A DIGEST OF DECISIONS AND ENCYCLOPÆDIA OF PENNSYLVANIA LAW

1754–1898

BEING AN ENCYCLOPÆDIC SUMMARY, UNDER APPROPRIATE TITLES, OF THE LAW OF PENNSYLVANIA; SUPPORTED BY COMPENDIOUS STATEMENTS OF ALL THE CASES EVER DECIDED BY COURTS OF RECORD IN THE COMMONWEALTH

BY

GEORGE WHARTON PEPPER

MEMBER OF THE PHILADELPHIA BAR AND PROFESSOR OF LAW IN THE LAW SCHOOL OF THE UNIVERSITY OF PENNSYLVANIA

AND

WILLIAM DRAPER LEWIS, PH.D.

MEMBER OF THE PHILADELPHIA BAR; PROFESSOR OF LAW AND DEAN OF THE FACULTY OF LAW IN THE UNIVERSITY OF PENNSYLVANIA

VOL. 3.

PHILADELPHIA
REES WELSH & COMPANY, LAW PUBLISHERS
901 SANSOM STREET
1898

PEPPER AND LEWIS'S DIGEST OF DECISIONS

AND

ENCYCLOPAEDIA OF PENNSYLVANIA LAW.

CONSTITUTION OF THE UNITED STATES.

See Bankruptcy ; Constitution of Pennsylvania ; Evidence ; Judgments ; Navigable Rivers ; Shipping ; Taxation ; United States Courts.

I. POWERS OF CONGRESS.

(A) REGULATION OF FOREIGN AND INTERSTATE COMMERCE.

1. Sale of Goods Manufactured without the State.

Under Article I., § 8, cl. 3, of the constitution of the United States, giving the control of interstate and foreign commerce to congress, a state may not, as a general rule, prohibit the importation from another state of an article of commerce, and its sale in the original package, so as to interfere with the general power to import and sell; but it may, in some instances, and for particular purposes, in the exercise of its police powers, regulate or prohibit the sale within the state of articles in the packages in which they are brought into the state. (1–3)

Under the Pennsylvania decisions, the act of May 21, 1885 (P. L. 22, § 1; P. & L. Dig. 3263), forbidding the manufacture or sale of any oleaginous substance designed to take the place of butter or cheese, was held not to be in conflict with the power vested in congress to regulate interstate commerce (4–6); but these cases were reversed by the supreme court of the United States, and the act held unconstitutional in so far as it applied to oleomargarine brought into the state and sold in the original package. (7)

(1) B. was convicted under the act of May 13, 1887 (P. L. 108, § 17; P. & L. Dig. 2710), of selling liquor to a person of known intemperate habits. He defended on the ground that he was the agent of a firm in another state, selling the liquor in the original packages as shipped to him by said firm, and requested an instruction that the state had no power to pass a law making a sale of liquor to a person of known intemperate habits a criminal offence, when such liquor was shipped into the state in original packages, until such liquor so brought in in such original packages might become, by breaking bulk or sale, a part of the common property of the state, and that any such law on the statute book did not apply to the case. Instructions to this effect were refused, and judgment for the commonwealth affirmed.—Comm. v. Zelt, 138 Pa. 615 (1891), Paxson, C. J.; s. c. 21 Atl. 7, 27 W. N. C. 131, 38 Pitts. L. J. 243.

(2) B. was the agent of a brewing company without the state of Pennsylvania, and sold the product of the company within the state in packages as packed. There was evidence to show that B. had sold beer to men of known intemperate habits and to minors. He was indicted for so selling as well as for the sale of liquors without license, and alleged as a defence the "original package" decisions of the United States supreme court. *Held*, that he must be acquitted as to the mere sale of liquor without a license, but as to its sale to minors and intemperate persons, the act forbidding such sales came within the just police power of the state. Judgment against B. affirmed.—Comm. v. Silverman, 138 Pa. 642 (1891).

(3) A New York corporation, having no agency within this state at which process might be served as required by Article XVI., § 5, of the constitution of Pennsylvania, and not having filed in the office of the secretary of state the statement required by act of assembly, sold and delivered goods to B. in Pennsylvania. *Held*, that to construe the transaction as prohibited by the article of the state constitution referred to, and by the law requiring the filing of the statement, would bring both the article and the law in conflict with the interstate commerce provision of the United States constitution.—Wile & Brickner Co. v. Onsel, 1 D. R. 187 (1891), Morrison, J.; s. c. 10 Pa. C. C. 659.

(4) B. sold from a package, two pounds of oleomargarine manufactured in Illinois. He was prosecuted for violating the act of May 21, 1885 (P. L. 22; P. & L. Dig. 3263), prohibiting the sale of oleomargarine in Pennsylvania. It was contended that this act, as far as it related to sales in this state of oleomargarine manufactured outside of the state, was unconstitutional, as interfering with the regulation of interstate commerce by congress. Judgment for the commonwealth was affirmed.—Comm. v. Paul, 148 Pa. 559 (1892) s. c. 24 Atl. 78.

(5) B., a resident of Pennsylvania, obtained, as agent for a Rhode Island manufacturer of oleomargarine, an internal revenue store license, and opened a store in this state under said license where he retailed the oleomargarine in the packages as shipped to him by his principal. For such a sale he was indicted under the act of May 31, 1885 (P. L. 22; P. & L. Dig. 3263), prohibiting, under a penalty, the sale of, offering for sale, or having in possession with intent to sell, oleomargarine. On a case stated, judgment was rendered for defendant. On appeal, B. contended that the sale was interstate commerce, within the commerce clause of the United States constitution, and not subject to the police regulations of the state. *Held*, that the business was not interstate, but intra-state, commerce, and subject to state police control; also that the package was not an "original package," within the interstate commerce doctrine, put up for convenience of handling and security of transportation, and therefore not protected by the federal constitution. Judgment reversed.—Comm v. Schollenberger, 156 Pa. 201 (1893), Williams, J.; s. c. 27 Atl. 30.

(6) B. was indicted for selling oleomargarine as an article of food, contrary to the act of 1885. The jury found that B. was a resident of Pennsylvania, and an authorized agent of A., a manufacturer of oleomargarine in Illinois; that B., as such agent, had taken out an internal revenue license as a wholesale dealer in oleomargarine; that A. had shipped to B. a package of oleomargarine, separate and apart from all other packages, being a tub of ten pounds, marked, sealed, stamped, and printed, in accordance with the act of congress; and that B. had sold this package with the marks, stamps, seals, and prints unbroken. Judgment for B. on the special verdict. On appeal, B. contended that the package was an "original package," within the meaning of the interstate commerce doctrine, and that the prohibition of the sale of such packages was an unconstitutional interference with interstate commerce. *Held*, that a package so put up with the intention of selling it at retail was not an "original package," as contended; and that the prohibition of its sale was a valid exercise of the police power of the state. Judgment reversed.—Comm. v. Paul, 170 Pa. 284 (1895), Williams, J.; s. c. 33 Atl. 82.

(7) In the cases of Comm. v. Paul, and Comm. v. Schollenberger, it was held, on appeal to the supreme court of the United States, that oleomargarine was a proper subject of interstate commerce, and that no state had authority to entirely forbid its importation on the ground that it was a newly discovered article whose wholesomeness as a food the state was entitled to determine, or on the ground that it was liable to be adulterated so as to be injurious to health; that the right of one importing a proper article of interstate commerce to sell the same in the original package did not depend on whether the package was suitable for retail trade or not; and that it might be sold either in person or through an agent in the state; that the act of May 21, 1885, prohibiting the sale of any oleaginous substance designed to take the place of butter was void as applied to pure oleomargarine brought into the state and sold in the original package.—Schollenberger v. Pennsylvania; Paul v. Same, 18 Supreme Ct. Reporter (May 23, 1898), Peckham, J. (Gray and Harlan, JJ., dissenting).

2. Purchase of Goods within the State for Outside Sale.

An act prohibiting the buying of goods in certain counties for sale without the state is in contravention of the interstate commerce clause of the federal constitution. (8)

(8) Judgment was entered by default in an alderman's court against B. for the penalty imposed by the act of April 8, 1861 (P. L. 258), for buying or bartering for goods in Berks and Franklin Counties, with intent to send the same to outside markets for sale or barter. On *certiorari* to the county court, B. excepted to the constitutionality of the act in question, as in violation of Art. IV., § 2, of the federal constitution, providing "that the citizens of each state shall be entitled to all privileges and immunities of citizens of the several states," with the fourteenth amendment to the same, forbidding any state "to deny to any person within its jurisdiction the equal protection of its laws," and with Art. I., § 8, cl. 4, of the same providing that congress "shall have power to regulate commerce among the several states." *Held*, not in violation of Article IV., or the 14th amendment, but in direct contravention of Art. I., § 8, and therefore unconstitutional. Proceedings reversed.—Rothermel v. Zeigler, 7 Pa. C. C. 505 (1890), Endlich, J.

3. Taxation of Commodities Prepared for Sale without the State.

A tax on coal mined for sale without the state is a tax on the commodity, and not on interstate commerce. (9)

(9) B., a mining corporation, appealed from a settlement by the accounting department of the state, which had charged B. with a tax on anthracite coal mined within the state. It was objected that the coal taxed had been mined in order to be sent out of the state and sold, that it was so transported and sold, and that its taxation was in violation of the constitution of the United States. *Held*, that such a tax was not on commerce but on the commodity. Verdict directed for the commonwealth.—Comm. v. Pennsylvania Coal Co., 2 Pears. 402 (1875), Pearson, J.; s. c. 32 L. I. 336. Affirmed by supreme court.

4. License Regulations.

Statutes and ordinances requiring the taking out of licenses to do business, may be valid as police regulations, but if they interfere with commerce between the states, not sub-

ject to police regulation, they amount to trade regulations or restrictions, and are in violation of the United States constitution. (10–19)

The business of one who establishes a depot in another state to evade the Pennsylvania statute as to peddlers, is not entitled to protection as interestate commerce. (20)

A law refusing to a non-resident of the state or his agent a license to sell intoxicating liquors is an unconstitutional interference with interstate commerce. (21; but see 22)

A license tax on a foreign railway corporation, for the privilege of having an office in the state, where the corporation has its road lying wholly without the state, but has entered into contracts with railroads in other states whereby its road becomes a link in a through line between several states, has been held to be no interference with interstate commerce regulation; but the case was reversed by the United States court. (23)

A license tax on a foreign merchant having a storehouse or market in the state is not a tax on interstate commerce. (24)

(10) The act of April 2, 1821 (7 Sm. L. 471), and the supplement thereto, passed March 4, 1824 (P. L. 32), provided that vendors of foreign merchandise should take out licenses. In an action by the commonwealth against B., a merchant resident within the state, for the recovery of duties imposed by this act, judgment was rendered against B. over the contention that the acts violated the commerce provisions of the federal constitution.—Biddle v. Comm., 13 S. & R. 405 (1825), Tilghman, C. J.

(11) An employee of a citizen of New York was convicted of peddling in violation of the act of April 20, 1854 (P. L. 418), prohibiting peddling in certain counties. Upon a motion in arrest of judgment, *held*, that the said act was not contrary to the constitution of the United States.—Comm. v. Lippincott, 7 Pa. C. C. 32 (1889), Simonton, P. J.

(12) B., a canvasser for the sale of "soapine," representing a Rhode Island manufacturing company, came into Schuylkill County and was indicted under the local act of April 17, 1846 (P. L. 364), forbidding the sale by any person, within that county, as a hawker or peddler of foreign or domestic goods, wares, and merchandise. B. contended that the act violated the interstate commerce provisions of the United States constitution. The court held that the act did not interfere with the free exchange of commodities between citizens of the different states, and that the citizen of another state while in Pennsylvania was subject to her police powers to the same extent as her own citizens. Judgment on conviction affirmed.—Comm. v. Gardner, 133 Pa. 284 (1890), Williams, J.

See, however, note to (13), *infra*.

(13) Defendant, a non-resident of the state, was arrested for canvassing for a Chicago manufacturer without a license, contrary to a city ordinance, which prohibited all persons from peddling from house to house within the city, without first obtaining a license. He contended that the ordinance was in conflict with the interstate commerce provisions of the federal constitution. *Held*, that as the ordinance applied equally to all persons, and did not discriminate against goods produced in other states, it did not violate said provisions. Judgment for the city affirmed.—Titusville v. Brennan, 143 Pa. 642 (1891), Williams, J.; s. c. 22 Atl. 893.

This case was reversed, on appeal, by the United States supreme court, on the ground that the license required was a tax on interstate commerce. —Brennan v. Titusville, 153 U. S. 289 (1894), Brewer, J.; s. c. 14 Sup. Ct. 829. The same court has since decided that a statute imposing a license on peddlers, and making no distinction between residents and products of a particular state and those of other states, is not, as to peddlers of goods previously sent to them by manufacturers in other states, repugnant to the United States constitution.—Emert v. Missouri, 156 U. S. 296 (1895), Gray, J.

(14) B., a citizen of New York, was arrested and imprisoned on an execution with clause of *capias ad satisfaciendum* for the collection of a penalty adjudged against him for peddling without a license, in violation of a borough ordinance. Defendant was selling the goods for a firm in New York. On *habeas corpus* it was contended that the license ordinance imposed an unconstitutional burden on interstate commerce. Judgment for defendant.—Comm. v. Walker, 14 Pa. C. C. 586 (1894), Morrison, J.; s. c. 3 D. R. 534, 12 Lanc. L. R. 210.

(15) B. was arrested under a local act of 1846, prohibiting peddling, and committed by a magistrate in default of bail. B. was a salesman for a manufacturing company incorporated in New York, and peddled and sold their merchandise from house to house, also taking orders by sample. A writ of *habeas corpus* was taken by B. and it was contended that the act under which he was arrested was in conflict with the interstate commerce clause, and unconstitutional. Judgment for B.—Comm. v. Mooney, 12 Lanc. L. R. 209 (1895), Livingston, P. J.

(16) B., a canvasser for the sale of clocks, representing a Rhode Island company manufacturing them, was indicted, under the act of February 6, 1830 (P. L. 39, § 1; P. & L. Dig. 3415), for peddling clocks without a license. It was contended that the act violated the interstate commerce provisions of the constitution of the United States, but a judgment on conviction was affirmed.—Comm. v. Harmel, 166 Pa. 89 (1895), Williams, J.; s. c. 30 Atl. 1036.

(17) B., a corporation of New York, violated the provisions of an ordinance of a borough, prohibiting any person not engaged in permanent business in said borough from beginning a transient retail business there without first obtaining a license for the same, upon failure to do so such person to be subject to a fine. On a case stated, *held*, that the ordinance was in conflict with the "commerce clause." (Article I., § 8) of the federal constitution, being, as to the defendants, an interference with interstate commerce; also that it was void, as discriminating between citizens engaged in permanent business in the borough and other citizens.—South Bethlehem v. Hackett, 4 North. Co. 381 (1895), Scott, J.; s. c. 12 Lanc. L. R. 196.

(18) Under the act of May 4, 1889 (P. L. 86, § 1), a borough by ordinance imposed a license tax upon persons engaging in transient retail business therein. On a case stated to determine whether such a tax could be collected from a citizen of Maryland, proposing to do such a business in the borough, judgment was entered in favor of the defendant, on the ground that such a license fee would be, as to him, a tax on interstate commerce.—Danville Borough v. Leiberman, 4 D. R. 475 (1895), Ikeler, P. J.; s. c. 16 Pa. C. C. 394.

(19) The burgess and town council of a certain borough passed an ordinance imposing a license tax on peddlers trading in their borough limits, whether by sample or otherwise. Fines were provided for delinquency, and a proviso added that the ordinance "should not apply to persons soliciting orders for the manufacture of goods manufactured beyond the boundaries of the state." Under this ordinance A. was convicted and fined. On *certiorari*, it was contended that the proviso only covered manufactured goods, and did not prevent the ordinance from conflicting with the constitution of the United States. Proceedings reversed.—Port Clinton Borough v. Shafer, 5 D. R. 583, (1896), Pershing, P. J.; s. c. 18 Pa. C. C. 67; 14 Lanc. L. R. 28.

(20) Certain citizens of Pennsylvania establish a depot for their goods in another state, expecting to peddle goods from the same over Pennsylvania under the protection of the interstate commerce provisions of the constitution of the United States. A., one of their peddlers, was arrested and fined under the act of April 17, 1846 (P. L. 364), prohibiting peddling in Schuylkill County. Proceedings affirmed.—Comm. v. Dunham, 4 Super. Ct. 74 (1897), Willard, J.

(21) B. was indicted under the act of April 12, 1875 (P. L. 40, § 8), which provides that no person, non-resident of the commonwealth, shall engage in selling intoxicating liquor, and that no travelling agent shall sell intoxicating liquor for persons who are non-residents, within the limits of the commonwealth, and prescribing a penalty for violation thereof. B. moved to quash the indictment on the ground that the act was in violation of Article I., § 8, of the constitution of the United States. Indictment quashed.—Comm. v. Lehr, 10 York, 103 (1896), Bittenger, P. J.

(22) Applications by a foreign corporation and its agent for a license to sell liquor at wholesale at an agency in this state were refused by the license court, under the act of April 12, 1875 (P. L. 40; P. & L. Dig. 2708), prohibiting non-residents from engaging in selling, trading, or vending intoxicating liquors, either themselves, or by agents; the court holding that the act, being based on the police powers of the state and not intended as a regulation of commerce, was not void.—Risser's Application, 6 Pa. C. C. 270 (1888), White, P. J.; s. c. 6 Lanc. L. R. 104.

(23) A. was a railway corporation existing under the laws of Virginia, and its main line and branches lay wholly within that state. Its line of road connected with the roads of other corporations, and by virtue of their connections and certain traffic contracts and agreements, it had become a link in a through line of road over which freight and passengers were carried into and out of the state. On appeal to the common pleas by A. from a settlement of a license tax on it by the commonwealth under the act of June 7, 1879 (P. L. 120, § 16, repealed April 24, 1885; P. L. 9), authorizing the collection from corporations, having none of their capital invested in this state, of a license fee for the privilege of having an office in the state, it was contended by A. that this section of the act conflicted with the interstate commerce provision of the United States constitution. Judgment for the commonwealth was affirmed.—Norfolk & W. R. Co. v. Comm., 114 Pa. 256 (1886), Green, J.; s. c. 6 Atl. 45, 18 W. N. C. 381.

This case was reversed by the United States Supreme Court, on the ground that the act was an interference with interstate commerce.—136 U. S. 114 (1890), Lamar, J. (Fuller, C. J., Gray and Brewer, JJ., dissenting); s. c. 26 W. N. C. 189.

(24) B. was the owner of a certain store or market in the state of Pennsylvania, where he sold meats and merchandise prepared by him at his slaughter-houses and manufactories in other states. He was duly assessed with a mercantile license tax, appealed from such assessment, and alleged that as his wares were brought in from other states they could not be constitutionally subjected to a state tax. It was answered that such wares, after being brought into his market, and there kept for sale, ceased to be the subject of interstate commerce and became the subject of state commerce only. Appeal dismissed.—Comm. v. Swift & Co., 19 Pa. C. C. 572 (1897), Mitchell, P. J.

5. Taxes on Transportation and Transmission.

Under the decisions of the supreme court of the United States (overruling and reversing cases 25–28, and followed in 29–30), the imposition of taxes on transportation and transmission (as by railway, steamship, and telegraph companies), between this and other states, is unconstitutional, as conflicting with the interstate commerce provisions of the United States constitution; but continuous transportation from one point to an-

other in this state, with an intermediate passage through another state, is not interstate commerce, and is therefore subject to state taxation. (31–32)

A tax on tolls received by a railway company whose road lies entirely within this state, for the use of its road by a foreign corporation, for transportation either within or through the state, not being a tax on transportation, is therefore not a tax on interstate commerce. (33)

Telegraph poles and wires are not instruments of interstate commerce such as to render void state or municipal taxation thereof. (34–36)

An act authorizing detention and inspection at quarantine of vessels carrying emigrants, and imposing a charge upon the owners of such vessels for expense incurred in consequence of the care of persons found sick thereon, is not unconstitutional as an interference with the federal right to regulate commerce. (37)

An act prohibiting the floating of logs on the Susquehanna river except under certain restrictions, and providing for their forfeiture in case of failure to comply with such restrictions, does not violate the interstate commerce clause of the federal constitution. (38)

(25) An appeal was taken to the common pleas from a settlement of taxes under the act of August 25, 1864 (P. L. 988, § 1), authorizing the laying of a tonnage tax on freight carried by railroad and transportation companies. The settlement included freight carried from other states to Pennsylvania, and that carried from Pennsylvania, but not that carried through Pennsylvania from and to other states. It was contended by the companies taxed that such taxing of freight carried between Pennsylvania and other states violated the interstate commerce provisions of the federal constitution. Judgment for the companies was reversed.—Tonnage Tax Cases, 62 Pa. 286 (1869), Agnew, J. (Read, J., dissenting).

(26) On an appeal from a settlement by the commonwealth of taxes on gross receipts of a transportation company, it was objected that the company being engaged in the business of transporting freights and passengers between ports in the United States and between such ports and foreign contries, the imposition of such taxes was in conflict with the interstate commerce provision of the federal constitution. Judgment for the commonwealth was affirmed.—Philadelphia & Southern Mail S. S. Co. v. Comm., 104 Pa. 109 (1883), Mercur, C. J., Green, J. Affirming s. c. 14 W. N. C. 23.

Reversed in Philadelphia & Southern Mail S. S. Co. v. Pennsylvania, 122 U. S. 326, Bradley, J.; s. c. 7 Sup. Ct. 1118.

(27) Under the act of June 7, 1879 (P. L. 112, § 7), the Pullman Palace Car Company, a corporation chartered under the laws of the state of Illinois, was taxed upon its gross receipts derived from all sources, from its business carried on within the state of Pennsylvania, including receipts derived from passengers, travelling in the cars of the corporation passing into, through, and out of the state. It was claimed that the act was contrary to the interstate commerce clause of the constitution of the United States. *Held*, constitutional. Affirmed.—Pullman's Palace Car Co. v. Comm., 107 Pa. 148 (1884), Trunkey, J.

(28) The act of June 7, 1879 (P. L. 112), taxed the gross receipts of corporations doing business in the state. The settlement of taxes under this act against the Western Union Telegraph Company included receipts from messages sent outside of the state from points within the state, messages sent into the state from points outside, and messages sent through the state. It was contended that such a construction of the act was contrary to the interstate commerce provision of the federal constitution. Judgment for the commonwealth was affirmed.—Western Union Tel. Co. v. Comm., 110 Pa. 405 (1885); s. c. 20 Atl. 720.

This case was reversed by the supreme court of the United States, which held the taxes unconstitutional, except as to messages transmitted wholly within the state.—Western Union Tel. Co. v. Pennsylvania, 128 U. S. 39 (1888), Fuller, C. J.; s. c. 9 Sup. Ct. 6.

(29) On an appeal from a settlement of taxes on gross receipts against a transportation company, a New York corporation, under the act of June 7, 1879 (P. L. 112, § 7), the court struck out the items made up of receipts from goods transported beyond the state on the ground that the act, so far as it affected such receipts, was void, under the interstate commerce provisions of the federal constitution.—Comm. v. Delaware & H. Canal Co., 1 Mona. 36 (1888); s. c. 17 Atl. 175, 22 W. N. C. 525.

(30) A. brought an action against the Pennsylvania Railroad Company for treble the amount of the excessive charges for freights for transportation of goods from this state to another, under the act of June 4, 1883 (P. L. 72, § 2; P. & L. Dig. 3990). A demurrer on the ground that the act was, in respect of goods transported from this state to another, in conflict with the interstate commerce provisions of the constitution of the United States, was sustained.—Wigton v. Pennsylvania R. Co., 20 Phila. 184 (1890), Biddle, J.; s. c. 47 L. I. 154..

(31) In an assessment of taxes upon the gross receipts of a railroad company, for transportation

of passengers and freights, under the act of June 7, 1879 (P. L. 112, § 7), there were included the receipts for transportation from a point within the state through another state to another point within this state, by a continuous passage. It was contended that the taxation of these receipts was in violation of the constitution of the United States. *Held*, affirming the court below, that such taxation was not in violation of the constitution.—Comm. v. Lehigh Valley R. Co., 129 Pa. 308 (1889); s. c. 18 Atl. 125.

(32) The auditor-general, in settling an account with the A. railroad company, charged a tax upon the entire receipts derived from the operation of its lines in Pennsylvania. On appeal to the common pleas, it appeared that A. was incorporated by the state of New York, and had its principal office and general treasury in that state, and that part of the receipts taxed were received for transporting by continuous carriage, freight and passengers from one point in Pennsylvania to another point therein, which freight and passengers were carried out of the state and in again in the course of transit. It was contended by A. that such receipts could not be taxed, because the fact that the goods and passengers were carried out of the state made the whole carriage interstate commerce. *Held*, that such transportation was internal commerce, and that the state had the power to charge the tax.—Comm. v. New York, L. E. & W. R. Co., 21 W. N. C. 410 (1888), McPherson, J.

(33) Taxes were settled under the act of June 7, 1879 (P. L. 112, § 7), against a railroad company of this state for tolls received by it from a foreign railroad company for use of its road in the transportation of goods, said road lying wholly within this state. The contention of the company was that the imposition of the tax violated the interstate commerce provisions of the constitution of the United States. Judgment for the commonwealth was affirmed.—Comm. v. New York, P. & O. R. Co., 145 Pa. 38 (1891); s. c. 22 Atl. 212.

See, also, Comm. v. New York, L. E. & W. R. Co., 145 Pa. 200 (1891), Clark, J.; s. c. 22 Atl. 806.

(34) A telegraph company was assessed by a city for taxes on its telegraph poles and wires, and on non-payment, suit was brought. An affidavit of defence was filed setting forth that the poles and wires in question were principally employed and operated in the transmission of messages between the states, and were instruments of interstate commerce, the taxation of which by a state was void for unconstitutionality. Judgment for insufficient affidavit of defence, affirmed. —Philadelphia v. American Union Telegraph Co., 167 Pa. 406 (1895).

(35) By a city ordinance, every telegraph, telephone, or electric light pole in its limits was required to be inspected by the police, and the owner was charged a stated license fee. B.'s poles had been so inspected for some years, and the license fee not paid. Suit was brought to recover the amount due on the license fees, and it was objected that the property charged belonged to a corporation authorized to transmit messages to various states, that the license fee was indirectly a tax, and therefore illegal, being in contravention of the laws of the United States, and of Art. I., § 8, of the federal constitution. Judgment against B. affirmed.—Allentown v. Western Union Telegraph Co., 148 Pa. 117 (1892).

(36) Assumpsit was brought to recover of B., a telegraph company, a license tax imposed by city ordinance upon its poles and wires, in the city. B. contended that the property in question was not such as could be constitutionally taxed by the city, as it was employed in the interstate commerce and as it was private property on which the city had bestowed no money or labor. From an adverse judgment B. appealed. *Held*, that the ordinance was a proper exercise of police powers; and judgment affirmed.—Chester v. Phila., Reading & Pottsville Telegraph Co., 148 Pa. 120 (1892). Affirming s. c. 4 Del. 601.

(37) B. and C. were owners of vessels which brought to Pennsylvania certain emigrants, who were detained by the quarantine officials. Action was brought by the board of health to recover of B. and C. the cost of boarding, medical attendance, and nursing for these persons, under the act of January 29, 1818 (7 Sm. L. 5, § 16; P. & L. Dig. 3856). It was urged, in arrest of judgment, that the act empowering such detention and charge was unconstitutional, as it interfered with the federal right to regulate commerce, and was analogous to the imposition of head-money upon emigrant passengers. Motion to arrest judgment dismissed, and judgment awarded against B. and C.—Board of Health v. Loyd, 1 Phila. 7 (1850), Sharswood, J.

(38) In an action of replevin by A. against B., it appeared at the trial that A., the owner of certain logs, voluntarily put them into the west branch of the Susquehanna river, and permitted them to be floated into the main river Susquehanna, and down the same, without the logs being rafted and joined together, or enclosed in boats, and under the control and pilotage of men, specially placed in charge of the same, and actually thereon. The logs were being floated to A.'s mills, below the line of the state of Maryland. It further appeared that when the logs were first seen by A.'s agent, they were on the islands of B., on his cultivated fields. B. refused to allow A. to remove the logs unless he paid 50 cents on each log, which A. refused to do. B. claimed to retain the logs under the act of December 11, 1866 (P. L. [1867] 1365; P. & L. Dig. 2755), which provided that no saw-logs could be floated or driven in the Susquehanna river, unless rafted and under the pilotage and control of men, and that all saw-logs

not so rafted could be taken and held against all persons whatsoever unless redeemed upon the payment of fifty cents on each log. A. requested the court to charge that the act of December 11, 1866, was unconstitutional and void. The court refused so to charge, and instructed the jury that the act was constitutional and not repugnant to any law of congress passed to regulate commerce on the river. *Held*, no error.—Craig v. Kline, 65 Pa. 399 (1870), Agnew, J.

6. Taxes on Receipts of Corporations.

A tax on the receipts of a domestic insurance company, as evidenced by the entire amount of premiums received from all sources, both within and without the state, is not repugnant to the provisions of the United States constitution prohibiting interference with interstate commerce. Such a tax is merely a tax on money of the corporation in its treasury within the state. (39)

(39) The act of March 20, 1877 (P. L. 6, § 6), imposed a tax upon "the entire amount of premiums received by insurance companies." It was construed to intend to tax all the business of such companies, as evidenced by the entire premiums received by them from all sources, whether within or without the state. In an action of debt to recover taxes assessed under this act, it was objected that the act was in conflict with the constitution of the United States. Judgment against the company was affirmed.—Insurance Co. of North America v. Comm., 87 Pa. 173 (1878), Agnew, C. J.; s. c. 6 W. N. C. 177, 35 L. I. 366.

(B) EX POST FACTO LAWS.

The act of congress of March 3, 1865 (Rev. Stat. U. S. § 1996), making desertion from military service punishable by forfeiture of citizenship, is not *ex post facto*, as against one who deserted before its passage, as every new refusal of a drafted man to render service is a new offence. (40)

(40) A. was drafted in 1864, but refused to report or to provide a substitute. At the next election his vote was refused on the ground that he had forfeited his citizenship under the act of congress of March 3, 1865. In suit against the election judge, A. claimed that the act of 1865 was *ex post facto* as to him. The defendant contended that every new refusal of the plaintiff constituted a new offence, and that the act was therefore not unconstitutional. *Held*, affirming the lower court, that the act was constitutional. —Huber v. Reily, 53 Pa. 112 (1866), Strong, J.

(C) WEIGHTS AND MEASURES.

Where congress has not exercised its right under the constitution, to fix weights and measures, the states may properly exercise that power. (41)

(41) In an action by A. against B. to recover the price of a quantity of coal, the court charged that, by the act of April 15, 1834 (P. L. 525; P. & L. Dig. 4823), 2,000 pounds constituted a ton in Pennsylvania, and judgment was entered accordingly. On appeal, B. contended that the provision of the federal constitution giving congress power to regulate weights and measures, extinguished the right in the states over the same subject, until congress exercised the right conferred, and that the act of 1834 was therefore unconstitutional. Judgment for A. affirmed.—Weaver v. Fegely, 29 Pa. 27 (1857), Lewis, C. J.

(D) PATENTS.

An act requiring that any negotiable instrument, the consideration of which is the sale of a patent right, shall have the words "for a patent right" legibly written across its face, and otherwise making it a misdemeanor to take, sell, or transfer any note having such consideration, is a proper exercise of the police power of the state, and not unconstitutional. (42)

(42) A., having been indicted and convicted under the act of April 12, 1872 (P. L. 60; P. & L. Dig. 1305), making it a misdemeanor knowingly to receive or transfer any note given in consideration of the right to make or sell any patented invention, without the words "given for a patent right" written thereon, moved for a new trial, on the ground that the act was unconstitutional, being an exercise by the state of powers vested in congress. Order refusing motion, affirmed.—Shires v. Comm., 120 Pa. 368 (1888).

(E) ARMY AND MILITIA.

1. Power of Congress to Draft State Militia.

The United States conscription law of March 3, 1863, was within the powers vested in congress. (43)

(43) Bills for injunction were filed by persons drafted, under the United States conscription law of March 3, 1863, to restrain the conscription officers from acting, on the ground that congress had no power to draft persons constituting the militia force of the state, and that the act was in derogation of the reserved rights of the states, and of the rights and liberties of the citizens thereof, and was unconstitutional and void. Preliminary injunctions were granted, but subsequently dissolved.—Kneedler v. Lane, 45 Pa. 238 (1863), Strong, Read, and Agnew, JJ. (Woodward, C. J., Thompson, J., dissenting). Reversing 3 Gr. 465; affirming 3 Gr. 523.

2. Power of State to Punish Recusant Drafted Militiamen.

The state has the right to pass an act providing for trial by court martial, of drafted militiamen, who refuse to march to the place of rendezvous agreeably to the orders of the governor. (44)

(44) Under an act of legislature passed to provide for trial by court martial of drafted militiamen who should refuse to march to the place of rendezvous designated by the governor, A. was tried and fined a certain sum. He refused to pay the fine, and B., a deputy marshal, proceeded to collect it by levy. For trespass against B., A. contended that the act was in violation of Art. I., § 8, of the constitution of the United States. Judgment for A. reversed.—Moore v. Houston, 3 S. & R. 169 (1817), Tilghman, C. J.

(F) IMPLIED POWERS OF CONGRESS.

1. To Prefer Debts Due the United States.

Congress has a constitutional right to give preference, out of the estate of a public debtor, to debts due to the United States, and the privilege of such a law may be claimed in the state courts. (45)

(45) An act of congress provided that the United States should be entitled to a preference out of the estates of public debtors for debts due to the United States. In an action on an administration bond given for the due administration of a deceased revenue officer, who died heavily indebted to the United States, it was claimed that the law was without force in the state courts, as congress had no power to pass such laws. *Held*, that it was within the implied powers of congress. —Comm. v. Lewis, 6 Binn. 266 (1814), Tilghman, C. J.

2. To Pass Legal Tender Laws.

The act of congress of February 25, 1862, providing that the treasury notes issued thereunder should be legal tender was constitutional, and a tender made in such notes was sufficient. (46–48)

(46) B. tendered to A. the amount of a certain judgment, in legal tender notes of the United States. A. refused the tender, and issued execution, with instructions to the sheriff to collect the same in coin. B. moved to set aside the execution upon the ground of tender, and A. objected that the act of congress of February 25, 1862, providing that the treasury notes to be issued under it should be legal tender in payment of debts, was not within the powers vested in congress, and was unconstitutional. B. contended that such power was bestowed by the provision vesting in congress the capacity "to make all laws necessary and proper for carrying into execution the foregoing powers, and all the powers vested by the constitution in the government of the United States, or in any department or office thereof." *Held*, the act was constitutional, and execution set aside.—Crocker v. Wolford, 5 Phila. 340 (1863), Agnew, P. J.; s. c. 2 Pitts. 453.

(47) A. sued on a mortgage conditioned for the payment of the debt or sum of twelve thousand dollars, lawful silver money of the United States. B., the mortgagor, had previously, and before suit brought, tendered the amount in treasury notes of the United States issued under and in conformity with the act of congress of February 25, 1862, by which such notes were declared to be "lawful money and legal tender of all debts, public and private, within the United States." B. affirmed and A. denied the constitutionality of this act, and the sufficiency of the tender made in accordance with its provisions. Judgment for B. —Borie v. Trott, 5 Phila. 366 (1864), Hare and Stroud, JJ. (Sharswood, P. J., dissenting).

(48) In proceedings in equity by A. against B., it appeared that B. had conveyed certain land to C., reserving a yearly ground rent of $211.50, lawful silver money of the United States of America. The ground-rent deed contained a proviso, that if C., his heirs or assigns, should at any time thereafter pay or cause to be paid to C. the sum of $3,525, lawful money as aforesaid, then the said ground rent should forever thereafter cease and be extinguished, and the covenant for payment should become void. By sundry conveyances, the said land, subject to the ground rent, was conveyed to A. The bill prayed that B. should be ordered to extinguish, release, and forever quit claim to said ground rent, upon A. paying to B. the s umof $3,525, and such arrearages of rent as were due upon the same at the time of the tender. B. demurred to the bill in that it nowhere appeared in said bill that A. had tendered to B. the sums named in lawful silver money of the United States of America. It was agreed that the tender was made in the notes of the United States of America issued under the authority of the act of congress of February 25, 1862, commonly called "legal tender notes," and in no other kind of money. A. contended that the said act of February 25, 1862, was unconstitutional in that congress had no power to issue treasury notes of the United States, and make them lawful money, and a legal tender for the payment of debts. The court below held that the act was constitutional. Affirmed.—Shollenberger v. Brinton, 52 Pa. 9 (1866), Strong, Read, and Agnew, JJ. (Woodward, C. J. and Thompson, J., dissenting); s. c. 12 Am. L. Reg. 591.

II. JURISDICTION OF FEDERAL COURTS.

A state act giving a lien on ships for materials furnished in their construction, etc., is not unconstitutional as infringing upon

the admiralty jurisdiction of the federal courts. (49)

The sixth section of the act of March 24, 1851 (P. L. 229; P. & L. Dig. 3481), which provides that pilotage shall be a lien on a vessel recoverable by proceedings *in rem* in the state courts, is in contravention of Art. III., sec. 2, of the constitution of the United States and section 9 of the judiciary act of 1789, which give to the district court of the United States exclusive original cognizance of all cases of admiralty jurisdiction, saving to suitors common-law remedies. (50)

(49) The act of June 13, 1836 (P. L. 616, § 1; P. & L. Dig. 213), gave a lien for work done and material furnished in the building of ships to certain classes of tradesmen and mechanics, who actually did the work and furnished the material. A., a tradesman within the purport of the act, furnished material for a ship, and brought suit, on the lien given by the act, for the amount due. It was contended that the act was unconstitutional as dealing with matters within the admiralty jurisdiction conferred on the United States courts by the constitution. Judgment for A. affirmed. —Scull v. Shakespear, 75 Pa. 297 (1874), Agnew, C. J.

(50) A. filed a libel in a Pennsylvania court against the vessel, to secure the payment of pilotage, and under it the vessel was attached. The proceedings were taken in accordance with § 6 of the act of March 24, 1851, which provides that pilotage shall be a lien on the vessel, recoverable by proceedings *in rem*, in the same manner as in proceedings in courts of admiralty for the recovery of seamen's wages. A rule was taken to dissolve the attachment on the ground that the case was within the admiralty and maritime jurisdiction of the district court of the United States, and that by Art. III., sec. 2, of the constitution and section 9 of the judiciary act of 1789, the district court had exclusive original jurisdiction thereof in proceedings other than at common law, and that the state act was therefore unconstitutional. Attachment dissolved.—Rutherford v. The Bark Ornen, 2 W. N. C. 122 (1875), Biddle, J.; s. c. 10 Phila. 369, 32 L. I. 420.

III. PROHIBITIONS ON THE STATES.

(A) EX POST FACTO LAWS.

The prohibition against *ex post facto* laws does not apply to civil proceedings. (51)

(51) C. owned certain lands, and, dying intestate, the same were sold by order of the orphans' court of the county in which they were supposed partly to lie and in which the administrator resided. Afterward the whole tract was annexed to this county, when it appeared that the lands in question had in fact lain entirely in the adjoining county. An act of assembly was passed to validate the title of the purchaser. Subsequently A., the heir of C., brought action to recover the land, claiming that the purchaser had taken no title, and that the act was void as being *ex post facto* and retrospective, and in contravention of vested right. From judgment for A., error was taken. *Held*, the law in question was not *ex post facto*, and hence was not unconstitutional, although it might be retrospective. Judgment reversed.—Lane v. Nelson, 79 Pa. 407 (1875), Paxson, J. (Mercur, J., dissenting).

B) LAWS IMPAIRING THE OBLIGATION OF CONTRACTS.

1. In General.

The constitutional prohibition against laws impairing the obligation of contracts extends only to contracts existing before the passage of the act (52–53), and the obligation of a contract made before the final approval of an act by the governor but after its passage by the legislature, cannot be affected by said act. (54)

The provision does not apply when the obligation of a contract is impaired by a change in the judicial construction of the contract. (55)

A city ordinance requiring the payment of warrants in a certain order cannot prevent the taking of a judgment by any holder of an overdue warrant, as that would impair the obligation of the contract. (56)

An act preventing employees from making their own contracts is unconstitutional. (57)

Where a scholarship in a college does not expressly provide that the college shall be perpetually located in a designated place, an act of the legislature permitting it to remove to another place does not impair the obligation of the contract of such scholarship. (58)

The act of June 8, 1881 (P. L. 84, § 1; P. & L. Dig. 1613), providing that no defeasance to any deed, absolute on its face, shall reduce the same to a mortgage, unless the defeasance was made in writing at the time and recorded, does not impair the obligation of a contract. (59)

The act of May 6, 1863 (P. L. 582; P. & L. Dig. 1317), and its supplement of April 10, 1872 (P. L. 51; P. & L. Dig. 3992), prohibiting the sale of railroad tickets except by agents of railroad companies, do not impair the obligation of contracts. (60)

(52) A canal company was authorized to raise funds by a public lottery. While such funds were being raised, an act was passed providing that no officers of the company should receive salaries

until the works on the canal were actually commenced. In a suit by A., the secretary of the company, to recover for services rendered after the passage of the act, notwithstanding its provisions, it was contended that the act was unconstitutional as impairing the obligation of a contract. Judgment for defendant affirmed.—Ehrenzeller v. Union Canal Co., 1 Rawle, 181 (1829), Rogers, J.

(53) A. furnished materials to B.'s general contractor for use on B.'s house, and for the materials so furnished A. filed, in 1893, a mechanic's lien, and issued a suit of *sci. fa.* upon the same. B. filed an affidavit of defence setting forth that he had never authorized A. to furnish the goods, and that, by special agreement, all material was to have been furnished by the general contractor. A. entered a rule for judgment, under the act of June 8, 1891 (P. L. 225; P. & L. Dig. 2923, n.), which provided that in such cases an express release of liability should be obtained in writing from the sub-contractor. B. alleged that this act was in violation of the United States constitution, Art. I., § 10, as impairing the obligation of contracts. *Held*, that the article in the constitution applied only to retrospective laws, and a law entered into a contract made after its passage and became part of the contract. Act held unconstitutional on other grounds.—McMasters v. West Chester State Normal School, 2 D. R. 753 (1893), Hemphill, J.

(54) In December, 1853, the corporation of Philadelphia, by its councils opened negotiations for the purchase of new market buildings, and on recommendation of a committee, certain buildings were purchased on January 30, 1854. The written contracts, executed on behalf of the city by the mayor, under the corporate seal, were dated on February 1, 1854, and on February 2, an act of assembly passed on January 31 (P. L. 21) was approved by the Governor. By this act it was provided that the name of "The Mayor, Alderman and Citizens of Philadelphia" should be changed to "The City of Philadelphia," that the corporate limits should be extended to embrace the whole county, that the debts of all the municipal corporations therein should be consolidated, and that no such corporation at any time after the passage of the act should make any new debts or contracts. On February 2, the city councils passed an ordinance authorizing the issue of certificates of loan for the purchase price of the new buildings, which A. sought to enjoin, setting forth that the contracts in question had been hurried through in full knowledge of the pending act, and after its passage by both houses, and was void. *Held*, that the act could not constitutionally vary the obligations of a contract passed before its final approval by the executive. Motion refused.—Wartman v. Philadelphia, 33 Pa. 202 (1854), Black, C. J.

(55) In an action on an oil lease, for rent, the affidavit of defence set forth that the lease had been forfeited by failure to comply with its terms, and that the lessor had occupied the land at and after the time of breach, and contended that these facts made the lease void. Judgment was entered for the plaintiff. The defendant contended that the lease was made on the faith of the state of the law as expressed in a certain judicial decision, and that to apply a different rule of law to the lease would be contrary to Article I., section 10, of the federal constitution. Judgment affirmed.—Ray v. Western Pennsylvania National Gas Co., 138 Pa. 576 (1891), Clark, J.; s. c. 20 Atl. 1065.

(56) A. was the holder of a city warrant, and applied for judgment on the same, when due. It was shown that by a city ordinance, passed after the issue of the warrant, all warrants were to be paid in the order in which they were presented and registered at the treasurer's office, and it was therefore contended that A. could not anticipate his period of payment by judgment. A. alleged that the ordinance in question was unconstitutional, as it impaired the obligations of the contract. *Held*, that such ordinance could not bind A., or hinder the obtaining of his judgment.—O'Donnell v. Philadelphia, 2 Brewst. 481 (1868), Hare, P. J.; s. c. 7 Phila. 234.

(57) In a suit by a minor to recover wages, the defendant claimed that goods had been purchased from him by the plaintiff to the full amount of the claim. Plaintiff contended that he was nevertheless entitled to recover under the act of May 20, 1891 (P. L. 96; P. & L. Dig. 4800), which provides for the payment of minors "in lawful money of the United States." Judgment was given for plaintiff over defendant's contention that the act was unconstitutional. Reversed.—Showalter v. Ehlan, 5 Super. Ct. 242 (1897), Wickham, J.

(58) A., a holder of a scholarship in J. college, filed a bill in equity against the trustees of said college, to restrain them from consolidating said college with W. college, under the name of W. and J. college, and from removing the place of instruction of J. college from Canonsburg to Washington. It appeared that J. college was chartered in 1802, and was located in Canonsburg, and that it had created scholarships, a number of which had been sold. The scholarships did not state that the place of instruction should be at Canonsburg, but simply recited that they were for the endowment of J. college. By act of assembly permission was granted to J. college to consolidate with W. college, and to remove its place of instruction from Canonsburg to Washington. A. contended that the said act of 1865 was unconstitutional in that it impaired the obligation of his contract of scholarship in the said J. college. Bill dismissed.—Houston v. Jefferson College, 63 Pa. 428 (1870), Thompson, C. J.

(59) The act of June 8, 1881 (P. L. 84, § 1; P. & L. Dig. 1613), provided that no defeasance to any deed for real estate, regular and absolute upon its face, should have the effect of reducing it to a mortgage, unless such defeasance was made at the time that the deed was made, and was in writing, signed and recorded in the office of the recorder of deeds and mortgages within sixty days from the execution thereof. *Held*, affirming the court below, that this act did not impair the obligation of any contract, and was constitutional.—Fuller v. East End Homestead Loan & Trust Co., 157 Pa. 646 (1893); s. c. 28 Atl. 148.

See, also, Felts' Appeal, 1 Mona. 282 (1889); s. c. 17 Atl. 195.

(60) B. was indicted under the act of May 6, 1863 (P. L. 583; P. & L. Dig. 1317), and the supplement thereto of April 10, 1872 (P. L. 51; P. & L. Dig. 3992), providing for the punishment of "ticket scalping." *Held*, that the act was constitutional and not an impairment of the obligation of contracts.—Comm. v. Wilson, 9 W. N. C. 291 (1880), Ludlow, P. J.

2. Retrospective Laws.

A retrospective law, which does not impair the obligation of a contract, and is not in its nature *ex post facto*, is not unconstitutional. (61)

The act of May 5, 1854 (P. L. 572; P. & L. Dig. 1555), validating defective deeds made prior to its passage, does not impair the obligation of a contract (62); and so, an act fixing the distribution of decedents' estates and abolishing preferences of judgments is not unconstitutional as to judgments obtained before its passage. (63)

A statute rendering lawful an act previously prohibited, as if it had been lawful *ab initio*, is not unconstitutional, and applies retrospectively as well as prospectively. (64)

An act, however, will, if possible, be so construed as not to give it a retrospective operation. (65–66)

(61) An act of assembly appointed commissioners to open certain streets, and directed that they should make report to the quarter sessions, with a plan of the streets, and on its approval, that the plan should be recorded, and a certified copy of it should be evidence. A report made in accordance with these provisions was lost, after approval by the court. An action of trespass having been brought against the commissioners for opening a street through plaintiff's land, an act was passed providing that a certain plan in the clerk's office should be recorded and used as evidence in all cases in which the original plan could have been used. The court below refused to admit the plan in evidence on the ground that the act was unconstitutional. *Held*, error.—Adle v. Sherwood, 3 Whart. 481 (1838), Rogers, J.

(62) In *sci. fa. sur* mortgage by A. against B., it appeared that the mortgage in question was executed in June, 1853, and acknowledged on the same day before a justice of the peace of Genesee County in the state of New York. At that time, justices of the peace of other states had no authority to take acknowledgments to deeds for land in Pennsylvania. The act of May 5, 1854 (P. L. 572), validated all acknowledgments of deeds and mortgages theretofore made before officers of other states. At the trial, the court charged that any defect of acknowledgment to the mortgage was cured by the act of May 5, 1854. *Held*, no error.—Journeay v. Gibson, 56 Pa. 57 (1868), Strong, J.

(63) An act of assembly took away the preferences given by a prior act to judgments in the distribution of decedents' estates. It was contended by A., a creditor of B., a decedent, that the act was unconstitutional as to him, in that B. died after the law went into operation, and that he was a judgment creditor before its passage; and that his claim was diminished by the act, and it therefore impaired the obligation of a contract and was void. *Held*, affirming the court below, that the act was constitutional.—Deichman's Appeal, 2 Whart. 395 (1837), Sergeant, J.

See, also, Ilgenfritz v. Ilgenfritz, 5 Watts, 158 (1836).

(64) By an act of assembly the omission of banks to pay to the commonwealth six per cent. of their dividend, worked a forfeiture of their charters and of all their rights. An act was subsequently passed, restoring the charters of banks forfeited under the former act, and legalizing all notes and other instruments rendered void as a consequence of the forfeitures. In a suit on a note made by a bank which had forfeited its charter under the former act, the question arose whether the latter act was constitutional. The lower court held that the act was valid. Judgment affirmed.—Bleakney v. Farmers & Mechanics' Bank, 17 S. & R. 64 (1827), Duncan, J.

(65) An act of assembly relative to turnpike roads required subscribers to stock to pay $5 a share at the time of subscribing. Pending a suit against B., a subscriber, who had not paid the required $5 a share, an act of assembly was passed providing that recovery could be had against subscribers as if the former act had contained no provision as to the payment of $5. The court below accordingly gave judgment for plaintiffs. *Held*, that the act should be construed as only operating prospectively. Judgment reversed.—Ogle v. Somerset & Mt. P. Turnpike Co., 13 S. & R. 256 (1825), Tilghman, C. J.

(66) In an action of dower the defendant pleaded a release. The release proved to be defective, not having been properly acknowledged, whereupon judgment was given for plaintiff. Pending a writ of error taken to the judgment, an act of assembly was passed curing defects in acknowledgments of married women. The lower court held that the act had no application to the pending case. Judgment affirmed.—Barnet v. Barnet, 15 S. & R. 72 (1826), Tilghman, C. J.

3. State Insolvent Laws.

A state insolvent law does not violate the obligation of contracts entered into after its passage. (67)

(67) The act of March 26, 1814 (6 Sm. L. 195), provided that, when a majority of the creditors of an insolvent should consent in writing thereto, it should be lawful for the court to make an order that he be released from all suits for a certain time. Suit was brought upon a debt contracted in 1834, and the defendant moved to quash the writ, and produced a certificate of discharge under the act of 1814. It was contended that the act of 1814 was unconstitutional as impairing the obligation of a contract. Writ quashed.—Eckstein v. Shoemaker, 3 Whart. 15 (1838).

4. Marriage Contracts.

An act granting a divorce does not impair the obligation of the marriage contract. (68)

The right of dower is not part of the marriage contract, but results from the operation of laws existing at the husband's death. An act regulating rights of dower does not, therefore, impair the contract. (69)

The act of May 4, 1855 (P. L. 430; P. & L. Dig. 2902), securing to a deserted wife an absolute right over her own property, does not violate the obligation of the marriage contract, and is constitutional. (70)

(68) A. filed a bill in equity against B., his wife. The bill averred that A. and B. were married, and that during the absence of A., B. petitioned the legislature for a divorce, which was granted. A. asked that the act of the legislature granting the divorce be declared unconstitutional on the ground that it violated the obligation of the contract of marriage between himself and B. The court below held that the act of the legislature in dissolving a marriage and granting a divorce was not an impairment of a contract within the meaning of the constitution of the United States. Affirmed.—Cronise v. Cronise, 54 Pa. 255 (1867), Agnew, J.

See, also, Roberts v. Roberts, 54 Pa. 265 (1867), Agnew, J.

By Art III., § 7, of the state constitution of 1874, the legislature is prohibited from granting divorces.

(69) A,, the widow of C., presented a petition, praying that C.'s executor, B., be constrained to appear and give information in regard to C.'s property, part of which, as A. alleged, was concealed in consequence of a former agreement between B. and C. She further set forth that she had as yet made no choice as to her election to take under the will or against it, and wished to procure the information necessary to make a choice. On demurrer, the petition was dismissed, and B. appealed to the supreme court. The act of April 11, 1848 (P. L. 536, § 11; P. & L. Dig. 1679), amending the act of April 8, 1833 (P. L. 249, § 11; P. & L. Dig. 1678), provided that the latter act should not be so construed "as to deprive the widow, in case she elects not to take under the will of her husband, of her share of the personal estate of said husband, but that the said widow may take her claim either of the bequest or devise, or her share of the personal estate under the intestate laws." All of C.'s personal estate had been disposed of by his will. It was contended that the act of 1848 was unconstitutional, as the rights of husband and wife were fixed and vested at the time of marriage, and that the act in question altered them and interfered with the vested rights of the husband. *Held*, that the right of dower was not part of the marriage contract, and there was then no constitutional provision protecting it. Decree reversed.—Melizet's Appeal, 17 Pa. 449 (1852), Coulter, J.

(70) A. wilfully deserted his wife, C., who secured a decree under the act of May 14, 1855, making her a *feme sole* trader, and authorizing all persons to trade with her as if she had never married. C. was possessed of some property, acquired after the passage of the act and prior to the decree, which she conveyed, subsequent to such decree, to D., who conveyed the same to B. On the death of C., A. brought ejectment, as tenant by courtesy, against B., and obtained judgment, to which B. took a writ of error. A. contended that the act constituting C. a *feme sole* trader was unconstitutional; and that, having married C. previous to the act of 1855, he had a vested right under a marriage contract in such property as she then had and might acquire after the marriage. Judgment reversed.—Moninger v. Ritner, 104 Pa. 298 (1883), Gordon, J.

5. Contracts of Stockholders of Corporations.

An act dividing a turnpike road company into two separate corporations, and divid-

ing the stockholders between these, impairs the obligation of a stockholder's contract and is unconstitutional (71); so, also, an act changing the terminus of a turnpike road impairs the obligations of the contracts of the stockholders, and is void as to them. (72)

A subscription to the capital stock of a public road does not constitute such a contract that the state cannot constitutionally change the course of such road to better suit the convenience of the general public. (73)

A majority of the members of a corporation cannot be authorized to divest the interest of a dissenting stockholder, by a transfer of the whole of the property to another company, to be paid for in the shares of such other company, without first giving security for the interest of such dissenting stockholder. (74)

Legislation in aid of the objects and purposes of a corporation will not impair the contract of the original corporators. (75)

An act declaring it unlawful for an unincorporated company to engage in the business of banking does not impair the contract between the members of such an association existing prior to the act. (76)

(71) Under an act of incorporation, B. subscribed for certain shares in the stock of a turnpike company, the road to be built between A. and C. townships. By a later act, the road in question was divided at an intermediate point so as to become the property of two separate corporations, known as the A. turnpike-road company and the C. turnpike-road company, and the stockholders were, by the same act, apportioned between the two roads. B. was assigned to A., and refused payment of his subscription. He contended that his contract had called for payment of tolls, etc., on the whole road, and could not be constitutionally impaired by limitation to a part only. Judgment for B. affirmed.—Indiana & E. Turnpike Co. v. Phillips, 2 P. & W. 184 (1830), Gibson, C. J., Huston, J.

(72) A., a turnpike company, was incorporated to construct an artificial road between two designated points. The road was commenced and carried in the proposed direction, and B., at this time and under this understanding, subscribed for ten shares of stock. B. was the owner of property fronting on the unfinished portion of the proposed road. By a supplement to its charter A. was authorized to fix its terminus where it pleased, which it did before reaching B.'s proporty. In an action by A. against B. to enforce payment of his subscription, B. alleged that the supplementary act impaired the obligations of his contract with the road. Judgment for B. affirmed.—Manheim, etc., Turnpike Co. v. Arndt, 31 Pa. 317 (1858), Lowrie, C. J.

(73) A turnpike company was incorporated to build a road and bridge near A.'s property and A. subscribed thereto. He was assured by the commissioners that the bridge would be built at a certain point named in the act of incorporation. The state subscribed a large portion of the stock. By a later enactment the location of the bridge was moved two miles further down the stream, for the convenience of the general public, but the terminus of the road was not changed, and A. refused to pay his subscription, contending that it was made in consideration of the location of the bridge, and that the change impaired the obligations of his contract. In a suit by the turnpike company against A. to recover the amount of his subscription, judgment against A. was affirmed.—Irvin v. Susquehanna & P. Turnpike Co., 2 P. & W. 466 (1831), Gibson, C. J. (Rogers and Kennedy, JJ., dissenting).

(74) An act was passed providing for the entire merger of the B. railroad company into the C. company, so that the two companies might be consolidated into one; and that the property, rights, and franchises of B. should be transferred to and vested in C. Under the provisions of the act, a majority of the stockholders of B. voted to effect the consolidation, and agreed that the holders of the stock of the B. company should be entitled to an equal number of shares of stock in C. A., a stockholder in B., dissented from the agreement, and prayed for an injunction to restrain the proceedings, on the ground that the act was unconstitutional, as impairing the obligation of a contract, unless unanimously consented to. The court held that the legislature could pass an act providing for the merger of the companies and the transfer of B.'s property to C. upon a vote of a majority of the stockholders, but that under the constitution they could not be allowed to divest A.'s interest without first giving security therefor. Injunction granted to be dissolved on B.'s giving security for A.'s interest.—Lauman v. Lebanon Valley R. Co., 30 Pa. 42 (1858), Lowrie, C. J.

(75) B. was one of the original corporators of A., a railroad company, and held considerable stock. By subsequent acts of assembly A. was empowered to allow each stockholder one vote for each share of stock held by him, and to issue a certain amount of preferred stock. A. accepted these provisions, and acted under them. In a subsequent action against B. for unpaid subscriptions B. contended that the supplementary acts had impaired the obligation of his original contract as a stockholder under the act of incorpo-

ration. Judgment for A. affirmed.—Everhardt v. Philadelphia & West Chester R. Co., 28 Pa. 339 (1857), Woodward, J.

(76) The F. bank was an unincorporated association of citizens for banking purposes. Subsequent to the association of its members, the act of March 19, 1820 (P. L. 87), was passed declaring it unlawful for any uncorporated company to engage in the business of banking. In an action on a promissory note payable at the F. bank, it was contended that this act violated the contract between the members of the association. *Held*, that the act was constitutional.—Myers v. Irwin, 2 S. & R. 368 (1816), Tilghman, C. J.

6. Contracts of the State.

The charter of a corporation is a contract between the state and the incorporators, and the legislature cannot pass a subsequent act impairing the obligation of the contract. An act exempting certain vehicles from payment of tolls to a turnpike company is unconstitutional, as impairing the contract contained in the charter of such company. (77)

A municipality is the creature of the state, and if it is authorized to contract debts, no subsequent legislation can impair such obligations. (78)

A corporate franchise is, however, property, and, like other property, may be taken by the state under its right of eminent domain, upon giving due compensation, without impairing the obligation of a contract. (79–81)

The right to alter or amend a charter may be expressly or impliedly reserved by the legislature (82–84); but a charter cannot be revoked or impaired for alleged violation thereof, when the legislature has previously condoned the alleged violations, and third persons have contracted with the corporation on the faith of such condonation. (85)

The state cannot impose additional burdens on a corporation over and above the original contract as expressed in the charter; but in the absence of an express exemption from taxation, contained in its charter, no such right will be implied, and the state may tax the dividends of the corporation without impairing the obligation of any contract. (86) Under the police powers of the state, the property of a charitable institution may be taxed, although its charter contains a provision exempting it from taxation (87); and the state may, under its police power, pass an act requiring railroad companies to rebuild fences destroyed by fire caused by their trains, without impairing the obligation of the contract expressed in the charter. (88)

The act of April 4, 1873 (P. L. 20; P. & L. Dig. 2349), requiring insurance companies to file statements of their condition, does not violate the charters of the companies. (89)

A corporation may, by accepting the provisions of an act, estop itself from setting up that the act impairs the validity of its charter. (90)

The charter of a corporation, granted before the state constitution of 1874, was a vested right, which could not be impaired by the provisions in such constitution (91); but section 1 of Article XVI. of the state constitution, repealing all charters under which some *bona fide* operation had not previously been commenced, was constitutional. (92)

A charter granted for consideration, previous to an act purporting to alter all charters, is a contract, and cannot be constitutionally so impaired. (93)

An act authorizing the opening of a street through the grounds of an eleemosynary institution is constitutional, although the city where the institution is located is a beneficiary under the will establishing such institution. (94)

When, by an act of the legislature, the state has provided for the confirmation of the title of property held by a corporation, upon the performance by the corporation of certain acts, and the corporation has complied with the terms of the statute, a subsequent act in derogation of the former act impairs the obligation of a contract. (95)

(77) By an act of incorporation passed in 1792 there was conferred upon A., a turnpike company, the right to stop persons "riding, leading, or driving any horses, or sulky, chaise, phaeton, cart, wagon, or other carriage of burthen or pleasure" until they should have paid the tolls and rates by the act authorized to be charged. By an act of April 5, 1860, carriages going to and returning from funerals were exempted from toll. This A. resisted, as in violation of the contract made between the company and the state, and as a direct infringement of the federal constitution. To judgment for A. in the justice court against B., who refused to pay the tolls relying upon the act in question, B. took a writ of error. Judgment affirmed.—Philadelphia v. Lancaster Turnpike Co. v. Gartland, 6 Phila. 128 (1866), Allison, P. J.

(78) A. was the owner of a judgment against the borough of B., obtained in 1867. Upon this judgment a writ of mandamus was issued, to which B. answered, in 1868, that there was no money in the treasury with which to make pay-

ment. The legislature, by act of March 1, 1871, incorporated the city of C., embracing within its limits the territory of B., and providing for the payment of B.'s debts. In pursuance of this provision a tax was levied and collected, but before any part of it was paid out on B.'s indebtedness a supplementary act was passed in March, 1872, which created a board of trustees to take charge of the money and to use their efforts to pay off the indebtedness of C. to the best advantage of the taxpayers of C.; to which end it was provided that the trustees should offer publicly all the money in the treasury and should award the same to the creditors who should release the greatest proportion of indebtedness against B. therefor, and that no interest should be computed on B.'s indebtedness subsequently to its incorporation into the city of C. The trustees refused to pay A.'s judgment out of the funds of the B. borough, and proposed to offer the same publicly as prescribed by the act. A. filed a bill to restrain the trustees and to compel them to pay the creditors of B. in the order in which the writs of mandamus were served. The court *held*, that the act of March, 1872, impaired the obligation of a contract and was unconstitutional, and decreed that the trustees should be enjoined as prayed for, and that A. should be paid his judgment with interest out of the money then in their hands. Decree affirmed.—William's Appeal, 72 Pa. 214 (1872), Read, J.

(79) A., a turnpike road company, objected to the passage of B., a street railway corporation, along A.'s turnpike, and instituted proceedings to prevent it. B. sought to grade and lay tracks along the turnpike by virtue of an act of assembly, but A. contended that such an act was unconstitutional; that the original charter granted to A. was a contract, which no future legislature could impair; and that its franchise was exclusive. To this it was answered that A.'s charter was an easement merely and not a contract, and that the legislature could not disable itself from the future exercise of powers intrusted to it for the public good. *Held*, that B. should occupy so much of A.'s road as by act of assembly awarded it, the same to be maintained, kept in order, etc., at B.'s expense.—Citizens' Passenger Railway Co.'s Case, 2 Pitts. 10 (1859), McClure, P. J.

(80) A., a street railway corporation, was authorized by its charter to lay its tracks along certain streets, and, by a supplement of March 31, 1859 (P. L. 325), to the act of March 26, 1859 (P. L. 244), granting its charter, was given the "exclusive right" to use these streets for railway purposes. By a later act, B., a similar corporation, was empowered to run its cars along these streets for a short distance. A. applied for an injunction against B., which was granted, and B. appealed. A. contended that the charter in question was a contract with the state, the obligations of which no future legislation could constitutionally impair. *Held*, that a franchise was property, and could be taken under the right of eminent domain upon making compensation. Decree reversed.—Philadelphia, etc., Passenger Ry. Co.'s Appeal, 102 Pa. 123 (1883), Paxson, J. (Mercur, C. J., and Sterrett, J., dissenting).

(81) A., a cemetery association, had charge of a burial place in the city of Philadelphia. By a private act of March 20, 1849 (P. L. 194), it was enacted that no street, road, lane, or alley should be thereafter opened through the burial place in question, nor should the land be taken or used for any other than burial purposes. This act was formally accepted by A., considerable money was expended on improvements, and many persons were buried in the grounds. By the act of April 8, 1881 (P. L. 68), it was enacted that the municipalities and courts having jurisdiction in any city might open, widen, or otherwise change the streets, any private or special statute to the contrary notwithstanding. By virtue of this act a jury was appointed to view and report on the expediency of opening a road through the A. cemetery. A. filed exceptions to a report in the affirmative, and urged that the private act and formal acceptance constituted a contract with the state, and that the act of 1881 was inoperative. The exceptions were dismissed and report confirmed, and upon *certiorari* from the supreme court, *held*, that a franchise was property, and could be taken or destroyed in the exercise of the right of eminent domain as well as other property; and that its obligation was not impaired, but recognized when compensation was provided for its infringement. Proceedings affirmed.—Twenty-second Street, 102 Pa. 108 (1883), Paxson, J. Affirming 11 W. N. C. 465.

(82) The charter of the A. railroad company, granted in 1842, provided that upon the abuse or misuse of any of the privileges granted to A., the legislature might resume the rights granted. In 1855, the legislature passed an act revoking A.'s charter for abuse of powers granted, and providing that the governor should appoint some suitable person to take charge of the road which A. had built, and keep it in good repair, for the use of the public, but providing no method of compensation to A. B. was appointed to take charge of the road, and A. filed a bill for an injunction to restrain the proceedings, contending that the act of 1842 was a contract, and that the act of 1855, depriving A. of its franchises and property, impaired the obligation of the contract. Decree refusing the injunction affirmed.—Erie & N. E. R. Co. v. Casey, 26 Pa. 287 (1856), Black, J. (Lewis, C. J., dissenting).

(83) The B. bank obtained its charter under an act providing that the capital stock should not be

subject to taxation for any other than state purposes. The legislature subsequently passed an act authorizing the city of A. to assess a tax on the capital stock of B. for city purposes. On a case stated between A. and B. for the collection of the tax, B. contended that the later act was unconstitutional as impairing the obligation of the contract entered into between the state and B. by the former act. The lower court held that by virtue of the clause in the 25th section of the first article of the constitution of Pennsylvania, as amended in 1838, which provided that every bank charter should contain a clause reserving to the legislature the power to alter, revoke, or annul the same, whenever, in their opinion, it might be injurious to the citizens of the commonwealth, the legislature had the implied right to impose taxes on the bank for other than state purposes. Judgment affirmed.—Iron City Bank v. Pittsburg, 37 Pa. 340 (1861), Woodward, J.

(84) A., the holder of a scholarship in J. college, filed a bill in equity against the trustees of said college to restrain them from removing the place of instruction of J. college from Canonsburg to Washington. It appeared that J. college was incorporated in 1802, and was located in Canonsburg, and that it issued scholarships, a number of which were sold. The scholarship contracts did not state that the place of instruction should be Canonsburg, but simply recited that they were for the endowment of J. By act of assembly, permission was given to J. college to consolidate with W. college, and to remove its place of instruction from Canonsburg to Washington. The act incorporating J. college provided that its constitution should remain irrevocable, and should not be altered by the trustees nor in any other manner than by the legislature. A. contended that such a reservation was not sufficient to permit the legislature to alter or amend the charter of J. college. *Held*, such reservation was sufficient.—Houston v. Jefferson College, 63 Pa. 428 (1870), Thompson, C. J.

(85) A. a railroad company, was incorporated under the laws of the state of Pennsylvania in 1846; and in 1853, in derogation of its charter, was incorporated as a Maryland corporation. In 1856, by an act of assembly, it was provided that all defects or irregularities of the board of directors of A., so far as they proceeded from the neglect or omission of the said board to fully comply with the requisites of the acts of incorporation, were and should be thereby remedied and supplied. Subsequently, on the faith of that act, the city of Baltimore loaned to A. its bonds to the amount of $1,000,000, and after the passage of the said act of 1856, A. in all respects complied with the provisions of its charter. In 1864, by act of assembly, the legislature revoked the right of A. to construct a railroad in Pennsylvania, for alleged violations of its charter prior to the passage of the act of 1856. In *quo warranto* proceedings, A. contended that the act of 1864 was unconstitutional, in that the legislature had condoned all violations of A.'s charter prior to the passage of the act of 1856, and that after such condonation, the legislature could not revoke A.'s charter to the prejudice of persons who had advanced money on the faith of such condonation. *Held*, that the act of 1864 was unconstitutional.—Comm. v. Pittsburg & Connellsville R. Co., 58 Pa. 26 (1868), Sharswood, J.

(86) The act of April 11, 1848 (P. L. 512, § 3), provided that all banks of the commonwealth, whose charters had been renewed, should be subject to a certain tax upon their dividends, except in cases where there was an express exemption in the act renewing their charters. The P. bank was chartered in 1793, and its charter renewed in 1830. The renewal contained no express exemption from taxation, and, upon a settlement of an account by the auditor-general, the bank was charged with taxes assessed under the act of 1848. On appeal, the bank objected to the settlement on the ground that the intention of the legislature to exempt the bank from taxation was necessarily implied from the act of 1830, which renewed its charter, and that act being a contract, the act of 1848 was void so far as it applied to the appellant bank, as impairing the obligation of a contract. Judgment for the commonwealth affirmed.—Bank of Penna. v. Comm., 19 Pa. 144 (1852), Black, C. J.

(87) B., a charitable institution, was incorporated by act of March 25, 1871 (P. L. 452), which provided that all the estates and property of the corporation should be free from taxation. Certain real estate belonging to B. was situated in the borough of A., and the footwalk adjoining the same was so decayed as to be dangerous. Accordingly A., by a resolution of council, required B. to lay a new footwalk, agreeably with the ordinances and general regulations. B. took no notice of the requirement, and A. proceeded to have the footwalk constructed, and filed a claim against the real estate of B. to recover the value of the work and material. B. asserted that the claim was a species of local taxation, and void under the contract created by its charter. *Held*, that the resolution was a proper exercise of police power; and judgment against B. affirmed.—Wilkinsburg Borough v. Home for Aged Women, 131 Pa. 109 (1890), Paxson, C. J. Affirming 7 Pa. C. C. 75.

(88) On appeal from the judgment of a justice of the peace, in an action by A. against B., a

railroad company, to recover the penalty prescribed by the act of April 23, 1868 (P. L. 1022), requiring railroad companies within Erie County to rebuild fences destroyed by fire from their trains, it appeared that A. owned a farm on the B. railroad; that fences were necessary along said road for the protection of A.'s improved land; that a portion of the fence was burned by fire communicated by a locomotive of B.; and that B. had neglected and refused to rebuild or repair the fence. The act did not prescribe who should ultimately pay for the fence. The court instructed the jury to render a verdict for A., subject to a point reserved, whether the act was constitutional. Subsequently, the court entered judgment on the verdict for A. On writ of error, B. contended that the act was unconstitutional in that it violated B.'s charter in imposing on it an additional burden without its consent. Judgment affirmed.—Pennsylvania R. Co. v. Riblet, 66 Pa. 164 (1871), Sharswood, J.

(89) B., an insurance company, was incorporated in 1872, in Pennsylvania. By the act of April 4, 1873 (P. L. 20; P. & L. Dig. 2349), all insurance companies were required to file statements of their condition and business, certified copies of their charters, etc., with the insurance commissioner. This provision B. declined to notice, and suit was thereupon brought by the commonwealth. B. contended that the filing of the papers in question was an additional burden, impairing the contract originally made with the state, and that the act ordering the same was unconstitutional. *Held*, that such provision was within the police power of the state and therefore constitutional.—Comm. v. Hockage, etc., Assn., 31 L. I. 245 (1874), Pearson, P. J.; s. c. 21 Pitts L. J. 203.

(90) By the charter of a passenger railway company, it was made subject to all ordinances of the city of Philadelphia regulating the running of cars, and it was also provided that the company should pay a tax or license for each car, the same as other companies of the city. The tax then was $30 per car. An ordinance increased the tax to $50, and the act of April 11, 1868 (P. L. 849, § 1; P. & L. Dig. 4027), enacted that the various companies should pay annually to the city $50 per car, "as required by their charter," for each car run; and that the city should have no power by ordinance or otherwise, to regulate passenger railway companies, unless authorized to do so by the laws of the commonwealth, expressly in terms relating to such companies in the city of Philadelphia. After paying this tax until 1875 without protest, the company refused to pay the same any longer, and the city brought suit to recover it. Judgment was entered for the city. The company contended that the act impaired the obligation of the contract made by its charter, and therefore was in conflict with Article I., section 10, of the constitution of the United States. Judgment affirmed, on the ground that the company had accepted the provisions of the act of 1868.—Union Pass. Ry. Co. v. Philadelphia, 83 Pa. 429 (1877); s. c. 4 W. N. C. 303, 34 L. I. 331, 25 Pitts. L. J. 25.

(91) A. was a candidate for director of a corporation chartered prior to the constitution of 1874. By the charter of the corporation each share of stock entitled the holder to one general vote, whereas by the provisions of Art. XVI., § 4, of the constitution, each stockholder might cast the whole number of his votes for one candidate. If this latter method had been followed, A. would have been elected, but the tellers received only votes cast under the old system, and declared B. elected. In *quo warranto* proceedings instituted by A., it was contended by the respondents that the charter was in the nature of a contract with the state, and its provisions were vested rights; that the corporation had never accepted the new constitution, or received benefit under it; and that any change made by it in the manner of voting provided by the charter would impair the obligations of such charter contract, and be void for unconstitutionality. Judgment for A. reversed.—Hays v. Comm., 82 Pa. 518 (1877), Gordon, J. (Woodward, J., dissenting).

(92) B., a lumber company, was incorporated by special act of January 7, 1867 (P. L. 1541), and paid to the commonwealth the requisite enrolment tax. By subsequent enactment, in 1867, B. was empowered to sue for toll and boomage. Nothing further was done by the company under its charter until 1882, when A., a neighboring landowner, complained to the commonwealth that B. was about to build dams and booms under the charter of 1867, to the detriment of A.'s interests, and that this was in violation of the provisions of Article XVI., § 1, of the constitution of 1874, which declared all previous charters revoked, under which some *bona fide* organization should not have taken place and business been done prior to the adoption of the constitution. In *quo warranto* proceedings, B. objected to the constitutionality of the section aforesaid, and contended that its provisions impaired the obligations of the previous charter contract. Judgment against B. affirmed.—Chincleclamouche Lumber, etc., Co. v. Comm., 100 Pa. 438 (1882), Trunkey, J.

(93) The Bank of the United States was chartered under the act of February 18, 1836 (P. L. 36), in consideration of large sums paid into the state treasury. Its charter recited that, if at any time the bank should refuse to pay its liabilities on demand, in gold and silver, interest at twelve per cent. should accrue on the amount so demanded and refused; and, after three months' time from such refusal, the holder of the bank's liabilities might make oath before any judge in the proper county, who should present the same

to the governor, and after due inquiry the charter of the bank should be declared void. By the resolutions of April 3, 1840 (P. L. 714), it was provided that after January 15, 1841, banks failing to pay all liabilities, on demand, in gold and silver might be informed against in the common pleas of their county and cited to appear on the tenth juridical day, when their charters, if the fact were substantiated, should be declared forfeited. In 1841, A. presented two notes of the United States Bank for payment in gold and silver, which was refused. A. then presented his petition to the common pleas judges under the resolutions of 1840. The bank pleaded to the jurisdiction of the court, alleging that the resolutions could not constitutionally apply to its case, as the contract in its charter could not be impaired by the later law, and proceedings against the bank must be had under the charter. Proceedings dismissed.—Comm. v. United States Bank, 2 Ash. 349 (1841), King, P. J., Jones and Randall, JJ.

(94) By an act of assembly, of June 21, 1873, a street was to be opened through the Girard College grounds, in Philadelphia, and a petition was filed for that purpose. Girard had bequeathed to the commonwealth, for the benefit of the city, a large sum, which was accepted. It was contended that, by accepting this sum, the state became party to a contract to keep the college grounds in the exact condition in which they were laid out, in accordance with the directions of the will, and that an act for the opening of streets through such grounds would be an impairing of the obligation of such implied contract, and unconstitutional. The conditions of the will called for the erection of certain buildings according to a certain plan, without providing for their future continuance in such a state. The will further requested that the "establishment may be secure and private." Petition granted.—Girard College Case, 10 Phila. 145 (1874), Finletter, J. (Ludlow, J., dissenting); s. c. 31 L. I. 164, 6 Leg. Gaz. 165.

(95) By various acts of assembly the A. railroad company was authorized to procure rights of way and construct its road through certain counties. A., in procuring rights of way, also purchased certain real estate, upon which it afterwards executed several mortgages. Suits were instituted to foreclose the mortgages, and an act was passed providing for the appointment by the supreme court of a commissioner to decide what portion of the lands purchased by A. was necessary for the uses of the road, and also providing that the residue might be sold, and that upon the mortgagees releasing their mortgages as to the residue, the mortgages should be ratified as to the other property of the corporation. The commissioner reported that certain described lands, containing eighty acres, were necessary for the use of the road. His report was confirmed, and the mortgagees released the residue. Several years afterwards another act was passed, which, recited that mistakes had been made by the commissioner, authorized the appointment by the supreme court of another commissioner to decide what lands were then necessary for the uses of the road, and directed the residue of the land to be sold and the mortgages released, as in the former act. On a motion for the appointment of the commissioner, it was contended by the railroad company that the proceedings under the first act constituted an executed grant, on the part of the commonwealth, and that the latter act was in derogation of the grant, and impaired the obligation of the contract. Motion denied.—Drew v. N. Y. & E. R. Co., 81* Pa. 46 (1870), Sharswood, J.

7. Laws Affecting Remedies.

(*a*) *Creating a New Remedy or Changing an Existing One.*

The legislature may pass laws creating, altering, or taking away remedies, without impairing the obligations of contracts. (96–99)

The act of April 11, 1862 (P. L. 477), which vested in the supreme court the powers and jurisdiction of a court of chancery, in all cases of mortgages given by corporations, was constitutional and did not impair the obligations of such mortgages given prior to its passage, but merely provided an additional remedy. (100–101)

So, also, an act authorizing the resale of property, sold by city commissioners, in case the purchase money is not paid within a certain time, is constitutional. (102)

But where the contract between the parties has placed a remedy in the hands of the one, which may be exercised without the assistance of legal process of any kind, this is a substantial part of the contract, and the abrogation of the same by legislation is unconstitutional. (103)

(96) An act was passed providing that in all suits pending or thereafter to be instituted by a partner against his co-partners, no advantage should be taken of the fact that plaintiff was also technically a co-defendant. On a writ of error in an action by a partner against his co-partners, which action was pending at the time of the passage of the act, it was claimed that the act was void as impairing the obligation of a contract. *Held*, that it affected only the remedy and was not unconstitutional.—Hepburn v. Curts, 7 Watts, 300 (1838), Sergeant, J.

(97) A., on March 1, 1839, leased a lot to C. for a term of fourteen years. C. erected a house on the lot, against which a mechanic's lien was filed on February 13, 1840. A *scire facias* was issued to March term, 1840, and judgment was confessed on May 4, 1840, under which the right, title, and interest of C. was sold and purchased by B.

In an action by A. against B. on the lease, the question arose whether a fee-simple or a term of years passed to B. by the sheriff's deed. The act of April 28, 1840 (P. L. 467), provided that the lien created by the mechanic's lien act of June 16, 1836 (P. L. 695), should not be construed to extend to any greater estate in the ground on which a building was erected than that of the person in possession at the time of commencement of the building. B. contended that the question should be determined by the decisions under the act of 1836, which held that the lien extended to the fee-simple, and that the act of 1840 impaired the obligation of a contract and was unconstitutional. Judgment for A. affirmed.—Evans v. Montgomery, 4 W. & S. 218 (1842), Sergeant, J.

(98) A bill in equity was filed by the bank of A., a foreign corporation, against the bank of B., in Philadelphia. After the filing of the original bill, an act was passed, giving A. authority to proceed in equity in the common pleas of Philadelphia, against B. and such other persons as A. might choose, either by a new original bill or by amending the bill then pending, for the purpose of settling the controversy between the parties, in relation to certain alleged excessive issues of bank stock; and for all accounts between the parties and other matters set forth in the act; also giving to said court cognizance of the cause in equity with full power to determine all controversies between the parties and to make all necessary orders and decrees. B. contended that the act was unconstitutional as impairing the obligation of a contract. Decree for A.—Bank of Kentucky v. Schuylkill Bank, 1 Pars. 180 (1846), King, J.

(99) An action of covenant was instituted by A. against B. on a lease, B. being the assignee of the lease, which was held on a ground rent. After the institution of the suit, an act was passed providing that in all cases pending or thereafter brought to enforce the payment of ground rent, the lessor should have a complete remedy by covenant, against the lessee, or his assigns. B. contended that the act was unconstitutional as impairing the obligation of a contract. Judgment for A. affirmed.—Taggart v. McGinn, 14 Pa. 155 (1850).

(100) A. filed a bill in equity in the supreme court against B., a railroad company, under the act of April 11, 1862, to foreclose a mortgage on B.'s property. It appeared that the mortgage was created in 1856. The act of 1862 provided that the supreme court should have and exercise all the powers and jurisdiction of a court of chancery, in all cases of mortgages given by corporations. B. contended that the act of 1862 impaired the obligation of a contract. A. urged that the act simply enlarged the remedy, and in no way affected the obligation of the mortgage. *Held*, that the act was constitutional; and judgment for A. affirmed.—McElrath v. Pittsburg & Steubenville R. Co., 55 Pa. 189 (1867), Agnew, J.

(101) In a suit in the supreme court, on a mortgage given by a corporation, and dated prior to the passage of the act of April 11, 1862, it was contended that the act did not apply, as it impaired the obligation of a contract. In reply, it was urged that the act took away no vested right and injured no one, but only provided an additional and better remedy in the case. *Held*, that the act would constitutionally apply to the case. —Swope v. Gettysburg R. Co., 2 Leg. Gaz. 226 (1870), Agnew, J.

(102) An act gave authority to the commissioners of a certain city to make resales of all lots, the purchase money of which remained unpaid for a certain time after it ought to have been paid. In an action on a bond given as consideration for the purchase of a lot resold by the commissioners, it was claimed that defendant had no title, since the act authorizing the resale was unconstitutional as impairing the obligation of contracts. On verdict for defendant, a new trial was ordered.—Stoddart v. Smith, 5 Binn. 355 (1812), Tilghman, C. J.

(103) The act of October 13, 1857 (P. L. [1858] 611, § 11), provided that no stocks, bonds, promissory notes, personal property or other valuable securities hypothecated or held in pledge, either with power of attorney attached or otherwise, for credit or money loaned, should be sold for the period of six months from the passage of the act without the consent of the debtor, debtors, or parties hypothecating or pledging the same, being first had and obtained in writing. A., prior to the passage of the act, had hypothecated a note to B. to secure the repayment of an advance; and upon the distinct understanding that B. was to sell the note at any time to reimburse the advance. A. brought action on the case under the act in question, to which B. objected that the remedy provided by the note was part of the contract itself, and of obligation as inviolable as any other part of such contract, and that the act was unconstitutional as impairing the obligation of the contract. Judgment for B.—Hunt v. Thomas, 3 Phila. 121 (1858), Sharswood, J.

(*b*) *Stay Laws.*

The legislature may alter or abridge the remedy for breach of a contract, by stay of execution, provided such stay is not so great or unreasonable as to impair the obligation of the contract. (104–106)

It was held that the stay law of October 13, 1857 (P. L. [1858] 611, § 6), applied only to liens not perfected, and executions not in the hands of the sheriff. (107)

A law granting a stay of execution for an indefinite period impairs the obligation of contracts (108); so, an act directing the court to order that no execution shall issue

against a defendant except at periods when it shall appear by a prothonotary's report that the majority of his creditors, whose demands exceed two-thirds of his indebtedness, have agreed to extend the time of payment of their respective debts, is a violation of the United States constitution (109); and the act of April 9, 1850 (P. L. 437), restricting the issuance of a writ of sequestration against the Erie Canal Company was held unconstitutional as to judgments obtained for debts created prior to its passage. (110)

An act providing for a stay of execution, in cases where such stay has been expressly waived, impairs the obligation of the contract (111–112); and where the contract provides that judgment may be entered without stay of execution, after the day of payment, the legislature has not the constitutional power to grant a stay beyond that time. (113)

(104) The act of July 16, 1842 (P. L. 407, § 3), provided that, when land taken in execution could not be sold for two-thirds or more of its valuation, the sheriff should not make any sale of such premises, but should make a return of that fact to the court from which the execution issued, and thereupon all proceedings should be stayed for a year from the return day. Real estate was sold on a *levari facias*, sued out on a judgment on *sci. fa. sur* mortgage, for less than two-thirds of the appraised value. The mortgage had been executed before the act was passed, and, on a case stated, the lower court held that the act, as to its retrospective operation, was in conflict with the federal constitution. On error, the supreme court reversed the judgment, holding that the act, as it suspended the execution for a reasonable time, was not in violation of the constitution of the United States.—Chadwick v. Moore, 8 W. & S. 49 (1844), Gibson, C. J.

(105) On error to a decree granting a stay of execution under the act of October 13, 1857 (P. L. 611, § 6), it was contended that such act was unconstitutional as impairing the obligation of the contract. Decree affirmed.—Huntzinger v. Brock, 3 Gr. 243 (1858), Strong, J.

See, also, Breitenbach v. Bush, 3 Luz. L. Obs. 99 (1863); Coxe's Exr. v. Martin, 44 Pa. 322 (1863); Drexel v. Miller, 49 Pa. 246 (1865), as to the stay law of April 18, 1861 (P. L. 408, § 4).

(106) An *alias fi. fa.* was issued and real estate belonging to B. levied on and condemned. An order to expose it for sale was issued, and the property was advertised to be sold. Before the date of sale, but after the advertisement, the act of March 23, 1877 (P. L. 29), allowing a stay of execution where the property levied upon did not sell for two-thirds of its appraised value, and providing for its proper appraisement, was approved by the governor. B. moved to set aside a sheriff's sale made during the pendency of a rule to appoint appraisers on the property in question under said act. It was objected that the act was unconstitutional as impairing the obligation of the contract by removing the remedy for its breach. Rule absolute.—Thompson v. Buckley, 3 W. N. C. 560 (1877), Thayer, P. J.

(107) A. obtained judgment against B., and a *fieri facias* was issued and placed in the hands of the sheriff, who levied upon B.'s personal property. The property was in the sheriff's hands at the time of the passage of the stay law of October 13, 1857, by virtue of which the court, on motion, granted a stay of execution. On error, A. asserted that the act was unconstitutional, as it destroyed his lien and thereby impaired contract obligations. *Held*, that if so construed the act would be unconstitutional, but it was only to be applied to liens not perfected, and executions not in the hands of the sheriff, and to that extent it was constitutional.—Chaffee v. Michaels, 31 Pa. 282 (1858), Woodward, J.

(108) A. filed a bill in equity against B. to compel him to take down certain buildings, and a decree was entered in favor of A. Upon affidavit that the decree had not been complied with, a writ of attachment issued, which was returned *non est inventus*; and thereupon a writ of sequestration issued, directed to the sheriff. The sheriff was unable to execute the writ, and A. petitioned for a writ of assistance and a *fi. fa.* B. then entered a rule to show cause why all the proceedings since the entry of the decree should not be set aside. The act of April 18, 1861 (P. L. 407), provided that execution in civil cases should be stayed during the military service of any defendant. B. had enlisted in the war for an indefinite period, and based his application upon the provisions of said act of April 14, 1861. A. contended that the act was unconstitutional, in that the stay granted to B. by the provisions of said act was for an uncertain, unascertained, and indefinite period. The court dismissed B.'s petition. Affirmed.—Clark v. Martin, 49 Pa. 299 (1865), Woodward, C. J. Affirming 3 Gr. 393, 5 Phila. 251.

See, also, Irvine v. Pumroy, 5 Phila. 329 (1863); s. c. 20 L. I. 221.

(109) A., who was indebted to B. and others, made a motion for the appointment of a prothonotary, under the act of May 21, 1861 (P. L. 770), grounded upon an affidavit that a majority in number and two-thirds in value of A.'s creditors had agreed to give him an extension. B. did not assent to such extension, and opposed the reference to a prothonotary as a violation of the constitution of the United States. *Held*, that such act was unconstitutional. Rule discharged.—Miller v. Ripka, 4 Phila. 309 (1861), Sharswood, P. J.

(110) The act of April 9, 1850 (P. L. 437), provided that thereafter, on the return of an execu-

tion against the Erie Canal Company, unsatisfied, it should not be lawful for the court to grant a writ of sequestration except upon judgment of the same court that the corporation was guilty of mismanagement. From 1846 to 1848 the Erie Canal Company had become indebted to A. The indebtedness became due before the act was passed, at which time A. was entitled absolutely to sequestration, on judgment obtained and return of *nulla bona* to execution thereon. A. brought suit to recover and obtained judgment in 1860. His executrix issued a *fieri facias* in 1864, which was returned *nulla bona*. In 1867, A.'s executrix filed a petition for a writ to sequester the goods, chattels, etc. The defendant set up that the petition did not set forth any mismanagement of the company. Judgment dismissing the petition reversed, on the ground that the act of 1850 was in violation of the federal constitution, as impairing the obligation of the contract that the tolls, etc., should be an unconditional security for the indebtedness to A.—Penrose v. Erie Canal Co., 56 Pa. 46 (1868), Strong, J.

(111) A. held a judgment note executed by B. in 1860, in which was contained the clause: "and without stay of execution after date of payment." The act of May 21, 1861 (P. L. 770), entitled debtors to a year's stay of execution on certain conditions, and the proviso of the first section declared that this stay would extend to all cases where stay of execution had been waived. B. moved for a stay of execution under the act, which was granted, and A. took a writ of error, and contended that the proviso was unconstitutional as it impaired the express obligations of his contract with B. Decree reversed.—Billmeyer v. Evans, 40 Pa. 324 (1861), Woodward, J.

(112) A. held a judgment note given by B., containing a waiver of stay of execution, and dated in 1859. In 1862, an attachment execution was issued on a judgment entered on the note, and returned *non est inventus* as to B. Affidavits were filed, showing that B. was then in the United States army, and claiming the stay granted in such cases, notwithstanding waiver, by the act of May 21, 1861 (P. L. 770); and the court below made an order setting aside the attachment, to which A. took a writ of error. Order reversed.—Lewis v. Lewis, 47 Pa. 127 (1864), Thompson, J.

(113) In 1873, B. executed to A. his judgment note, payable twelve months after date, authorizing any attorney to appear for him and confess judgment, with waiver of stay of execution and all exemption laws. On the same day judgment was duly entered on the note. Afterwards, B. made an assignment to C. of all his estate, for the benefit of creditors. C. petitioned for an order of sale of the real estate, in pursuance of the terms of the act of February 17, 1876 (P. L. 4), which authorizes an assignee to make a sale upon such terms as the court may direct, and declares that such a sale shall, with certain exceptions, discharge all liens on the real estate sold, and provides that the court may order a stay of execution on all liens that may be divested by the sale, until the order of sale is extended or revoked. The court accordingly directed a sale of B.'s real estate and ordered that all executions be stayed on all liens upon said real estate which would be divested by such sale, until otherwise ordered by the court, and in compliance with this order the execution of A. against B. was stayed. A. took a writ of error and contended that he had contracted with B. that there should be no stay of execution, and that the legislature had no constitutional power to pass an act impairing the obligation of the contract. Order reversed.—White v. Crawford, 84 Pa. 433 (1877), Mercur, J.

(c) *Statutes of Limitations.*

Statutes of limitations, even though retrospective, do not impair the obligation of contracts, provided sufficient time be given for the commencement of the suit, before the bar takes effect. (114)

(114) In an action of covenant by A. against B. for the recovery of ground rent, B. gave notice that A. would be required to prove the payment by B., or some one under him, of ground rent within twenty-one years preceding the suit. The act of April 27, 1855 (P. L. 368, § 7; P. & L. Dig. 2228), enacted that in all cases where no payment, claim, or demand should have been made on account of or for any ground rent for twenty-one years, a release or extinguishment thereof should be presumed, provided, however, that the act should not go into effect until three years from its passage. The ground rent was created in 1834, and the suit was not commenced until 1869. At the trial, A. offered no evidence of the payment of any ground rent. The court instructed the jury that the act of April 27, 1855, did not apply to the case, as the act was not retrospective. On writ of error, B. contended that the act of April 27, 1855, was retrospective, and constitutional. Judgment for A. reversed.—Korn v. Browne, 64 Pa. 55 (1870), Read, J.

(C) PROVISIONS OF THE FOURTEENTH AMENDMENT.

1. Acts Impairing Vested Rights and Liberties of Citizens.

A retroactive statute which merely affects a remedy is constitutional (115); but an act which directly tends to destroy a

right already vested is unconstitutional and void. (116–118)

An act forfeiting property for negligence cannot be so construed as to deprive the owner of an opportunity to be heard in defence. (119)

An act of assembly distributing the effects of disbanding fire companies to certain classes of their members, to the exclusion of others, is constitutional, such fire companies being eleemosynary corporations, in which the members have no right of ownership. (120)

An act rendering it criminal for a resident of Pennsylvania to insure in a company not authorized to do business in the state is not unconstitutional. (121)

(115) A. filed a petition in the orphans' court for a citation to B., the executrix of the estate of C., to show cause why B. should not file an account. The petition was filed under the act of April 17, 1869 (P. L. 70, § 1; P. & L. Dig. 1510), which provided that the owner of a contingent interest in the personal property of any decedent might cite the executor to file an account. The act was passed after A. became interested in C.'s estate, and was retroactive in terms. The court below dismissed the petition. On appeal, B. contended that the act was unconstitutional in that it was retroactive. Decree reversed.—Keene's Appeal, 64 Pa. 268 (1870), Sharswood, J.

(116) C. devised certain land to his daughter D. for the separate use of her and her lawful heirs, without authority on the part of D. to convey or incumber said land. D., with her husband, conveyed the land to E. in 1859. Subsequently, E. conveyed the land to B. Upon the death of D., A., a child of D., brought ejectment against B. to recover the said land. By the act of April 22, 1863 (P. L. 533), it was provided that the deed of a married woman, who had no trustee, should have the same force and effect as if a power of sale had been contained in the instrument creating her separate estate. At the trial, the court held that the conveyance by D. to E. was ineffectual to pass the estate, it having been devised to her for her sole and separate use, with restriction as to her power of sale; and that the act of April 2, 1863, could not validate the sale. Affirmed.—Shonk v. Brown, 61 Pa. 320 (1869), Agnew, J.

(117) A. and B., husband and wife, had wills prepared giving their property to each other, but by mistake each signed the other's will. After A.'s death an act of assembly was passed authorizing the court to hear testimony, and, upon proof of the mistake, to reform the will. The court held that the rights of A.'s heirs had vested on his death, and that the act was unconstitutional. Decree affirmed.—Alter's Appeal, 67 Pa. 341 (1871), Agnew, J. Affirming 7 Phila. 529.

(118) Policies of insurance for property in Pennsylvania were issued and delivered in Massachusetts by a Massachusetts corporation, to a Pennsylvania corporation. These policies were afterwards cancelled and the insured received a return premium. In an action to recover assessments imposed for losses incurred by plaintiff company while the policies were in force, an affidavit of defence was filed which set up that the plaintiff, being a foreign company, had not, prior to placing the insurance, complied with the act of assembly of Pennsylvania regulating the way in which foreign insurance companies should undertake the insurance of property in Pennsylvania. The court below discharged a rule for judgment for want of a sufficient affidavit. On appeal, *held*, that the contract was a Massachusetts contract, to be governed by the law of that state, regardless of the penalties imposed by the Pennsylvania statute; that to hold otherwise would be taking the property of defendant without due process of law and denying to it the equal protection of the laws, in violation of the United States constitution. Judgment reversed.—Western Massachusetts Ins. Co. v. Girard P. S. Co., 6 Super. Ct. 288 (1898), Porter, J.

(119) Logs belonging to A. were seized by B. under the provisions of the act of December 11, 1866 (P. L. [1867] 1365), which prohibited the floating of logs in the Susquehanna river, without being rafted, or enclosed in boats and under the control of men actually on them; and provided that the logs could be taken up by any one who found them so floating, and that unless the logs were redeemed by the payment of fifty cents on each log within two months, they became the property of the captor. In replevin by A. against B., A. contended that he should be permitted to show that he did not voluntarily put the logs loose in the river, but that their drifting was caused by a rise in the river. The court held that if the logs were found floating loose in the stream, and not in the personal charge of some one upon them, then the logs were forfeited under the act, without notice to A., or an opportunity being given to show that the logs were not voluntarily put loose in the stream. On writ of error, A. urged that such a construction of the act was unconstitutional in that it deprived him of his property without due process of law. Judgment for B. reversed.—Craig v. Kline, 65 Pa. 399 (1870), Agnew, J. Reversing 2 Leg. Gaz. 81.

(120) A. was a member of the H. fire engine company at the time of its disbanding. By act of assembly the effects of the company were to be distributed to such members of the company as were required to perform active service as a con-

dition of membership, or who had been transferred from the active roll to the roll of honorary members, as a reward for previous active service. It did not appear that A. was in either of these classes, but in a suit brought to enforce his right to participate in the company's property he alleged that as a life member he was entitled to a share of the effects of the corporation and that any legislation to deprive him of his just property rights was unconstitutional. It was contended, on the other hand, that the corporation in question was of an eleemosynary character, and that the corporators had no right of property. Judgment against A.—Comm. v. Hibernia Fire Engine Co., 32 L. I. 40 (1875), Thayer, P. J.; s. c. 1 W. N. C. 187.

(121) By the act of April 26, 1887 (P. L. 61; P. & L. Dig. 1233), it was provided that any person taking out insurance with a company not lawfully authorized to do business in Pennsylvania should be guilty of an indictable offence. Under this act, B. was indicted, and a special verdict given against him. B. thereupon moved for a new trial, contending that the act in question was in violation of the fourteenth amendment of the constitution of the United States. *Held*, that the act was constitutional, but must be rigorously construed, and under such construction, judgment against B. was reversed.—Comm. v. Biddle, 139 Pa. 605 (1891), Mitchell, J.; s. c. 27 W. N. C. 287.

2. Regulations within the Police Power of the State.

Acts of legislature, within the police power of the state, prescribing what may or may not be sold within the state, do not amount to taking the property or abridging the privileges of a citizen without due process of law, within the meaning of the fourteenth amendment to the federal constitution. (122–123)

The act of May 6, 1863 (P. L. 582; P. & L. Dig. 3991), amended by the act of April 10, 1872 (P. L. 51; P. & L. Dig. 3992), prohibiting the sale of railroad tickets except by the agents of the companies, and making a violation of the act a misdemeanor, is constitutional. (124)

The business of insurance against fire is, by reason of its magnitude, a proper subject for the exercise of the police powers of the state, and a law forbidding the issuing of any policy or the making of any contract of insurance by other than incorporated companies is constitutional. (125)

The fourteenth amendment is not violated by the act of March 3, 1870 (P. L. 3, § 3), compelling mine owners to make at least two entrances to each of their workings (126–127); nor by an act authorizing a borough to pass an ordinance to prevent the erection of wooden buildings within its territory (128); nor by laws enacted for the purpose of regulating the time and appliances for catching fish (129–130)

(122) The act of May 21, 1885 (P. L. 22; P. & L. Dig. 3263), prohibited the manufacture and sale of oleomargarine, or the keeping of the same with intent to sell. Under this act, B. was indicted for the sale of imitation butter, and was convicted. On a motion in arrest of judgment and for a new trial, it was contended that the act violated the fourteenth amendment of the federal constitution, which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of . . . property without due process of law." The court refused the motion. *Held*, no error.—Powell v. Comm., 114 Pa. 265 (1887), Sterrett, J. (Gordon, J., dissenting); s. c. 7 Atl. 913.

Affirmed in Powell v. Pennsylvania, 127 U. S. 678.

(123) B. sold to C. a package of oleomargarine, to be used as a substitute for butter. The package was sold as oleomargarine, and had the words "Oleomargarine Butter" stamped on either side, and on the lid, as required by the act of May 24, 1883 (P. L. 43; P. & L. Dig. 524), passed "to prevent deception in the sale of butter and cheese." B. was indicted for this sale, under the act of May 21, 1885 (P. L. 22, § 1; P. & L. Dig. 3263), forbidding the manufacture and sale of oleomargarine, and, as a defence, attacked the constitutionality of the act, under the fourteenth amendment. Judgment against B. affirmed.—Walker v. Comm., 11 Atl. 623 (1887).

(124) B. was indicted for selling railroad tickets under the acts of May 6, 1863 (P. L. 582; P. & L. Dig. 3991), and April 10, 1872 (P. L. 51; P. & L. Dig. 3992), which made it a misdemeanor for any one except the agents of companies to sell such tickets. It was contended on the trial that these acts violated the fourteenth amendment, as abridging the privileges or immunities of citizens of the United States. Judgment against B.—Comm. v. Wilson, 14 Phila. 384 (1880), Ludlow, P. J.; s. c. 37 L. I. 484.

(125) An indictment was framed against B. for issuing a policy of fire insurance, in contravention of the terms of the act of February 4, 1870 (P. L. 14; P. & L. Dig. 2383), which provides that no such policy shall be issued or contract of insurance made except by authority conferred by a charter of incorporation for that purpose. Judgment was given for B., and an appeal taken by the commonwealth. B.'s contention was that the act in question was in violation of the fourteenth amendment. *Held*, that the subject of insurance against fire was important enough to call forth the police power of the state, and that this act was a proper exercise of such police power, and constitutional. Judgment reversed.—Comm. v.

Vrooman, 164 Pa. 306 (1894), Williams, J. (Dean, Sterrett, and Green, JJ., dissenting). Reversing 15 Pa. C. C. 92, 51 L. I. 152.

(126) By the act of March 3, 1870 (P. L. 3, § 3), it was provided that there should be at least two openings for egress from each working in a mine. The operation of B.'s mine was enjoined for his failure to comply with the provisions of this act, and B. pleaded to the constitutionality of the same, alleging that it was in violation of vested right and liberty guaranteed by the federal constitution. *Held*, that the act was a proper exercise of the police power of the state, and injunction made perpetual.—Comm. v. Bonnell, 8 Phila. 534 (1871), Harding, P. J.

(127) A coal mine had been operated along a certain vein, in full compliance with the terms of the act of March 3, 1870 (P. L. 3, § 3), requiring two exits, at a reasonable distance apart, for each mine. Subsequently a new shaft was sunk, leading off from the old workings, but no second opening was provided. On information of the inspector of mines, suit was brought to enjoin the further working of this new mine, to which it was answered that the act providing for such openings was unconstitutional. *Held*, that the act was within the police power of the state; and injunction granted.—Comm. v. Wilkesbarre Coal Co., 29 L. I. 213 (1872), Harding, P. J.

(128) A. was enjoined from erecting a wooden building in Wilkesbarre borough, in violation of the act of March 23, 1865 (P. L. 725), authorizing the borough authorities to pass an ordinance forbidding the erection of wooden buildings within the territory of the borough. A. moved to dissolve the injunction, as in violation of his vested rights under the constitution. *Held*, that the act was a proper exercise of the police power of the state; and rule discharged.—Wilkesbarre Borough v. Bertels, 5 Luz. L. R. 149 (1876), Conyngham, P. J.

(129) B. was the owner of a small non-navigable stream, within the bounds of his survey. Under the act of June 10, 1881 (P. L. 93, § 3), this stream was planted with brook trout by the fish commissioners, and the taking of the same was prohibited. B. contended that the act was in violation of rights of liberty and property guaranteed by the federal constitution. *Held*, that the act was constitutional, as a proper exercise of police power; but the act was unconstitutional on other grounds.—Comm. v. Bender, 7 Pa. C. C. 620 (1887), Rowe, P. J.

(130) B. was indicted under the second section of the act of May 22, 1889 (P. L. 267; P. & L. Dig. 2133), which makes it a misdemeanor for any person to make use of any fyke-net, etc., for the purpose of catching fish in any of the rivers, waters, or streams of this commonwealth. B. took a rule to quash the indictment on the ground that the act was unconstitutional, as it infringed the liberties and abridged the privileges of the subject. The commonwealth maintained that such legislation was necessary, and within the proper police power of the state. Rule discharged.—Comm. v. Lohman, 8 Kulp, 485 (1897), Lynch, J.

3. Discrimination among Citizens and Persons within State Limits.

While the legislature cannot, under the name of taxation, take private property for public use without compensation, or lay a special tax on particular individuals, persons and things may be classified for the purpose of taxation (131–132); but a local act, or an ordinance, enacted by authority of the legislature, which undertakes to lay a license tax on merchants, peddlers, or hucksters, to the exemption of those in a particular class or locality, is unconstitutional and void, as discriminating between citizens of the state, and denying to all the equal protection of the laws. (133–140)

(131) By an act of assembly the council of the city of A. was authorized to impose by ordinance a license upon the owners of certain kinds of property and also upon certain classes of persons. The city passed an ordinance imposing the license, and a number of persons affected thereby filed a bill for an injunction to restrain the collection of the license tax, on the ground that the act was unconstitutional. *Held*, that the act was constitutional; but the proceedings were restrained on other grounds.—Butler's Appeal, 73 Pa. 448 (1873), Mercur, J.

(132) A. filed a bill in equity against B. borough to restrain the collection of a tax of $25, imposed upon saloon-keepers, under the act of October 30, 1865 (P. L. [1866] 1224), which authorized the B. borough, for the purpose of maintaining its police force, to assess upon each keeper of any bar, saloon, etc., a tax of not more than $100 nor less than $25, to be levied as other taxes in the borough. A. contended that said tax was a special tax on a certain class of individuals, and that it therefore violated the constitution of the United States, in that it deprived A. of his property without compensation. The court below dismissed the bill. Affirmed.—Durach's Appeal, 62 Pa. 491 (1869), Sharswood, J.

(133) Under the local act of March 22, 1870 (P. L. 522), authorizing the burgess and town council of Conshohocken borough to regulate the selling of goods, wares, etc., in the streets, and giving them power to require licenses for the privilege, an ordinance was passed making it unlawful for any person to sell certain articles of produce and manufacture without having paid a license fee at a certain rate, excepting butchers and hucksters living within the limits of the borough, who were to be allowed licenses at half rates. The defendant, a non-resident, was indicted for pedding meat without a license. On a case stated, *held*, that the said ordinance was unconstitutional; and judgment was entered for the defendant.—Conshohocken Borough v. Fennel, 5 Pa. C. C. 65 (1888), Swartz, P. J.

(134) An ordinance of the city of Easton provided that every person, corporation, or co-operative association, resident outside of the city, and

doing business in the city, should obtain a license. *Held*, unconstitutional.—Easton v. Easton Beef Co., 5 Pa. C. C. 68 (1888), Schuyler, P. J.; s. c. 5 Lanc. L. R. 180, 1 North. Co. 125.

(135) A. was convicted and fined in an alderman's court for dealing in certain articles as a huckster, without a license, in violation of the local act of May 10, 1866 (P. L. 1082), which provided that persons residing outside of L. County should pay a higher license than residents of the county. On *certiorari*, *held*, that the act, as discriminating between citizens of Pennsylvania, was in violation of the fourteenth amendment of the federal constitution, forbidding a state to deny to any person within its jurisdiction the equal protection of the laws.—Groh v. Comm., 6 Pa. C. C. 130 (1888), McPherson, J.

(136) The act of April 3, 1851 (P. L. 320, § 2; P. & L. Dig. 398), empowered the borough of Sandford to impose a license fee upon hawkers and peddlers. The act contained a clause exempting all citizens of the borough from the operation of the ordinance. The validity of an ordinance enacted under this law was submitted to the opinion of the court. *Held*, that the ordinance was unconstitutional.—Sansford Borough v. Brode, 7 Pa. C. C. 221 (1889), Dreher, P. J.

(137) A borough ordinance prohibited all persons from engaging in the business of peddling or selling goods from house to house by sample or otherwise, without a borough license, and fixed the price of a license at a figure that made the ordinance prohibitory. At the end of the prohibiting section of the ordinance there was a proviso exempting all citizens of the borough from its operation. In a suit for a penalty under the act, *held*, affirming judgment for the borough, that this proviso rendered the ordinance a trade regulation, and a discrimination against non-residents, and therefore unconstitutional.—Sayre Borough v. Phillips, 148 Pa. 482 (1892), Williams, J.; s. c. 24 Atl. 76, 30 W. N. C. 196.

(138) The record of a suit before a justice showed that judgment was entered against B., a non-resident of the borough of A., for the sum of $20 and costs, as a penalty for temporarily engaging in selling pictures and frames in said borough without a license, in violation of a borough ordinance, which excepted residents from its operation. On *certiorari*, *held*, that the ordinance was unconstitutional.—Wilcox v. Knoxville Borough, 12 Pa. C. C. 641 (1892), Mitchell, P. J.; s. c. 2 D. R. 721.

(139) B. sold meat from house to house in the borough of A., without a license. An ordinance was passed by the burgess and town council of A., prohibiting the vending or peddling in that borough of almost every usual article of necessity or comfort, with an exception in favor of such persons as sold the produce of their own farms. B. contended that the ordinance was void and unconstitutional. Judgment for B.—Warren Borough v. Lewis, 16 Pa. C. C. 176 (1895), Noyes, P. J.

(140) B. was arrested and fined for violating a borough ordinance prohibiting peddling without a license. The ordinance contained a provision excepting persons or firms holding mercantile licenses within the borough. On *certiorari*, B. maintained that the ordinance was invalid. Proceedings reversed, and judgment set aside.—West Pittston Borough v. Dymond, 8 Kulp, 12 (1895), Craig, P. J.

4. Taxation of Stocks and Bonds of Domestic Corporations.

An act requiring a domestic corporation to withhold and pay over to the state a certain proportion of the interest paid on its evidences of indebtedness held by residents of the state is constitutional. (141)

The taxation of the capital stock of a domestic corporation is not an abridgment of the privileges or immunities of the citizens, within the meaning of the fourteenth amendment. (142)

(141) The act of June 30, 1885 (P. L. 193, § 4; P. & L. Dig. 4456), provides that the treasurer of every corporation doing business in the state shall retain out of the interest due upon bonds of the corporation the tax due upon this interest under the act, from the owners of the bonds resident in this state, and pay the same to the state treasurer. The treasurer of a corporation reported the amount of interest paid upon the bonds, and there was an assessment of the taxes against the corporation. On an appeal there was a contention that this section of the act was unconstitutional and void, as in conflict with Article V. and section 1 of Article XIV. of the amendments to the constitution of the United States, which provide against depriving any person of "life, liberty, or property without due process of law." Judgment in favor of the commonwealth was affirmed.—Comm. v. Lehigh Val. R. Co., 129 Pa. 429 (1889), Clark, J.; s. c. 18 Atl. 406, 410, 25 W. N. C. 15.

(142) On appeal from a settlement of taxes on the capital stock of B., a corporation organized under the laws of Pennsylvania, as provided by act of June 7, 1879 (P. L. 112, § 4), imposing taxes on the capital stock of corporations, B. contended that said section was in conflict with the fourteenth amendment to the constitution of the United States, prohibiting the making or enforcement of any law abridging the privileges or immunities of the citizens. Judgment for the commonwealth.—Comm. v. United States Electric Lighting Co., 7 Pa. C. C. 90 (1889), Simonton, P. J.

(D) TAXATION.

1. Taxation of United States Property.

Taxation by a state of United States property within the state is constitutional, where the state has never consented to the purchase of the property in question by the federal government, or relinquished its right of taxation. (143)

(143) The lot on which stood the mint of the United States, in the city of Philadelphia, was assessed for taxes for county purposes under the state laws. The state had never relinquished its right of taxation, nor given its consent to the purchase of the ground by the United States. On error to the supreme court of Pennsylvania, *held*, that the state's right of taxation was unimpaired and constitutional. On writ of error from the United States supreme court, judgment affirmed.—Roach v. Philadelphia County, 2 Am. L. J. (N. S.) 444 (1850)

2. Taxation of National Banks.

Taxation of national banks by the states in any other way than that excepted by the act of congress of June 3, 1864, is unconstitutional, as being a tax on an institution constituting an instrumentality of the United States government. (144–145)

(144) Under the power given by the local act of January 4, 1859 (P. L. 828, § 4), the city of Pittsburg provided for a tax upon the business of banks, and assessed such a tax upon a national bank. In an amicable action of assumpsit by the city against the bank, for the recovery of this tax, judgment in favor of the bank was affirmed, the court holding such a tax upon a national bank to be unconstitutional.—Pittsburg v. First Nat. Bank of Pittsburgh, 55 Pa. 45 (1867), Read, J. (Thompson, J., dissenting).

(145) A city required a license tax of a national bank operating within its limits, and brought suit to enforce payment of the same. It was shown that the city was fully authorized by act of assembly to impose such a tax, but the bank contended that no such authority could be lawfully given by the legislature, as the taxation of national banks was exclusively in the power of congress. Judgment for the bank.—Scranton v. National Bank, 4 Law Times (N. S.), 2 (1881), McCollum, P. J.

3. Extraterritorial Taxation.

While a state may not tax the subjects of another state or sovereign, a tax on the gross receipts of a foreign corporation doing business in a state is not unconstitutional. (146–147)

But, notwithstanding decisions of the state courts to the contrary, it is held by the supreme court of the United States that a requirement, as in the act of June 30, 1885 (P. L. 193, § 4; P. & L. Dig. 4456), to deduct and pay over to this state a certain proportion of the interest on the evidences of indebtedness, held within this state, due by a foreign corporation, which has to pay such interest without this state, violates the constitution of the United States, as being an exercise of the power of taxation over funds not within the jurisdiction of the state. (148–151)

(146) In an action by the commonwealth against a foreign corporation, to recover a tax imposed by a state law on corporations doing business within the borders of the state, it was contended that such law was contrary to the constitution of the United States. Judgment for the commonwealth.—Comm. v. Central Petroleum Co., 1 Pears. 373 (1867).

(147) A settlement was made by the state accounting officers, against B., a palace car company, doing business in Pennsylvania, for taxes on its gross receipts, under the act of June 7, 1879 (P. L. 112). B. was a corporation of another state, having its general offices there, and when the tax was claimed the property taxed was mingled with the other property of B. in another state. From the account settled, B. appealed, and alleged that the act authorizing such tax was unconstitutional under Art. I., § 8, cl. 1, of the United States constitution, as being against corporations and property in another state. judgment for the commonwealth affirmed. —Pullman Palace Car Co. v. Comm. (No. 1), 107 Pa. 148 (1884), Trunkey, J.

Affirmed in 141 U. S. 18.

(148) Under the act of June 30, 1885 (P. L. 193, § 4; P. & L. Dig. 4456), requiring corporate officers to deduct a tax from the interest on scrip, bonds, or certificates of indebtedness, issued to and held by residents of this state, the commonwealth settled such a tax against the A. company, a foreign corporation doing business in Pennsylvania. It was contended on behalf of the company that, in requiring the retention of the tax in the absence of the assessment or valuation of bonds by lawful authority, and in holding the company or its treasurer liable for such tax, the act violated the federal constitution, as depriving of property without due process of law; also as impairing the contract of the company with its creditors; and also the contract with the state of Pennsylvania, under the legislation authorizing the company to operate in that state, and the contract with New York under the charter from that state, neither of which required the company or its treasurer to be a collector of taxes. *Held*, that the act complained of was not unconstitutional in these respects. Judgment for commonwealth affirmed.—Comm. v. New York, L. E. & W. R. Co., 129 Pa. 463 (1889), Clark, J.; s. c. 18 Atl. 414, 25 W. N. C. 15.

(149) Action was brought to recover from defendant railway company a tax on evidences of the company's indebtedness, held by residents of Pennsylvania, as provided by the act of June 30, 1885 (P. L. 193). The company was a foreign

corporation, organized under the laws of New York, where the interest was paid, but operated a portion of its line in Pennsylvania, under an act of the legislature. The company resisted the payment of the tax on the ground that the act was unconstitutional. *Held*, that the act was constitutional. Judgment for commonwealth affirmed.—Comm. v. New York, L. E. & W. R. Co., 145 Pa. 57 (1891); s. c. 22 Atl. 212, 236.

(150) The commonwealth brought action against a railroad corporation, organized under the laws of New York, to recover the tax directed by section 4 of the act of June 30, 1885 (P. L. 193). Some of the bonds thus taxed were held by mutual savings associations, which were subject to taxation on the income from such stock, under the act of June 1, 1889 (P. L. 420, § 27; P. & L. Dig. 4470), taxing net earnings of such societies. Defendant objected that the two acts above mentioned were in conflict with the implied prohibition against extraterritorial taxation contained in the federal constitution; with Article V. and Article XIV., § 1, of the amendments of said constitution, providing for due process of law and equal protection; and with Article I., § 10, as impairing the contract between the company and the state of New York under the charter, between the company and the state of Pennsylvania, contained in the legislation authorizing the company to do business, which legislation did not impose a condition that the company should act as collector of state taxes, and between the company and its creditors or the holders of the coupons; also that said acts violated the commerce clause (Article I., § 8), if applying to the taxation of the company's indebtedness. Judgment below for the commonwealth, in favor of the constitutionality of the acts, was affirmed.—Comm. v. New York, L. E. & W. R. Co., 150 Pa. 234 (1892); s. c. 24 Atl. 609.

The judgments in cases (148–150), *supra*, have been reversed or overruled by the supreme court of the United States, on the ground that the commonwealth of Pennsylvania could not, consistently with the constitution of the United States, impose upon defendant railway company the duty of deducting the tax from the interest on bonds held by residents of Pennsylvania, when the company was paying the interest in New York; also that section 4 of the act of June 30, 1885, was unconstitutional, as impairing the contract of the company with the state of Pennsylvania, under the acts by which the company was allowed to operate in Pennsylvania.—New York, L. E. & W. R. Co. v. Pennsylvania, 153 U. S. 628 (1894), Harlan, J.; s. c. 14 Sup. Ct. 952.

(151) Action was brought to recover from defendant canal company, a foreign corporation, a tax on its bonds held by residents of this state, as provided by the act of June 30, 1885 (P. L. 193, § 4; P. & L. Dig. 4456). The case involved substantially the same points as (148–150), *supra*. Judgment for the commonwealth, upholding the constitutionality of the act, was affirmed.—Comm. v. Delaware & Hudson Canal Co., 150 Pa. 245 (1892); s. c. 24Atl. 599.

Reversed by the supreme court of the United States.—Delaware & H. Canal Co. v. Pennsylvania, 156 U. S. 200 (1895), Fuller, C. J.; s. c. 15 Sup. Ct. 358.

(E) SELF-INCRIMINATION UNDER THE FIFTH AMENDMENT.

The act of July 9, 1897 (P. L. 237; P. & L. Dig. Supp. 360), authorizing the courts to make inquiry relative to fraudulent debtors, and prescribing the procedure therefor, has been held in conflict with the fifth amendment to the federal constitution, requiring that no one be compelled to testify against himself. (152)

(152) B. entered judgment against C., under a power of attorney contained in a judgment note. Subsequently A., a creditor of C., presented a petition, alleging fraud, and begged that the matter might be inquired into in court according to the act of July 9, 1897 (P. L. 237; P. & L. Dig. Supp. 360). It was objected that the act in question was unconstitutional, as the party charged with fraud would be called upon to witness against himself, contrary to the fifth amendment to the constitution of the United States. Petition dismissed.—Hamburger Co. v. Friedman, 6 D. R. 693 (1897), Slagle, J.; s. c. 45 Pitts. L. J. 137, 20 Pa. C. C. 1.

See, also, Krug v. Behringer, 20 Pa. C. C. 81 (1897), Walling, P. J.

It has been held by the United States courts that the first eight amendments are restrictions on the federal government and not on the states.—Permoli v. First Municipality, 3 How. 589; Fox v. Ohio, 5 How. 410; Smith v. Maryland, 18 How. 71; Withers v. Buckley, 20 How. 84.

IV. RULES OF STATE COMITY.

(A) PUBLIC RECORDS AND JUDICIAL PROCEEDINGS.

Under Article IV., § 1, of the constitution of the United States, providing that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state," the judicial proceedings of other states will be received in the courts of Pennsylvania with the same credit and effect as in the states where such proceedings were had. (153–155) But this principle does not render binding, or require the admission in evidence of, proceedings as to which facts appear negativing the jurisdiction of the foreign court. (156–161)

A judgment obtained in a sister state is a bar to a proceeding between the same parties and for the same cause of action,

by foreign attachment, instituted in this state, after the bringing of the suit in the foreign state, and before judgment therein (162); but the pendency of a suit in another state will not bar a suit in this state between the same parties, concerning the same subject-matter. (163–164; but see 165)

The act of May 23, 1887 (P. L. 164; P. & L. Dig. 212), prohibiting a citizen of Pennsylvania from assigning a claim against a resident of this state, for the purpose of having the same collected by attachment in the courts of another state, with intent to deprive the debtor of his right of exemption, etc., and imposing a penalty therefor, is not in violation of the provision of the federal constitution. (166)

(153) A. brought suit against B. in the United States District Court of Mississippi, and recovered a judgment for costs. An action of debt was instituted on this judgment against B. in a Pennsylvania court. On the trial an exemplification of the record of the suit in Mississippi was offered in evidence, to which B. objected, as it showed no warrant to his attorney to appear for him in such suit. The court overruled the objection, and judgment was given for A. with interest, to which B. took a writ of error. Judgment reversed as to the interest, as under the law of Mississippi judgments did not carry interest; and a new judgment was entered for the amount of the original judgment for costs.—Rogers v. Burns, 27 Pa. 525 (1856), Lewis, C. J.

(154) Judgment was obtained before a justice of the peace in Ohio, and the transcript filed in a court of record in that state. In an action of debt, brought in this state on the judgment, the introduction of the transcript in evidence was objected to on the ground that the judgment was not that of a court of record. *Held*, that such transcript could be introduced, and would receive the same faith and credit as would be given to the judgment in the state where it was rendered. —Curran v. Rowley, 2 Pa. C. C. 539 (1886).

(155) B. filed a bill in equity in the chancery court of Kentucky, against A., and obtained an injunction restraining A. from using a certain claim which he had against B. in an action at law brought by B. against A. For seven years there were no further proceedings, when A. at length filed an answer in the nature of a cross-bill, denying the allegations of B.'s bill, and asking for a decree for the sum due him from B. After several processes had issued and been returned "not found," B. was marked as present by counsel, under the laws of Kentucky, at the election of a new chancellor, and a decree was subsequently entered against him, which was affirmed, on appeal by the Kentucky supreme court. The record was then brought to Pennsylvania, and suit instituted to recover the amount decreed to be paid to A. B.'s principal contention was that no proper notice had ever been received by him of the suit under which the decree was entered, and he offered in evidence the deposition of his attorney, stating that he had received no such actual notice, and that A.'s cross-bill was on matters not contained in the original bill, wherefore he, as B.'s counsel under the original bill, was not constructively present. Judgment for B. reversed.—Guthrie v. Lowry, 84 Pa. 533 (1877), Sharswood, J.

(156) A. brought an action against B. and C. in the courts of Louisiana, the defendants being residents of the state of Pennsylvania. No process was served on B. and C. in Louisiana, but the court rendered a personal judgment against them. In an action on the judgment in Pennsylvania, it was contended by defendants that the judgment was rendered against them without the Louisiana court's having acquired jurisdiction of their persons, and that the judgment therefore gave A. no right of action against them personally. A. contended that Article IV., § 1, of the constitution of the United States, precluded the defendants from questioning the judgment. Judgment for A. reversed.—Steel v. Smith, 7 W. & S. 447 (1844), Gibson, C. J.

(157) In a suit by A. against B. for divorce, A. took a rule for alimony *pendente lite*. This was resisted upon the ground that a decree of divorce *a vinculo matrimonii* had been pronounced by one of the courts of common pleas in the state of Indiana. A. claimed that the decree was obtained by fraud upon her, and upon the court that pronounced it, and that said court had no jurisdiction, as neither she nor B. had ever resided in the state of Indiana. *Held*, that the fact that such averments were made, and were sufficient, if true, to avoid the Indiana decree, gave A. a status in court.—Thomas v. Thomas, 4 Leg. Opin. 440 (1872), Ross, J.

(158) On a rule for judgment for want of a sufficient affidavit of defence, the record showed a return of service upon the defendant in the state of Georgia; but the defendant, by his affidavit, declared that he never had notice of the suit in question; and the record showed that he was then contesting the truth of the sheriff's return in the courts of Georgia, as he had a right to do under the laws of that state. Rule discharged.—Railroad Co. v. Mercer, 11 Phila. 226 (1876), Biddle, J.; s. c. 33 L. I. 366.

(159) A., a resident of Ohio, obtained in that state a decree of divorce *a vinculo matrimonii* from her husband, B., with alimony in a gross sum. She afterwards caused to be issued out of one of the courts of common pleas in Pennsylvania a writ of foreign attachment in debt against B. It appeared that B. was not a resident of the state of Ohio at the time the proceeding was instituted; and it was not shown, nor did it appear, that at that time he had any property, real or

personal, in that state. It also appeared that no personal service of process had been made upon him by a duly authorized officer of the court, that he had not voluntarily appeared generally in the action, and that, therefore, the court rendering the judgment had no jurisdiction over the person of the defendant. *Held*, that the judgment could have no extraterritorial effect, and could not be admitted as an evidence of debt.—Sheets v. Sheets, 6 Lanc. L. R. 97 (1889), Livingston, P. J.

(160) Judgment was entered against B. in a certain county in Maryland, and A., the judgment creditor, brought assumpsit upon such judgment in Pennsylvania. B.'s affidavit of defence averred in substance that he had never resided in the county in which the judgment was rendered after the suit was brought, had never carried on any business there, had never been served with a summons nor any paper of any kind in the said suit, and knew nothing about the suit until demand was made upon him in Philadelphia for payment of the judgment. *Held*, reversing the court below, that, as these were facts going to the jurisdiction of the court which rendered the judgment, the record could be contradicted in regard to them, and that, as the affidavit presented a *prima facie* defence, it was sufficient to prevent judgment.—Price v. Schaeffer, 161 Pa. 530 (1894), Mitchell, J.; s. c. 29 Atl. 279.

(161) A. and B., husband and wife, resided in Pennsylvania at the time of their marriage. B. continued to reside there, but A. went to Arkansas, where he obtained a divorce, and afterwards returned to Pennsylvania. In a prosecution for desertion instituted against A. on his return, he offered in evidence the decree of divorce obtained in Arkansas, wherein it was recited that B. had wilfully and without cause deserted A. more than four years previously, and that the cause of action had existed in Pennsylvania more than one year before the commencement of the suit. The depositions in support of the divorce proceedings were taken without notice to B., and she had no notice of the institution of the suit except by warning order published in an Arkansas newspaper. On the trial of the desertion proceedings, it appeared that the facts as recited in the decree of divorce were untrue, and that A. had wilfully deserted his wife, and that no cause of divorce existed in Pennsylvania more than one year before the bringing of the suit. It was contended by A. that section 1 of Art. IV. of the constitution of the United States prevented the Pennsylvania court from inquiring into the facts recited in the decree of divorce. *Held*, that the jurisdiction of the court of another state might be inquired into, or the existence of facts necessary to give such court jurisdiction; and that A.'s divorce was void for want of jurisdiction.—Comm. v. Bolich, 18 Pa. C. C. 401 (1896), Pershing, P. J.

(162) A. instituted an action against B. in Maryland and afterwards issued a writ of foreign attachment on the same cause of action in Pennsylvania. A judgment was obtained against B. in the Maryland court, after the issuance of the attachment, which B. pleaded in bar to the attachment proceedings. On demurrer to the plea, the court held that, under the provision of the federal constitution, that full faith and credit should be given in each state to the public acts, records, and judicial proceedings of every other state, and the act of congress of May 26, 1790, made in pursuance of it, a judgment recovered in a state, before a court of competent jurisdiction, upon due notice to the defendant, was not to be regarded in any other state as a foreign judgment, but was to be treated as a domestic judgment throughout the United States, in so far as to give it the same effect in every other state as it would have in the state from which it was taken. Judgment for B. on the demurrer was affirmed.—Baxley v. Linah, 16 Pa. 241 (1851), Chambers, J.

(163) In an action of assumpsit brought in Pennsylvania, the defendants set up that before the time of suit brought, plaintiffs had brought an action against defendants in New York, for the recovery of the same money, and that said action was still pending. Judgment for plaintiffs affirmed.—Smith v. Lathrop, 44 Pa. 326 (1863), Read, J.

(164) In a suit by A. against B. for divorce, A. took a rule for alimony *pendente lite*. This was resisted upon the ground that a similar proceeding was then pending in New York, with an existing decree of the character prayed for. The objection was *held* not to be good, for the reason that the court would not consider proceedings prior to judgment in another state.—Thomas v. Thomas, 4 Leg. Opin. 440 (1872), Ross, J.

(165) An affidavit of defence set up the pendency of an action for the same cause, between the same parties, in a court of a sister state. *Held*, that such proceedings were a bar, and rule for judgment for insufficient affidavit discharged.—Hopkins v. Ludlow, 1 Phila. 272 (1851), Sharswood, P. J.; s. c. 8 L. I. 239, 5 Clark, 143.

(166) A., whose wages as an employee of a railroad company had been attached in another state by B., to whom C. had assigned a claim held by him against A., brought an action against C. under the act of May 23, 1887 (P. L. 164), to recover the penalty prescribed thereby. It was contended by C. that the act violated Article IV., § 1, of the constitution of the United States. Judgment for A. affirmed.—Sweeny v. Hunter, 145 Pa. 363 (1891), Sterrett, J.; s. c. 22 Atl. 653, 29 W. N. C. 133, 48 L. I. 486, 39 Pitts. L. J. 89.

(B) EQUAL PRIVILEGES AND IMMUNITIES TO THE CITIZENS OF THE SEVERAL STATES.

1. License Regulations.

An act of assembly prohibiting the hawking or peddling of certain articles without a license, but exempting citizens of

the commonwealth from the operation of the act, is in violation of Art. IV., § 2, of the constitution of the United States and void (167), and acts and ordinances imposing license taxes on hucksters and peddlers in certain localities, with reservations in favor of residents in such localities, are void as to residents of the state. (168–170)

But a local act, passed prior to the passage of the fourteenth amendment, prohibiting peddling in a certain locality without a license, and doubling the license tax in the case of non-resident peddlers, was held not to be void for unconstitutionality, under Article IV., § 2, of the constitution, as to residents of the states. (171)

A license tax on a foreign corporation for the privilege of having an office in the state is not a discrimination between citizens of the several states. (172)

(167) A., a resident of New Jersey, was convicted of selling the produce of his farm in the streets of Philadelphia without a license, as required by an ordinance passed in conformity to the act of April 15, 1891 (P. L. 17, § 1; P. & L. Dig. 3418), imposing a penalty on all persons, other than citizens of Pennsylvania, hawking or peddling fish, fruit, or vegetables in cities of the first class without a license. A new trial was granted, on the ground that the ordinance and the act authorizing it violated Article IV., § 2, and Article I., § 8, of the constitution of the United States.—Comm. v. Simons, 3 D. R. 792 (1894), Hare, P. J.; s. c. 15 Pa. C. C. 550, 35 W. N. C. 511.

(168) The local act of May 18, 1866 (P. L. 1097), prohibiting hucksters from buying certain products of certain counties with an intent to sell them in other counties without taking out a license, etc., discriminated in the price of the license between a citizen of the county and one residing outside of the county, charging the latter ten times as much as the other. The offence was made a misdemeanor by the act. B., a citizen of Maryland, was indicted under the act. He claimed that this discrimination in the price of the license was in violation of section 2, Art. IV., of the constitution of the United States, which provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens of the several states." *Held*, reversing the court below, that the act was unconstitutional in this respect.—Comm. v. Shaffer, 128 Pa. 575 (1889), McCollum, J.; s. c. 18 Atl. 390, 24 W. N. C. 539.

The discrimination against non-residents in this act was removed by the supplemental act of March 14, 1867 (P. L. 459).

(169) A borough passed an ordinance levying a license upon peddlers, etc., but excepted from its operation "persons holding mercantile licenses within the borough, who comply with the market ordinance," and persons selling the products of their own farms or gardens, and hucksters who first attended the borough market, and complied with the provisions of the market ordinance. Under this ordinance A., a non-resident of the state, was fined by a justice of the said borough for selling tea without a license. On appeal, the court gave binding instructions for A., on the ground that the ordinance was unconstitutional. *Held*, no error.—Shamokin Borough v. Flannigan, 156 Pa. 43 (1893); s. c. 26 Atl. 780.

(170) The local act of March 12, 1869 (P. L. 341), imposed a heavy license fee upon peddlers in Perry County, but provided that the act should not apply to peddlers dealing exclusively with the merchants of said county, nor to merchants residing and having a regular place of business therein, nor to the sale by citizens of the said county of products of their own growth and manufacture. B., a peddler, was arrested for selling goods in violation of this act, and attacked its validity under Art. IV., § 2, cl, 1, of the constitution of the United States, which provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." Judgment for the commonwealth reversed.—Comm. v. Snyder, 182 Pa. 630 (1897), Williams, J.; s. c. 45 Pitts. L. J. 134.

(171) By the local act of April 8, 1861 (P. L. 258), resident hawkers and peddlers within the counties of Berks and Franklin were charged a license fee of ten dollars, while the fee for non-residents was twenty dollars. The act further imposed a penalty on any one engaging in said business without a license. B., a resident of another county, was convicted of a violation of the act, and fined. *Held*, that the act did not conflict with Article IV., § 2, of the constitution, as its discriminations were solely against non-residents of the counties named and markets outside thereof, nor with the fourteenth amendment to said constitution, since that was adopted after the passage of the act.—Rothermel v. Meyerle, 136 Pa. 250 (1890), Clark, J.; s. c. 20 Atl. 583, 26 W. N. C. 42. Reversing 7 Pa. C. C. 616.

(172) On appeal to the common pleas by a foreign corporation, from a settlement of a license tax on the corporation by the commonwealth under the act of June 7, 1879 (P. L. 120, § 16), repealed April 24, 1885 (P. L. 9), authorizing the collection from foreign corporations, having none of their capital invested in this state, of a license fee for the privilege of having an office in this state, it was contended that the act was in violation of Article IV., § 2, clause 1, of

the constitution of the United States. Judgment for the commonwealth affirmed.—Pembina Mining & C. Co. v. Comm., 13 W. N. C. 521 (1883). Affirmed in 125 U. S. 181 (1888), Field, J.

Where, however, such a license tax interferes with interstate commerce it will be held void. See Norfolk & Western R. Co. v. Comm. (23), *supra*.

2. Requirements for the Practice of Medicine and Surgery.

An act prescribing the manner in which a graduate of a medical college outside the commonwealth may be registered and practise in the commonwealth, is not contrary to Article II., § 4, of the federal constitution (173); but an act providing for the admission to practise within the state, of residents who have practised for not less than five continuous years prior to the passage of the act, but with a proviso that this should not apply to non-residents, is void, as to such proviso. (174)

(173) Section 4 of the act of June 8, 1881 (P. L. 72; P. & L. Dig. 2964), provided that where a graduate of a foreign medical college desired to commence the practice of medicine or surgery in the state, after the passage of the act, he should lay his diploma before the faculty of one of the medical colleges or universities of the state for inspection, and, if the faculty were satisfied as to his qualifications and the genuineness of the diploma, the dean should indorse the same, after which such applicant should be allowed to register as required by another section of the act. A graduate of a foreign medical college presented his diploma, together with a separate certificate of its genuineness, from the secretary of a medical university to the commonwealth, to the prothonotary of a county for registration, and it was accordingly registered. The prothonotary took a rule to strike off the name, on the ground that the diploma should have been indorsed. The applicant contended that the act of 1881 was contrary to Article IV., section 2, of the federal constitution. Name stricken off. Affirmed.—Bauer's Appeal, 17 W. N. C. 394 (1886); s. c. 4 Atl. 913.

(174) The second section of the act of March 24, 1877 (P. L. 42; P. & L. Dig. 2963), provided as follows: "It shall be unlawful after the passage of this act for any person to announce himself or herself as a practitioner of medicine, surgery, or obstetrics, or to practise the same, who has not received in a regular manner a diploma from a chartered medical school duly authorized to confer upon its alumni the degree of doctor of medicine: provided, that this act shall not apply to any resident practitioner of medicine, surgery, or obstetrics who has been in such continuous practice in this commonwealth for a period of not less than five years previous to the passage of this act." The discrimination against non-residents in this section was *held* unconstitutional.—Comm. v. Irving, 1 Susq. L. Chron. 69 (1878), Jessup, P. J.

3. Security for Costs.

A rule of court requiring non-resident plaintiffs to give security for costs is not in conflict with the United States constitution, requiring equal privileges and immunities for the citizen of each state. (175)

(175) On rule upon B., a non-resident plaintiff, to give security for costs, B. contended that the rule of court calling for such security in his case violated Art. IV., § 2 of the constitution of the United States. Rule absolute.—Kilmer v. Groome, 6 D. R. 540 (1897), Biddle, P. J.; s. c. 19 Pa. C. C. 339.

4. Assignment of Claims within the State to Non-residents.

The act of May 23, 1887 (P. L. 164; P. & L. Dig. 212), prohibiting a citizen of the state from assigning a claim against a resident of the state, for the purpose of having the same collected by attachment in the courts of another state, with intent to deprive the debtor of his right of exemption, and imposing a penalty therefor, is not unconstitutional. (176)

(176) A., a citizen of Pennsylvania, was indebted to B., also a resident of the commonwealth. B. assigned the claim to C., a resident of West Virginia, for the purpose of gaining an advantage which he could not enjoy under the law of this state. C. commenced an action thereon, and attached the wages of A. in the hands of the X. railroad company, as garnishee. Judgment was entered against X., and the claim paid by it. A. then instituted an action against B. for the penalty provided by the act of May, 23, 1887. B. contended that the act was in violation of Article IV., § 2, of the constitution of the United States. Judgment for A. affirmed.—Sweeny v. Hunter, 145 Pa. 363 (1891), Sterrett, J.

5. Discrimination in Favor of "Local Freight."

A discrimination in favor of "local freight," carried between certain points on a certain road, as against freight brought from without the state over the same road, is not a personal distinction, and not unconstitutional. (177)

(177) A. brought assumpsit to recover an alleged overcharge for freight on grain carried by B., a railroad corporation, over its road. The grain in question was brought into the state at A.'s own cost, and delivered to B. for transportation to another point within the state. The rates de-

manded for the carriage were in accordance with B.'s general rule that grain brought from beyond the state and shipped between the points in question should be charged at rates proportioned to the through freights then existing from the point at which the goods started without the state, or at the proportionate rate which B. would have charged had it received them at their point of departure and carried them through. There was a much lower rate for what was called "local freight," under the commutation act of March 7, 1861 (P. L. 88), requiring a reduction in the charges of transportation between these points for local freight as fixed by B.'s toll-sheets. A. contended that such discrimination was unconstitutional, and that B. was bound to carry their goods at as low a rate as that charged for the local freight. *Held*, that the act was constitutional. Judgment for B. affirmed.—Shipper v. Pennsylvania R. Co., 47 Pa. 338 (1864), Strong, J.

6. Foreign Attachments.

A citizen of another state has a right to sue out a writ of foreign attachment in Pennsylvania against a foreign corporation having effects in the state. (178)

(178) B. was a New Jersey corporation doing business in E. County in Pennsylvania. A. was a citizen of New York, and a creditor of B. B. having become insolvent, a receiver was appointed by a New Jersey court, to take possession of its property. A. afterward issued in E. County, writs of foreign attachment against B., by virtue of which the sheriff took possession of B.'s property. Application was made to the court on behalf of B. and the receiver to quash the attachments on the ground that A. was a resident of a foreign state and not entitled to maintain the attachment, and that a Pennsylvania court would not sustain a non-resident's claim in preference to the claim previously acquired by the receiver. The court held that the claims of the receiver would not be sustained in preference to that of citizens of Pennsylvania, and that under Article IV., section 2, of the federal constitution a citizen of a foreign state was entitled to the same privilege; that a citizen of Pennsylvania had the right to sue out a foreign attachment, and therefore A. had the right. Motion to quash refused.—Clark Co. v. Toby Valley Co., 14 Pa. C. C. 344 (1894), Mayor, P. J.

V. FEDERAL LAWS AND GUARANTIES, AND RESERVED RIGHTS OF STATES.

(A) FEDERAL LAW SUPREME.

No state law can be passed to vary the provisions of an act of congress, so that when the act of congress of February 12, 1793, in regard to reclaiming fugitives from labor was constitutional, it was held that no state law could prevent such recapture. (179)

(179) Certain slaves escaped from their owner, A., into the state of Pennsylvania. They were pursued by A., arrested, and carried before a justice, who heard the claimants, and gave them the certificate required by the act of congress of February 12, 1793. A mob attacked A. and rescued the slaves, for which a number of such mob were indicted, and a question arose as to the constitutionality of the arrest of the slaves in a non-slaveholding state. *Held*, the constitution and laws of the United States clearly sustained such arrest, and any state law in contravention of, or conflict with, these was void.—Comm. v. Clellans, 4 Clark, 92 (1847), Hepburn, P. J.

(B) GUARANTEE OF REPUBLICAN FORM OF GOVERNMENT.

An act calling a constitutional convention and providing for a minority representation therein is not in conflict with that provision of the federal constitution which guarantees to each state a republican form of government. (180)

(180) The constitution of 1873 was framed by a convention chosen according to the act of April 11, 1872 (P. L. 53), providing for a minority representation. The convention adopted an ordinance for submitting the new constitution to a vote of the people, and a bill was filed by certain taxpayers to restrain the carrying into effect of said ordinance. The bill alleged that by the terms of this act, in a certain county, each citizen was allowed to vote for six only out of nine delegates to the convention which prevented a purely majority representation, and, it was alleged, violated the provision of the United States constitution which guarantees to each state a republican form of government. *Held*, that the act was constitutional, and decree dismissing the bill affirmed.—Woods's Appeal, 75 Pa. 59 (1874), Agnew, C. J. Affirming 5 Leg. Gaz. 297, 21 Pitts. L. J. 61.

(C) RESERVED RIGHTS OF STATES.

1. Unrelinquished Right of Taxation.

Where a state has never relinquished its right of taxation over property within its limits, or consented to the purchase of the same by the United States, such purchase will not deprive the state of its power to tax the property. (181)

(181) The lot, in the city of Philadelphia, on which stood the United States mint, was assessed for taxes for county purposes, under the laws of the state. The state had never relinquished its right of taxation, nor given its consent to the purchase of the lot in question by the United States. The supreme court of Pennsylvania rendered a decision favorable to the state's right of taxation. On writ of error from the United States supreme court, judgment af-

firmed.—Roach v. Philadelphia County, 2 Am. L. J. (N. S.) 444 (1850).

2. Right of Complementary Legislation Where Congress has Failed to Exercise a Right.

Where congress has not exercised the powers delegated to it to fix the standard of weights and measures, a state can fix such standard. (182)

(182) In an action by A. against B. to recover the price of a quantity of coal sold, the court charged that, by act of April 15, 1834 (P. L. 525; P. & L. Dig. 4823), two thousand pounds constituted a ton in Pennsylvania, and judgment was entered accordingly. On writ of error, B. contended that the provision of the federal constitution giving to congress the power to regulate weights and measures extinguished the rights of the states over the same subject, until congress exercised the right conferred, and that the act of 1834 was therefore unconstitutional. Judgment affirmed. —Weaver v. Fegely, 29 Pa. 27 (1857), Lewis, C. J.

3. Assistant and Supplementary Legislation.

A state may constitutionally pass an act imposing a penalty on drafted militiamen, who fail to report at the rendezvous appointed by the governor. (183)

(183) Under an act of legislature, passed to provide for trial by court martial of drafted militiamen, who should refuse to march to the place of rendezvous ordered by the governor, A. was arrested and fined. The fine was collected, on payment being refused, by B., a deputy marshal. In trespass against B., A. contended that the act was in violation of art. I., § 8, of the constitution of the United States. Judgment for A. reversed. —Moore v. Houston, 3 S. & R. 169 (1817), Tilghman, C. J.

4. Reserved Right of Legislation under Police Power of the State.

A state may constitutionally pass an act requiring the words "for a patent right" to be legibly written across the face of every negotiable instrument given for such a consideration, and making it a misdemeanor to make, transfer, or sell such instruments not so marked. (184)

(184) A. was indicted and convicted under the act of April 12, 1872 (P. L. 60; P. & L. Dig. 547), making it a misdemeanor to knowingly receive or transfer any note given in consideration of the right to make or sell any patented invention unless the words "given for a patent right" were written thereon. Motion for a new trial was made on the ground that the act was unconstitutional. Order refusing motion affirmed.—Shires v. Comm., 120 Pa. 368 (1888).

5. Incidental Power of Congress over State Suffrage.

Congress may, as a penalty, impose upon a criminal the forfeiture of his citizenship of the United States, and, if the constitution of a state allows only citizens of the United States to vote, congress may thus affect the number of its voters. (185)

(185) A. was refused the right to vote, because, being a deserter from the United States army, he had lost his citizenship of the United States under an act of congress. In suit against the election judge, A. claimed that the act was unconstitutional for interfering with the right of suffrage in the states. The defendant contended that loss of citizenship of the United States did not involve the loss of suffrage in the state necessarily, and that the fact that the constitution of Pennsylvania required every voter to be a citizen of the United States did not affect the constitutionality of the act. *Held*, affirming the court below, that the act was constitutional.—Huber v. Reily, 53 Pa. 112 (1866), Strong, J.

CONSTITUTION OF PENNSYLVANIA.

See Cities; Constitution of the United States; Corporations; Eminent Domain; Taxation.

I. BILL OF RIGHTS.

(A) RIGHT OF SELF-GOVERNMENT.

An act making it a misdemeanor to enter upon land in Pennsylvania by virtue of a title not derived from the commonwealth or its former proprietaries, is not a violation of Article IX., section 1, of the state constitution of 1790 (now Art. I., sec. 2), asserting the right of self-government. (1)

(1) The act of April 11, 1795 (3 Dall. 703), made it a misdemeanor for any one to take possession of any land within certain counties of the commonwealth, by virtue of a title not derived from the commonwealth or its late proprietaries. After a conviction under this act, it was contended, on motion in arrest of judgment, that the act was in contravention of article IX., section 1, of the state constitution of 1790 (superseded by art. I., § 2, of the constitution of 1874). *Held*, that the act was constitutional.—Comm. v. Franklin, 4 Dall. 255 (1802), Shippen, C. J.

(B) RIGHT TO JUSTICE.

A rule of court requiring the entry of security for costs in actions for injury to property, person, or reputation, violates section 12 of Article I. of the constitution, inasmuch as an enforcement of the rule would be a denial of justice to any one too poor to comply with the order. (2)

(2) On argument of a rule to show cause why security for costs should not be given by a plaintiff, in an action *ex delicto*, under a rule of court, it was contended that the rule did not apply to actions for torts, since to hold that it did so apply would be to deprive a plaintiff too poor to give security of any redress for an injury done him in his lands, person, or reputation, and thus violate art. I., § 11, of the constitution. Rule discharged.—Schade v. Luppert, 17 Pa. C. C. 460 (1896), Metzger, P. J.

(C) CRIMINAL LEGISLATION.

1. Libel.

(*a*) *Freedom of the Press.*

Article I., § 7, of the constitution, providing that the printing press shall be free, and that the free communication of thoughts and opinions is one of the invaluable rights of man, does not sanction an unreasonable use of the liberty conferred (3), nor prevent the state from restraining the publication of matter deleterious to public morals. (4)

(3) A., a publisher of a newspaper, having been sued, published an article before the trial, accusing the judges of being partial and opposed to him. The court made a rule to show cause why an attachment should not be issued for contempt. In opposition to the rule, A. argued that he had a right to publish the article complained of under chapter 1, section 12, of the constitution of 1776, which provided for the freedom of the press, and is replaced by article I., section 7, of the constitution of 1874. *Held*, that, although the freedom of the press is guaranteed, yet a publisher is liable for the abuse of that power.—Respublica v. Oswald, 1 Dall. 319 (1788), McKean, C. J.

(4) The act of May 6, 1887 (P. L. 84, § 2; P. & L. Dig. 1281), prohibits, under a penalty, the sale of obscene papers. A. was indicted under the act. He objected that the act was unconstitutional, under the seventh section of the first article of the constitution. Objection overruled.—Comm. v. Dowling, 14 Pa. C. C. 607 (1894), Brégy, J.

(b) *Scope of Constitution.*

Article I., § 7, of the constitution, relates solely to indictments for criminal libel, and does not apply to a civil action to recover damages for a libellous publication. (5)

(5) A. was chairman of a county Democratic committee, and in reply to an article published by him, addressed to the voters, B. published a libellous editorial. Suit was brought by A. to recover damages, and B. pleaded his right to publish information regarding a person's actions in a public capacity, and argued that under section 7, Art. I., of the constitution, the alleged libellous matter was a privileged communication. *Held*, reversing judgment for A. because of error in the admission of testimony, that the section of the constitution referred to did not apply to a civil action to recover damages, and that B. was liable in damages.—Barr v. Moore, 87 Pa. 385 (1878), Mercur, J.; s. c. 6 W. N. C. 273, 1 Lack. L. Rec. 157.

(c) *Privileged Communications Under the Constitution.*

Under Article I., § 7, of the constitution, providing that no conviction shall be had for the publication of any matter proper for public investigation or information, a privileged communication is one in the subject-matter of which the public have a common interest. Matter of private scandal is not privileged. (6–7)

(6) C. advocated the election of B. by circulating a petition in his favor. A. published a derogatory statement concerning C.'s character, and was indicted for libel. *Held*, that the communication was privileged.—Comm. v. McClure, 3 Lanc. L. R. 104 (1885), Woodward, J.; s. c. 1 Pa. C. C. 207.

(7) A. was indicted for libel in publishing in his newspaper certain articles which professed to give a synopsis of testimony reported by a commission in divorce, but consisted only of extracts from the testimony, which represented the prosecutor in the libel case as having had improper relations with the respondent in the divorce case. The articles also applied opprobrious epithets to the prosecutor. *Held*, that the articles were not privileged publications.—Comm. v. Costello, 1 D. R. 745 (1892), Endlich, J.

See, also, Comm. v. Murphy, 8 Pa. C. C. 399 (1890), Endlich, J.

As to privileged communications by attorneys, reflecting on the court in which they practise, see Steinman's Case, 12 Lanc. Bar, 73 (1880).

(d) *Malice and Negligence.*

Where the subject-matter of a publication is privileged, even though the publication be untrue, the publisher cannot be convicted of libel if he made the publication without malice and exercised reasonable care to ascertain the truth; but the burden of proof is on him. (8–11)

(8) Indictment for libel against the proprietors of a newspaper. The defence was that what they published was true, and, if it was not true, it was not maliciously or negligently made; that they had published it on proper information and after thorough investigation; and that they were thus protected by Article I., § 7, of the constitution. On the trial the defendants offered evidence of investigation tending to show that the publication was not negligently or maliciously made. The court admitted the evidence, ruling that the defence was not limited to the truth of the charges made, but they might also defend on the other branch of the constitution; and, because they now reiterated the truth of the charges made, they could not be deprived of such defence. The court charged that the matter embraced in the publication was proper for public information, if it was true, and if it was not true the burden of proof was upon the defendants to remove the presumption that it was malicious.—Comm. v. McClure, 3 W. N. C. 58 (1876), Thayer, J.

(9) A. published a statement that B., a public officer, had committed perjury. On an indictment for libel, the court charged that, if the jury found from the evidence that the defendant had failed to make proper inquiries to connect the prosecutor with the subject-matter of the publication, it was their duty to return a verdict of guilty.—Comm. v. Woodward, 7 Luz. L. Reg. 44 (1878), Handley, J.

In a trial for malicious libel of a city official and his clerk, the court charged that, if the jury found that there was no malice or negligence in the publication, the defendant should be acquitted, even though the publication were untrue. —Comm. v. Singerly, 15 Phila. 368 (1881), Briggs, J.; s. c. 38 L. I. 177.

(10) Indictment for libel. The article complained of contained charges of corruption and extortion on the part of the prosecutor, a lawyer. The court charged that the immunity intended by Article I., § 7, of the constitution, extended to and included the case of a lawyer charged with such crimes as subornation of perjury and extortion, and that a newspaper might, if the occasion arose, expose and criticise, within proper bounds, the conduct of members of the bar who were accused of such derelictions of duty; but that, if the article was not founded upon an earnest effort to obtain the truth, and was malicious and negligent, then defendant was guilty as indicted.—Comm. v. Coon, 4 Pa. C. C. 422 (1886), Woodward, J.

(11) A. and others were indicted for libel in publishing in their newspaper a statement that B., a United States senator, had shared in an embezzlement by a treasurer of Philadelphia. The court *held*, that the defendants were obliged to show affirmatively that they had not been guilty of malice or negligence in publishing the statement, and left to the jury to find whether a proper investigation had been made before publication, and whether probable cause existed therefor.—Comm. v. Mellon, 29 W. N. C. 433 (1892), Wickham, P. J.; s. c. 9 Lanc. L. R. 112.

(e) Province of Court and Jury.

Under Article I., § 7, of the constitution, the court is the judge of whether the subject-matter of a communication is privileged. It is the province of the jury to determine whether the publication is libellous. (12; but see 13)

(12) Indictment for libel. The court charged the jury that they were not the judges of whether the subject-matter of the publication was privileged, but that they were the judges of whether it was libellous; and instructed them that the publication complained of was not privileged, leaving it to them to find whether it was a libel. The jury found for the defendant.—Comm. v. Murphy, 8 Pa. C. C. 399 (1890), Endlich, J.

(13) Indictment for libel. The defendants offered to prove the truth of the publication. The commonwealth objected, on the ground that it was not for the jury to decide whether the matter complained of was proper for public investigation, but that this was a matter wholly for the court. The court overruled this objection, and, after some testimony on the part of the defendants that the publication was made in good faith, that they had reasonable grounds for believing it to be true, and that it actually was so, a verdict was allowed to be taken for defendant.—Comm. v. Paschall, 8 Lanc. L. R. 37 (1890), Livingston, P. J.

See, also, Comm. v. Moore, 2 Chest. Co. 358 (1884), Simonton, P. J.; Comm. v. Telford, 32 Pitts. L. J. 422 (1885), Wickham, P. J.; Comm. v. Ball, 5 Lanc. L. R. 113 (1888), Patterson, J.

2. Bearing Arms.

Article I., § 21, of the constitution, providing that the right of citizens to bear arms in defence of themselves and the state shall not be questioned, does not prevent the state from prohibiting under penalty the carrying of concealed deadly weapons, with the intent, therewith, unlawfully and maliciously to do injury to any person. (14) For the justifiable carrying of deadly weapons for self-defence, see (15)

(14) A. was indicted under the act of May 5, 1864 (P. L. 823; P. & L. Dig. 1162, note), prohibiting the carrying of concealed deadly weapons in the county of Schuylkill, with the intent, therewith, unlawfully and maliciously to do injury to any other person. He was acquitted, but sentenced to pay costs. On appeal, he contended that the act was unconstitutional. Judgment affirmed.—Wright v. Comm., 77 Pa. 470 (1875); s. c. 1 W. N. C. 275, 32 L. I. 282.

(15) B. was indicted for murder, and, during the course of the trial, one of the witnesses for the commonwealth appeared upon the stand with a loaded revolver on his person, stating that he carried it for self-defence, and that, having been shot at several times, he had reasonable cause to apprehend future injury. In reference to the subject, the judge said to the jury that the right to carry arms in such cases was protected by the constitution, and not prohibited by any statute.—Comm. v. McNulty, 28 L. I. 389 (1871), Allison, P. J.

(D) ACCUSATION, TRIAL, AND PUNISHMENT.

1. Information.

An information in the nature of *quo warranto* is a civil proceeding in substance, though criminal in form, and is therefore not within the prohibition of Article I., § 10, of the constitution, against proceedings by information in indictable offences. (16–17)

(16) A rule was granted against the defendant, on an affidavit, that he show cause why an information in the nature of *quo warranto* should not be filed against him for assuming and exercising the office of treasurer of Cumberland County. The affidavit on which the rule was obtained contained a suggestion that the defendant had obtained his appointment by improper practices. A doubt was suggested whether the information prayed for might not contravene the constitutional provision (similar to that in the present constitution) which prohibited proceeding against a person criminally by information (except in cases specified, of which the present was not one) for any indictable offence. *Held*, that the constitution did not prohibit such a method of procedure.—Respublica v. Wray, 2 Yeates, 429 (1799), Shippen, J.; s. c. 3 Dall. 490.

(17) At the instance of B., a private citizen and taxpayer, a rule was had against A. to show cause why an information in the nature of a *quo warranto* should not be filed against him, to try by what authority he claimed the right to exercise the office of collector. *Held*, that, as the proceeding was in substance a civil one, any citizen who paid taxes had a sufficient interest to institute the same.—Comm. v. Commissioners of Philadelphia, 1 S. & R. 382 (1815), Tilghman, C. J.

It seems that criminal proceedings may be instituted by information against a county commissioner who has been concerned in public contracts.—Comm. v. Hurd, 177 Pa. 481 (1896).

2. Twice in Jeopardy.

(a) Confined to Capital Cases.

The tenth section of the first article of the constitution, which provides that no person shall, for the same offence, be twice put in jeopardy of life or limb, applies only to capital cases. (18)

(18) A. and B. were indicted for burglary.

On the trial, the jury failed to agree, and were discharged. On being again called up for trial a second time, the defendants pleaded that they had "once been in jeopardy for the same offence." The plea was overruled by the court, and the defendants were tried, found guilty, and, a new trial being refused, were sentenced. On error, judgment was affirmed, the supreme court *holding*, that, as burglary was not a capital felony, the constitutional provision that "no person shall, for the same offence, be twice put in jeopardy of life or limb," did not apply.—McCreary v. Comm., 29 Pa. 323 (1857), Armstrong, J. *Affirming* 5 Pitts. L. J. 262.

(*b*) *What Constitutes Jeopardy.*

A defendant is not in jeopardy until a jury of twelve men is selected and sworn. (19–20) When once the jury is sworn he is in jeopardy, and a discharge of the jury in a capital case, without the consent of the prisoner, except in a case of necessity, is equivalent to an acquittal. Mere failure or inability to agree, separation of the jury during the trial by permission of the court, with the consent of the prisoner and the commonwealth, or illness of jurors caused by failure to allow them refreshments, does not constitute a case of necessity, justifying discharge of the jury. (21–24)

(19) A. was indicted for murder. Eleven jurors were selected when the panel was exhausted. Before the twelfth juror was selected, on motion of the commonwealth, the jury was discharged, and the case continued. A. was again arraigned, and pleaded former jeopardy. The plea was overruled, and, the prisoner refusing to plead further, the plea of not guilty was entered for him, and he was tried and convicted. On error, judgment was affirmed.—McFadden v. Comm., 23 Pa. 12 (1853), Black, C. J.

(20) Upon a trial of an indictment for murder, after the names of forty-nine jurors had been drawn from the box, and eight jurors had been separately sworn, it appeared that eleven of the paper pellets had been clandestinely removed. The court directed the clerk to prepare eleven pellets in place of those which had been removed, and again put all the pellets in the box; and further ordered that the drawing of the jury be commenced *de novo*. After verdict of guilty, the prisoner took a writ of error, complaining that he had been twice put in jeopardy. Judgment affirmed, the supreme court *holding*, that the prisoner was not in jeopardy before a full jury was impannelled and sworn.—Alexander v. Comm., 105 Pa. 1 (1884), Trunkey, J.; s. c. 15 W. N. C. 145.

(21) A., B., and C. were indicted and tried for murder. The jury agreed upon a verdict regarding A. and B., but could not agree as to C. The court refused to permit them to give the verdict they had agreed upon, and discharged them without the consent, and against the objection, of the prisoners' counsel. A new indictment was found. On being arraigned the defendants pleaded the former proceedings in bar. Plea sustained, and prisoners discharged.—Comm. v. Cook, 6 S. & R. 577 (1822), Tilghman, C. J.

(22) A. was indicted for murder. The jury retired on April 23. On the 25th they returned, and said that they would never be likely to agree on a verdict. The court had kept them without meat or drink. Two were ill and the life of one was in danger. The court directed that refreshments should be sent to them, provided the commonwealth, the defendant, and the jury would agree thereto. Some of the jury objected, and, in spite of the objection of the defendant, the jury were discharged. A. was again indicted and pleaded the former trial in bar. Plea sustained, on the ground that the rule of law which forbade refreshments to be given to the jury had been changed, and therefore the discharge was not in a case of necessity.—Comm. v. Clue, 3 Rawle, 498 (1831), Gibson, C. J.

(23) A. was indicted upon a charge of murder. The case was called for trial, and a jury was obtained and sworn on that day. After the impannelling of the jury the court adjourned until the next day, and the jury was allowed to separate by consent of the defendant and the commonwealth. The next day the judge, being of the opinion that such separation of the jury was an irregularity to which the prisoner had no power to consent, discharged the jury, and ordered another one to be sworn. Counsel for A. objected to the selection of a new jury, and pleaded former jeopardy. The plea was overruled, and the prisoner was tried and convicted. On error, the overruling of the plea of former jeopardy being assigned, judgment was reversed.—Hilands v. Comm., 111 Pa. 1 (1886), Mercur, C. J. (Gordon, J., dissenting); s. c. 2 Atl. 70, 33 Pitts. L. J. 264, 17 W. N. C. 36, 43 L. I. 204.

(24) The jury in a capital case retired to deliberate on their verdict, and on the same day, it being the last day of the regular term of court, they were discharged against the objection of the defendants, without having agreed on a verdict. The defendants were afterwards called for trial, and pleaded the former trial and the discharge of the jury. The commonwealth demurred. Judgment for the defendants affirmed.—Comm. v. Fitzpatrick, 1 Lack. Jur. 4 (1888), Williams, J.

3. Searches, Seizures, and Warrants of Arrest.

Article I., § 8, provides that the people shall be secure in their persons, houses, papers, and possessions from unreasonable searches and seizures, and no warrant, to search any place, or to seize any person or things, shall issue, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation subscribed to by the affiant. This clause is confined to criminal proceedings. (25) It requires that all warrants shall be sufficiently particular to enable the defendant, if again arrested on the same charge, to plead his former acquittal (26); and an officer need not serve an illegal warrant. (27) It prohibits general search warrants, but does not require that the warrants should describe exactly the thing to be searched for (28); and in an information the offence may be alleged on information received. (29) It prohibits legislation which imposes as a penalty the seizure and sale of goods without previous trial or conviction. (30) But a justice may hold one for contempt for obstructing him in the exercise of his judicial function (31); and an officer of the law, who has arrested one without a warrant, may justify in an action of trespass, on the ground that the charge on which he arrested the plaintiff was true. (32)

(25) A. was arrested on a writ of *capias ad respondendum* upon a *præcipe* issued by an attorney without affidavit. On motion to quash the writ, it was *held*, that civil proceedings were not within the prohibition of the constitution, and that under the act of June 13, 1836 (P. L. 568), as partly repealed by the act of July 12, 1842 (P. L. 339), no affidavit was required before the service of the writ.—Finn v. Teeter, 1 Lack. Jur. 31* (1889), Gunster, J.

(26) A. was indicted for conspiring with others to prevent certain citizens whose names were unknown from voting. On motion the indictment was quashed, on the ground that sec. 8, Art. I., of the constitution, requires that the information on which the indictment is based shall be specific enough to enable the defendant to plead his acquittal or conviction in bar of further prosecution.—Comm. v. Hunter, 2 D. R. 707 (1893), Brégy, J.; s. c. 13 Pa. C. C. 573.

(27) A constable was indicted, tried, and convicted, for refusal to execute a warrant issued to him for the arrest of a certain person charged with uttering false and forged notes. The warrant was not issued upon oath, but upon common rumor, and report of the guilt of the party therein charged, and contained a recital that there was danger of his escape before witnesses could be summoned to enable the judge to issue the warrant on oath. On error, judgment was reversed, the supreme court *holding*, that, the warrant being illegal, the constable was not bound to execute it.—Conner v. Comm., 3 Binn. 38 (1810), Tilghman, C. J.; s. c. 9 Phila. 591.

(28) In trespass to recover damages for injuries committed in making a search for stolen goods upon plaintiff's premises without a sufficient search warrant, the plaintiff showed that the policemen had appeared at plaintiff's residence and produced a search warrant, which described the goods to be searched for only as "a quantity of jewelry and other personal effects," and had proceeded to search the house. On motion of the defence, the court entered a compulsory nonsuit, and subsequently refused to take off the same; to which plaintiff took a writ of error, contending that the warrant, having been issued in violation to the constitution, was null and void. Judgment affirmed on the ground that the warrant contained a sufficient description.—Moore v. Coxe, 10 W. N. C. 135 (1881); s. c. 13 Lanc. Bar, 58, 29 Pitts. L. J. 70.

(29) In an information in proceedings for summary conviction before a magistrate, the affiant alleged the offence positively and with particularity, though he asserted that the charge was made on information received. The defendant, having been tried and fined, took a writ of *certiorari* from the court of common pleas, contending that the information did not comply with Art. I., § 8, of the constitution. Judgment of the magistrate's court affirmed.—Knorr v. Comm., 4 Pa. C. C. 32 (1887), Stowe, P. J.; s. c. 3 Montg. Co. 184.

(30) The act of April 2, 1822 (7 Sm. L. 660; P. & L. Dig. 4101), to prevent the disturbance of meetings held for the purpose of religious worship, prohibited, in sections 1 and 2, the sale of any kind of articles of traffic, spirituous liquors, etc., within three miles of any place of religious worship, with a penalty of forfeiture of all such goods exposed for sale. A. erected a booth on his own ground, and offered for sale cakes, bread, pies, etc., near a camp-meeting ground. The goods were seized and disposed of, in accordance with the provisions of the act. In trespass *q. c. f.* by A., he urged that the act was unconstitutional, as it allowed property to be taken without due process of law. Judgment for defendants. On error, Thompson, J. (Woodward, C. J., concurring) *held*, that the above sections were unconstitutional; but, as these judges were not a majority, one member of the court (Agnew, J.) dissenting, and another expressing doubt, judgment was reversed on another ground.—Fetter v. Wilt, 46 Pa. 457 (1864).

(31) A. was indicted for obstructing the office of a justice of the peace. The records of the case showed that the warrant to arrest A. was not supported by any oath, and that A., without any

preliminary hearing, had been "held for a contempt before B., and for obstructing his office as a justice of the peace." The grand jury found a true bill. A. moved to have the indictment quashed. Motion dismissed.—Comm. v. McClure, 10 W. N. C. 466 (1881), Futhey, P. J.

(32) A., the high constable of a city, arrested B., without a warrant, upon information that he had stolen a watch. The stolen watch was found in B.'s possession, and this, together with other circumstances, raised the presumption of his guilt. B. sued A., in trespass for false imprisonment. A. offered in evidence the proceedings in the court of quarter sessions, by which it appeared that an indictment for larceny had been found against B., who had been admitted to bail, and had made default by which the recognizance was forfeited. This evidence, under objection, was admitted. *Held*, affirming judgment for A., that he was justified in making the arrest, if he could prove B. guilty of larceny; consequently the record tending to prove the larceny was legal evidence. —Wakely v. Hart, 6 Binn, 316 (1814), Tilghman, C. J.

4. Bail.

A prisoner charged with a capital offence has a right, either before or after indictment, to be admitted to bail, where the evidence produced on the hearing satisfies the judge to whom the application is made that the offence is not capital. (33–34)

(33) C., an unmarried female, being pregnant, applied to A. for the purpose of obtaining his aid in accomplishing a criminal abortion. A. consented, and effected the object, but did it in such a manner that C. died a few days afterwards. A. was charged with murder, and B. as accessory before the fact. The defendants sued out a writ of *habeas corpus* in order to offer bail for their appearance. The court *held*, that the crime charged could only be regarded as murder in the second degree, unless there existed in the perpetrator an intent to take the life of the mother, as well as to destroy her offspring, and that, as it had not been shown that the present was the case of a "capital offence, where the proof is evident, or the presumption great," the defendants had a constitutional right to be admitted to bail.—Comm. v. Keeper, 2 Ash. 227 (1838), King, P. J.

(34) After the finding of a true bill of indictment for murder, the prisoner made application for bail. This was opposed upon the ground that bail could not be taken after the finding of an indictment for murder. The evidence on the hearing convinced the judge that the offence committed was not murder in the first degree, and therefore not capital. *Held*, that the prisoner had a constitutional right to be admitted to bail.—Comm. v. Lemley, 2 Pitts. 362 (1862), Lindsay, P. J., s. c. 10 Pitts. L. J. 122.

5. Right to Demand Nature and Cause of Accusation.

An act of the legislature providing that, in cases of murder and manslaughter, it shall not be necessary to set forth in the indictment the manner in which, or the means by which, the death was caused, is not in violation of Article I., section 9, of the constitution, providing that the accused has a right to demand the nature and cause of the accusation against him. (35)

(35) The 20th section of the act of March 31, 1860 (P. L. 427; P. & L. Dig. 1354), provides that, in cases of murder and manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death was caused. On a writ of error to a verdict and sentence on an indictment for murder, framed according to the act, it was contended that the indictment was void, as not complying with the provision of the constitution, that "the accused shall have the right to be informed of the nature and cause of the accusation against him." Indictment sustained.—Cathcart v. Comm., 37 Pa. 108 (1861), Strong, J.

6. Trial by Jury.

An act providing for the trial of certain offences, by a justice of the peace and six jurors, at the election of the defendant, is constitutional (36); but the right to a trial by jury cannot be waived by implication (37); nor, in a trial by jury according to the course of the common law, can the accused constitutionally elect to be tried by eleven men instead of twelve (38–39); and an act which compels the accused to submit to a trial by a jury of six persons is unconstitutional. (40)

The allowance of peremptory challenges to the commonwealth in criminal trials does not impair the prisoner's right of trial by jury. (41–42)

The substitution by the act of December 14, 1863 (P. L. [1864] 1125; P. & L. Dig. 2650), of two magistrates only, as the tribunal before whom ejectment proceedings shall be tried, instead of two magistrates and a body of twelve men, as provided by the act of March 21, 1772, is not an impairment of the common-law right of trial by jury, as the body superseded was not a common-law jury, but a special statutory inquest as to certain facts (43); and the constitutional guarantee is not infringed by a provision for the trial of a claim of purely statutory origin and sanction before a tribunal other than a common-law jury. (44)

A summary conviction may be had under a city ordinance, if the city charter so provides (45); or under vagrancy acts (46); or

by legislative authority, for selling liquor on Sunday (47); or for performing worldly labor on Sunday (48); or for violating a law for the protection of fish (49), without violating any constitutional right.

Section 14 of Article V. of the constitution, providing that, in case of judgment in a suit for a penalty before a magistrate, an appeal shall be specially allowed, does not impair the right of trial by jury. (50)

A fire company may be disbanded by the court for rioting, without a trial by jury. (51)

No right is violated by an act authorizing the commitment of infants to the house of refuge under certain circumstances without a previous trial by jury (52); or dispensing with a jury trial in the case of one neglecting to provide for his children. (53)

Drafted militiamen, who refuse to obey orders, may be tried by court martial. (54)

The legislature may provide for the abatement of a nuisance without legal proceedings therefor. (55)

(36) A., having been arrested and brought before a justice, charged with assault and battery, pleaded not guilty, and demanded a trial before the justice, with a jury of six men, under the act of May 1, 1861 (P. L. 682; P. & L. Dig. 4710), providing that certain offences might, at the election of defendant, be tried by a justice of the peace and six jurors. A., having been convicted and sentenced to pay a fine, took a *certiorari* from the court of common pleas, contending that the act under which the proceedings were had before the justice was unconstitutional, as depriving him of the common-law trial by jury. The judge of the common pleas delivered an opinion sustaining the constitutionality of the act, and affirmed the judgment of the justice's court; and, on error to the supreme court, the judgment was affirmed on the opinion of the judge of the common pleas.—Lavery v. Comm., 101 Pa. 560 (1882); s. c. 12 W. N. C. 514, 12 Luz. L. Reg. 51, 2 Kulp, 273.

Overruling Comm. v. Eagles, 7 W. N. C. 324 (1879); Comm. v. Seamans, 3 Law Times (N. S.), 133 (1881).

(37) In a matter respecting the proceeds of a sheriff's sale, brought into court, for appropriation, questions of fact were involved. All the evidence had been given to the court, and counsel on each side had concluded their arguments, and the court was about to deliver their opinion, when the counsel for one of the parties demanded an issue to try the facts. This demand was refused by the court. On appeal, *held*, that the right of trial by jury was a constitutional right, under Art. IX., § 6, of the constitution of 1790 (replaced by Art. I., § 6, of the constitution of 1874), which cannot be waived by implication. Decree reversed.—Trimble's Appeal, 6 Watts, 133 (1837).

(38) On the trial of an indictment against B., one of the jurors was taken sick and excused. By consent of counsel for prisoner, the court allowed the trial to proceed with only eleven jurors. Motion in arrest of judgment and for a new trial granted.—Comm. v. Shaw, 1 Pitts. 492 (1859), McClure, P. J.

(39) On the trial of A. upon an indictment for forgery, one of the jury was taken sick after the jury had been sworn. This juror was excused, and the trial proceeded with only eleven jurors, A. consenting thereto. A. was convicted, and moved for a new trial upon the ground that he had not had such a trial by jury as he was entitled to. New trial granted, on the ground that A. could not waive his constitutional right to a trial by a jury of twelve men, and a trial by less than that number was a nullity.—Comm. v. Byers, 5 Pa. C. C. 295 (1878), Hazen, J.

(40) Information was made before a justice of the peace against A. for selling liquor without a license. The defendant, without his counsent, was tried, and convicted before the justice and a jury of six men, according to the provisions of the act of May 24, 1871 (P. L. 1108, § 6; P. & L. Dig. 4718), giving jurisdiction to a justice of the peace, and a jury of six persons, in Mercer County, to try those selling liquor without a license. On *certiorari* from the common pleas, *held*, that the act, in so far as it compelled the accused to submit to such jurisdiction, was unconstitutional.—Comm. v. Saal, 5 Leg. Op. 21 (1873), Trunkey, P. J.; s. c. 21 Pitts. L. J. 5, 10 Phila. 496.

(41) On the trial of A. upon an indictment for murder, the commonwealth was allowed to peremptorily challenge certain jurors, in accordance with the thirty-seventh section of the criminal procedure act of March 31, 1860 (P. L. 427, § 37; P. &. L. Dig. 1373). After verdict of guilty, A. took a writ of error, contending that, the challenges not having been allowed to the commonwealth at the time of the adoption of the then existing constitution, the allowance of such challenges by the criminal procedure act of 1860 was in violation of the provision of the constitution (contained also in the present constitution of 1874), that trial by jury shall be as heretofore, and the right thereof remain inviolate. *Held*, affirming judgment, that the allowance of peremptory challenges to the commonwealth did not interfere with the prisoner's constitutional right to a trial by jury. —Warren v. Comm., 37 Pa. 45 (1861), Thompson, J.

(42) A. was indicted for murder, and upon the impannelling of the jury the panel was exhausted by reason of the peremptory challenges by the

commonwealth. The prisoner's counsel objected to calling a *tales de circumstantibus*, because the commonwealth had exhausted the panel, claiming that the allowance of such challenges to the commonwealth interfered with her constitutional right of trial by jury. The objection was overruled, and the prisoner was convicted. On error, judgment was affirmed, the supreme court declaring that the right of peremptory challenge by the commonwealth did not infringe on the defendant's constitutional right of trial by jury.—Hartzell v. Comm., 40 Pa. 462 (1861), Thompson, J.

(43) Case stated to determine the validity of the act of December 14, 1863 (P. L. [1864] 1125, § 1; P. & L. Dig. 2650), which took away the jury trial before magistrates under the act of March 21, 1772, which provided that in case a person had demised premises and wished to regain possession thereof at the end of the term, he could, after proper notice served, bring ejectment, to be tried before two justices and twelve freeholders, which tribunal was to have jurisdiction of every fact necessary to the regaining of the landlord's title. It was contended that the act of 1863, inasmuch as it provided that the proceedings should be had before two justices, without the aid of a jury, was an infringement of the right of trial by jury, guaranteed by the constitution to remain as heretofore. *Held*, that, as this was not the case of a jury known to the common law, but a special statutory inquest as to certain facts, the act of 1863 was constitutional. —Kinley v. McFillen, 6 Phila. 35 (1865), Allison, J.; s. c. 22 L. I. 198.

(44) An act of the legislature provided that in all cases where the owners of adjoining wharves, docks, etc., . . . in the port of Philadelphia, should disagree as to the proper apportionment of the wharfage payable to them in accordance with their titles by persons making use of the wharves, docks, etc., the master warden and board of wardens of said port, on written application of one or more of such owners, should determine the relative proportions of such wharfage belonging to the several proprietors. A. sued B. on an award by the port wardens under the aforesaid act. B. contended that the award was void, because the act granted the board powers which were in derogation of the right of trial by jury guaranteed by the constitution. Judgment for A. was affirmed, on the ground that the claim of B. was derived from, and altogether depended on, statutory enactment.—Simpson v. Neill, 89 Pa. 183 (1879).

(45) The charter of the city of Wilkesbarre gave the mayor's court jurisdiction in all actions for penalties under ordinances, and, under an ordinance providing for the payment of a fine upon conviction of disorderly conduct, defendant was convicted. On *certiorari* from the common pleas, *held*, that the ordinance under which the proceedings were had was such an ordinance as the mayor and council might legally adopt, and that the mayor, under the charter, had jurisdiction of a case arising under the ordinance; but the proceedings were reversed for irregularities in the procedure.—Jones v. City of Wilkesbarre, 2 Kulp, 68 (1884), Woodward, J.

(46) The act of March 13, 1862 (P. L. 115, § 1; P. & L. Dig. 1303), authorized the summary conviction, before the mayor or police magistrate of the central station of Philadelphia, of professional thieves, burglars, etc. Under the act, on application to a judge of the quarter sessions, a writ of *habeas corpus* would issue and a rehearing could be had. A. and others were convicted and imprisoned, and sued out a writ of *habeas corpus*, and a writ of *certiorari* from the supreme court to the convicting magistrate. It was contended that the act was in violation of the right of trial by jury. *Held*, affirming judgment, that the interpretation of the clause in the constitution preserving the right of trial by jury was dependent on custom, and that, as the vagrancy acts in existence at the time of the adoption of the constitution provided for commitment of vagrants without trial by jury, the conviction must stand. —Byers v. Comm., 42 Pa. 89 (1862), Strong, J.

(47) The act of April 14, 1851 (P. L. 548, § 2), prohibited the sale of spirituous, vinous, or malt liquors on the Sabbath day, in Allegheny County, except for medicinal purposes, under a penalty of $50, and authorized a conviction therefor before an alderman or justice of the peace, without giving a trial by jury. A. was convicted under this act, and took a writ of *certiorari* from the supreme court, contending that the act was in violation of the constitutional provision that trial by jury shall remain as heretofore, and the right thereof remain inviolate. *Held*, that the act did not diminish the number of cases triable by jury before the adoption of the constitutional sanction, and that there was nothing to forbid the legislature to create a new offence, and to prescribe the mode of ascertaining the guilt of those charged with it; hence the act was constitutional. Judgment affirmed.—Van Swartow v. Comm., 24 Pa. 131 (1854), Black, C. J. (Lewis, J., dissenting).

(48) The defendant was convicted before a magistrate of violating the act of April 22, 1794 (3 Sm. L. 177; P. & L. Dig. 4406), prohibiting labor on Sunday. The court below made an order granting an appeal, and, when the case was called for a hearing, refused the defendant's motion for a jury trial, and entered judgment against him. The defendant contended that he was guaranteed a jury trial by Article I., section 9, of the constitution. Judgment affirmed.—Comm. v. Waldman, 140 Pa. 89 (1891), Paxson, C. J.

(49) An appeal was taken from a judgment of a justice of the peace, imposing a penalty for catching speckled brook trout, contrary to the act

of May 24, 1871 (P. L. 275; P. & L. Dig. 2127, note), which act gives no right to an appeal and trial by jury. It was claimed that the act violated the constitutional right of trial by jury. Appeal quashed, it being *held*, that, as summary convictions of this nature were older than the constitution, and as old as the right of trial by jury and the common law, they were not in conflict with the provision that the right of trial by jury should be as heretofore.—Hammus v. Mock, 2 Leg. Opin. 135 (1871), Hall, P. J.

(50) Judgment was given against A. before a justice of the peace for the penalty for violating an ordinance. A. appealed without an *allocatur*. A rule was taken to strike off the appeal, on the ground that Article V., section 14, of the constitution provides that the appeal must be specially allowed in such cases. A. argued that the imposition of such a condition upon the right of appeal was inconsistent with the declaration of rights, section 6 providing that "trial by jury shall be as heretofore," because, before the adoption of the constitution, an appeal in such cases was a matter of course. *Held*, affirming the court below, that the appeal should be stricken off, as this provision was merely regulating a preliminary proceeding to a trial by a jury, and in no way impaired the right to such a trial.—Comm. v. McCann, 174 Pa. 19 (1896), Williams, J.; s. c. 38 W. N. C. 1, 43 Pitts. L. J. 321.

(51) The act of March 7, 1848 (P. L. 110; P. & L. Dig. 1257, n.), provides that, if any fire company shall be guilty of rioting, it shall be the duty of the court of quarter sessions, upon the complaint of any citizen, supported by an affidavit, should the court consider the complaint well founded, to declare such company out of service. Certain citizens of Philadelphia made complaint that certain members of the A. company had been guilty of rioting, and a citation was issued to the A. company to show cause why they should not be disbanded by the court. After a full hearing, the company was declared out of service. The members of the company appealed on the ground that they had been deprived of their constitutional right to a trial by jury. Judgment affirmed.—Northern Liberty Hose Co., 13 Pa. 193 (1850), Burnside, J.

(52) Under the acts of March 23, 1826 (P. L. 133, § 5; P. & L. Dig. 2265), and April 10, 1835 (P. L. 133; P. & L. Dig. 2266, note), authorizing the commitment of infants to the house of refuge by justices of the peace, under certain circumstances, and their detention there, without a previous trial by jury, an infant was committed on the warrant of a justice upon complaint of the mother. The father obtained a writ of *habeas corpus* directed to the managers of the house of refuge. On hearing it was argued that the acts were unconstitutional, as violations of the right of trial by jury. The court remanded the prisoner.—Crouse's Case, 4 Whart. 9 (1839).

(53) A., a mother, petitioned the court to be allowed to exercise parental rights over her children to the exclusion of her husband. The petition was presented under the act of May 4, 1855 (P. L. 430, § 3), providing that, whensoever any husband or father, from drunkenness, profligacy, or other cause, shall neglect or refuse to provide for his child or children, the mother shall have all the rights, and be entitled to claim and be subject to all the duties, reciprocally due between a father and his children. The petition was opposed, on the ground that the act took away the father's common-law right to the custody, control, and earnings of his children without a trial by jury, in violation of the constitution. Objection overruled, and prayer of petition granted.—Van Billiard v. Van Billiard, 6 Pa. C. C. 333 (1888), Schuyler, P. J.; s. c. 1 North. Co. 282.

(54) The act of congress of April 22, 1794, provided for trial by court martial of drafted militiamen who should refuse or neglect to march to the place of rendezvous agreeably to the orders of the governor, founded on a requisition of the president of the United States. *Held*, constitutional.—Moore v. Houston, 3 S. & R. 169 (1817), Tilghman, C. J.

This case was affirmed by the supreme court of the United States, 5 Wheat. 1 (1820), Washington, J.

(55) The act of May 13, 1887 (P. L. 108, § 18; P. & L. Dig. 2724), declared that any place where liquors were sold in violation of the law should be held a nuisance, and be abated by proceedings either at law or equity. Under this act a bill was filed to have a certain liquor saloon declared a nuisance, and praying that the defendant be restrained from maintaining the same, and that the license be revoked. A demurrer to the bill was filed and it was contended that the act was unconstitutional, in so far as it attempted to confer equity jurisdiction to try and determine the offence of nuisance without a trial by jury. *Held*, that the act was not unconstitutional, as it did not deprive the proprietor of such a place of any right of trial by jury, because such cases were not within the constitutional guaranty of such a right. Demurrer sustained on other ground.—Wishart v. Newell, 4 Lanc. L. R. 393 (1887), Ewing, P. J.; s. c. 4 Lanc. L. R. 354, 4 Pa. C. C. 141.

7. Right to Confront Witnesses.

Where, in a criminal prosecution, a witness has once testified, and the accused has had opportunity to cross-examine, the admission as evidence, in a subsequent trial of the same cause, of notes of the testimony taken at the former trial, is not in violation of the right of the accused to meet the witnesses face to face, as guaranteed by the ninth section of the first article of the constitution. (56) This section does not prevent a juror from being called as a witness. (57)

(56) Indictment for murder. A prior convic-

tion of murder in the first degree had been reversed by the supreme court, and the case returned for a new trial. The court received in evidence notes of the testimony of A. taken on the former trial, on its being shown that A. had removed from the state, and was beyond the reach of a subpœna. *Held*, no error; judgment on conviction of murder in the first degree affirmed.—Comm. v. Cleary, 148 Pa. 26 (1892), Paxson, C. J. (Sterrett, J., dissenting upon other grounds); s. c. 23 Atl. 1110, 30 W. N. C. 1.

(57) A. and B. were indicted for murder. In the course of the trial two of the jurors were called and examined as witnesses on immaterial points. Exceptions were taken to the admission of their testimony. There was a verdict of guilty, and judgment thereon was affirmed.—Howser v. Comm., 51 Pa. 332 (1866), Woodward, C. J.

8. Evidence Against Oneself.

Under the ninth section of the first article of the constitution, providing that a witness cannot be compelled to give evidence incriminating himself, a debtor cannot be compelled to answer questions as to concealed property, which might subject him to a criminal prosecution. (58-59)

(58) The act of June 11, 1879 (P. L. 129; P. & L. Dig. 45, note), provided that the plaintiff in an execution, on filing an affidavit that he believed that the defendant owned property which he fraudulently concealed and refused to apply to payment of his debts, might have the defendant examined on oath as to such property. In a proceeding under this act, the court below, while of the opinion that the act was unconstitutional, discharged on other grounds a rule obtained by a creditor for appointment of a commissioner to take defendant debtor's testimony. On a writ of *certiorari* by the plaintiff, the supreme court, in affirming the order of the lower court, *held*, that, as the object of the act was to compel the defendant to reveal a misdemeanor, and as it contained no provision that his answers should not be used against him in any criminal prosecution, it was unconstitutional.—Horstman v. Kaufman, 97 Pa. 147 (1881), Gordon, J.; s. c. 9 W. N. C. 513, 28 Pitts. L. J. 307.

Overruling Loewi v. Haldrich, 8 W. N. C. 70 (1880), Peirce, J.

(59) A. applied for an attachment against B., a debtor, on the ground of fraud. On the hearing B. refused to answer a certain question on the ground that his answer might subject him to a criminal prosecution, and to a penalty or punishment. *Held*, that he could not be compelled to answer.—Brannon v. Ruddy, 8 Pa. C. C. 176 (1890), Woodward, J.; s. c. 5 Kulp, 482.

9. The Law of the Land.

To deprive a deputy sheriff of his office for taking illegal fees, without trial, is not prohibited by the ninth section of the first article of the constitution, which provides that one cannot be deprived of life, liberty, or property "unless by the judgment of his peers or the law of the land." (60) If this section is taken in connection with the eleventh section, which provides that all courts shall be open, it is unconstitutional to provide for the separate trial of a particular class of persons, as infants under sixteen years of age. (61) Proceedings to examine into the sanity of a married woman cannot be had without notice to her, where their effect is to deprive her of her liberty and give her husband entire control of her property. (62)

(60) The act of March 31, 1843 (P. L. 122, § 2; P. & L. Dig. 4316), provided that, on complaint, a rule to show cause why a sheriff should not discharge a deputy for receiving illegal fees should issue, and that, on default of appearance, the rule should be made absolute and enforced by attachment. A. petitioned the court, stating that he had paid costs in a certain case, and had demanded a bill of items, which had been refused, and that he believed that B., the deputy sheriff, had collected fees that were illegal. He prayed for a rule on the sheriff in pursuance of the said act. The answer admitted the excess charge of $25, but claimed that it had been refunded to A., and that the act was unconstitutional. The court made the rule absolute, and ordered B. dismissed. On appeal, judgment was affirmed.—Leeds's Appeal, 75 Pa. 75 (1874), Agnew, C. J.

(61) The act of June 12, 1893 (P. L. 459, § 1; P. & L. Dig. 2308), provided for the separate confinement and trial of infants under 16 years. *Held*, that the act violated the provision of the constitution that all courts shall be open, and all laws relating thereto shall be general and of uniform operation.—Courts for Trial of Infants, 14 Pa. C. C. 254 (1893), Yerkes, P. J.; s. c. 3 D. R. 753.

(62) The act of October 28, 1851 (P. L. [1852] 725, § 7; P. & L. Dig. 2910), provided that, when a married woman became insane, her husband might, on application to the court of common pleas, select and appoint three persons, one of whom must be a physician, to examine as to her insanity and report the facts to the court. It also provided that, if the court was satisfied that the woman was insane, the husband should have full power to manage her estate. A married woman was sent to an asylum after proceedings under this act without notice to her. On a rule to show cause, the proceedings were vacated, and the court, while not passing on the constitutionality of the act, expressed the conviction that the act was unconstitutional.—May's Case, 10 Pa. C. C. 283 (1891), Archbald, P. J.; s. c. 2 Lack. Jur. 162.

10. Commissions of Oyer and Terminer.

The provision of the fifteenth section of the first article of the constitution against commissions of oyer and terminer has no application to a court erected by law with a general criminal jurisdiction (63), but prohibits the legislature from passing an act authorizing a judge of the supreme court to hold a special court of oyer and terminer in conjunction with associate judges of the county in which the court is to be held. Such an act, though not in form a commission of oyer and terminer, has all the effect of one. (64)

(63) Under the act of April 18, 1867 (P. L. 91), establishing criminal courts for certain counties, to have general jurisdiction as courts of oyer and terminer and general jail delivery, A. was appointed by the governor as president judge of one of these counties. *Quo warranto* was brought against A. on the ground that the act was contrary to the constitution. Writ dismissed.—Comm. v. Green, 58 Pa. 226 (1868), Sharswood, J.; s. c. 25 L. I. 292.

(64) By act April 4, 1844 (P. L. 187), one of the judges of the supreme court was authorized and required to hold a special court of oyer and terminer in conjunction with one or more of the associate judges of A. County, to hear and determine a rule to show cause why the verdict of a jury in a certain case should not be set aside and a new trial granted. The judges addressed a letter to the governor, stating that the act, though not in form a commission of oyer and terminer, had all the effect of one, and was therefore unconstitutional, as being in violation of the provision in the constitution declaring that no commission of oyer and terminer shall be issued.—Comm. v. Flanagan, 7 W. & S. 68 (1844).

11. Ex Post Facto Laws.

An act regulating the practice of a certain profession, and making it criminal to engage in the practice of that profession unless qualified therefor, is constitutional (65); but cannot apply so as to punish a person for continuing to practise such profession, entered upon without qualifications before the passage of the act. (66) Where the time for bringing prosecutions for certain crimes is extended, such extension is not *ex post facto*, as applied to one who was still liable to prosecution under the former limitation. (67)

(65) The act of June 8, 1881 (P. L. 72, § 7; P. & L. Dig. 1296), provides for the registration of practitioners of medicine and surgery, and that such practitioners shall have certain qualifications and comply with certain requirements, and makes it criminal for those who are not so qualified under the act, to engage in such practice. A. was convicted under this act, and moved in arrest of judgment and for a new trial, on the ground that the act was *ex post facto*, and therefore unconstitutional. Motions dismissed, the court *holding*, that this was a constitutional exercise of the legislative power, and not an *ex post facto* law.—Comm. v. Taylor, 2 Kulp, 364 (1883), Woodward, J.; s. c. 12 Luz. L. Reg. 182.

(66) The act of April 17, 1876 (P. L. 39; P. & L. Dig. 1164), prohibits any one who is a practising dentist of less than three years' standing from continuing the practice of his profession unless he has first passed certain examinations, etc. A was a practicing dentist before the act was passed, but not one of three years' standing. He was indicted for continuing to practise in violation of the act, and convicted. Judgment was arrested on motion, on the ground that the act was unconstitutional, in so far as it related to dentists practising at the time of its passage.—Comm. v. Wasson, 29 Pitts. L. J. 434 (1882), Wickes, P. J.

(67) B. committed a forgery. At the time the limitation of prosecutions for forgery was two years. Before this period had elapsed, the act of March 23, 1877 (P. L. 26; P. & L. Dig. 1395), was passed, providing that "hereafter the offence of forgery, whether the same be a misdemeanor or a felony, shall not be held barred by the statute of limitations when the indictment therefor shall be brought or exhibited within five years next after the offence has been committed." After the two years had passed, B. was indicted, and pleaded the statute of limitations as a bar to prosecution, claiming that the act of 1877 was an *ex post facto* law, so far as it applied to his case. The court on this ground arrested judgment after conviction. On error, the supreme court reversed judgment, *holding* that the act was constitutional.—Comm. v. Duffy, 96 Pa. 506 (1881), Green, J.; s. c. 13 Lanc. Bar, 57, 38 L. I. 285, 28 Pitts. L. J. 244.

12. Punishment for Crime.

Section 13, Art. I., providing that excessive fines shall not be imposed nor cruel punishments inflicted, does not prohibit the legislature from providing that one on whom a fine is imposed for violation of an act shall be imprisoned until it is paid (68); nor does it prevent one who is acquitted from being sentenced to pay costs. (69–70)

The act of May 9, 1889 (P. L. 145; P. & L. Dig. 297), providing for the punishment by imprisonment of any bank who shall receive money from any depositor, with a knowledge that he or the bank is at the time insolvent, is not in violation of section 16 of Article I. of the constitution, providing that the person of a debtor, where

there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law. The punishment provided by the act is not for the indebtedness, but for the crime of receiving the money under the circumstances specified. (71)

(68) A. was convicted under the act of May 25, 1878 (P. L. 144, § 1; P. & L. Dig. 3051), which imposes a fine for the selling of adulterated milk, and provides for the imprisonment until the fine is paid. A motion was made in arrest of judgment, on the ground that the act was unconstitutional, as it might, in case of failure or inability to pay the fine, impose a sentence of perpetual imprisonment. *Held*, that, as one convicted under the act could be released after serving out his term of imprisonment, on taking oath that he had no property, the act was constitutional. Motion overruled.—Comm. v. Hough, 1 D. R. 51 (1892), Arnold, J.

(69) A. was indicted for carrying concealed weapons, and was found not guilty, but adjudged to pay costs. A motion in arrest of judgment having been overruled, A. took a writ of error, on the ground that the section of the criminal procedure act of 1860, allowing the imposition of costs by a jury on a defendant who has been acquitted, was unconstitutional. Judgment affirmed.—Wright v. Comm., 77 Pa. 470 (1875); s. c. 1 W. N. C. 275, 32 L. I. 282.

(70) A. was convicted before a justice, of assault and battery upon B., and received a nominal punishment. To an indictment for the same offence he put in pleas of "not guilty" and "once in jeopardy," and the court directed his acquittal. The jury, however, directed that he should pay one-half of the costs. He moved in arrest of judgment on the ground that the imposition of costs was in violation of the rule that no person shall be twice put in jeopardy for the same offence. The court overruled the motion, *holding*, that the imposition of the costs was not prohibited by the constitution.—Comm. v. Huggins, 2 D. R. 329 (1893), Wickham, P. J.; s. c. 12 Pa. C. C. 496, 40 Pitts. L. J. 290.

(71) A. was indicted under the act of May 9, 1889 (P. L. 145; P. & L. Dig. 297), providing for the punishment of any banker who shall take and receive money from any depositor with a knowledge that he or the bank is at the time insolvent. On motion for a new trial and in arrest of judgment, it was argued that said act was in conflict with Art. I., § 16, of the constitution, which declares that the person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law. New trial refused, on the ground that the act did not provide for imprisonment for debts, but for doing an act deemed by the legislature to be dishonest, and against public policy.—Comm. v. Sponsler, 16 Pa. C. C. 116 (1895), Bell, P. J.

13. Habeas Corpus.

An act which restricts the right of a prisoner, arrested on requisition of the governor of another state, to a writ of *habeas corpus* only in case he asserts and proves that there has been a mistake in his identity, is in conflict with Art. I., § 14, of the constitution, providing that the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it. (72)

(72) A. was arrested, upon requisition of the governor of New Jersey, under the act of May 24, 1878 (P. L. 137; P. & L. Dig. 1216), which provides that, on application of the governor of another state, the governor of this state shall sign a warrant for a party's arrest, and that the sheriff shall take him before a judge, where he shall be informed of the charge against him; and that, if he denies that he is the particular person mentioned in the requisition, he may have a writ of *habeas corpus*. A. took out a writ of *habeas corpus*, alleging no mistake in identity, but that he was not a fugitive from the justice of New Jersey, because he had never been in that state, and that he was therefore illegally detained. *Held*, that, if the act of 1878 meant to limit the right to a writ of *habeas corpus* to cases only in which defendant claimed the arrest illegal on account of a mistake in identity, it was unconstitutional under Art. I., § 14, of the constitution of Pennsylvania. Relator discharged.—Comm. v. Trach, 3 Pa. C. C. 65 (1887), Dreher, P. J.

(E) RIGHT OF PRIVATE PROPERTY.

1. What is Property.

The right to use the water of a stream is an incorporeal hereditament, and is within the protection of the constitutional provision forbidding the taking of private property for public use without compensation. (73–74) A public office created by the legislature is not property. (75) Rights of property cannot be acquired in public highways by private work thereon (76), nor in a navigable river by a license from the commonwealth to erect a dam. (77) A private way acquired by user, and not by grant, is not property (78–80); nor does the right of the owner of property on a public highway prevent a public use of the highway, by authority of a legislative enactment, for other purposes than those of a driveway or footway. (81–82) The statute of *quia emptores* not being in force in this state, a ground rent is property, and not a mere contract. (83)

A man's profession is property within the meaning of the constitutional provision that no one shall be deprived of his property unless by the judgment of his peers,

or the law of the land; and hence, an act forbidding the practice of a profession solely on the ground of having neglected to register within six months from passage of the act is unconstitutional. (84)

(73) A., the owner of a mill situated on and run by a stream, filed a bill praying for an injunction to restrain B. borough, situated higher up the stream, from taking water for supplying the borough, without compensation, under an act of assembly, on the ground of threatened injury to her mill property. In the answer, the borough contended that no private property was proposed to be taken. *Held*, that the right to the use of the water was an incorporeal right which could not be wrested from the owner by legislative authority, without compensation; but, as A. did not show that her right would be materially infringed on, the injunction was refused.—Hough v. Doylestown, 4 Brewst. 333 (1870), Chapman, P. J.

(74) A. filed a bill to restrain the B. company from diverting a stream of water from A.'s colliery, and appropriating it to B.'s use, without compensation. B. contended that the taking of the water was not a taking of anything that belonged to A., since A. had a property only in the use of the water, and not in the water itself. Injunction granted.—Heckscher & Co. v. Shenandoah Citizens' Water and Gas Co., 2 Foster, 273 (1874), Green, J.

(75) The act of May 23, 1893 (P. L. 113, § 1; P. & L. Dig. 424), provides for the election of a chief burgess in the boroughs of this commonwealth. Prior to this act, the election and powers of such officer had been regulated by the act of March 12, 1869 (P. L. 344). An application by one elected under the latter act for a writ of *quo warranto* against one holding office under the former act was refused, and error was assigned to the refusal. Judgment reversed, the supreme court *holding*, that the latter act repealed the former, and that the prayer of the bill should be granted, on the ground that a possessor of an office can be ousted therefrom without infringing any right which he may have under the constitution, unless the office is a constitutional one.—Comm. v. Weir, 165 Pa. 284 (1895), Green, J.

(76) The citizens of the town of A. maintained wells in the public streets. The city passed an ordinance providing that, in all cases where a pump had been ordered to be put in such a well, any person who should injure the same should be guilty of a misdemeanor. The city placed a pump in a well in front of the property of A. A. removed the pump, and was brought before the mayor and fined under the ordinance. He took a writ of *certiorari* from the supreme court, contending that the well was his private property, and that the city had no right to the same, and that the councils had no authority to direct the pump to be placed therein. *Held*, that the contention was groundless, but judgment reversed on other grounds.—Barter v. Comm., 3 P. & W. 253 (1831), Gibson, C. J.

(77) The state accorded to A., a riparian owner along the Susquehanna river, the right to erect a dam. Subsequently the state incorporated a company to construct a canal, which impaired the dam erected under the former act. A. petitioned the court of common pleas for the appointment of a jury to assess the damages. The question before the court being whether A. had such a right conferred on him by the act conferring the privilege of erecting the dam, the court instructed the jury that there was such a right vested in A. as entitled him to recover, which was the subject of error assigned. *Held*, that the grant was that of a mere license, revocable without the right on A.'s part to claim damages. Judgment for A. reversed.—Susquehanna Canal Co. v. Wright, 9 W. & S. 9 (1845), Gibson, C. J.

(78) The act of April 21, 1846 (P. L. 416, § 1; P. & L. Dig. 4147), gave the courts of quarter sessions power to vacate roads existing by prescription or lapse of time. A. filed his petition to have a certain private road vacated. Viewers were appointed, and reported in favor of vacating the road. The report was confirmed. It was objected by B., who was the owner of the said private road, acquired by user for more than twenty-one years, that the act was unconstitutional, as divesting vested rights. The supreme court affirmed the order vacating the road, *holding*, that the act was constitutional, as the legislature was simply taking away what it had given, which it was authorized to do.—Stuber's Road, 28 Pa. 199 (1857), Lowrie, J.; s. c. 14 L. I. 300, 5 Pitts. L. J. 286.

(79) A person who owned all the lots on which a private way had been gained by prescription, began proceedings under the act of April 21, 1846 (P. L. 416, § 1; P. & L. Dig. 4147), to have the way vacated. Viewers appointed reported that the private road had become useless and burdensome, and ought, therefore, to be vacated. The report was confirmed. An adjoining owner for whom the private road had not been laid out, but who claimed a prescriptive right by twenty-one years' use, filed exceptions, claiming that the law was unconstitutional, as it took away private rights which had been acquired, and gave no compensation. *Held*, that the law was constitutional, as it did not interfere with a vested right. Proceedings affirmed.—Krier's Private Road, 73 Pa. 109 (1873).

(80) A., the owner of certain lots of ground, filed a petition, praying the vacation of a private road which had been laid out by a former owner for the use of those lots alone, and entirely upon

such lots or part of them. The viewers' report vacating said road was confirmed. B., the owner of land adjacent to this private road, filed exceptions, setting up his use of the road for more than twenty-one years, and claiming the right thereto by prescription; alleging that so much of the act of April 21, 1846 (P. L. 416, § 1; P. & L. Dig. 4147), as authorized the courts of quarter sessions to vacate private roads "existing by prescription or lapse of time," was unconstitutional. Upon appeal, *held*, on the authority of Stuber's Case [see (78), *supra*], that the act was constitutional. Order and decree of vacation affirmed.—Neal's Appeal, 20 Pitts. L. J. 103 (1873); s. c. 5 Leg. Gaz. 45, 30 L. I. 46.

(81) The act of March 22, 1839, authorized a railroad to lay its tracks on certain streets in Philadelphia, subject to the approval of the quarter sessions. A *certiorari* was taken, on the ground that the legislature had no authority to grant to a railroad company the right to lay tracks on the steets of a city, as it was the taking of private property for public use, without compensation, and therefore unconstitutional under Article IX., section 10, of the constitution of 1790, which has been replaced by Art I., § 10, of the constitution of 1874. *Held*, that the streets of a city were under the authority of the state, and the act was constitutional.—Philadelphia & Trenton R. Co.'s Case, 6 Whart. 25 (1840), Gibson, C. J.

(82) Abutting property owners filed a bill against a street railway company, incorporated under authority of an act of assembly, to enjoin the construction and operation of an electric railway on a city street, newly paved with asphalt, at the expense of the property owners. The bill averred that the construction and operation of the railway would impose an additional burden for which compensation was not provided in the act of incorporation, and that the act was therefore unconstitutional. The court refused a preliminary injunction prayed for, holding that the construction and operation of the railway, including the stretching of wires across the street, and the insertion of poles to support them, were not a taking of the private property of the abutting owners. On appeal, the decree was affirmed.—Lockhart v. Craig St. Ry. Co., 139 Pa. 419 (1891); s. c. 21 Atl. 26. Affirming 8 Pa. C. C. 470, 7 Lanc. L. R. 301.

(83) The act of April 15, 1869 (P. L. 47; P. & L. Dig. 2223, n.), provided for the extinction of irredeemable ground rents; the owner of the rent being compelled to submit to an assessment of the value of the rent, receive his pay, and have the rent extinguished. A. petitioned in the name of the commonwealth to have three irredeemable ground rents, held against his property by B., extinguished in accordance with the act. The answer averred that the act was unconstitutional, as permitting a deprivation of property without due process of law. Judgment for plaintiff reversed on appeal.—Palairet's Appeal, 67 Pa. 479 (1871), Sharswood, J. (Agnew, J., concurring); s. c. 3 Leg. Gaz, 169, 18 Pitts. L. J. 321. Reversing 7 Phila. 470 (1870).

The owner of a ground rent is not an owner to whom damages can be awarded for the opening of a street through the land.—Workman v. Mifflin, 30 Pa. 362 (1858), Strong, J.

(84) The act of April 11, 1889 (P. L. 28; P. & L. Dig. 2973), provided that all veterinary surgeons of five years' practice in the commonwealth should register within six months, and made the use of that title without registration, as provided by the act, a misdemeanor. A. registered as a veterinary surgeon after the prescribed six months. B. moved to strike off A.'s name from the register, on the ground that the registration had not taken place within the required time. A. contended that the time limitation, taken in connection with the penalty for its violation, was unconstitutional, as being contrary to the provision of the bill of rights, that no one should be deprived of his property unless by the judgment of his peers or the law of the land. This contention was sustained, and the motion was refused.—Ritter v. Rodgers, 8 Pa. C. C. 451 (1890), Schuyler, P. J.; s. c. 7 Lanc. L. R. 257, 2 North. Co. 207.

2. Retrospective Laws.

A retrospective statute is not *per se* unconstitutional; it will be sustained where it does not operate to divest vested rights. (85–86)

An act of the legislature which in effect annuls a judgment of a court, is unconstitutional, because it takes private property of the successful party in the action and transfers it to the unsuccessful party. Such act, however, though purporting to explain an act under which the judgment was rendered, will, where possible, be construed to operate on future cases only, the courts being averse to declaring an act unconstitutional. (87)

The legislature may pass retrospective laws impairing the rights of the commonwealth (88), but cannot divest any vested rights of property (89–92), except with the consent of all the parties whose vested rights are to be affected. (93) Where a tenant in common of land has died, the legislature may direct that, in case of partition, the share of which such tenant died possessed, or the proceeds thereof, shall be paid to a trustee for the use of his heirs. (94)

The legislature may authorize the sale of premises held in trust for minors, and a reinvestment of the proceeds upon the

same trusts (95), or the leasing of such property held in trust for minors for a term extending beyond the time when such minors will attain their majority (96); and an act authorizing trustees to convey lands on a contract of sale made by a decedent is valid. (97) The legislature can authorize the exercise of a power under a will at an earlier time than that prescribed by the testator (98), or a sale upon different terms from those provided by the will (99); but not against the consent of parties in interest who are of full age and under no disability. (100–101) The legislature cannot give an executor power to sell real estate where no such power was given by the will (102); but trustees may be authorized to sell land on redeemable or irredeemable ground rents. (103) An administrator may be authorized to receive purchase money due on the sale of property made by order of the court. (104)

The legislature cannot pass an act affecting a will made prior to the passage of such act (105–106), or allowing a will improperly executed to be admitted to probate (107); but it can retrospectively provide that a probate of a will uncontested for a certain length of time shall be conclusive. (108)

The legislature can confirm a title to property when such confirmation carries out the expressed intention of the grantor. (109)

The legislature can give to a widow the right to elect between a bequest and her dower, and such a provision can apply to a woman who was married before the passage of the act. (110)

The legislature cannot confirm a void judicial sale. (111)

An expository act of assembly is destitute of retroactive force, because it is an act of judicial power, and is in contravention of the constitutional provision that no person shall be deprived of life, liberty, or property, except by the judgment of his peers, or the law of the land. (112)

An act validating a conveyance by a married woman of property devised to her merely for life, the power to convey being expressly withheld from her in the will, is unconstitutional. (113)

An act extending the collateral inheritance tax to property before held to be exempt is not, as applied to the estate of one who died before the act was passed, a taking of property in violation of the constitutional provisions. (114)

A provision that an act relating to the competency of witnesses shall apply to pending proceedings is constitutional. (115)

(85) A. bought certain real estate which was sold as the property of B., for a municipal claim, on March 3, 1856. The deed was executed in 1857. The act of May 13, 1856, extended the time for real estate owners in Philadelphia to redeem their property, when sold for municipal claims, to two years, instead of one year as theretofore. Within two years after the sale, B. made an offer to redeem, which was refused. B. then made application for an order on A. to re-convey. A. contended that the latter act aforesaid was unconstitutional, as it was retrospective. *Held*, affirming decree in favor of B., that a retrospective act is not unconstitutional *per se;* and that A. had acquired no right until the deed was signed.—Gault's Appeal, 33 Pa. 94 (1859), Woodward, J.

(86) An appeal was taken from an order of court directing the sale of lands which had been successively conveyed, and which were subject to a common incumbrance, on the ground that the order was not in accordance with the act of April 22, 1856 (P. L. 533, § 9), providing a mode to compel contribution where the real estate of several persons is subject to a common incumbrance. It was contended that the act of 1856 was unconstitutional, as applied retrospectively. *Held*, reversing the lower court, that the act was constitutional.—Phelps's Appeal, 10 W. N. C. 525 (1881), Sharswood. C. J. (Mercur, J., dissenting on another ground).

(87) A. having brought ejectment against B. for certain land, B. claimed, under certain acts of assembly, to be entitled to compensation for improvements made by him on the land, which the court refused to allow, and judgment was given for A. Subsequently acts were passed which provided for compensation for improvements made under such circumstances as those under which B. had made his improvements. Thereupon B. brought ejectment against A., and contended that the acts were merely intended to construe the former acts on the subject, and that B. was entitled to recover for the improvements. Judgment for A. affirmed.—Lambertson v. Hogan, 2 Pa. 22 (1845), Rogers, J.

(88) The act of April 15, 1835 (P. L. 384), provided for the seizure and forfeiture of flour under certain circumstances. A.'s flour was seized and sold under this act. Subsequently the act of March 31, 1836 (P. L. 332), declared that such forfeitures were not incurred by the true intent and meaning of the former act. A. sued to recover the proceeds of the sale, and the court below rendered judgment for him. Judgment affirmed.—Davis v. Dawes, 4 W. & S. 401 (1842).

(89) C. was an illegitimate child of D. C. died in 1832, leaving two children. D. died intestate in 1846, leaving as her heirs at law her two brothers, E. and F. The act of April 21, 1841 (P. L. 246, § 17), declared that the children of C. should be capable of inheriting the estate of D. E. and F. brought ejectment to recover from the husband of C.'s daughter land formerly belonging to D. Judgment was rendered for the defendant, and plaintiffs took a writ of error, contending that the above act was unconstitutional, and, whether constitutional or not, did not vest in defendant the right to the real estate in question. *Held*, that the act was not unconstitutional, as not designed to divert the right already vested in the plaintiff to the property in question,—which it would be out of the power of the legislature to do,—but that its provisions were enabling and prospective, their object being to enable the children of C. to take whatever estate might [in future] descend to them from C.'s ancestors on D.'s side. Judgment was therefore reversed.—Norman v. Heist, 5 W. & S. 171 (1843), Gibson, C. J.

(90) A., by his will, devised certain real estate to his widow for life, with power to dispose of the same by will to such persons as she might appoint, with remainder over in default of such appointment. An act of assembly authorized the sale of part of said realty, without notice to remainder-men, some of whom were *sui juris*, and authorized two persons to dispose of the proceeds according to directions in the will. Trustees were appointed, and made an agreement with B. for the purchase of the property. B. afterwards refused to consummate the sale, on the ground that the trustees could not convey a good title since the act was unconstitutional as affecting vested rights. On bill to compel specific performance, *held*, dismissing the bill, that the act was unconstitutional, as the property bequeathed vested in the devisees immediately at the death of A.—Schoenberger v. School Directors, 32 Pa. 34 (1858), Woodward, J.; s. c. 6 Pitts. L. J. 387.

(91) C., by his will, directed the sale of his real estate after the death of his wife, except a certain tract which was to be "reserved forever, for the use of the members of the Methodist Episcopal Church, to hold their camp meetings on." Subsequently an act of assembly authorized the sale of the land so reserved, and investment of the proceeds in other real estate, to be used for camp-meeting purposes. In an action to test the right to sell the land, the supreme court *held*, reversing the decree of sale made by the court below, that as the fee remained in B. and others, the heirs of C., and the church had only a right to a limited use of the property, the act was an attempt to deprive such heirs of their vested rights, and therefore unconstitutional.—Saxton v. Mitchell, 78 Pa. 479 (1875), Mercur, J.; s. c. 2 W. N. C. 108, 32 L. I. 448.

(92) An act of assembly conferred legitimacy upon A. to the same extent as if he had been born in lawful wedlock. A.'s father, under a deed of trust executed prior to the passage of the act, was entitled to an estate for life, with remainders to his "lawfully begotten children." Upon the father's death the orphans' court decreed that under the above act A. was entitled to the estate. On error, reversed.—Edwards's Appeal, 108 Pa. 283 (1885), Green, J.

(93) A., being the owner of certain ground rents, agreed with a foreign corporation to convey them in consideration of the advance of a certain sum of money. He executed a defeasance showing that the conveyance was but a mortgage. The deed was delivered in 1854, but the defeasance was not placed on record. Subsequently A. released his equity of redemption to the mortgagee. Upon the application of both parties, the legislature passed the act of April 2, 1860 (P. L. 555), declaring that this deed should be a valid and effectual conveyance in law for the purpose of vesting in the said corporation the estate conveyed by such deed, notwithstanding the fact that such grantee was a foreign corporation, and the rights of the state were released by the act. As no vested rights of any person but the parties applying for the act were affected, the act was *held* constitutional.—Caverow v. Mutual Ben. Life Ins. Co., 52 Pa. 287 (1866), Read, J.; s. c. 23 L. I. 188.

(94) After the death of D., who was tenant in common of certain lands, an act of assembly was passed which provided that any one who had held an indefinite interest in lands with D. should have the right to issue a writ of partition in the usual form, and that the court should grant such partition if the parties applying therefor were by law entitled to demand the same, and that the share of which D. died seized, or the proceeds of such share, if sold, should be paid to a trustee, who should give security to hold the same for the use of the persons entitled thereto as heirs or legatees of D. In a partition suit, it was contended that the act was unconstitutional, because it took the property from the parties claiming under D., and vested it in trustees, at the request, not of such claimants, but of a stranger. *Held*, that the act was constitutional. Judgment of partition affirmed. — Biddle v. Starr, 9 Pa. 461 (1849), Rogers, J.

(95) A. held certain land as trustee for certain minor children. The special act of March 14,

1844 (P. L. 117), authorized him to sell the premises freed and discharged of the trust, and provided for a reinvestment of the proceeds on the same trust. In a subsequent action of ejectment against one claiming under the vendee of the trustee under this act, the admission of the trustee's deed, executed under this act, as evidence in favor of the defendant, who claimed thereunder, was objected to on the ground that the act was unconstitutional. The deed was excluded as being void on this ground, the jury were instructed that the defendant's claim to the property was invalid, and there was a verdict for the plaintiff. A rule for a new trial was made absolute.—Clark v. Miller, 2 W. N. C. 50 (1875), Lynd, J.

(96) A. died leaving a will by which he devised certain property to his wife, to be held by her for the benefit of his children until the youngest should come of age. Subsequently guardians were appointed for three of the children, who were minors. The act of April 15, 1864 (P. L. 433), authorized such guardians to lease the property in question "for such terms and upon such rents as the other owners of said real estate should sell or lease at." The guardians joined with the other parties in interest in the execution of a lease, which extended beyond the time at which the minors would attain their majority. A bill brought by the wards after becoming of age prayed the cancellation of the lease, on the ground, *inter alia*, that the act authorizing it was void. The court sustained the constitutionality of the act, and dismissed the bill, and the complainant appealed. Decree affirmed on the opinion of the court below.—Myers's Appeal, 16 W. N. C. 137 (1885).

(97) A. contracted to sell land to B., and received consideration on the contract. Before the conveyance was made, A. died, and subsequently, in accordance with a special act of the legislature, the guardians of A.'s children, in whom the title had become vested, executed a conveyance to B. In ejectment by heirs of A. against defendants claiming under the conveyance to B., the plaintiffs contended that the aforesaid act of the legislature was unconstitutional. *Held*, reversing judgment for plaintiffs, that the act was constitutional.—Estep v. Hutchman, 14 S. & R. 435 (1826), Huston, J.

(98) A special act of assembly gave to an executor the right to sell real estate of his testator "for the purpose of paying the debts on the premises, and to raise a sufficient sum of money to erect a suitable and convenient barn on and for the residue of said real estate, which barn he is hereby authorized to erect." As the act gave to the executor no new power, but merely authorized the exercise of the power at an earlier period of time than that prescribed by the testator, the act was *held* constitutional.—Martin v. Bear, 5 Clark, 17 (1850), Lewis, P. J.

(99) X. devised lands in trust, with power to the tenant for life to sell on irredeemable ground rents. The legislature passed an act authorizing a sale by the tenant for life on ground rents redeemable at any time not less than two years from the execution of the deed, the redemption money to be payable to the trustees and to be invested under the direction of the orphans' court. The life tenant having sold a lot of ground under the act, the purchaser declined to pay rent, alleging the invalidity of the act. In a proceeding to compel payment, the court gave judgment for the plaintiff, and in favor of the constitutionality of the act. Affirmed.—Sergeant v. Kuhn, 2 Pa. 373 (1846).

(100) A., by will, provided that his lands should not be sold during the life of his son D., but that they should be rented, and the rent used for the support of D. during his life. After D.'s death the lands were to be sold, and the proceeds distributed to his other children. An act of assembly directed that the probate court should, upon the application of D., sell the lands, and that the proceeds of such sale should be invested for D.'s benefit. D. accordingly filed his petition to have the lands sold. The other heirs objected, and the orphans' court refused to decree a sale, on the ground that the act was unconstitutional. On appeal, the decree was affirmed, on the ground that, as the legislature did not possess the power to direct a sale against the consent of the other parties in interest, who were of full age and under no disability, within the time during which the sale was forbidden by the testator, the act was unconstitutional.—Ervine's Appeal, 16 Pa. 256 (1851), Coulter, J. (Bell, J., and Gibson, C. J., dissenting).

(101) A., by his will, gave a life estate in his real property to his wife, remainder to his eight children, share and share alike, in fee-simple. Subsequently to his death, the legislature passed an act authorizing the executor to sell the real estate, subject to the approbation of the orphans' court. The executors accordingly made sale to B., who refused to complete the sale on the ground that the executors could not give a good title. The orphans' court refused on this ground to confirm the sale. Two of A.'s children were minors at the time the act was passed, but became of age before the sale. But in the meantime one of the devisees had died, leaving a minor child; so that one undivided eighth part of the estate given to the children belonged to an infant at the time of sale. The executors appealed to the supreme court from the decree refusing to confirm the sale. *Held*, that, as to the parties interested, and of full age, and capable of acting for themselves, and not consenting to the sale, the act was unconstitutional; and that, as there was nothing on

the record to show that such parties had knowledge, they should be cited to file objections, the sale to be confirmed if no objections were filed, but confirmation to be withheld in case of objections. Decree reversed and record remanded, with directions to proceed in accordance with this opinion.—Kneass's Appeal, 31 Pa. 87 (1857), Lewis, C. J.

(102) By the will of A., the executor had no power or duty as to the real estate. An act of the legislature was passed without the consent of the heirs, "to expedite the settlement of the estate," authorizing the sale of the real estate by the executor, and directing how the proceeds should be applied. A bill was filed by the widow and heirs of A. to restrain the executor from carrying out the provisions of the act, claiming that it was unconstitutional, as depriving them of their rights in the property. A decree restraining the executor as prayed for, and adjudging the act unconstitutional, was affirmed on appeal. —Hegarty's Appeal, 75 Pa. 503 (1874), Sharswood, J.

(103) D. devised land in trust for A., B., and C., for life, remainder to their respective children. By a special act of assembly, the trustees were authorized to sell the lands, reserving perpetual or redeemable ground rents. The trustees were to give security on receipt of the money paid in redemption, and such money was to be applied according to the trusts in the will. The trustees sold on ground rent, redeemable in seven years, and brought a bill for specific performance by the purchasers, who refused to complete the purchase, on the ground that the trustees could not make title. A decree for defendants was entered at *nisi prius*, and an appeal taken. The supreme court affirmed the constitutionality of the act, reversed the decree, and decreed the relief sought by the bill.—Norris v. Clymer, 2 Pa. 277 (1846), Gibson, C. J.

See, also, as to acts authorizing conveyances by trustees, Kerr v. Kitchen, 17 Pa. 433 (1851), Lewis, J.; Martin's Appeal, 23 Pa. 433 (1854), Lewis, J.

(104) A tract of land belonging to the estate of A. was allotted in partition proceedings to B., who entered into a recognizance, with surety, to secure the purchase money to the heirs of A. Subsequently an act was passed which authorized the administrator of A. to receive the proceeds of the estate, and distribute them according to the interests of the several heirs or claimants. The administrator having brought suit on B.'s recognizance, the court refused to instruct that recovery could not be had on the ground that the terms of the recognizance were to pay to the heirs, or that B. could retain the amount of his share (he claiming to be an heir), and there was a verdict for the administrator. On error, *held*, that the act was constitutional, and judgment affirmed.—Custer v. Comm., 25 Pa. 375 (1856), Knox, J.; s. c. 1 Gr. 216.

(105) In ejectment by A., claiming as heir at law of C., against B., claiming under C.'s will, it appeared that the will had been executed in 1840, a few days before C. died. C. had executed the will by making her mark, her name having been written by one of the subscribing witnesses. Under the act of 1833, relating to wills, this execution was insufficient in the absence of proof that the testatrix's name was written by her express direction. The act of January 27, 1848 (P. L. 16, § 1; P. & L. Dig. 1442), however, had provided that wills theretofore made, or thereafter to be made, except those finally adjudicated prior to the act, to which the testator had made his mark or cross, should be deemed and taken to be valid. *Held*, on this point reversing the court below, that the act was destitute of retroactive force, as being an act of judicial power, and in contravention of the constitutional provision, that no one should be deprived of property except by the law of the land.—Greenough v. Greenough, 11 Pa. 489 (1849), Gibson, C. J.

(106) The act of January 27, 1848, as applied to a will made by a testator who died before its passage, but which was not adjudicated until after the passage of the act, was *held*, by the supreme court, in an opinion reversing judgment sustaining the will, to be retroactive and unconstitutional.—McCarty v. Hoffman, 23 Pa. 507 (1854), Woodward, J. (Lewis, J., dissenting).

(107) A. and his wife had each prepared a will in favor of the other. By mistake each signed the other's will. On the death of A., the register refused to admit his will to probate. An act of assembly was passed reciting the facts, and enacting that any executor or parties in interest under said last will might present a petition to the register's court in Philadelphia, and that testimony should be taken, and if the facts were proved as claimed, the will should be admitted to probate. Proceedings were had in pursuance of this law, and the petition for probate was dismissed. On appeal, *held*, affirming the decree of dismissal, that A. had died intestate, and his property had vested in his heirs at once; hence the act was unconstitutional, as its effect would be to divest vested estates.—Alter's Appeal, 67 Pa. 341 (1871), Agnew, J.; s. c. 3 Leg. Gaz. 53, 211, 28 L. I. 53. Affirming 18 Pitts. L. J. 95.

(108) The seventh section of the act of April 22, 1856 (P. L. 532, § 7; P. & L. Dig. 1455), declared that an uncontested probate by the register of

the proper county of any will devising real estate should be conclusive after five years from its date. The supreme court *held*, affirming the judgment of the court below, that the act applied to a will proved before its passage, and, though retroactive, was constitutional.—Kenyon v. Stewart, 44 Pa. 179 (1863), Woodward, J.; s. c. 11 Pitts. L. J. 274.

(109) A conveyance was made to A., a married woman, "to her own separate use" in fee. She with her husband subsequently conveyed the premises to B. A special act of assembly gave to the court power to ratify and confirm the title of B. As this was only an enabling law, to carry out the expressed intent of A., and did not violate her rights, it was *held*, by the supreme court, in an opinion reversing the judgment rendered by the court below on the ground of unconstitutionality, to be constitutional.—Jones's Appeal, Attmore's Estate, 57 Pa. 369 (1868), Agnew, J.

(110) The act of April 8, 1833 (P. L. 249, § 11; P. & L. Dig. 1678), provided that a bequest by a husband to his wife should be deemed in lieu of her dower. The act of April 11, 1848 (P. L. 536, § 11; P. & L. Dig. 1679), provided that she might elect either to take under the will or to have her dower at common law. B. died in 1850. He devised to C., his executor, in trust for his wife, one-third of his real estate, the income to be paid to her. C. filed an inventory of the personal estate. The widow filed a petition asking that the executor be compelled to bring into court a complete inventory of B.'s estate, so that she could decide whether or not to take under the will. The petition was denied on the ground that the widow was not a party interested, as required by law. On appeal it was contended that the act of 1848 was unconstitutional, in that it affected rights of the wife vested at the time of the marriage, she having been married before the passage of the act. *Held*, reversing the decree of the court below on the ground that the widow was a lawful party in interest, that said act of 1848 was constitutional, and violated no vested right.—Melizet's Appeal, 17 Pa. 449 (1852), Coulter, J.

(111) A sheriff sold land lying in both A. and B. Counties, under a mortgage recorded only in A. County. The sheriff's deed was declared void as to that part of the land lying in B. County. An act of the legislature was passed confirming the sheriff's deed in so far as it had been decided to be void. This act was decided by the supreme court to be constitutional. On the faith of this decision, B. bought the land from the sheriff's vendee. Subsequently, decisions contrary to that sustaining the constitutionality of the act having been made by the supreme court, an heir of the original mortgagor brought ejectment against B. The court below directed a verdict for B. on the authority of the former decision of the supreme court in the case, and the plaintiff took a writ of error. *Held*, that the act was unconstitutional; but, as B. was a *bona fide* purchaser on the faith of the former contrary decision, judgment in his favor was affirmed.—Menges v. Dentler, 33 Pa. 495 (1859), Lowrie, C. J.

Overruling Menges v. Wertman. 1 Pa. 218.

(112) An act regulating building associations was interpreted to prohibit the charge of a greater rate of interest than 6 per centum, the legislature thereupon passed an act declaring that the true intent of the former act was not to prohibit a greater rate than 6 per centum. In an action to recover a loan made prior to the passage of the latter act, plus interest at a greater rate than 6 per centum, judgment was given for plaintiff for the full amount. Reversed.—Reiser v. Tell S. F. Ass'n, 39 Pa. 137 (1861), Lowrie, C. J.

See, also, Premium Fund Association's Appeal, 39 Pa. 156 (1861), Lowrie, C. J.; Blackburne's Appeal, 39 Pa. 160 (1861), Thompson, J.

(113) X., a married woman, was the devisee of an estate for her separate use for life, without power of sale. X. and her husband, after the married woman's act of 1848, conveyed the property devised in fee. In 1863 an act was passed validating all conveyances by married women which were void for want of a power of sale in the deed of the donor. In ejectment by X.'s heirs against the purchaser, judgment was given for the heirs. On error, affirmed.—Shonk v. Brown, 61 Pa. 320 (1869), Agnew, J.

(114) A. appealed from a decree of the register's court of Philadelphia, charging him, as executor of a person who had died in 1849, with the collateral inheritance tax on the whole estate including property without as well as within Pennsylvania, as directed by the act of March 11, 1850 (P. L. 170), which provided that the words, "being within this commonwealth," contained in the act of April 7, 1826, should be so construed as to relate to all persons who had been domiciled within Pennsylvania at the time of their decease. It had previously been held that the said words referred only to the estate within the commonwealth. A. contended that the act of 1850, being retrospective, violated Art. I., § 9, of the constitution, as interfering with rights vested in collateral relations before its enactment. Decree affirmed, the supreme court *holding*, that no clause of the constitution forbade the extending of a tax already laid, and that no injustice was done by increasing a tax to meet an increased public burden.—Short's Estate, 16 Pa. 63 (1851), Gibson, C. J.

(115) Exceptions to a referee's report. Before July 1, 1887, A., the plaintiff, closed his case in chief. On August 26, B., the defendant, closed. A. then offered C. as a witness. C. was disqualified from testifying as the law stood prior to the act of May 23, 1887 (P. L. 158; P. & L. Dig. 4831); but said act which made C. a competent witness went into force July 1, and was expressly made to apply to cases then pending as well as those thereafter to be brought. C. was rejected as a witness by the referee, on the ground that the act, so far as it affected pending cases, was unconstitutional. Exceptions sustained, and report recommitted.—Meredith v. Thomas, 4 Kulp, 505 (1888), Rice, P. J.

3. Laws Affecting the Course of Judicial Proceedings.

An act which changes the right of a tenant to contest the title of his landlord is constitutional, and may apply to pending cases. (116) An act providing for the obtaining of a writ of error after a decision by the supreme court on a writ of error obtained by the adverse party is unconstitutional. (117) An act directing the orphans' court to grant a review in a particular case, after the time limit for the bringing of bills of review has expired, is unconstitutional. (118) Where an act directs a stay of execution in case property will not sell for two-thirds of its assessed valuation, the legislature may, in extending the time during which such act shall be in force, impose qualifications upon such stay. (119) An act, to go into effect in three years, providing that in case no payment shall have been made upon a ground rent for twenty-one years, such ground shall be presumed to be extinguished and shall be irrecoverable, is constitutional and may apply retrospectively. (120) An act purporting to affect the course of judicial proceedings, but which is supererogatory, will not be declared unconstitutional. (121)

(116) A. brought an action against B., and secured a verdict upon the ground that B. was a tenant, and could not contest the title of his landlord. The judgment was reversed by the supreme court, which held that the rule was not applicable in this case, because A.'s title was a Connecticut title, existing in violation of the laws of Pennsylvania, and the relation of landlord and tenant did not exist after the time of A.'s acquiring the title from Pennsylvania. Before the case came up again, the act of April 8, 1826 (P. L. 270), was passed, enacting that the relation of landlord and tenant should exist as fully and effectually between Connecticut settlers and Pennsylvania claimants as between other citizens, on the trial of any cause then pending or thereafter to be brought within the commonwealth of Pennsylvania. The court of common pleas, on the rehearing, charged that the above act did away with the force of the law as declared by the supreme court in regard to the relation of landlord and tenant in such cases. *Held*, no error.—Satterlee v. Matthewson, 16 S. & R. 169 (1827), Huston, J. (Duncan, J., dissenting).

(117) A. brought suit against B. on a promissory note for $1,259, and recovered $400. A. sued out a writ of error, and the decision of the lower court was affirmed. Afterwards B. sued out a writ of error, in support of which he referred to the act of March 22, 1850 (P. L. 230, § 2; P. & L. Dig. 132), which provided that either party might obtain a writ of error as well after the decision of the supreme court on a writ of error previously obtained by the adverse party in such cause, as if both parties had obtained writs returnable to the same term of said court. It was argued that the act was unconstitutional, as affecting vested rights. On motion the writ was quashed.—McCabe v. Emerson, 18 Pa. 111 (1851), Rogers, J.

(118) The act of October 13, 1840 (P. L. [1841] 1, § 1; P. & L. Dig. 2334), required bills of review, after final decree, to be brought within five years. The orphans' court settled the distribution of an estate and made a final decree thereon. Nearly twelve years thereafter, an act was passed directing the orphans' court, on petition of any party interested in the decree, to grant a review of the same. A. filed a bill of review under the act, and an auditor was appointed, who made a report re-distributing the estate, which report was set aside by the court on exceptions by the former distributee. Decree affirmed, on the ground that the act authorizing the review was unconstitutional.—Baggs's Appeal, 43 Pa. 512 (1863), Lowrie, C. J.; s. c. 10 Pitts. L. J. 368.

(119) The act of March 28, 1820 (7 Sm. L. 334), granted a stay of execution for one year in case land would not sell for two-thirds of its appraised value. This act was to remain in force for one year. The act of March 27, 1821 (7 Sm. L. 422), continued the provisions of the former act, provided interest upon the judgment debt should be paid every six months. Judgment was rendered on a *scire facias* upon a mortgage, and an attempt was made to sell the property, but it was returned "Unsold for want of buyers," while the act of 1820 was in force. Less than a year after the first sale the property was resold, the judgment debtor having failed to pay the interest as provided by the act of 1821. It was moved to set aside the sale, upon the ground that the right to a stay was a vested right, not affected by the expiration of the act of 1820, nor the qualification in the act of 1821 that interest should be paid half-yearly.

Held, that the motion was properly refused.—Peddle v. Hollinshead, 9 S. & R. 277 (1823), Duncan, J.

(120) In 1834 C. conveyed to D. a lot of ground, reserving a yearly ground rent. By subsequent conveyances the land became vested in B., the ground rent in A. The act of April 27, 1855 (P. L. 368, § 7; P. & L. Dig. 2227), provided that in case no payment, etc., should have been made on account of any ground rent or other charge upon real estate for twenty-one years, etc., a release or extinguishment thereof should be presumed, and such ground rent should be irrecoverable. After the period prescribed by this act, A. brought suit against B. for the ground rent. B. requested the court to charge that, if there had been no payment of or demand by A. of ground rent, or declaration or acknowledgment thereof by B. or those under whom he claimed, for twenty-one years preceding, the verdict must be for B. The judge refused the instruction, on the ground that the act was not retrospective. Judgment was reversed on error, the court *holding*, that the act was retrospective in its operation, and that, as it was not to go into effect for three years, this prospective commencement made the retrospective bar "not only reasonable but strictly constitutional."—Korn v. Browne, 64 Pa. 55 (1870), Read, J.

(121) The supreme court on the ground that evidence had been irregularly received by the court below, quashed an order of removal from a justice of the peace, and the confirmation thereof by the court of quarter sessions. On the mistaken presumption that the effect of this proceeding was to conclude the parties in like manner as a final determination of the case on the merits, the legislature passed an act to open the questions in the case. Thereupon, on a new trial under the act, the court below made a new order of confirmation, expressly deciding also that the act was constitutional. On error, *held*, affirming the order, that the action of the supreme court in quashing the former writ having been inconclusive, the question had never been closed, hence the act was merely supererogatory, and its constitutionality was unnecessarily attacked.—West Buffalo v. Walker, Tp., 8 Pa. 177 (1848), Gibson, C. J.

As to the power of the supreme court to set aside a verdict, see Smith v. Times Pub. Co., 178 Pa. 481 (1896), Mitchell, J. (Dean, J., dissenting).

4. Trial by Jury.

It is not an infringement of the right of trial by jury to require an appellant from a justice's court to make an affidavit that he believes that injustice has been done him, and that he has no purpose of delay (122); or to give judgment against him if he fails to appear when the case is called (123); or to give judgment for plaintiff for want of an affidavit of defence, or of a sufficient affidavit of defence. (124–127)

The right is not violated by the submission of a case to a master in equity to find and report facts. (128) An act to allow actions against fraudulent debtors to be commenced by attachment does not violate the right (129); nor does an act extending the jurisdiction of aldermen's courts from action for debts of £10, to actions for debts of £20. (130) An act allowing the amendment of a declaration, to make it conform to what was tried by the jury and found by them, is not in violation of the right of trial by jury, as applied to a case in which the verdict has been directed by the judge (131); and a provision requiring the payment of costs on taking an appeal from an award of arbitrators is not unconstitutional. (132)

Cases between landlord and tenant may be tried by a single justice of the peace where an appeal is allowed, as such appeal secures trial by jury in the usual manner. (133) A proceeding by road viewers, being a mere inquisition between the government and private parties, and not according to the common law, a jury trial cannot be demanded on appeal from a report of such viewers, when such trial is not given by the statute. (134)

An act providing that the quarter sessions, or mayor's court, on application of the owners of houses in Philadelphia County, which are injured by a mob, shall appoint six persons to ascertain and report damages, and inquire whether the owners were concerned in the riot, does not violate the right of trial by jury. (135)

A mill dam which is a continuing, periodical nuisance may be summarily removed by order of court. (136) When parties in possession of land refuse to surrender possession to the purchaser at a judicial sale, the court may inquire into the rights of the parties and the regularity of the proceedings, and award possession according to the rights as shown by the facts. (137)

The right to a jury trial may be waived by contract before any right of action accrued. (138)

Parties may consent to an arbitration, but compulsory arbitration, without the right of appeal, violates the right. (139–140)

An act giving servants a right to distrain for wages claimed, as for rent, violates the right of trial by jury. (141)

An act permitting equity courts to decide disputed facts, violates the right. (142–144)

The right to a jury trial does not exist in civil cases against the state (145), nor in motions for summary relief against abuse of the process of a court (146), nor in proceedings in chancery. (147)

Municipal corporations, being creatures of legislation, have no constitutional guaranty of trial by jury; hence such trial may be denied to them. (148)

Article I., § 6, of the constitution, providing that trial by jury shall be as heretofore, and the right thereof remain inviolate, is not infringed by the act of May 20, 1891 (P. L. 101; P. & L. Dig. 135), which gives the supreme court power in all cases to affirm, reverse, amend, or modify a judgment, as it may deem just, without returning the record to the court below, and to order a verdict and judgment set aside and a new trial had; and under said act the supreme court may set aside a verdict which it considers excessive. (149)

(122) The act of April 2, 1821 (7 Sm. L. 471), and its supplements, provided for a trial, by a justice, without a jury, for the recovery of license duties imposed on dealers in foreign merchandise; and that no appeal should be taken to the common pleas unless the appellant made oath "that he verily believed that injustice had been done him, and that the appeal was not made for purposes of delay." B. was sued before an alderman under the act, and judgment was given for the commonwealth both in the alderman's court, and, on appeal, in the court of common pleas. B. took a writ of error from the supreme court, contending that the act was unconstitutional, as impairing the right of trial by jury. Judgment affirmed, the court *holding*, that the act left the substance of the trial by jury unimpaired, and hence did not violate the constitution.—Biddle v. Commonwealth, 13 S. & R. 405 (1825), Tilghman, C. J.

(123) In assumpsit on a book account before an alderman, judgment was entered against the defendant, and an appeal was taken to the common pleas. When the case was called for trial, the defendant failed to appear, whereupon the court affirmed the judgment of the alderman, in accordance with a rule of court providing that, in appeals from the judgment of a magistrate, if the appellant did not appear when the case was called, judgment would be given against him. The defendant assigned this action for error, contending that the rule of court was in conflict with the constitutional guarantee of the right of trial by jury. *Held*, that the rule was not a violation of the right of trial by jury. Judgment affirmed.—Lloyd v. Toudy, 4 W. N. C. 225 (1877).

(124) A special act of assembly, passed April 21, 1852, required specific affidavits of defence in certain cases where copies of the instrument sued on were filed. On writ of error, to determine the validity of a judgment entered for want of a sufficient affidavit of defence, it was contended that the act conflicted with the constitutional right of trial by jury. Judgment affirmed.—Bishop v. Denormandie, 1 Pitts. 145 (1854), Lowrie, J.

(125) Upon a rule for judgment for want of a sufficient affidavit of defence, it was contended that, under the constitution of 1874, the courts did not have the authority to enter such judgment. Rule absolute.—Reynolds v. Lawrence, 1 W. N. C. 625 (1875).

(126) In an action of assumpsit, the court entered judgment for the plaintiff for want of a sufficient affidavit of defence. The defendant appealed, alleging that the law requiring an affidavit of defence conflicted wtth the provisions of the constitution which guaranteed the right of trial by jury. The judgment of the court below was affirmed.—Lawrence v. Born, 86 Pa. 225 (1878).

Followed in Randall v. Weld, 86 Pa. 357 (1878), Mercur, J.; s. c. 35 L. I. 383.

(127) Section 5 of the act of May 25, 1887 (P. L. 271, § 5; P. & L. Dig. 3619), provides that, "in the action of assumpsit, judgment may be moved for for want of an affidavit of defence, or for want of a sufficient affidavit, for the whole or part of the plaintiff's claim, as the case may be, in accordance with the present practice in actions of debt and assumpsit." It was *held*, that this act is constitutional, and, under a rule of court founded upon it, judgment for want of an affidavit of defence may be taken in the prothonotary's office.—Honeywell v. Tonery, 5 Kulp, 360 (1889), Rice, P. J.

(128) In an equity suit by A. against B., a master was appointed, who found facts on evidence, and reported in favor of A. The report was confirmed. On appeal, it was urged that the proceedings before a master were inconsistent with the duty of a court of equity, and that the right of trial by jury was infringed by the appointment of a master to report the facts and such a decree as he might deem proper to be made by the court. *Held*, that the submission to a master was a proper and necessary proceeding, and in derogation of no right.—Phillips's Appeal, 68 Pa. 130 (1871), Agnew, J.

(129) The act of March 17, 1869 (P. L. 8, § 1), provides that actions against fraudulent debtors may be commenced by attachment, provided an affidavit of the fraud is made, if the alleged fraud is not sustained, the attachment to be dissolved.

In an action begun as provided by the act, judgment was given for the plaintiff. The defendant took a writ of error, contending that the act was without constitutional warrant, as being in derogation of the right of trial by jury. *Held*, that the act does not deprive the debtor of his right of trial by jury. Judgment affirmed.—White v. Thielens, 106 Pa. 173 (1884), Mercur, C. J.

(130) Judgment was rendered against A. in an alderman's court for £11, 6s. 0d. and costs. On *certiorari* from the supreme court, the only objection to the proceeding was that the alderman's court had no jurisdiction in causes above £10, it being contended that the act of April 19, 1794, increasing the jurisdiction in cases of that kind to an amount not exceeding £20, was contrary to the sixth section of the ninth article of the constitution, providing that the right of trial by jury should remain inviolate. *Held*, that, as by this act only the original jurisdiction was limited to the justice's court, and a trial by jury could still be had on appeal, the act was constitutional. Judgment of the alderman's court affirmed.—Emerick v. Harris, 1 Binn. 416 (1808), Yeates, J., Brackenridge, J.

(131) In ejectment by A. against B., verdict was directed for A., who subsequently took a rule to show cause why an amended description of the tract in controversy should not be filed to make the record conform to what was tried by the jury and found by the verdict, as authorized by act of March 14, 1872 (P. L. 25; P. & L. Dig. 3635). Rule absolute. On error, it was contended that said act was not applicable where the court directed the verdict, or that, if it was applicable, it infringed on the right of trial by jury. *Held*, constitutional. Judgment reversed on other grounds.—Parks v. Boynton, 98 Pa. 370 (1881), Trunkey, J.

(132) In a suit by A. against B., referred to arbitrators, award was made for B. A. appealed, demanding as a constitutional right that the prothonotary should enter his appeal without the payment of costs, though contrary to section 11 of the arbitration law of March 20, 1810 (5 Sm. L. 131), and contending that the refusal so to do would violate the constitutional privilege of trial by jury. The common pleas discharged a rule to show cause why A. should not appeal without the payment of costs. Judgment affirmed.—M'Donald v. Schell, 6 S. & R. 240 (1820).

(133) The act of December 14, 1863 (P. L. [1864] 1125; P. & L. Dig. 2650), provides for the trial of certain cases between landlord and tenant by a single justice of the peace, but allows an appeal if taken within ten days, and if security be given for costs and the rent to accrue. A. sued B. under the act, and recovered judgment before an alderman, which was affirmed by the common pleas. B. removed the proceedings to the supreme court by *certiorari*, contending that the act was unconstitutional, as it did not "secure the right of trial by jury in its accustomed form." *Held*, that there was a trial by jury and assessment of damages by them in case of verdict for the tenants, provided for on appeal; hence, the right of trial by jury in its accustomed form was secured to the tenant before his right could be finally determined, and the act was constitutional. Judgment affirmed.—Haines v. Levin, 51 Pa. 412 (1866), Agnew, J. Affirming 6 Phila. 62, 22 L. I. 357.

(134) The special act of May 4, 1857, provided for the opening of certain streets, and required that, upon petition of those through whose land such streets were opened, the common pleas should appoint viewers, from whose report an appeal was given to the common pleas. A. petitioned for a jury of view under this act, and from their report duly appealed. When the case came on in the common pleas, A. demanded a jury trial, contending that he was entitled to such a trial by the provision of the constitution which guarantees that right. *Held*, that, this being a mere inquisition between the government and private parties, and not according to the course of the common law, A. had no right to go before a jury.—Pennsylvania Avenue, 2 Pitts. 1 (1859), Maynard, J.

(135) The act of June 16, 1836 (P. L. 702, § 36), declared that, in case any dwelling-house, or other building, etc., should be injured or destroyed in the city and county of Philadelphia, in consequence of any mob or riots, etc., the owner or his agent might apply, if in the county, to the court of quarter sessions, and if in the city, to the mayor's court, which should thereupon appoint six disinterested persons to ascertain and report the amount of the loss, and also whether the owner had any immediate or active participation in the mob or riot. A commission appointed under the act awarded damages for the destruction of a building by a mob, and an exception to the award was taken in the supreme court, on the ground that the act was unconstitutional as substituting an inquest of six men to determine facts out of court, instead of a jury of twelve to try the matter in court. *Held*, that the constitutional provision related to the trial of issues of fact in civil or criminal cases in courts of justice, and contained nothing inhibiting the legislature from ascertaining damages, as before allowed, by commission, on award of a less number of men than twelve out of court; hence, the right of trial by jury was not infringed, and the act was constitutional.—Pennsylvania Hall, 5 Pa. 204 (1847), Rogers, J.

(136) A mill dam which caused periodical in-

undations and ice gorges, injuring private property and impeding public travel, was removed by order of a court of equity. *Held*, that such compulsory removal was not in contravention of Article I., § 6, of the constitution, as to trial by jury.—New Castle City v. Raney, 6 Pa. C. C. 87 (1888), Mehard, P. J.

(137) The act of May 13, 1871 (P. L. 820), provided that purchasers of real estate at coroner's, sheriff's, and orphans' court sales within the county of Schuylkill might notify tenants in possession to surrender the premises, and in case of refusal the purchaser might petition the court for possession of the same. The act further provided that the court should proceed to inquire whether the petitioner had become the purchaser of such estate at such a sale, whether the person in possession of such real estate was the defendant in the execution under which such real estate was sold, and whether the person in possession had had three months' notice of such sale previous to such application, and had been required to give up such estate three months previous to such application; and that, upon finding the facts as aforesaid, the court or judge should award possession of such real estate to the petitioner. In proceedings under this act, a writ of possession was awarded to A., the contention of B., the defendant, that the act was unconstitutional, being overruled. On error, by B., contending that the act was in violation of the right of trial by jury, *held*, that, as no question of fact was submitted by the act to the court, the act was not in derogation of the right of trial by jury, and was constitutional. Judgment affirmed.—Wynkoop v. Cooch, 89 Pa. 450 (1879), Sharswood, C. J.; s. c. 7 W. N. C. 53, 36 L. I. 393.

The court expressly left out of consideration the seventh section of the above act, providing for an assessment of damages against the defendant, person or persons in possession, because there had been no such assessment in this case.

(138) A. insured his property in a mutual insurance company, and thereby became a member. He deposited his note, which was to be subject to all assessments of the company for necessary expenses. Assessments were made, and A. was notified. He failed to pay them, and judgment was entered on the note and agreement in the policy, in accordance with an act supplementary to the act of incorporation. A rule to set aside judgment, on the ground that it had been entered without suit or warning to the defendant, was discharged. On appeal, it was urged that trial by jury, being a constitutional right, could not be waived by implication. *Held*, that, by becoming a member of the company, A. had submitted to their terms and conditions, and was bound by the judgment.—Krugh v. Lycoming Fire Ins. Co., 77 Pa. 15 (1874), Mercur, J.

(139) Section 7 of the act of March 27, 1852 (P. L. 182), provides that, when a dam on the Clarion river is not erected according to law, a person aggrieved thereby may notify the owner of the dam, and each of them shall choose one person, and the two so chosen shall choose a third, and these three shall assess the damages and file their award in the prothonotary's office, and it shall have the force and effect of a judgment. A.'s raft having been damaged by B.'s dam in said river, A. brought an action on the case against B., to recover damages. The court below, holding that a remedy was provided in the above statute, which must be exclusively pursued, gave binding instructions against A., who took a writ of error. *Held*, that, as the referees chosen could not be compelled to act, and as their award was made final, the section violated the right of trial by jury and was unconstitutional. Judgment reversed.—Rhines v. Clark, 51 Pa. 96 (1866), Woodward, C. J.

(140) The local act of April 6, 1870 (P. L. 948; P. & L. Dig. 158, note), provided a method of settling cases before an arbitrator, whose decision should be final, if the parties agreed to such method of settlement. The act of March 25, 1873 (P. L. 396; P. & L. Dig. 158, note), supplementary thereto, provided that the arbitration should be compulsory. *Held*, that the original act was valid, but the supplementary act was unconstitutional, as depriving a party of his right to a trial by jury without his consent.—Cutler v. Richley, 151 Pa. 195 (1892), Sterrett, J.; s. c. 25 Atl. 96, 30 W. N. C. 561.

See, also, Philadelphia v. Linnard, 97 Pa. 242 (1881), Trunkey, J.

(141) The act of May 1, 1861 (P. L. 553; P. & L. Dig. 4789, n.), provided for the protection of the wages of laborers in Berks County, giving the right to any persons to whom wages to the amount of $25 might be due, to proceed to collect the same by distraining therefor in the manner of a distress for rent. A. under this statute placed a warrant for $121 for wages alleged to be due him from B., in the hands of C., who seized goods of B. B. brought replevin against C., and the question of the constitutionality of the act was raised. *Held*, unconstitutional, as a denial of the right to try an unliquidated demand by jury, also as authorizing the taking of property without due process of law.—Linderman v. Reber, 1 Woodw. 2 (1863), Woodward, J.

(142) Plaintiff, in a bill in equity to determine the rights of the parties, claimed to be heir to a deceased tenant in common in certain mining rights, and to have been debarred by other tenants from deriving any benefits from said rights. The action was brought in conformity with the act of April 22, 1856 (P. L. 502, § 1; P. & L. Dig. 718), giving such a tenant in common in coal and iron mines the power to apply by

petition in equity to the court of common pleas, which court should determine and adjudicate the right of the several parties. *Held*, reversing the decree of the lower court in favor of the complainant, that the act was unconstitutional, as controverted questions of fact in common-law cases must be decided by jury.—North Pennsylvania Coal Co. v. Snowden, 42 Pa. 488 (1862), Strong, J. ; s. c. 2 Luz. L. Obs. 267.

(143) A ground rent existed against the lands of A. His executors stated that no acknowledgment of said rent had been made for twenty-one years, and prayed that the court decree it extinguished in accordance with the act of April 28, 1868 (P. L. 1147), authorizing the court upon petition, on "due proof" that the ground rent had "been extinguished by payment or presumption of law," to make a decree to that effect. The lower court entered a decree as prayed for. Judgment reversed on the ground that the act, by giving the court such power, violated the right of trial by jury.—Haines's Appeal, 73 Pa. 169 (1873), Sharswood, J. ; s. c. 1 Foster, 86, 30 L. I. 85.

(144) A., claiming title to certain land, filed a bill in equity praying for an injunction against B., on the sole ground that A. was the owner of said land, and that B. was occupying it and obstructing plaintiff in its use. B., in his answer, denied the plaintiff's title, and claimed the land as owner. A motion to continue preliminary injunction was dissolved by the court, on the ground that this was simply a controverted question of the title to real estate, which a court of equity did not have, and which the legislature could not give to such court jurisdiction to try.—Pennsylvania Canal Co. v. Middletown & H. Turnpike Co., 1 D. R. 663 (1892), Simonton, P. J.; s. c. 11 Pa. C. C. 582.

(145) Section 3 of the act of July 2, 1842 (P. L. 310), provided that, when any injury was done to property by reason of the Pennsylvania canal or railroad passing through the same, the assessment of damages provided to be made by the canal commissioners should be final and conclusive. This section was *held* constitutional, because "a sovereign state is not liable to an action at law against her consent, and the right of trial by jury has no existence in such a case."—Ligat v. Comm., 19 Pa. 450 (1852), Lewis, J.

(146) A judgment was confessed against B., by an attorney who appeared for the purpose without writ. The district court granted a rule to show cause why the judgment should not be stricken off, and on the hearing made the rule absolute. It was claimed that this summary action of the court interfered with the right of trial by jury. *Held*, affirming judgment, that this right did not exist after judgment, nor could it exist in motions for summary relief against abuse of the process of the court.—Banning v. Taylor, 24 Pa. 289 (1855), Lewis, C. J. (Lowrie and Black, JJ., dissenting on the ground that sufficient reason for striking off the judgment did not appear of record) ; s. c. 12 L. I. 255.

(147) A.'s claim in an ejectment against B. was founded on a mere equity. After judgment for B., it was contended that the whole case should have been submitted to a jury without any binding instructions by the court, on the effect of the evidence, and that the right of such jury trial was secured by the constitution. Judgment affirmed. —Irwin v. Irwin, 34 Pa. 525, 17 L. I. 116 (1860), Woodward, J.

(148) The act of April 10, 1862 (P. L. 528), appointed three commissioners for the purpose of making a distribution of the balance of a certain indebtedness between certain townships and boroughs. It did not give to these municipal corporations either a trial by jury or the right of appeal. *Held*, affirming the striking off by the lower court of an appeal, as not given by the act, that, as the act denied trial by jury only to municipal corporations, to which the constitutional guaranty of right of trial by jury does not apply, it was not in conflict with the constitution.—Dunmore Borough's Appeal, 52 Pa. 374 (1866), Woodward, C. J. ; s. c. 23 L. I. 381.

(149) A. sued B. for damages for a libel, and recovered $50,000. An appeal was taken to the supreme court on an assignment of error that the verdict was excessive, and the court was asked to set it aside under the act of May 20, 1891 (P. L. 101 ; P. & L. Dig. 142), which provides that the supreme court may order the verdict to be set aside and a new trial had. A. contended that the revision of a verdict was a matter that lay solely within the province of the trial court, and that, if the act of 1891 was intended to give the supreme court any such power, it was an infringement of the constitutional guaranty that the right of trial by jury shall remain as heretofore. *Held*, that the act was constitutional; judgment reversed and *venire de novo* awarded.—Smith v. Times Pub. Co., 178 Pa. 481 (1896), Mitchell, J. (Sterrett, C. J., and Williams, J., concurring; Dean, J., dissenting) ; s. c. 39 W. N. C. 329.

5. Due Process of Law.

An act of the legislature which authorized a taking of private property for a private use is in violation of the constitutional principle that no person shall be deprived of property without due process of law (150) ; so, an act divesting a vested estate in remainder, and vesting it in another person, is unconstitutional (151) ; but an act vesting the legal title to land owned by several heirs in one of their number as

trustee, and giving him power to sell and divide the proceeds among them, does not divest any beneficial interests, and is constitutional. (152)

An act which provides for the charging of private property under the police power of the state is unconstitutional if it does not provide for an adjudication by some tribunal authorized by law, upon the facts which render such charge proper (153); so, an act which makes a city its own judge to assess damages in condemnation proceedings is in conflict with the bill of rights. (154)

An act under which commissioners are authorized to change the lines of a street, and property owners are required to conform to the new lines, interferes with the rights of property owners without due process of law, and is unconstitutional (155); but authorizing a mere entry on lands for the purpose of making a municipal survey does not impair any property right (156); neither is the mere fact of putting streets on a plan a taking of private property within the constitutional prohibition (157); nor an act vacating a street laid out by a former landowner, for public use, when the street has been superseded by others in the same neighborhood. (158)

An act which provides for, or validates legal proceedings without due notice to persons whose property is to be affected thereby, is unconstitutional (159–160), as is also an act which provides for service of process on defendants residing outside of the state where resident defendants have been served, and the court has jurisdiction of the subject-matter (161); but an act requiring a specific affidavit of defence in certain cases (162), or authorizing the entry of judgments for want of an affidavit of defence (163), or authorizing a summary proceeding for recovering the amount due from a delinquent tax collector without trial, by entry in the prothonotary's office, of the amount due, with the force of a judgment (164), is valid.

Where there has been an over-subscription by the state to the stock of a corporation, the state may be authorized to sue for the amount so over-subscribed. (165)

An act providing that a garnishee shall be taken to be a party in a cause, and allowing him a counsel fee, is not unconstitutional as applied to cases pending at the time of its passage, no vested rights as they existed at the time of the impetration of the writ, before the passage of the act, being affected by the act. (166)

A by-law of a society providing for the expulsion of a member, who has vested property interests in the society, is in violation of the state constitution. (167)

An act to validate sheriff's sales made after the return day of the writs of execution, under which the sales are directed, is unconstitutional as against one who has bought at a subsequent regular sale, under an incumbrance which would have been discharged by the former sale had it been valid. (168)

A judgment rendered by default two days before the time fixed for the hearing in the copy of summons served upon the defendant, is not good. (169) A tax imposed upon the agencies of foreign insurance companies, payable to an association for the relief of disabled firemen, is not a tax or imposition within the legislative power, for public purposes, but merely a sum levied on one class of men for the benefit of another class, and hence the act authorizing its levy is unconstitutional, as it deprives the parties on whom the tax is imposed of property without due process of law. (170)

The act of May 4, 1855 (P. L. 430; P. & L. Dig. 2891), relating to *feme sole* traders, is not unconstitutional in interfering with vested rights of a husband in his wife's property, in authorizing a conveyance by the wife, after being decreed a *feme sole* trader, of property acquired by her during coverture, but after the passage of the act. (171)

An act authorizing a city to subscribe to railway stock is not unconstitutional as involving the wrongful taking of property by taxation authorized for payment of the stock. (172) But, a penalty not being a tax, its appropriation to a private corporation is not in violation of the constitutional principle that private property shall not be taken without due process of law. (173)

An act providing for a minimum but not a maximum penalty is unconstitutional, as depriving of property, without due process of law. (174) An act directing the weighing of bituminous coal before screening it, by mine owners employing miners at bushel or ton rates, is in violation of the right of property as guaranteed in Art. I., §§, 1 and 9 of the constitution. (175)

(150) The act of June 13, 1874 (P. L. 286), provided that the owners or lessees of anthracite coal underlying lands on both sides of any stream in this commonwealth might acquire a right of way across said stream for the purpose of mining coal; and that, where the underlying ground be-

longed to others, viewers should be appointed to determine whether the tunnelling could be done with safety, and to assess the damages likely to accrue to the owner; and that such damages should be paid to said owner. B. filed a petition, praying for a right of way under a river through the land of A. A. filed a bill in equity to restrain B., and contended that the act of 1874 was in violation of Article I., sections 9 and 11, of the constitution, as taking private property without authority of law, and without compensation first made or secured. A motion to dissolve a preliminary injunction was overruled. Affirmed. —Waddel's Appeal, 4 W. N. C. 29 (1877). Affirming 8 Leg. Gaz. 37.

(151) By virtue of the will of X., B. had a vested remainder in fee in X.'s estate, after the termination of a life estate in C. By an act of assembly of April 21, 1846 (P. L. 440), the estate of B. was divested and the fee was vested in C. After C.'s death, A., the heir of C., brought ejectment against B. B.'s defence was, that the act of 1846 was unconstitutional, because it destroyed vested property rights. Judgment for B. was affirmed. —Wolford v. Morgenthal, 91 Pa. 30 (1879), Mercur, J.

(152) A. died, seized of certain land, which descended to his heirs, of whom B. was one. Subsequently the legislature passed an act vesting the title to the whole in B., in trust to sell the land and divide the proceeds among all the heirs. In proceedings for possession of the land, *held*, reversing the lower court, that the act was constitutional.—Fullerton v. McArthur, 1 Gr. 232 (1855), Black, J.

(153) The act of March 25, 1848 (P. L. 250), provided that the district commissioners, upon complaint of any person of an overflow, might give notice to one whose bank was out of repair, to repair the same within forty-eight hours, and that, in case of his failure to do so, they might enter, repair, and collect the cost by *scire facias*, and that the owner in defence might show nothing but payment. The commissioners entered on A.'s land, made repairs, and filed a lien as provided by the act. On *scire facias* against A., he contended that the act was unconstitutional, as depriving him of property without due course of law. Judgment for defendant was affirmed on the ground that the act provided no mode of determining the necessity for repair.—Philadelphia v. Scott, 81 Pa. 80 (1876), Agnew, C. J.; s. c. 2 W. N. C. 714. Affirming 9 Phila. 171; s. c. 31 L. I. 12.

(154) A. petitioned for the appointment of viewers to assess benefits and damages by reason of the opening of a street by the city of B. The viewers were appointed, and B. moved for a vacation of said appointment, on the ground that proceedings to assess benefits and damages had already been had under the act of April 1, 1870 (P. L. 751), which gave the city a right to appoint viewers and have damages assessed without the intervention of the courts. Motion overruled, and viewers' report confirmed.—Judgment affirmed, on the ground that the act of 1870, in so far as it made the city a judge in its own case in condemnation proceedings, was a violation of the declaration of rights.—Fisher's Petition, 178 Pa. 325 (1896), Williams, J.

(155) The act of April 14, 1851 (P. L. 581), appointed certain commissioners to carefully retrace the original lines of a certain avenue in the borough of Wyoming. These commissioners made their reports, fixing the lines of the road otherwise than as actually used as far back as there was any recollection of living men. There was no sufficient evidence that the lines as so fixed were the "original lines." The borough authorities passed an ordinance requiring the property owners to conform to the new lines of the road and A. and others filed a bill to restrain the removing of buildings and improvements for the purpose of opening the avenue according to the report. The court granted the decree, on the ground that the act did not provide for "due process of law." Decree affirmed.—Hancock v. Wyoming Borough, 148 Pa. 635 (1892); s. c. 24 Atl. 88.

(156) The act of May 23, 1889 (P. L. 277, art. 17, § 2; P. & L. Dig. 675), provided for a topographical survey of cities of the third class, and prescribed that upon the plot should be laid out prospective streets which might be deemed necessary, and gave to the city engineer and his assistants power to enter upon the lands and premises of persons within such cities for the purpose of making said survey. On exceptions to a survey under this act, it being contended that the act was unconstitutional, *held*, that it was constitutional, not being in violation of any constitutional right of the owners of property.—Topographical Survey, 6 York, 171 (1893).

(157) The legislature passed an act on June 16, 1836 (P. L. 750), authorizing a tract of land adjoining the city of Pittsburgh to be surveyed and set off as a city district for the city of Pittsburgh; another act passed March 1, 1837 (P. L. 29), directed that commissioners be appointed to lay off streets, lanes, alleys, and squares, in said district, and to make a plan thereof, and return it to the quarter sessions, which court was to fix a day when objections to said plan should be heard. Power was also given to the councils of Pittsburgh to open any of these streets on the petition of thirty freeholders within the district so laid off. Objection was made, on the ground that the acts were unconstitutional, as they violated Art. IX., § 10, of the constitution of 1790 (replaced by Art. I., § 10, of the constitution of 1874), which pro-

vides that no private property shall be taken for public use without compensation. Objections sustained. On *certiorari*, *held*, reversing the lower court, that the property was not taken, within the meaning of the constitution, until the streets were actually opened.—Pittsburg, District of, 2 W. & S. 320 (1841), Kennedy, J.

(158) A. laid out a roadway on a large tract of land in Philadelphia, and, by writing recorded, dedicated the same as a street for public use, and especially for the accommodation of the purchasers of his tract. The established plan of the city provided other streets through the tract, and A.'s street was vacated by act of assembly. B. objected that the act was unconstitutional, as the roadway was not a public grant, but a mere private way and easement. Judgment against B.—Bauer v. Andrews, 7 Phila. 359 (1870), Allison, P. J.

(159) A., one of B.'s heirs, was a weak-minded person. In the partition of B.'s real estate, the orphans' court appointed a trustee for A., and all notices, etc., in the partition were served on this trustee. An act of assembly was subsequently passed to validate the proceedings. The vendee of the party who took the property under the partition proceedings having brought ejectment against A., and having put in evidence the above proceedings and act, the court refused to instruct that the proceedings were void, and the act unconstitutional, and there was a verdict for the plaintiff. On error, the judgment was reversed, it being *held*, that the act was unconstitutional, as it deprived A. of his property without due process of law.—Richards v. Rote, 68 Pa. 248 (1871), Sharswood, J.; s. c. 3 Leg. Gaz. 198.

(160) The act of May 9, 1871 (P. L. 263; P. & L. Dig. 1686), applying to swamp lands belonging to several owners disjointly, that had been once drained, provided that, on petition of an owner of such lands, commissioners should be appointed to view and determine whether the lands described in the petition could be redrained, and what drains should be made. The act required no notice to the landowner of the appointment of the commission or their report, but, on the filing of the same, he could be ordered to open the drains, within a given time under a penalty. On petition of A., commissioners were appointed, who reported it advisable to redrain certain lands belonging to B. and others. Exceptions by B. that the act prescribed a course that was in effect the taking of private property without due process of law were overruled, and an order for the drainage was issued by the court. Order reversed on the ground that the act was unconstitutional.—Rutherford's Case, 72 Pa. 82 (1872), Agnew, J.; s. c. 5 Leg. Op. 38, 29 L. I. 260.

See, also, Craig v. Kline, 65 Pa. 399 1870), Agnew, J. Affirming 2 Leg. Gaz. 81.

(161) The act of April 6, 1859 (P. L. 387, § 1; P. & L. Dig. 724), provided that any court having equity jurisdiction, on motion of the plaintiff in any equity suit where the court had acquired jurisdiction of the subject-matter in controversy by the service of its process on one or more of the principal defendants, might order subpœnas or other process in such suit to be served on defendants out of the jurisdiction of the court, wherever they might be found. *Held*, unconstitutional, in so far as it provided for service on defendants resident beyond the limits of Pennsylvania.—William Penn Building & Loan Ass'n v. Mayer, 20 Phila. 413 (1888), Swartz, P. J.

(162) The act of April 21, 1852 (P. L. 386, § 1), relative to Berks and Tioga Counties, required a specific affidavit of defence in certain cases. In assumpsit on a promissory note, judgment was entered against B. for want of such an affidavit as designated in the act. B. took a writ of error, contending that the act was unconstitutional. Judgment affirmed, the court declaring that the act was constitutional.—Taggart v. Fox, 1 Gr. 190 (1854) Black, J.; s. c. 2 Pitts. L. J. 166.

(163) The act of April 3, 1851 (P. L. 305), authorized judgments to be entered in certain cases for want of an affidavit of defence. In an action of debt on a note, a rule for judgment for want of an affidavit of defence under this act was made absolute, defendant's rule for arbitration being discharged. A writ of error was taken on the ground that the act was unconstitutional. *Held*, that the act was constitutional. Judgment affirmed.—Hoffman v. Locke, 19 Pa. 57 (1852), Black, C. J.

(164) The 13th section of an act passed in 1862 provided that the balance found due from a collector of school taxes by the secretary of the school board should be entered in the prothonotary's office of the proper county, and should have the same effect as a judgment. The sureties of a collector of school tax, against whom such a balance had been entered, contended that the act was in conflict with the constitutional provision securing to every man a trial to ascertain and fix the amount due. *Held*, constitutional, and application to set aside the proceeding or open judgment dismissed.—Williams Township School Directors v. Reed, 2 Pears. 187 (1874), Pearson, J.

(165) An act of assembly authorized the governor to subscribe on behalf of the commonwealth for stock in the A. company, the amount to be subscribed to depend on the length of the road. By a mistake of the surveyors of the A. company in stating the length of the road, the state subscribed and paid for a greater amount of the stock than was authorized. The act of March 19, 1834, directed the governor to bring a suit against the company for the amount of stock over-subscribed. *Held*, in an action under this last act, that it was constitutional. Judgment for the commonwealth reversed on other grounds.—New Alexandria

Turnpike Co. v. Comm., 2 Watts, 433 (1834), Rogers, J.

(166) In a proceeding on a foreign attachment under act of April 29, 1891 (P. L. 35, § 1; P. & L. Dig. 2166), which provided that a garnishee in a foreign attachment should be taken as a party to the cause, and allowed a counsel fee, on a discontinuance, or other final disposition thereof, prior to answer filed, it was *held*, in a case which was pending at the passage of the act, that the act applied to the case, and was not unconstitutional, as it did not affect vested rights of the plaintiffs as they existed at the time (previously to the passage of the act) of the impetration of the writ.—Boyd v. Davis, 1 D. R. 438 (1892).

(167) The by-laws of a certain society provided that every member should pledge himself to submit all cases of dispute with the society to a committee of its members on pain of expulsion. A. instituted proceedings for sick benefits in a court of law, and was expelled from the society. In proceedings by him to be restored to membership judgment was given for A., the court holding a by-law to be unconstitutional which provided for the expulsion of a man from a society in which he had vested property interests.—Sweeny v. McLaughlin Beneficial Soc., 14 W. N. C. 466, 486 (1884), Ludlow, P. J.

(168) An act of assembly provided that all sales of real estate made after the return day of writs of execution should not on account of such irregularity be set aside, invalidated, or in any manner affected, but should be as good and valid to all intents and purposes as if made on or before the return day of such writs. In an action to try title, the defendant claimed under a sale after the return day of a *sci. fa.* issued on a mortgage. The plaintiff claimed under a sale under a subsequent mortgage, which sale was void as against the former sale if valid. Judgment was given for the defendant below, which, on error, was reversed, on the ground that the former sale was void, and was not validated by the act, which was *held* unconstitutional, as authorizing the taking of property without due process of law.—Dale v. Medcalf, 9 Pa. 108 (1848), Burnside, J.

(169) On *certiorari* to review the judgment of a justice of the peace, the defendant objected to a judgment rendered by default against him before the justice, two days before the date fixed for the hearing in the copy of the summons served upon him. *Held*, that such judgment was a violation of his constitutional rights.—Sauser v. Werntz, 21 Pitts. L. J. 15 (1873), Walker, J.; s. c. 1 Foster, 237, 5 Lanc. Bar, No. 18.

(170) An act of assembly imposed on the agencies of foreign insurance companies in the city of Philadelphia a tax of 2 per cent. on their receipts, payable to the Philadelphia Association for the Relief of Disabled Firemen. In an action on the bond of an agent of a foreign insurance company coming within the provisions of the act, to recover the penalty of the bond for non-payment of the percentage, as required by the act, judgment was rendered below for the plaintiff. On error, reversed, on the ground that the act was unconstitutional, not being a tax, or imposition for the supply of the public treasury, but a mere requisition that one class of men should pay a portion of their earnings to another.—Philadelphia Ass'n for Disabled Firemen v. Wood, 39 Pa. 73 (1861), Lowrie, C. J.; s. c. 1 Luz. L. Obs. 257.

(171) B. was deserted by her husband, A., in 1867, and was in 1873 decreed a *feme sole* trader, under the provisions of the act of May 4, 1855 (P. L. 430; P. & L. Dig. 2891). She subsequently conveyed to C. land which she had acquired in 1860, during coverture. In ejectment by A. against C., after the death of B., A. contended that the act did not and could not constitutionally authorize B. to convey her husband's vested interest in her real estate. The court below sustained the contention, and directed a verdict for A. On error, reversed, on the ground that, B. not having acquired the property till after the passage of the act of 1860, A. had no vested right with which the act interfered, and the right he acquired on B.'s acquisition of the property he held subject to the act of 1855. Judgment for A. reversed.—Moninger v. Ritner, 104 Pa. 298 (1883), Gordon, J.

(172) A bill in equity was filed in the supreme court by certain citizens of Philadelphia to restrain the mayor and other officers of said city from subscribing and paying for a large amount of railroad stock as authorized by certain acts of the legislature. It was urged that the acts authorized an unconstitutional taking of property through the taxation authorized for payment of the stock. Motion for injunction refused.—Sharpless v. Mayor of Philadelphia, 21 Pa. 147 (1853), Black, C. J.

(173) The act of March 24, 1851 (P. L. 229; P. & L. Dig. 3478), provided that vessels licensed to coast, and not taking a pilot, should pay half pilotage, and those not licensed should pay full pilotage, to be recovered in the name and for the use of a certain society for the relief of pilots. An action of debt was brought by this society under the provisions of this act. The defendant contended that the act was unconstitutional, in that it imposed a duty on individuals for the benefit of a private corporation. Judgment for plaintiff affirmed.—Collins v. Society for Relief of Pilots, 73 Pa. 194 (1873), Sharswood, J.

(174) On a case stated, it appeared that B. had violated a borough ordinance which prohibited the carrying on of a transient retail business without a license, and which imposed a penalty of not less than $100, for its violation, but which fixed no maximum penalty. *Held*, unconstitutional.—South Bethlehem v. Hackett, Carhart & Co., 4 North. Co. 381 (1895), Scott, J.; s. c. 12 Lanc. L. R. 196.

(175) Indictment of B. for screening coal mined by his employees before weighing the same, contrary to the provisions of the act of July 15, 1897 (P. L. 286, § 1; P. & L. Dig. Supp. 427), prohibiting the screening of bituminous coal before weighing to determine the compensation of the coal-miner. B.'s defence was that the act was unconstitutional under Art. I., §§ 1 and 9, of the bill of rights, as interfering with the right of property. Indictment quashed.—Comm. v. Brown, 45 Pitts. L. J. 179 (1897), Frazer, J.; s. c. 6 D. R. 773.

6. Liability to Answer for the Acts of Another.

An act which provides that a person shall be liable in damages for the negligence of another over whom he has no control is in violation of the bill of rights. (176)

(176) The act of June 2, 1891 (P. L. 176, art. 8; P. & L. Dig. 3086, 3087), provided that every owner or operator of an anthracite coal mine in the state should employ a "certified mine foreman," and provided for the issuing of certificates of qualification to such foremen, and prescribed their duties about the mines. Section 8 of Article XVII. of the same act (P. & L. Dig. 3108) provided that, for any injury to person or property occasioned by the failure of the mine foreman to comply with the provisions of the act, the owner or operator of the mine should be liable. In an action, under the act, against a mine owner, to recover damages for negligence of a foreman, judgment against the defendant was reversed, on the ground that the act, in so far as it imposed liability on the mine owner for the negligence of the foreman, was in violation of the bill of rights. —Durkin v. Kingston Coal Co., 171 Pa. 193 (1895), Williams, J.; s. c. 33 Atl. 237.

7. Eminent Domain—Public Purpose.

An act authorizing the taking of private property for public use without compensation is unconstitutional. (177)

The taking by a city of property required for opening a street, authorized by act of legislature, is within the power of eminent domain, and is therefore constitutional (178); so, also, an act providing for the laying out of private roads, when they are necessary, is not a taking of private property for private use, within the meaning of the constitutional prohibition. (179)

The power of eminent domain extends also to corporate franchises, hence the road of a turnpike company, or a bridge, may be taken. (180–181)

Land may be condemned for schoolhouse sites, as the purpose is a public one (182), even though the land be held in trust for private purposes. (183)

So, also, operators of coal mines may be authorized to condemn adjoining land for a necessary lateral railroad from their mines (184–185); but such operators cannot be authorized to condemn land merely for their convenience in mining. (186)

The right of eminent domain can be granted only to corporations organized for public purposes (187); but an act providing for the incorporation and regulation of natural gas companies and requiring them to furnish gas to consumers, may give to such companies the right of eminent domain for the transportation and distribution of gas. (188)

Before the constitution of 1874, the rule that land condemned must be compensated for, applied only to damages for the taking, and not to consequential damages due to the actual taking; and in the absence of a special statutory provision to that effect, such consequential damages could not be recovered. (189–190) The constitution of 1874 has, however, established a different rule. [See XVI. (G), 5, *infra.*]

Under this rule the use of a public street for a railway was held not such a taking of private property for public use, within the meaning of the constitution, as entitled adjoining property owners to compensation, even though they had title to the middle of the street taken; such taking was held merely a change in the use of the street, and the damage to individual properties merely consequential (191); but the legislature might provide for consequential damages due to a change in the use of land already taken for a public use, and compensated for, and where provision was made for such additional compensation it was recoverable. (192)

The rule that compensation must be made does not apply to a continuing burden, —such as the maintenance of fences,— which the use of the land taken throws on the party who has been compensated for the taking. (193)

An allowance of six per cent. having been made by the commonwealth to the original grantees, for roads and highways, such allowance is compensation for land taken for such purpose; hence an act authorizing the taking of land for a road or highway is not unconstitutional if it does not make provision for compensation for the land so taken, and compensation in such cases cannot be recovered except under a special provision of the statute. (194–195)

The vacating of a public street is not taking private property for public use, hence the legislature may vacate a public street

without the consent of those whose private interests may be affected thereby, and without compensation for the consequential injury. (196)

A legislative grant to a railroad company of authority to occupy a public road on condition of supplying the public with another road in its place, does not imply an authority to take the road so permitted to be occupied as against the public without making compensation to the private owner. (197)

The right of eminent domain, for the purpose of opening streets, is exercisable by act of the legislature over property to which immunity from the exercise of such right has previously been granted by legislative enactment. (198)

It is not unconstitutional for an act to require a county to pay damages upon the taking of a private road, notwithstanding the fact that an adjoining county had previously taken another part of the same road, the owner, after such previous taking, having continued to collect tolls as before. (199)

Where provision is made for recovery of compensation within a reasonable time, it is not necessary that such compensation should be actually ascertained and paid before the property is taken. (200)

An act authorizing the payment of fines imposed by a criminal court to a corporation for the purpose of improving a library for the use of the court, is constitutional, as such payment is for a public purpose, and is not a taking of private property for private use. (201)

The power of eminent domain can be exercised only where property taken is converted from a lower to a higher use; the state has no right to transfer property from one person or body corporate to another for the discharge of the same use; hence, the legislature has no power to authorize one railroad company to appropriate premises of another railroad company which are necessary to the proper conduct of the business of the latter. (202)

A law granting the right of eminent domain will be presumed constitutional, and if its constitutionality is questioned, the clause or section which it violates should distinctly appear. (203)

(177) A. brought suit against B. for obstructing a private way. B. defended on the ground that the way was public under act of assembly providing that all streets, lanes, and alleys in the city, if not less than twenty feet in width, laid out, appropriated, and opened by private persons for public use, etc., should be deemed, taken, and be public highways. A later act made a similar provision but without limit as to the width of the alleys, etc. *Held*, that the acts did not apply to private ways, and, if they did, they would be unconstitutional, as they provided for no compensation. Judgment for A.—Maffatt v. Perry, 3 Pitts. 8 (1865), Williams, J.

(178) In an action on the case by the A. city against B., for obstructing a street laid out under authority of an act of the legislature, it was contended by the defence that the case was not embraced in the power of eminent domain, and the seizure of private property under it was therefore unconstitutional. The court so instructed the jury, and there was a verdict for B. On error, reversed, the supreme court holding that B.'s contention was invalid.—Pittsburgh v. Scott, 1 Pa. 309 (1845), Rogers, J.

(179) The act of June 13, 1836 (P. L. 551, § 12; P. & L. Dig. 4141), authorized the laying out of private roads, "if it shall appear to viewers of the court directing the view that such road is necessary." The act provided that such road should be deemed a lawful private road. A. petitioned the court for a private road through improved land of B. The jury reported that "there is occasion" for the said road. The court confirmed the report. B. excepted on the ground that, according to the report, there was no necessity for the road, and that the act of 1836 was unconstitutional, in that it appropriated private property of an individual to the use of another. Exceptions overruled.—Pocopson Road, 16 Pa. 15 (1851).

(180) The act incorporating the Kensington District of the Northern Liberties authorized the commissioners to appoint surveyors to lay out and open any new street which they might deem necessary and convenient for the regular town plan; and gave them power, for these and other purposes, to enter upon any land in the district, whether held by individuals or corporations. A turnpike company, which had been chartered by the state, and was required to maintain a road not less than fifty nor more than sixty feet wide, had part of its turnpike within this district. The commissioners made a plan which took part of the turnpike as a street. The company took exceptions to the condemnation proceedings, on the ground that the act was unconstitutional, as it violated the charter given to the exceptant. *Held*, that the act was constitutional.—Kensington, Third Division of, 2 Rawle, 445 (1830), Rogers, J.

(181) Proceedings were commenced to condemn a toll bridge, and make it a free county bridge, under the act of May 1, 1876 (P. L. 86; P. & L. Dig. 4213). It was contended that the act of 1876 was unconstitutional. *Held*, affirming the lower court, that the right of eminent domain

extends to corporate franchises, therefore the bridge could be taken by the county.—Towanda Bridge Co.'s Case, 91 Pa. 216 (1880).

See, also, Phila. v. Gray's Ferry R. Co.'s Appeal, 102 Pa. 123 (1883), Paxson, J.

(182) The act of April 9, 1867 (P. L. 51, § 1; P. & L. Dig. 774), gives to school directors power to condemn land for sites for schoolhouses. In an action arising on a condemnation of land under the provisions of the act, it was *held*, in affirming judgment of the court below, that, as the taking authorized by the act was for a public purpose, and adequate security was provided for compensation, the act was constitutional.—Long v. Fuller, 68 Pa. 170 (1871), Read, J.; s. c. 2 Lanc. Bar, 47.

(183) Land was conveyed to certain persons as trustees "for all German and English societies, Methodist only excepted, for the only proper use and benefit for said societies, for school and worship for every religion and denomination, Methodist only excepted." The school directors of the township appropriated a part of the lot for a schoolhouse site. The trustees of the land filed a bill in equity, and asked for an injunction to restrain the directors from occupying the land. The directors contended that they could take the land by right of eminent domain. Injunction granted. Motion to continue injunction denied.—Rittenhouse v. Creasy, 12 Luz. Leg. Reg. 14 (1882), Rice, P. J.

(184) The act of May 5, 1832 (P. L. 501, § 1; P. & L. Dig. 3993), provides that the owners of mines shall have the right to exercise the right of eminent domain, for the purpose of building railways from the mines, and shall make full compensation for the land taken. In a proceeding by plaintiff to take land of the defendant for the purposes authorized by the act, the defendant appealed from the report of the viewers allowing the road; and the judge of the common pleas, in reply to a point of defendant raising the question of constitutionality, charged that the act was as clearly constitutional as any of the road laws. There was a verdict and judgment thereon for plaintiff. The jury also found that the road was necessary. On error, judgment was affirmed on the opinion (as to this point) of the court below.—Harvey v. Lloyd, 3 Pa. 331 (1846), Burnside, J.

(185) The act of May 5, 1832 (P. L. 501; P. & L. Dig. 3993), provides that an owner of land, etc., not more than three miles from a railroad, canal, or slack water navigation, if he desire to make a lateral railroad over intervening lands, may enter upon such lands, mark a route, and petition the court for the appointment of viewers, who shall report whether such route is necessary and useful for public or private purposes, and the damages sustained by the owners of the intervening land. Viewers were appointed on A.'s petition, to determine whether a lateral railroad over B.'s land was necessary and useful for public or private purposes. From an award in favor of A., B. appealed, and contended that the act was in violation of the constitutional provision which declares, "the right of acquiring, possessing, and protecting" to be "inherent and indefeasible." Judgment for A. affirmed.—Schoenberger v. Mulhollan, 8 Pa. 136 (1848), Burnside, J.

(186) The act of June 13, 1874 (P. L. 286), provided "for a right of way across or under the rivers or other streams of this commonwealth, for the better and more convenient mining of anthracite coal." In pursuance of this act, A. and B., lessees and owners of lands on either side of the Susquehanna river, petitioned the common pleas court of Luzerne County for a right of way under the river. The C. coal company filed a bill setting forth that the petition of A. and B. was for a way through land of the complainants, and that the act of 1874 was void, as it authorized the taking of private property for private use. Decree, continuing special injunction, affirmed, and the act *held* unconstitutional.—Waddell's Appeal, 84 Pa. 90 (1877). Affirming 8 Leg. Gaz. 37.

(187) B. erected on his land, along a stream, a "splash dam," by which the water was retained in large quantities, and then let out for the purpose of floating logs down stream. A., a mill owner, lower down on the stream, brought an action on the case against B. to recover damages for injuring and unreasonably obstructing A.'s use of his mill property, by cutting off the water flooding A.'s wheels, and breaking his dam, and by the floating of the logs. B. justified, under an act of assembly authorizing the erection by any person, on to his own lands or the lands of another, of dams, etc., for floating timber. *Held*, affirming judgment on verdict for A., finding that B. had unreasonably exercised his rights, that the act in question neither had conferred nor could confer such powers on B.; that only corporations organized for public purposes could be clothed with such privileges, and to such only could the legislature grant the commonwealth's right of eminent domain.—Finney v. Somerville, 80 Pa. 59 (1875), Gordon, J.

(188) The act of May 29, 1885 (P. L. 29; P. & Dig. 3218), provided for the incorporation and regulation of natural gas companies, gave to such companies the right of eminent domain, for the transportation and distribution of such gas, and made it the duty of such companies to furnish to consumers along their lines and within their respective districts, natural gas for heat, light, or other purposes, as the consumers might desire. A bill in equity was filed to restrain the defend-

ant, a natural gas company, from appropriating lands for the laying of its pipes for the transportation of natural gas. The bill alleged that the act of 1885 was unconstitutional, and that the appropriation was for a private not for a public purpose. Dismissal of the bill affirmed.—Johnston v. People's Natural Gas Co., 5 Cent. R. 564 (1886).

(189) Bill in equity by A. against the city of B., to restrain said city from disposing by sale of a strip of ground theretofore forming part of what was termed the Southwark landing, and which had been subject to the easement of the public for traffic. The city, for answer, set out an act of assembly of June 16, 1868 (P. L. 1166), revising the lines of certain streets bounding said land, and authorizing the city to sell said strip of land, in pursuance whereof an ordinance had been passed authorizing a conveyance of said property. A. contended that he and the other abutting property owners had a right to have the space forever kept open for public use, by virtue of the constitutional provision that no man's property shall be taken or applied to public use, without the consent of his representatives and without just compensation being made. *Held*, that this provision applied only to cases of direct taking, and not to cases of consequential damage such as the present; and bill dismissed.—Godley v. Philadelphia, 7 Phila. 637 (1869), Sharswood, J.; s. c. 26 L. I. 12.

(190) The B. company was by the legislature granted the right to build walls for the protection of the banks of a certain stream; such walls were built, and backed water on A.'s land. A., in 1867, sued B. to recover for the damage thus done, and took judgment against B. Reversed, on the ground that the wall had been erected under authority f the state, and the damage was not direct but consequential, for which the constitution provided no remedy.—Tinicum Fishing Co. v. Carter, 90 Pa. 85 (1879), Paxson, J.

See, also, McKeen v. Delaware Div. Canal Co., 49 Pa. 424 (1865), Agnew J.; West Branch & Susq. Canal Co. v. Mulliner, 68 Pa. 357 (1871), Thompson, C. J.

(191) A. filed a bill for an injunction against the B. street railroad company, averring that B. was about to lay tracks on the street in front of A.'s property, under authority from the legislature, and had entered no security for the damage that would thereby be done to A.'s property. A. contended that this would be a taking of private property for public use, as the title to the land of the street was in the abutting owners, to the middle of the street. *Held*, that the proposed act was not a "taking" within the meaning of the constitutional provision, but merely a change in the manner of use of the street, and that the injury to abutting owners was merely consequential. Injunction refused.—Faust v. Passenger Ry. Co., 3 Phila. 164 (1858), Strong, J.

See, also, Mercer v. Pittsburgh, Fort Wayne, and Chicago R. Co., 36 Pa. 99 (1859), Read, J.

(192) A turnpike road was constructed over the ground of individuals, who, in 1825, receipted in full for damages sustained by its construction. In 1849 an act was passed authorizing the turnpike company to sell its corporate rights to a railroad company, and the latter to purchase, for the purpose of laying rails thereon, the same to be laid under the act of incorporation of the railroad company, which provided for the valuation of land occupied by the road, and of all damages which the owner or owners should sustain or might have sustained by reason of its construction. A., who held under the original owners (those who had receipted for the original damages), petitioned for an inquest to assess damages done to him by the building of the railroad, but the report assessing damages was set aside by the court on the ground that the railroad company had taken no ground except what had previously been taken for the turnpike; and that A. was not entitled to damages for the change in the manner of using the road. On appeal and error, the judgment was reversed, on the ground that, though the legislature might have omitted to enjoin compensation for the damages consequent upon the taking of the turnpike for the railroad, yet, as the legislature might provide for such damages, and as such damages had been so provided for in this case, A. was entitled thereto.—Mifflin v. Harrisburg, etc., Railroad Co., 16 Pa. 182 (1851), Bell, J.

(193) Action by A. to recover from the B. railroad company the cost of fencing her land along its tracks, under the local act of March 28, 1868 (P. L. 514), which provided that railroad companies should keep fences along their tracks, and that, in case of neglect, any person might build a necessary fence and recover its cost from the railroad. Damages to the land had been paid to the owner when the railroad was built. It was claimed that the company, once having paid for the damage caused to the land, could not be compelled to pay more, and that the act was unconstitutional, as taking private property for the use of another. *Held*, reversing judgment for plaintiff, that legislation compelling the railroad company to bear a burden resting upon the land of another, for which it had once compensated him, was void.—Welles v. Northern Cent. R. Co., 150 Pa. 620 (1892), McCollum, J.; s. c. 25 Atl. 51.

(194) A turnpike road was laid out over land of A. under authority of an act of assembly. In a case stated in the supreme court, A. claimed compensation for the land so taken, no appraisement thereof or payment therefor having ever been made. It was contended that the act was unconstitutional, as authorizing the taking of private property for public use without compensation. *Held*, that, as such compensation had been made originally in each purchaser's particular grant, by an allowance of six acres for roads and highways, in addition to every hun-

dred granted, the act was not an infringement of the constitution. Judgment for the defendant. —McClenachan v. Curwin, 3 Yeates, 362 (1802), Shippen, C. J., Brackenridge, J.

(195) In an action of assumpsit for constructing a road laid out under a special act of the legislature of April 7, 1873, the defendant township contended that the act was unconstitutional, as it provided for the assessment of damages, but not for their payment. *Held*, affirming judgment for the plaintiff, that, as such compensation had been made in each purchaser's original grant, there was no right to compensation unless directly authorized by statute, such compensation being a matter of grace on the part of the legislature, and not a constitutional right; and moreover, that the act of June 13, 1836, §§ 7, 8, and 9 (P. L. 551), as extended by the act of May 29, 1840 (P. L. 749), furnished an adequate method for the recovery of such damages.—East Union Twp. v. Comrey, 11 W. N. C. 533 (1882), Gordon, J.

See, also, Sharett's Road, 8 Pa. 89 (1848), Bell, J.; Plank Road Co. v. Thomas, 20 Pa. 91 (1852), Black, C. J.

(196) A. filed a bill in equity praying that B. might be restrained from obstructing or continuing to obstruct an alleged street by erections thereon. The street had been laid out by the public. A subsequent act of the legislature vacated said street, and B., the owner of adjoining lots, claimed the right to occupy and build upon the soil *ad medium filum viæ*. A. contended that this was an injury to him, because his property could not be conveniently reached were that street not kept open and unobstructed, and that the legislature had no constitutional power to vacate a public street without the consent of all persons whose private interests might be affected. *Held*, reversing the lower court, that the public had but a right of way, and that being abandoned by the state, the owners of the soil could resume their unlimited control of it.—Paul v. Carver, 24 Pa. 207 (1855), Black, J.

See, also, McGee's Appeal, 114 Pa. 470 (1887), Clark, J.

(197) A public road was laid out over A.'s land. Subsequently a railroad company appropriated the road, and laid their tracks upon it, without an assessment of damages under the general railroad law. Under that law, the company made a new road to supply the place of the one taken. A., the owner of the soil of the old road, brought ejectment therefor against the railroad company. The court held, that, by supplying the common road under the provisions of the statute, the company became entitled to the use of the old road without compensation to the owner; and there was a verdict for defendant. On error, judgment on the verdict was reversed, on the ground that the supplying of the old road by another was a vacation of the former, which *eo instante* vested the owner's right of occupancy; and that A. was entitled to compensation.—Phillips v. Dunkirk, etc., R. Co., 78 Pa. 177 (1875), Gordon, J.

Where a turnpike company, having merely a right of way over land, lays railway tracks along the line of its road, it is liable for damages to the owner of the land; even though the claimant has given a release of damage to the turnpike company, it would still be liable on changing a road that could be used by the whole neighborhood into one beneficial merely to the company. —Mumma v. Harrisburg, etc., R. Co., 1 Pears. 24 (1851), Pearson, J. Affirmed by supreme court, July 20, 1852.

(198) By a private act passed March 20, 1849 (P. L. 194), it was enacted that no street or road should thereafter be opened through the land of a certain cemetery or burial place. By the act of June 8, 1881 (P. L. 68; P. & L. Dig. 563), it was enacted that the municipal authorities or courts having jurisdiction might open streets at such places as they might deem necessary, any private statute to the contrary notwithstanding. On a rule to stay proceedings relative to opening a street through said cemetery, it was urged that the latter act was unconstitutional, in that it worked an impairment of contract. *Held*, a valid exercise of the power of eminent domain; and rule discharged.—Twenty-Second Street Opening, 15 Phila. 409, 39 L. I. 128 (1882), Thayer, P. J.

(199) A. constructed a private road upon his own land, erected a toll-gate thereon, and collected toll. The act of April 5, 1849, authorized the county to take the road for a public highway, upon the payment of damages to A., to be assessed by a jury of viewers. An award of damages was made in favor of A. An adjoining county had previously taken a part of A.'s road, but A. had afterwards collected the same toll; and the county in this case contended, on appeal, that the other county should have made compensation, and that to impose such damages on this county was unconstitutional. The proceedings were affirmed, because there was no transfer of obligation in the former case, and the appellant county had merely paid for the benefit it had received.—Carbon County's Appeal, 12 L. I. 35 (1855), Woodward, J.

(200) The A. city was authorized by an act of the legislature to lay out and open a street, and establish a public landing, and in so doing, appropriated land of B., who subsequently obstructed the street, and was sued therefor by the city. B. contended that the act authorizing the street was unconstitutional, as it did not provide compensation for the land. The act provided a remedy for recovery of damages by the appointment of viewers, on application of a party con-

sidering himself damaged. The court below sustained B.'s contention, and there was a verdict for B. On error, *held*, reversing judgment, that, an adequate remedy being provided for compensation without unreasonable delay, it was not necessary that the compensation should be actually ascertained and paid before the appropriation.—Pittsburgh v. Scott, 1 Pa. 309 (1845), Rogers, J.

(201) The act of April 11, 1866 (P. L. [1867] 1460), provided that all fines imposed by the court of quarter sessions of Luzerne County should be paid to an incorporated association for the purpose of improving a law library, which library, by the charter of the corporation, was declared to be for the use of the courts of the county. In a case stated to try whether the county commissioners, or the library association under the act, were entitled to a fund derived from fines, and in the hands of the defendant as a stakeholder, it was *held*, that, the purpose of the act being to provide a library for the use of the courts of the county, and such purpose being one for which public money might be legitimately employed, the act was constitutional.—Comm. v. Ehret, 1 North. Co. 168 (1882), Schuyler, J.

(202) The A. railroad company, having power from the legislature to build a railroad between two points, desired to build a road which would necessarily take in a portion of the B. railroad company's road. Being unable to agree with B. as to the amount of damages, A. petitioned for viewers to estimate the damages. B. contended that all the lands owned by it were necessary for the uses and purposes, present and prospective, of its road, and denied the right of A. to take the property by eminent domain for railroad purposes. *Held*, that A. could not take the property of B. which was necessary for B.'s road.—Cleveland & Pitts. R. Co.'s Petition, 2 Pitts. 348 (1862), Ritchie, J.

(203) The city of Philadelphia wished to secure the land about League Island to present it to the United States for the purposes of a naval station. The owners refused to sell, and the city applied to the common pleas to appoint a jury to appraise the land in question. The jury was appointed and reported, and the landowners filed exceptions alleging generally the unconstitutionality of the special act of assembly authorizing the common pleas to appoint such jury, and, in connection therewith, that the United States was, as to the state of Pennsylvania, a foreign nation, and property taken for the United States was not for the public use. No special clause of the constitution was alleged as violated, for which reason the exceptions were dismissed.—League Island, 1 Brewst. 524 (1868), Brewster, J.

8. Tax Returns.

An act requiring persons subject to taxation to make a sworn return of their property is not in contravention of the inviolability of private property, as protected by Art. I., §§ 1 and 8, of the constitution. (204)

(204) The act of June 30, 1885 (P. L. 193, §§ 6 and 7), supplied by the act of June 1, 1889 (P. L. 420; P. & L. Dig. 4476), provided that taxable persons should make sworn returns of their property subject to taxation. A bill in equity was filed against the commissioners and some of the assessors of a county, to restrain them from requiring such returns, on the ground that the act was unconstitutional, as interfering with the inviolability of private affairs. Bill dismissed.—Sanderson v. Lackawanna County Commissioners, 3 C. P. Rep. 1 (1886), Hand, P. J.

9. Municipal Assessments.

An act authorizing the apportionment of damages occasioned by the extension or opening of a street, on the property in the vicinity which has been benefited, is constitutional. (205–206)

An act authorizing the construction of sewers and the assessment of the cost at a certain rate per front foot, to be a lien upon the property benefited, is constitutional; and it is no defence to a *scire facias* upon such lien that the work was done without the owner's consent. (207–209)

An act providing for the paving of municipal streets, and assessment of the costs against abutting property by the foot-frontage rule, is constitutional (210); and the claim filed is evidence of the facts therein recited (211); but assessments for municipal improvements cannot be made by the foot-frontage rule upon rural property within city limits (212–214); however, a property owner will be estopped from denying the validity of such a lien, if he has helped to induce the undertaking of the improvement, thus waiving his right to object to the assessment (215–216); and rural lands included within the city limits are subject to taxation under a general assessment for general municipal purposes, though so situated as not to derive any specific benefits from the municipal institutions to maintain which the tax is levied. (217)

A local tax for a general public benefit is unconstitutional (218–219); and if, from the nature of the improvement, a fair and equal assessment cannot be made, it will not be sustained. (220)

An act authorizing the viewers of a street to apportion the damages occasioned to some of the lots by grading, and providing that such damages shall be paid by those properties which have been benefited, is constitutional. (221–223)

The power conferred upon a land company (*quasi*-corporation) to levy a tax for maintaining necessary embankments, and to collect the same by distress and sale of the goods of a delinquent, is constitutional (224); but such an act must be strictly

construed, and will not warrant the seizure by distress of the goods of a renter, to satisfy assessments made prior to his tenancy. (225)

Compensation for removing a nuisance cannot be recovered by a municipal board, without proof that the work was done. (226)

(205) On a *scire facias* against B. to recover an assessment made under an act authorizing the viewers on Market Alley, in Pittsburg, to apportion the damages occasioned to some of the lots, by opening the alley, upon other lots thereby benefited, it was argued by B. that said act was unconstitutional. Judgment against B. affirmed.—McMasters v. Comm., 3 Watts, 292 (1834), Rogers, J.

(206) An appeal was taken from a decree of confirmation of the common pleas of Alleghany County, in a proceeding for the extension of Hancock Street in Pittsburgh, on the ground that the act of April 6, 1850 (P. L. 387), authorizing such extension, and an apportionment of the amount of damages occasioned thereby upon lots in the vicinity of the extension which were benefited by the opening of the street, was unconstitutional. Proceedings affirmed. Hancock Street Extension, 18 Pa. 26 (1851), Rogers, J.

(207) Assessments were made, and a lien filed for work done in constructing a sewer, in pursuance of acts of April 8, 1864 (P. L. 324), and March 13, 1866 (P. L. 354), authorizing the city of Philadelphia to construct sewers, fix the rates and charges, and enter liens therefor. On *scire facias* on a lien against A., the affidavit of defence alleged that the work was not done at his request, nor for his benefit, nor the benefit of his property but was a public benefit, and that the acts were unconstitutional, as taking private property, for public use without consent of the owner or just compensation. Judgment for want of sufficient affidavit of defence affirmed.—Stroud v. Philadelphia, 61 Pa. 255 (1869), Read, J.; s. c. 26 L. I. 212.

(208) Action of *sci. fa. sur* municipal lien for constructing a sewer unauthorized by the property holders. Rule for judgment for want of sufficient affidavit of defence. The affidavit set forth, *inter alia*, that the assessment was unconstitutional. Rule absolute.—Philadelphia v. Church, 1 W. N. C. 299 (1875).

(209) The act of May 23, 1889 (P. L. 277, Art. V., § 3; P. & L. Dig. 622), provided that councils of cities of the third class might finally determine the necessity and authorize the laying of sewers, and assess the costs on the property benefited. A lien was filed against A. for the construction of a sewer. On a *scire facias* on the lien, A. claimed that making the determination of the necessity for the sewer by the council final was in violation of Article I., § 11, of the constitution, which provides that every one shall have a remedy by due course of law. Judgment for A. reversed.—Oil City v. Oil City Boiler Works, 152 Pa. 348 (1893), Sterrett, J.; s. c. 25 Atl. 549.

(210) Municipal claim for repair and improvement of paving in front of A.'s lot, under the act of April 23, 1889 (P. L. 44; P. & L. Dig. 391), authorizing assessments by the foot-frontage rule. The defendant claimed that an assessment without regard to the value of the abutting houses, to the extent of two-thirds of the cost of paving, irrespective of the local advantage to the property, was unconstitutional. Judgment for want of sufficient affidavit of defence.—Greensburg Borough v. Laird, 8 Pa. C. C. 608 (1890), White, P. J. Affirmed 138 Pa. 533 (1891); s. c. 21 Atl. 96.

See, also, Langstroth v. Philadelphia, 1 W. N. C. 166 (1875); s. c. 22 Pitts. L. J. 136.

(211) Under the local acts of March 16, 1819 (P. L. 129), and April 16, 1840 (P. L. 410; P. & L. Dig. 3203), a lien for municipal improvements was filed against a certain church property. The latter act made the claim filed and a *scire facias* thereon evidence of the facts set forth. In an action on such a claim, the defendants objected to the admission of the claim in evidence, on the ground that the act was unconstitutional, and the court, having reserved the question, subsequently entered judgment for defendants, notwithstanding verdict for plaintiff. On error, judgment was reversed, the supreme court *holding*, that it was proper to admit the evidence, and that the act was constitutional.—Northern Liberties v. St. John's Church, 13 Pa. 104 (1850), Coulter, J.

(212) *Sci. fa. sur* municipal lien; case stated by A. city, against B. The lien was one for grading, curbing, and paving a city street, and the property of B. against which the lien had been filed was situated in the rural portion of the city, and the assessment was calculated, as prescribed by the act authorizing the improvement, by the front foot. *Held*, that the act, in so far as it applied the foot-frontage rule to the property in question, was unconstitutional. Judgment for the city reversed.—Seely v. Pittsburgh, 82 Pa. 360 (1877), Agnew, C. J. (Paxson, J., dissenting).

See, also, Kaiser v. Weise, 85 Pa. 366 (1877).

(213) The local act of April 5, 1870, provided for the paving of a certain street, and assessing the costs on abutting property owners by the foot-frontage rule. The street passed through rural districts. The property of A. was assessed, and a lien was filed against it. On *scire facias*, A. claimed that the act was unconstitutional, as assessing rural property for public improvements. He offered evidence to prove that his property

was rural, and assessed as such, and that the improvement was for the benefit of the general public, without producing any local advantage to the owners of lands along its line. Offers rejected. *Held*, error.—Craig v. Philadelphia, 89 Pa. 265 (1879), Woodward, J. (Paxson, J., dissenting); s. c. 7 W. N. C. 117, 36 L. I. 486.

(214) A lien was filed against property of A. for part of the cost of paving a street in accordance with an act of April 3, 1873 (P. L. 504), providing for the assessment of costs against owners of property by the foot-frontage rule. On *scire facias* on the lien, the property was proved to be rural. It was urged for the defence that the act was unconstitutional, as applying the foot-frontage rule to such property. Judgment for the defendant was affirmed.—Philadelphia v. Rule, 93 Pa. 15 (1880), Gordon, J. (Paxson. J., dissenting); s. c. 8 W. N. C. 244, 37 L. I. 465.

(215) A. induced a municipal corporation to direct the grading and paving of a street in a rural district, on which his property was situated, under the act of April 2, 1870, which authorized an assessment per front foot for such improvements. Afterward, so much of said act as authorized assessments on rural property by the foot-frontage rule was declared unconstitutional. In a subsequent *sci. fa. sur* municipal claim against A., for the amount of the assessment against his property, A. pleaded the unconstitutionality of the act. *Held*, affirming the lower court, that A. by his action was estopped to set up this defence.—Bidwell v. Pittsburg, 85 Pa. 412 (1878), Mercur, J.; s. c. 5 W. N. C. 41.

(216) Land owned by A. and B. as tenants in common was sold on a judgment entered on a mortgage. On distribution, the payment of a paving lien was objected to, on the ground that the property was rural, and had been assessed by the frontage rule of valuation. The auditor found that A. had been one of the signers of a petition for the improvement of the street, in accordance with the provisions of the act of April 2, 1870 (P. L. 796), and had acted as an officer at the election of the commission. B. had taken no part in the matter. The auditor reported that, as against the interest of B., the assessment was unconstitutional, and that the city could not recover against him, but that A. was estopped by his acts from setting up a defence. Exceptions by A. to the report were dismissed. Judgment affirmed.—Ferson's Appeal, 96 Pa. 140 (1880).

(217) By the act of April 6, 1867 (P. L. 846), the territorial limits of Pittsburg were extended to embrace certain tracts of improved farm lands belonging to A. These lands were assessed for general municipal purposes, from some of which the lands derived no benefit. A. filed a bill asking relief on the ground that he had not received and did not desire the benefits of the city improvements, and regulations for which the tax was assessed, and that the taxation was in conflict with section 10, Art. I., of the constitution, as taking his property for the benefit of others, without compensation. The master to whom the case was referred reported that the land remained substantially in the same situation as before it was included within the city limits; that gas had not been extended, nor had the streets been paved, to the property, and that the land was suffiiciently watered, hence there was no need of the city water-works; that the police did not visit the locality, and the fire department could not be made available. The master, however, found against A. and the court confirmed his report. On error, affirmed.—Kelly v. Pittsburg, 85 Pa. 170 (1878), Gordon, J. (Agnew, C. J., Sterrett, J., dissenting).

(218) The local act of May 3, 1870 (P. L. 1298), provided that a certain turnpike should become a public highway, and created a corporation of seven commissioners to take charge of and improve said road. The act further, for the purpose of providing means for the making of said improvement, authorized the commissioners to levy a special tax on property within certain specified distances of the road in question. A bill was filed to restrain the collection of the tax on the ground that it was unconstitutional. The master appointed to find the facts reported that the improvement would be a general public benefit, and the court enjoined the collection of the tax. Decree affirmed, the supreme court *holding*, that the imposition of the tax was a violation of the right of private property as guaranteed by the bill of rights.—Washington Ave., 69 Pa. 352 (1871), Agnew, J.

(219) An act of assembly authorized the assessment of the cost of grading, paving, and macadamizing a public highway, upon the owners of the land lying within one mile on each side of the highway, and in proportion to the number of acres owned by each. In an action against B. to recover the assessment, it was contended that this was not a case of local improvement and taxation therefor, and that such method of assessment on rural lands was not in proportion to benefits received. Judgment for B. affirmed.—Washington Avenue Commissioners v. Curran, 29 L. I. 28 (1872), Agnew, J.

(220) The city of Pittsburg rebuilt a bridge within the city limits, under the act of May 26, 1871. The cost was assessed, at different rates, on a multitude of properties situated on eleven different streets, and the report of the viewers making the assessment was confirmed by the court. On

appeal by the property owners claiming said act unconstitutional, the order was reversed and the report set aside.—Saw Mill Run Bridge Case, 85 Pa. 163 (1878), Woodward, J. ; s. c. 5 W. N. C. 321.

(221) By the act of April 7, 1832 (P. L. 372), a street was ordered to be opened, and damages and benefits were ordered to be assessed by a jury of view, the excess of damages over benefits to any lot or lots to be apportioned separately on the lot or lots benefited. Certain damages were apportioned and assessed upon certain lots benefited, which damages were by a subsequent act made a lien on said premises. On a *scire facias* in the name of the commonwealth to use of B. *et al.* (whose property had been damaged) against A., to recover the sum assessed against his lot, it was contended that the acts were unconstitutional, as taking the private property of A. and compensating him only in benefits. Judgment for commonwealth affirmed on appeal.—McMasters v. Comm., 3 Watts, 292 (1834), Rogers, J.

(222) By the local act of April 6, 1850, viewers were appointed to ascertain whether it would be expedient to extend a street, and to determine the benefits to be derived and the damages incurred. They reported in favor of the extension, and assessed damages and benefits. Certain landowners filed exceptions to the report, on the ground that the act was unconstitutional, as assessing property for benefits derived from the opening of the street. The court below dismissed exceptions and confirmed the report of the viewers, and, on appeal, the proceedings were affirmed on the opinion of the court below.—Hancock St. Extension, 18 Pa. 26 (1851), Rogers, J.

(223) The property of A. was injured by changing the grade of a street, and the damage thus sustained was assessed upon the owners of lots that were benefited thereby, under the provisions of the act of May 16, 1857 (P. L. 549), which provided for assessing damages for opening or grading a street upon property owners by the front-foot rule. In an amicable action to recover the amount of an assessment against B., the act was attacked as unconstitutional in taking property without due process of law. Judgment for the plaintiff affirmed.—Wray v. Mayor, etc., of Pittsburg, 46 Pa. 365 (1863), Read, J,

(224) The act of September 26, 1761, incorporated a company, and authorized the division of the banks which surrounded and included a tract of meadow land between the Delaware and Schuylkill rivers, and the allotment of the number of perches of said bank each owner of said tract should make and maintain. The act of April 15, 1782 (2 Sm.L. 44), authorized the company to make and repair the bank and assess the costs upon the land within the said bank. In an action for assessments under these acts, the defendant contended that the act of 1782 was unconstitutional, because it deprived a citizen of his property without due process of law. Judgment for the plaintiff affirmed.—Garrett v. Green, 3 Penny. 370 (1883).

(225) The acts of April 12, 1760 (1 Sm. L. 227), and January 30, 1804 (4 Sm. L. 109), incorporated a land company for the improvement of certain meadow, marsh, and cripple lands, and provided for the levy and collection of a tax on the lands for the purpose of keeping in order certain sluices and embankments, and provided that such assessments could be recovered by levy, distress, and sale of the goods of a delinquent, and that, if such sum was paid by or recovered from a renter, it should be deducted from his rent. A., the owner of certain lands which had been assessed, did not pay her taxes, and the company distrained the goods of B., who held the land as A.'s tenant. B. brought replevin. It was shown that B. was not a tenant of A. at the time the assessments were made. It was also contended that the acts were unconstitutional. *Held*, affirming the court below, that the acts were constitutional, but the distress was unauthorized.—Rutherford v. Maynes, 97 Pa. 78 (1881), Trunkey, J. ; s. c. 9 W. N. C. 561, 38 L. I. 233. Affirming 9 W. N. C. 221.

(226) Motion to take off nonsuit. On the trial the plaintiff had proved a notice to defendant to remove a nuisance from his property; an order by plaintiff to a third person to remove the nuisance, defendant having neglected to do so, and payment to the person employed to remove the nuisance. The plaintiff, not having proved that the work was done, was nonsuited. Motion to take off the nonsuit refused.—Board of Health v. Pennock, 1 Clark, 323 (1842).

Compare Board of Health v. Hubert, 1 Phila. 280 ; Board of Health v. Potts, 2 Clark, 267.

10. Municipal Regulations.

The regulation of party walls is an interference with property rights sustainable only on the police power, and is to be governed and measured by a strict construction of the statute granting and regulating the power. (227)

The police power also extends to requiring railroad companies to rebuild fences destroyed by fire originating from sparks from their engines, although the charter makes no such requirement. (228)

The act of May 21, 1885 (P. L. 22 ; P. & L. Dig. 3263), prohibiting the manufacture and sale of oleomargarine, or the keeping

of the same with intent to sell, falls within the police power of the state, and is not in violation of the provisions of section one of article one of the state constitution. (229)

[The act has, however, been held by the supreme court of the United States to be an unconstitutional interference with interstate commerce, in so far as it applies to oleomargarine brought into the state and sold in the original package. See CONSTITUTION OF THE UNITED STATES, I. (A) 1.

But an act which authorizes a borough to recover all damages suffered by owners of a private watercourse is an unconstitutional invasion of private rights. (230)

(227) The act of April 8, 1872 (P. L. 986; P. & L. Dig. 509), regulating party walls in Pittsburgh, prescribes the proceedings to be taken when the owner of any lot desires to erect a building with a party wall, and provides that, where an existing party wall is insufficient for the erection of a new building, the building inspector shall, on the application of the parties, determine what alterations and repairs shall be made, and in what proportion the cost of repairing or tearing down shall be paid by the respective owners of the lots. The act also provides that the adjoining owner shall not use the new party wall, until he shall have paid to the first builder, his heirs, etc., the proportion of cost of the wall as fixed by the building inspector, or of so much of it as he may desire to use. A. and B. were the joint owners of a party wall which A. had torn down for the erection of a new building. The inspector assessed a portion of the cost on B., and A. sued B. for the amount. The judge refused B.'s points negativing his liability under the act in the absence of his not having used the party wall "by building into or against it, or in any way using it for any new building or structure," and directed a verdict for A. B. appealed. *Held*, reversing judgment, that the regulation of party walls, being an interference with the rights of property, and sustainable only on the police power, must be measured by the strict extent of the statutory grant; and that the statute in this case did not make B. in any way liable to pay until he began to make a new use of the wall, and then only for his proportion of so much of the wall as he should use. Judgment for A. reversed.—Hoffstot v. Voight, 146 Pa. 632 (1892), Mitchell, J.; s. c. 23 Atl. 351, 29 W. N. C. 397, 39 Pitts. L. J. 229, 9 Lanc. L. R. 78.

(228) The local act of April 13, 1868 (P. L. 1022), required railroad companies to rebuild fences burned by fire caused by sparks from their engines. A. brought action against a railroad company for a penalty prescribed by the act for failure to rebuild a fence, It was contended by the company that it was not required by its charter to make or rebuild fences, and that the act was unconstitutional, because it imposed new conditions without the company's consent. Judgment for A. was affirmed by the supreme court, which *held* the act constitutional, as within the police power of the state.—Pennsylvannia R. Co. v. Riblet, 66 Pa. 164 (1871), Sharswood, J.; s. c. 3 Leg. Gaz. 365.

(229) A. was indicted and convicted for a violation of the act of May 21, 1885 (P. L. 22; P. & L. Dig. 3263), prohibiting the manufacture and sale of oleomargarine, or the keeping the same with intent to sell. He moved for a new trial on the ground that the act was in violation of Article I., section 1, of the constitution, being an unjust and unlawful interference with the personal rights of property, business, industry, and liberty, and a destroying of property without providing compensation. Decree refusing new trial affirmed.—Powell v. Comm., 114 Pa. 265 (1887), Sterrett, J. (Gordon, J., dissenting). Affirming 1 Pa. C. C. 94 (1885), Simonton, P. J.

(230) A. laid out a tract of land in streets and lots, and purchased from the owner of a stream the right of drawing water therefrom, the deed reciting that the water was to be delivered to A. and his assigns forever. In accordance with this obligation, the stream was allowed to run over the lots and streets so laid out, which were subsequently included within the incorporated borough of G. In 1857 an act of assembly was passed, giving to the borough the superintendence of the stream, the expenses of repair, etc., to be borne by the borough as far as incurred on the streets, and, as to those incurred on the lots, to be taxed by the borough against the several lots, and collected by the borough in the same manner as taxes. Provision was also made for the imposition and collection by the borough of penalties for damages, etc. B., the assignee of one of the aforesaid lots, filed a bill to restrain the borough from collecting the expenses above mentioned, and praying to have the act under which the assessment was made declared unconstitutional. The court granted the prayers of the petition, declaring the act unconstitutional so far as it provided for taxing the lots for the improvement and repair of the stream. On appeal, the decree was affirmed, the supreme court *holding*, that, considering the borough as an assignee of A. as to the streets, it had a right to damages suffered by the streets with reference to the stream; but that, in so far as the act was intended to vest in the borough, the right to recover all damages suffered by A.'s other grantees

[*i. e.*, the lot holders], it was unconstitutional.—Fleming's Appeal, 65 Pa. 444 (1870), Sharswood, J.

(F) RIGHT TO MAKE CONTRACTS.

The legislature cannot interfere with the right of individuals to make contracts (231–234), but an act making indictable neglect of duties assumed by contractors on the public roads of a certain township is constitutional, notwithstanding such neglect is not made indictable elsewhere. (235)

An act authorizing the merger of one corporation in another is unconstitutional in so far as it authorizes the majority of the members of the corporation to be merged to impose upon a dissenting member, stock in the other corporation as compensation for his own stock, thus authorizing such majority to divest the dissenting member of his interest without first giving him security. (236)

(231) The act of June 29, 1881 (P. L. 147; P. & L. Dig. 4802, note), by its first four sections required that all employees at mines and manufactories be paid in money or cash order, and not in store orders, and limited the rate of profit for coal operators and manufacturers engaged in merchandising. In assumpsit by A., an employee of B., to recover wages from the latter, B. claimed to set off orders given by him on various parties in favor of A.. and which had been paid. A. objected that, under the above act, the orders could not be set off, and the court, holding the act unconstitutional, disallowed the set-off. *Held*, error, and judgment for A. reversed, the supreme court *holding* that the act was an attempt to prevent persons who were *sui juris* from making their own contracts, and was therefore unconstitutional.—Godcharles v. Wigeman, 113 Pa. 431 (1886), Gordon, J.; s. c. 6 Atl. 354, 18 W. N. C. 214.

(232) C. made a contract with B., which provided that B. should erect a house for C., and that no liens should be filed by B. or any sub-contractor. A., a sub-contractor, filed a lien, to which C. filed an affidavit of defence, setting up the provisions of the contract with B. A. took a rule for judgment for want of a sufficient affidavit of defence, on the ground that C. had not alleged that A. had consented to the contract, as required by the act of June 8, 1891 (P. L. 225; P. & L. Dig. 2923, note). C. contended that the act of 1891 was unconstitutional, as it sought to create a debt and give a lien therefor against the express covenant in the contract. Judgment for C. affirmed.—Waters v. Wolf, 162 Pa. 153 (1894), Dean, J. (Mitchell, J., dissenting).

(233) The act of June 8, 1891 (P. L. 225; P. & L. Dig. 2923, note), provided that a sub-contractor could not be bound by a covenant in the original contract without having consented to it in writing. A sub-contractor, on verbal agreement, furnished material for a building, and filed a lien therefor. The original contractor had covenanted with the owner that no liens should be filed. On a *scire facias* on the lien, the owner, in an affidavit of defence, set up the covenant with the original contractor. On a rule for judgment for want of sufficient affidavit of defence, the owner set up that the aforesaid act was unconstitutional, as taking away the right to contract for and hold property. The court decided the act unconstitutional, and discharged the rule. Decree affirmed.—McMaster v. West Chester State Normal School, 162 Pa. 260 (1894), Dean, J. (Mitchell, J., dissenting); s. c. 29 Atl. 734, 34 W. N. C. 456.

In so far as the act of June 8, 1891 (P. L. 225), undertook "to secure the rights of sub-contractors to file mechanics' liens and prevent interference with this right by contracts" by making the contractor the owner's agent, and conferring authority on him to bind the building for labor and materials furnished upon his order, notwithstanding a contract between the owner and contractor that no such liens should be filed, and the knowledge of the sub-contractor of such agreement, it was held to be an unauthorized interference with the right of a citizen to contract in relation to his property, and therefore unconstitutional.—Lee v. Lewis, 7 Kulp, 164 (1893), Rice, P. J.; s. c. 13 Pa. C. C. 567, 11 Lanc. L. R. 6.

(234) The act of May 20, 1891 (P. L. 96, § 1; P. & L. Dig. 4800), prohibited the payment of wage-workers in any other manner than semi-monthly, and made void any contract to the contrary. *Held*, that the act was unconstitutional, as it amounted to making a contract against the will of the parties.—Bauer v. Reynolds, 14 Pa. C. C. 497 (1894), Noyes, P. J.; s. c. 3 D. R. 502.

See, also, Comm. v. Isenberg, 4 D. R. 579 (1895), Gordon, P. J.

For the constitutionality of the act of April 12, 1872 (P. L. 60; P. & L. Dig. 346, 347), as affecting the right of a patentee to sell his patent, see Shires v. Comm., 120 Pa. 368 (1888).

(235) The act of January 19, 1860, authorized the supervisors of N. township to let the making and repairing of roads at public sale to the lowest bidder, and made neglect of the duties assumed by such contractors an indictable offence. Defendant was convicted and sentenced under the act, and, on a motion in arrest of judgment, contended that the act, inasmuch as it made an act indictable in N. township, which was not made indictable elsewhere, was unconstitutional. The motion was overruled, and a writ of error was taken. *Held*, that the act was constitutional and judgment affirmed.—Phillips v. Comm., 44 Pa. 197 (1863), Strong, J.; s. c. 11 Pitts. L. J. 267.

(236) An act of the legislature authorizing the merging of the A. railway company with the B. railway company, provided that the stockholders of the A. company should receive one share of the stock of the B. company for every share of the stock of the A. company held by them. C., a stockholder, filed a bill to enjoin the A. company and its officers from proceeding under the act, and to have the act declared unconstitutional and void. *Held*, that the act was unconstitutional in so far as it authorized the corporation to impose stock of the B. company on C. without his consent, as compensation for his stock in the A. company; or, in so far as it authorized the majority of the members of the corporation to divest C.'s interest, by transferring the stock of the A. company to the B. company, to be paid for in stock of the B. company, without first securing C. Injunction granted on condition to be dissolved on defendants' giving security to C. in double the market value of his stock.—Lauman v. Lebanon Valley R. Co., 30 Pa. 42 (1858), Lowrie, C. J.

(G) IMPAIRMENT OF THE OBLIGATION OF CONTRACTS.

1. General Rules.

Any impairment of the obligation of a contract is in violation of the constitution and void; thus, the legislature has no power to authorize the violation of a contract made with individuals by a city acting as a private corporation (237), or to grant a stay of execution against a debtor by consent of the majority of his creditors, when the rights of other creditors will be thereby impaired (238–239); or when such stay has been waived (240–243); nor has a court of law such power. (244)

An act providing that all the money in a city treasury raised by taxation, under authority of a previous act, for the payment of specific municipal debts, shall be otherwise disposed of, such debts remaining unpaid, and that interest on such indebtedness shall cease, is void (245); so, also, an ordinance which operates to postpone payment of municipal bonds is void. (246)

An act providing that no obligation may be sold without the consent of the debtor cannot apply to the case of a note hypothecated previously to passage of the act, to secure an advance, under a distinct understanding with the creditor and pledgee, that he may sell the note at any time. (247)

The charter of a private corporation is a contract, and the grant by the legislature to another corporation of rights in conflict with the charter rights of the first is unconstitutional. (248–249) An act imposing any new burden upon a *quasi*-public corporation, which is a grantee of the state, impairs the contract contained in its charter, and is void (250–251); as is also an act depriving a corporation or municipality of any of the rights, privileges, or franchises, secured to it by its charter or by grant of the commonwealth. (252–255) Where a corporation has by charter the unconditional power to increase its capital stock, a subsequent act imposing a bonus on increases of capital stock by any corporation would impair the obligation of the contract with that corporation, and cannot apply to it. (256)

While a grant by the legislature to a corporation is a contract, the legislature cannot thereby divest itself of its power to legislate for the benefit of the whole community, and any attempt to bargain away such power is void (257); and, generally, whenever a power to repeal, alter, or amend, a charter is reserved, the exercise of such power does not alter the obligation of the charter contract. (258)

Where, by act of legislature, a commissioner has been appointed to decide what lands are necessary for the uses of a railroad, the residue to be sold, and mortagees have released their mortgages as to such residue, a subsequent act appointing another commissioner, with the same powers, to decide the same question anew, is unconstitutional. (259)

An act authorizing the taking for school purposes of land which has been given to a municipality for a public burying-ground, impairs the contract between the donors and the municipality. (260)

An order of court changing the compensation of the sheriff for certain duties, during his term of office, violates the contract under which he entered office, and is void. (261)

A contract which has become void by virtue of its inherent conditions cannot be reinstated by an act of assembly. (262)

An act authorizing the vacation of a private road acquired by prescription, and not by grant, is constitutional. (263)

(237) The city of Philadelphia became the proprietor of gas works which were held in trust and managed by twelve trustees. A large loan was obtained for the better equipment of the plant, and certificates were issued in pursuance of a city ordinance. The proceeds of the business were to be applied to the payment of the loan and the interest thereon. By the act of April 20, 1858 (P. L. 347), the city was authorized and required to

elect six additional trustees, in a different manner from that in which the existing board was elected, the additional trustees to act in conjunction with the existing trustees. A bill was filed by the loan holders to restrain the city from electing said trustees, on the ground that the act, if enforced, would violate the contract of the city with them. They urged that the city, as owner of the gas works, must be regarded as a private corporation. Injunction granted and decree sustained on appeal.—Western Sav. Fund Soc. v. Philadelphia, 31 Pa. 185 (1858), Strong, J.

(238) Certain creditors took a rule under the act of May 21, 1861 (P. L. 770), to have a case referred to the prothonotary of the district court. This act provided that, on motion based on affidavit that two-thirds in value and a majority in number of the creditors consented, the case might be referred to the prothonotary to report to the court the terms and length of a stay of execution, and that, on such report being made, no execution should be issued during the running of the stay, except by order of the court in accordance with the terms of stay fixed by the said majority of the creditors. Rule discharged, on the ground that the act impaired the obligation of contracts, for, though affecting the remedy, it practically took away the remedy entirely.—Miller v. Ripka, 4 Phila. 309 (1861), Sharswood, P. J.; s. c. 18 L. I. 197.

(239) A. brought action against B. on a contract made before the act of May 21, 1861, was passed. After judgment B. applied for a stay of execution under the provisions of the act. It was urged, *inter alia*, that the act was unconstitutional, as violating the obligation of that contract. Refusal to grant the stay was affirmed on appeal.—Bunn, Raiguel & Co. v. Gorgas, 41 Pa. 441 (1862), Woodward, J.; s. c. 3 Luz. Leg. Obs. 19.

(240) On the 12th of July, 1860, A. executed a single bill for $1,000, payable to the order of B., twelve months after date, with interest and costs, and "without stay of execution after date of payment." The act of May 21, 1861, entitled debtors to a year's stay of execution on certain conditions, the act to extend to all judgments or debts on which stay of execution had been or might be waived by the debtor. When the note was due a stay of execution was prayed for by A. It was urged that he was not entitled to a stay, as the act impaired the obligation of a contract and hence was void. A decree permitting the stay was reversed on appeal, the court holding that, though this statute was strictly remedial, it impaired the obligation of a contract, and was unconstitutional.—Billmeyer v. Evans, 40 Pa. 324 (1861), Woodward, J.; s. c. 2 Luz. Leg. Obs. 28.

(241) B. entered into an agreement with A. for the waiver of the benefit of the stay laws. The act of May 21, 1861, was passed subsequently, by which a stay of execution was granted upon all judgments or debts upon which a stay of execution had been waived by the debtor. Upon a rule to set aside the stay granted in this case, it was contended that the act was unconstitutional. Rule discharged. Reversed.—McCandless v. Gilger, 9 Pitts. L. J. 161 (1861), Woodward, J.; s. c. 2 Luz. L. Obs. 44.

(242) An act of assembly granted a stay of execution on a judgment due by a soldier of the state or of the United States, notwithstanding such stay of execution might have been waived. An execution having issued on a judgment with waiver of stay, the court, under authority of the above act, granted a stay to the execution debtor, who was a soldier in the army. *Held*, error, on the ground that the act was unconstitutional, as impairing the obligation of the contract.—Lewis v. Lewis, 47 Pa. 127 (1864), Thompson, J.

(243) A judgment note by A. to B. provided that judgment should be entered without stay of execution after the day of payment. The act of February 17, 1876, gave courts of common pleas power to authorize an assignee for the benefit of creditors to make public sale of the real estate of the assignor, and declared that, when an order of sale was made the court might order a stay of execution on all liens that might be divested by such sale, until such order should be extended or revoked. Under this act the court ordered a stay of execution after the judgment had been entered on the note. Order staying execution reversed.—White v. Crawford, 84 Pa. 433 (1877), Mercur, J.

(244) A judgment was obtained against A., and he waived stay of execution. After A.'s death, an application was made for a sale of his real estate and a stay of execution. The objection was raised that A. having waived such stay, it became a part of the contract, and that the court could make no order interfering therewith. Application refused.—Hill's Estate, 1 Pa. C. C. 584 (1886), Hunter, P. J.

(245) An act of March 1, 1871, incorporated the borough of A. into the city of A., and provided for levying a tax to pay the debts of the late borough. Before any part of their tax was paid out on said indebtedness, an act was passed, March 11, 1872, creating a board of trustees to take charge of said money, and authorizing them four times a year to offer all the money which might be in the treasury publicly, and to award the same to the creditor or creditors who would release the greatest sum of indebtedness therefor. The act also provided that no interest should be computed on the indebtedness of the borough from the time of its incorporation into the city. B. obtained judgment against the borough, but the trustees refused to apply the money in their hands to payment of the judgments, or in any other way

than as directed by the act of 1872. B. filed a bill to have the trustees restrained from offering the money under the act of 1872, and to compel them to apply the same to payment of judgment creditors in their order, to pay interest on the judgments, and to levy taxes according to the act of 1871, till the borough debts should be paid. The court granted the prayer of the petition, on the ground that the act of 1872 was unconstitutional, and the decree was affirmed by the supreme court on the opinion of the court below.—Williams's Appeal, 72 Pa. 214 (1872), Read, J.

(246) A city ordinance provided that certain warrants for the payment of money, issued by the city, should be payable in the order in which they were presented to the city treasurer by the holders and registered. To an action on such a warrant, the city pleaded the ordinance. This plea was overruled on the ground that the ordinance if applied to warrants already due, would vary the obligation of the contract. Judgment was entered for the plaintiffs, but a new trial was granted on other grounds.—O'Donnell v. Philadelphia, 2 Brews. 481 (1868), Hare, P. J.; s. c. 7 Phila. 234.

(247) A. hypothecated a note of $1,000 to secure repayment of an advance made by B., with a distinct understanding that B. could sell the note at any time to reimburse the advance. Subsequently the act of October 13, 1857, provided that six months from the passage of that act no obligation could be sold without the consent of the debtor obtained in writing. *Held*, that the act, as applied to the contract in this case, impaired its obligation.—Hunt v. Thomas, 3 Phila. 121 (1858), Sharswood, J.; s. c. 15 L. I. 133.

(248) An act was passed to authorize the incorporation of a company for the purpose of making a turnpike between two specified points; books were opened by the commissioners appointed to take subscriptions of stock, at two places on the contemplated route; but subscriptions to an amount sufficient to authorize the granting of a charter were not obtained. A supplement to the original act was then passed, which divided the contemplated road into two parts, authorized the granting of two charters, and provided that those who had originally subscribed for stock at a certain place should be members of one of the companies, and those who had subscribed at the other place should be members of the other company. In an action to recover the amount of a subscription to the original company, *held*, that the supplement was unconstitutional. Judgment for defendant affirmed.—Indiana Turnpike Company v. Phillips, 2 P. & W. 184 (1830), Gibson, C. J.

(249) The A. street railway company, incorporated April 10, 1858, applied for a special injunction to restrain the B. company, incorporated subsequently from using the A. company's tracks, under the act incorporating B., providing for the use by B. of A.'s tracks, on terms in derogation of A.'s charter rights, and not necessarily involving A.'s consent. *Held*, that the latter act was unconstitutional, as impairing the contract with A., and injunction granted.—Second & Third St. Pass. Ry. Co. v. Green & Coates St. Pass. Ry. Co., 3 Phila. 430 (1859), Allison. J.; s. c. 16 L. I. 197.

(250) By the act of March 7, 1843 (P. L. 36), the Erie Division of the Pennsylvania Canal, together with all the estate, real and personal, purchased and owned by the commonwealth for the use of said canal, was vested in the Erie Canal Company. The act of March 16, 1864 (P. L. 13), required the Erie Canal Company to build and repair all bridges over their canals, and provided that, if such company should refuse or neglect so to do, then such bridges should be repaired by the proper authorities of the townships, and the cost thereof should be "recovered by suit at law as debts of like amount are recoverable." In an action of debt brought under the latter act, to compel the canal company to pay for repairs, to a bridge made by plaintiff city, the company pleaded that they had not accepted the act of 1864, and hence it was void. Plaintiff demurred, and judgment was given for defendant. On error, judgment was affirmed, on the ground that the defendant being a *quasi*-public corporation, its charter (unlike that of a municipal corporation) was a contract within the protection of the bill of rights; and that the act of 1864 impaired such contract, and hence was unconstitutional.—Erie v. Erie Canal Co., 59 Pa. 174 (1869), Sharswood, J.

(251) The state granted certain public works to a railroad company, which sold them to a canal company. In the meantime the legislature had passed an act compelling the owners of public works to maintain sluices in all dams at the owner's expense. The canal company neglected to comply with the act, and was indicted for a misdemeanor. The railroad company had taken the works from the state under a contract, and paid a valuable consideration. It was contended that the canal company held under that contract, and that the state could not impose upon its grantee any new burden not contained in the original sale, and that consequently the act impaired the obligation of a contract. Judgment for the defendant was affirmed on appeal.—Commonwealth v. Pennsylvania Canal Co., 66 Pa. 41 (1870), Sharswood, J.; s. c. 2 Leg. Gaz. 237.

(252) The A. university brought ejectment as grantees under a patent from the state authorized by act of assembly. A. claimed the absolute, unincumbered title. Defendants claimed a right of common pasture in the land under a previous grant, whereby the land in suit had been reserved out of a tract on which a town had been laid out, for a common pasture. *Held*, affirming judgment of the court below, that A. took subject to defendant's right.—Western

University of Penna. v. Robinson, 12 S. & R. 29 (1824), Tilghman, C. J.

(253) Trustees were appointed to manage property devised for an orphan house, and by an act of the assembly in 1839 were incorporated with the right of perpetual succession. On April 21, 1846, an act of assembly was passed authorizing the court of common pleas of Dauphin County to appoint trustees upon nomination of certain Lutheran synods. Trustees were accordingly appointed, and brought ejectment against trustees in possession. The defendants urged the unconstitutionality of the act as depriving them of property without due process of law. Judgment for the plaintiffs. On appeal, reversed, holding that, as this was a private corporation, its charter was a contract under the protection of the bill of rights, and hence beyond the reach of subsequent legislatures; and therefore this act altering such charter was unconstitutional.—Brown v. Hummel, 6 Pa. 86 (1847), Coulter, J.

(254) The A. turnpike company was authorized in its charter to collect toll from all persons using its road. An act of assembly was afterward passed exempting certain classes of travellers from paying toll. B., a gate-keeper, collected toll from C., a person who came within the excepted class, and C. sued B. for the alleged wrongful act. B. contended that the legislature had no power to pass the act exempting persons from paying toll, as the charter was a contract, the obligation of which the legislature could not impair. Judgment for B.—Hartman v. Bechtel, 1 Woodw. 32 (1861), Woodward, J.

(255) The act of April 9, 1793, conferred on a turnpike company the right to stop persons riding or driving horses until they should have paid tolls. The act of April 5, 1860, excepted carriages going to and returning from funerals. In an action against B. to recover toll, he set up that the carriage, at the time of passing through the gate, was being driven to a funeral, and hence was exempt from toll under the latter act. *Held*, that this act impaired the obligation of the contract with the turnpike company in the former act, and hence was unconstitutional. Judgment for plaintiff.—Philadelphia & L. Turnpike Co. v. Gartland, 6 Phila. 128 (1866), Allison, P. J.; s. c. 23 L. I. 132.

(256) The act of June 21, 1865 (P. L. 850), incorporated the B. company, and conferred upon it the unconditional privilege of increasing its capital stock from time to time. The act of April 18, 1874 (P. L. 61, § 7; P. & L. Dig. 959), required all companies upon the increase of their capital stock to pay a bonus. The B. company increased its capital stock, and the commonwealth brought suit for the bonus. The trial court *held*, that the act of 1874, if applied to the B. company, would be an impairment of the obligation of a contract, and that such company was not liable for the bonus. Judgment affirmed on the opinion of the court below.—Comm. v. Erie & W. Transp. Co., 107 Pa. 112 (1884); s. c. 16 W. N. C. 140.

(257) The general assembly granted to the A. company the right to occupy and use 16 feet of the surface of X. road for laying tracks and transporting passengers. The B. turnpike company had been granted the privilege of making this road a turnpike some years before. Said road also ran through a municipality, C. B. and C. filed a bill to restrain A. from using said road, and alleged that the act giving A. that right was unconstitutional, because privileges had been granted them with respect to the X. road, upon which an exercise of A.'s right would infringe. *Held*, that, while the grant to a corporation is a contract, and inviolable, yet the legislature cannot, by contract, divest itself of the right to legislate in a public capacity for the interest and welfare of the whole community, and any attempt to do so is void; and, as the grant to A. was an exercise of such right, it was valid and constitutional. Bill dismissed.—Citizens' Passenger Ry. Co., 2 Pitts. 10 (1859), McClure, P. J.

(258) A railroad company was incorporated subject to the provisions of the general railroad act, with a provision that it should not be taxed until its dividends amounted to 6 per cent. per annum. The general railroad act, in one of its sections, provided that the legislature reserved the power to resume, alter, or amend any charter granted under it. A subsequent act subjected all corporations to a tax of 1 per cent. of dividend. In a suit to recover the tax, the company claimed that the act was unconstitutional for impairing the obligation of the contract between it and the state. Judgment for defendant reversed.—Comm. v. Fayette County R. Co., 55 Pa. 452 (1867), Read, J.

(259) A certain railroad, by various acts of the legislature, was authorized to procure rights of way and construct its road through certain counties in the state. The company purchased real estate, and then executed several mortgages on its property. An act was passed for the appointment of a commissioner to decide what portions of the said land was necessary for the uses of the road, and providing that the residue might be sold; and that upon the mortgagees releasing their mortgages as to such residue, the mortgages should be ratified as to the other property of the corporation. The commissioner reported what lands were necessary, and his report was confirmed, and the mortgages released the residue. A later act of assembly recited that mistakes had been made by the commissioner, and authorized the appointment of another commissioner to decide what lands were then necessary for the uses of the road, and authorized a sale of the residue, the mortgages to be released, as in the prior act. *Held*, that this act impaired the obligation of the contract in the former act, and was therefore unconstitutional.—Drew v.

New York & E. R. Co., 81* Pa. 46 (1870), Sharswood, J.

(260) By deed C. and D. gave to a municipality certain lands for the purpose of a public burying-ground. The act of June 6, 1893 (P. L. 342, § 1; P. & L. Dig. 778), authorized the taking of a portion of the land for the pnrposes of a common school. *Held*, that, while the heirs of C. and D. had no interest in the reversion, the act impaired the obligation of the contract between the donors and the municipality, and was therefore unconstitutional.—Potter's Field, 8 York, 145 (1895), Latimer, P. J.

(261) Prior to A.'s term of office as sheriff, the compensation for boarding vagrants had been fixed at "four cents a day and no more." After the beginning of his term a retrospective order of court was made, providing that such compensation should be nine cents a day. *Held*, that this order violated the obligation of the contract made with A. when he entered into office as sheriff, and was therefore void.—Strock v. Cumberland County Commissioners, 4 D. R. 321 (1895), Biddle, P. J.

(262) An act of assembly for the incorporation of a plank-road company provided that the act should be null and void, unless the construction of the road was commenced within three years. The construction was not commenced within the time specified, but a subsequent act was obtained, which extended the time, and "legalized and made valid" the original subscriptions. In an action by the company against one of the original subscribers for his subscription, judgment was given for defendant, which was affirmed on error.—Greencastle, etc., Plank-Road Co. v. Davidson, 39 Pa. 435 (1861), Lowrie, C. J.

(263) A. appealed from an order of the quarter sessions vacating a private road. The road had been laid out for the benefit of certain lots, all of which had become the property of the petitioner for vacation, whereby the road had merged and become extinguished. A.'s land adjoined this private road, and, although it had not been laid out for his use, he claimed a prescriptive right in it by a user of twenty-one years and upwards; and argued that the act authorizing the vacation of private roads, under which the order in this case had been made, was unconstitutional. *Held*, that the act was constitutional, as A. had no land taken from him, nor any easement secured by grant or contract; but only lost an easement originating in a wrongful use of another's land. Appeal dismissed.—Neal's Appeal, 20 Pitts. L. J. 103 (1873); s. c. 5 Leg. Gaz. 45, 30 L. I. 46.

2. Acts which Do Not Impair Contracts.

Article XVI., § 8, of the constitution of 1874, providing compensation for property taken, injured, or destroyed, by corporations or individuals, for public use, and for the determination of the damages—in case of appeal from the preliminary assessment—by a common-law jury, does not violate the obligation of any charter contract with corporations incorporated prior to the adoption of such constitution, by imposing a liability not imposed by the original charter, where such corporations, by acceptance of subsequent legislation, have subjected themselves to the provisions of said article and section. (264)

Nor does an act imposing upon a corporation the liability to compensate for damages already done, when, in the charter of the corporation, there was a reservation to the legislature of the right to alter, amend, or annul the charter. (265)

The legislature may annul the charter of a corporation upon the arising of certain contingencies, when the charter provides that in such case it may be annulled (266); but not when the contingency has not arisen. (267)

A reasonable regulation of a corporation's exercise of its chartered rights does not impair any contract. (268)

When certain shares of a corporation are exempt from taxation, it is permissible to tax the capital stock, or the income thereof (269); and, where the power to tax a bank has not been relinquished expressly or by necessary implication, either in the charter or by subsequent legislation, an act authorizing an increase in the tax on dividends is constitutional (270); so, where a railroad pays a certain sum annually for the right of passing through a state, it is not unlawful to impose a tax upon the corporation in addition to this sum. (271)

A state bankrupt law does not impair the obligation of any contract. (272)

An act discontinuing the compensation received by an officer of a corporation whose salary has never been fixed is valid. (273)

An act which removes an impediment to the enforcement of a contract fairly entered into is constitutional. (274)

An act taking away a preference of judgments in the payment of the debts of decedents is not an impairment of the obligation of a contract, even if it affects a judgment rendered, before the act was passed, as against a person who died after the passage of the act. (275)

An act merely carrying into effect a constitutional condition subject to which a charter is granted, is valid (276); and an act in violation of a legislative grant which was without consideration is lawful. (277)

An act which declares that a street shall for-

ever remain open and public is not impaired by changing the line of such street. (278)

Prior to the constitution of 1874, Art. III., § 7, the legislature might pass a special divorce law. (279)

An act to the effect that a creditor may be presumed from his silence to have assented to a modification of the rights given him by his contract is good. (280)

An act changing the site of an endowed college does not violate the contract with those who contributed to the endowment fund. (281)

Where a railway corporation has been granted a franchise to operate a railway in a city, subject to regulation by the city, an ordinance increasing the license on each car used, as prescribed by a former ordinance, is constitutional, notwithstanding the fact that the company had given a bond to the city to comply with the first ordinance. (282)

A city may impose a license tax upon liquor-dealers who have already been licensed by the court of quarter sessions (283) ; and a tax may be imposed upon the commissions, etc., of brokers who are already licensed. (284)

A decision of court changing the construction of the law with reference to certain leases applies to a lease made before such decision. (285)

An act directing a stay of execution in certain circumstances does not constitute such a contract with the judgment debtor that the conditions of the stay may not be modified. (286)

An act requiring applications to be attached to policies of insurance before the policies can be received in evidence, does not impair the contracts of insurance. (287)

(264) Action against a railroad company for damages caused to plaintiff's property by shifting the company's tracks so that access to plaintiff's house was shut off and other injury was caused. The company was incorporated under an act of assembly passed in 1833. The change of the tracks complained of was made under the authority of an act of assembly passed in 1864, subject to the fourth amendment of 1857, which provided that the legislature should have power to alter, revoke, or annul any charter of incorporation conferred by or under any general or special law, when, in their opinion, it became injurious to the citizens of the commonwealth. The defendant company pleaded that, as the charter did not make it liable for consequential damages, the application of Article XVI., section 8, to it, so as to make it compensate for such damages would be an impairment of the obligation made by its charter. The plaintiff demurred, and judgment was entered for him. Affirmed, on the ground that the defendant company, by accepting the act of 1864, and the powers and privileges therein granted, had subjected itself to the amendment of 1857, and thus to the liability for damages imposed by Art. XVI., § 8, of the constitution of 1874. —Philadelphia and Reading R. Co. v. Patent, 17 W. N. C. 198 (1886), Gordon, J. ; s. c. 43 L. I. 79. Affirming 14 W. N. C. 545, 17 Phila. 291, 41 L. I. 224, 1 Lanc. L. R. 217.

(265) The A. company was chartered with authority to construct a lock navigation in a certain river. A supplement to its charter, which was accepted, granted new privileges, and reserved to the legislature " the right to alter, amend, or annul the charter in such manner as to do no injustice to the stockholders." In 1842, the company erected a dam by which B. was injured. In 1844 it was enacted that the company " shall make amends for any damages done, or that may be done, to lands and property " on the river by overflowing the same. Under this act B. claimed to recover damages for the injuries he had sustained. The company contended that the act of 1844 violated the contractual obligation of its charter. Judgment for B., sustaining the constitutionality of the act, was affirmed.—Monongahela Nav. Co. v. Coon, 6 Pa. 379 (1847), Gibson, C. J.

(266) The charter of a railroad company contained a proviso that, if the company abused any of the privileges granted, the legislature might resume any of the rights granted to the company. The company located a terminus and used a street in a manner unauthorized by the legislature, but their violation in this respect was not a wilful violation. The legislature repealed and annulled the charter of the company, and authorized the governor to appoint one or more persons to take charge and custody of the property. B. was so appointed. A bill was filed by the company in the supreme court to restrain B. from taking charge of the property. The company contended that the abuse of its privileges must be wilful to justify a forfeiture, and that this must be preceded by a judicial ascertainment of the facts, and that the repealing act was unconstitutional. This contention was overruled and the bill was dismissed.—Erie & N. E. R. Co. v. Casey, 26 Pa. 287 (1856), Black, Lowrie, and Knox, JJ. (Lewis, C. J., and Woodward, J., dissenting).

(267) The charter of a railroad company provided that if at any time it abused its privileges the legislature might revoke them. A subsequent act revoked certain privileges. On *quo warranto* proceedings, it was shown that the company had not abused its privileges, and the court held that the act revoking them was unconstitutional.—

Comm. v. Pittsburgh & C. R. Co., 58 Pa. 26 (1868), Sharswood, J.

(268) A company was incorporated to construct and maintain suitable works for the manufacture of gas, and was given the right to lay pipes in the streets of Philadelphia. The city passed an ordinance prohibiting the opening of streets between December 1st and March 1st. Upon a case stated for the violation of the ordinance, it was contended that the ordinance was void. *Held*, affirming judgment of the court below, that this was a reasonable regulation, and bound the corporation.—Northern Liberties Commissioners v. Northern Liberties Gas Co., 12 Pa. 318 (1849), Rogers, J.

(269) The charter of a certain corporation provided that a specified number of the shares of stock should be exempt from taxation. Subsequent acts imposed a certain tax upon the annual income of the corporation. On appeal from a settlement for such tax it was contended that the acts were unconstitutional as impairing the obligation of the charter contract. Judgment for the commonwealth.—Comm. v. Minersville Water Co., 2 D. R. 738 (1893), Simonton, P. J.; s. c. 13 Pa. C. C. 17.

(270) A bank was chartered under the law of 1824, which prescribed the payment of a certain tax on dividends declared. Subsequently, by act of April 1, 1835 (P. L. 99), the amount of this tax was increased. In an action against the bank for the increased tax it was contended that the legislature had no power thus to "impair" the obligation of its contract with the bank. *Held*, affirming judgment for the commonwealth, that, in the absence of a relinquishment of the power either expressly or by necessary implication, in the charter or by subsequent legislation, the act of 1835 was constitutional.—Easton Bank v. Comm., 10 Pa. 442 (1849), Bell, J.

(271) An act of legislature granted a railroad company, organized under the laws of another state, a right of way through the northwestern portion of this state, in consideration of a certain annual payment. The act further provided that the company should pay a tax on the proportion of capital stock represented by the cost of the part of its road within the state, at the same rate as paid by other railroad companies. A later act provided for a tax on the tons of freight carried by all railroad companies. On appeal by the company from the settlement of the accounting officer of the commonwealth, it was contended that the last act was a violation of the contractual obligation of the company's charter. Judgment for the commonwealth. Affirmed.—Erie R. Co. v. Comm., 66 Pa. 84 (1870), Sharswood, J.; s. c. 3 Brewst. 368.

(272) An act for the relief of insolvent debtors provided that, on surrender of their property to be divided among their creditors, they should be given certificates discharging them from all indebtedness and demands originating before that time. To an action on a promissory note falling due before the act, the defendant pleaded a discharge under the act. The plaintiff demurred to this plea, on the ground that the act was unconstitutional. Judgment for defendant.—Farmers & Mechanics' Bank v. Smith, 3 S. & R. 63 (1817), Tilghman, C. J.

(273) In 1811, an act was passed to incorporate a canal company. The act gave the company authority to raise, by lottery, a sum of money, and provided that the profits arising from the lottery should not form a capital stock, upon which any dividend should be made to the stockholders, but that the same should be considered as a bounty to the corporation, to enable them to make the tolls as low as possible. The company, after raising large sums of money by lotteries, discontinued work, but continued to pay large salaries to its officers, who had few or no duties to perform. A special act, passed in 1819, provided that no compensation should be allowed to any officer of the company until work was actually recommenced upon the canal. A. had been appointed secretary of the company, to hold office during the pleasure of the managers, and, while no particular sum was fixed as his salary, he was paid $300 per annum until 1818. In 1821 the company accepted the provisions of the act of 1819. A. had continued to serve as secretary until 1821, and sued for salary accruing to that date. The company contended that the salary was stopped by the act of 1819. A. contended that the act of 1819 was unconstitutional, in that it violated the contract created by the charter. Judgment for defendant. Affirmed.—Ehrenzeller v. Union Canal Co., 1 Rawle, 181 (1829), Rogers, J.

(274) A banking corporation which had forfeited its charter brought an action on a promissory note taken after the forfeiture. While the case was pending, the act of April 1, 1822 (7 Sm. L. 541; P. & L. Dig. 325), was passed, providing for the closing up of banking institutions which had forfeited their charters, and legalizing acts done after forfeiture which would have been legal before forfeiture. The defendant contended, that the note, being avoided as to the plaintiff in its corporate capacity by the forfeiture of its charter, the legislature could not pass a retrospective act making the note binding. Judgment for plaintiff. Affirmed.—Bleakney v. Farmers & Mechanics' Bank, 17 S. & R. 64 (1827), Duncan, J.

(275) The act of April 18, 1794 (3 Sm. L. 143), gave to judgments a preference in the order of

paying the debts of decedents. The act of Feb. 24, 1834 (P. L. 70; P. &. L. Dig. 1432), took away this preference as to the distribution of the estates of persons dying after such act went into effect. A judgment had been obtained by A. against B. before the passage of the act, and B. died after the act went into effect. Upon the distribution of B.'s estate, A. claimed the preference secured by the act of 1794, on the ground that the act of 1834 was unconstitutional. Exceptions to the report of auditors, who made distribution according to the act of 1834, were dismissed, and the act of 1834 was *held* constitutional. Affirmed.—Deichman's Appeal, 2 Whart, 395 (1837), Sergeant, J.

(276) Section 25 of Article I. of the constitution of 1838 provided that every bank charter should contain a clause reserving to the legislature the power to alter, revoke, etc., provided that no injustice should be done the corporators. Subsequently the legislature created a banking corporation, subject to taxation in a manner prescribed by acts, which provided that the capital stock should not be taxable for any other than state purposes. The act of incorporation did not make the constitutional reservation in terms, but provided that the bank should be governed by the provisions of the act of April 16, 1850 (P. L. 477; P. & L. Dig. 287). By section 53 of this act the legislature reserves the power to alter, revoke, or annul the charters of banks whenever, in their opinion, it may be necessary for the public welfare. An act, passed subsequently, empowered the city councils to levy a tax on banks for city purposes. In an amicable action by the city to collect a tax levied under an ordinance passed in pursuance of this act, the defence was that the act was unconstitutional, and violated the obligation made by the charter between the commonwealth and the bank. Judgment for the plaintiff. Affirmed.—Iron City Bank v. Pittsburg, 37 Pa. 340 (1861), Woodward, J.

(277) The act of March 1, 1866 (P. L. 358), gave to A., his heirs and assigns, the privilege of making a ferry and receiving tolls, provided he would keep the landings and ferry in good order, etc. The act of April 15, 1867 (P. L. [1868] 1308), without any new consideration, gave to A. the exclusive right and privilege of a ferry for one mile above and below the place designated in the first act, and all persons were prohibited from using the river for the purpose of a ferry under penalty. Afterwards the legislature gave to B., his heirs and assigns, the right to establish a ferry within the prescribed limits. A. filed a bill against B. to restrain him from establishing a ferry, contending that the acts of 1866 and 1867 were to be construed together, and, when so taken, constituted a contract, the obligation of which would be impaired by the grant to B. B. contended that the first grant to A. was not exclusive, and that the grant contained in the act of 1867 was without consideration. The case was referred to a master, who recommended that the bill be dismissed. Exceptions to the report were dismissed. Judgment affirmed.—Johnson v. Crow, 87 Pa. 184 (1878).

(278) An act of assembly passed in 1866 provided that the city of Philadelphia should have the right to occupy and appropriate Broad Street for its entire length; and, in consideration of the cost of pavement being borne by abutting property owners, that no person, or persons, or corporation, of the city of Philadelphia, should have authority to construct any railway or other obstruction prejudicial to the use of the property as a public drive. A. and others, owning property on Broad Street, paid the cost of paving opposite their property. Penn Square was part of the square laid out by William Penn for buildings for "public concerns." The act of August 5, 1870 (P. L. [1871] 15), authorized certain commissioners to erect on Penn Square, and across the said Broad Street, a public building, and to vacate so much of Market and Broad Streets as they might deem useful, provided that the streets passing around said buildings should not be less than one hundred feet wide. A. and others filed a bill to restrain the commissioners from erecting said building, and carrying out the provisions of the act of 1871. Bill dismissed.—Baird v. Rice, 63 Pa. 489 (1871), Read, J.; s. c. 8 Phila. 61.

(279) A. was married to B. in 1860. He removed to Clearfield with the consent and approval of B., and remitted to B. means for her support. In 1864, without notice, B. petitioned the legislature of Pennsylvania for a divorce, representing that A. had fraudulently deceived her, and had entrapped her into marriage. The legislature passed an act divorcing the parties. A. filed a bill against B., setting out these facts, and praying for an injunction to restrain B. from setting up or pleading the said act of assembly in bar of A.'s conjugal rights, and that B. be restrained from acting as a single woman or contracting any other marriage, and contending that the act of legislature was unconstitutional, in that it impaired the obligations of the marriage contract. The dismissal of the bill was affirmed.—Cronise v. Cronise, 54 Pa. 255 (1867), Agnew, J.

Compare Jones v. Jones, 12 Pa. 350 (1850), Coulter, J.

Article III., section 7, of the constitution of 1874 prohibits the passing of any special law granting divorces.

(280) The act of April 10, 1862 (P. L. 395), authorized the calling of a meeting of the stock and

bondholders of a certain corporation for the adoption by them of an agreement for the settlement of the affairs and liabilities of the corporation. The act further provided that, when an agreement had been reached, in case any bondholder should fail to file with the president of the corporation his or her refusal, in writing, to concur in the agreement reached, within three months from the date thereof, such bondholder should be taken to have agreed to the same. In an action on coupons for interest upon bonds of the corporation, it was contended on the part of the plaintiff that this act was an impairment of the obligation of the contract made by the corporation with the bondholder, and was unconstitutional. Judgment for the plaintiff reversed.—Union Canal Co. v. Gilfillan, 93 Pa. 95 (1880), Paxson, J. (Mercur and Gordon, JJ., dissent). Reversing 7 W. N. C. 179.

(281) Jefferson College, situated in Canonsburg, put into operation, in 1853, a plan of endowment, whereby, upon the payment of a subscription sum, the subscriber became entitled to a scholarship. A. and others, residents of Canonsburg, subscribed to this fund. The act of incorporation provided that the constitution of the college should not be altered by ordinance, or by law of the trustees, nor in any other manner than by an act of legislature. By an act of assembly the college was united with Washington College, and partly removed to Washington. A later act of assembly provided that the location of the college should be entirely at Canonsburg or Washington, or some suitable place to be determined by the trustees. The trustees selected Washington, and A. and others filed a bill to restrain them from removing the college from Canonsburg. Bill dismissed.—Houston v. Jefferson College, 63 Pa. 428 (1870), Thompson, C. J.; s. c. 17 Pitts. L. J. 25.

Affirmed by the United States supreme court, 13 Wall. 190 (1871), Clifford, J.

(282) The acts incorporating a railway company authorized it to construct a street railway and receive the tolls, and provided that the city councils might prescribe the tolls for the use of the city road, and regulations for travel. The city passed an ordinance requiring passenger railway companies to pay $5 annually to the city for each car. The company filed a bond with the city solicitor, in which it engaged to comply with the condition of the ordinance. The city subsequently passed an ordinance requiring passenger railway companies to make certain improvements in the streets on which their rails were laid, to keep unpaved streets in repair, and to pay $30 to the chief commissioner of highways for each car used. The stockholders of the company filed a bill in equity to restrain the collection of the tax of $30 on the ground that the act of incorporation exempted the company from municipal control, except as therein provided, and that the first ordinance, and the bond given by the company to the city, constituted a contract, whose obligation could not be violated by subsequent ordinance. The bill was dismissed. Affirmed.—Johnson v. Philadelphia, 60 Pa. 445 (1869), Sharswood, J.; s. c. 26 L. I. 269.

(283) A., a liquor dealer in a city of the third class, obtained a license from the court of quarter sessions, according to an act passed subsequently to the act of May 23, 1874 (P. L. 230), which provided that a city of the third class might levy a tax on liquor sellers. Subsequently, the city passed an ordinance taxing A. A. filed a bill in equity to restrain the collection of this tax, and contended that the ordinance was a violation of the contractual obligation entered into by the state with A. in granting him a license. Bill dismissed.—Hadtner v. Williamsport, 15 W. N. C. 138 (1883), Cummin, P. J.

(284) The act of May 16, 1861 (P. L. 708, § 1; P. & L. Dig. 455), requires brokers to make return of their receipts from commissions, discounts, etc., and imposes a tax thereon. An action was brought against B. to recover the penalty imposed by the act for failure to comply with its provisions. B. set up the fact that he had a license from the state, which license had been issued prior to the passage of the act; and he contended that the act of 1861 violated the obligation of the contract contained in the license. A verdict was directed for the commonwealth, and judgment was entered thereon. Affirmed.—Drexel v. Comm. 46 Pa. 31 (1863), Read, J. Affirming 1 Pears. 337.

(285) A certain lease was made between two parties. Subsequently the case of Willis v. Manufacturers' Nat. Gas. Co., 130 Pa. 222 (1889), Clark, J., s. c. 18 Atl. 721, was decided in such a manner as to change the construction of the law in reference to such leases. *Held*, that the decision applied to the lease in question, and did not inpair the obligation of the contract.—Ray v. Western Pa. Natural Gas Co., 138 Pa. 576 (1891), Clark, J.; s. c. 20 Atl. 1065.

(286) The act of March 28, 1820 (7 Sm. L. 334), provided that, on execution, appraisement of land should be had, and, if it would not sell for two-thirds of the appraised value, further proceedings should be stayed for one year, the act to continue in force for one year and no longer. The act of March 27, 1821 (7 Sm. L. 422), enacted that the provisions of the first act should be continued for one year, provided that the defendant in the execution should pay interest on the judgment. While the act of 1820 was in full force, A. attempted to sell the land of B. under a judgment,

and it was returned unsold for want of buyers. After the act of 1821, B. failed to pay the interest on the judgment, and his property was taken in execution and sold. B. moved to set aside the execution and sale, on the ground that, the act of 1820 having granted him a stay, the act of 1821 could add no conditions to such indulgence. Rule discharged. Affirmed.—Peddle v. Hollinshead, 9 S. R. 277 (1823), Duncan, J.

(287) In a suit on a policy of insurance to recover assessments, the court refused to admit the application of the assured in evidence, on the ground that the same was not attached to the policy as required by the act of May 11, 1881 (P. L. 20; P. & L. Dig. 2375). The insurance company thereupon took a writ of error, claiming that the act was unconstitutional as impairing the obligation of the contract. Judgment affirmed.—New Era Life Ass'n v. Musser, 120 Pa. 384 (1888), Paxson, J.

3. Acts Affecting Remedies.

The legislature may modify or change remedies, if no rights are affected thereby (288–295), provided the power is exercised with a sound discretion (296); and such change may apply to cases pending (297–301), but it cannot take away all remedy. (302)

The legislature may grant a reasonable stay of execution for a definite time, where stay has not been waived (303), including a stay, for a limited time, of execution against persons in military service of the state or of the United States (304–305), but such a stay for an indefinite time is unconstitutional. (306)

An act granting a definite and reasonable stay of execution when property will not sell for two-thirds of its value appraised is constitutional, although operating retrospectively. (307)

The legislature may make that evidence which was not evidence before (308), or remedy a formal defect in judicial proceedings. (309)

(288) The act of April 28, 1840 (P. L. 467; P. & L. Dig. 2928), so modified the remedy for recovery on a mechanic's lien that no greater estate in the premises charged with the lien could be sold than was vested in the person in possession at the time the building was erected. Before the passage of the act, A. had leased a lot to B. for fourteen years. B. built a house on the lot, against which a mechanic's lien was filed, under an execution on which the premises were sold to C. In an action of covenant by A. against C., on the lease, C. contended that he took a fee, under the law as it was before the passage of the act of 1840, when the lien was filed, and that, to construe the act of 1840 to extend to this lien would disturb vested rights and make the act unconstitutional. Judgment was given for A., against C.'s contention, and C. took a writ of error. Judgment affirmed, the supreme court *holding*, that the act affected only the remedy, and was therefore constitutional. —Evans v. Montgomery, 4 W. & S. 218 (1842), Sergeant, J.

(289) The act of June 16, 1836 (P. L. 695; P. & L. Dig. 2921 *et seq.*), gave a mechanic's lien to material men for materials furnished in the construction of a building, but not to contractors. A. erected a building under a contract with B. Subsequently the act of April 16, 1845 (P. L. 538; P. & L. Dig. 2927), gave contractors the right to file a lien, and A. filed a lien under this act. In a *scire facias* on the lien, *held*, that the act of 1845 was valid, as it affected only the remedy.—Bolton v. Johns, 5 Pa. 145 (1847), Gibson, C. J.

(290) In an action against husband and wife, under the married woman's property act of April 11, 1848 (P. L. 536), to recover for goods sold to the wife before the passage of the act, it was contended that the act was unconstitutional, as, under it, the creditor was prevented from resorting to the property coming to the wife subsequently to the passage of the act. *Held*, that, as this affected the remedy only, and not the contract, it did not render the act unconstitutional.—Headley v. Ettling, 1 Phila. 39 (1849), Findlay, J.; s. c. 7 L. I. 39.

(291) On exceptions to the report of a commissioner making distribution of the proceeds of a sheriff's sale of A.'s estate, it was decided that the act of May 1, 1861, giving preference to claims for wages of persons employed by insolvents, was constitutional, as applied to a claim of B., whose contract of employment was made in 1860. The court *held*, that the act of 1861, although undoubtedly affecting the remedy somewhat, did not impair the obligation of the contract.—Umbenhauer v. Miller, 1 Woodw. 69 (1862), Woodward, P. J.

(292) In an equitable ejectment by A. against B., to compel the payment of the balance of purchase money, B. appeared, and in 1844 confessed judgment to A. for the land, "to be released on the payment of a sum of money, one-half in six months and the balance in one year." As the law was declared in Seitzinger v. Ridgeway, 9 Watts, 496, Kennedy, J. (1840), this would have been conclusive as to the time within which B. could redeem, but the act of May 5, 1841 (P. L. 445), placed equitable ejectments on the same footing as all other ejectments. The act of 1841 was repealed by the act of April 21, 1846 (P. L. 424, § 1; P. & L. Dig. 1703), which enacted that in all actions tried since May 5, 1841, wherein, by verdict or confession of judgment, time became essential, the defendant should have two years after the passage of that act to pay the money, commence his action, and enforce his contract. In

a subsequent action of ejectment by C., claiming under a conveyance from A., dated 1846, against D., claiming under B., D. offered to prove a tender to C., in 1858, of the amount due from B. to A., which had not been paid. The evidence was rejected by the court as irrelevant, and judgment was given for C. D. took a writ of error contending that the act of 1846 was unconstitutional. *Held*, affirming judgment, that, as B. had failed to pay the money within two years his recovery of the land was barred under the act of 1846, which, being a mere modification of legal remedies, was constitutional.—Waters v. Bates, 44 Pa. 473 (1863), Woodward, J. (Thompson, J., dissenting).

(293) The act of April 11, 1862 (P. L. 477), gave the supreme court of the state the powers of a court of chancery as to corporation mortgages. Prior to the passage of this act, a company had given a mortgage in which a different remedy was provided for the failure of the payment of interest. The company having defaulted on its mortgage, a bill in equity was filed against it in the supreme court, under the act of 1862. *Held*, that the remedy provided in the mortgage was not exclusive, and that the act of 1862, being merely remedial, was not an impairment of the obligation of the contract in the original mortgage. Decree granted in accordance with the prayer of the bill. —McElrath v. Pittsburgh & S. R. Co., 55 Pa. 189 (1867), Agnew, J.

(294) The act of April 17, 1869 (P. L. 70, § 1; P. & L. Dig. 1510), provides that the owner of any contingent interest in any personal property of any decedent may require an executor or administrator thereof to make and exhibit in the register's office his or her account of the trust in one year from the time of administration granted, and may require the legatee of any previous interest in the same property, before receiving the same, to give security. In an action to compel an accounting under the act, it was *held*, that the act, being merely an extension of a remedy to existing rights, was constitutional. Decree of the court below dismissing the petition reversed, on the ground that the petitioner had such a contingent interest as entitled him to an accounting under the act.—Keene's Appeal, 64 Pa. 268 (1870), Sharswood, J.; s. c. 2 Leg. Gaz. 222, 27 L. I. 269, 18 Pitts. L. J. 33.

(295) In 1845 B. conveyed a lot to C., reserving a ground rent, under an agreement that C. was to pay a yearly rent of $45, the ground rent to be redeemable in seven years. In 1865 the ground rent was conveyed to A. A. issued a summons in covenant *sur* ground rent deed against B., in 1887. B. defended on the ground that no claim or demand had been made on account of or for said yearly ground rent for twenty-one years prior to the commencement of the suit, and no declaration or acknowledgment of the existence thereof had been made within that period by the owner of the premises subject to the ground rent; and therefore, such circumstances existing, the ground rent was, under the act of April 27, 1855 (P. L. 369, § 7; P. & L. Dig. 2227), presumed to be extinguished. A. contended that this act was unconstitutional as impairing the obligation of a contract. Judgment for B. affirmed.—Biddle v. Hooven, 120 Pa. 221 (1888), Paxson, J.; s. c. 13 Atl. 929.

See, also, Kentucky Bank v. Schuylkill Bank, 1 Parsons, 180 (1846), King, P. J.; Phelps's Appeal, 10 W. N. C. 525 (1881), Sharswood, C. J.

(296) The seventh section of the act of April 22, 1856 (P. L. 532; P. & L. Dig. 1455), provides "that the probate, by the register of the proper county, of any will devising real estate, shall be conclusive as to such realty, unless, within five years from the date of such probate, those interested to controvert it shall, by *caveat* and action at law duly pursued, contest the validity of such will as to such realty: provided, that all persons who would be sooner barred by this section taking immediate effect, shall not be thereby barred before two years from the date hereof." In an action of ejectment the defendant claimed by purchase in 1855, under a will probated in 1833. Plaintiff claimed as heir at law of the testator, and contended that the will was void for want of testamentary capacity, and for fraud in its procurement. A certificate from the register of wills, that no *caveat* had been filed against the will, was offered and received in evidence under the above section of the act of 1856, and, under the same section, evidence tending to show the testator's mental incapacity, and fraud in procuring the will, was rejected. The judge directed a verdict for defendant under the act, and the plaintiff appealed, contesting the applicability of the section of the act in question to the will in suit, which was probated before the act was passed. *Held*, affirming judgment, that the section was retroactive, and as it affected only the remedy, and the legislative power had been exercised with a sound discretion, the section was not unconstitutional.—Kenyon v. Stewart, 44 Pa. 179 (1863), Woodward, J.; s. c. 3 Luz. Leg. Obs. 153, 11 Pitts. L. J. 274.

(297) In an action of assumpsit brought by members of one partnership against members of another, the court below held that the action could not be sustained, because one of the parties was a member of both partnerships, and therefore both plaintiff and defendant. While a writ of error was pending, the act of April 14, 1838 (P. L. 457, § 1; P. & L. Dig. 3567), was passed, which in its terms was sufficient to remove the objection to

the parties. *Held*, that the act was constitutional, and under it the suit could be maintained.—Hepburn v. Curts, 7 Watts, 300 (1838), Sergeant, J.

(298) The act of March 31, 1823 (P. L. 229, § 1; P. & L. Dig. 1701), provided that, "in all actions of ejectment now pending or hereafter to be commenced in the courts of this commonwealth, by more than one plaintiff, if, upon the trial, any of the plaintiffs shall fail to establish his, her, or their right to recover, a judgment of nonsuit may be entered against the plaintiff or plaintiffs so failing; and a verdict and judgment may be entered in favor of the other plaintiff or plaintiffs for the interest in the premises which he or they may be entitled to recover in any such action." In an action of ejectment, in which a verdict for certain of the plaintiffs had been rendered, April 11, 1822, the defendant moved, April 12, 1822, in arrest of judgment. On January 20, 1842, the plaintiffs who had failed to establish title on the trial suffered a non suit, and the court entered judgment on the verdict. The defendant assigned for error the allowance of the non suit. Judgment affirmed, the supreme court *holding*, that the act did not impair any contract, but only removed a technical obstruction out of the way of those whose rights had been established on a trial by due course of law.—Hinckle v. Riffert, 6 Pa. 196 (1847), Coulter, J.

(299) An action of covenant on a lease for ground rent, against the lessee's assignee, was referred, and a rule to show cause why the arbitrator's report in favor of plaintiff should not be set aside was discharged, December 28, 1849. On January 14, 1850, a writ of error was filed. On April 25, 1850, was passed an act (P. L. 569, § 8; P. & L. Dig. 2226), providing that, "in all cases now pending or hereafter to be brought in any court of record in this commonwealth, to enforce the payment of ground rent due and owing upon lands or tenements, held by virtue of any lease for life, or a term of years, or in fee, the lessor, his heirs and assigns, shall have a full and complete remedy therefor by action of covenant against the lessee or lessees, his, her, or their heirs, executors, administrators, or assigns, whether the said premises, out of which the rent issues, be held by deed poll or otherwise." In the court below, defendant had contended that the action of covenant did not lie against him as he was the lessee's assignee; and it was again urged in the supreme court, as a ground of error, that the action did not lie against an assignee at the time when it was brought. *Held*, affirming judgment for plaintiff, that the objection had been removed by the act of 1850, which was constitutional as applied to pending actions, as operating on the remedy, not on the right.—Taggart v. McGinn, 14 Pa. 155 (1850).

(300) The act of May 10, 1889 (P. L. 183, § 1; P. & L. Dig. 2167), amending the foreign attachment act of June 13, 1836 (P. L. 568), provided that judgment might be taken for want of appearance at or after the third term after the execution of the writ, provided a declaration had been filed fifteen days before the entry of the judgment. In an action of attachment begun in September, 1888, the statement of claim was filed on May 25, 1889, and judgment was entered for the plaintiff, for want of an appearance by defendant, subsequent to the third term after execution of the attachment, and after the passage of the above act. The judgment would have been irregular before the act, but it was *held*, on error, that the case was within the act, and that the act, since it affected only the mode of procedure, was applicable to litigation pending at the time of its passage.—Lane v. White, 140 Pa. 99 (1891); s. c. 21 Atl. 437.

(301) A. obtained judgment against B. on a judgment note. B. had the judgment opened, and sought to interpose the bar of the statute of limitations. A. contended that, by virtue of the act of May 22, 1895 (P. L. 112; P. & L. Dig. Supp. 366), which provides that the statute shall not run in favor of any defendant who moves from this state to another, during his residence in the other state, the statute was tolled as against B. B. argued that the statute was unconstitutional, as being retroactive, it having gone into operation pending the proceedings. Judgment for B. was reversed, on the ground that the act was constitutional as affecting the remedy only, and not the right.—Bates v. Cullum, 177 Pa. 633 (1896), Sterrett, C. J.; s. c. 39 W. N. C. 145.

(302) In a suit brought by A. against B., on Jan. 30, 1896, to recover damages for an injury inflicted by B. on May 9, 1893, B. demurred, alleging that the act of June 24, 1895 (P. L. 236), had destroyed the right of action by limiting the time within which such suits must be brought to two years from the time when the injury was done. No provision was made for bringing suit on causes of action which had accrued two years prior to the passage of the act. Demurrer overruled, on the ground that said act was a violation of the constitutional provision that every man shall have remedy by due course of law.—Byers v. Pennsylvania R. Co., 5 D. R. 683 (1896), McClung, J.; s. c. 18 Pa. C. C. 187, 43 Pitts. L. J. 447, 14 Lanc. L. R. 31.

(303) B., a defendant, obtained a stay of execution under the act of October 13, 1857 (P. L. [1858] 611), in an action pending at the time the act was passed. This act provided for a stay for one year on actions then pending. On error, it was contended that the act was unconstitutional, in that it impaired the obligation of a contract. Order affirmed.—Huntzinger v. Brock, 3 Gr. 243 (1868), Strong, J.

(304) The act of April 18, 1861 (P. L. 407), pro-

vided that no civil process should be enforced against any person mustered into the military service of the state or the United States, during the term of his service, nor for thirty days thereafter. An *alias sci. fa.* on a judgment on a mortgage having issued in June, 1862, against A., his counsel applied for a stay, on the ground that A. had been for several months, and was still, enlisted in the military service of the United States. The court refused a stay, and A.'s counsel took a writ of error. It was argued for the plaintiff that the act of 1861 was unconstitutional, as injuriously affecting the right, and therefore impairing the contract, by allowing a stay for an indefinite period. *Held*, reversing the order of the court below, that the stay was for a definite period, *i. e.*, for not more than three years and thirty days (A. having enlisted for "three years or during the war"), and for this reason, and because it merely modified the remedy, without impairing the obligation, it was constitutional.—Breitenbach v. Bush, 44 Pa. 313 (1863), Woodward, J.; s. c. 11 Pitts. L. J. 267.

(305) A *sci. fa.* on a mortgage dated June 6, 1860, was sued out to January term, 1862. The defendant pleaded that he was "mustered in the service of the United States for the term of three years unless sooner discharged," and prayed judgment in abatement. Judgment accordingly, under the act of April 18, 1861 [see (304), *supra*]. Plaintiff took a writ of error, arguing that no law subsequent to the mortgage contract could constitutionally take away the mortgagee's right to have a sale of the premises, if the debt were not paid, as the remedy in such case was a part of the contract. *Held*, affirming judgment, that the remedy did not arise out of the contract, but was conferred by the legislature; hence, the legislature might suspend the remedy for a time neither indefinite nor unreasonable.—Coxe v. Martin, 44 Pa. 322 (1863), Woodward, J. (Read, J., dissenting); s. c. 3 Luz. Leg. Obs. 123, 11 Pitts. L. J. 260.

(306) Writs of assistance and *fi. fa.* for costs having been ordered against a defendant, he took a rule to have the order rescinded, under the act of April 18, 1861 [see (304), *supra*], on the ground that defendant was in the military service of the United States. The court refused the rule, on the ground that, as the defendant had enlisted "for the term of during the war," the stay would be indefinite and unreasonable, and hence the act of 1861, if applicable to this case, was unconstitutional. On appeal, the order of the court below was affirmed.—Clark v. Martin, 49 Pa. 299 (1865), Woodward, C. J.

See, also, Bucher v. Curtes, 9 Pitts. L. J. 365 (1862), Derrickson, J.

(307) On February 20, 1877, an *alias fi. fa.* was issued, and real estate of B. was levied on and condemned. On March 21, a *vend. ex.* was issued, and the property was advertised to be sold April 2, 1877. On March 23, an act of assembly (P. L. 29) was passed, allowing a stay of execution for twelve months where the property levied upon did not sell for two-thirds of its appraised value, and requiring the sheriff to appraise property before sale. A rule on the sheriff in this case to have the property appraised was obtained by B., but, no notice being given to the sheriff, the sale proceeded. On April 7, 1877, a rule was taken to have the sale set aside. The court, holding the act constitutional, and that the defendant had been in time in claiming the benefit of the act, set aside the sale.—Thompson v. Buckley, 3 W. N. C. 560 (1877), Thayer, P. J.

This case was decided on the authority of Chadwick v. Moore, 8 W. & S. 49 (1844), Gibson, C., J. holding the similar act of July 16, 1842, not to be in violation of the federal constitution. For a decision holding this latter act unconstitutional as to mortgages executed before its passage, see Lancaster Savings Institution v. Reigart, 2 Clark, 238 (1844), Lewis, P. J.

(308) Prior to 1846 a sheriff's deed was not within the recording acts. The act of March 14, 1846 (P. L. 124, § 1; P. & L. Dig. 1564), provided that such deeds might be recorded, and that a certified copy of such record should be evidence in all cases where the original would be evidence; and that the record, or a duly certified copy thereof, of such a deed recorded before the act should be as good evidence as if the same had been recorded under the provisions of the act. The defendant in an action of ejectment brought after the passage of this act claimed under a sheriff's deed executed and recorded before the passage of the act, and offered in evidence the record of the deed, which was admitted. Exception was taken to the admission. On error, judgment for defendant was affirmed, the court *holding*, that the above act was constitutional, as it did not divest a right or impair a contract.—Foster v. Gray, 22 Pa. 9 (1853), Lewis, J.; s. c. 1 Pitts. L. J. 87.

(309) E., administrator of D., petitioned the orphans' court of Jefferson County for the sale of the decedent's land, described as being in Jefferson and Clearfield Counties, for the payment of debts. Under order of the court, the land was sold to B. Long after the sale had been confirmed, and the purchase money paid, it was discovered that the land was entirely in Clearfield County. A. and others, the heirs of D., brought ejectment against B. During the pendency of the action, the act of April 1, 1873 (P. L. 473), was passed, validating the sale to B. The court below affirmed plaintiff's point, that the act was unconstitutional, and there was a verdict for plaintiffs. On error, judgment was reversed, the supreme court *holding*, that the orphans' court of Jefferson County had jurisdiction to order con-

version of D.'s real property by sale to pay debts, the action of the court of Clearfield County being necessary as an aid in consummating the conversion; and that, as the act operated merely to supply the remedy (before lacking, from the failure to employ the ancillary action of the court of Clearfield County) for the enforcement of B.'s equitable right, it was constitutional.—Lane v. Nelson, 79 Pa. 407 (1875), Paxson, J. (Mercur, J., dissenting); s. c. 2 W. N. C. 216.

4. Retrospective Laws.

Where a law does not impair any contract, and is not in its nature *ex post facto*, it will not be declared unconstitutional merely because retrospective (310); but an act cannot be allowed to impair the obligation of a contract made while the act was pending. (311)

The legislature may pass an act providing a remedy for the enforcement against a county of an existing moral obligation, which cannot otherwise be legally enforced (312), or curing a formal defect in a remedy provided by a city ordinance for collecting a tax authorized by a valid statute to be imposed by the city (313); and, where the legislature has antecedent power to authorize a tax, it can cure, by a reroactive law, an irregularity or want of authority in levying the tax, even though thereby a right of action which has been vested in an individual should be divested (314); and an act confirming a title to an office merely voidable, and validating acts of the incumbent which have been performed in general accordance with a valid law (315), or a mere technical or formal defect in a contract for work on city streets authorized by law (316), is constitutional.

An act regulating and altering the conditions under which liens may be filed does not impair the obligation of a contract, and hence is applicable to the case of a lien which has attached before but has not been filed till after the passage of the act. (317)

The legislature may provide for assessments to pay the costs of municipal improvements, even though the acts under which such improvements have been made have been declared unconstitutional. (318)

The legislature may validate defective acknowledgments in deeds (319–320), but an act curing defects in acknowledgments of deeds cannot apply to cases where a judgment has been rendered on the defective deed previously to the act. (321)

An expository act can have no retroactive force, because an act of judicial power; it is therefore unconstitutional if retroactive. (322)

(310) Commissioners were appointed by an act of assembly to lay out and improve certain streets, their report when approved to be recorded, and a certified copy to be evidence in all matters in which it might be pertinent. A plan for the widening of X. Street was confirmed, but lost by the clerk before being recorded. A later act of assembly permitted the recording of another plan, and the admission of the same as evidence in all cases where the lost report would have been admissible. In an action against one of the commissioners for trespass in opening a street, the act was offered in evidence, but refused, as being unconstitutional. On appeal, *held*, error, and judgment reversed, on the ground that the act, though retrospective, did not impair the obligation of any contract, and was constitutional.—Adle v. Sherwood, 3 Whart. 481 (1838), Rogers, J.

(311) The councils of Philadelphia passed an ordinance authorizing a loan of $1,000,000 for the purpose of building market sheds, and made a contract for the erection of the same, after a bill had passed the legislature (but before it was signed by the governor), which bill provided that the city of Philadelphia should not thereafter contract any loans or debts, except for current expenses. After the bill was signed by the governor, a bill in equity was filed to restrain the city from carrying out the contract, on the ground that the ordinance was passed to avoid the statute. *Held*, that councils had the right to make such a contract, and that the act did not go into effect before it was signed. Bill dismissed.—Wartman v. Philadelphia, 33 Pa. 202 (1854), Black, C. J.

(312) An act of assembly of April 13, 1843, provided that certain cases might be removed for trial from one county to another. Under this act, cases were removed from the county of B. to the county of A. Subsequently the act of March 27, 1845 (P. L. 219), provided that the due proportion of the expenses incurred by the county of A. for all causes so removed should be reimbursed to that county by the county of B. In an action of assumpsit by A. against B., founded on a taxation of costs under the act, judgment was given for A., and B. took a writ of error. On the questions whether the act of 1845 was valid, and whether, if valid, it could have any operation on costs which had accrued prior to its passage, *held*, in opposition to B.'s contention that the act was unconstitutional as depriving of property without due process of law, that inasmuch as it provided for the adjustment and discharge of an existing obligation morally binding on B., it was constitutional. Decree affirmed.—Lycoming County v.

Union County, 15 Pa. 166 (1850), Bell, J.; s. c. 3 Am. L. J. 63.

(313) The councils of a certain city had power to grade and pave the streets within the corporate limits, and to levy and collect a special tax to defray the cost of the same, which tax should remain a lien upon the lots on the streets paved until paid. An ordinance authorized the grading of certain streets traversing the land of B. The ordinance was duly published as required by the city charter, but not recorded until after the work was done; consequently by the terms of the city charter the ordinance was void. To cure this defect, an act of assembly was passed, providing that the omission to record should not impair any assessment, tax, or lien on grading done under the ordinance. In an action on a *scire facias* filed by the commonwealth for the use of the city, against the property of B., B. claimed that the act was unconstitutional. Judgment for the plaintiff affirmed, the court *holding*, that the neglect in recording the ordinance was, at most, but a formal defect in the remedy provided for enforcing the tax constitutionally authorized by the statutes, and, as such, could be cured by a retrospective act.—Schenley v. Comm., 36 Pa. 29 (1859), Strong, J.; s. c. 17 L. I. 196, 7 Pitts. L. J. 377.

(314) A school board were authorized by the act of March 25, 1864 (P. L. 85), to assess and collect a tax for the purpose of paying bounties. At a meeting of the citizens the act was approved, and the directors were instructed to proceed. A. paid the tax under protest, believing it to be illegal, and brought suit to recover back the money. Subsequently the act of August 25, 1864 (P. L. 1027), legalized the tax. On trial, A. urged that the latter act was unconstitutional, as divesting him of his right. Judgment for defendant was affirmed, on the ground that, the tax having been within the authority of the legislature to impose, they could cure any irregularity or want of authority in levying it by a retroactive law, even though thereby a right of action which had been vested in an individual should be divested, hence the act was constitutional.—Grim v. Weissenberg School Dist., 57 Pa. 433 (1868), Sharswood, J.

(315) A. and B. were irregularly elected water commissioners, and recognized as such by the remaining members of the board, who had power to object. A. and B. subsequently joined with the other commissioners in electing C. and D., on a failure of the councils to elect. Subsequently an act of the legislature confirmed the acts of A., B., C., and D., and ratified their titles as water commissioners. In *quo warranto* proceedings, subsequently brought to oust these commissioners, *held*, that, as the authority of the defendants was, at most, voidable, and as their acts were done in general accordance with a previously existing statute (the act regulating the election, duties, etc., of water commissioners), the act of ratification was constitutional; and judgment was entered for the defendants.—Comm. v. Hoff, 1 Woodw. 464 (1869), Woodward, P. J.

(316) The act of April 13, 1840 (P. L. 303), incorporating the city of Allegheny, provided that all ordinances should be published fifteen days after their passage, and recorded within thirty days, or else should be null and void. In 1863, the councils passed an ordinance to grade certain streets, the expense to be defrayed by a tax assessed on lots abutting on the street. This ordinance was not recorded, but under it A. contracted to do the work. Subsequently A. filed a lien against part of the land abutting on the street. In an action of *scire facias* on this lien, judgment was given against A. on the ground that his contract was invalid because of the failure duly to record the ordinance. Subsequently the act of March 24, 1869 (P. L. 501), provided that the contract between A. and the city should be valid, and that the liens or claims could be collected. *Held*, that this legislation remedying a mere technical or formal defect was constitutional.—Comm. v. Marshall, 69 Pa. 328 (1872), Agnew, J.; s. c. 19 Pitts. L. J. 89.

(317) The act of May 1, 1861 (P. L. 550), gave a lien to material men for repairs. Subsequently the act of May 18, 1887 (P. L. 118), extended the remedy, and provided that, to be entitled to the benefit of its provisions, a claimant must give notice to the owner or reputed owner of his intention to file a lien. A. furnished materials to B. for a dwelling-house, some of which were delivered prior to the passage of the act, and afterwards filed a lien, but failed to give the notice required by the act. In an action to enforce the lien, judgment was given below for A., on the ground that the lien had attached before passage of the act, and hence that notice was not necessary. On error, *held*, that the lien was not a part of the contract, but a remedy which the law afforded for enforcement of the contract; therefore the act was applicable to this lien, and the constitutional objection had no application.—Best v. Baumgardner, 122 Pa. 17 (1888), Green, J.; s. c. 15 Atl. 691, 46 L. I. 149.

(318) The acts of June, 14, 1887 (P. L. 386), and May 16, 1889 (P. L. 228), gave to certain municipalities power to provide for municipal improvements. Under authority of these acts, the city of Pittsburgh made certain improvements. Subsequently, the supreme court declared the acts of 1887 and 1889 unconstitutional. The act of May 16, 1891 (P. L. 71), provided for an assessment on property owners for the improvements which had been made. A bill in equity was filed by property holders to have the act of 1891 declared unconstitutional, and to restrain the city from collecting the assessment. A decree dismissing the

bill was affirmed, the supreme court holding that, the property owners having received the benefit of the improvements, which the legislature might previously have ordered, it had a clear right to legalize the assessment by such remedial legislation as this act.—Donley v. Pittsburgh, 147 Pa. 348 (1892); s. c. 23 Atl. 394, 29 W. N. C. 362, 39 Pitts. L. J. 268.

See, also, Gray v. Pittsburgh, 147 Pa. 354 (1892); s. c. 23 Atl. 395; Whitney v. Pittsburgh, 147 Pa. 351 (1892); s. c. 23 Atl. 395, 29 W. N. C. 363, 39 Pitts. L. J. 269; Bingaman v. Pittsburgh, 147 Pa. 353 (1892); s. c. 23 Atl. 395, 29 W. N. C. 364, 39 Pitts. L. J. 270; Rubright v. Pittsburgh, 147 Pa. 355 (1892); s. c. 23 Atl. 579; Boggs Avenue, 39 Pitts. L. J. 308 (1892); Allen Avenue Improvement, 39 Pitts. L. J. 309 (1892).

(319) In an action of ejectment by A. against B., B. claimed title under a deed from D., and exhibited a release executed by C. and his wife to D. in 1796. The release of C.'s wife was not separately acknowledged. The act of April 3, 1826 (P. L. 187, § 1; P. & L. Dig. 1552), validated all conveyances of husband and wife before that time, whether separate acknowledgments had been taken or not. The judge instructed the jury that the acknowledgment was sufficient under the above act, and there was a verdict for B. On appeal, the contention being that the act was unconstitutional, as passing property without consent or compensation, *held*, that, as the act did not impair the contract, but merely cured a defect in proceedings otherwise fair, *i. e.*, the omission of a formality which did not diminish an existing obligation contrary to its situation when entered into, it was constitutional. Appeal dismissed.—Tate v. Stoolzfoos, 16 S. & R. 35 (1827), Duncan, J.

(320) In 1853, B. executed a mortgage to A., and executed an acknowledgment of the same before a justice of the peace in the city of New York, which acknowledgment was insufficient at that time by the laws of Pennsylvania. In 1854 an act was passed validating defective acknowledgments made in good faith before persons authorized to take acknowledgments outside of the state. In a suit by A. against B. to test the validity of B.'s mortgage, *held*, affirming the court below, that the act was constitutional, and B.'s mortgage good.—Journeay v. Gibson, 56 Pa. 57 (1868), Strong, J.

See, also, Mercer v. Watson, 1 Watts, 344 (1833), Gibson, C. J.

(321) A. brought an action of dower against B. B. set up a deed given by A. and her husband. The court below gave judgment for A., on the ground that the acknowledgment of the deed by A. was defective. Subsequently an act of assembly was passed curing defects in the acknowledgment of deeds by married women, after which the judgment was affirmed, but the act was held constitutional as to defective acknowledgments not adjudicated upon at the time of its passage.—Barnet v. Barnet, 15 S. & R. 72 (1826), Tilghman, C. J.

(322) Appeal by A. from the common pleas, assigning as error the refusal to award interest to the claimant, from the day on which the jury of view filed its report on the taking of claimant's property by a city for a public park. Under the act of March 26, 1867 (P. L. 547), A. was entitled to the interest; but the city claimed that it was exempted from payment of interest by virtue of the act of April 21, 1869 (P. L. 1194, § 9), which was passed after the condemnation proceedings were begun, and which declared the true intent and meaning of the act of 1867 to be "that no interest shall be allowed on damages for ground taken, up to the time of their payment on the issue of any warrant for their payment, by the city of Philadelphia," etc. *Held*, that this act was of no retroactive force, because such an interpretation would render it unconstitutional. Judgment reversed, and judgment entered for amount of verdict with interest.—Haley v. Philadelphia, 68 Pa. 45 (1871), Sharswood, J.

See, also, Philadelphia v. Miskey, 68 Pa. 49 (1871), Sharswood, J.

(H) RIGHT TO AN OCCUPATION.

Every citizen has a right to an occupation, but the exercise of this right may be regulated. Thus, those engaged in certain occupations may be required to take out licenses, and such licenses may be regulated. (323–326) An act prohibiting any persons other than those engaged in their ordinary business at their usual place of business, or farmers disposing of their farm products, from erecting any stand for the purpose of traffic, within one mile of any camp meeting for religious worship, does not violate Article I., section 1, of the constitution. (327) The sale of liquor may be regulated. (328)

A provision that an applicant for a peddler's license must prove bodily disability in order to be allowed to engage in such business is not valid. (329)

The legislature may regulate the terms upon which graduates of foreign medical colleges may be registered for the practice of medicine or surgery in this state (330), but cannot impose terms upon which veterinary surgeons may be allowed to practise, such as will operate to deprive some who are already engaged in such profession of their occupation. (331)

Under the principle that the state may reg-

ulate the manner in which a right is exercised, a local act forbidding the sale of goods, etc., as by a hawker or peddler, is constitutional, as it is directed not against the sale, but against the manner of sale, and is therefore not in violation of the right of acquiring, possessing, and protecting property, as guaranteed in the bill of rights. (332)

(323) The act of April 3, 1832 (P. L. 259), incorporating the borough of Warren, and also the general borough act of April 3, 1851 (P. L. 320, § 2; P. & L. Dig. 389), granted to such borough the power to enact such ordinances as were not unreasonable or contrary to common right. Under this authority, the borough passed an ordinance requiring hawkers and peddlers to take out a license and pay a fee therefor, and providing that in default thereof those engaged in such business should be subject to a fine. To an action by the borough for the recovery of the fine imposed by this ordinance, the defendant demurred. Judgment for the defendant on the demurrer, on the ground that the borough was without the authority to pass such an ordinance, because such authority was not conferred by express legislative grant. Reversed.—Borough of Warren v. Geer, 117 Pa. 207 (1887), Green, J.; s. c. 11 Atl. 415, 20 W. N. C. 157.

(324) The local act of April 20, 1854 (P. L. 418), regulated the granting of licenses to hawkers and peddlers within certain counties of the state, and prescribed the conditions upon which such licenses should be granted. After a finding that the defendant was guilty of the violation of this act, it was moved in arrest of judgment that the act was unconstitutional. Motion overruled.—Comm. v. Lippincott, 7 Pa. C. C. 32 (1889), Simonton, P. J.

(325) The act of May 9, 1889 (P. L. 150, § 1; P. & L. Dig. 3414), provided that all persons who desired to hawk or peddle goods should take out a license, and provided a penalty for disobedience of its provisions. A. and others were convicted of hawking without a license. A rule for a new trial, on the ground that the act was unconstitutional, was discharged.—Comm. v. Winslow, 7 Pa. C. C. 667 (1890), Ermentrout, P. J.

(326) The act of May 23, 1887 (P. L. 173, § 1; P. & L. Dig. 1625), made the carrying on of the business of a detective without a license a misdemeanor, and regulated the licensing of detectives and their powers. To the application of one who had complied with the terms of the act, a remonstrance was filed, which alleged that the act was unconstitutional. The license was granted.—Armour's Case, 1 D. R. 620 (1892).

(327) The act of May 8, 1878 (P. L. 46; P. & L. Dig. 1132), makes it a misdemeanor for any person to erect, place, or have any booth, stall, carriage, or boat, for the purpose of selling, giving, or otherwise disposing of any kind of articles of traffic (with certain exceptions) within one mile of any camp meeting held for religious worship. The exceptions relate to persons engaged at their usual places of business, in their ordinary occupations, and to farmers disposing of their own farm products, within the prescribed limits. The defendant, who was indicted under this act, took a rule to quash the indictment, on the ground that the act was contrary to Article I., section 1, of the constitution. Rule discharged.—Comm. v. Seward, 2 Kulp, 294 (1883), Rice, P. J.

(328) The act of April 20, 1858 (P. L. 365, supplied by the act of May 13, 1887, P. L. 108; P. & L. Dig. 2700), prohibited the sale of intoxicating liquor without a license, and made such sale a misdemeanor. The defendant, who was indicted under this act, demurred to the indictment, and contended that the act was contrary to Article I., section 1, of the constitution. The demurrer was overruled.—Comm. v. Schoenhutt, 3 Phila. 20 (1858), Thompson, P. J.; s. c. 15 L. I. 4.

(329) A., in his application for a license to peddle, alleged full compliance with the provisions of all the acts of assembly bearing on the subject, except that of physical disability to gain a livelihood by labor. He contended that the act of March 28, 1799 (3 Sm. L. 359; P. & L. Dig. 3417), and its supplements, containing this provision, were in violation of Article I., section 1, of the constitution, which asserts among a man's inherent and indefeasible rights, those "of enjoying and defending life and liberty." This contention was sustained, and the application was granted.—Peddler's License Application, 22 W. N. C. 35 (1888), Wickham, P. J.; s. c. 5 Pa. C. C. 318.

(330) Section 4 of the act of June 8, 1881 (P. L. 72; P. & L. Dig. 2964), provides for the registration of a graduate of a foreign medical college upon indorsement of his diploma by the dean of a medical college or university of this state, if after the party has laid the diploma before the faculty, such faculty shall be satisfied of his qualifications and of the genuineness of the diploma. B. was registered on presentation of his diploma, with the certificate of its genuineness given by the secretary of a medical faculty within this state. On motion, the registration was struck off, for non-compliance with the act. On appeal, *held*, affirming judgment, that the act was not unconstitutional.—Bauer's Appeal, 17 W. N. C. 394 (1886); s. c. 4 Atl. 913.

(331) The act of April 11, 1889 (P. L. 28; P & L. Dig. 2973), provides for the registration of veterinary surgeons within six months from the passage of the act, and provides a penalty for practising without being so registered. B. registered subsequently to the expiration of the required six months. A rule to have B.'s name struck from the register was discharged on the ground that the limitation clause, taken together with the penalty for its violation, was unconstitutional, as tending to deprive B. of his occupation.—Ritter v. Rodgers, 8 Pa. C. C. 451 (1890), Schuyler, P. J.; s. c. 7 Lanc. L. R. 257, 2 North. Co. 207.

(332) The local act of April 17, 1846 (P. L. 364), forbade the sale of foreign or domestic goods, wares, etc., in the county of Schuylkill, by any persons as hawkers or peddlers, from door to door. The defendant who was convicted, and fined under the provisions of this act, appealed, contending that this act violated the rights of property asserted in Article I., section 1, of the state constitution. Affirmed, on the ground that the act was directed not against the right but the manner of sale.—Comm. v. Gardner, 133 Pa. 284 (1890), Williams, J.; s. c. 19 Atl. 550, 25 W. N. C. 462, 47 L. I. 167, 37 Pitts. L. J. 395.

See, *contra*, Fromberg's Appeal, 4 Pa. C. C. 354 (1887), Sittser, P. J.

That an act prohibiting insurance against loss by fire without authority expressly conferred by a charter of incorporation is valid as a police regulation. See Comm. v. Vrooman, 164 Pa. 306 (1894), Williams, J. (Dean, J., dissenting).

(I) ALL COURTS SHALL BE OPEN.

The constitutional provision that all courts shall be open means that they shall be open to persons having business therein, and does not give to any person the right to force his way in, and thereby produce disorder. (333)

A provision that certain judges should appoint directors of certain trusts is not unconstitutional, as closing the courts to suits to which such directors are parties, because of incompetency of the appointing judges to try such suits. (334)

An act limiting the amount which a person may recover for an injury to his person, is void as contrary to the constitutional provision reserving to every man the right to have, for an injury done him in his person, a remedy by due course of law (335); but an act providing that any person sustaining injury while lawfully engaged on or about roads or depots of a railroad company of which he is not an employee or about any car or train therein or thereon, shall have only the same right of action that he would have if he were an employee, is constitutional. (336)

(333) An attorney, being desirous of going into a court room, and finding the door for the admission to the bar fastened, went to the door for the admission of suitors, witnesses, and the general public. He was informed that the court was full, and that there was no room for him. He told the officer in charge that he was a member of the bar, and, being still refused admission at that door, attempted to force his way in, and the officer used sufficient force to keep him out. *Held*, that the officer was right, as the constitutional provision that "all courts shall be open" does not mean that any person has a right to force his way in, and thereby produce disorder.—"All Courts shall be Open," 30 Pitts. L. J. 362 (1883), Peirce, J.

(334) An act of assembly provided that the judges of the supreme court, together with the judges of the district court and the court of common pleas of Philadelphia, should appoint the directors of city trusts. On demurrer to a bill in equity in the supreme court to restrain interference with the city trust estates, it was contended that the act was contrary to Article I., section 11, of the constitution, because the judges who appointed the directors would be incompetent to decide a case in which they were a party. Dismissal of bill sustained.—Philadelphia v. Fox, 64 Pa. 169 (1870), Sharswood, J.

(335) A. sued the B. railway company for damages resulting from a personal injury. The verdict and judgment was for $10,000. On appeal, B. contended that the court should have reduced the verdict to $3,000, in accordance with the provisions of the act of April 4, 1868 (P. L. 58), which limited the amount of recovery in such cases to that sum. *Held*, that the act was in contravention of the bill of rights, which reserves to every man the right to have, for an injury done him in his person, a remedy by due course of law. Judgment affirmed.—Thirteenth and Fifteenth Sts. Pass. Ry. Co, v. Boudrou, 92 Pa. 475 (1880), Trunkey, J.

(336) The act of April 4, 1868 (P. L. 58, § 1; P. & L. Dig. 3236), provided that any person sustaining injury while lawfully engaged on or about roads or depots of a railroad company of which he is not an employee, or about any car or train therein or thereon, shall have only the same right of action as he would have if he were an employee. In an action by a person employed by a coal company to unload coal from cars standing on the defendant's railroad, to recover for personal injuries received by defendant's negligence, a judgment of nonsuit was given, because of the act of 1868. On appeal, plaintiff contended that the act was unconstitutional. Judgment affirmed.—Kirby v. Pennsylvania R. Co., 76 Pa. 506 (1875), Agnew, C. J.; s. c. 2 Foster, 390, 22 Pitts. L. J. 99.

See, also, Wyoming Street, 137 Pa. 494 (1890), Williams, J. (Paxson, C. J., and Mitchell, J., concurring in the judgment, but not in all the reasons).

(J) RIGHTS OF CONSCIENCE.

The right of individuals to worship God according to the dictates of their own consciences cannot be interfered with. An act prohibiting all worldly employment upon the first day of the week (the Christian Sabbath) does not interfere with this right, even when applied to persons whose religious belief leads them to observe another day of the week as their Sabbath. (337–339)

(337) The act of April 22, 1794 (3 Sm. L. 177, § 1; P. & L. Dig. 4406), imposed a penalty upon all those who performed unnecessary worldly labor upon the first day of the week. Under this act a person professing the Jewish religion, and keeping the seventh day as his Sabbath, was convicted, and the penalty was imposed. On appeal, it was contended that this act violated Article IX., section 3, of the constitution of 1790, which is embodied in Article I., section 3, of the constitution of 1874. Judgment affirmed.—Comm. v. Wolf, 3 S. & R. 48 (1817), Yeates, J.

(338) The act of April 22, 1794 (3 Sm. L. 177, § 1; P. & L. Dig. 4406), prohibited any unnecessary worldly employment on Sunday. A., who was charged before a justice of the peace with the violation of this act, pleaded that his religion taught him to observe Saturday as the Sabbath. A. was convicted and fined by the justice, and judgment was affirmed in the common pleas. It was contended that the act violated Article IX., § 3, of the constitution of 1790, which is supplied by Article I., § 3, of the constitution of 1874. Judgment affirmed.—Specht v. Comm., 8 Pa. 312 (1848), Bell, J.

(339) A Seventh Day Baptist was found guilty before a justice of the peace of following worldly employment on Sunday, contrary to the provisions of the act of April 22, 1794 (3 Sm. L. 177, § 1; P. & L. Dig. 4406), and fined. On appeal, he attacked the constitutionality of the act. Judgment affirmed.—Waldo v. Comm., 9 W. N. C. 200 (1880); s. c. 12 Lanc. Bar, 60.

(K) SPECIAL PRIVILEGES.

The act of April 29, 1874 (P. L. 73, § 34), making exclusive the franchises of a water company incorporated under its provisions, is not unconstitutional as violating Article I., § 17, of the constitution, which prohibits the making of an irrevocable grant of special privileges or immunities. (340)

(340) The A. company, which had been chartered under the act of April 29, 1874 (P. L. 73, § 34; P. & L. Dig. 2216), to supply the borough of X. with water, filed a bill in equity for an injunction to restrain B., a private citizen, from extending water pipes laid by him in said borough, on the ground that the said act granted to A. exclusive privileges. B. replied that, if the act gave exclusive privileges, it conflicted with Article I., § 17, of the constitution, which forbids "making irrevocable any grant of special privileges or immunities." *Held*, that A.'s charter was granted and accepted subject to Article XVI., § 10, of the constitution, reserving to the legislature the right to alter, revoke, or annul any charter that might be thereafter created, hence it was not an irrevocable franchise, and not unconstitutional. Injunction granted.—Freeport Water Works v. Prager, 3 Pa. C. C. 371 (1887), Mehard, P. J.

II. THE LEGISLATURE.

(A) LEGISLATIVE POWER.

1. In General.

Section 1 of Article II. of the constitution provides that the legislative power of the commonwealth shall be vested in a general assembly. The general assembly may pass laws on any subject upon which its legislation is not prohibited; thus it may direct the opening and re-settlement of the accounts of a county officer (341), may prohibit the manufacture and keeping for sale of adulterated or imitation articles of food (342), or give to a railway the right to extend its road to "any point" in a city (343), and the amendment to the constitution adopted in 1864 (and incorporated substantially into § 7, Art. III., of the constitution of 1874), providing that no bill shall be passed granting any powers or privileges, where the authority to grant such powers or privileges has been, or may be, conferred on the courts, does not prohibit the passage by the legislature of a law authorizing an act to be performed, except where authority is by law conferred on the courts to grant the powers and privileges which the legislature is asked to bestow (344); but the general assembly cannot exercise any of the functions of the judiciary. (345)

When the first legislature under an amended constitution neglected to make certain provisions which such constitution had directed should be made by it, it was held that such provisions could be made by a subsequent legislature. (346)

A constitutional provision directing that the legislature shall provide for a certain thing, and not prohibiting the doing of more than is expressed in the terms of the provision, fixes the minimum of the power, not the maximum. (347)

When to remove doubts, as to a borough's title to, and right to dispose of, land, a statute has been passed, confirming the title, and conferring on the borough power to sell lots out of the land, a provision therein that, before making any such sales, the borough shall convey a lot of a certain size to a historical society, is a valid exercise of legislative power. (348)

(341) A. was treasurer of a certain county. He issued his warrant to a constable for the collection of delinquent taxes. The constable collected the taxes, but defaulted, and A. paid the amount out of his own private means when he settled his accounts. The special act of April 8, 1864 (P. L. 323), provided "that the auditors of Clarion

County are hereby authorized and required to open the accounts of A., former treasurer of Clarion County, and with the approval of the county commissioners resettle and equitably readjust the same, allowing the same right of appeal to the court that is provided for by law, in the settlement of treasurers' accounts." The auditors appointed concluded not to make any alterations. A. appealed from their report, and the court directed an issue, the county to be plaintiff, and A. defendant, he having the right to give all matters in defence entitling him to a balance in his favor. It was contended that the act was unconstitutional, on the ground that, in passing it, the legislature had assumed the functions of a judiciary. *Held*, reversing the lower court, that the act was within the power of the legislature, and constitutional.—Burns v. Clarion County, 62 Pa. 422 (1869), Thompson, C. J.; s. c. 16 Pitts. L. J. 227.

(342) The act of May 21, 1885 (P. L. 22, § 1), prohibits the manufacture or sale, or keeping for sale, of any oleaginous substance other than that produced from pure unadulterated milk or cream, to take the place of butter or cheese or (of) any imitation or adulterated butter or cheese. In a prosecution, under the act, for selling butterine, it was contended by the defence, on motion for a new trial, that the act was unconstitutional. *Held*, that the act was a proper exercise of the police powers of the state, and was therefore constitutional. Motion for new trial overruled.—Comm. v. Powell, 1 Pa. C. C. 94 (1885), Simonton, P. J.

The supreme court of the United States has held that so far as the above act applies to oleomargarine brought into the state and sold in the original packages, it is unconstitutional. See Title Constitution of the United States, Case (7).

(343) An act of assembly provided that the A. street railway company should have the right to extend its road at any time from its terminus in the city of Philadelphia to any other point in the city west of the Schuylkill river. On a motion by the B. company for an injunction restraining the A. company from extending its track under the act, it was contended that the act was unconstitutional. *Held*, that the act was within the scope of legislative power. Injunction refused.—West-End Pass. Co. v. Philadelphia City Pass. Ry. Co., 10 Phila. 75 (1873), Peirce, J.; s. c. 30 L. I. 257.

(344) The ninth section of the eleventh article of the constitution adopted in 1864 provided that "no bill shall be passed by the legislature, granting any powers or privileges, in any case, where the authority to grant such powers or privileges has been, or may hereafter be, conferred upon the courts of this commonwealth." The act of June 13, 1836 (P. L. 551; P. & L. Dig. 4128 *et seq.*), gave to the courts of quarter sessions jurisdiction of the opening of roads. The act of March 13, 1867 (P. L. 414), gave to the town council of a certain borough authority to open streets, roads, etc., within the borough. *Held*, that this act was constitutional, as the authority to grant the power to open roads had never been conferred upon the courts.—Clinton Street, Doylestown, 7 Phila. 644 (1870), Allison, P. J.; s. c. 27 L. I. 5.

(345) The special act of March 16, 1847 (P. L. 405), directed that a new trial should be granted and allowed to Abel Fairchild in an action instituted against him by Cæsar Laurent, Conte de Chastellux. A rule accordingly obtained to set aside a *vend. exp.* on the judgment, which had been affirmed by the supreme court, was made absolute, but the order was reversed by the supreme court, on the ground that the act was unconstitutional, as being a usurpation of the functions of the judiciary.—De Chastellux v. Fairchild, 15 Pa. 18 (1850), Gibson, C. J.

Overruling Braddee v. Brownfield, 2 W. & S. 271 (1841), Sergeant, J.

(346) The eleventh section of the schedule of the constitution of 1838 provided that the first legislature under that constitution should pass laws providing for the election or appointment of canal commissioners. This was not done, but a subsequent legislature passed an act providing as required, and B. was elected. In *quo warranto* proceedings to oust B., it was contended that the act was an unlawful exercise of legislative authority. Judgment for B.—Comm. v. Clark, 7 W. & S. 127 (1844), Gibson, C. J.

(347) The act of April 11, 1848 (P. L. 517), provided "that the common-school system from and after the passage of this act, shall be deemed, held, and taken to be adopted by the several school districts of this commonwealth," etc. The act of April 7, 1849 (P. L. 441), provided "that a system of common-school education be, and the same is hereby deemed, held, and taken to be adopted, according to the provisions of this act, in all the counties of this commonwealth." The act provided that the school directors should establish a sufficient number of common schools for the education of every individual between the ages of five and twenty-one years, in the districts, who might apply for admission and instruction, either in person, or by parent or guardian or next friend. Directors of a certain township made provision for the education of poor children, but refused to establish a system of common schools in the township, as provided for in the above acts. On petition their offices were declared vacant by the court, and successors were appointed. The contention of the ousted directors was, that the acts were in conflict with the provision in the first section of the seventh article of the constitution of 1838, that "the legislature shall, as soon as conveniently may be, provide for the establishment of schools throughout the state, in such manner that the poor may be taught *gratis*." On appeal, the action of the

court below was affirmed, the supreme court holding that, as the constitutional provision did not forbid the legislature to do more than was expressed in its terms, the provision fixed the minimum, not the maximum of duty.—Comm. v. Hartman, 17 Pa. 118 (1851), Black, C. J.

(348) The legislature, in order to remove a doubt as to the right of a borough to convey a certain tract of land, passed the special act of April 5, 1870 (P. L. 891), giving the borough authority to sell the land in lots. The statute contained a provision, however, that before any lots were sold a certain lot should be conveyed to a historical society. On a case stated, it was contended that the act was unconstitutional, as the legislature had exceeded their authority. *Held*, reversing the lower court, that the act was constitutional.—Wilkes-Barre v. Wyoming Society, 134 Pa. 616 (1890), Green, J.

2. Delegation of Powers.

An act which delegates the legislative power is unconstitutional; but it is not such a delegation to submit to a popular vote such questions as the establishment or continuance of a new township (349), the removal of the seat of justice of a county (350), the consolidation of certain districts into a city (351), or the granting of liquor licenses. (352)

The legislature may give to city councils the right to exercise the power of taxation within the corporate limits (353); or may give to a borough power to prohibit the erection of certain buildings within borough limits (354), or give to municipal boards of health the power to regulate house drainage, etc. (355); and it is no delegation of the legislative power for the legislature to provide, in granting a franchise to a railway company, that the franchise shall be exercised subject to all the ordinances of city councils. (356)

An act conferring on the secretary of the commonwealth power to prepare certain forms necessary to carry the act into effect is not a delegation of legislative power, and is constitutional (357); but an act directing the insurance commissioner to prescribe a uniform policy of insurance to be used throughout the state, permitting him to use his own discretion entirely, is a delegation of the legislative power, and therefore unconstitutional. (358)

An act empowering a local board of revision and appeal to order a new assessment in any other than a triennial year is unconstitutional as an attempt to delegate legislative powers. (359)

(349) A new township, W., was erected by commissioners of the quarter sessions, out of the old township of B. Subsequently the 13th section of the act of March 8, 1847 (P. L. 256), authorized the qualified voters of the townships of B. and W. to decide by ballot whether W. township should be continued or annulled. The ballot resulted against continuing the township. A. was thereafter elected constable by the citizens within the territory of W. township. The court of quarter sessions refused to administer the oath of office, and A. petitioned the supreme court for a writ of mandamus to the judges of the said quarter sessions, commanding them to allow A. to be sworn into office. A.'s contention was that the section of the statute above set forth was unconstitutional, as a delegation of the law-making power. Mandamus refused.—Comm. v. Judges of Quarter Sessions, 8 Pa. 391 (1848), Bell, J.

(350) An act of assembly provided that the question of the removal of the seat of justice of Delaware County should be submitted to a vote of the qualified electors of that county at their general election. The decision was in favor of removal, and the question of the constitutionality of the act was raised on petition for a mandamus to compel the county commissioners to effect the removal. *Held*, that the legislature could delegate this decision to the people, and the act was constitutional. Peremptory mandamus granted.—Comm. v. Painter, 10 Pa. 214 (1849), Coulter, J.

(351) The act of April 6, 1867 (P. L. 846), provided for the consolidation ef the city of Pittsburg and surrounding territory into one city. The question of such consolidation was to be submitted to a vote of the citizens in three designated districts, and if either district decided in favor of consolidation an election was to be held for municipal officers. One of the districts having voted for consolidation, a bill in equity was filed in the supreme court to have the aforesaid act declared unconstitutional, and to have the holding of an election under the provisions of the act restrained. *Held*, that the act was not a delegation of the legislative power, and was constitutional. Injunction refused.—Smith v. McCarthy, 56 Pa. 359 (1867), Thompson, J.

(352) The act of May 3, 1871 (P. L. 522), authorized the voters of the twenty-second ward of Philadelphia to vote on the question of granting license to sell intoxicating liquors. A majority of votes having been cast against license, a bill in equity was filed in the common pleas to restrain the city commissioners from granting license in said ward. The court granted the injunction, and the commissioners appealed, contesting the constitutionality of the act of 1871. Decree

affirmed, on the ground that the act was not a delegation of the legislative power, and was constitutional.—Locke's Appeal, 72 Pa. 491 (1873), Agnew, J. (Read, C. J., and Sharswood, J., dissenting); s. c. 4 Leg. Opin. 597. Affirming 4 Leg. Gaz. 161.

Overruling Parker v. Commonwealth, 6 Pa. 507 (1847), Bell, J. (Burnside and Coulter, JJ., dissenting).

See, also, McClain v. City Commissioners, 3 Leg. Opin. 248 (1872), Allison, P. J.

(353) An act of assembly gave to the councils of Wilkesbarre the power to impose certain taxes or license fees within the city. A bill filed in the common pleas to restrain the city from collecting such taxes and licenses, on the ground of the unconstitutionality of the act, was dismissed. On error, *held*, that the act was constitutional. Decree reversed on the ground that the ordinance imposing the taxes complained of was not supported by the act.—Butler's Appeal, 73 Pa. 448 (1873), Mercur, J.

(354) The act of March 23, 1865 (P. L. 725), authorized the borough of Wilkesbarre to pass ordinances to prevent the erection of wooden buildings within the territory of the borough. The common pleas refused to dissolve an injunction to prevent violation of an ordinance passed under authority of the act *holding*, that the act was constitutional on the ground of public policy, as necessary to obviate the danger by fire.—Wilkesbarre Borough v. Bertels, 5 Luz. L. Reg. 149 (1876), Conygham, P. J.

(355) The act of June 30, 1885 (P. L. 250), authorized the boards of health in cities of the first class to regulate house drainage, to provide for the registration and licensing of master plumbers, and the construction of cesspools. On demurrer to an indictment under the act, on the ground that the act was unconstitutional, *held*, that the act did not delegate the law-making power to a department of the municipality, and was therefore constitutional.—Comm. v. Lambrecht, 18 Phila. 505 (1887), Arnold, J.; s. c. 44 L. I. 196, 3 Pa. C. C. 323.

(356) The defendant, B., a railway company, was incorporated under the act of May 16, 1861 (P. L. 700), which provides that the company should be subject to all the ordinances of the councils of the city. An ordinance declared that it should not be lawful to remove any pavement of the highways of the city for the purpose of laying any tracks for a railway, without the consent of the city councils. The act of April 14, 1863 (P. L. 353), supplemental to the act of incorporation of B., authorized it to lay its tracks upon a certain street. B. proceeded to do this without the consent of councils. The city filed a bill in equity in the supreme court to restrain B. from using said street for its tracks. B. demurred, on the ground that the legislature had no authority under the constitution to delegate to the city the right to assent to or dissent from the exercise of the franchise conferred by the legislature. Demurrer overruled and injunction granted.—Philadelphia v. Lombard and South Street Ry. Co., 4 Brewst. 14 (1866), Strong, J.

(357) The act of June 19, 1891 (P. L. 349), regulated elections, nominations, etc., and provided that the secretary of the commonwealth should prepare certain forms necessary to carry the act into effect. *Held*, refusing an injunction to restrain county commissioners from incurring expenses under the act, that this was not a conferring of legislative powers upon said secretary in violation of the constitution.—Ripple v. Lackawanna County Commissioners, 1 D. R. 202 (1892).

(358) The act of April 16, 1891 (P. L. 22), provided that there should be a uniform contract or policy of insurance against fire throughout the state, directed the insurance commissioner to prescribe a standard policy of insurance, and forbade the use of any other. In an action to recover on such a policy, the plaintiff offered evidence to prove that the defendant company had waived a certain condition in the policy. Objected to on the ground that the condition was prescribed by statute, and could be waived only in the manner provided by statute. The court entered a compulsory nonsuit, which it subsequently refused to remove, holding the act constitutional. On error, *held*, that the act was an unauthorized delegation of legislative power, and was unconstitutional. Nonsuit set aside.—O'Neil v. American Fire Ins. Co. 166 Pa. 72 (1895), Williams, J.; s. c. 30 Atl. 943, 35 W. N. C. 513, 42 Pitts. L. J. 236. Reversing 42 Pitts. L. J. 97.

(359) A.'s property in Scranton was duly assessed in 1895, the year of the triennial assessment, at $11,000, under the act of May 23, 1889 (P. L. 277; P. & L. Dig. 4563). In the year 1897, however, the board of revision and appeals acting under the authority of the act of May 23, 1895 (P. L. 118), issued a precept to the city assessors for a new assessment, which assessment was made, and raised the valuation to $14,000. Thereupon A. filed a bill in equity praying for an injunction to restrain the city from collecting taxes for the excess of valuation over that of the triennial assessment, on the ground that the act of May 23, 1895, was unconstitutional, as an unlawful delegation of legislative power. A demurrer to the bill was overruled.—Jermyn v. Scranton City, 6 D. R. 591 (1897), Archbald, P. J.

(B) COMPENSATION OF MEMBERS.

Section 8 of Article II. of the constitution provides that members of the general assembly shall receive a certain "salary," and mileage to be fixed by law, and no other compensation whatever. An act prescribing a fixed "compensation" for members of the general assembly for sessions of a certain length, and giving additional compensation for time necessarily employed beyond that, is not in conflict with this section. (360)

Members of the legislature who hold other offices *ex officio*, the duties of which have no relation to their duties as members of the legislature, can receive compensation

for duties performed as such *ex officio* officers. (361)

(360) The act of May 11, 1874 (P. L. 129), provides that "the compensation of members of the general assembly shall be one thousand dollars for each regular and each adjourned annual session, not exceeding one hundred days, and ten dollars per diem for time necessarily spent after the expiration of the one hundred days; provided, however, that such time shall not exceed fifty days at any one session." The state treasurer refused to pay to A., a member of the legislature, the excess over $1,000 and mileage for a session of 158 days, on the ground that the act was unconstitutional as to such excess. A. petitioned the common pleas for a writ of mandamus to compel payment, which was refused on the constitutional ground. A. took a writ of error. *Held*, reversing judgment, and granting the mandamus, that, giving to the word "salary" the meaning of "wages," of which it was susceptible, the act was not in contravention of the constitutional provision.—Comm. v. Butler, 99 Pa. 535 (1882), Sharswood, C. J. (Trunkey, J., dissenting); s. c. 39 L. I. 304, 11 W. N. C. 241. Reversing 13 Lanc. Bar, 38, 2 York, 93.

(361) The act of April 10, 1834 (P. L. 266), provided that the members of the senate and house of representatives from the city and county of Philadelphia should form the "county board." The act of March 27, 1839 (P. L. 656), provided that members of the Philadelphia county board should receive, for each day's attendance upon the duties of the said board, the pay and mileage of members of the legislature, to be paid out of the funds of the treasury of the county of Philadelphia. A. brought suit against the city for his compensation under the latter act, and obtained judgment. On error it was objected that the act was in conflict with section 18 of article I. of the then existing constitution, providing that members of the legislature should be paid a compensation out of the treasury of the commonwealth. *Held*, affirming judgment, that, as the duties and business to be performed by the members of the country board had no relation to or connection with their duties and business as members of the legislature, the act of 1839 was constitutional.—Philiadelphia County v. Sharswood, 7 W. & S. 16 (1844), Kennedy, J.

(C) POWERS OF EACH HOUSE.

1. In General.

The provision of section 11, Article II., of the constitution that each house "shall have all other powers necessary for a branch of the legislature of a free state," is not a restriction of legislative authority, but a bestowal of privilege upon the separate branches. (362)

(362) A bill in equity was filed by certain citizens of Philadelphia against the mayor and other officers of said city to prevent them from subscribing and paying for a large amount of railroad stock, as authorized by an act of May 6, 1852 (P. L. 612). It was contended that the words in art. I., § 13, of the constitution of 1790 (see art. II., § 11, of constitution of 1874), "all other powers necessary for a branch of the legislature of a free state," limited the power of the general assembly and prevented the making of any law inconsistent with the freedom of the state. Motion for injunction refused.—Sharpless v. Mayor of Philadelphia, 21 Pa. 147 (1853), Black, C. J.

2. Adjournment.

Under the section of the constitution providing that neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting, an adjournment of the house of representatives for more than three days, without the concurrence of the senate, does not, *ipso facto*, work a dissolution of the general assembly. (363)

(363) Bill by A. to restrain the B. railroad company from laying its tracks on M. street, alleging that the act of March 13, 1872 (P. L. 339), under which B. claimed the right to lay the tracks, was void because, pending its passage, the house of representatives had adjourned for more than three days, without the concurrence of the senate, contrary to art. I., § 17, of the constitution of 1790 (see art. II., § 14, constitution of 1874). *Held*, that this did not, *ipso facto*, work a dissolution of the general assembly, and that the act was not invalid. Preliminary injunction continued on other grounds.—West Phila. Pass. R. Co. v. Union Pass. R. Co., 9 Phila. 495 (1872), Allison, P. J.; s. c. 29 L. I. 196.

3. To Be Judge of Election of Members.

Under section 9, Article II., of the constitution, making each house the judge of the election and qualifications of its members, the final determination of a contested election to the senate or house of representatives is with the house in which membership is contested, and under an act giving a court the power to try and determine contested elections, such court cannot make a decree declaring which claimant is entitled to the office. (364)

(364) Art. II., § 9, of the constitution of 1874, declares that "each house shall judge of the election and qualifications of its members." Art. VIII., § 17, provides that the trial and determina-

tion of contested elections of members of the general assembly, and other officers therein named, shall be, by the courts of law, or by one or more of the law judges thereof, and that the general assembly shall by law designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto. The act of May 19, 1874 (P. L. 208, § 11; P. & L. Dig. 894), provided that contested elections of senators and members of the house of representatives should be tried and determined by the court of common pleas of the proper county, and § 14 of the act declared that, after the hearing, the court should, without unnecessary delay, decide which of the candidates voted for had received the greatest number of legal votes, and was entitled to the certificate of election. A. was returned as elected to the state senate, but his election was contested on the ground that, in certain precincts, the election had been held outside of the election district. The lower court decided that B., the contestant, was elected. A. took a writ of *certiorari*. Writ quashed, on the ground that, under the constitution, the final determination of the election remained with the house in which membership was contested. — McNeil's Contested Election, 111 Pa. 235 (1886), Mercur, C. J.; s. c. 17 W. N. C. 41, 2 Atl. 341, 33 Pitts. L. J. 233.

(D) PRIVILEGE OF MEMBERS FROM ARREST.

Section 15 of Article II. of the constitution provides that "members of the general assembly shall in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective houses and in going to and returning from the same."

This privilege of members extends only to arrest on civil process. (365)

(365) A member of the house of representatives was arrested eight days before the commencement of the session, charged with embezzlement. On *habeas corpus*, he demanded to be released on the ground of privilege, under art. II., § 15, of the constitution, alleging that he was on his way to the state capital at the time of his arrest. *Held*, that the exemption applied only to arrest on civil process.—Comm. v. Keeper of Jail, 4 W. N. C. 540 (1877), Clayton, P. J.; s. c. 1 Del. Co. 215.

III. LEGISLATION.

(A) PASSAGE OF BILLS.

Section 1 of Article III. of the constitution provides that "no law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either house, as to change its original purpose." Section 4 of the same article provides that "every bill shall be read at length on three different days, in each house; all amendments thereto shall be printed for the use of the members, before the final vote is taken on the bill; and no bill shall become a law, unless on its final passage the votes be taken by yeas and nays, the names of the persons voting for and against the same be entered on the journal, and a majority of the members elected to each house be recorded thereon as voting in its favor." These are duties imposed upon the members of the legislature, and the courts will not inquire as to whether these formalities have been observed, when an act has been passed and approved and certified in due form. (366–367)

(366) On appeal from a decree dismissing a bill in equity, filed to enjoin the city treasurer of Pittsburg from appointing a collector of delinquent taxes and water rents, as authorized by the act of March 22, 1877 (P. L. 16; P. & L. Dig. 4544 *et seq.*), it was alleged in the pleadings that the act had not been passed or enacted conformably to the requirements of the constitution of the commonwealth; that it had been altered and amended on its passage through both houses of the general assembly, so as to entirely change its original purpose; and that it had not been read at length on three different days in each or either house of the general assembly. *Held*, affirming the lower court, that, where a law had been passed and approved and certified in due form, as this had been, it was no part of the duty of the judiciary to go behind the law as duly certified, to inquire into the observance of form in its passage.—Kilgore v. Magee, 85 Pa. 401 (1877); s. c. 25 Pitts. L. J. 57.

(367) The act of May 23, 1874 (P. L. 230), authorized the councils of cities of the first class whose debt then exceeded 7 per cent. of the assessed valuation to borrow 1 per cent. more upon such valuation. The act, as originally introduced and passed in the senate, contained no such clause, but the clause was incorporated afterwards by the adoption of the report of a conference of committees appointed by the two houses. On motion for a preliminary injunction to restrain the city of Philadelphia from borrowing a large amount as authorized by said act, it was argued that the original purpose of the act had been altered in passage. *Held*, refusing the injunction, that the court of common pleas had no right to examine as to what took place in the passage of the bill through the two houses of the legislature.—Massey v. Philadelphia, 1 W. N. C. 140 (1875), Allison, P. J., Ludlow, J.

(B) FORM OF BILLS.

Section 3 of Article III. of the constitution

provides that "no bill except general appropriation bills shall be passed containing more than one subject, which shall be clearly expressed in the title." This corresponds to the first amendment of 1864 to Art. XI., § 8, of the old constitution.

Where an act contains provisions properly and naturally connected with its main subject, this requirement is not violated (368–372); but if legislation on two or more distinct subjects be included, the act is unconstitutional. (373–374)

It is not necessary that the title should be a complete digest of the contents of the act; it is sufficient if it fairly and clearly gives notice of the subject-matter, so as reasonably to lead to an inquiry into the body of the act. (375–419)

The word "streets" in the title of an act is sufficiently general to cover legislation affecting public roads. (420–422) Qualifying words in the title will be taken to restrict the more general language of the body of the act. (423)

An act giving borough authorities power to open streets when they shall deem it necessary and also laying down the method of procedure and practice in such cases does not violate this section. (424)

Where the subject of an original act is sufficiently expressed in its title, it is sufficient if a supplement thereto, containing only germane matter, specifically refers to the title of the original act (425–430); but otherwise if the act contains matter not germane to the original act. (431–434)

Where the title to a supplementary act specifies the nature of the changes made in the original, the provisions of such supplement are limited to the subjects specified in its title. (435)

An obvious mistake in the title, such as misplaced quotation marks, will not vitiate an act otherwise in compliance with the constitutional requirements. (436)

If the title is misleading (437–443), or does not give fair and reasonable notice of the contents or subject-matter, the act is unconstitutional. (444–475)

An entire act is not necessarily void because the title fails to give notice of some particular matter contained therein. While the act will be held unconstitutional as to that portion not indicated by the title, the rule is to sustain that portion of which the title gives notice. (476–481)

(368) The act of October 31, 1866 (P. L. [1867] 1527), was entitled "An act to increase the boundaries of Forest county," and provided for the extension of the borders of the county, and for locating the seat of justice, and for accepting donations for public buildings. On bill in equity to prevent the removal of the county seat, it was contended that the bill contained more than one subject. *Held*, affirming the lower court, that the act was constitutional, as the various provisions related to but one general subject.—Blood v. Mercelliott, 53 Pa. 391 (1867), Read, J. (Woodward, C. J., dissenting); s. c. 14 Pitts. L. J. 446.

(369) The act of April 15, 1869 (P. L. 30), was entitled "An act allowing parties in interest to be witnesses." Its provisions extended to "persons" not "parties," and to those who had before been incompetent on the ground of policy. In assumpsit, the wife of the plaintiff was allowed to testify, as provided by said act. On error, *held*, affirming judgment for plaintiff, that the act did not embrace more than one subject. —Yeager v. Weaver, 64 Pa. 425 (1870), Sharswood, J.

(370) The act of March 24, 1869 (P. L. 513), was entitled "An act giving the right to the town council of the borough of Mauch Chunk to build drains and sewers and file liens for the building of the same," and provided that the authorities might impose a reasonable charge upon lot-owners "who may have tapped, or who may hereafter tap, any sewer which was built, or may hereafter be built," by the borough, not exceeding one dollar yearly for each foot front of the lot, which charge might be discontinued when the borough was reimbursed the expense of building and maintaining the sewer. In debt to recover rent for use of a sewer it was argued that the provisions embraced more than a single subject. *Held*, reversing the lower court, that the act was constitutional.—Mauch Chunk v. McGee, 81 Pa. 433 (1876), Agnew, C. J.

(371) The act of June 22, 1883 (P. L. 139; P. & L. Dig. 4258 *et seq.*), was entitled "An act fixing salaries of county officers in counties containing a certain population, and requiring the payment of fees into the county treasury." On rule for a mandamus to compel the prothonotary of one of such counties to make the returns required by said statute, the respondent argued that the act embraced two distinct subjects. *Held*, that the act related to but one subject, and was constitutional.—Comm. v. McCarthy, 2 Chest. Co. 417 (1885), Pershing, P. J.; s. c. 2 Lanc. L. R. 139.

(372) The act of March 27, 1873 (P. L. 54; P. & L. Dig. 2781), was entitled "An act to organize the state hospital for the insane at Danville and to provide for the government and management of the same." On a case stated, it was urged that the organization and government of the hospital formed two separate subjects, and could not be combined. Judgment holding the act constitutional was affirmed.—Clearfield County v. Cam-

eron Twp. Poor Dist., 135 Pa. 86 (1890); s. c. 19 Atl. 952.

(373) The act of March 20, 1873 (P. L. 330), provided for the laying out and opening of a certain street in Philadelphia by the chief commissioner of highways. On his refusal to comply with the act a petition for a mandamus was filed. The return set up that said act was void because containing more than one subject, to which return plaintiffs demurred. Judgment on demurrer for defendant.—Comm. v. Dickinson, 1 W. N. C. 185 (1875).

(374) The act of May 24, 1893 (P. L. 124), was entitled "An act to abolish commissioners of public buildings, and to place all public buildings heretofore under the control of such commissioners under the control of the department of public works in cities of the first class." This act repealed the act of August 5, 1870, and the proviso to section 1, art. IV., of the act of June 1, 1855, and saved from repeal the act of March 26, 1867, creating the Fairmount Park Commission. On a bill for an injunction to restrain the director of public works of Philadelphia from interfering with the construction of public buildings by commissioners appointed under said act, it was *held*, that the act embraced more than one subject, and was unconstitutional.—Perkins v. Philadelphia, 156 Pa. 554 (1893), Dean, J. (McCollum, Mitchell, and Thompson, JJ., dissenting); s. c. 27 Atl. 356, 32 W. N. C. 385, 33 W. N. C. 41, 41 Pitts. L. J. 85.

(375) The act of April 18, 1867 (P. L. 91), was entitled "An act to establish criminal courts for Dauphin, Lebanon, and Schuylkill counties;" and contained provisions as to the appointment and election of the judges, as to who should act as clerk, and how and by whom the grand and petit jurors should be chosen and summoned. On *quo warranto*, directed to a judge elected under said act, it was contended that the title of said act did not give adequate notice of its various provisions. *Held*, affirming the lower court, that the act was constitutional.—Comm. v. Green, 58 Pa. 226 (1868), Sharswood, J.; s. c. 25 L. I. 292.

(376) The act of April 9, 1870, was entitled "A supplement to the act incorporating the City Sewage Utilization Company, approved May 3, 1869," and gave the company authority to contract with the city of Philadelphia for the cleansing of streets. On bill for injunction to restrain the board of health of said city from entering into any contract for cleaning streets, other than with the plaintiffs, the respondents contended that the said act was unconstitutional because the title did not fairly indicate its contents. Injunction continued.—City Sewage Utilization Co. v. Davis, 8 Phila. 625 (1871), Allison, P. J.; s. c. 28 L. I. 412.

(377) The act of April 1, 1869 (P. L. [1868] 583), entitled "An act for the improvement of the borough of Norristown, in the county of Montgomery," authorized the construction of sewers by the town council, and the recovery of the expenses thereof from the property owners. A property owner applied for a preliminary injunction to restrain the town council from carrying into effect an ordinance for the construction of certain sewers. It was contended that the subject of the act of assembly was not clearly expressed in the title. Injunction refused.—Schall v. Norristown Town Council, 6 Leg. Gaz. 157 (1873), Ross, P. J.

(378) The act of May 25, 1871 (P. L. 1138), was entitled "An act providing for an equitable division of property between Allegheny county and the city of Pittsburg," and provided that the value of the interest of certain townships which had been annexed to Pittsburg should be ascertained and paid to the Pittsburg guardians of the poor. The report of commissioners appointed under said act was confirmed by the court of quarter sessions. On *certiorari*, it was contended that the subject of the act was not clearly expressed in the title. Judgment affirmed.—Allegheny County Home's Case, 77 Pa. 77 (1874); s. c. 1 W. N. C. 213, 32 L. I. 4.

(379) The act of May 24, 1873 (P. L. [1874] 379), was entitled "An act supplementing the several acts incorporating the borough of McKeesport, extending its boundaries, *et cetera*." The borough had been, in fact, incorporated under the general borough act, by proceedings in the quarter sessions. In assumpsit on a contract made with commissioners appointed by said act, the lower court held the act constitutional, though the title was "on the verge of fatal defectiveness." Judgment affirmed.—McKeesport Borough v. Owens, 6 W. N. C. 492 (1878).

(380) The act of March 18, 1868 (P. L. 352), was entitled "An act relating to boroughs in the county of Chester." The act had reference to the laying out and opening of roads, streets, and alleys, in the boroughs of Chester county, and repealed portions of prior laws on the same subject. A jury of view reported upon the opening of a street, and exceptions were taken to the report, on the ground that the act was unconstitutional, because it related to more than one subject, not clearly expressed in the title. *Held*, that the title was sufficient. Exceptions dismissed.—Nutt's Avenue, 2 Chest. Co. 49 (1883), Futhey, P. J.

(381) The act of March 31, 1876 (P. L. 13; P. & L. Dig. 4248), was entitled "An act to carry into effect section five, article fourteenth of the constitution, relative to the salaries of county officers, and the payment of fees received by them, into the state or county treasury, in counties containing over one hundred and fifty thousand inhabitants." The act, *inter alia*, designated those officials who should be considered county officers. On *quo warranto* against B., commanding him to show by what warrant he exercised the office of city controller of Philadelphia, *held*, affirming the court below, that the act was con-

stitutional, the title being an epitome of the section of the constitution to which it referred, and the designation of who were county officers being a natural corollary of the title.—Taggart v. Comm., 102 Pa. 354 (1883), Mercur, C. J.

(382) A city ordinance entitled "An ordinance providing for the levy and collection of a license tax in the city of Williamsport," provided that the funds raised by the act should be applied to a specific purpose. A bill in equity was filed to restrain the collection of this tax, and it was contended that the ordinance violated article III., § 3, of the constitution of Pennsylvania, because the object to which the tax fund was to be devoted was omitted from the title. Bill dismissed. —Hadtner v. Williamsport, 15 W. N. C. 138 (1883), Cummin, P. J.

(383) The act of May 9, 1871 (P. L. 639), was entitled "An act relating to streets in the several boroughs of Montgomery county;" and provided that the court of quarter sessions of Montgomery county, by and with the consent of the town councils, should have jurisdiction to inquire of, lay out, widen, vacate, or change any public street, road, or alley within the limits of any incorporated borough within said county. On exceptions to a report of viewers laying out a street, *held*, that the title of said act plainly expressed its true subject.—Jenkintown Borough Street, 1 Montg. Co. 185 (1885), Boyer, P. J.; s. c. 2 Chest. Co. 565.

(384) The act of May 9, 1871 (P. L. 639; see (383), *supra*), entitled "An act relating to streets in the several boroughs of Montgomery county," provided that damages might be assessed according to the provisions of the general road law. On *certiorari* to a decree of the quarter sessions, confirming a report of viewers to lay out a street and assess damages, it was held, in affirmance of the lower court, that the subject of the act was fairly expressed in the title and the act was therefore constitutional.—Airy St., Royersford, 113 Pa. 281 (1886), Gordon, J.; s. c. 6 Atl. 122, 18 W. N. C. 170, 43 L. I. 456, 2 Montg. Co. 153.

(385) The act of May 29, 1885 (P. L. 29; P. & L. Dig. 3218), entitled "An act to provide for the incorporation and regulation of natural gas companies," gave such companies the right of eminent domain, for the transportation and distribution of such gas, and made it the duty of the companies organized under the act to furnish to consumers along their lines, and within their respective districts, natural gas for light or heat, or other purposes, as the company might determine. A bill in equity was filed for an injunction to restrain the defendant, a natural gas company, from appropriating lands for the laying of its pipes. The bill alleged that the act of 1885 was unconstitutional by reason of not disclosing in its title the purpose of the legislature to grant to natural gas companies the right of eminent domain. Decree dismissing the bill, affirmed.—Johnston v. People's Natural Gas Co., 5 Cent. 564 (1886).

(386) The act of June 6, 1873 (P. L. [1874] 407; P. & L. Dig. 4198), entitled "An act to limit the time for the report of road juries and for the repeal of an act entitled 'An act relative to the qualification and powers of road jurors in the city of Philadelphia,' approved May 6, 1870, as well as the first section of the act of December 27, 1871, a supplement thereto," proceeded to remove a number of qualifications formerly necessary in road jurors. Upon exceptions by property owners, to the report of a road jury, *held*, affirming the lower court, that the act was constitutional. —Arrott Street Opening, 18 W. N. C. 121 (1886), Arnold, J.

(387) A. issued a writ of *quo warranto* to try the right of B. to a seat in the borough council of X. borough, and to B.'s answer, which set forth B.'s election, filed a demurrer. The ground of the demurrer was the unconstitutionality of the act of May 14, 1874 (P. L. 159; P. & L. Dig. 385). The act was entitled "An act to prescribe the manner by which the courts may divide boroughs into wards." The fourth section provided that the courts might, upon the filing of reports of commissioners appointed to make a division, order that an equal number of councilmen be elected from each ward. A. contended that the title of the bill did not clearly express its subject-matter in respect of this clause, and that, as B. was elected from a ward concerning which the court had made an order as provided by the act, he was illegally elected. *Held*, that the act was constitutional, and writ quashed.—Comm. v. Van Loon, 4 Kulp, 338 (1887), Rice, P. J.

(388) The act of May 24, 1887 (P. L. 194), was entitled "An act providing for the licenses of wholesale dealers in intoxicating liquors," and provided for the licenses of brewers and distillers. On petition for a brewer's license, *held*, that the title sufficiently indicated the contents of the act.—Doberneck's License, 5 Pa. C. C. 454 (1888), White, P. J.; s. c. 5 Lanc. L. R. 248.

(389) The act of May 6, 1887 (P. L. 84; P. & L. Dig. 1280), was entitled "An act to prevent and punish the making and dissemination of obscene literature and other immoral and indecent matter." The act made indictable the sale or publication of obscene or indecent papers. On indictment for disseminating indecent literature, the defendant demurred on the ground that the subject of the act was not clearly expressed in the title. Demurrer overruled.—Comm. v. Havens, 6 Pa. C. C. 545 (1888), Ewing, P. J.; s. c. 6 Lanc. L. R. 254.

(390) The act of April 22, 1879 (P. L. 30), was entitled "An act extending the power and authority of county auditors, authorizing them to settle, audit, and adjust the accounts of the directors of the poor"; and provided that the county auditors should audit the accounts of the directors of the poor and of the treasurer and steward of every poorhouse. On appeal from a report of auditors of Erie county, on the account of the treasurer of the directors of the poor of said county, it was *held*, affirming the lower

court, that the title clearly expressed the subject-matter so far as the report of such treasurer was concerned.—Nason v. Erie County Poor Directors, 126 Pa. 445 (1889), Paxson, C. J.; s. c. 17 Atl. 616, 24 W. N. C. 60.

(391) The act of April 13, 1887 (P. L. 22; P. & L. Dig. 3276), was entitled "An act to amend the fifth section of 'An act relating to the organization and jurisdiction of the orphans' court and to establish a separate orphans' court in and for counties having more than fifty thousand inhabitants, and to provide for the election of judges thereof,' approved May 19, A. D. one thousand eight hundred and seventy-four, as to appointment of assistant clerks of the said court and fixing the salaries of the same." A county treasurer refused to pay an assistant clerk the salary fixed by the act of 1874 on the ground that the act of 1887 repealed the provisions of the former act regarding salaries, under which the assistant clerk claimed. On rule for a mandamus to compel payment, *held*, affirming the lower court on this point, that the title was sufficiently comprehensive to include all the subject-matter of the act.—Reid v. Smoulter, 128 Pa. 324 (1889), Clark, J.; s. c. 18 Atl. 445.

(392) B. was indicted, under the act of May 13, 1887 (P. L. 108; P. & L. Dig. 2710), for selling liquors to minors. He contended that the act, which was entitled "An act to restrain and regulate the sale of vinous and spirituous, malt or brewed liquors, or any admixture thereof," was unconstitutional, because it violated art. III., § 3, of the constitution. A motion to quash the indictment was refused. Judgment affirmed.—Comm. v. Sellers, 130 Pa. 32 (1889), Sterrett, J.

(393) In a case stated, it appeared that Pittsburg, a city of the second class, had filed a municipal claim under the act of March 22, 1877 (P. L. 16; P. & L. Dig. 4544), against B. for taxes. The prothonotary's and sheriff's costs in the proceedings were not paid, and the prothonotary claimed a right to them under the act of 1877, which was entitled "An act in relation to cities of the second class, providing for the levy, collection and disbursement of taxes and and water-rents." B. contended that the act was unconstitutional in so far as it related to costs, because that subject was not indicated by its title. *Held*, affirming the lower court, that the act was constitutional.—Bradley v. Pittsburg, 130 Pa. 475 (1889).

(394) The act of May 16, 1889 (P. L. 228), was entitled "An act relating to streets and sewers in cities of the second class." It provided for the assessment of benefits on property owners, and for the widening of streets. A. filed a bill to enjoin the taking of his property under the act, claiming that the said act was unconstitutional, in that the title did not sufficiently set forth the subject-matter of the act. *Held*, constitutional. —Howard v. Pittsburg, 38 Pitts. L. J. 87 (1889), Ewing, P. J.

(395) An act entitled "An act to incorporate the B. Passenger Railway Company," granted a charter for a steam railroad. In a proceeding to prevent the railroad from laying its tracks through a borough, it was contended that the act was unconstitutional, in that its subject-matter was not sufficiently expressed in the title. *Held*, affirming the lower court, that the terms "railway" and "railroad" being synonymous, the act was constitutional.—Millvale Borough v. Evergreen Ry. Co., 131 Pa. 1 (1890), Green, J.

(396) Section 17 of the act of May 13, 1887 (P. L. 108; P. & L. Dig. 2710), provides that it shall be unlawful to furnish spirituous liquous to a person of known intemperate habits, by gift, sale, or otherwise. The act is entitled "An act to restrain and regulate the sale of vinous and spirituous, malt or brewed liquors, or any admixtures thereof." The defendant, who had been indicted and convicted under this section, contended, upon a motion in arrest of judgment, that it was in violation of the constitution, in that said section was not covered or mentioned in the title of the act. Judgment overruling the motion was affirmed.—Comm. v. Silverman, 138 Pa. 642 (1891).

(397) The act of May 7, 1889 (P. L. 116; P. & L. Dig. 2381), prohibits an insurance company or its agent from discriminating in favor of any insurants of the same class. B., who was indicted under the provisions of this act, moved to quash the indictment on the ground that the act was unconstitutional, for the reason that the title did not clearly indicate the subject-matter. The title of the act was very full, and almost an epitome of the act itself. B. further moved to quash for certain matters of form, which were amendable. The court entered an order quashing the indictment, without filing an opinion. In the supreme court, no reason for holding the act unconstitutional appearing, judgment was reversed.—Comm. v. Morningstar, 144 Pa. 103 (1891), Paxson, C. J.

(398) The act of June 25, 1885 (P. L. 187; P. & L. Dig. 4603), was entitled "An act regulating the collection of taxes in the several boroughs and townships of this commonwealth," and provided for the collection of county and school taxes. Under this act A. was elected collector of school taxes in the borough of C., and upon his suggestion a writ of *quo warranto* was issued, against B., who, it was alleged, unlawfully held and exercised said office. B. moved to quash the writ for the insufficiency of the petition, asserting that the act upon which A.'s title rested was unconstitutional, its subject not being clearly expressed in its title. Motion overruled.—Comm.

v. Frutchey, 11 Pa. C. C. 112 (1891), Sittser, P. J.; s. c. 1 D. R. 153.

(399) The act of April 22, 1889 (P. L. 39; P. & L. Dig. 4577), is entitled "A further supplement to an act regulating boroughs, . . . authorizing the corporate authorities to levy and collect a license tax on hacks, carriages, and other vehicles carrying persons or property for pay," etc. The first section of the act empowered the council of every borough to enact ordinances establishing reasonable rates of license tax on all hacks, carriages, omnibuses, and other vehicles used in carrying persons or property for pay, and limited the compensation for the same within the limits of the borough. The second section provided that said ordinance should be enforced as other borough ordinances were by law enforced, and the license tax should be collected as other licenses, taxes, fines, and penalties were then authorized by law to be collected. The plaintiff borough passed an ordinance in pursuance of this act, and fixed the license tax for the different kinds of vehicles. The defendant failed to pay the tax fixed by the ordinance. Upon a case stated, it was contended the act was unconstitutional, in that its subject was not clearly expressed in the title. This contention was overruled with regard to the first section of the act, and sustained with regard to the second section, and judgment was entered for the borough. On appeal, the whole act was held constitutional, and judgment was affirmed.—Washington Borough v. McGeorge, 146 Pa. 248 (1892), Sterrett, J.

(400) The act of May 16, 1891 (P. L. 90; P. & L. Dig. 4181 *et seq.*), was entitled "An act authorizing the ascertainment, levy, assessment, and collection of the costs, damages, and expenses of municipal improvements, including the grading, paving, macadamizing, or otherwise improving of any street laid or alley or parts thereof completed or now in the process of completion, and also the costs, damages, and expenses of the construction of any sewer completed or now in process of completion, and authorizing the completion of any such improvement;" and provided for assessments on property owners for street improvement. On bill in equity praying that the city of Pittsburg be restrained from proceeding to assess damages as authorized by said act, on the ground that its purpose was not sufficiently expressed in the title, *held*, affirming the lower court, that the act was constitutional.—Donley v. Pittsburg, 147 Pa. 348 (1892); s. c. 23 Atl. 394, 29 W. N. C. 362.

Followed in Whitney v. Pittsburgh, 147 Pa. 351 (1892); s. c. 23 Atl. 395; Bingaman v. Pittsburgh, 147 Pa. 353 (1892); s. c. 23 Atl. 395; Gray v. Pittsburgh, 147 Pa. 354 (1882); s. c. 23 Atl. 395; Rubright v. Pittsburgh, 147 Pa. 355 (1892); s. c. 23 Atl. 579.

(401) The act of May 15, 1889 (P. L. 222), was entitled "An act for the taxation of dogs and the protection of sheep," and provided that "all dogs in this commonwealth shall hereafter be personal property and the subject of larceny." On appeal from conviction for larceny of a dog, *held*, affirming the lower court, that the act embraced but one subject, which was fairly expressed in the title.—Comm. v. Depuy, 148 Pa. 201 (1892); s. c. 23 Atl. 896.

(402) The act of June 2, 1887 (P. L. 310; P. & L. Dig. 2213), was entitled "An act supplementary to an act approved April 29, 1874, entitled 'An act to provide for the incorporation and regulation of certain corporations,' amending the thirty-fourth section thereof, extending its provisions to fuel companies, providing for their capital stock and regulation, and giving them power of eminent domain." The act repealed by implication certain exclusive privileges given to water companies by the act of April 29, 1874 (P. L. 73). On bill in equity for an injunction, to restrain defendant company from laying water pipes in violation, it was alleged, of plaintiffs' exclusive right, *held*, affirming the lower court, that such inplied repeal was clearly expressed in the title of the act of 1887.—Luzerne Water Co. v. Toby Creek Water Co., 148 Pa. 568 (1892); s. c. 24 Atl. 117. Affirming 6 Kulp, 237.

(403) The act of May 21, 1885 (P. L. 22; P. & L. Dig. 3263), was entitled "An act for the protection of the public and to prevent the adulteration of dairy products and fraud in the sale thereof." The act prohibited the sale of oleomargarine, and provided a penalty for violations. On case stated, *held*, that the bill had but one subject which was clearly expressed in the title. Affirmed.—Comm. v. Shirley, 152 Pa. 170 (1893), Paxson, C. J.; s. c. 25 Atl. 819, 31 W. N. C. 397, 40 Pitts. L. J. 465.

(404) The act of June 11, 1879 (P. L. 126; P. & L. Dig. 2906), was entitled "An act relative to actions brought by husband and wife or by the wife alone for her separate property in case of desertion;" and provided for the recovery by the wife of the damages to which her husband was entitled for the loss of her services, where the husband by stipulation released his right. In trespass for personal injury to the wife, *held*, affirming the lower court, that the provisions of said act were cognate and clearly expressed in the title.—Kelly v. Mayberry Twp., 154 Pa. 440 (1893), Sterrett, C. J.; s. c. 26 Atl. 595.

(405) The act of April 12, 1875 (P. L. 48; P. & L. Dig. 2712 *et seq.*), was entitled "An act to repeal an act to permit the voters of this commonwealth to vote every three years on the question of granting licenses to sell intoxicating liquors, and to restrain and regulate the same." The act contained the repeal, the classification of retail

licenses, a general enactment applicable to wholesalers and retailers, a special enactment as to bottlers, penal provisions, and the saving of local laws. On rule to show cause why judgment entered on defendant's bond for a violation of said law should not be stricken off, it was argued that said act was unconstitutional because its subject was not clearly expressed in the title. *Held*, that the title was not misleading, and the act was constitutional.—Comm. v. Deibert, 12 Pa. C. C. 504 (1893), Endlich, J.; s. c. 2 D. R. 446.

(406) The act of May 11, 1893 (P. L. 44; P. & L. Dig. 407), was entitled "An act to enable borough councils to establish boards of health;" and provided for boards of health, whose rules and regulations should be approved by the borough councils. On application for a preliminary injunction restraining a board of health from proceeding under authority of the act to abate a nuisance, *held*, that the title of the act fairly pointed to legislation concerning the powers and duties of said board.—Smith v. Baker, 3 D. R. 626 (1893), Swartz, P. J.; s. c. 9 Montg. Co. 194, 14 Pa. C. C. 65.

(407) The act of May 23, 1889 (P. L. 277; P. & L. Dig. 612), was entitled "An act providing for the incorporation and government of cities of the third class," and provided for changing or enlarging the limits of such cities. Under this act, a petition to annex a portion of a township to the city of Scranton was presented to the councils, and an ordinance was passed in accordance with the prayer of the petition. Exceptions were filed, on the ground that the title of the act was misleading. Judgment dismissing the exceptions was affirmed.—Lackawanna Township, Harris's Appeal, 160 Pa. 494 (1894), Williams, J.; s. c. 28 Atl. 927.

(408) On appeal from an assessment of corporate taxes, the corporation contended that the act of June 8, 1891 (P. L. 229), was unconstitutional because its title did not express its contents. The act was entitled "An act to provide increased revenues for the purpose of relieving the burden of local taxation, being supplementary to an act, entitled 'An act to provide revenue by taxation, approved June 7, 1879, amending the 1st, 14th, 16th, 20th, 21st, 25th, and 26th sections of an act supplementary thereto, which became a law on the first day of June, 1889, entitled 'A further supplement to an act entitled "An act to provide revenue by taxation," approved June 7, 1879,' and providing for greater uniformity of taxation by taxing all the property of corporations, limited partnerships, and joint stock associations having capital stock, at the rate of five mills on each dollar of its actual value." The act also provided, that the personal property tax should be raised to four mills, and that corporations should be responsible for the four mills on their bonded indebtedness. *Held*, affirming the lower court, that the act was constitutional.—Comm. v. Wilkes-Barre & Scranton Ry., 162 Pa. 614 (1894).

(409) The act of May 5, 1876 (P. L. 124; P. & L. Dig. 4546), was entitled "An act providing for the classification of real estate for purposes of taxation and for the appointment of assessors in cities of the second class," and prescribed the duties of the assessors, and provided for taxation. On bill in equity filed in the supreme court to restrain a city of the second class from borrowing money and issuing bonds of indebtedness therefor, it was contended that the title of said act was defective. *Held*, constitutional.—Bruce v. Pittsburg, 166 Pa. 152 (1895), Dean, J.; s. c. 30 Atl. 831, 42 Pitts. L. J. 335.

(410) The act of May 23, 1891 (P. L. 107; P. & L. Dig. 2188), was entitled "An act to authorize and empower certain corporations incorporated under an act entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved the 29th day of April, 1874, to pay money or benefits to members in the event of their sickness, accident, disability, or death, or in the event of any or all such contingencies." The act provided that certain corporations should have the right to issue death-benefit certificates. On *quo warranto* against a benefit association incorporated under said act, it was argued that the title did not clearly express the subject of the act. *Held*, constitutional, affirming the lower court.—Comm. v. Keystone Ben. Ass'n, 171 Pa. 465 (1895), Mitchell, J.; s. c. 32 Atl. 1027, 37 W. N. C. 158.

(411) The act of May 10, 1878 (P. L. 51; P. & L. Dig. 418), was entitled "A supplement to an act entitled 'An act to prescribe the manner in which the courts may divide boroughs into wards,' approved May 14, 1874." The act provided for the method of election of justices of the peace after such division. On *quo warranto* against B. to determine his title to the office of justice of the peace, *held*, affirming the court below, that the title clearly indicated the subject of the act.—Comm. v. Morgan, 178 Pa. 198 (1896).

(412) The act of March 16, 1872 (P. L. 405), was entitled "An act relating to the county commissioners of Cambria county." It provided when the commissioners should meet for organization, fixed their salary, and empowered them to employ and fix the salary of a clerk. On case stated for the opinion of the court as to the constitutionality of said act, it was argued that the subject-matter of the act was not sufficiently expressed in the title. *Held*, constitutional. Affirmed.—Comm. v. Lloyd, 178 Pa. 308 (1896).

(413) The act of March 22, 1887 (P. L. 8; P. & L. Dig. 1260), was entitled "An act for the protection of livery-stable keepers," and provided that a violation of its terms should constitute a misdemeanor. A. was indicted and convicted

under the act for wilfully damaging the property of a livery-stable keeper, but a motion in arrest of judgment was sustained, on the ground that the title did not fairly indicate the subject of the act. Judgment reversed.—Comm. v. Moore, 2 Super. Ct. 162 (1896), Orlady, J.

(414) B. was convicted of wilfully cutting down ornamental trees, contrary to the act of June 8, 1881 (P. L. 82; P. & L. Dig. 1362), amended by the act of June 18, 1895 (P. L. 196; P. & L. Dig. Supp. 252). The title to the act of 1881, which was repeated in the act of 1895, was "An act to protect fruit, gardens, growing crops, grasses, *et cetera*, and punish trespass." The body of the act made it punishable to cut or mutilate any ornamental tree, shrub, etc. B. was indicted for a violation of said act, and convicted. A motion for new trial was refused. On appeal, it was contended that the subject of the act was not clearly expressed in the title. *Held*, affirming the lower court, that the act was constitutional.—Comm. v. Clark, 3 Super. Ct. 141 (1896), Wickham, J.

(415) The act of May 1, 1876 (P. L. 90; P. & L. Dig. 4665), was entitled "An act supplementary to 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, 1874, relative to the incorporation and powers of telegraph companies for the use of individuals, firms, and corporations and for fire alarm, police, and messenger business." The first section contained the words, "or for the transaction of any business in which electricity over or through wires may be applied to any useful purpose." On bill in equity for an injunction to restrain defendant from interfering with plaintiff's poles erected under authority of said act, it was contended that the title did not clearly indicate the subject-matter. *Held*, constitutional; and injunction granted.—York Telephone Co. v. Keesey, 9 York, 153 (1896), Stewart, J.

(416) The act of July 2, 1895 (P. L. 428; P. & L. Dig. Supp. 380), was entitled "An act to regulate and license public lodging-houses in different cities in this commonwealth." The act provided a penalty for not procuring a license for keeping a lodging-house in cities of the first class. A. was indicted for keeping such a lodging-house without a license. On motion for a new trial, it was contended that the subject of the act was not clearly expressed in the title. Judgment of the lower court holding the act constitutional and refusing a new trial was affirmed.—Comm. v. Muir, 180 Pa. 47 (1897). Affirming 1 Super. Ct. 578; s. c. 38 W. N. C. 328.

(417) The pure food law of June 26, 1895 (P. L. 317; P. & L. Dig. Supp. 318), was entitled "An act to provide against the adulteration of food and providing for the enforcement thereof." It imposed a penalty for selling one article of food under the name of another, though not "adulterated" in the common understanding of the term. B. was indicted under said act for selling "cotton seed oil" in packages labelled and marked "olive oil." A verdict of guilty was set aside on motion for a new trial, the court being of opinion that the title of the act was defective. Judgment reversed.—Comm. v. Curry, 4 Super. Ct. 356 (1897), Orlady, J.

(418) The act of May 8, 1876 (P. L. 154; P. & L. Dig. 4779), was entitled "An act to define and suppress vagrancy," and provided that for each arrest, hearing, or commitment made under the act, a fee should be paid out of the county treasury to the magistrate or officer making such commitment. On a case stated to determine the liability of a county under said act, it was *held*, reversing the lower court, that the title clearly indicated the subject-matter of the act.—Hays v. Cumberland County, 5 Super. Ct. 159 (1897), Wickham, J.

(419) The act of May 16, 1891 (P. L. 69; P. & L. Dig. 4187), was entitled "In relation to the laying out, opening, widening, straightening, extending, or vacating streets and alleys, and the construction of bridges in the several municipalities of this commonwealth, the grading, paving, macadamizing or otherwise improving the streets and alleys, providing for ascertaining the damage to private property resulting therefrom, the assessment of the damages, costs, and expenses thereof upon the property benefited, and the construction of sewers and payment of the damages, costs, and expenses thereof, including damages to private property resulting therefrom." The act provided that the cost of such work might be collected by an action of assumpsit, thus creating a personal liability. In assumpsit to recover the cost of paving, it was *held*, by the lower court, that the title was not misleading but fairly indicated a liability and some remedy. Affirmed.—Pittsburg v. Daly, 5 Super. Ct. 528 (1897), Rice, P. J.

(420) The act of May 14, 1889 (P. L. 211; P. & L. Dig. 4014), was entitled "An act to provide for the incorporation and government of street railway companies in this commonwealth," and provided for the construction of railways on county roads, as well as on the streets of cities and boroughs. A petition was presented to the attorney-general praying the intervention of the commonwealth and that defendant railway company be enjoined from continuing the work of constructing its railway on roads. The attorney-general was of the opinion that the word "street" in the title was plainly intended to include "roads," and that the title was not misleading.—Gettysburg Battlefield Ass'n v. Gettysburg Electric R. Co., 2 D. R. 659 (1893), Hensel, Atty.-Gen.; s. c. 13 Pa. C. C. 337.

(421) The act of May 14, 1889 (P. L. 211; P. & L. Dig. 4014 *et seq.*), was entitled "An act to provide for the incorporation and government of

street railway companies in this commonwealth," and provided for the construction of street railways on public roads. On motion for a preliminary injunction to restrain a street railway company from laying its tracks on a public road, it was contended that, if said act was intended to apply to roads as well as streets, the title was misleading. *Held*, that, as the word "street" in the title could include a road in a township as well as a street in a city or borough, the act was constitutional.—Pennsylvania R. Co. v. Montgomery County Ry. Co., 14 Pa. C. C. 88 (1893), Weand, J.; s. c. 3 D. R. 58.

(422) The act of May 14, 1889 (P. L. 211; P. & L. Dig. 4014), was entitled "An act to provide for the incorporation and government of street railway companies in this commonwealth," and gave to such companies the right to build their tracks along public roads. As the word "streets" was construed to extend to public roads, a bill for an injunction to prevent the defendant from building and operating an electric railway upon a bridge which carried a turnpike over a railroad, on the ground that the title of the act authorizing such construction was misleading, was dismissed.—Conshohocken Ry. Co. v. Pennsylvania R. Co., 15 Pa. C. C. 445 (1894), Swartz, P. J.; s. c. 10 Montg. Co. 180.

(423) The second section of the act of May 22, 1889 (P. L. 267; P. & L. Dig. 2134), entitled "An act for the protection of shad and game fish in the state of Pennsylvania," prohibited using nets "for the purpose of catching fish" in the waters of the commonwealth. A defendant indicted for the violation of this section, took a rule to quash the indictment, and contended that the omission of the qualifying word "game" from the body of the act rendered the title misleading. Rule discharged.—Comm. v. Lohman, 8 Kulp, 485 (1897), Lynch, J.

(424) The act of May 22, 1895 (P. L. 106; P. & L. Dig. Supp. 527), was entitled "An act amending section nine of an act entitled 'An act in relation to the laying out, opening, widening, straightening, extending, or vacating streets, alleys, and the construction of bridges in the several municipalities of this commonwealth, the grading, paving, macadamizing or otherwise improving streets and alleys, providing for ascertaining the damages to private property resulting therefrom, the assessment of the damages, costs, and expenses thereof upon the property benefited, and the construction of sewers and the payment of the damages, costs, and expenses thereof including damages to private property resulting therefrom,' approved May 16, A. D. 1891, enabling municipal corporations to lay out, open, widen, extend, and vacate streets or alleys, upon petition, or without petition of property owners." An ordinance for the opening of a street in a borough was enacted in accordance with the provisions of the general borough law of April 3, 1851 (P. L. 320; P. & L. Dig. 390). A bill in equity was filed by the owner of land over which the said street passed, praying for an injunction restraining the borough authorities from opening the street under said ordinance on the ground that the act of 1895, so far as it regulated procedure, superseded and replaced such parts of the general borough law of 1851 as conflicted therewith and in accordance with which said ordinance was passed. The ninth section of the act of 1891 gave municipalities power to open streets upon petition, and section ten thereof provided the procedure. It was contended that the act of 1895 provided for the things enacted in both of these sections and thus violated the constitutional provision that no bill shall be passed containing more than one subject, which shall be clearly expressed in the title. The act of 1895 was held constitutional, and an injunction restraining the borough authorities was continued. Affirmed.—Dorrance v. Dorranceton Borough, 181 Pa. 164 (1897).

(425) The act of April 5, 1870 (P. L. [1871] 1484), was entitled "An act to incorporate the State Line & Juniata Railroad," and authorized the said railroad to construct its road between certain points and to connect with certain railroads. The act of May 18, 1871 (P. L. 935), was entitled "A supplement to an act entitled 'An act to incorporate the State Line & Juniata Railroad,'" and authorized the company to locate its roads and branches without reference to the terminal and intermediate points mentioned in the original act, and to extend its road as the directors might judge would enable them to make proper connection with other railroads, and to erect a telegraph line. The act of March 6, 1872 (P. L. 230), was entitled "A further supplement to an act entitled 'An act to incorporate the State Line & Juniata Railroad,' approved the 5th day of April, Anno Domini 1870," and gave the company the power to build such branches, by such routes, and to such points, as to the directors might seem expedient, to commence the main line and branches at any points the directors might determine, to cross other roads at grade, to build and maintain bridges, etc. A. filed a bill in equity, praying that the company be restrained from taking land, etc., and that said supplemental acts be declared unconstitutional, because their objects were not sufficiently expressed in their titles. *Held*, reversing the lower court, that the acts were constitutional.—State Line & J. R. Co.'s Appeal, 77 Pa. 429 (1875), Paxson, J.

(426) The act of May 12, 1887 (P. L. 96; P. & L. Dig. 521), was entitled "A supplement to an act entitled 'An act supplementary to an act relative to burial grounds and cemeteries situated in incorporated boroughs,' approved May 19, 1874, changing the title of the said act, and authorizing the court to make orders and decrees required by

the act, and to enforce the same by process." The act empowered courts to direct removal of remains in boroughs and cities from burial grounds where interments had ceased, and such remains interfered with religious buildings or trusts and provided for such removal by petition of the managers, officers, or trustees of a religious society or church owning such burial ground to the court of quarter sessions. A petition was filed on the part of the trustees of a church, asking for a decree to remove the remains of the dead from a portion of the burial grounds of said church. Petition refused, on the ground that the act violated art. III., § 3, of the constitution. On *certiorari*, *held*, reversing the lower court, that the title to said act was sufficient.—Craig v. First Presbyterian Church of Pittsburg, 88 Pa. 42 (1879), Paxson, J. (Agnew, C. J., dissenting); s. c. 6 W. N. C. 421, 36 L. I. 72.

(427) The act of June 11, 1879 (P. L. 129), was entitled "A supplement to an act of the general assembly approved the 17th day of March, 1869, entitled 'An act relative to fraudulent debtors,'" and provided that, in aid of an execution against a fraudulent debtor a creditor might obtain discovery by an oral examination of the debtor and others. This provision was germane to the act of 1869, which provided that a creditor might proceed by attachment against a fraudulent debtor to obtain judgment against him. On rule to show cause why an order for the examination of a defendant under the act of 1879 should not be vacated, it was contended that the act violated art. III., § 3, of the constitution. *Held*, that the title was sufficient.—Loewi v. Haedrich, 8 W. N. C. 70 (1880), Peirce, J.

But see Horstman v. Kaufman, 8 W. N. C. 73 (1879), Finletter, J.

(428) The act of June 11, 1879 (P. L. 150; P. & L. Dig. 372), was entitled "A supplement to an act for the regulation of boroughs approved April 3, 1851." The title of the original act completely covered the subject of enactment, and the supplement contained nothing that might not properly have been embraced in the original. On writ of *certiorari*, to a judgment, in proceedings to change the limits of the borough of Pottstown under the act of 1879, *held*, that the title to said act was sufficient, affirming proceedings below.—Pottstown Borough, Change of Limits, 117 Pa. 538, 4 Montg. Co. 29 (1888), Clark, J.; s. c. 12 Atl. 573, 20 W. N. C. 494, 45 L. I. 75.

(429) The title of a supplementary act incorporating B., a railway company, contained no reference to the subject-matter of the principal act other than by reference to the title of that act, which latter title was sufficiently expressive. It appeared that the legislation in the supplement was germane to that in the original act. On the hearing of a bill for an injunction to restrain B. from laying tracks, a decree holding the title sufficient was affirmed.—Millvale Borough v. Evergreen Railway Co., 131 Pa. 1 (1890), Green, J.

(430) The act of June 8, 1891 (P. L. 229; P. & L. Dig. 4446, *et. seq.*), was entitled "An act to provide increased revenues for the purpose of removing taxes, being supplementary to an act entitled 'An act,'" etc. The subject of this supplemental act was germane to the act of which it was a supplement. On appeal from a tax settlement, *held*, affirming the lower court, that the subject was sufficiently expressed in the title.—Commonwealth v. Edgerton Coal Co., 164 Pa. 284 (1894); s. c. 30 Atl. 125, 129, 35 W. N. C. 205. Affirming 14 Pa. C. C. 449, 33 W. N. C. 369.

(431) The act of April 7, 1877 (P. L. 831), was entitled "A further supplement to an act to incorporate the city of Scranton." It provided for the repeal of a clause in a special act relating to the collection of taxes in the city of Scranton, by which the county of Luzerne had been prevented from collecting taxes within said city. On appeal from a decree enjoining the collection of county taxes in said city, as authorized by the act of 1877, *held*, that the title was defective and injunction continued.—Ruth's Appeal, 10 W. N. C. 498 (1881). Affirming 1 Lack. L. Rec. 311.

(432) The act of April 4, 1873, was an act to establish an insurance department to supervise and regulate the business of insurance within the state. The act of June 20, 1883 (P. L. 134; P. & L. Dig. 2392), was entitled "An act amending an act," etc., citing the title of the act of 1873. The act of 1883 provided for a method of serving process on insurance companies. On *certiorari* to the judgment of an alderman, *held*, that this subject was not germane to the act of 1874, and was therefore not sufficiently set forth in the title.—Metropolitan Life Ins. Co. of New York v. Duffy, 41 Pitts. L. J. 321 (1894), Archbald, P. J.

(433) Assumpsit to recover from a turnpike company the costs of repairing its road within the limits of the plaintiff borough. The action was grounded upon the act of May 24, 1871 (P. L. 1096), the constitutionality of which was attacked by the defendant. This act was a supplement to an act incorporating the borough, and provided that the borough should repair the road within its limits and collect the cost thereof from the defendant by suit in a method entirely different from that theretofore existing. The title of the supplemental act merely quoted the title of the original act, but neither this title nor the body of the original act contained any reference to the rights or duties of the defendant, or gave any intimation that those rights were to be affected. Judgment for the plaintiff reversed.—Mount Joy Borough v. Lancaster Turnpike Co., 182 Pa. 581 (1897), Sterrett, C. J.; s. c. 41 W. N. C. 159, 14 Lanc. L. R. 409.

(434) The act of July 9, 1897 (P. L. 237; P. & L. Dig. Supp. 358), was entitled "A supplement to an act of the general assembly, approved March 17, 1869, entitled 'An act relative to fraudulent debtors,' authorizing the courts to inquire into the validity of judgments confessed and alleged to be fraudulent, and providing the practice therefor." This act affected the judgment creditor, and provided a summary proceeding by the court, whereas the act to which it was a supplement was directed only against the defendant and his property, and provided an orderly proceeding under well-known rules of law. On petition for rule to show cause why the validity of a judgment should not be inquired into, it was contended that the act of 1897 violated art. III., § 3, of the constitution. *Held*, unconstitutional. —Hamburger Company v. Friedman, 6 D. R. 693 (1897), Slagle, J.; s. c. 45 Pitts. L. J. 137, 15 Lanc. L. R. 37, 20 Pa. C. C. 1.

(435) The act of June 10, 1881 (P. L. 92), was entitled "A supplement to an act to amend and consolidate the several acts relating to game and game fish approved the 3d day of June, 1878, changing the time for hunting and killing deer, squirrels, rabbits, wild turkeys, pheasants, and prairie chickens," and provided for a change in the laws governing bass, trout, and shad fishing. On a case stated in the nature of a special verdict, the opinion of the court was asked as to whether the act of 1881 conformed to the requirements of art. III., § 3, of the constitution. *Held*, that so much of the act as related to fish was unconstitutional because not indicated in the title.—Comm. v. Bender, 7 Pa. C. C. 620 (1887), Rowe, P. J.

(436) The act of February 16, 1883 (P. L. 5), as printed in the pamphlet laws, was entitled as follows: "A further supplement to the act approved the 14th day of May, A. D. 1874, entitled 'An act to prescribe the manner in which the courts may divide boroughs into wards, and to provide for a ward representation upon school boards, in said boroughs.'" The court punctuated the title properly, so that it read as follows: "A further supplement to the act approved the 14th day of May, A. D. 1874, entitled 'An act to prescribe the manner in which the courts may divide boroughs into wards,' and to provide for a ward representation upon school boards in said boroughs." On *quo warranto*, *held*, reversing the lower court, that the title as thus punctuated was sufficient.—Comm. v. Taylor, 159 Pa. 451 (1894), Mitchell, J.; s. c. 28 Atl. 348.

(437) The act of March 13, 1872 (P. L. 339), was entitled "A further supplement to an act entitled 'An act to incorporate the Union Passenger Railway Company of Philadelphia,' approved April 8, 1861, authorizing the said company to declare dividends quarterly and to lay additional tracks of railway," and gave the company the authority to extend their railways into streets which they were not authorized by their charter to use. On appeal from a decree granting a preliminary injunction, restraining the laying of such additional tracks, it was contended, that the act of 1872 was in conflict with art. III., § 3, of the constitution. *Held*, that the title was misleading; and decree affirmed.—Union Pass. Ry. Co.'s Appeal, 81* Pa. 91 (1872), Agnew, J.; s. c. 20 Pitts. L. J. 49, 4 Leg. Op. 456.

(438) The act of May 10, 1871 (P. L. 655), was entitled "An act relative to grading, paving, curbing, and otherwise improving Troy Hill road, in the city of Allegheny." The act authorized the council of said city to grade and pave the road between certain points, and provided that the cost and expense of the said improvement should be assessed on all property in said city and in Reserve Township which might be benefited thereby. The act of April 1, 1872 (P. L. 707), was entitled "A supplement to an act entitled 'An act relative to grading, paving, curbing, and otherwise improving Troy Hill road, in the city of Allegheny, approved the 10th day of May, Anno Domini 1871,'" and provided that if property outside of said city and Reserve Township was benefited by the said improvement it might be assessed for part of the cost thereof. On appeal from a decree refusing a preliminary injunction restraining the filing of liens for the cost of improving Troy Hill road, against complainant's property, *held*, that the titles of the act and its supplement were misleading; and decree reversed. —Beckert v. Allegheny City, 85 Pa. 191 (1877), Gordon, J.; s. c. 4 W. N. C. 530, 34 L. I. 428.

(439) The act of March 30, 1872 (P. L. 679), was entitled "An act to incorporate the Manufacturers' Improvement Company," and authorized the company to clear out, improve, and erect dams in a certain creek, and to charge tolls from persons floating lumber thereon. Prior to the act, the creek had been a public highway. In assumpsit for a sum alleged to be due for floating logs down said creek, *held*, reversing the lower court, that the title was misleading and the act therefore unconstitutional.—Rogers v. Manufacturers' Imp. Co., 109 Pa. 109 (1885), Mercur, C. J.; s. c. 1 Atl. 344, 2 C. P. Rep. 210, 33 Pitts. L. J. 493.

(440) The title of the act of April 12, 1867 (P. L. 1178), was "An act to prohibit the issuing of licenses within two miles of" X. The second section of the act made it a misdemeanor to sell liquor within two miles of X. A., who was indicted and convicted under the second section, took a writ of error claiming the section to be in violation of art. III., § 3, of the constitution, which provides that no bill shall be passed, containing more than one subject, which shall be clearly expressed in its title. Judgment reversed.—Hatfield v. Comm., 120 Pa. 395 (1888), Paxson, J.

(441) The act of June 25, 1885 (P. L. 170), was

entitled "An act authorizing the acquisition of turnpikes, roads, or highways heretofore or hereafter constructed near or through any borough or township in this commonwealth, upon which tolls are charged the travelling public," and provided for the acquisition of turnpikes near or through cities. On *certiorari* to a court of quarter sessions, where a decree had been entered setting aside proceedings by road viewers, on the ground that the act was in conflict with art. III., § 3, of the constitution, *held*, the title of the act of 1885 was misleading; and decree affirmed.—Carbondale & P. T. & P. Road, 13 Atl. 913 (1888). Affirming 3 Pa. C. C. 460, 17 W. N. C. 310.

(442) The act of May 13, 1887 (P. L. 108), was entitled "An act to restrain and regulate the sale of vinous and spirituous, malt, or brewed liquors or admixtures thereof," and provided that it should not be lawful for any person, with or without license, to furnish by gift to any person any spirituous, vinous, or brewed liquors on Sunday. A special verdict was found on an indictment against B. for giving away intoxicating liquors on Sunday, reserving the point as to whether the act violated art. III., § 3, of the constitution. *Held*, that the title to the act was not sufficient.—Comm. v. Doll, 6 Pa. C.C. 49 (1888), McPherson, J.; s. c. 6 Lanc. L. R. 48.

(443) The act of May 14, 1874 (P. L. 158; P. & L. Dig. 4654), was entitled "An act to exempt from taxation public property used for public purposes and places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity." After providing for the various exemptions the act directed that all other property should be taxed. On appeal from an assessment under said act, *held*, reversing the lower court, that the title was misleading and the proviso to the act unconstitutional.—Sewickley Borough's Appeal, 45 L. I. 275 (1888), Green, J.

(444) The act of May 6, 1872 (P. L. 1163), was entitled "An act to authorize the opening and paving of certain portions of Fifteenth, Sixteenth, and Norris streets." The title did not state in what city or town the streets were situated. On demurrer to a return to an alternative writ of mandamus, on the ground that the act conflicted with art. III., § 3, of the constitution, *held*, that the subject of the act was not clearly expressed in the title.—Comm. v. Dickinson, 9 Phila. 561 (1872), Peirce, J.; s. c. 29 L. I. 404.

(445) The act of April 3, 1872 (P. L. 762), was entitled "An act to extend certain avenues in the city of Scranton." The act provided for the extension of the avenues from Vine street, in the said city, to the Philadelphia and Great Bend turnpike, in the borough of Dunmore. On exceptions to the report of road viewers, *held*, that the title of said act did not fairly express its subject and purpose.—Padden's Petition, 1 Lack. Jur. 382 (1872), Archbald, P. J.

(446) The act of March 18, 1869 (P. L. 393), was entitled "An act providing for the appointment of supervisors and the election of supervisors of highways in the Twenty-Second ward of the city of Philadelphia." Section 11 provided for a new mode of assessing and apportioning damages, unlike that prescribed by the general law. On exceptions to a report of jurors appointed under said act, *held*, that the title did not clearly express the subject of the act, and hence the act was unconstitutional.—Hancock Street, 1 W. N. C. 112 (1874), Allison, P. J.

(447) The act of June 13, 1883 (P. L. 116), was entitled "An act to amend the first section of an act entitled 'An act for the better protection of the wages of mechanics, miners, laborers and others,' approved the 9th day of April, 1872, amending said act so that wages of servant girls, washerwomen, clerks and others shall be preferred and first paid out of the proceeds of the sale of the property of insolvent debtors owing wages to such servants or employees." The act enlarged the class of wage claimants, and reenacted an act which had been repealed. On appeal from a decree confirming an auditor's report distributing an assigned estate, *held*, reversing the lower court, that the title was defective, and the act therefore unconstitutional.—Brown's Estate, 152 Pa. 401 (1883), Green, J.; s. c. 25 Atl. 630, 31 W. N. C. 402, 40 Pitts. L. J. 413.

(448) The special act of March 18, 1868 (P. L. 352), entitled "An act relating to boroughs in the county of Chester," repealed certain provisions of a general act, entitled "An act regulating boroughs," as far as the latter act affected the proceedings for laying out and opening roads within the boroughs of Chester county. Proceedings were had under the act of 1868, and a report was filed by the road jury. On exceptions to the report it was contended that the act was unconstitutional in not clearly expressing its purpose and provisions in its title. Decree dismissing exceptions reversed.—Phœnixville Borough Road, 109 Pa. 44 (1885), Sterrett, J.

(449) The act of June 25, 1885 (P. L. 170), was entitled "An act authorizing the acquisition of turnpikes," etc., "near or through any borough or township, upon which tolls are charged," and provided for the condemnation of "any turnpikes," etc., "wholly located in the county." The act also imposed upon the county the expense of the proceedings, and the payment of the damages assessed to the owners of the turnpikes, etc. On exceptions to the report of viewers, *held*, that the subject was not clearly expressed in the title of said act, as provided by art. III., § 3, of the constitution.—Little Equinunk & Union Woods Turnpike Co., 2 Pa. C. C. 632 (1887), Seely, P. J.

(450) The act of March 8, 1872 (P. L. 264), was entitled "An act relating to the Ridge Avenue Railway Company." This act provided for the consolidation of two street railway companies, and also declared that "all provisions in the charters of the two companies so consolidated as

above recited, not included in this act, are hereby repealed." In assumpsit by the city of Philadelphia against the railway company, the city claimed the right to recover various sums of money expended by the city in repairing and repaving Ridge avenue after notice to the company to do the same, and contended that the act was unconstitutional. *Held*, affirming the court below, that the act was unconstitutional, as it released the company from its duty to repair streets and from the control of the city, and such objects were not expressed in its title.—Ridge Ave. Pass. Ry. Co. v. Philadelphia, 124 Pa. 219 (1889); s. c. 16 Atl. 741. Affirming 6 Pa. C. C. 283.

(451) The act of April 9, 1870 (P. L. 1068), was entitled "An act to punish the sale and traffic in mineral water bottles and other bottles, and for the protection of bottlers and vendors of mineral water and other beverages in this commonwealth." B. was indicted and convicted for fraudulently selling and trafficking in registered mineral water bottles. On argument of a rule for a new trial, *held*, that the act violated art. III., § 3, of the constitution which provides that no bill shall be passed containing more than one subject, which shall be clearly expressed in the title.—Comm. v. Farley, 6 Pa. C. C. 433 (1889), Reed, J.

(452) An action was brought against A. for the violation of an act passed April 9, 1869 (P. L. 759), entitled "An act to prohibit the issuing of licenses to sell spiritious liquors in certain boroughs." The second section of the act provided a punishment for the sale of liquors in said boroughs. *Held*, affirming the lower court, that the second section was unconstitutional because the subject was not clearly expressed in the title. —Comm. v. Frantz, 135 Pa. 389 (1890).

(453) The act of June 3, 1885 (P. L. 55, § 1; P. & L. Dig. 1253), was entitled "An act for the suppression of lottery gifts by storekeepers and others to secure patronage," and provided that merchants and others giving tickets entitling the holders, without any element of chance or hazard, to money or articles of value as inducement to purchasers should be deemed guilty of a misdemeanor. On motion to quash an indictment, on the ground that the act did not conform to the requirements of art. III., § 3, of the constitution, *held*, that the title did not clearly indicate the subject.—Comm. v. Moorehead, 7 Pa. C. C. 513 (1890), Endlich, J.

(454) The act of June 17, 1887 (P. L. 413), was entitled "An act relating to the liens of mechanics, laborers and others upon leasehold estates and property thereon," and gave a lien upon "such engine or engines, engine house, derrick, tank, building, machinery, wood or iron improvement, oil wells and fixtures on said leasehold or lot itself," but gave no lien upon the leasehold estate. The act further provided a mode by which the removal of property from the leasehold was to be prevented after the claim was filed. On a motion to strike off a mechanic's lien filed under the act, it was *held*, that the subject of the act was not clearly expressed in the title.—Titus v. Elyria Oil Co., 1 D. R. 204 (1890), McIlvaine, P. J.

(455) The act of June 24, 1885 (P. L. 160), was entitled "An act to perfect the records of deeds, mortgages, and other instruments in certain cases," and provided that the cost of perfecting such records should be borne by the several counties in which the records were to be perfected. In an amicable action to obtain the opinion of the court whether a recorder of deeds was entitled to fees under the act, it was adjudged that the title was defective in that it contained nothing to indicate that the cost of recording would be thrown on the several counties of the state. Affirmed.—Pierie v. Philadelphia, 139 Pa. 573 (1891), Paxson, C. J.; s. c. 21 Atl. 90, 27 W. N. C. 285. Affirming 7 Lanc. L. R. 182, 8 Pa. C. C. 278.

(456) The act of May 9, 1889 (P. L. 162; P. & L. Dig. 926), entitled "An act to provide for the appointment of deputy coroners in the several counties of the commonwealth," prescribed further the method of appointment and how the coroners were to be paid in cities having a population of more than 150,000. On petition by a deputy coroner for a mandamus compelling the county controller to certify as correct the deputy's charges under said act, it was contended by the county that the act violated art. III., § 3, of the constitution in that the title to the act gave no notice as to how the deputy coroners were to be appointed and paid. *Held*, unconstitutional. Petition dismissed.—Comm. v. Grier, 9 Pa. C. C. 444 (1891), Collier, J.

(457) The act of May 23, 1889 (P. L. 277; P. & L. Dig. 612), was entitled "An act providing for the incorporation and government of cities of the third class." The act provided for the annexation of outlying lands to cities of the third class. On exceptions to a report of viewers appointed under said act, *held*, that the title gave no indication of an intention to provide for the annexation of outlying lands, and the act was therefore unconstitutional.—Scranton City Annexation, 2 Lack. Jur. 233 (1891), Gunster, J.

(458) The act of March 3, 1868 (P. L. 263), was entitled "An act relative to the borough of Oxford in the county of Chester, to enable the borough authorities to widen Third street, and relative to the opening, widening, straightening, and arranging the line of new buildings on the same in said borough." The act also provided for a change as to the manner of opening streets in the said borough, and for the payment of damages by the county instead of by the borough. On exceptions to report of viewers, it was contended that the act was unconstitutional under art. III., § 3, of the constitution, in that the title did not clearly indicate the subject of the act. *Held*, that the section relating to the payment of damages was unconstitutional.—Oxford Borough Street, 2 D. R. 327 (1893), Waddell, P. J.

(459) The act of March 16, 1865 (P. L. 394), was entitled "A supplement to an act entitled 'An act to incorporate the Union Passenger Railway

Company,' approved April 8, 1864, authorizing said company to extend their tracks." The act provided that the company should not be chargeable with the cost or obliged to pay the cost of paving any street which had never been previously paved. On *scire facias sur* municipal claim, the defendant contended that the liability for paving was placed, by the act of 1864, on the railway company, and that the act of 1865, which relieved the street railway company from liability for the paving in question was unconstitutional because the exemption was not clearly expressed in the title. Judgment for defendant affirmed.—Philadelphia v. Spring Garden Farmers' Market Co., 161 Pa. 522 (1894), Mitchell, J.; s. c. 29 Atl. 286.

(460) The act of January 28, 1873 (P. L. 100), was entitled "An act authorizing the town councils of the borough of Carlisle to establish a board of health," and provided that all expenses incurred by the board should be paid by the county of Cumberland. On case stated to determine the liability of the county for such expenses, it was *held*, reversing the lower court, that in so far as the act imposed a liability upon the county, it was unconstitutional because such purpose was not indicated in the title.—Quinn v. Cumberland County, 162 Pa. 55 (1894), Green, J.; s. c. 29 Atl. 289, 34 W. N. C. 431.

(461) The act of June 8, 1893 (P. L. 393), was entitled "An act creating the office of county controller in counties containing 150,000 inhabitants and over, prescribing his duties." The act abolished the office of county auditor. On *quo warranto* to oust from their office auditors elected after the passage of said act, it was *held*, reversing the lower court, that there was no indication in the title of an intent to abolish the office of county auditor; hence the act was unconstitutional.—Comm. v. Samuels, 163 Pa. 283 (1894), Mitchell, J.; s. c. 29 Atl. 909, 34 W. N. C. 429. Reversing 14 Pa. C. C. 423.

(462) The act of June 8, 1893 (P. L. 393), was entitled "An act creating the office of county controller in counties containing one hundred and fifty thousand inhabitants and over, prescribing his duties." The act abolished the office of the county auditor, and provided for the election of a controller in his place. On *quo warranto* to oust a controller elected under the act, *held*, affirming the lower court, that the title was defective, and the act therefore unconstitutional.—Comm. v. Severn, 164 Pa. 462 (1894); s. c. 30 Atl. 395. Affirming 15 Pa. C. C. 249.

(463) The act of June 10, 1893 (P. L. 419), was entitled "An act to regulate the nomination and election of public officers, requiring certain expenses incident thereto to be paid by the several counties, and punishing certain offences in regard to such elections." The act provided also for submitting the question of approval of constitutional amendments to the vote of the people, and also provided for the manner of voting in such cases. On petition for mandamus directing the county commissioners to perform certain acts specified in said act, *held*, that the title was defective and the act unconstitutional.—Comm. v. Weir, 42 Pitts. L. J. 126 (1894), Ewing, P. J.

(464) The act of April 25, 1889 (P. L. 54; P. & L. Dig. 4827), was entitled "An act to amend the provisions of the first section of an act approved May 13, 1887 (P. L. 116), entitled 'An act for the destruction of wolves and wildcats,'" and provided for the restoring of a premium for the killing of foxes and minks. On a case stated to determine the liability of a county for premiums for the destruction of foxes and minks, *held*, that the act of 1889 was unconstitutional, because the title did not fairly indicate the contents of the act.—Sanders v. Cambria County, 4 D. R. 241 (1894), Barker, P. J.

(465) The act of June 24, 1885 (P. L. 160), was entitled "An act to perfect the records of deeds, mortgages, and other instruments in certain cases," and provided for a fee of 20 cents for each certificate added to the records, to be paid by the county. A., the recorder of deeds, brought an action against the county to recover for services authorized by said act, and was nonsuited on the ground that the act was unconstitutional because of a defective title. Order refusing to take off nonsuit affirmed.—Gackenbach v. Lehigh County, 166 Pa. 448 (1895); s. c. 31 Atl. 142.

(466) The act of February 8, 1871 (P. L. 31), was entitled "An act to enable the board of school directors of the borough of Coudersport, in the county of Potter to establish and maintain a graded school." The second section of the act provided "that the whole of the territory contained in the East Fork road district, in the county of Potter, is hereby annexed to the said school district of Coudersport, and the board of school directors of said district are authorized and empowered to levy and collect a school tax upon the assessed valuation of all property in said territory, the same as they levy and collect on the property within the original bounds of said school district." On a bill by a landowner to restrain the sale of certain lands for arrears of school taxes, it was contended that the act was unconstitutional, in that its title was not broad enough to cover all of the provisions of the act as provided by art. III., § 3, of the constitution. *Held*, affirming the lower court, that the title was defective.—Payne v. Coudersport Borough School Dist., 168 Pa. 386 (1895); s. c. 31 Atl. 1072.

(467) The act of June 10, 1893 (P. L. 419; P. & L. Dig. 1736 *et seq.*), was entitled "An act to regulate the nomination and election of public officers, requiring certain expenses incident thereto to be paid by certain counties, and punishing cer-

tain offences, in regard to such elections." The act attempted to regulate the mode of voting on questions of increase of municipal indebtedness. On bill in equity to restrain the supervisors of a township from increasing its indebtedness in pursuance of an election which purported to authorize such increase, it was *held*, affirming the lower court, that the title of the act gave no notice of any provisions as to the increase of municipal indebtedness, and such provisions were therefore unconstitutional.—Evans v. Willistown Twp., 168 Pa. 578 (1895), Mitchell, J.; s. c. 32 Atl. 87, 36 W. N. C. 385. Affirming 15 Pa. C. C. 326.

(468) The act of June 3, 1878 (P. L. 160), was entitled "An act to amend and consolidate the acts relating to game and fish." The twenty-sixth section provided a penalty for killing fish by means of torpedo or giant powder. B. was indicted under the act for killing fish by the use of dynamite, and moved to quash the indictment on the ground that the act was unconstitutional, as killing fish by means of torpedo or giant powder was not expressed in the title, which therefore was defective under art. III., § 3, of the constitution. Indictment quashed.—Comm. v. Nihil, 4 D. R. 582 (1895), Gordon, P. J.

(469) The act of June 6, 1893 (P. L. 328; P. & L. Dig. 3533), was entitled "An act providing for the relief of the needy, sick, and injured, and in case of death, burial of indigent persons whose legal place of settlement is unknown." The first section of the act provided that, in the event of a poor district having estimated or paid the expenses incurred for the relief or burial of a person whose legal settlement was unknown, the county in which such poor district was located should be liable to the poor district for such expenses. On case stated, it appeared that a needy indigent person, and whose legal place of settlement was unknown, became a charge on B. township, which expended various sums in his maintenance, and later presented a bill to the county commissioners for payment. The commissioners resisted payment on the ground that the act was unconstitutional, in that its title did not give notice of the liability of the county. *Held*, that the title did not fairly express the subject of the act.—Decatur Twp. Poor Dist. v. Clearfield County, 4 D. R. 584 (1895), Gordon, P. J.

(470) The act of March 22, 1887 (P. L. 8; P. & L. Dig. 1260), was entitled "An act for the protection of livery-stable keepers." The act provided that whenever the bailee of property of any livery-stable keeper should destroy the property in his charge he should be deemed guilty of a misdemeanor. B. was tried and convicted on the charge of wilfully damaging the property of a livery-stable keeper, the indictment having been framed under the act of 1887. On motion in arrest of judgment and for a new trial, it was contended that the act was unconstitutional under art. III., § 3, of the constitution, in that its title did not indicate a criminal act. *Held*, unconstitutional.—Comm. v. Moore, 4 D. R. 649 (1895), Wallace, P. J.; s. c. 16 Pa. C. C. 481.

Followed in Comm. v. Lehr, 16 Pa. C. C. 532 (1895), Albright, P. J.

(471) The act of June 1, 1883 (P. L. 52; P. & L. Dig. 3059), entitled "An act to protect miners in the bituminous coal regions of this commonwealth," provided penalties for taking more than 2,000 pounds for a ton, or for weighing with incorrect scales the coal mined. B. was indicted and convicted for a violation of said act. On motion in arrest of judgment, it was contended that the act was unconstitutional, as the title did not give notice of the penalty, and therefore violated art. III., § 3, of the constitution. *Held*, unconstitutional. Motion granted.—Comm. v. Hartzell, 5 D. R. 148 (1895), Porter, J.

(472) The act of June 6, 1893 (P. L. 328; P. & L. Dig. 3533), was entitled "An act providing for the relief of the needy, sick, and injured, and in case of death, burial of indigent persons whose legal place of settlement is unknown." The purpose of the act was to relieve the several poor districts of certain defined counties from the expense of providing for the needy and to shift those burdens upon the counties. On a case stated to determine the liability of a county under said act, *held*, that the act was unconstitutional because the title gave no notice of the purpose of the act.—Conyngham Twp. v. Luzerne County, 5 D. R. 183 (1895), Craig, P. J.; s. c. 17 Pa. C. C. 83.

(473) The B. turnpike company was incorporated by the legislature, and later an act was passed incorporating the territory through which the turnpike ran into a borough. Subsequently, as the company did not keep the turnpike in good condition, the legislature passed an act authorizing the borough to repair the turnpike and to sue the company for the money so expended, and providing that, in such suits, the company's only defence was to be that the work had not been done as alleged, or at the price alleged. The act in question was entitled "An act entitled 'A supplement to an act erecting the villages of Mt. Joy, and Richland, and their vicinity, in the county of Lancaster, into a borough to be called the borough of Mt. Joy,' passed the tenth day of February, 1851." In a suit by the borough against B. for the value of repairs to the turnpike, judgment was entered for plaintiff. Reversed on the ground that the supplementary act was unconstitutional, as its title did not at all indicate that it dealt with the relations between the borough and the turnpike company, but only that it was a supplement to the act erecting the borough.—Mount Joy Borough v. Lancaster, E. & M. Turnpike Co., 182 Pa. 581 (1897), Sterrett, C. J.; s. c. 14 Lanc. L. R. 409, 41 W. N. C. 159. Reversing 13 Lanc. L. R. 180.

(474) A. brought suit before a justice of the peace for the recovery of a penalty provided for in a borough ordinance; and, after judgment against the defendant, an appeal was taken under the act of April 17, 1876 (P. L. 29; P. & L. Dig. 2609). On a rule to quash the appeal it was argued that so much of said act as authorized appeals in cases of suits for penalties was unconstitutional, the title being "An act relating to appeals in cases of summary conviction," and

containing no reference to the cases of appeals from judgments in suits for penalties. Appeal quashed.—Mauch Chunk Borough v. Betzer, 6 D. R. 330 (1897), Craig, P. J.; s. c. 10 York, 151; 19 Pa. C. C. 27; 5 North. Co. 354.

(475) The act of April 15, 1891 (P. L. 17), was entitled "An act to provide for an appeal by county commissioners, cities, or other municipalities, and all persons interested in the damages awarded in the laying out, widening, grading, opening, or changing the lines or grades of any public street, road, or alley in this commonwealth, from the decree of the court of quarter sessions confirming the report of viewers assessing such damages." The first section provided for an appeal by county commissioners and others indicated in the title, from the report of damages assessed by view; "provided the appeal be taken within thirty days after the final confirmation of the report of said jury; provided that notice be given to the commissioners of the proper county or their clerk, of the time and place of holding such view." A petition was filed by inhabitants of B. township praying for the appointment of viewers. The viewers were appointed and made their report, which was confirmed, and a road opened. Exceptions were filed to the report by the county commissioners on the ground that no notice of the time and place of view had been given to them as provided by the act of 1891. The exceptions were sustained and a writ of error was taken on the ground that the act was unconstitutional because its subject was not clearly expressed in the title as required by art. III., § 3, of the constitution. On appeal to the superior court, *held*, reversing the court below, that the act was unconstitutional. Affirmed in the supreme court.—Otto Township Road, 181 Pa. 390 (1897). Affirming 2 Super. Ct. 20; s. c. 38 W. N. C. 289.

(476) The act of April 8, 1868 (P. L. 752), was entitled "An act relating to the liens of mechanics, material men and laborers upon leasehold estates and property thereon in the county of Venango." Section 6 of the act extended the liens to freeholds. On appeal from a distribution of the proceeds of a sheriff's sale, *held*, reversing the lower court, that this section was unconstitutional.—Dorsey's Appeal, 72 Pa. 192 (1872), Agnew, J.

(477) The act of May 10, 1871 (P. L. 655), was entitled "An act relative to grading, paving, curbing, and otherwise improving Troy Hill in the city of Allegheny," and provided for the assessment of part of the cost of the work upon property in Reserve Township. On a *sci. fa. sur* municipal lien, said act was *held* unconstitutional, so far as it affected Reserve Township; otherwise constitutional. Affirmed.—Dewhurst v. Allegheny City, 95 Pa. 437 (1880), Paxson, J. (Gordon and Trunkey, JJ., dissent); s. c. 28 Pitts. L. J. 113.

(478) The act of May 13, 1887 (P. L. 108; P. & L. Dig. 2710), was entitled "An act to restrain and regulate the sale of vinous and spirituous, malt or brewed liquors." The seventeenth section made it a criminal offence for a person not engaged in the business of selling liquor to give liquor to minors. A. was indicted for giving liquor to a minor. On motion in arrest of judgment and for a new trial it was argued that the title of said act was misleading. *Held*, that so much of the act as related to the gift of liquor by one not a dealer therein, was unconstitutional because not indicated in the title.—Comm. v. Fowler, 5 Lanc. L. R. 20 (1887), Gordon, J.

(479) Rule to strike off a mechanic's lien filed under the act of June 17, 1887 (P. L. 413; P. & L. Dig. 2921), on the ground that the said act was unconstitutional. The title of the act was "An act relating to the lien of mechanics and others upon buildings." For the motion it was argued that the title was not broad enough to cover a provision in the body of the act relating to liens upon machinery, and that therefore the act was void also in respect of its provisions for liens upon buildings, which were here in controversy. *Held*, that the rule was to sustain the part of the act of which the title gave notice, and as that was the part in question, the act was valid for the purposes of this case.—Bennett v. Maloney, 4 Kulp, 537 (1888), Rice, P. J.

(480) The act of March 8, 1872 (P. L. 264), was entitled "An act relating to the Ridge Ave. Passenger Ry. Co." The act provided for a reduction in the rate of taxation of dividends for city purposes. On a case stated to determine the liability of said railway company for taxes on dividends, it was *held*, reversing the lower court, that the title did not indicate any legislation affecting the rights of the city of Philadelphia, and that it was unconstitutional so far as it reduced the rate of taxation.—Philadelphia v. Ridge Ave. Ry. Co., 142 Pa. 484 (1891), Clark, J.; s. c. 21 Atl. 982, 28 W. N. C. 106.

(481) The act of June 1, 1883 (P. L. 51), was entitled "An act to require assessors of townships to assess all seated lands in the county in which the mansion house is situated, where county lines divide a tract of land," and provided that when lands were situated on the lines which separated a borough from a township or one borough from another such land should be assessed where the mansion was situated. On case stated in nature of a special verdict, for the recovery of taxes, it was *held*, affirming the court below, that the act was unconstitutional, so far as concerned township and borough lines.—La Plume Borough v. Gardner, 148 Pa. 192 (1892); s. c. 23 Atl. 899. Affirming 2 Lack. Jur. 28.

See, also, Cassel's Appeal, 8 Lanc. L. R. 260 (1884), Livingston, P. J.; Forty Fort Borough Incorporation, 4 Kulp, 225 (1887), Rice, P. J.; Mc-

Clintock v. Remmel, 4 Kulp, 327 (1887), Rice, P. J.

(C) REVIVAL AND AMENDMENT OF LAWS.

Section 6 of Article III. of the constitution provides that "no law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred, shall be re-enacted and published at length." Under this section, an act which purports to amend another act (482–483), or to extend its provisions (484–485), must re-enact said act and set it forth at length; but an amendatory act is not unconstitutional because it fails to recite at length for amendment the statute or portion thereof to be amended, provided the law in its complete and amended form is given (486); and where, instead of the portion of the act itself to be amended, a supplement thereto citing said act by its title, and setting forth said portion thereof, is recited in the amendatory act, the latter is a sufficient compliance with the constitutional requirement. (487)

It is not necessary that every act shall recite all other acts that its operation may incidentally affect by way of repeal, modification, or extension; this section relates only to express amendments. (488–491)

An act organizing an institution, and providing that the general law applicable to such institutions shall be applicable to the one organized, need not set out at length such general law (492), and an act which simply recites that certain powers, etc., shall remain as heretofore need not set forth or re-enact those powers. (493)

The name of an office may be changed without re-enacting the duties pertaining to the office (494); but an act abolishing one office and creating another, and providing that the duties and liabilities imposed by any and all acts of assembly upon the former shall apply to the latter, is unconstitutional. (495–496)

This section of the constitution relates as well to borough ordinances as to acts of assembly. (497)

The affidavit of defence law of 1887 does not violate this section. (498)

Although one part of an act violates this section, other parts of the act not dependent upon the void section may be sustained. (499)

A statute may be repealed by reference to its title only. (500)

(482) On motion for a preliminary injunction to restrain the city of B. from paving a certain street, A., the complainant, contended that the only proper method of procedure in paving said street was under the act of April 22, 1879 (P. L. 29; P. & L. Dig. 681). B. answered that the act of 1879 was unconstitutional, and that it had proceeded under the act of April 11, 1876 (P. L. 20). It appeared that the act of 1879 was a supplement to the act of March 18, 1875 (P. L. 7), and did not recite said act but only referred to it. *Held*, that the act of 1879 was defective in form and void. Injunction refused.—Woodward v. Wilkesbarre, 4 Kulp, 125 (1886), Rice, P. J.

(483) The act of May 1, 1876 (P. L. 93), purported to amend the act of April 16, 1875 (P. L. 55; P. & L. Dig. 412), by enacting that the second section thereof be amended by adding thereto as follows: "That the legal voters," etc.,—but did not re-enact or publish at length the amended section. An election held under said acts authorized the levy of a water tax. On bill in equity to restrain the collection of said tax, *held*, reversing the lower court, that the act of 1876 was unconstitutional.—Barrett's Appeal, 116 Pa. 486 (1887), Sterrett, J.; s. c. 10 Atl. 36, 19 W. N. C. 519, 35 Pitts. L. J. 13.

(484) A *sci. fa. sur* mechanic's lien was issued by A. against B., who defended on the ground that no notice of the amount and character of the claim had been given to him as was required by the act of June 17, 1887 (P. L. 413, § 2). A rule for judgment for want of a sufficient affidavit of defence was discharged, because of A.'s noncompliance with the terms of the act of 1887. A. contended on error that the act of 1887 was unconstitutional as it provided in its first section that the provisions of the acts of 1836 and 1845, referring to said acts merely by their titles, should be construed to include claims for labor done by mechanics and others in the erection and construction of buildings, and was therefore in conflict with art. III., § 6, of the constitution, providing that no law shall be extended by a reference to its title only. Judgment reversed.—Titusville Iron Works v. Keystone Oil Co., 122 Pa. 627 (1888), Williams, J.

Followed in Gearing v. Hapgood, 22 W. N. C. 437 (1888), Williams, J.; s. c. 15 Atl. 920, 1 Mona. 248. See, also, Marsh v. Bower, 1 Mona. 247 (1888), Williams, J.; s. c. 15 Atl. 920, 22 W. N. C. 524, 36 Pitts. L. J. 145, 5 Lanc. L. R. 420; Titus v. Elyria Oil Co., 1 D. R. 204 (1890), McIlvaine, P. J.

(485) On a motion to strike off a mechanic's lien acquired by virtue of the provisions of the act of June 17, 1887 (P. L. 409; P. & L. Dig. 2934), it appeared that the said act was entitled, "An act relating to the lien of mechanics, laborers, and others upon leasehold estates and property thereon"; and created a lien upon the "engines, engine-house, derrick, tank, building, machinery, wood, or iron improvements, oil wells and fixtures on the lot or leasehold"; and provided in § 4 that all proceedings under the act to

enforce collection of claims "shall be as is now provided by law," etc.; with a provision in § 5 as to seizure by the sheriff in case of removal. *Held*, that the act conflicted with art. III., § 6, of the constitution, prescribing the method for amending or extending existing laws.—McKeever v. Victor Oil Co., 9 Pa. C. C. 284 (1890), McIlvaine, P. J.

But see Gardner v. Gibson, 21 W. N. C. 121 (1888), Mitchell, J.

The act of June 8, 1891 (P. L. 247), purported to enlarge the provisions of the act of March 9, 1855 (P. L. 68; P. & L. Dig. 1636), relating to divorce, but did not re-enact the provisions or publish them at length. A libel in divorce was filed and service made as authorized by said act of 1891. *Held*, that the act was unconstitutional. Oakley v. Oakley, 1 D. R. 781 (1891), Gunster, J.; s. c. 11 Pa. C. C. 572, 9 Lanc. L. R. 230.

Followed in Burdick v. Burdick, 2 D. R. 622 (1893), Morrison, J.

(486) An indictment was drawn under § 2 of the act of June 12, 1878 (P. L. 196; P. & L. Dig. 1155), which was supplementary to the act of March 31, 1860, and which enacted the law at length in its amended form but did not recite at length the statute or portion thereof amended. On a motion to quash the indictment on the ground of the unconstitutionality of the act, *held*, that the act was constitutional. Motion denied.—Comm. v. Flecker, 17 Pa. C. C. 671 (1896), Lynch, J.

(487) The act of May 18, 1887 (P. L. 118; P. & L. Dig. 2933), was entitled "A supplement to an act relating to the lien of mechanics and others upon buildings," the act referred to being the act of June 16, 1836. The act of 1887 then recited for amendment the supplementary act of May 1, 1861, extending and amending a portion of the act of 1836, which act was referred to by its title in the supplement, in which was also set forth at length the portion of the act of 1836, extended and amended by the act of 1887. On a rule to strike off a mechanic's lien on *sci. fa.*, *held*, affirming the lower court, that this was a substantial compliance with the constitutional requirements.—Purvis v. Ross, 158 Pa. 20 (1893); s. c. 27 Atl. 882.

Followed in Smyers v. Beam, 158 Pa. 57 (1893); s. c. 27 Atl. 884.

(488) The act of March 18, 1875 (P. L. 7; P. & L. Dig. 600 *et seq.*), was entitled "A supplement to an act entitled 'An act dividing the cities of this state into three classes,' etc., approved May 23, A. D. 1874," and was indirectly amendatory of the act referred to in the title, but did not re-enact or publish at length the original act. On *quo warranto* to test the title of a city assessor appointed under said act of 1875, the object of the proceeding being to test the constitutionality of the act, *held*, that it was constitutional.—Comm. v. Halstead, 2 C. P. Rep. 247 (1886), Hand, P. J.

(489) The act of May 5, 1876 (P. L. 124), provided that the city councils of cities of the second class should elect three assessors annually, two of whom should be assistants, at a salary of five dollars per day for each day of actual service. The act of June 14, 1887 (P. L. 395; P. & L. Dig. 599), entitled an "An act in relation to the government of cities of the second class," provided that councils should have power to fix the salaries of all city officers. The act of 1887 did not repeal the act of 1876 in express terms. An ordinance was passed fixing the salary of an assistant assessor at twenty-five hundred dollars per annum. The assistant assessor petitioned for a mandamus to compel the city controller to issue a warrant to him for the latter sum. For the defendant it was contended that the act of 1887 could not operate as an amendment of the act of 1876, because the amended act was not re-enacted and published at length. Judgment was given for the commonwealth, the act being sustained on the ground that it amended the earlier act, if at all, only by implication, and was thus not within the provision of art. III., § 6, of the constitution.—Comm. v. Morrow, 40 Pitts. L. J. 327 (1893), McClung, J.

(490) The act of June 26, 1895 (P. L. 389; P. & L. Dig. Supp. 39), after prescribing the proceedings to be had in applications for the incorporation of boroughs, provided for the repeal of all laws or parts of laws inconsistent therewith. On the hearing of a petition for the incorporation of a borough it was contended that the act of 1895 operated as a change or alteration of the law as declared in the acts of 1834 and 1871 and so violated art. III., § 6, of the constitution. *Held*, affirming the lower court, that the act, being complete in itself, was not in violation of the constitutional provision.—Emsworth Borough Incorporation, 5 Super. Ct. 29 (1897), Rice, P. J.

(491) In a proceeding by a landlord against a tenant, the case was tried before one magistrate and a jury, under § 12, of the act of February 5, 1875 (P. L. 56; P. & L. Dig. 2854). On *certiorari* to the magistrate, it was contended that the said act was, in effect, an amendment of the act of March 21, 1772, in that it changed the number of members of the court from two magistrates to one, and that therefore the parts of the earlier act affected by the later act should have been re-enacted and published. Exception dismissed.—Gallagher v. Maclean, 6 D. R. 315 (1897), Wiltbank, J.

See, also, Comm. v. Hill, 127 Pa. 540 (1889), Paxson, C. J.; s. c. 19 Atl. 141; Searight's Estate, 163 Pa. 210 (1894), Mitchell, J.; s. c. 29 Atl. 800, 35 W. N. C. 55.

(492) The act of March 27, 1873 (P. L. 54; P. & L. 2781), provided for the organization of a state hospital for the insane at Danville. The fourth section re-enacted, by reference only, certain sections of the acts of April 14, 1845 (P. L. 440), and April 8, 1861 (P. L. 248), which were parts of the general laws relating to the insane, and made them apply to the hospital at Danville without re-enacting them in full. On case stated, *held*, affirming the lower court, that the act was constitutional.—Clearfield County v. Cameron Twp. Poor Dist., 135 Pa. 86 (1890); s. c. 19 Atl. 952.

(493) The act of June 14, 1887 (P. L. 395, § 1; P. & L. Dig. 597), relating to the government of cities of the second class, provided that the legislative powers of cities of that class should be vested as theretofore, in two branches. A previous act of assembly provided that the legislative power of every city should vest in two branches. The councils of a city, organized under the act of 1887, authorized street improvements to be made by the city. A bill in equity was filed to restrain the city from making the improvements, on the ground that this section of the act of 1887 violated article III., section 6, of the constitution. Decree refusing the injunction, and sustaining the constitutionality of the section, affirmed.—Pittsburgh's Petition, 138 Pa. 401 (1891), Williams, J.

(494) A. filed a bill for an injunction against B. *et al.*, county commissioners, to compel them to submit county warrants to him for approval, alleging that he had been elected county controller under the act of June 27, 1895 (P. L. 403), which substituted a county controller in counties of a given population for the county auditors who had formerly been in office under the act of April 15, 1834 (P. L. 537). B. contended that the act of 1895 was unconstitutional because it changed the provisions of the act of 1834, without reciting said provisions. Bill dismissed. Reversed, on the ground that the later act only changed the name of the official and did not change the nature of the duties of the office.—Lloyd v. Smith, 176 Pa. 213 (1896), Mitchell, J.; s. c. 38 W. N. C. 363. Reversing 8 Kulp, 128.

(495) The act of February 14, 1881 (P. L. 3), enacted that "in all cities of the first class, the receiver of taxes therein shall have all the powers and privileges, and be subject to all the duties and liabilities, conferred or imposed upon the collector of delinquent taxes, by any and all acts of assembly heretofore passed." On the hearing of a bill in equity for an injunction, filed by a collector of delinquent taxes against a receiver of taxes, to restrain the latter from interfering with the former in the discharge of his customary duties, the act of 1881 was *held* unconstitutional.—Donohugh v. Roberts, 15 Phila. 144 (1881), Hare, P. J.

(496) Sections 5, 6, and 7 of the act of June 14, 1887 (P. L. 395; P. & L. Dig. 597, note), relating to the government of cities of the second class, provided that the powers previously exercised by a number of officers, whose duties were discontinued, should be exercised by heads of departments created by the act, and that the acts of assembly (there not being even a reference to their dates, titles, or subject-matter) relating to the abolished offices should apply to the new officers. The city councils organized under the act of 1887 authorized certain street improvements. A bill in equity was filed to restrain the city from making the improvements, on the ground that the aforesaid sections of the act were contrary to art. III., § 6, of the constitution. The injunction was refused, but these sections of the act were held unconstitutional. Affirmed.—Pittsburgh's Petition, 138 Pa. 401 (1891), Williams, J.

(497) A borough ordinance authorizing a railway company to use the streets of the borough for its tracks, provided that, if at any time the town council should be of the opinion that the streets thus used were not in proper repair, notice should be given to the railway company, and, in default of repair by the company, the borough should make the same, and file a claim for the amount thereof against the company; and that collection of the claim should be made in the manner and by the process prescribed in the twenty-ninth section of the act of June 16, 1836, entitled "An act authorizing the governor to incorporate the Huntingdon and Chambersburg Railroad Company," and the several supplements thereto. A borough ordinance was passed directing the railway company to make certain repairs upon a street used by the company, which the company failed to do. The borough made the repairs and sued the company for the amount, in accordance with the provisions of the former ordinance. Judgment was entered for the defendant, on the ground that that ordinance violated art. III., §§ 6 and 7, of the constitution of Pennsylvania. Judgment affirmed.—Norristown v. Norristown Passenger Ry. Co., 148 Pa. 87 (1892). Affirming 9 Pa. C. C. 102, 6 Montg Co. 185.

(498) The act of May 25, 1887 (P. L. 271; P. & L. Dig. 3608), provided that the plaintiff's declaration in assumpsit and trespass should consist of a concise statement of the plaintiff's demand as provided by the fifth section of the act of March 21, 1806. On demurrer to a declaration in trespass on the case, *held*, that the act of 1887 was not in conflict with art. III., § 6, of the constitution.—Krause v. Pennsylvania R. Co., 4 Pa. C. C. 60 (1887), Arnold, J.

See, also, Kauffman v. Jacobs, 4 Pa. C. C. 462 (1887), Latimer, J.

But see Doud v. Citizens' Insurance Co., 6 Pa. C. C. 329 (1889), Gunster, J.; s. c. 6 Lanc. L. R. 128, 1 Lack. Jur. 7.

(499) The act of June 2, 1883 (P. L. 61; P. & L. Dig. 3487), was supplementary to the act of April 29, 1874 (P. L. 73), and authorized the incorporation of pipe lines for the transportation of petroleum, and provided for the exercise of the right of eminent domain in taking lands and property for such purposes, and also amended a certain clause of the act of 1874. The acts of June 22, 1883 (P. L. 156), and May 21, 1889 (P. L. 259), also amended the act of 1874, and the clause in question, but in neither of the acts did the amendments intended to extend to the said clause mention or refer to companies for the transpor-

tation, etc., of petroleum. It was therefore claimed that the whole act of June 2, 1883, was repealed. On motion to continue an injunction restraining defendants from exercising the right of eminent domain it was *held*, that, as the act did not depend for its validity upon the attempted re-enactment or amendment of the clause in question, and that portion of the act was not material to the main purpose of the legislation, the other parts of the act could be allowed to stand.—Lehigh Val. Coal Co. v. United States Pipe-Line Co., 7 Kulp, 77 (1893), Woodward, J.

(500) The act of July 5, 1883 (P. L. 182; P. & L. Dig. 4255), relating to county commissioners, repealed the first section of the act of May 21, 1879, which section had repealed, in terms, the seventh section of the act of March 31, 1876. This was done by reference to the title and section of the act to be affected. On suggestion for writ of *quo warranto* to the county commissioners, to determine their right to exercise the authority conferred by said act of 1876, the defendants contended that the repealing act of 1879 having been itself repealed by the act of 1883, left the act of 1876 in force. Plaintiff contended against this construction, as being in violation of art. III., § 6, of the constitution. *Held*, that the section of the constitution referred to did not affect the right of the legislature to repeal a statute by reference to its title, and therefore that the act of 1883 was constitutional. Judgment for defendants.—Comm. v. Evans, 6 Kulp, 145 (1891), Woodward, J.

(D) LOCAL, SPECIAL, AND CLASS LEGISLATION.

1. Legislation Relating to the Affairs of Counties, Cities, Townships, Wards, Boroughs, or School Districts.

Section 7 of Article III. prohibits any local or special legislation relating to the affairs of counties, cities, townships, wards, boroughs, or school districts,

An act excepting from its operation a class of cities embracing only one city, for which the constitution itself makes special provision, is not unconstitutional. (501–502)

This clause is prospective, and does not repeal local or special acts passed before the constitution went into operation (503–504); and an act is not rendered invalid by a provision that it shall not affect prior local or special acts. (505–509)

An act providing for the grading and paving of the public streets of cities of a certain class, and the filing of municipal claims therefor in the manner provided for in cities of other classes, is valid. (510) So, also, an act regulating the use of the public streets by passenger railway companies in cities of a certain class (511), or an act regulating the management of municipal property devoted to the relief of the poor in cities of a certain class (512), or an act relating to the appointment or election of city officers in a particular class of cities (513–514), is valid.

When the classification of cities is not founded on manifest peculiarities of the cities, and is made merely for the purpose of local or special legislation, it is contrary to the constitution. (515) An act classifying cities for the purpose of regulating the organization of corporations (516–517), or the collection of judgments against cities (518), is unconstitutional.

Counties may be classified for the purposes of legislation, on the same principle as cities. An act creating the office of county controller in counties of more than one hundred and fifty thousand inhabitants, and abolishing the officer of county auditor therein, is valid. (519)

An act providing for the payment of the fees or salary of county officers in counties having a certain number of inhabitants and perpetually excluding from its operation certain other counties, is invalid. (520–521) So, also, an act providing for an appeal to the courts from the assessment of taxes by the county commissioners in counties having less than five hundred thousand inhabitants is unconstitutional. (522)

An act authorizing courts in counties of not over four hundred thousand inhabitants to direct a re-indexing of certain records is invalid. (523)

An act which relates to the discharge of prisoners who have served out their time, without proceedings under the insolvent laws, and exempts from its operation counties co-extensive with cities, is invalid. (524–525) An act authorizing a tax for a special purpose in a single township is invalid (526); but an act relating to boroughs and townships, and containing a proviso that its provisions shall not apply to boroughs or townships divided into wards or election districts, has been held constitutional, at least as far as relating to townships and boroughs not divided. (527)

Legislation relating to school districts should be general, affecting the whole state, and is not necessarily connected with municipal government; hence, an act relating to school districts and their officers, in cities, or in cities of a single class, is local and special legislation, and invalid. (528–531)

An act relating to a class of cities or counties may be general and valid, although the class includes but one or a few. (532–535)

An act which is intended to apply to but one city or county, and cannot apply to any other, is unconstitutional. (536–538)

An act which allows cities, counties, or townships to become subject to its provisions

at their option is invalid when such privilege may lead to a diversity of practice in the different cities, counties, or townships (539–544); but, where such privilege tends to uniformity, the act will be sustained. (545)

The fact that a general act may operate with different effect in the different counties or cities does not render such act invalid. (546–547)

An act providing for the collection of taxes in boroughs and townships is not invalid because it does not apply to counties. (548–549)

An act may authorize a borough to pass an ordinance regulating the erection of wooden buildings within the borough limits, and such an act is not rendered invalid by reason of the fact that an ordinance passed under it does not apply to the whole borough. (550)

An act making it lawful for a married woman to sell and convey loans of a city of a certain class is valid. (551)

(501) The act of July 7, 1879 (P. L. 194; P. & L. Dig. 2553), enlarged the civil jurisdiction of justices of the peace to cases involving $300, except in cities of the first class. On appeal from the judgment of an alderman for $300 rendered after the passage of said act, it was *held*, reversing the lower court, that this was not local or special legislation, and that the act was constitutional, and could not in any event have applied to the city of Philadelphia (the only city of the first class) without being in conflict with the constitutional provisions for that city.—Wilkesbarre v. Meyers, 113 Pa. 395 (1886), Trunkey, J.; s. c. 6 Atl. 110, 18 W. N. C. 329, 34 Pitts. L. J. 375.

(502) On appeal from the judgment of a justice of the peace in which want of jurisdiction in the justice was relied on, it was contended that the act of July 7, 1879 (P. L. 194; P. & L. Dig. 2553), was unconstitutional because it excepted the city of Philadelphia from its operation. *Held*, that the act was not within the inhibition of art. III., § 7, of the constitution, since the constitution itself makes special provision for the city of Philadelphia in the matter of justices, and the act only followed the constitution.—Johnson v. Beacham, 2 Pa. C. C. 108 (1886), Rockefeller, P. J.

See, also, Comm. v. Anderson, 178 Pa. 171 (1896); Morrison v. Bachert, 112 Pa. 322 (1886); s. c. 17 W. N. C. 353, 33 Pitts. L. J. 463.

(503) Three commissioners were appointed, under a special act of assembly, to lay out and open a state road in the counties of Columbia and Luzerne. The road was constructed as the said act and its supplements directed, and money was paid by the treasurers of said counties from time to time, as the building of the road progressed. The road was completed after the adoption of the present constitution. In the return to a petition for a writ of mandamus commanding the treasurer of Luzerne county to pay for the work done on the road after the adoption of the constitution, it was argued that art. III., § 7, repealed *eo instanti* any special laws authorizing special commissions for the construction of public works. This contention was overruled and a mandamus awarded.—Harrison v. Courtright, 4 Luz. L. Reg. 297 (1875), Handley, J.; s. c. 7 Leg. Gaz. 406.

(504) An action of trespass against the county of Allegheny, for the loss of 60 barrels of whiskey destroyed by a mob, was brought under the act of March 20, 1849 (P. L. 184), making the county liable for property so destroyed. It was urged by defendant that the act of 1849 was inconsistent with the constitution of 1874, art. III., § 7, forbidding local legislation with reference to counties. Judgment for the plaintiff was affirmed, on the ground that the constitutional provision was prospective and did not operate to destroy existing special legislation,—Allegheny County v. Gibson, 90 Pa. 397 (1879), Paxson, J.; s. c. 7 W. N. C. 441, 36 L. I. 401.

(505) The act of June 25, 1885 (P. L. 187; P. & L. Dig. 4603), regulated the collection of taxes in boroughs, and provided that it should not apply to any taxes the collection of which was regulated by local law. A., who was elected a collector of taxes of a township according to the provisions of this act, petitioned the court for a mandamus to compel the members of the board of school directors to issue the duplicate for the collection of the school tax. The board of directors answered that the act of 1885 was unconstitutional because of the proviso therein contained. This contention was sustained, and the rule was discharged. Judgment affirmed, on the ground that the act of 1885 did not apply; but the constitutionality of the act of 1885 was asserted.—Evans v. Phillipi, 117 Pa. 226 (1887), Clark, J.; s. c. 11 Atl. 630, 3 Montg. Co. 180.

Followed in Bitting v. Comm., 20 W. N. C. 178 (1887); s. c. 12 Atl. 29.

See, also, Keim v. Devitt, 3 Pa. C. C. 250 (1887), Rockefeller, J.

(506) The act of May 13, 1887 (P. L. 108, § 19; P. & L. Dig. 2710), "to restrain and regulate the sale of vinous and spirituous, malt or brewed liquor or admixtures thereof," provided that "the act should not be held to authorize sales in territory having special prohibitory laws." A., having been convicted for a violation of the act, moved in arrest of judgment, on the ground that the act was local and special. Motion overruled.—Comm. v. Haag, 6 Pa. C. C. 118 (1888), Furst, P. J.; s. c. 6 Lanc. L. R. 40.

(507) B. was indicted, under the act of May 13, 1887 (P. L. 108, P. & L. Dig. 2710), for selling liquor to minors. B. contended that the act was unconstitutional, because the proviso to the nineteenth section declared that none of the provisions of the act "shall be held to authorize the sale of any spirituous, vinous, malt, or brewed

liquors, or any admixture thereof, in any city. county, borough, or township, having special prohibitory laws," and, therefore, violated art. III., § 7, of the constitution, prohibiting local or special legislation. B. moved to quash the indictment. Motion refused. Affirmed.—Comm. v. Sellers, 130 Pa. 32 (1889), Sterrett, J.

(508) The act of May 8, 1889 (P. L. 129, § 1; P. & L. Dig. 4129), was "An act fixing the number of road and bridge viewers." It contained a proviso that "this act shall not apply to counties having local acts inconsistent herewith." Exceptions were taken to a report of viewers appointed under said act, on the ground that the act was local or class legislation. Judgment dismissing the exceptions was affirmed, on the ground that the proviso did nothing more than hold in abeyance the general law, where there was an inconsistent local law, and was therefore not local legislation, in violation of the constitution.—Cheltenham Twp. Road, 140 Pa. 136 (1891); s. c. 21 Atl. 238, 7 Montg. Co. 42.

See, also, East Avenue Widening, Jenkintown, 7 Lanc. L. R. 164 (1890), Swartz, P. J.

(509) The act of May 23, 1889 (P. L. 277, art. III., § 1; P. & L. Dig. 612), provided a method for changing and enlarging the limits of cities of the third class. A petition for the annexation of a township to a city was presented to the city councils, and an ordinance was passed in accordance with the prayer of the petitioner. Exceptions to the action of councils were taken, on the ground that the act of 1889 was class legislation, in that its provisions did not extend to cities of the third class that had not adopted the frame of government provided by the cities act of 1874, and were therefore governed by local acts. Judgment dismissing exceptions affirmed.—Lackawanna Twp. Harris's Appeal, 160 Pa. 494 (1894), Williams, J.; s. c. 28 Atl. 927.

(510) The act of May 23, 1889 (P. L. 277; P. & L. Dig. 607 *et seq.*), was "An act providing for the incorporation and government of cities of the third class," and provided for the grading and paving of streets by such cities, and the filing of a municipal claim therefor in the same manner as provided for similar assessments in cities of the first and second classes. On *sci. fa. sur* municipal lien, filed under the provisions of said act, for paving a street in front of defendant's premises, judgment for defendant, on the ground that the act was local or special legislation, was reversed.—Scranton v. Whyte, 148 Pa. 419 (1892), Williams, J.; s. c. 23 Atl. 1043, 30 W. N. C. 74. Reversing 2 Lack. Jur. 223.

(511) The act of May 8, 1876 (P. L. 147, § 1; P. & L. Dig. 4007), provided that passenger railways in cities of the first class might use other than animal power in the carriage of passengers, and repealed the provisions in any of the charters of such railways which restricted them to the use of horse power. On bill in equity by citizens and property owners of Philadelphia for an injunction to prevent certain railway companies from erecting electric poles and wires under authority of said act, *held*, reversing the court below, that it related to a subject proper for municipal classification, and was constitutional. —Reeves v. Philadelphia Traction Co., 152 Pa. 153 (1893), Mitchell, J.; s. c. 25 Atl. 516, 31 W. N. C. 265. Reversing 1 D. R. 506.

(512) The act of May 25, 1887 (P. L. 263; P. & Dig. 3558), entitled "An act relating to the acquisition, purchase, and sale of real estate by the boards of guardians for the relief and employment of the poor in cities of the second class," authorized the said guardians to sell the poor farm property. The act of June 14, 1887 (P. L. 395; P. & L. Dig. 601), entitled "An act in relation to the government of cities of the second class," transferred the powers and duties of the boards of guardians of the poor to the city councils, in said cities. An ordinance directing the sale of a poor farm was passed by the councils of a city of the second class. A bill in equity was filed to restrain the city from making the sale, and it was contended that both of the above acts were unconstitutional because they were special laws. Decree refusing injunction affirmed.—Straub v. Pittsburgh, 138 Pa. 356 (1890). Affirming 38 Pitts. L. J. 89.

(513) The act of March 22, 1877 (P. L. 16, § 7; P. & L. Dig. 4549, note), provided that city treasurers in cities of the second class should appoint collectors of delinquent taxes. A city treasurer-elect of a city of the second class filed a bill in equity to restrain the city treasurer from making an appointment in accordance with the terms of this act, on the ground that the act was local and unconstitutional. A demurrer to the bill was sustained. Affirmed.—Kilgore v. Magee, 85 Pa. 401 (1877); s. c. 5 W. N. C. 61.

(514) The act of May 4, 1889 (P. L. 83; P. & L. Dig. 868), provided for the election of a properly qualified person for constable in each of the wards of cities of the second and third classes. Objections were filed to the approval of bonds and qualification of persons elected as constables under said act, on the ground that constables were ward or township officers and the act was therefore one regulating the affairs of townships and wards. Objections dismissed on the ground that constables were not strictly township or ward officers, and their election was a matter of municipal government.—Reading's Constables, 8 Pa. C. C. 101 (1890), Endlich, J.

(515) The act of May 24, 1887 (P. L. 204), divided the cities of the state into seven classes.

A bill was filed by the treasurer and councils of a certain city, elected in accordance with the provisions of the act to restrain defendants, who were councilmen, elected under former laws, from acting as councilmen of said city. The answer set forth that the act, of 1887 was unconstitutional, as the division into so many classes was unnecessary, and was made for the purpose of legislating for each class separately. Decree dismissing bill affirmed.—Ayars' Appeal, 122 Pa. 266 (1889), Sterrett, J.; s. c. 16 Atl. 356, 46 L. I. 36, 23 W. N. C. 97.

Followed in Shormaker v. Harrisburg, 122 Pa. 285 (1889); Berghaus v. Harrisburg, 122 Pa. 289 (1889); Comm. v. Smoulter, 126 Pa. 137 (1889); Comm. v. Miller, 126 Pa. 137 (1889); Meadville v. Dickson, 129 Pa. 1 (1889); s. c. 24 W. N. C. 451, 18 Atl. 513.

(516) The act of March 19, 1879 (P. L. 9), provided for the incorporation, government, and regulation of street railways in cities of the second and third classes. In an action by a street railway company incorporated under this act, to recover for unpaid subscriptions, the defendant contended that, as the act related only to certain members of the general class of street railway companies, and was local in its operation, it was unconstitutional. *Held*, reversing the court below, that the act was unconstitutional.—Weinman v. Wilkinsburg & E. L. Pass. Ry. Co., 118 Pa. 192 (1888), Williams, J.; s. c. 12 Atl. 288, 20 W. N. C. 455, 45 L. I. 176, 35 Pitts. L. J. 315.

(517) The act of May 23, 1878 (P. L. 111; P. & L. Dig. 4025, note), provided for the incorporation and regulation of passenger railway companies in cities of the third, fourth, and fifth classes, and in boroughs and townships. On motion for an injunction restraining defendant railway company from entering upon the roadway of the plaintiff, and laying down tracks, as authorized by said act, *held*, that a statute relating to the formation of corporations was not a proper one for municipal classification; and injunction awarded.—Berks & Dauphin Turnpike v. Lebanon Electric Railway Co., 5 Pa. C. C. 467 (1888), McPherson, J.

(518) The act of June 1, 1885 (P. L. 37, art. VIII., § 1; P. & L. Dig. 584, note), provided a method for recovering judgments against cities of the first class. Upon a motion to set aside a mandamus execution, issued under prior acts, it was contended that the act of 1885 was contrary to the constitutional provision prohibiting the legislature from passing any local or special law providing or changing methods for the collection of debts or the enforcing of judgments; and therefore that the prior legislation was still in force. This contention was sustained and the motion to set aside the mandamus execution was dismissed.—Betz v. Philadelphia, 19 Phila. 452 (1887), Thayer, P. J.; s. c. 4 Pa. C. C. 481, 44 L. I. 512.

(519) A. applied for an injunction to restrain B. *et al.*, commissioners of X. county, from drawing warrants on C., the county treasurer, which he, A., had not approved. A. averred that he had been duly elected county controller under the act of June 27, 1895 (P. L. 403; P. & L. Dig. Supp. 223), which provided that, in counties having more than 150,000 inhabitants, the office of county auditor should be abolished, and the office of county countroller substituted therefor. B. answered that the act was unconstitutional, because special, and that A. had no right to pass upon the warrants. Decree refusing the injunction reversed.—Lloyd v. Smith, 176 Pa. 213 (1896), Mitchell, J.; s. c. 38 W. N. C. 363. Reversing 8 Kulp, 375.

(520) The act of June 22, 1883 (P. L. 139; P. & L. Dig. 4258), directed that, in counties the population of which exceeded 100,000, and was less than 150,000, the fees which formerly belonged to the county officers should be turned over to the county treasurer, and that the officers should be compensated by salaries. The act also imposed new duties upon the auditors in the counties to which it related. On a petition for a mandamus to compel a prothonotary of a county within the terms of the act, to file a copy of his fee account, he answered that the act was local and special legislation, and therefore unconstitutional. This contention was overruled and the writ of mandamus granted. Reversed.—McCarthy v. Comm., 110 Pa. 243 (1885), Gordon, J.; s. c. 2 Atl. 423, 16 W. N. C. 497, 33 Pitts. L. J. 473.

(521) The act of June 12, 1878 (P. L. 187; P. & L. Dig. 2040, note), regulated the fees to be received by sheriffs, coroners, prothonotaries, etc., in the state, but provided "that the provisions of this act shall not extend to officers in counties containing over one hundred and fifty thousand or less than ten thousand inhabitants." Upon a case stated to determine whether a prothonotary was entitled to fees under this act or under a prior act, it was contended that this exception rendered the act local and unconstitutional. This contention was not sustained by the lower court, which held the act constitutional. Reversed.—Morrison v. Bachert, 112 Pa. 322 (1886), Paxson, J.; s. c. 5 Atl. 739, 3 Lanc. L. R. 198, 33 Pitts. L. J. 463, 17 W. N. C. 353, 43 L. I. 240. Reversing 3 Lanc. L. R. 97, 1 Pa. C. C. 153.

(522) The act of May 24, 1878 (P. L. 133, § 1), authorized any owner of real estate, in any county of less than 500,000 inhabitants, who felt aggrieved by the assessment of his real estate, to appeal to the court of common pleas from the decision of the county commissioners, or the board of appeal and revision of any city of the third class. A taxpayer appealed to the court of common pleas from the decision of the board of appeal and revision. The court made a decree reducing the assessment. The city appealed, con-

tending that this was a local act, regulating the affairs of counties and cities, and was therefore unconstitutional. Judgment reversed.—Scranton v. Silkman, 113 Pa. 191 (1886), Green, J.; s. c. 6 Atl. 146, 3 C. P. Rep. 155, 18 W. N. C. 384, 4 Lanc. L. R. 192, 34 Pitts. L. J. 388.

See, also, Lake Shore & M. S. Ry. Co.'s Appeal, 1 Pa. C. C. 327 (1885), Galbraith, P. J.; s. c. 33 Pitts. J. L. 191; Western Pa. R. Co.'s Appeal, 34 Pitts. L. J. 357 (1887), White, P. J.; s. c. 3 Pa. C. C. 162.

(523) The act of May 3, 1878 (P. L. 43), authorized the courts to direct the re-indexing of certain records in the county offices, with a proviso that the act should not apply to counties having a population of over 400,000. A court made an order under the act directing the re-indexing of certain records. Afterwards, it was suggested that this act was a local law, regulating the affairs of counties, and prescribing the powers and duties of county officers, and was unconstitutional. Order revoked.—Beaver County Indexes, 6 Pa. C. C. 525 (1889), Wickham, P. J.; s. c. 36 Pitts. L. J. 400.

(524) The act of June 13, 1883 (P. L. 99; P. & L. Dig. 2337, note), provided for the discharge of prisoners who should have served out their term of imprisonment, without proceedings under the insolvent laws, and excepted from its operation "counties containing a city co-extensive with a county." On the hearing of a petition for discharge under this act, it was contended that the act was local and unconstitutional. Petition refused, on this ground.—Comm. v. Carey, 2 Pa. C. C. 293 (1886), Yerkes, P. J.; s. c. 18 Phila. 668, 43 L. I. 384.

(525) A. took exceptions to the report of viewers condemning land for an extension of a courthouse, on the ground that the act of June 1, 1883 (P. L. 58; P. & L. Dig. 1053), under which the proceedings were instituted, was unconstitutional. The act contained a proviso that it should not apply to counties containing cities co-extensive with the county. A. contended that this made it, in effect, a local law. Exceptions sustained.—Chester County Court House, 7 Pa. C. C. 212 (1888).

But see Bennett v. Norton, 7 Kulp, 443 (1894), Rice, P. J.

(526) The act of May 4, 1876 (P. L. 201), required the school directors of Ayr Township to assess and levy a tax upon the basis of the existing valuation for school purposes for said township, to reimburse certain parties money advanced by them for certain purposes. A mandamus was issued at the relation of these parties, against the school directors, to compel compliance with this act. The directors made return that the act was unconstitutional. The commonwealth demurred, and judgment was entered for the relators. Reversed.—Montgomery v. Comm., 91 Pa. 125 (1879), Mercur, C. J.; s. c. 37 L. I. 94.

(527) The act of February 14, 1889 (P. L. 7; P. & L. Dig. 4687), provided for the election of assessors for three years in boroughs and townships, with a special proviso that its terms should not apply to boroughs or townships divided into wards or election districts. On rule for *quo warranto* against one holding the office of assessor in a township not divided into election districts, the act of 1889 was *held* constitutional, at least so far as it related to townships and boroughs not divided.—Comm. v. Coleman, 9 Pa. C. C. 90 (1890), Wickham, P. J.

(528) On *quo warranto* to test the right of respondents, B. *et al.*, to act as school directors, the respondents set up that they were elected according to the provisions of the act of May 23, 1889 (P. L. 274; P. & L. Dig. 646, note), which constituted each city of the third class a separate school district. The relator contended that the law was local and special legislation. Judgment of ouster awarded, as the law did not apply to any function of municipal government, and related to but one class of cities.—Comm. v. Richard, 8 Pa. C. C. 563 (1890), Rice, P. J.

Overruling Engle v. Reichard, 4 Pa. C. C. 48 (1887), Rice, P. J.

(529) A motion was made to continue a preliminary injunction against a board of school controllers, restraining them from performing certain acts connected with their office, on the ground that the board had not been constituted according to the act of May 23, 1874 (P. L. 230, § 41; P. & L. Dig. 646, note), dividing cities into three classes, and applying in its provisions relating to schools (which were different from those of the general school law) to cities of the third class only; but had been elected in the mode prescribed by the general school law of 1854. The bill was resisted on the ground that the said act of 1874, so far as it attempted to regulate the school system, was local in its effect and void. Injunction dissolved.—Gaston v. Graham, 18 Pa. C. C. 265 (1896), Henderson, P. J.; s. c. 5 D. R. 549.

(530) The act of June 16, 1891 (P. L. 306; P. & L. Dig. 644), provided that cities of the third class should constitute separate school districts, and that the members of the board of school controllers should have the same rights and powers as were possessed by the school directors of the districts of the commonwealth. Proceedings by *quo warranto* were begun against school controllers elected under this act, and it was contended that the act violated article III., section 7, of the constitution. Judgment of ouster entered.—Comm. v. Gilligan, 8 Kulp, 560 (1897), Bennett, J.

(531) A., a creditor of a school district, presented for payment a voucher for his debt, signed by the president and secretary of the board of school controllers. The district refused to pay, on the ground that the voucher was not countersigned by the city controller, as provided by the cities' act of May 23, 1874 (P. L. 230, § 43). A. petitioned for a mandamus to compel payment without the city controller's approval, contending that this section of the act was unconstitutional, as school districts constituted a subject not necessarily connected with the government of cities, and must be dealt with by legislation affecting the whole state, cities, boroughs, and townships alike. Mandamus issued.—Baker v. McKee, 6 D. R. 599 (1897), McPherson, J.

(532) The act of May 23, 1874 (P. L. 230), pro-

vided for the classification of cities, and authorized the increase of the city debt in cities of the first class. In support of a motion in the supreme court for an injunction to restrain the city of Philadelphia from borrowing $1,000,000 for the purpose of constructing sewers for the city, as authorized by said act, it was contended that the act was local or special legislation, because affecting only one city. *Held*, that the act was constitutional; and injunction refused.—Wheeler v. Philadelphia, 77 Pa. 338 (1875), Paxson, J.; s. c. 1 W. N. C. 178, 205, 7 Leg. Gaz. 35, 44, 32 L. I. 41, 75, 22 Pitts. L. J. 101.

(533) The act of March 22, 1877 (P. L. 16), was an act in relation to cities of the second class, and provided for the levy, collection, and disbursement of taxes and water rents in such cities. A. filed a bill to restrain the city treasurer of Pittsburg from appointing a collector of delinquent taxes and water rents, as authorized by said act, on the ground that as the act applied to but one city, it violated art. III., § 7, of the constitution. A demurrer to the bill was sustained, and, on appeal, the decree was affirmed.—Kilgore v. Magee, 85 Pa. 401 (1877).

(534) The act of April 22, 1879 (P. L. 30; P. & L. Dig. 1024, note), made it the duty of the county auditors to audit the accounts of the directors of the poor, of the treasurer and steward of every poorhouse, within any county where a poorhouse had been or might thereafter be erected. The account of a treasurer of the directors of the poor of a county was audited, and he appealed to the common pleas, where he contended that, as the act applied to only a few counties of the state, it was local and unconstitutional. This contention was overruled, and judgment was entered against him. Affirmed.—Nason v. Erie County Poor Directors, 126 Pa. 445 (1889), Paxson, C. J.; s. c. 17 Atl. 616, 24 W. N. C. 60.

(535) The act of June 14, 1887 (P. L. 395; P. & L. Dig. 597), entitled "An act in relation to the government of cities of the second class," fixed certain dates at which acts necessary to put the government into operation were to be done, among which was the election of councils. Performance at these dates was possible to only one city, the only city of that class at the time, and the act made no corresponding provision for cities afterwards coming into that class. The city councils organized under this act authorized certain street improvements. A bill in equity was filed to restrain the city from making the improvements at its own expense, on the ground that the act of assembly was local and unconstitutional. Decree refusing injunction affirmed.—Whitney v. Pittsburgh, 138 Pa. 427 (1891), Williams, J.

See, *contra*, Conyngham Township v. Luzerne County, 5 D. R. 183 (1895), Craig, P. J.

(536) The act of August 5, 1870, constituted certain citizens, the mayor, and the president of select and common councils of Philadelphia, commissioners for the erection of the public buildings required to accommodate the courts, and for all other municipal purposes, and authorized them to execute contracts for construction. The act empowered them to make requisition upon the councils for the money necessary in each year for their expenditures, for which special taxes were required to be levied. The act of June 1, 1893 (P. L. 124; P. & L. Dig. 579, note), abolished commissioners created by special acts of assembly for the erection of public buildings in cities of the first class, and the erection, repair, removal, and protection of public buildings theretofore under the control of such commissioners in said cities was placed under the control of the department of public works. At the date of the passage of this act there was but one city of the first class, but one set of commissioners, but one special act of assembly, and but one building to which the act could apply. The commissioners filed a bill in equity in the supreme court to restrain the city from enforcing the act of 1893, contending that said act was contrary to the constitutional provision prohibiting the legislature from passing any local law regulating the affairs of cities. This contention was sustained, and a preliminary injunction was made perpetual.—Perkins v. Philadelphia, 156 Pa. 554 (1893), Dean, J. (McCollum, Mitchell, and Thompson, JJ., dissenting); s. c. 27 Atl. 356, 32 W. N. C. 385, 41 Pitts. L. J. 85.

(537) The act of June 8, 1891 (P. L. 216), provided that it should thereafter be unlawful to "establish any cemetery upon lands, located within one mile from any city of the first class of this commonwealth, the drainage from which empties or passes into any stream from which any portion of the water supply for such city is obtained." The B. company having established a cemetery within one mile from Philadelphia, and its land being so situated that the drainage therefrom passed into the river from which the water supply of the city was taken, a bill was filed to restrain the company from using its lands for purposes of burial. The answer averred that, as this act could relate only to a narrow strip of land on one side of Philadelphia, it was therefore local and special legislation, and unconstitutional. Decree dismissing bill affirmed.—Philadelphia v. Westminster Cemetery Co., 162 Pa. 105 (1894), Williams, J. (Mitchell, J., dissenting.); s. c. 29 Atl. 349.

(538) The school board of the city of York passed a resolution declaring that they proposed to take one-half of a certain burial ground for school purposes, in accordance with the provisions of the act of June 6, 1893 (P. L. 342; P. & L. Dig. 778). The act was entitled "An act authorizing and regulating the taking, use, and occupancy of certain public burial places, under certain circumstances, for purposes of common-school education." It was so worded that it could not apply to many burial grounds, if, indeed, to any, except the one proposed to be taken. To the report of viewers assessing damages for the taking of the lot, exceptions were taken, on the ground that the act of assembly violated art. III., § 7, of the constitution, as being a local law regulating the affairs of a school district, and relating to cemeteries. Judgment sustaining exceptions affirmed.—York City School District's Appeal, 169 Pa. 70 (1895). Affirming 8 York, 145.

(539) The sixth section of the act of March 24, 1877 (P. L. 40, § 6; P. & L. Dig. 3525), in regard to the erection of poorhouses, provided that it should not apply to a county or district that had already within it a county or district poorhouse or houses, under any special law, unless the same should be accepted by a majority of the voters of such county or district, at an election which might be ordered by the quarter sessions. A petition was filed asking the court to order an election to decide as to the erection of a county poorhouse. It was contended in opposition that the act was local and unconstitutional. Petition refused.—Taxpayers' Petition, 25 Pitts. L. J. 146 (1878), Bredin, J.

(540) The act of March 18, 1875 (P. L. 15), provided that cities of the third class might provide for the levy and collection of taxes. Section 5 provided that no city of the third class, nor any city of less than ten thousand inhabitants, should become subject to the provisions of the former sections, until the same were accepted by an ordinance of councils of said city. A taxpayer of a city of the third class filed a bill in equity to restrain the city and its treasurer from collecting a tax greater than provided for by this act. The answer was that the act of 1875 was unconstitutional and local. A decree granting an injunction was reversed.—Scranton School District's Appeal, 113 Pa. 176 (1886), Green, J.; s. c. 6 Atl. 158, 18 W. N. C. 261, 43 L. I. 488, 3 C. P. Rep. 141.

See, also, the dictum in Severs v. Winton Borough Council, 1 Lack. L. N. 103 (1894), Archbald, P. J.

(541) The act of June 23, 1885 (P. L. 142; P. & L. Dig. 2084, note), provided for the repeal of section 1 of the fence law of 1700, but such repeal was to be effective in any county only upon a vote of the people of the county, at an election advertised at the request of the county commissioners, in favor of such repeal. Upon a case stated it was agreed that the cattle of the defendant had trespassed upon the land of the plaintiff, who did not have the same enclosed as required by the act of 1700 (1 Sm. L. 13; P. & L. Dig. 2084, note). The plaintiff contended that the act of 1885 was valid and in force; the defendant contended that the effect of this act might be to lead to the adoption of a different law in the different counties, contrary to the constitutional provision against local legislation. Judgment for the defendant affirmed.—Frost v. Cherry, 122 Pa. 417 (1888), Paxson, J.; s. c. 15 Atl. 782.

(542) The act of June 12, 1878 (P. L. 198), for the taxation of dogs and the protection of sheep, provided that the tax should form a fund from which the owners of sheep destroyed by dogs should receive compensation, and contained the proviso that the act should take effect only in those counties where a majority voted for it. It was contended, in an action for compensation for sheep destroyed, that this was local legislation, and unconstitutional. This contention was sustained, and judgment was entered for the defendant.—Bowen v. Tioga Co., 6 Pa. C. C. 613 (1889), Wilson, P. J.

(543) The act of May 23, 1889 (P. L. 274; P. & L. Dig. 6461, note), provided that any city of the third class, thereafter incorporated, should constitute a separate school district, and that any city incorporated prior to the passage of the act could become subject to its provisions, by accepting the act; but it did not require that cities accepting its provisions should, at the same time, accept those of the act of May 23, 1874 (P. L. 230; P. & L. Dig. 556, note), authorizing the classification. A writ of *quo warranto* was granted against school directors elected under the provisions of the act of 1889, which, it was argued, tended to diversity and not to uniformity in the administration of cities of the third class. Judgment for the commonwealth affirmed.—Comm. v. Reynolds, 137 Pa. 389 (1891), Clark, J.; s. c. 20 Atl. 1011, 27 W. N. C. 139, 38 Pitts. L. J. 373.

(544) The act of March 24, 1877 (P. L. 47), and its supplements, the acts of May 1, 1879 (P. L. 44), and February 14, 1881 (P. L. 6), provided for the election of a city recorder in cities containing a certain number of inhabitants, upon condition that such cities accepted the provisions of the act. A writ of *quo warranto* was granted against a recorder elected under the provisions of these acts, and it was contended that the acts were contrary to the constitutional provision prohibiting local legislation for cities. This contention was sustained and a judgment of ouster was entered. Affirmed.—Comm. v. Denworth, 145 Pa. 172 (1891), McCollum, J.; s. c. 22 Atl. 820, 28 W. N. C. 440, 39 Pitts. L. J. 183.

(545) The act of May 23, 1874 (P. L. 230; P. &

L. Dig. 679, note), dividing the cities of the state into three classes and providing for the incorporation and government of cities of the third class, by its fifty-seventh section was made applicable to such cities of the third class, or any city of less than 10,000 inhabitants, theretofore incorporated, as might accept it. Upon the petition of the plaintiff, a lien against his property, filed by the defendant, a city of the third class, under the provisions of this act, was stricken off, on the ground that the act was local and unconstitutional. Judgment reversed, the supreme court holding the act constitutional, because it tended to promote uniformity by allowing the surrender of special privileges.—Reading v. Savage, 124 Pa. 328 (1889), Green, J.; s. c. 16 Atl. 788, 23 W. N. C. 332. Overruling 120 Pa. 198.

Followed in Meadville v. Dickson, 129 Pa. 1 (1889); s. c. 24 W. N. C. 451, 18 Atl. 513.

See, also, Von Storch v. Scranton, 3 Pa. C. C. 567 (1887); s. c. 4 C. P. Rep. 94.

See, *contra*, Sixteenth Street Opening, 4 Pa. C. C. 124 (1887), holding the act of May 23, 1874 (P. L. 230; P. & L. Dig. 556, note).

(546) The act of June 12, 1893 (P. L. 451; P. & L. Dig. 4232), provided that a taxpayer of a township might acquire the right to make and repair the roads of a township at his own expense, by giving a bond with sureties, and obtaining the approval of the court of quarter sessions. A petition presented to the court, for the right to make and repair the roads of a township, was opposed, on the ground that said act was special and local legislation and therefore unconstitutional. This contention was sustained and the petition was dismissed. Decree reversed.—Lehigh Valley Coal Co.'s Appeal, 164 Pa. 44 (1894), Dean, J.; s. c. 30 Atl. 210.

Followed in Philadelphia & Reading Coal & Iron Co.'s Petition, 164 Pa. 248 (1894).

(547) Article XIV., section 5, of the constitution provides that, in counties containing over one hundred and fifty thousand inhabitants, all county officers shall be paid by salary. The act of May 6, 1874 (P. L. 125; P. & L. Dig. 4500), provided that, in counties of less than one hundred and fifty thousand inhabitants, the prothonotaries, clerks of court, registers of wills, and recorders of deeds shall pay into the treasury of the commonwealth, after deducting all necessary clerk hire and office expenses, fifty per centum on the amount of any excess over the sum of two thousand dollars, which shall be found to have been received by any office in any year. The act further provides that, if two or more of said offices shall be held by one person, the fees received in the offices so held shall be added, and the same percentage on the aggregate sum shall be charged. A., who held more than one of the offices above named, appealed from the settlement of the amount due by him to the state, and contended that the proviso was unconstitutional, because it fixed a different rate for counties where the offices were held together, from the rate for those counties where they were held separately. This contention was overruled, and judgment was entered for the commonwealth. Affirmed.—Comm. v. Anderson, 178 Pa. 171 (1896), Sterrett, C. J.

(548) B. was elected a tax collector for a borough under the act of June 25, 1885 (P. L. 187; P. & L. Dig. 4603), which provided that the collector of taxes in boroughs and townships should be elected by the people. Prior thereto county taxes had been collected by the appointees of the county commissioners. The property of A. was subject to a tax, which B. was about to collect. A. filed a bill in equity to restrain B., on the ground that the act of 1885 was local and unconstitutional, because it did not apply to counties. A preliminary injunction was dissolved. Affirmed.—Bennett v. Hunt, 148 Pa. 257 (1892).

Followed in Comm. v. McDonnell, 3 D. R. 767 (1894).

(549) A. was elected a collector of taxes for a township, under the act of June 25, 1885. The county commissioners refused to give A. the tax duplicates on the ground that the act of 1885 was unconstitutional because it did not apply to counties. A. petitioned for a mandamus to compel the commissioners to issue the tax duplicates. Peremptory mandamus awarded. Affirmed.—Comm. v. Lyter, 162 Pa. 50 (1894), Fell, J.

Hannick's Bond, 3 Pa. C. C. 254 (1887); Collector's Bond, 4 C. P. Rep. 38 (1887); s. c. 4 Lanc. L. R. 166; Comm. v. Lackawanna County Commissioners, 7 Pa. C. C. 173 (1889); s. c. 1 Lack. Jur. 197, holding the above act unconstitutional, are overruled by the above cases.

(550) The act of June 3, 1885 (P. L. 55; P. & L. Dig. 402), authorized the town council of any borough to pass ordinances to regulate or prevent the erection of wooden buildings within the corporate limits. Under this act, a borough passed an ordinance prohibiting the erection of wooden buildings within certain prescribed limits, and providing that any person violating the ordinance should be compelled to remove the structure, or pay the cost of its removal by the council, together with a penalty. After notice, A. erected a frame structure in violation of this ordinance, and B., the high constable, in pursuance of a resolution of the town council, removed the structure. A. sued B. in trespass, contending that the act of 1885 was unconstitutional because local and special. Judgment for A. reversed.—Klingler v. Bickel, 117 Pa. 326 (1887), Paxson, J.; s. c. 11 Atl. 555, 20 W. N. C. 353, 44 L. I. 492.

(551) The act of March 18, 1875 (P. L. 24; P. & L. Dig. 2894), made it lawful for any married woman, owning any of the loans of the state or of the city of Philadelphia, to sell and transfer them with like effect as if unmarried. The plaintiff, a married woman, having made such a sale, presented to the defendant, the agent of the city, the certificates of loan, with a power of attorney executed by herself. The defendant refused to make the transfer, because plaintiff's husband had not been joined in the power of attorney, contending that the act authorizing the sale by the married woman alone was local and unconstitutional. Judgment for the plaintiff affirmed.—Loftus v. Farmers & Mechanics' Nat. Bank, 133 Pa. 97 (1890), Mitchell, J.; s. c. 19 Atl. 347.

2. Legislation Affecting Classes of Persons.

An act providing a police regulation is not special and unconstitutional because it excepts from its operation certain persons or classes of persons not within the mischief sought to be remedied (552–554); but the exception of a person or class of persons within the mischief will render an act unconstitutional. (555)

A police regulation applicable to a class of persons in a single city is invalid. (556)

An act requiring foreign insurance companies to maintain an agent in this state on whom process may be served is valid. (557)

An act giving special advantages to children of soldiers of the civil war is invalid. (558)

An act making it a misdemeanor to injure or destroy the property of a livery-stable keeper is not class legislation and is valid. (559)

(552) The act of April 2, 1830 (P. L. 147, § 1; P. & L. Dig. 3412), prohibited the hawking or peddling of goods, wares, or merchandise, in Philadelphia, with or without a license, under a penalty, saving to citizens the right to so sell goods, etc., of their own growth, product, or manufacture. In an action to recover a fine under the above act, judgment was entered for plaintiff, the court holding that the act was a proper exercise of police power, and not a grant of special or exclusive privileges or immunities, and was therefore constitutional. On appeal, affirmed.—Comm. v. Brinton, 132 Pa. 69 (1890), Williams, J.; s. c. 18 Atl. 1092, 25 W. N. C. 277.

(553) The act of May 15, 1893 (P. L. 52), was enacted for the protection of coal miners "in all coal mines not now included in the anthracite boundaries" except those "employing less than ten persons in any one period of twenty-four hours." A. was indicted under the provisions of said act, but on motion the indictment was quashed, on the ground that the act was class legislation. Judgment reversed.—Comm. v. Jones, 4 Super. Ct. 362 (1897), Smith, J.

Following the dictum of Williams, J., in Durkin v. Kingston Coal Co., 171 Pa. 193 (1895).

(554) A. was indicted under the provisions of the act of May 18, 1893 (P. L. 94; P. & L. Dig. 1297), for practising medicine without having procured a license as provided therein. The act excepted from its operation commissioned medical officers serving in the army or navy of the United States, or in the United States marine hospital service, while so commissioned, medical examiners of relief departments of railroad companies, while so employed, any one while actually engaged as a member of a resident medical staff of any legally incorporated hospital, or any lawfully qualified physician from another state meeting registered physicians in this state. A. contended that the act was unconstitutional, because of the exemptions therein contained. *Held*, constitutional. Judgment for the commonwealth.—Comm. v. Wilson, 6 D. R. 628 (1897), Love, P. J.

(555) B. was indicted for engaging in the business of a druggist without being registered, under the act of May 24, 1887 (P. L. 189; P. & L. Dig. 2980), as amended by the act of June 16, 1891 (P. L. 313; P. & L. Dig. 2979), prohibiting unqualified persons from engaging in the business of selling drugs. The act of 1891 permits the widow or legal representative of a deceased, and registered pharmacist, to continue the business. *Held*, unconstitutional, reversing the lower court.—Comm. v. Zacharias, 3 Super. Ct. 264 (1897), Reeder, J.

(556) The act of May 5, 1876 (P. L. 109, § 2), provided that the certificate of the secretary of the commonwealth should be conclusive evidence of the publication, marking, and registering of mineral water and other bottles. The act affected only Philadelphia. At the trial of an indictment for filling registered bottles, the certificate of the secretary was admitted under objection that the above act was local and unconstitutional. Rule for new trial made absolute.—Comm. v. Farley, 6 Pa. C. C. 433 (1889), Read, J.

(557) The act of June 20, 1883 (P. L. 134, § 1; P. & L. Dig. 2391), required foreign insurance companies to appoint a state agent on whom process might be served. Judgment by default having been entered against a foreign insurance company which had not appointed a state agent as provided by the above act, a rule was taken to strike off the judgment on ground of unconstitutionality of the act. Order making the rule absolute reversed.—Kennedy v. Agricultural Ins. Co., 165 Pa. 179 (1895), Sterrett, C. J.; s. c. 30 Atl. 724, 35 W. N. C. 457, 42 Pitts. L. J. 241.

(558) The act of July 2, 1895 (P. L. 434; P. & L. Dig. Supp. 144), provides for the admission and instruction of children of soldiers of the civil war in the common schools of districts outside of those in which their parents may reside. The

act then provides that for such instruction the district in which the parent resides shall be liable. In an action by one school district against another under this act, the act was *held* unconstitutional, as coming within the inhibition of art. III., § 7, of the constitution providing against class legislation.—Sewickley School District v. Osborne School District, 6 D. R. 211 (1897), Ewing, P. J.; s. c. 44 Pitts. L. J. 440, 19 Pa. C. C. 257.

(559) The act of March 22, 1887 (P. L. 8; P. & L. Dig. 1260), was enacted for the protection of livery-stable keepers, and made it a misdemeanor to wilfully or by gross negligence damage or destroy any property of a livery-stable keeper. A. was indicted and convicted for a violation of the act, but a motion in arrest of judgment was sustained and defendant discharged, on the ground that the act was class legislation. Judgment reversed.—Comm. v. Moore, 2 Super. Ct. 162 (1896), Orlady, J.

3. Bridges, Roads, and Streets.

By section 7 of Article III., the general assembly is prohibited from passing any local or special law relating to bridges or ferries, or authorizing the improvement or maintenance of roads, highways, streets, or alleys.

Under these provisions, an act which applies to a certain class of bridges is not unconstitutional when such class is particularly described, and a proper reason is given for such classification. (560)

An act providing a rule for the assessment of damages upon the improvement of a street in cities of a single class is unconstitutional (561–562), unless it tends to produce uniformity by the repeal of prior local acts. (563)

(560) The act of May 6, 1887 (P. L. 92; P. & L. Dig. 443), authorized an increase of tolls in bridges thereafter constructed in all parts of the state, except cities of the first and second class, where, "by reason of the demands and requirements of navigation," the cost of the bridge had been increased. An application by plaintiff bridge company for permission to charge toll according to this act was opposed, on the ground that the act was local and special. *Held*, that this was not such local or special legislation as to be repugnant to the constitution.—Boston Bridge Co.'s Case, 13 Pa. C. C. 190 (1893), White, J.

(561) The act of June 14, 1887 (P. L. 386; P. & L. Dig. 600, note), relating to streets in cities of the second class, provided that the city councils might direct the improvement of a street on the petition of one-third in interest of the owners of property on such street; and that the court of common pleas of Allegheny county should appoint a board of viewers, to which all claims for damages from the exercise of the right of eminent domain by the city in said improvement must be referred. The act further provided that an appeal might be taken from this board to the city council, and from the council, within ten days, to the common pleas. On appeal to the common pleas under the provisions of this act, it was contended that the act was unconstitutional and local. A decree dismissing the appeal was reversed.—Wyoming Street, Pittsburgh, 137 Pa. 494 (1891), Williams, J.

The rule of this case was re-affirmed in Pittsburgh's Petition, 138 Pa. 401 (1891); Howard v. Pittsburgh, 38 Pitts. L. J. 87 (1887); *contra* is overruled by these cases.

(562) The act of May 23, 1889 (P. L. 277, art. XIV.; P. & L. Dig. 4210), related to cities of the third class, and provided a special rule for the assessment of damages for the opening of streets in such cities. On motion to quash proceedings taken under said act, for the assessment of damages caused by opening a street, *held*, that this was local legislation of a prohibited character, and therefore unconstitutional.—Gardiner v. Chester City, 2 D. R. 162 (1892), Clayton. P. J.; s. c. 9 Lanc. L. R. 246, 5 Del. Co. 69.

(563) The act of May 6, 1887 (P. L. 87, §§ 1 & 2; P. & L. Dig. 4209), provided that viewers deciding in favor of opening or widening any plotted street in any city of the first class, might pass upon the question of benefits and damages. These sections changed what was local and special in road cases in the city of Philadelphia, so as to harmonize with the general system prevailing in the rest of the state. The remaining sections of the act provided a method of procedure in road cases for Philadelphia, which was unlike that in use in the rest of the state. Exceptions to the report of a board of viewers appointed under the act, on the ground that the act was unconstitutional, were dismissed. Reversed, the supreme court, holding the first two sections constitutional because producing uniformity, and holding the rest of the act unconstitutional.—Ruan Street, 132 Pa. 257 (1890), Williams, J. (Clark and McCollum, JJ., concurred in the judgment, but considered the whole act unconstitutional. Paxson and Mitchell, JJ., dissented from the judgment); s. c. 19 Atl. 219. Reversing the judgment given on a prior argument in 24 W. N. C. 460 (1889).

4. Elections; Courts; Corporations.

Under the provisions of section 7 of Article III., prohibiting the general assembly from passing any local or special law for opening and conducting elections; regulating the practice or jurisdiction of courts; or creating corporations or amending their charters, an act regulating the election of public officers is not rendered special and unconstitutional, because it does not apply to other elections. (564)

But an act requiring the president judges

of counties of a certain number of inhabitants to order a special session of court (565), or prescribing by what evidence certain claims of particular persons should be proved (566), is unconstitutional under this section.

An act authorizing passenger railway companies in cities of a certain class to use a motive power other than that specified in their charters is in violation of section 7 of Article III. (567)

(564) An injunction was asked against county commissioners to restrain them from incurring expenses of an election under the ballot reform act of June 19, 1891 (P. L. 349), on the ground that the act, in failing to provide for elections other than of public officers, violated art. III., § 7, of the constitution, prohibiting special legislation for the conducting of elections. Injunction refused.—Ripple v. Lackawanna County Commissioners, 1 D. R. 202 (1892).

(565) The act of June 12, 1879 (P. L. 174), provided that in all counties containing a population of not less than 60,000 inhabitants, and in which there was then or might thereafter be an incorporated city of the fifth class, it should be the duty of the president judge, upon the application of the mayor and councils of such incorporated city, to make an order for the holding of one week of court, or more, if necessary, in such city. A bill was filed for an injunction restraining county commissioners from expending public money under said act. Decree granting injunction affirmed, on the ground that this was local and special legislation, and the act was unconstitutional.—Scowden's Appeal, 96 Pa. 422 (1881), Paxson, J.; s. c. 11 W. N. C. 28, 38 L. I. 12. Affirming 14 Phila. 626.

(566) The act of March 23, 1877 (P. L. 25), provided that any prothonotary or sheriff of any county of the commonwealth, within six years after the expiration of his term of office, might before a justice of the peace of his own county, sue any person residing outside of the county, for the recovery of fees for official services performed during his official term. The act provided that a writ of summons issued to a constable of the plaintiff's county might be served by a constable of the county where the debtor resided, and that a certificate of the prothonotary of the plaintiff's county that any bill of fees appeared by the record of his office should be *prima facie* evidence of the correctness of such bill, and that execution might be issued in any county on a judgment so obtained. A., a sheriff, recovered a judgment before a justice of the peace, against B., under the provisions of this act. B. removed the proceedings to the common pleas by *certiorari*, contending that the act was a special act regulating the practice before a justice of the peace, and was therefore unconstitutional. Judgment given by the justice reversed. Affirmed on appeal.—Strine v. Foltz, 113 Pa. 349 (1886), Sterrett, J.; s. c. 6 Atl. 206.

As to the validity of the act of June 1, 1885 (P. L. 37, art. XIII., § 1; P. & L. Dig. 588), conferring upon the courts of common pleas in cities of the first class the power to punish by imprisonment, as for contempt of court, a refusal to testify before a committee of councils, see the concurring opinion of Gordon, J., in Simon's Case, 4 D. R. 189 (1895).

(567) The act of May 8, 1876 (P. L. 147; P. & L. Dig. 4007), relating to the use of motive power upon passenger railways, attempted to repeal limitations in special charters of certain passenger railway companies in cities of the first class. On motion for preliminary injunction to restrain the Director of Public Safety of the City of Philadelphia from issuing, under said act, a permit to either of said companies to erect any poles or string wires thereon, and to enjoin the companies from erecting such poles in front of the plaintiff's property, it was *held*, that this was special legislation and unconstitutional.—Watkin v. West Philadelphia Pass. Ry. Co., 11 Pa. C. C. 648 (1892), Arnold, J.; s. c. 1 D. R. 463.

In Foster v. Strayer, 6 D. R. 333 (1897), White, J., was of the opinion that the act of April 20, 1876 (P. L. 43; P. & L. Dig. 4797), requiring bail absolute upon an appeal from the judgment of a magistrate upon claims for manual labor, was unconstitutional, as being special legislation.

5. Liens.

Section 7, Article III., provides that the general assembly shall not pass any local or special law authorizing the creation, extension, or impairing of liens. Under this section, an act relating to liens which excludes from its operation counties of more than a certain population (568), or which applies to cities of a certain class only (569–572), is invalid.

(568) The act of June 28, 1879 (P. L. 182), authorized the filing of mechanics' liens in certain cases against leasehold interests in certain lands for work done in boring, drilling, or mining for the development and improvement of the same. The act contained a proviso that it should not apply to counties having a population of over two hundred thousand inhabitants. On case stated, the act was *held* unconstitutional, it appearing that at least two counties had a population of more than two hundred thousand.—Davis v. Clark, 106 Pa. 377 (1884), Mercur, C. J.; s. c. 15 W. N. C. 209, 13 Luz. L. Reg. 383, 3 Kulp, 168, 32 Pitts. L. J. 110.

(569) The act of June 27, 1883 (P. L. 161), provided that every writ of *scire facias* " issued upon a municipal claim for the recovery of any sum of money, the subject of a municipal lien in cities of the first class, shall have the additional

force and effect of a writ of *scire facias* to revive the lien of said claim for a period of five years from the date of said writ." Writs of *sci. fa.* were issued on municipal claims, and within five years thereafter *alias* writs of *sci. fa.* were issued to revive and extend the liens as authorized by the act of 1883. Subsequently the judgments of revival were stricken off, the court being of opinion that said act was local and unconstitutional. Judgment affirmed.—Philadelphia v. Haddington M. E. Church, 115 Pa. 291 (1887), Gordon J.; s. c. 8 Atl. 241, 19 W. N. C. 109.

(570) The act of March 22, 1877 (P. L. 16, § 12), relating to cities of the second class, provided for the levying, collection, and disbursement of taxes and water rents, and, also, that claims for such taxes, when filed in court, should be liens on real estate. In ejectment to determine the ownership of a tract of land sold under a lien so created, it was *held* the act was local and special legislation, and therefore unconstitutional. Judgment affirmed.—Safe-Deposit & Trust Co. v. Fricke, 152 Pa. 231 (1893), Sterrett, J.; s. c. 25 Atl. 530, 31 W. N. C. 324, 40 Pitts. L. J. 404.

(571) The act of March 22, 1877 (P. L. 16), related to liens against real estate for delinquent taxes in cities of the second class. On a feigned issue to determine the validity of said act, *held*, reversing the lower court, that the act was unconstitutional.—McKay v. Trainor, 152 Pa. 242 (1893), Sterrett, J.; s. c. 25 Atl. 534, 31 W. N. C. 329. Reversing 39 Pitts. L. J. 449.

See, also, Pittsburgh v. Hughes, 13 Pa. C. C. 535 (1893), Stowe, P. J.; s. c. 41 Pitts. L. J. 127.

(572) A. brought ejectment against B., claiming title by a tax sale under the act of June 2, 1881 (P. L. 45; P. & L. Dig. 4652). B. held title under a regular chain of conveyances, and claimed that A.'s title was void because the act of 1881 was special legislation and unconstitutional. The act provided that all taxes of whatever kind should be a first lien, and provided a special method for their collection, including such a sale as that under which A. claimed title. It expressly excepted from its operation cities of the first, second, and fourth classes. Verdict and judgment for B. Affirmed, on the ground that the act was local legislation, authorizing the creation, extension, or impairing of liens, and regulating the affairs of cities, without having the saving feature of dealing with municipal agencies only.—Van Loon v. Eagle, 171 Pa. 157 (1895), Williams, J.; s. c. 37 W. N. C. 244, 33 Atl. 77.

This act had been held unconstitutional in Townsend v. Wilson, 6 Lanc. L. R. 390 (1889); s. c. 7 Pa. C. C. 101; Miller v. Cunningham, 7 Pa. C. C. 500 (1890); Lancaster v. Stormfeltz, 8 Lanc. L. R. 194 (1891).

Ancona v. Becker, 3 D. R. 86 (1893); s. c. 14 Pa. C. C. 73, *contra*, must be regarded as overruled.

6. Enactment of Special Law by Partial Repeal of General Law, and Repeal of Special Law.

Section 7 of Article III. provides that the general assembly shall not indirectly enact special or local law by the partial repeal of a general law; but that laws repealing local or special acts may be passed.

Under this provision, an act providing for the recovery of bounties from boroughs and townships upon claims barred by the statute of limitations is unconstitutional. (573)

Where an act is repugnant to the constitution it is not revived by the repeal of an act by which it had been repealed. (574)

(573) In an action of assumpsit by A. against B., to recover a bounty of $100, under the act of May 8, 1889 (P. L. 131; P. & L. Dig. 435), authorizing an action of assumpsit for bounty against counties, boroughs, and townships, by veteran soldiers and sailors of the war of the rebellion, who were accredited to such county, borough, or township, and providing that the statute of limitations should not be a bar to such action, the court charged that said act was unconstitutional, in that it did not apply to cities, in that it applied to particular persons only, and in that it was the indirect enactment or a special law by the partial repeal of the general statute of limitations, thus violating in each respect article III., § 7, of the constitution. Motion for compulsory nonsuit granted.—Bearce v. Fairview Township, 9 Pa. C. C. 342 (1890), Mehard, P. J.

(574) The local act of April 26, 1855, which provided for summary conviction for selling intoxicating liquors on Sunday in Allegheny county, was repealed by the local act of April 3, 1872. The act of 1872 was repealed by the general act of May 13, 1887 (P. L. 108; P. & L. Dig. 2700 *et seq.*). On a *certiorari* to a conviction before a justice under the act of 1855, it was claimed that, as the act of 1855 was repugnant to the constitution of 1874, it had not been revived by the repeal of the repealing act. Proceedings reversed.—Durr v. Comm., 3 Pa. C. C. 525 (1887), Ewing, P. J., and Magee, J.

(E) NOTICE OF LEGISLATION.

Section 8 of Article III. of the constitution prescribes that no local or special bill shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected is situated.

The courts will presume that this formality has been complied with where the act is certified by both houses, and approved by the governor. (575)

An act which in terms repeals prior local acts is within the meaning of this provis-

ion, and requires the notice therein prescribed. (576)

(575) On a bill for an injunction to restrain defendants from proceeding under a certain local act, on the ground that the act was unconstitutional, because it had not been advertised in the locality affected, it appeared that the act was certified by both houses and was approved by the governor. *Held*, that, under such circumstances, the court would presume that all formalities had been complied with.—Perkins v. Philadelphia, 156 Pa. 554 (1893), Dean, J.; s. c. 27 Atl. 356, 32 W. N. C. 385, 33 W. N. C. 41, 41 Pitts. L. J. 85.

(576) The act of July 3, 1895 (P. L. 588; P. & L. Dig. Supp. 143), provided for the regulation of the affairs of school districts and sub-school districts in cities of the second class, and for the repeal of all local or special laws inconsistent therewith. The act of July 3, 1895 (P. L. 603; repealed two prior local acts relating to the school districts in the city of Pittsburgh. No notice of the intention to apply for this act had been given. A bill in equity was filed to restrain the school directors of a district in Pittsburgh from issuing bonds for school purposes, on the ground that these acts abolished the school district. The prayer was granted, the former act being held unconstitutional and the latter constitutional. Reversed on the ground that the repealing act was contrary to the constitutional provision requiring notice of the intention to apply for local or special laws.—Chalfant v. Edwards, 173 Pa. 246 (1896), Williams, J.

(F) SIGNING OF BILLS.

Section 9 of Article III. of the constitution provides that all bills must be signed by the presiding officer of each house. Formerly this was not necessary. (577)

(577) In a suit against B. by the A. corporation, B. pleaded *nul tiel* corporation, and offered in evidence the act under which the charter had been obtained, which act appeared not to have been signed by the speakers of the house and senate. The judge refused to charge that the act was void. Affirmed.—Speer v. Plank Road Co., 22 Pa. 376 (1853), Knox, J.

(G) EXTRA COMPENSATION PROHIBITED.

Section 11 of Article III. provides that "no bill shall be passed giving any extra compensation to any public officer, servant, employee, agent, or contractor after services shall have been rendered or contract made, nor providing for the payment of any claim against the commonwealth, without previous authority of law."

An act passed after the election of a public officer paid by fees, which requires of him new and different duties, and fixes the compensation therefor, does not violate this section (578); but an act giving a public officer extra compensation after services rendered is unconstitutional. (579)

(578) On a case stated by A. against Montgomery county, for the recovery of fees, it appeared that A. was paid entirely by fees, and that subsequently to his election as clerk of the orphans' court the act of June 24, 1895 (P. L. 246), had been passed, requiring him to administer affidavits in certain cases, and fixing the compensation therefor. It was urged that this was a violation of art. III., § 11. *Held*, constitutional.—Shiffert v. Montgomery County, No. 2. 5 D. R. 570 (1896), Weand, J.

(579) On a case stated by A. against the county of Montgomery for the recovery of fees it appeared that, subsequently to A.'s election as clerk of the orphans' court, a bill had been passed allowing compensation for certain services voluntarily performed by A., but for which no compensation had been fixed at the time of his election. *Held*, that the act was an attempt to give extra compensation to a public officer after services rendered, and unconstitutional.—Shiffert v. Montgomery County, No. 1, 5 D. R. 568 (1896), Weand, J.; s. c. 12 Montg. Co. 21, 5 North. Co. 201.

(H) CHANGING COMPENSATION OF PUBLIC OFFICERS.

Section 13 of Article III. of the constitution provides that "no law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment."

Under this section an act changing the compensation of public officers does not apply to incumbents at the time of its passage (580–583); and where an officer is elected after the passage of an act affecting only counties having a certain population, but it does not appear at the time he takes the office, that the act affects the county in which he is elected, his salary cannot be affected by the act. (584)

Where the effect of legislation is to increase or diminish the salary of an office by taking it out of one class and putting it into another, such legislation does not take effect upon the salary of the officer then in office. (585)

The legislature has no power to diminish the compensation of the judges of the courts of common pleas fixed by law, during their continuance in office, by imposing a tax on their salaries. (586)

Where the legislature has passed an act fixing the salary of an office established by the constitution, such an act may not afterwards be repealed without the substitution of another act in its stead, as an

officer's salary cannot be taken away in such manner. (587)

The supplying of stationery where it has not been supplied before is an increase of the emoluments of office. (588)

An act which imposes new duties without additional compensation therefor is a decrease of emoluments. (589)

Where a collector of taxes is allowed commissions, out of which he has to pay his assistants, and also costs, an act which takes away such costs, and gives them to deputies provided for in the act, does not violate this section of the constitution. (590)

Section 13, Article III., of the constitution does not apply to an act providing for compensation for special services performed by judges in other than their own judicial districts. (591)

The compensation or emoluments of a city officer may be changed during his term of office by ordinance of council (592–595); so, also, the compensation or emoluments of a county officer may be changed by the county commissioners. (596–597)

Section 13 of Art. III. of the constitution applies only to offices which are constitutional, not to offices created by the legislature. (598–599)

An office may be abolished during the term of an incumbent. (600–601)

Section 13 of Article III. of the constitution does not take away the power of the court to change the emoluments of a sheriff under authority given by a local act passed prior to the adoption of the constitution (602); and where a court has power to fix a sheriff's compensation for boarding prisoners, but a sheriff enters into office before this is done, the court may fix different rates for the past and the future. (603)

Where the compensation for certain duties is limited by law, and, at the time of an officer's entry into office, a higher rate fixed by order of court prevails, he is nevertheless entitled only to the rate fixed by law. (604)

(580) The special act of April 8, 1867 (P. L. 909), fixed the compensation of the sheriff of a certain county for boarding prisoners in the jail at fifty cents a day. This act was in force when A. became sheriff. While he was in office the act of June 4, 1879 (P. L. 82; P. & L. Dig. 4315, note), repealed the act of 1867, and this restored the act of March 5, 1858 (P. L. 70), by which the rate for boarding prisoners could not exceed two dollars and fifty cents a week. On case stated, the court below *held*, that A. was entitled to the rate fixed by act of 1879. On error, it was contended that, under art. III., § 13, of the constitution the act of 1879 could not apply to incumbents. Judgment reversed.—Apple v. Crawford County, 105 Pa. 300 (1884), Green J.; s. c. 14 W. N. C. 322, 41 L. I. 322, 32 Pitts. L. J. 127.

(581) The act of May 24, 1887 (P. L. 195, § 1; P. & L. Dig. 4689), increased the compensation of township assessors to two dollars per day. On case stated, *held*, that, under art. III., § 13, of the constitution the act did not apply to a person who was in office at the time the act was passed.—Fox v. Lebanon County, 4 Pa. C. C. 393 (1888), McPherson, J.

(582) The act of May 23, 1893 (P. L. 117; P. & L. Dig. 2057 *et seq.*), regulated and established the fees to be charged by justices of the peace, constables, and others, such fees furnishing the compensation received by those officers. On case stated, *held*, that, under art. III., § 13, of the constitution, this act was not applicable to those who were in office at the time of its passage.—Rupert v. Chester County, 2 D. R. 688 (1893), Waddell, P. J.; s. c. 13 Pa. C. C. 342, 5 Del. Co. 316, 10 Lanc. L. R. 343.

(583) On case stated, *held*, that, under art. III., § 13, of the constitution, the fee act of May 23, 1893 (P. L. 117; P. & L. Dig. 2057 *et seq.*), was void so far as it related to persons in the office at the time it was passed.—Cornell v. Beaver County, 42 Pitts. L. J. 263 (1894), Wickham, P. J.

(584) The act of March 31, 1876 (P. L. 13; P. & L. Dig. 4248 *et seq.*), provided that the coroner of counties having a population of over 150,000 should be paid a certain salary. A. was elected coroner of a certain county, which at the time he went into office had, according to the last census, a population of 129,974. A few days after A. went into office the result of a new census showed that the population of the county was 154,163. A. brought assumpsit to recover fees, which, by the method of compensation prior to the passage of the act, would be due him. The court below *held*, that the act of 1876 applied to A. On error, reversed.—Guldin v. Schuylkill County, 149 Pa. 210 (1892), Heydrick, J.; s. c. 24 Atl. 171, 30 W. N. C. 162.

Overruling Darte v. Luzerne Co., 10 Pa. C. C. 604 (1891), Rice, P. J.

Followed in Comm. v. Comrey, 149 Pa. 216 (1892), Heydrick, J.; s. c. 24 Atl. 172, 30 W. N. C. 165.

(585) A. went into office as sheriff of Luzerne county in January, 1878, at which time the county contained a population of more than 150,000. Under the provisions of the act of April 17, 1878 (P. L. 17; P. & L. Dig. 1007 *et seq.*), the county of Lackawanna was subsequently erected out of the county of Luzerne, and the population of Luzerne county was thereby decreased to less than 150,000. A. then charged fees for services, contending that he was taken out of the salaried class by the decrease in the population of the county. On petition for madamus to compel him to turn over fees received by him, *held*, that this act did not affect A.'s compensation, so as to take his office out of the operation of the salary act of

March 31, 1876 (P. L. 13 P. & L. Dig. 4248; *et seq.*), which applied to counties of over 150,000 population, and to allow him to retain the fees as sheriff of a county of less than that population.—Comm. v. Kenny, 1 Kulp, 231 (1880), Rice, P. J.

(586) By the act of May 4, 1841 (P. L. 307), a tax of two per cent. was levied on the salaries of judges and the state treasurer was directed to retain the amount of the tax. A., a judge, instituted mandamus, proceedings against the state treasurer, to compel him to show cause why he should not be paid the full amount of his salary. A. contended that the legislature was prohibited from diminishing the salary of a judge during his continuance in office, by art. V., § 2, of the constitution of 1790 (which is covered by art. III., § 13, of the constitution of 1874). Mandamus granted.—Comm. v. Mann, 5 W. & S. 403 (1843), Rogers, J.

(587) The act of May 19, 1874 (P. L. 206, § 5; P. & L. Dig. 4076, note), provided that the register of wills of Luzerne county should be clerk of the orphans' court, and that he might appoint one clerk in the county of Luzerne, who should receive an annual salary. Lackawanna county was taken from Luzerne in 1878, and, according to the census of 1880, the county of Luzerne had less than 150,000 inhabitants. The act of April 13, 1887 (P. L. 22, § 1; P. & L. Dig. 3276), amended the act of 1874, so as to change the salary of the clerk of the orphans' court of all counties over 150,000 inhabitants and abolished the office of assistant clerk. A., who was assistant clerk to the register of Luzerne county before the passage of the act of 1887, took a rule for a mandamus to compel payment of his salary under the act of 1874. The court below discharged the rule, on the ground that the act of 1874, being inconsistent with the act of 1887, was repealed thereby. On error, reversed.—Reid v. Smoulter, 128 Pa. 324 (1889), Clark, J.; s. c. 18 Atl. 445.

(588) On a case stated, it appeared that the act of April 25, 1889 (P. L. 52, § 1; P. & L. Dig. 1035), required the counties to furnish certain county offices with furniture, stationery, books, fuel, and lights. It was contended that under art. III., § 13, of the constitution, the act could not apply to officers elected before its approval, as furnishing stationery was increasing the emoluments of the office. A., an officer of a class included within the act, claimed a credit for certain stationery furnished by himself. Credit disallowed.—Wren v. Luzerne County, 9 Pa. C. C. 22 (1890), Rice, P. J.; s. c. 6 Kulp, 37.

See, *contra*, Young v. Bradford County, 7 Pa. C. C. 428 (1889), Sittser, P. J.

(589) The act of May 13, 1887 (P. L. 108, § 11; P. & L. Dig. 2720), required constables, in addition to their present duties, to visit, once a month, all places within their jurisdictions where any intoxicating liquors were sold or kept, but did not provide any compensation therefor. A., a constable appointed before the passage of the act, refused to perform the duties required by it, and was indicted. A. demurred on the ground that the act was unconstitutional as to constables already in office, because it violated art. III., § 13, of the constitution, as amounting to a decrease of emoluments. Judgment for defendant.—Comm. v. Kromer, 4 Pa. C. C. 214 (1887), Schuyler, P. J.; s. c. 1 North. Co. 85.

(590) The act of March 24, 1870 (P. L. 544), provided that the compensation of the collector of taxes should be five per cent. upon the amount collected and paid in to the city treasury, and that the city should not be liable for any expense of clerk hire, etc., or any other cost of collection; all such expenses to be paid by the collector. The collector was entitled to legal costs, in addition to the five per cent. commission. By the act of April 16, 1879 (P. L. 24), deputies were to be paid by commissions, and they were to receive the costs instead of the collector. B., a tenant, filed a bill praying for an injunction to restrain A., a collector of taxes, from collecting a tax on the landlord's property, under the act of 1879, on the ground that that act was unconstitutional, in that it violated art. III., § 13, of the constituton, as providing for an increase of the collector's emoluments. Bill dismissed.—Lorman v. Donohugh, 8 W. N. C. 55 (1879), Yerkes, J.

(591) The act of May 2, 1871 (P. L. 247; P. & L. Dig. 2457), provided that judges holding special courts, in cases of the absence, sickness, or disability of the judges who should preside, should receive as compensation $12 a day for each day's attendance upon, and in going to and returning from, such court. The act of March 24, 1887 (P. L. 14, § 2; P. & L. Dig. 4337), provided that judges holding special terms of court, when called upon to do so by the judges of other district sbecause the calendars were over-crowded should receive as compensation $10 a day and mileage. On application to the auditor-general for interpretation of the above acts, *held*, that this was not a change in the compensation of an officer such as is prohibited by art. III., § 13, of the constitution, for the duties to be performed were entirely distinct from the regular duties of the office.—Judges' Compensation, 4 Pa. C. C. 596 (1887), Sanderson, Dep. Atty. Gen.

(592) A. was elected collector of tolls at an aqueduct for a city, under a city ordinance authorizing the election of such a collector. Before the time for which he had been elected expired, the select and common councils of the city, by joint resolution, abrogated his salary. A. brought an action against the city to recover for the unexpired term, on the ground that the city could not deprive an officer of his salary. Judgment for the city affirmed.—Barker v. Pittsburgh, 4 Pa. 49 (1846).

(593) The office of chief commissioner of the highways was created by ordinance of the city councils of Philadelphia. A. was appointed chief commissioner by ordinance of the councils. While he was in office his compensation was in-

creased by ordinance. In an action by A. against the city for his salary, the court gave judgment for the amount of his claim at the old rate, holding him to be an officer within the meaning of article III., § 13, of the constitution. *Held*, error; that the case was not within the constitutional prohibition of increasing salary by law, *i. e.*, by act of the legislature.—Baldwin v. Philadelphia, 99 Pa.164 (1881), Paxson, J.; s. c. 29 Pitts. L. J. 123, 10 W. N. C. 558. Reversing 14 Phila. 93, 38 L. I. 157.

(594) During A.'s term of office as city solicitor an ordinance was passed by councils increasing the compensation of the office. On case stated, *held*, that, as a municipal ordinance was not a law within the meaning of the word in art. III., § 13, of the constitution, A. was entitled to the increased rate of compensation from the time the ordinance was passed.—Carpenter v. Lancaster, 4 Del. Co. 63 (1889), Livingston, P. J.; s. c. 6 Lanc. L. R. 273.

See, also, Russell v. Williamsport, 9 Pa. C. C. 129 (1890), Metzger, P. J.

(595) A city, the salary of whose mayor was fixed by ordinance, by authority of statute, increased by ordinance the salary of the mayor. On case stated, *held*, that the incumbent at the time of such increase was not within the restriction of art. III., § 13, of the constitution; and there being nothing prohibitory of such increase in the statute, judgment was given for the incumbent.—Fellows v. Scranton, 2 Lack. Jur. 211 (1891), Archbald, P. J.

In Gift v. Allentown, 37 L. I. 332 (1880), it was said, by way of dictum, that a chief of police is not an officer within the meaning of art. III., § 13, of the constitution, and that an ordinance of councils is not to be regarded as a law within the meaning of said section.

(596) A. was elected treasurer of the county of X., having less than 150,000 inhabitants, in which, under the statute in force, the county commissioners, with the consent of the county auditors, were authorized to fix the compensation of the county treasurer. While A. was in office, the county commissioners reduced his compensation. On appeal, from the report of the county auditors fixing A.'s compensation at the reduced rate, the lower court held the action of the commissioners to be in violation of article III., § 13, of the constitution. *Held*, error.—Crawford County v. Nash, 99 Pa. 253 (1882), Paxson, J.; s. c. 39 L. I. 296, 29 Pitts. L. J. 305.

(597) The commissioners of B. county, with the approval of the auditors, fixed the compensation of A., county treasurer, at the annual settlement, January, 1888. The next year, at the annual settlement, they changed this compensation. A. appealed from the settlement of the county auditors made according to this change, contending that, under art. III., § 13, of the constitution, his compensation could not be altered during the term for which he was elected. Judgment for B. affirmed.—Merwine v. Monroe County, 141 Pa. 162 (1891); s. c. 21 Atl. 509.

(598) A., district attorney of X. county, appealed from a decree granting two-thirds of a certain fee to A. and one-third to C., assistant district attorney, under the local act of February 6, 1867 (P. L. 140). A. contended that the act was unconstitutional, as it transferred the duties and emoluments of the office of district attorney to another. *Held*, that the office of district attorney was a legislative office, and therefore subject to legislative control. Appeal dismissed.—Comm. v. McCombs, 56 Pa. 436 (1868), Strong, J.; s. c. 15 Pitts. L. J. 423.

Under the constitution of 1874, the office of district attorney is a constitutional one.

(599) In 1892 B. was elected burgess of a certain borough, to hold office until March, 1895. The act of May 23, 1893 (P. L. 113; P. & L. Dig. 424), changed the law as to burgesses of boroughs, and provided that elections for burgess should be held on the third Tuesday in February, 1894, and triennially thereafter. At the time appointed, A. was elected burgess. A *quo warranto* having issued against B., the court dismissed the writ. On appeal by the commonwealth, it was contended, that, as the office was created by the legislature, and not by the constitution, the term could be abridged or the office abolished by the legislature. Judgment reversed.—Comm. v. Weir, 165 Pa. 284 (1895), Green, J.; s. c. 30 Atl. 835.

(600) The act of February 14, 1881 (P. L. 3, § 1), abolished the office of collector of delinquent taxes, and vested all the duties and rights of the office in the receiver of taxes. On bill in equity to restrain the latter from acting under the act, *held*, that this act could take effect upon its passage, and was not unconstitutional under art. III., § 13, because it abolished the office of a public officer during the term of his incumbency.—Donohugh v. Roberts, 15 Phila. 144 (1881), Hare, P. J.

(601) A borough appointed a constable to light lamps and patrol the streets at a certain salary. Before his term of office had expired the town council passed an ordinance abolishing the office. In assumpsit by the constable to recover for services as lamp-lighter until the expiration of his term as constable, judgment was given against him, the court holding that the ordinance abolishing the office was not in conflict with art. III., § 13, of the constitution. On appeal, affirmed.—Bigley v. Bellevue Borough, 158 Pa. 495 (1893), Williams, J.; s. c. 28 Atl. 23, 34 W. N. C. 50, 41 Pitts. L. J. 460.

(602) A. was elected sheriff of a certain county, and, at the time of entering into office, and for some time afterwards, was allowed fifty cents per

day for boarding prisoners in the jail. After he had been in office for some time, the court of quarter sessions, under the authority given it by the local act of February 14, 1867 (P. L. 199; P. & L. Dig. 4315, note), reduced this allowance to forty cents per diem. In a suit by A. to recover at the former rate, the court *held*, that section 13 of article III. of the constitution did not take away the power of the court, under the act of 1867, to make this change, as that section applied to the legislature alone. Judgment for the county affirmed.—McCormick v. Fayette County, 150 Pa. 190 (1892), Heydrick, J.; s. c. 24 Atl. 667, 30 W. N. C. 398, 40 Pitts. L. J. 58.

Overruling Levan v. Carbon County, 1 D. R. 375 (1891), Dreher, P. J.; s. c. 11 Pa. C. C. 315.

(603) The local act of April 10, 1873 (P. L. 666), empowered the court of quarter sessions of York county to fix the compensation to be paid to the sheriff for boarding prisoners in the county jail. A. was elected sheriff of the county, and entered into office in January, 1878. At the time he entered into office there was no compensation fixed for boarding prisoners. On January 23, 1879, the court fixed the compensation at "thirty-five cents each per diem for the year 1878, and twenty-five cents each per diem for the year 1879." On case stated, the court below *held*, that this order was not in conflict with article III., § 13, of the constitution. Judgment affirmed.—Peeling v. York County, 113 Pa. 108 (1886), Mercur, C. J.; s. c. 5 Atl. 67, 34 Pitts. L. J. 55, 43 L. I. 364.

(604) The act of April 11, 1856 (P. L. 314, § 1; P. & L. Dig. 4315), limited the compensation to be paid sheriffs for boarding prisoners to twenty-five cents a day for each prisoner. This act was never repealed as to the county of B., but by various orders of court the compensation was changed, and, when A. entered into office as sheriff, the rate was fifty cents. This the county commissioners refused to pay on the ground that the court had no power to change the rate of compensation in violation of art. III., § 13, of the constitution. A. brought suit for the amount. Judgment for B. affirmed.—Strine v. Northumberland County, 2 Walk. 198 (1885).

(I) APPROPRIATIONS.

Section 15 of Article III. of the constitution provides that "the general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of executive, legislative, and judicial departments of the commonwealth, interest on the public debt, and for public schools."

A provision in a general appropriation act for a clerk in the office of a prothonotary of the supreme court, and for his salary, is not in conflict with this section. (605)

(605) Section 3 of the general appropriation act of June 6, 1893 (P. L. 300), contained the following item: "For the payment of the salary of a clerk in the offices of the prothonotaries of the supreme court for the eastern and western districts, respectively, two years, the sum of four thousand eight hundred dollars, or so much thereof as may be necessary." On petition for a mandamus compelling the state treasurer to draw a warrant according to the provisions of the act, *held*, reversing the court below, that this was not in conflict with the constitutional provision as to general appropriation bills, as such a clerk as was provided for by this section was clearly a part of the judiciary.—Comm. v. Gregg, 161 Pa. 582 (1894), Mitchell, J.; s. c. 29 Atl. 297.

(J) SPECIAL COMMISSIONS PROHIBITED.

Section 20 of Article III. of the constitution provides that the general assembly shall not delegate to any special commission any power to perform any municipal function.

An act transferring the powers of the "Building Commission" of Philadelphia to the department of public works was held to violate this section. (606)

An act providing for boards of health to be under the supervision of borough councils is valid. (607)

This section of the constitution is prospective, and does not apply to commissions created before the constitution went into effect, nor affect valid contracts entered into by such commissions prior to the constitution. (608–609; but see 610)

(606) The act of May 24, 1893 (P. L. 124), was "An act to abolish commissioners of public buildings, and to place all public buildings heretofore under the control of such commissioners under the control of the department of public works in cities of the first class." On bill for an injunction against the officers of the department of public works to restrain them from acting under the act, *held*, that this act was in violation of article III., § 20, of the constitution. Injunction granted.—Perkins v. Philadelphia, 156 Pa. 554 (1893), Dean, J. (McCollum, Mitchell, and Thompson, JJ., dissenting); s. c. 27 Atl. 356, 32 W. N. C. 385, 33 W. N. C. 41, 41 Pitts. L. J. 85.

(607) The act of May 11, 1893 (P. L. 44; P. & L. Dig. 407 *et seq.*), provided for the establishment of boards of health by borough councils. Such boards, when appointed, were to be under the supervision of the councils. On bill for an injunction against a board established as above, *held*, that this act did not delegate to any commission power to interfere with any municipal function, and was constitutional. Injunction refused.—Smith v. Baker, 14 Pa. C. C. 65 (1893), Swartz, P. J.; s. c. 9 Montg. Co. 194, 3 D. R. 626.

(608) The act of August 5, 1870 (P. L. [1871]

1548), created "The Public Buildings Commission of Philadelphia." The commission, in performance of the duties imposed upon it, and before the adoption of the constitution of 1874, entered into a contract for the marble work of the new public buildings. In an action to recover the contract price, *held*, that this contract was not forbidden by the prohibition in the constitution of 1874 directed against the delegation by the legislature to any special commission of the power to perform any municipal function, and that such contract was binding upon the city. Judgment for plaintiff.—Struthers v. Philadelphia, 12 Phila. 268 (1877), Mitchell, J.; s. c. 34 L. I. 220, 4 W. N. C. 378.

(609) In petition filed by commissioners appointed under the act of August 5, 1870 [see preceding case], for a mandamus compelling the councils of Philadelphia to appropriate the amount necessary for improvements during the year 1877, it was contended that the further exercise of the powers delegated to the commissioners by said act, was forbidden by art. III., § 20, of the constitution. Judgment refusing the writ of mandamus reversed.—Perkins v. Slack, 86 Pa. 270 (1878), Trunkey, J.

(610) The act of April 2, 1870, authorized owners of property on a street in Pittsburgh to elect a commission to superintend the improvement of said street, and to assess the total expenses upon the abutting property. The act further provided that, when a majority of the abutting property owners desired it, the city council should direct the grading and paving of a street. An ordinance directing the grading and paving of certain streets, and the election of commissioners, was passed March 9, 1874. The owners of abutting property filed a bill to restrain the commission from proceeding with the improvement, contending that the act of 1870 was unconstitutional as respected improvements begun after the constitution went into effect. Injunction granted.—Mellon v. Pittsburgh, 21 Pitts. L. J. 185 (1874), White, J.

(K) DAMAGES.

1. Amount Recoverable.

Section 21 of Article III. of the constitution provides that "no act of the general assembly shall limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property; and, in case of death from such injuries, the right of action shall survive, and the general assembly shall prescribe for whose benefit such actions shall be prosecuted. No act shall prescribe any limitations of time within which suits may be brought against corporations for injuries to persons or property, or for other causes, different from those fixed by general laws regulating actions against natural persons; and such acts now existing are avoided."

The act of April 4, 1868 (P. L. 58, § 2), in so far as it attempted to limit the damages recoverable against a railroad company for injuries or loss of life, was abrogated by this section, both as to the companies which had not and as to those which had accepted the provisions of said act (611–617); so, also, as to the act of April 11, 1867 (P. L. 69, § 2), limiting the recovery for loss of baggage or property. (618)

(611) In an action on the case against a railroad company for injuries sustained, the court charged that the limitation on the amount recoverable, fixed by the act of April 4, 1868, was avoided by the constitution of 1874. Judgment on verdict in accordance with the charge affirmed.—Central R. Co. of N. J. v. Cook, 32 L. I. 150 (1875).

(612) Trespass for damages for injuries to the plaintiff, alleged to have been caused by the negligence of the defendant, a passenger railway company. The defendant had accepted the provisions of the act of April 4, 1868, and contended that the recovery should be limited to three thousand dollars. This contention was overruled, on the ground that said act was unconstitutional, and a verdict was rendered for a larger sum, and judgment was entered on the verdict. Affirmed.—Lombard & South Street Ry. Co. v. Steinhart, 2 Penny. 358 (1882).

(613) A. sued the receivers of the B. railroad company, which had not accepted the act of 1868, for damages, caused by negligence which had resulted in the death of C., A.'s husband. The fact of B.'s negligence was admitted, the only question being the extent of the liability. In response to B.'s request that the court charge that A.'s recovery was limited to $5,000, by the act of April 4, 1868, the court charged that said act was avoided by art. III., § 21, of the constitution. Judgment for A. for $12,000. B. appealed, alleging that § 21 was intended to be prospective merely, and not retrospective. Judgment affirmed.—Lewis v. Hollaham, 103 Pa. 425 (1883), Sterrett, J.

(614) The act of April 4, 1868, limited the amount of damages recoverable against railroad companies for personal injuries to $3,000. In an action against a railroad company which had accepted the provisions of said act, to recover for personal injuries, the plaintiff recovered a sum exceeding the above amount. Rule for new trial discharged.—Conway v. Philadelphia, W. & B. R. Co., 17 Phila. 71 (1885), Peirce, J.; s. c. 42 L. I. 434.

(615) In an action against a railroad company which had accepted the provisions of the act of April 4, 1868, to recover for personal injuries, the plaintiff laid his damages at $50,000. The defendant pleaded in abatement the act of 1868. Demurrer to plea sustained.—Mathews v. Pennsylvania R. Co., 20 W. N. C. 575 (1887).

(616) A. sued a railroad corporation to recover $20,000 for the death of his son by reason of the company's negligence. To a plea in abatement that by the provisions of the act of April 4, 1868, which had been accepted by the defendants, their liability was limited to $5,000. A. demurred on the ground that the said act became ineffective on the adoption of the constitution of 1874. Demurrer sustained.—Fleming v. Pennsylvania R. Co., 21 W. N. C. 526 (1888).

(617) In an action against a railroad company which had accepted the provisions of the act of 1864, the lower court held that this act was abrogated by art. III., § 21, of the constitution of 1874, and gave judgment for the plaintiff. On error, affirmed.—Pennsylvania R. Co. v. Bowers, 124 Pa. 183 (1889), Paxson, C. J.; s. c. 16 Atl. 836, 23 W. N. C. 257, 16 L. I. 210.

Overruling upon this point Pennsylvania R. Co. v. Langdon, 92 Pa. 21 (1880), Paxson, J.

The decision in Bondram v. Thirteenth, etc., Railway, 31 L. I. 164 (1874), Briggs, J., is not obsolete.

(618) The act of April 11, 1867 (P. L. 69, § 2; P. & L. Dig. 3987), limited the recovery against a railroad company for loss of baggage or property to $300. In an action against a common carrier to recover a sum exceeding $300, *held*, that this limitation was abrogated by the constitution of 1874. Verdict for $875, and rule for new trial refused on condition that a remittitur for the excess over $500 be filed.—Barker v. North Pennsylvania R. Co., 5 W. N. C. 292 (1878), Ludlow, P. J.

2. Survival of Actions.

The provision that the right of action shall survive does not mean that the right of action shall survive against the executor or administrator of the party whose violence or negligence occasioned the injury (619), nor does it confer any right of action upon the administrator of a person whose death resulted from negligence. (620)

(619) A. was killed by B., who then killed himself. A.'s widow brought an action of trespass against B.'s administrator under the acts of April 15, 1851 (P. L. 669; P. L. Dig. 3231–3233), and April 26, 1855 (P. L. 309; P. & L. Dig. 3234), which provide that, when death is occasioned by unlawful violence, the widow of the deceased may maintain an action and recover damages. The plaintiff was nonsuited on the ground that the action did not survive against the administrator of B., and, on a writ of error, contended that art. III., § 21, of the constitution, providing that, in case of injuries resulting in death, the right of action shall survive, means that it shall survive against the personal representatives of the wrongdoer. Judgment affirmed.—Moe v. Smiley, 125 Pa. 136 (1889), Paxson, C. J.

(620) The act of April 26, 1855 (P. L. 309, § 1; P. & L. Dig. 3234), conferred the right of action in cases of death from injuries only upon parents for the loss of their children, and upon children for the loss of parents, and reciprocally upon husband and wife. In an action by a husband, in his capacity as administrator, to recover damages for the death of his wife, the court below held that the act of 1855 was not abrogated by the constitution of 1874, and that no right of action survived to the administrator of a deceased person.—Judgment of nonsuit affirmed.—Books v. Danville Borough, 95 Pa. 158 (1880), Green, J.; s. c. 9 W. N. C. 339, 1 Kulp, 522, 28 Pitts. L. J. 71.

3. Limitation of Actions.

An act prescribing a limitation of time for bringing suit against a municipal or *quasi*-corporation, different from the limitation as to natural persons, is in conflict with section 21 of Article III., and is abrogated by it (621–622), and an act which provides for an assessment of damages for the opening of streets at any time short of the period prescribed by law for the bringing of actions is valid. (623)

An act fixing a new limitation of time for bringing action for certain injuries, which applies equally to corporations and to natural persons, is valid. (624–627)

(621 The act of June 13, 1836 (P. L. 55), provided that proceedings for the assessment of damages for the opening of streets should be commenced within one year. A road jury having awarded damages against a certain city, exceptions were taken by the city on the ground that the proceeding was barred by the act of 1836. The court dismissed the exceptions on the ground that the act was abrogated by the constitution of 1874. Order affirmed.—Grape St., 103 Pa. 121 (1883), Gordon J.; s. c. 13 W. N. C. 377, 40 L. I. 181. Affirming 16 Phila. 444.

(622) The act of June 8, 1891 (P. L. 214; P. & L. Dig. 435), authorized suits against counties, boroughs, or townships for bounties, and provided that "any law or limitation of time within which actions might be commenced shall be no bar to the commencement or prosecution of the action herein provided; but any suit for the recovery of the money claimed to be due must be brought within three years from the date of the approval of this act," on a rule for judgment against a township, it was *held*, that the provision of the constitution was broad enough to include municipal or *quasi*-corporations and that said act was unconstitutional.—Cole v. Economy Twp., 3 D. R. 699 (1803), Wickham, P. J.; s. c. 13 Pa. C. C. 549.

(623) The act of May 14, 1874 (P. L. 164, § 1;

P. & L. Dig. 4179), provided that whenever persons appointed to view or review any public road should decide in favor of locating such road, and should fail to secure releases of the land necessary therefor, it should be their duty to assess the damages. On petition for assessment of damages, *held*, that this act merely provided for an assessment before the period prescribed by law for the bringing of an action had expired, and was not in conflict with the constitution.—West Whiteland Road, 4 Montg. Co. 11 (1886), Futhey, P. J.; s. c. 4 Pa. C. C. 511.

(624) X. was killed through the negligence of B. A., the widow of X., two years after his death, brought suit to recover damages. B. set up in defence the acts of April 26, 1855, limiting the time for bringing such actions to one year after the death so caused. A. was nonsuited. On a rule to take off nonsuit, A. contended that the act of 1855 violated art. III., § 21, of the constitution. *Held*, that the act of 1855 was a general act and not unconstitutional. Rule refused.—Wasson v. Pennsylvania R. Co., 25 Pitts. L. J. 184 (1878), Ewing P. J.

(625) The act of April 26, 1855 (P. L. 309, § 2; P. & L. Dig. 3236), limited the time for bringing action for damages for injuries resulting in death to one year after death. In an action by a wife to recover for the death of her husband, the defendant, a railroad company, pleaded that the action was barred by the act of 1855. Plaintiff demurred on the ground that the act was unconstitutional. Demurrer overruled.—Kashner v. Lehigh Val. R. Co., 17 Phila. 641 (1884), Schuyler, J.; s. c. 41 L. I. 346.

(626) In an action against a railroad company to recover for injuries resulting in death, plaintiff was nonsuited on the ground that the action was not brought within a year after the death, as required by the act of April 26, 1855. Plaintiff moved to take off the nonsuit on the ground that the act was unconstitutional. Motion refused.—Jacobs v. Pennsylvania R. Co., 6 Pa. C. C. 60 (1888), McMichael, J.

See, also, Black v. Nockamixon Twp., 2 Pa. C. C. 116 (1886), Yerkes, P. J.

(627) On demurrer to a declaration for damages for injuries resulting in death, filed more than a year after the death of the person injured (the period of limitation prescribed by the act of 1855), it was claimed that the limitation violated art III., § 21, of the constitution, in that it applied only to corporations. *Held*, a general limitation, and judgment for defendant.—Grath v. Iowa Barb-Wire Co., 5 North. Co. 359 (1894), Albright, P. J.

(L) CHANGE OF VENUE.

Section 23 of Article III. of the constitution provides that "the power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such a manner as shall be provided by law."

This section did not become operative immediately upon the adoption of the constitution, so as to repeal existing laws. Legislation was necessary to carry its provisions into effect. (628)

(628) An action was brought in Delaware county, and removed to Philadelphia county, under the acts of April 14, 1834 (P. L. 395; P. & L. Dig. 3959), and April 28, 1870 (P. L. 1292), by the plaintiffs. The plea of the defendants raised the objection that the common pleas of Philadelphia had no jurisdiction, because, according to section 23 of article III. of the constitution of 1874, the power to change the venue became a part of the judicial power. *Held*, reversing the court below, that the section in question did not become immediately operative by the adoption of the constitution, as legislation was necessary to carry it into effect, and, until such legislation, the acts of 1834 and 1870 were in force.—Wattson v. Chester & D. R. R. Co., 83 Pa. 254 (1877), Agnew, C. J.; s. c. 3 W. N. C. 467.

Overruling Folsom v. Chester & D. R. Co., 1 W. N. C. 201 (1875), Ludlow, P. J.

The act of March 30, 1875 (P. L. 35; P. & L. Dig. 3635), carried into effect the constitutional provision that the power to change the venue in civil and criminal cases should be vested in the courts.—Philadelphia v. Ridge Ave. Pass. Ry. Co., 143 Pa. 444 (1891), Sterrett, J.; s. c. 22 Atl. 695, 28 W. N. C. 388.

(M) INSPECTORS OF MERCHANDISE.

Section 27 of Article III. of the constitution operated to abolish the office of state inspector from the time the constitution went into effect. (629)

(629) Motion for a special injunction to restrain B. from inspecting leather, and C. from selling leather inspected by B., and not inspected by A., the complainant, who claimed to be the regularly commissioned inspector. A. contended that the office of leather inspector was not abolished by art. III., § 27, of the constitution of 1874, because it was not done expressly, and, if the convention had meant to abolish the office, they would have used express words. *Held*, that, while the section was obscurely worded, the evident intention was to abolish the office from the time the constitution went into effect. Injunction refused.—Elton v. Geissert, 10 Phila. 330 (1875), Allison, P. J.; s. c. 32 L. I. 116.

(N) COMPELLING WITNESSES TO TESTIFY IN PROCEEDINGS FOR BRIBERY.

Sections 29, 30, and 31 of Article III. of the constitution prescribe certain punishments for the offences of receiving bribes by members of the general assembly or giving bribes to a member of the general assembly, or corrupt solicitation of such members.

Section 32 of Article III. of the constitution provides that a person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offence of bribery or corrupt solicitation, or practices of solicita-

tion, and shall not be permitted to withhold his testimony.

The operation of the provisions of section 32 is not confined to proceedings under sections 29 to 31, but applies to any case of bribery at any elections or at nominating conventions. (630)

(630) In a prosecution for bribery at a nominating convention, a witness refused to testify upon the ground that his answers would criminate him. The court ordered him to give his testimony, and upon his refusal committed him for contempt. Upon the hearing of a writ of *habeas corpus*, he claimed that the testimony he had refused to give was not within the provisions of section 32 of article III. of the constitution, and that, therefore, he could not be compelled to testify. *Held*, that the section did not apply solely to the crimes of bribery and corrupt solicitation, as specified in sections 20 and 31 of the same article, but that the words "offence of bribery" meant all bribery, whether at common law, under the constitution itself, or under any statute, and included bribery at nominating conventions or delegate elections which was made criminal by the act of June 8, 1881 (P. L. 70; P. & L. Dig. 1127), and that the witness giving his testimony under the provisions of section 32 would be protected thereby. Writ dismissed.—Comm. v. Bell, 145 Pa. 374 (1891), Sterrett, J.; s. c. 22 Atl. 641, 644, 28 W. N. C. 333.

IV. THE EXECUTIVE.

(A) PRIVILEGES OF THE GOVERNOR.

Section 2 of Article IV. of the constitution provides that the supreme executive power shall be vested in the governor, who shall take care that the laws be faithfully kept.

Under this section, the governor is the absolute judge of what official communications may be revealed, and of his own official duties; and, as such, is not subject to judicial process to compel his attendance as a witness. (631)

(631) The governor of Pennsylvania failed to appear, in answer to a subpœna, to testify in proceedings before a grand jury at Pittsburg, at the court of quarter sessions. An order for an attachment against the governor was then issued, from which an appeal was taken, on the ground that art. IV., § 2, of the constitution, making the governor supreme executive, thereby vested him with such discretion in the discharge of his official duties, and the disclosure of communications, as exempted him from any judicial process to compel his attendance as a witness. Attachment set aside.—Hartranft's Appeal, 85 Pa. 433 (1877), Gordon, J. (Agnew, C. J., and Sterrett, J., dissenting).

(B) EXECUTIVE APPOINTMENTS TO FILL VACANCIES.

1. What Constitutes a Vacancy.

Section 8 of Article IV. of the constitution provides that the governor shall have power to fill any vacancies which may happen in certain offices.

When the governor is authorized by law to remove an official appointed by him, and appoint another in his place, only on request of a majority of the official board to which such appointee is attached, a removal and new appointment cannot be made in the absence of such request. (632)

The mental or physical disability of the incumbent of an office does not, of itself, create a vacancy (633); but, when an officer has absconded, there is a vacancy. (634)

When a new county is erected, a "vacancy" in the county offices occurs, within the meaning of the constitution. (635)

(632) The act of March 17, 1806 (P. L. 494), incorporated a board of health. Attached to the board were two physicians, to be appointed by the governor, who might be removed from office at the request of a majority of the board. The act of March 25, 1813 (P. L. 171), continued the act of 1806 in force for four years longer. A. was appointed by the governor, one of the physicians of the board in 1816, and, on March 14, 1817, B. was appointed to the same position. A., having been removed by the governor without the request of a majority of the board, B. took a rule to show cause why leave should not be granted to file an information in the nature of a *quo warranto* to inquire by what authority A. exercised the office in question. *Held*, that, as the governor had not the power to remove A., except upon the request of a majority of the board of health, before the time for which the act had been extended had expired, and there was no vacancy in the position, the governor was without power to appoint B. to fill the place. Rule discharged.—Comm. v. Sutherland, 3 S. & R. 145 (1817), Tilghman, C. J., and Duncan, J.

(633) B., an alderman of a certain city, became insane; and certain citizens petitioned the governor to appoint A. to the office, alleging that there was a vacancy therein. The governor requested the opinion of the attorney-general as to his power to make such appointment. *Held*, that the mental or physical disability of the incumbent did not create a vacancy in the office.—Huth's Case, 4 D. R. 233 (1895), McCormick, Atty.-Gen.

See, also, Swanck's Case, 16 Pa. C. C. 318 (1895), McCormick, Atty.-Gen.

(634) The coroner of Erie county absconded.

The attorney-general was asked whether the governor had the right to fill the vacancy. *Held*, that there was a vacancy in the office, which the governor might fill by appointment.—Erie County Coroner's Case, 1 D. R. 224 (1892), Hensel, Atty.-Gen.

(635) The county of Luzerne was divided, and part of its territory erected into the county of Lackawanna, on August 21, 1878. On the same day B. was appointed by the governor to the office of county surveyor of the new county. A. was elected to the same office at the general election, November 5, 1878, and took a rule to show cause why a *quo warranto* should not be issued against B. *Held*, that, when a new county was erected, a "vacancy" in the offices of the new county "happened," within the meaning of art. IV., § 8, of the constitution, which vacancy could not be filled by election until the second general election thereafter, if it occurred within three months of a general elaction. Judgment of ouster reversed.—Walsh v. Comm., 89 Pa. 419 (1879), Woodworth, J. (Mercur and Gordon, JJ., dissenting); s. c. 7 W. N. C. 21, 36 L. I. 355, 1 Law Times (N. S.), 101, 1 Lack. L. R. 342.

2. Term for Which Appointment May be Made.

In case of a vacancy in the office of superintendent of public instruction, during a recess of the senate, the governor may make an appointment to hold until the end of the next session of the senate, and at that session may appoint, with the consent of the senate, for the balance of the unexpired term. (636) In case of a vacancy in an office, which is to be abolished at a certain time, the governor may fill the vacancy until such time. (637)

The right of appointment of a governor, to fill a vacancy in a county office, under Art. IV., § 8, of the constitution, extends only to the period between the happening of the vacancy and the beginning of the new term by regular succession. (638)

(636) C., the incumbent of the office of superintendent of public instruction, died during a recess of the senate, and the governor appointed B. to the office, and commissioned him to hold until the end of the next session of the senate. At the next session, the governor appointed B., and the senate confirmed the appointment; but, prior to such confirmation, a successor to the governor had been inaugurated, who refused to commission B., and, after adjournment of the senate, commissioned A. In *quo warranto* proceedings against B., *held*, reversing the lower court, that B. was entitled to the office for the balance of the term for which C. had been originally appointed.—Comm. v. Waller, 145 Pa. 235 (1892), Paxson, C. J.; s. c. 23 Atl. 382, 29 W. N. C. 191, 28 W. N. C. 252. Affirming 10 Pa. C. C. 111.

(637) The act of May 4, 1893 (P. L. 31; P. & L. Dig. 733, note), constituted Lebanon county a separate judicial district, and abolished the office of associate judge not learned in the law in that county. This act was to go into effect from and after the first Monday in January, 1894. Subsequently to the passage of this act, the associate judge died. The attorney-general was asked whether the governor could fill the vacancy, and if so for what term. *Held*, that the governor could appoint a successor to hold until the act went into effect.—Lebanon County Associate Judges, 14 Pa. C. C. 145 (1893), Hensel, Atty.-Gen.

(638) A sheriff died on October 14, 1875, during the last year of his term. To fill the vacancy A. was appointed by the governor, his commission running to January, 1877. B. was elected sheriff at the regular triennial election of November 2, 1875, and claimed the office, on the ground that art. IV., § 8, of the constitution authorized an appointment by the governor only until the expiration of the regular term. On *quo warranto* against B., judgment for B. was affirmed.—Comm. v. King, 85 Pa. 103 (1877), Agnew, C. J.

3. Elections to Fill Vacancies.

Section 8 of Article IV. of the constitution, providing that, in case of a vacancy in an elective office, a person shall be chosen to fill such vacancy at the next general election, unless such vacancy shall happen within three calendar months immediately preceding such election, in which case the election for said office shall be held at the second succeeding general election, does not apply to officers elected at the spring election, but only to those elected at the November election. (639)

(639) *Quo warranto* to try the right of A. to the office of alderman in the city of X. C., who had been elected alderman to serve for a term of five years, died during the term, and within three calendar months of an annual spring election. At the said election A. was elected to the office, and commissioned by the governor. The commonwealth contended that art. IV., § 8, of the constitution applied to the office of alderman, and that there could be no election to fill the vacancy until the second general election. Judgment for A. was affirmed, on the ground that the section in question did not apply to any officers elected at the spring elections.—Comm. v. Callen, 101 Pa. 375 (1882).

4. Pardons and Remission of Forfeitures.

Section 9 of Article IV. of the constitution provides that the governor shall have power

to remit fines and forfeitures, to grant reprieves, commutations of sentence, and pardons, except in cases of impeachment.

Under this section, the fines and penalties which the governor may remit are such only as are payable to the state (640); but he has power to pardon a prisoner and remit his fine, although an act of assembly has given the fine to a county, such act being a mere appropriation of the money when collected, to the use of the county. (641)

The governor has power to remit a recognizance given for the appearance of a defendant, after forfeiture and judgment thereon. (642)

(640) B. was convicted of peddling contrary to act of assembly. On *certiorari*, the proceedings were affirmed. A pardon from the governor was subsequently obtained, and a motion to set aside the execution from the common pleas was refused, on the ground that the suit was under the act of 1830, which provided that one half of the penalty should go to the informer, the other half to the county, and that under art. II., § 9, of the constitution of 1790 (see art. IV., § 9, of constitution of 1874), the governor had power to remit only fines and penalties payable to the state. Judgment affirmed. — Shoop v. Comm., 3 Pa. 126 (1846).

(641) Rule to show cause why a commitment should not issue against B., who had been convicted of seduction and sentenced to pay a fine and undergo imprisonment, but who had been pardoned by the governor. It was admitted that the governor had power under the constitution of 1838, art. II., § 9 (see constitution of 1874, art. IV., § 9), to remit fines, grant reprieves and pardons, but the act of March 24, 1818 (7 Sm. L. 120; P. & L. Dig. 2097), was cited, which provides that all fines which enure to the use of the commonwealth "shall be paid to the respective county treasurers for the use of the county." It was argued that the act gave the county a vested right in the fine, which the governor had no power under the constitution to divest. *Held*, that the act was a mere appropriation of the money, when collected, to the use of the county. Rule discharged.—Comm. v. Shisler, 2 Phila. 256 (1856), Allison, J.

(642) A recognizance, conditioned for the appearance of a defendant charged with a criminal offence, was remitted by the governor, after forfeiture and judgment thereon. On a case stated to test the right of the governor to make such remission, *held*, that the governor had the power, under art. II., § 9, of the constitution of 1790 (replaced by art. IV., § 9, of the constitution of 1874), to remit such recognizance. Judgment affirmed.—Comm. v. Denniston, 9 Watts, 142 (1830), Rogers, J.

V. THE JUDICIARY.

(A) SCOPE OF JUDICIAL POWER.

1. In General.

The courts have authority to redress any wrong done by any body of men within the state except the legislature. (643)

(643) A division took place in the common council of Philadelphia. The result was that there were two bodies of men, with different officers, each claiming to be the lawfully organized common council of the city. One party applied to the supreme court for an injunction against the other. *Held*, that, as all bodies, except the legislature, were under the law, the court had authority to redress this wrong. Injunction granted.—Kerr v. Trego, 47 Pa. 292 (1864), Lowrie, C. J.

2. In Determining Validity of Acts of the Legislature.

The constitution should not be construed technically, like a common-law instrument or a statute, but should be interpreted according to its spirit. (644)

The presumption is in favor of the constitutionality of an act, and he who attacks it must point out the clause of the constitution which prohibits or condemns it. (645)

The courts cannot pass on the wisdom or expediency of an act (646–648), or set it aside on the ground that it was passed in fraud of the rights of the people (649); but, if there is a violation of a constitutional provision, neither a spirit of comity for the legislature nor the fact that public sentiment is in favor of the act can be allowed to influence the court to uphold it. (650)

The courts will not unnecessarily pass on the constitutionality of an act (651); and, when the question has once been decided, it cannot be raised again. (652)

(644) Section 5 of article V. of the constitution of 1838–39 provided that the judges of the court of common pleas in each county should, by virtue of their offices, be justices of oyer and terminer and general jail delivery, for the trial of capital and other offenders therein, and that any two of the said judges, the president being one, should be a quorum. The act of February 3, 1843 (P. L. 8; P. & L. Dig. 3875 *et seq.*), abolished the criminal court of Philadelphia, and transferred its powers to the courts of oyer and terminer, general jail delivery, and quarter sessions of the peace in and for the city and county of Philadelphia. The court of common pleas for the city and county of Philadelphia then consisted of three judges learned in the law, and the second section of the

act provided for the appointment of a fourth judge learned in the law. The fourth section of the act authorized any one of the four judges to have full power and authority to hold courts of oyer and terminer, etc., for the trial of all indictments, except in cases of homicide, when there should be two of said judges. A. was convicted of murder and sentenced to death by a court of oyer and terminer held as authorized by the act of 1843, by two of the judges, neither of whom, however, was the president judge. A. took a writ of error, contending that no court for the trial of capital offenders could be held without having the president judge as a member thereof. Judgment affirmed, the supreme court *holding*, that, although this act was not in accord with the strict letter of the constitution, it was in accord with the spirit, as it prescribed the necessary number of judges for the trial of indictments in case of homicide, and preserved the great object of the constitution, a law judge to preside and another law judge to assist him; and that the act was therefore constitutional.—Comm. v. Zephon, 8 W. & S. 382 (1845), Burnside, J.

Followed in Kilpatrick v. Comm., 31 Pa. 198 (1858), Strong, J.; s. c. 15 L. I. 347.

(645) The act of April 4, 1866 (P. L. 96; P. & L. Dig. 3800, note), authorized the appointment of viewers to estimate the value of land which the city of Philadelphia desired to acquire in order to present it to the United States for a naval station. The constitutionality of this act was attacked by property owners on the grounds that "the state cannot take property and give it to the United States; that she cannot make such a title thereto as the general government will accept; that the United States is, as to the state of Pennsylvania, a separate nation; that the right of eminent domain is inalienable; and that the government cannot be compelled to take or use the land." *Held*, that these grounds were not good, in that they did not point out the constitutional clause which was violated by the act in question, and that, as the presumption was in favor of the constitutionality of the act, it would be upheld.—League Island, 1 Brewst. 524 (1868), Brewster, J.

(646) The special act of April 8, 1846 (P. L. 264), directed that the commissioner of highways of Philadelphia should, "within thirty days after the passage of the act, open for public use" a street designated in the act. A bill was filed in the common pleas to restrain the commissioner from proceeding under the act, on the ground that the act was unconstitutional, as being passed "hasty and improvident," and that there was no public necessity for the street. Decree granting prayers of bill reversed, the supreme court holding, that the legislature had passed the act in the exercise of their undoubted right to take private property for public use; and that the degree of public necessity was for the legislature.—Smedley v. Erwin, 51 Pa. 445 (1866), Strong, J.

(647) The local act of April 2, 1872 (P. L. 740), gave to the councils of a certain city the power to impose taxes upon certain classes of property or businesses. The constitutionality of this act was attacked by persons taxed under the authority thereof, who filed a bill in equity to restrain the city from collecting the tax. Bill dismissed. On appeal, *held*, that the supreme court could not review the wisdom or expediency of legislative enactments, and, as the act in question did not violate any prohibition, expressly declared or clearly implied, of the constitution of the state or of the United States, the court could not pronounce it unconstitutional. Decree reversed on other grounds.—Butler's Appeal, 73 Pa. 448 (1873), Mercur, J.

(648) The local act of April 7, 1869 (P. L. 738), provided for the construction of a public road in certain counties at the expense of the individuals and companies owning or occupying lands through which the road ran, or contiguous or adjacent to such road, and appointed commissioners to lay out the road. The local act of February 27, 1872 (P. L. 171), enlarged the powers of the commissioners, and gave them power to construct the road and to issue certificates for sums advanced for such construction, which certificates were to be repaid, with interest, through and by means of the road taxes which were directed to be appropriated and applied to the opening and construction of the road by the act of 1869. In mandamus proceedings against the commissioners, *held*, that, as these acts did not violate any prohibition, express or necessarily implied, in either the federal or the state constitution, they could not be pronounced unconstitutional, upon the ground that the legislation was unwise or unequal.—Comm. v. Thompson, 2 Foster, 361 (1875), Pershing, P. J.

(649) The act of April 21, 1858 (P. L. 414), provided for the sale of a certain portion of the public works to the Sunbury & Erie Railroad Company. The said company sold certain bonds secured on these works. B. had contracted for certain of these bonds and refused to take them. In equity proceedings in the supreme court, by the company against B., to compel performance of his contract, he claimed that the act of 1858 was unconstitutional, because it had been passed through the influence of local interests, some of which had been illegitimately brought into connection with the scheme for the passage of the act. *Held*, that the court had no power to decree that the act was unconstitutional for this reason, and specific performance decreed.—Sunbury & E. R. Co. v. Cooper, 33 Pa. 278 (1859), Lowrie, C. J.; s. c. 6 Pitts. L. J. 145.

(650) The local act of May 24, 1893 (P. L. 124), providing for the abolition of the public building commissioners, in cities of the first class, was clearly unconstitutional, but public sentiment was very much in favor of sustaining the act. In equity proceedings instituted by the commissioners, in the supreme court, to restrain the director of public works from interfering with the erection of public buildings, it was *held*, granting the in-

junction prayed for, that neither public sentiment nor a consideration of comity for the legislature as a co-ordinate branch of the government could be permitted to influence the court in passing upon the constitutionality of the act.—Perkins v. Philadelphia, 156 Pa. 554 (1893), Dean, J.; s. c. 27 Atl. 356, 33 W. N. C. 41, 41 Pitts. L. J. 85.

(651) In an action by A. against canal company, for damages caused by not keeping its canal in repair, the company defended on the ground that it had abandoned the canal in question, pursuant to the act of June 2, 1870 (P. L. 1318). A verdict was directed for the company and A. moved for a new trial, on the ground that the act was unconstitutional. As the only objectionable section had no bearing on the controversy, the court refused to pronounce it unconstitutional, and denied the motion for a new trial.—Fredericks v. Pennsylvania Canal Co., 16 Phila. 605 (1881), Cummin, P. J. Affirmed 42 L. I. 426.

(652) On a bill for an injunction to restrain defendants from proceeding, under the act of August 5, 1870 (P. L. [1871] 1548), to erect the public buildings mentioned in that act, the question was raised as to whether the act was constitutional. The supreme court had previously considered this question, and had upheld the act of 1870 as constitutional (Baird v. Rice, 63 Pa. 489 [1869], Read, J.), but the same objections had not been raised then as were raised in this case. *Held*, that the constitutionality of the act was *res adjudicata*, and that the court would presume that every objection to the constitutionality of the act had been considered. Injunction refused.—Wheeler v. Rice, 1 Camp. 213 (1871), Thompson, C. J.

(B) LEGISLATIVE INTERFERENCE WITH THE JUDICIARY.

1. Assumption by the Legislature of Judicial Functions.

Section 1 of Article V. of the constitution provides that "the judicial power of this commonwealth shall be vested in the supreme court, in courts of common pleas," etc.

An act which attempts to control the judicial interpretation to be put upon previous acts (653–655), or to direct the discretion of the courts (656–661), is in violation of this section; but an act which modifies the charter of a municipal corporation is good, even though it affects the decision of a case then pending. (662)

A provision that the decision of certain officers shall be final as to the apparent or formal sufficiency of certificates of nomination does not confer judicial powers on such officers in violation of the constitution. (663)

(653) An act of assembly providing for the creation of, and regulating the business of, building and loan associations, was construed not to allow a higher rate of interest than 6 per cent. After those decisions, the legislature, by an act, declared that the true intent of the former act was to allow premiums greater than 6 per cent. In an action by a loan association to recover a loan plus interest greater than 6 per cent., *held*, reversing judgment for the association for the amount claimed, that the act was unconstitutional, because it was within the province of the judiciary to expound the law, and not within that of the legislature.—Reiser v. William Tell S. F. Ass'n, 39 Pa. 137 (1861), Lowrie, C. J.

The act of June 10, 1871 (P. L. 385, § 1; P. & L. Dig. 3283), provided that "it is hereby declared to be the true intent and meaning of the several acts and parts of acts of assembly of this commonwealth, conferring jurisdiction upon the different orphans' courts, that the powers and jurisdiction of said courts shall extend to and embrace all causes in which," etc. It was held by one of the judges, in a concurring opinion, that this was an attempt to control the judiciary in their construction of the prior acts of assembly on the subject, and was therefore unconstitutional.—Parker's Estate, 8 Phila. 217 (1871), Allison, P. J.; s. c. 28 L. I. 365.

(654) The act of June 17, 1887 (P. L. 413), enacted that the provisions of the acts of June 16, 1836 (P. L. 696), and April 16, 1845 (P. L. 538), relating to the liens of mechanics and others upon buildings, should be construed to include claims for labor done by mechanics and laborers in the erection or construction of a building. A *sci. fa.* was issued on a lien filed under this act, and judgment for want of a sufficient affidavit of defence was refused. The plaintiff took a writ of error, and contended that the act of 1887 was an attempt to direct the courts in their interpretation of the acts of 1836 and 1845, and was therefore unconstitutional. It was so held, and judgment was ordered to be entered against the defendant.—Titusville Iron Works v. Keystone Oil Co., 122 Pa. 627 (1888), Williams, J.; s. c. 15 Alt. 917.

Lucas v. Ruff, 5 Lanc. L. R. 182 (1888), Allison, P. J., is overruled by the preceding case.

(655) The local act of February 2, 1854, provided that, when a vacancy occurred in any elective office of a certain city, such vacancy should be filled by the city councils until "the next city election." The act of April 18, 1867 (P. L. 1299), provided that the words "the next city election" should be construed to mean "the election at which the qualified voters would, in accordance with existing laws, elect a successor in office, had no vacancy occurred therein." In mandamus proceedings against the mayor to show cause why he should not administer the oath to a receiver of taxes, elected under the act of 1867, the relator

contended that the act was an attempted usurpation of the judicial functions, and was therefore unconstitutional. Judgment for relator affirmed.—Comm. v. Warwick, 172 Pa. 140 (1895), Sterrett, C. J. (Mitchell, J., dissenting); s. c. 33 Atl. 373.

See, also, Greenough v. Greenough, 11 Pa. 489.

(656) In an action by A. against B., A. obtained judgment and issued execution against B.'s real estate. Before the sale, the legislature passed the special act of March 16, 1847 (P. L. 405), which directed that a new trial should be granted, and allowed to B. A rule was then taken to set aside the execution, which was made absolute. On error, *held*, reversing the lower court, that this act was a usurpation of the functions of the judiciary, and therefore unconstitutional.—De Chastellux v. Fairchild, 15 Pa. 18 (1850), Gibson, C. J.

Overruling Braddee v. Brownfield, 2 W. & S. 271 (1841), Sergeant, J.

(657) A. signed an agreement to subscribe to a certain number of shares of stock in a railroad company (not naming the company), which was to run from X. to Y. Afterwards, B., a company, was organized to build a railroad from X. to Y., and the special act of March 17, 1856 (P. L. 127), was passed, which provided that the courts should not enter nonsuits, or interfere in any way, with suits brought by B. for subscriptions, by reason of the name of the company not being in the subscription. In a suit by B. against A. on the latter's subscription, *held*, that the act was unconstitutional, on the ground that the legislature had usurped the power of the judiciary. Judgment of nonsuit affirmed.—Pittsburg & Steubenville, R. Co. v. Gazzam, 32 Pa. 340 (1858), Woodward, J.

(658) The act of May 1, 1861 (P. L. 462, § 3; P. & L. Dig. 3433), provided for a graduated deduction from the term for which a prisoner was sentenced, for good behavior, and authorized the inspectors of the penitentiary to discharge a prisoner when he had served out his term of imprisonment, less the deduction to which his good behavior had entitled him. On a writ of *habeas corpus*, granted by the supreme court to a prisoner, who was entitled to have a deduction from his sentence, under the act, *held*, that the act was an interference with the judgments of the judiciary, and was therefore unconstitutional. Writ refused.—Comm. v. Halloway, 42 Pa. 446 (1862), Woodward, J.; s. c. 5 Phila. 120, 19 L. I. 196.

(659) An administrator, in accordance with a decree of the orphans' court made distribution of a decedent's personal estate. No bill of review was filed within five years, as provided by law. Eleven years afterward, an act was passed, ordering the court to review its decree. Under this act a new auditor was appointed, and his report filed. Exceptions to the second auditor's report, on the ground that the act was unconstitutional as it was within the discretion of the court to review the decree, were sustained.—Hendrickson's Estate, 19 L. I. 372 (1862), Ritchie, J.

(660) In proceedings for the partition of property, in which A., a person incapable of managing his own estate, had an interest, A. was not named in the proceedings as a party, but C. was named as a trustee for him. C. was not trustee for A., so far as the land in question was concerned. The act of April 6, 1870 (P. L. 960), was passed for the purpose of validating the proceedings. *Held*, that this was the exercise of a judicial function, and that the act was therefore unconstitutional. Judgment for defendant reversed.—Richards v. Rote, 68 Pa. 248 (1871), Sharswood, J.; s. c. 3 Leg. Gaz. 198.

(661) The act of June 26, 1895 (P. L. 343), provided that surety companies incorporated under the laws of any state or country, upon complying with certain conditions, should have the right to be accepted as sole surety in all the courts of the commonwealth. A trust company filed a petition under this act, praying that they be accepted as sole surety. *Held*, that this act purported to control the discretion of courts in accepting such companies as sureties, and was therefore unconstitutional. Prayer refused.—American Banking & Trust Co., 4 D. R. 757 (1895), Penrose, J.

(662) The local act of February 2, 1854 (P. L. 21), provided that no one holding office or employment from or under the state should be eligible as a member of the councils of Philadelphia. In 1871, A., who at that time was a notary public, was elected a member of councils. An information in the nature of a *quo warranto* was filed to inquire by what right he held such office. While the proceeding was pending, the local act of January 29, 1873 (P. L. 103), provided that the holding of the office of notary public should not be incompatible with holding at the same time the office of member of either branch of the councils of Philadelphia, and that no member of the then present councils should be disqualified by reason of holding such office, nor be removed by reason of such disqualification. *Held*, that this act of 1873 simply modified the charter of the city, and as this was within the province of the legislature, and did not interfere with the functions of the courts, the act was constitutional. Judgment of ouster reversed.—Hawkins v. Comm., 76 Pa. 15 (1873), Read, C. J.

(663) An injunction was asked against county commissioners to restrain them from incurring expenses under the ballot reform act of June 19, 1891 (P. L. 349), on the ground that said act violated art. V., § 1, of the constitution, by conferring judicial powers upon ministerial officers, in that it made a decision of a majority of them final as to the formal or apparent sufficiency of certificates of nomination. Injunction refused.—Ripple v. Commissioners of Lackawanna Co., 1 D. R. 202 (1892).

The act of June 19, 1891 (P. L. 349), was repealed by the act of June 10, 1893 (P. L. 419, P. & L. Dig. 1735 *et seq.*).

2. Right of Legislature to Alter Powers or Jurisdiction of Courts.

Though the legislature may not abolish any of the courts provided for by the constitution, nor divest them of all of their powers, it has power to divest them of some of their jurisdiction, and vest it in other courts from time to time established (664); and it may also enlarge the jurisdiction of courts (665–667); and may provide for a special organization of the several courts for necessary purposes, when the regularly commissioned judge is disabled. (668)

But the legislature cannot add to the existing judicial organization of a county another court composed of the same judges and officers as the court of common pleas, but occupying a subordinate position (669); nor pass an act imposing extra judicial functions on a court. (670)

The legislature cannot confer upon the courts the power of trying by chancery proceedings any question which has always been tried by a jury. (671)

(664) The local act of April 18, 1867 (P. L. 91), established criminal courts in Dauphin, Lebanon, and Schuylkill counties, and gave to such courts jurisdiction over all offences which had been cognizable in the courts of quarter sessions of the peace and oyer and terminer, and divested the last-named courts in Schuylkill county of jurisdiction over those offences, of which jurisdiction was given to the criminal court. In *quo warranto* proceedings in the supreme court against the judge of the criminal court, it was *held*, that this act was constitutional, for, while the legislature could not abolish any of the courts mentioned in the constitution, or divest them of their entire jurisdiction, it had express power to divest those courts of some of their jurisdiction, and vest it in courts from time to time established. Judgment for defendant.—Comm. v. Green, 58 Pa. 226 (1868), Sharswood, J. (Thompson, C. J., dissenting); s. c. 25 L. I. 292.

Followed and reaffirmed in Comm. v. Hipple, 69 Pa. 9 (1870), Agnew, J.; Brown v. Comm., 73 Pa. 321 (1873), Read, C. J.; s. c. 20 Pitts. L. J. 149, 30 L. I. 117; reversing 2 Foster, 193.

(665) A. filed a bill in equity against B. B.'s answer alleged, *inter alia*, that the special act of June 13, 1842 (P. L. 276), upon which the equitable jurisdiction of the case was grounded, was unconstitutional, as the legislature had not the power to grant any equity powers to the courts except those only which they had at the time of the adoption of the constitution. *Held*, that the legislature had power, under the constitution, to change and enlarge the scope of the courts' equitable jurisdiction. Decree for complainant.—Bank of Kentucky v. Schuylkill Bank, 1 Pars. Eq. 180 (1846), King, P. J. (This case was affirmed by the supreme court, but not reported.)

(666) The act of April 11, 1862 (P. L. 477; P. & L. Dig. 4414, note), gave to the supreme court the right to exercise all the powers and jurisdiction of a court of chancery in the case of mortgages given by corporations. On a bill in equity to foreclose a mortgage, the defendant contended that the supreme court had no jurisdiction, as the act of 1862 was unconstitutional. *Held*, that, as this act came within the powers of the legislature to enlarge or diminish the powers of courts, under art. V., § 6, of the constitution of 1790, it was not in conflict with the constitution.—McCurdy's Appeal, 65 Pa. 290 (1870), Agnew, J.

This act was abrogated by art. V., § 3, of the constitution of 1874.

(667) A. brought an action in assumpsit against B. before a magistrate, for a sum not exceeding $300. Judgment was given for A. On a *certiorari*, B. contended that the magistrate had no jurisdiction, as the act of July 7, 1879 (P. L. 194; P. & L. Dig. 2553), which enlarged the jurisdiction of magistrates, justices of the peace, and aldermen, and gave them concurrent jurisdiction in certain cases, where the amount did not exceed $300 (under which act the magistrate had entered judgment in this case), was unconstitutional, as the legislature has no power to extend the jurisdiction of any of the courts. *Held*, that the act was constitutional. Judgment for A.—Wissler v. Becker, 2 Pa. C. C. 103 (1880), Patterson, J.; s. c. 11 Lanc. Bar, 187.

(668) The act of April 2, 1860 (P. L. 552; P. & L. Dig. 4334), provided as follows: "In case of sickness of a president judge in any judicial district in Pennsylvania, or of sickness in his family, or of his inability to hold the regular term of his courts, in any county, from any cause whatever, it shall be lawful for him to call upon any other president judge in the commonwealth, who may not himself be engaged, to hold said regular term of courts, and said president judge so called upon is hereby authorized and empowered to discharge the duties appertaining to said office as fully as the regularly commissioned president judge of said district could do if present, and shall be entitled to the same compensation allowed by law for holding special courts." On a petition, to the supreme court, for the holding of courts under this act in the county whereof the applicants were president judges, *held*, that the act of 1860 was for a special organization of the several courts for necessary purposes, and was within the constitutional power of the legislature. Petition granted.—Application of President Judges, 64 Pa. 33 (1871), Agnew, J.

(669) The local act of April 13, 1869 (P. L.

894), created the district court of Cambria county. This court was to have for its judges the judges of the common pleas of that county, who were to receive an additional compensation for their services. The prothonotary of the common pleas was to be clerk of the district court, and such court was to be in every way a mere parasite of the common pleas. It was not the intention of the legislature to create a new court wholly independent of the judicial organization then existing, but to add to the existing judicial organization another for a portion of the county, composed of the same judges and officers, who should occupy a subordinate position. In *quo warranto* proceedings against the judge of said court, the act was *held* unconstitutional, and judgment of ouster was rendered.—Comm. v. Potts, 79 Pa. 164 (1873), Agnew, J.; s. c. 21 Pitts. L. J. 38.

(670) The act of March 18, 1875 (P. L. 15), required the judges of a court of Allegheny county to appoint a board of assessors. The court filed an opinion holding that the appointment of a board of assessors was not within the duties of the judges, and therefore the act was in violation of the constitutional division of governmental powers among executive, legislative, and judicial departments.—Board of Assessors for Pittsburgh, 7 Leg. Gaz. 117 (1875), White, J.

(671) An act of assembly conferred upon the supreme court and courts of common pleas "all and singular the jurisdiction and powers of a court of chancery in all cases of disputed boundaries between adjoining and neighboring lands." Disputes as to boundaries had always been tried at law, unless some equity was introduced by the acts of the parties. A bill in equity to determine a dispute as to a certain boundary, where no such equity appeared, was entertained at *nisi prius*, and the prayer of the bill was granted. On appeal, the decree was reversed and the bill dismissed, the supreme court *holding* that the act, as far as it affected such cases, was unconstitutional.—Tillmes v. Marsh, 67 Pa. 507 (1871), Sharswood, J.

(C) SUPREME COURT.

1. Original Jurisdiction.

Section 3 of Article V. of the constitution provides that the supreme court shall have "original jurisdiction in cases of injunction, where a corporation is a party defendant, of *habeas corpus*, of mandamus to courts of inferior jurisdiction, and of *quo warranto* as to all officers of the commonwealth whose jurisdiction extends over the state, but shall not exercise any other original jurisdiction."

Under this section the supreme court has original and exclusive jurisdiction to issue writs of *quo warranto* to the judges and associate judges of the courts of common pleas, who are state officers within the meaning of the section. (672–673)

Its original jurisdiction in mandamus is restricted to courts of inferior jurisdiction. (674)

It can take original jurisdiction of a bill for injunction against a municipal corporation. (675) Its original jurisdiction in injunction cases is limited to cases where a corporation is a party defendant (676); and an incidental prayer for injunction, where that is not the main relief sought, will not bring the case within the original jurisdiction of the court. (677)

This section is not mandatory, and the supreme court will not take original jurisdiction of cases for injunction against a corporation unless some special reason is shown therefor. (678)

No neglect of the officer upon whom the primary duty of imposing a penalty is cast by statute can prevent the supreme court from passing the judgment required by said statute when the facts are before it, and such action of the court will not be an assumption of original jurisdiction violating this section of the constitution. (679)

This section of the constituttion does not take away the power of the supreme court to remove criminal cases into that court by *certiorari*. (680)

(672) In *quo warranto* proceedings in the common pleas against an associate judge of the common pleas, the lower court overruled a plea to the jurisdiction. On error, the appellant contended that an associate judge of the common pleas was a state officer, and under art. V., § 3, of the constitution of 1790 (which has been replaced by art. V., § 3, of the constitution of 1874), the supreme court had exclusive original jurisdiction. Judgment reversed.—Leib v. Comm., 9 Watts, 200 (1840), Sergeant, J.

(673) The supreme court, on the suggestion of the attorney-general, issued a writ of *quo warranto* against B. and C., to inquire by what authority they exercised the offices of associate judges in a certain district. The defendants pleaded want of jurisdiction in the court. *Held*, that the judges and the associate judges of the common pleas were "officers of the commonwealth whose jurisdiction extends over the state," within the meaning of art. V., § 3, of the constitution, and that the supreme court had therefore original jurisdiction to issue writs of *quo warranto* to such judges.—Comm. v. Dumbauld, 97 Pa. 293 (1881), Paxson, J. (Mercur, C. J., Gordon and Green, J. J., dissenting); s. c. 28 Pitts. L. J. 213, 13 Lanc. Bar, 5, 38 L. I. 54, 9 W. N. C. 369.

(674) A. petitioned the supreme court for a mandamus commanding the governor to issue a commission to the petitioner as justice of the peace for a certain borough, to which office he alleged he had been duly elected. The governor demurred upon the ground that the original jurisdiction of the supreme court in mandamus was restricted by the constitution of 1874 to courts of inferior jurisdiction. Judgment for defendant on the demurrer.—Comm. v. Hartranft, 77 Pa. 154 (1874), Agnew, C. J.; s. c. 31 L. I. 404, 22 Pitts. L. J. 57.

(675) At the instance of A. and others, a rule was awarded by the supreme court to show cause why leave should not be granted to move in that court for an injunction against the city of Philadelphia. The rule was made absolute, the court *holding* that, under the constitution of 1874, they could take original jurisdiction of a bill for injunction against a municipal corporation.—Wheeler v. Philadelphia, 77 Pa. 338 (1875), Paxson, J.; s. c. 1 W. N. C. 178, 205, 7 Leg. Gaz. 35, 32 L. I. 41, 75, 22 Pitts. L. J. 101.

(676) A. and others filed a petition praying the supreme court for leave to file in that court a bill in equity to restrain the commissioners of Philadelphia county from incurring any expenses in the execution of a certain act. *Held*, that, as the original jurisdiction of the supreme court in cases of injunction was limited to cases where a corporation was a party defendant, and the bill sought to be filed was not against the municipality, but only against certain officers thereof, the bill could not be filed.—De Walt v. Bartley, 146 Pa. 525 (1892); s. c. 23 Atl. 448, 29 W. N. C. 360.

(677) A bill was filed in the supreme court, praying that it would decree a sale of property of a corporation under a mortgage; and also praying that a special injunction be granted restraining the defendant from disposing of its property. *Held*, that the prayer for injunction was merely incidental to the prayer for the sale, and that, as the decree for such sale was not within the jurisdiction of the court, the prayer of the bill should not be granted.—Fargo v. Oil Creek & A. R. R. Co., 81* Pa. 366 (1875), Mercur, J.

(678) A bill was filed in the supreme court praying for an injunction against a corporation. No reason was given why the suit should not have been brought in the court of common pleas. The supreme court, therefore, declined to take jurisdiction.—Buck Mountain Coal Co. v. Lehigh Coal & Nav. Co., 2 W. N. C. 241 (1876), Agnew, C. J.

(679) An account was settled against a corporation for taxes on corporate indebtedness under the act of June 30, 1885 (P. L. 192; P. & L. Dig. 4456 *et seq.*) The accounting officer did not claim the ten per cent. penalty for failure to "assess and pay said tax and make report." The liability of the corporation for said penalty was not raised on the trial of the case below, but the supreme court on appeal incorporated the amount of the penalty in the judgment rendered against the corporation. A motion for re-argument was made on the ground that the supreme court had assumed original jurisdiction in so passing upon the liability of the corporation for the penalty when such question had not been raised below. *Held*, that the act of the supreme court was not an assumption of original jurisdiction, in violation of the constitution.—Comm. v. Philadelphia R. Coal & Iron Co., 145 Pa. 283 (1892), Mitchell, J.; s. c. 23 Atl. 809, 29 W. N. C. 507.

See, also, McClure v. People's Freight Ry. Co., 32 L. I. 448 (1875), Agnew, C. J.

(680) The supreme court, on petition of defendants in a certain case, granted a rule to show cause why a writ of *certiorari* should not issue to the court of quarter sessions of a certain county to remove a pending indictment, and all proceedings therein, to the supreme court. It was contended that the acts of June 16, 1836 (P. L. 784, § 9; P. & L. Dig. 128), and March 31, 1860 (P. L. 427, § 33; P. & L. Dig. 142), conferring upon the supreme court the power to remove criminal cases into that court by *certiorari*, were repealed by art. V., § 3, of the constitution of 1874. *Held*, that such power was not taken away, and was still vested in the supreme court. Writ of *certiorari* granted.—Comm. v. Balph, 111 Pa. 365 (1886), Paxson, J. (Trunkey, Gordon, and Clark, JJ., dissenting); s. c. 3 Atl. 220.

2. Appellate Jurisdiction.

Section 24 of Article V. of the constitution provides that, in criminal cases, the accused may, after conviction and sentence, remove all proceedings to the supreme court for review.

This section does not give the supreme court authority to review the discretion of the court below in refusing a new trial in a murder case (681); nor does it interfere with the rule that the jury are judges of law as well as of fact. (682)

An act which prescribes the time in which the right given by this section shall be exercised, but does not interfere with the right itself, is constitutional. (683)

(681) A. was convicted of murder in the first degree, and moved for a new trial, which was refused. A. then appealed to the supreme court under the provision of art. V., § 24, of the constitution. He asked the supreme court to review

the exercise of discretion by the court below in refusing a new trial. *Held*, that the court prior to the constitution had no power to examine the evidence further than to ascertain whether there was evidence taken which, if believed by the jury, would sustain a conviction of murder in the first degree, and the constitution of 1874 did not change the law in this respect. Judgment affirmed.—McGinnis v. Comm., 102 Pa. 66 (1883), Mercur, C. J.

(682) In the trial of A. upon an indictment for selling liquor on election day, the court charged the jury that the rule that the jury were to be judges of law as well as of fact was not in force since the adoption of the constitution of 1874; and gave as a reason for such view, that, when the new constitution, and the legislation in pursuance of it, gave defendants in a criminal court writs of error, the reason which had led to the adoption of that doctrine ceased, and the doctrine no longer existed. A. was found guilty. On appeal judgment reversed.—Kane v. Comm., 89 Pa. 522 (1879), Sharswood, C. J.; s. c. 7 W. N. C. 149, 10 Lanc. Bar, 209, 36 L. I. 202, 26 Pitts. L. J. 189.

(683) The act of March 24, 1877 (P. L. 40, § 1; P. & L. Dig. 145), prescribed that writs of error and *certiorari* in capital cases must be taken out within twenty days from the sentence. On a writ of error taken out, after the twenty days had expired, by B., who had been found guilty of murder, the act of 1877 was claimed to be an unreasonable interference with the right to a writ of error or *certiorari*, under art. V., § 24, of the constitution of 1874, *held*, that the act was constitutional, and writ of error quashed.—Sayres v. Comm., 88 Pa. 291 (1879), Paxson, J.

(D) COURTS OF COMMON PLEAS.

1. Chancery Powers.

Under section 20 of Article V. of the constitution, the court of common pleas has chancery powers over the persons and estates of persons *non compotes mentis*, and its jurisdiction to order a sale of a lunatic's property for the payment of his debts does not terminate at the death of the lunatic. (684)

The jurisdiction of the common pleas in matters of injunction against corporations was not affected by the constitution of 1874, Article V., section 3, giving the supreme court original jurisdiction in such cases. (685)

(684) C. was declared a lunatic, and D. and E. were appointed his committee to manage his person and estate. Upon petition of such committee, the court of common pleas ordered C.'s real estate to be sold in payment of his debts, which was done. In a subsequent action of ejectment by the heirs of C. against the purchasers of the property, the heirs offered to prove that at the time the order of sale was made C. was dead. This evidence was rejected. *Held*, affirming the lower court, that the court of common pleas had chancery powers in regard to the persons and estates of those *non compotes mentis*, and might, through a committee, exercise the powers of a chancellor in the custody and management of the lunatic's estate, and in applying it to the payment of his debts, and that such court had power to make the order of sale after the death of the lunatic under art. V., § 6, of the constitution of 1790 (see art. V., § 20, of the constitution of 1874).—Yaple v. Titus, 41 Pa. 195 (1862), Strong, J.

(685) Motion to continue an injunction issued by the common pleas against a corporation. Defendant objected that art. V., § 3, of the constitution, vested in the supreme court exclusive jurisdiction of bills in equity against corporations. *Held*, that the constitution, by § 20 of the same article, gave the common pleas courts the same equity jurisdiction as they had at the time of the adoption of the constitution, and that by the act of June 16, 1836 (P. L. 784; P. & L. Dig. 706 *et seq.*), and the act of February 14, 1857 (P. L. 39), the common pleas was given jurisdiction of such bills. Injunction continued.—McGeorge v. Hancock S. & I. Co., 11 Phila. 602 (1875), Elwell, J.; s. c. 32 L. I. 372.

In Comm. v. Wickersham, 7 W. N. C. 265 (1879), it was *held*, by the supreme court, that the lower courts had no authority to issue writs of mandamus to state officers. By the act of June 8, 1893 (P. L. 345, § 1; P. & L. Dig. 2857), the common pleas of the county in which the state capital is situate, has jurisdiction to issue writs of mandamus to state officers.

2. Judges.

(*a*) *Official Powers.*

Under Art. V, §§ 8 and 9, of the constitution, and the act of Feb. 27, 1875 (P. L. 62; P. & L. Dig. 3878), the several judges of the courts of common pleas of Allegheny county have power to hold court of oyer and terminer. (686)

(686) A. was convicted of murder in the court of oyer and terminer of Allegheny county, and in his bill of exceptions, assigned as error the overruling of his plea to the jurisdiction of the court, which, by an order of the common pleas, had been presided over by two judges of the common pleas specially designated for that purpose, as provided for in the act of February 27, 1875 (P. L. 62; P. & L. Dig. 3878). Judgment affirmed.—Myers v. Comm., 79 Pa. 308 (1875), Gordon, J.

The act of April 7, 1876 (P. L. 19; P. & L. Dig. 3866), which provides that, in any county forming a separate judicial district, the president judge or additional law judge of the common pleas shall

have power to hold the court of quarter sessions; and the act of May 9, 1889 (P. L. 172; P. & L. Dig. 3866), which provides that, in counties not forming a separate judicial district, the president judge shall have power to hold such court, render obsolete the decisions in Comm. v. Nathans, 2 Pa. 138 (1845), Kennedy, J.; Comm. v. Martin, 2 Pa. 244 (1845); Comm. v. Jacoby, 1 Pitts. 481, (1858), McClure, P. J.

(b) Legal Qualifications.

A judge who is not learned in the law is a judge *de facto*, and as against all parties but the commonwealth, he is judge *de jure*. (687)

(687) B. was tried and convicted of arson before a court composed of three judges, the president judge of which was the only one learned in law. B. took an appeal on the ground that the associate judges, not being learned in law, as provided by art. V., § 9, of the constitution, had no authority to act as judges, and therefore the trial and sentence were void. *Held*, that they were judges *de facto*, and as against all parties but the commonwealth they were judges *de jure*. Judgment affirmed.—Campbell v. Comm., 96 Pa. 344 (1881), Mercur, J.

(c) Term of Office.

Section 15 of Article V. of the constitution provides that judges shall hold their offices for the period of ten years, if they so long behave themselves well.

A judge cannot be dismissed from the exercise of the functions of his office by the abolition of his judicial district before his term expires. (688)

(688) In *quo warranto* proceedings in the supreme court against B., who had been elected president judge under the local act of February 28, 1868 (P. L. 44), which erected a certain county into a separate judicial district, and authorized the electors of such district to elect a president judge therefor to serve for the term of ten years. The commonwealth contended that the act of March 16, 1869, repealed the act of 1868, and attached the county referred to in that act to another judicial district. *Held*, that this act interfered with the tenure of office of the president judge elected under the act of 1868, and was therefore invalid. Judgment for defendant.—Comm. v. Gamble, 62 Pa. 343 (1869), Thompson, C. J.; s. c. 16 Pitts. L. J. 201, 1 Lanc. Bar, 8.

(d) Compensation.

Section 18 of Article V. of the constitution provides that judges of the supreme court and of the several courts of common pleas, and all other judges required to be learned in the law, shall at stated times receive for their services an adequate compensation which shall be fixed by law and paid by the state, and that they shall receive no other compensation, fees, or perquisites of office, for their services from any source. Under the corresponding section in the constitution prior to that of 1874, it was held that, under the provision requiring an "adequate compensation" for "services," the legislature had no power to abolish a court of criminal jurisdiction, and another of civil jurisdiction, and to impose all the business of the said tribunal on the court of common pleas, without providing any compensation for the increased services required. (689)

The act of June 4, 1883, fixing the compensation of judges of the common pleas, and prohibiting additional compensation, repealed the act of May 2, 1871, allowing to such judges $12 a day for holding court in districts other than their own, and since the passage of the later act (which was intended to carry into effect Art. V., § 18, of the constitution), no judge can receive such extra compensation. (690)

(689) An act of legislature abolished a civil and a criminal court in the city of Lancaster, and imposed all the business of said courts upon the court of common pleas, without providing any compensation for the increased services required. The court of common pleas filed an opinion, in relation to the unfinished business of said court, in which the act was declared void because it did not provide for adequate compensation as required by the constitution.—District and Mayor's Court of Lancaster, 4 Clark, 315 (1849), Lewis, P. J.

(690) The act of May 2, 1871 (P. L. 247, § 1; P. & L. Dig. 2457), allowed to judges of the common pleas $12 a day for holding court in districts other than their own. The act of June 4, 1883 (P. L. 74, § 4; P. & L. Dig. 2457), fixed the compensation of judges of the court of common pleas, and provided as follows: "No judge of the said courts of common pleas hereafter appointed or elected and commissioned shall receive any compensation, in addition to the salary and mileage fixed by this act, and all acts, or parts of acts, inconsistent herewith, are hereby repealed." The attorney-general was asked for his opinion as to whether a judge was entitled to the extra compensation allowed by the act of 1871. *Held*, that the act of 1883 was intended to give effect to art. V., § 18, of the constitution, which provided that the salaries of judges should be fixed by law, and that they should receive no other compensation, fees, or perquisites of office; and that the act of 1871 was repealed by the later act of 1883.—Judges' Compensation, 2 Chest. Co. 231 (1884), Snodgrass, Dep. Atty.-Gen.

(e) Incompatibility of Offices.

Article V., section 18, of the constitution prohibits a judge from holding any other office of profit under the United States, this state, or any other state.

The office of a commissioner appointed to ascertain the rights of lot holders where the title is in dispute, is not an office within the prohibition of this section (691); but the office of recorder of a mayor's court is an office of trust and profit under the commonwealth, and judges of other courts are prohibited from holding it. (692)

(691) A., a president judge of a court of common pleas, was appointed a commissioner under the act of April 4, 1799 (P. L. 362), to ascertain the right, etc., of lot holders in the seventeen townships occupied by Connecticut claimants. A certificate given by A. as commissioner was objected to on the ground that his appointment was void under art. V., § 2, of the constitution then in force, which has been replaced by art. V., § 18, of the constitution of 1874, prohibiting a judge from holding any other office of profit under the commonwealth. *Held*, that a commissioner was not an officer within the meaning of the constitutional prohibition, and that A. was a lawful commissioner when he signed the certificate.—Shepherd v. Comm., 1 S. & R. 1 (1814), Tilghman, C. J.

(692) The act of April 23, 1866 (P. L. 1034), established the mayor's court of the city of Scranton, and provided that the president judge of the eleventh judicial district should be recorder of the same. In *quo warranto* proceedings against the recorder, it was *held*, that, as the office of recorder was one of profit under the state, it could not be held by one of the judges of the state, and the act was therefore declared unconstitutional under art. V., § 2, of the constitution of 1790 (see art. V., § 18, of the constitution of 1874). Commonwealth's demurrer to the recorder's answer sustained.—Comm. v. Conyngham, 65 Pa. 76 (1870), Thompson, C. J.; s. c. 18 Pitts. L. J. 68, 3 Brewst. 214.

(*f*) *Vacancies.*

Article V., section 25, of the constitution provides that when a vacancy is caused by the death of a judge, a successor is to be elected at the next general election, which shall not be held earlier than three months after such vacancy shall occur.

The period of three months, within the meaning of this section, is exclusive of the day on which the vacancy occurs, and inclusive of the day of the election. (693–694)

(693) X., a president judge of the common pleas, died on the 15th day of July. B. was appointed by the governor to fill the vacancy on July 21, and A. was elected to the office, at a general election, held on October 14. A. instituted *quo warranto* proceedings against B., who contended that more than three months had not expired, between X.'s death and the election, as provided by the act of April 27, 1852 (P. L. 465), which is replaced by art. V., § 25, of the constitution of 1874. *Held*, that more than three months must have expired between the death of a judge and the election of his successor, exclusive of the day of his death, and inclusive of the day of his election. Judgment for B.—Comm. v. Maxwell, 27 Pa. 444 (1856), Woodward, J. (Lewis, C. J., and Black, J., dissenting).

(694) A judge tendered his resignation to take effect August 4, 1884. The next general election was to be held November 4, of that year. In an opinion of the attorney-general, it was *held*, that a successor could not be elected at the coming election, as three months exclusive of the day on which the vacancy occurred would not then have elapsed; hence, as the successor could not be elected before the general election of 1885, the term of the successor to be appointed *ad interim* would run until January 1, 1886.—Judge's Commission, 2 Chest. Co. 317 (1884), Snodgrass, Dep. Atty.-Gen.

(*g*) *Removal.*

Article V, section 15, provides for the removal by the governor of judges learned in the law, except those of the supreme court, for any reasonable cause, which shall not be sufficient ground for impeachment, on the address of two-thirds of each house of the assembly.

Under this section, when a judge has become incapacitated for further work, the governor may remove him only on the address of two-thirds of each house. (695)

(695) On complaint to the governor that two of the judges of a common pleas court had become incapacitated for further work, and a request for relief under art. V., § 15, the attorney-general was of opinion that the governor had no power to act except "on the address of two-thirds of each house of the general assembly."—Removal of Judge of Common Pleas, 5 D. R. 158 (1896), McCormick, Atty.-Gen.

3. Dispensing with Jury Trial.

Section 27 of Article V. of the constitution, provides that "the parties by agreement filed, may, in any civil case, dispense with trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same, and the judgment thereon shall be subject to a writ of error as in other cases."

This section did not execute itself so as to be independent of the legislation necessary to regulate practice under it; and a writ of error taken in a case where an act regu-

lating such practice has not been conformed to, will be quashed. (696–697)

(696) The act of April 22, 1874 (P. L. 109, § 1; P. & L. Dig. 3642), provided for the practice under the constitutional provisions for the submitting of a case to the court without a jury. On a motion to quash a writ of error taken in a case, which had been referred to the court under this section, it was argued that, as the act of 1874 was not complied with, the writ should be quashed. The appellant contended that the provision of the constitution executed itself and needed no legislation. *Held*, that the provision did not execute itself, but the practice under it was regulated by the said act. Writ of error quashed.—Comm. v. Mitchell, 80 Pa. 57 (1875); s. c. 32 L. I. 441, 2 W. N. C. 159.

(697) Upon the return of a writ of alternative mandamus, the parties agreed to dispense with a jury trial, and submitted the cause to the determination of the court. The writ was refused, and judgment was entered for the defendant, whereupon a writ of error was taken without application to the court below to hear or dispose of the exceptions as provided by the act of April 22, 1874 (P. L. 109; P. & L. Dig. 3642), which provided for the practice under art. V., § 27, of the constitution, in the submission of a case to the court without a jury. On appeal, the writ of error was quashed.—Comm. v. Mitchell, 80 Pa. 57 (1875); s. c. 2 W. N. C. 159.

4. Prothonotary of Philadelphia County.

Under section 7 of Article V. of the constitution, providing that the prothonotary of Philadelphia county shall receive a fixed salary to be determined by law and paid by said county, and that the fees collected in such office shall be paid into the county treasury, said prothonotary was held entitled to retain his fees until his salary was fixed by law. (698)

(698) In equity proceedings to restrain the prothonotary of Philadelphia from taking the fees received by him, it was *held*, affirming the lower court, that the clause of art. V., § 7, of the constitution, providing that the prothonotary should be paid a fixed salary, to be determined by law, and the clause requiring that the fees collected in such office should be paid into the county treasury, were to be construed together, and they were interpreted to mean that, until the legislature should fix the salary of the prothonotary, that officer was entitled to retain his fees, and need not pay them into the county treasury.—Perot's Appeal, 86 Pa. 335 (1878), Agnew, C. J.; s. c. 5 W. N. C. 203, 35 L. I. 91. Affirming 12 Phila. 353, 34 L. I. 28.

(E) ORPHANS' COURTS.

1. Abolition of Registers' and Old Orphans' Courts—Effect on Rights of Parties.

Section 22 of Article V. of the constitution provides for the abolition of registers' courts, and for the establishment of new orphans' courts, etc., in counties of over 150,000 inhabitants.

The rights of parties in proceedings in the old registers' courts were not impaired by this section. (699)

(699) The register of wills refused to certify to the orphans' court his rulings on certain points of evidence, in a matter before him. A petition was filed asking for a mandamus to compel the register so to certify said proceedings. *Held*, that, under the constitution of 1874, the orphans' court had succeeded to all the powers and jurisdiction of the registers' court, by which under the act of March 15, 1832 (P. L. 135, § 31; P. & L. Dig. 4079), matters similar to the present were formerly determined; but that the rights of the parties under said act were not lost in any respect. As there was no other adequate remedy than that prayed for, the mandamus was granted.—Comm. v. Clark, 1 W. N. C. 330 (1875), Thayer, P. J.; s. c. 32 L. I. 116.

2. Effect on Clerks of Old Orphans' Courts.

This section, requiring the erection of separate orphans' courts in certain counties, and constituting the register of wills the clerk of such court, abolished the office of the clerk of the old orphans' court, and terminated his duties. (700)

(700) A. was commissioned clerk of the orphans' court for Luzerne county in 1873, his commission to last three years. A separate orphans' court was established by the act of May 19, 1874 (P. L. 206; P. & L. Dig. 3273); and B., who was at that time register of wills of Luzerne county, entered upon the duties of clerk of the orphans' court, conformably to the act of 1874 and the new constitution. A. brought *quo warranto* to inquire by what right B. exercised the office of clerk of the orphans' court. *Held*, that, under the new constitution, the former orphans' court was abolished, and the office of the clerk of that court was also abolished. Judgment for relator reversed.—French v. Comm., 78 Pa. 339 (1875), Mercur, J.; s. c. 32 L. I. 218, 2 W. N. C. 9.

(F) QUARTER SESSIONS; FORM OF INDICTMENT.

Section 23 of Article V. of the constitution provides that the style of all process shall be "The Commonwealth of Pennsylvania," and that all prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same."

A conviction on an indictment not framed according to this section cannot be sustained (701–702); but an indictment concluding "against the peace and dignity of the commonwealth of Pennsylvania" has been held sufficient. (703)

(701) An indictment for murder was framed in the names of the judges, instead of the commonwealth, as required by art. V., § 12, of the constitution of 1790 (which section is replaced by art. V., § 23, of the constitution of 1874). Exceptions taken to the indictment were sustained, and judgment of conviction was reversed.—White v. Comm., 6 Binn. 179 (1813), Tilghman, C. J.

(702) An indictment for forcible entry concluded "to the great damage of the said L. C. P., against the peace of the state, the government and dignity of the same." On error, *held* defective, because contrary to the form prescribed by art. V., § 12, of the constitution of 1790, replaced by art. V., § 23, of the constitution of 1874.—Comm. v. Jackson, 1 Gr. 262 (1855), Lewis, C. J.

(703) The conclusion of an indictment for an assault was "against the peace and dignity of the commonwealth of Pennsylvania." The defendant was found guilty and sentenced. Exceptions taken on the ground that the indictment was not framed in accordance with the constitution, were dismissed.—Rogers v. Comm., 5 S. & R. 463 (1820), Duncan, J.

(G) MAGISTRATES AND JUSTICES OF THE PEACE.

1. Powers.

Art. V., § 10, of the constitution gives power to the common pleas alone, not to the quarter sessions, to review proceedings before an alderman on a *certiorari*. (704)

Under the act of April 26, 1855 (P. L. 304, § 2; P. & L. Dig. 2613), an *allocatur* from the judge of the common pleas is not necessary to obtain a review of cases heard by magistrates. (705)

Art V., § 11, of the constitution, is not mandatory in its provisions for the election of "not more than two justices in each ward." The number may be fixed at less than two in a ward by appropriate legislation. (706)

A reduction in the number of members composing a magistrate's court does not increase their civil jurisdiction, and is not, therefore, in violation of Art. V., § 12, of the constitution. (707)

(704) *Certiorari* to an alderman, issued out of the quarter sessions to review his proceedings under the local act of May 1, 1861 (P. L. 682), in a case of assault and battery. Exceptions were filed to the jurisdiction of the alderman and to the regularity of the record. Writ quashed, on the ground that art. V., § 10, of the constitution vests in the common pleas alone the power to review and examine the proceedings of an alderman, upon *certiorari*.—Evans v. Comm., 5 Pa. C. C. 362 (1887), Gunnison, P. J.

(705) A. took a writ of *certiorari* from the common pleas to a justice of the peace. B. moved to quash the writ on the ground that it had not been allowed by a judge of the common pleas, contending that art. V., § 8, of the constitution of 1790 (now art V., § 10, of the constitution of 1874) required that such a writ must be so allowed. Motion denied, on the ground that the constitution only gives power to allow writs, whereas the act of April 26, 1855, dispenses with the necessity of an *allocatur*. Affirmed.—McGinnis v. Vernon, 67 Pa. 149 (1871), Thompson, C. J.

(706) In *quo warranto* proceedings against B., who claimed to be a duly-elected justice of the peace of the borough of X., it appeared that the borough had been divided into five wards, and that two justices had been elected in each ward, of whom B. was one. The general borough act of April 3, 1851 (P. L. 320, § 26), provided that there should be but two justices for each borough. B. contended that this act was abrogated by art. V., § 11, of the constitution, which declares that "justices shall be elected in the several wards, districts, boroughs, or townships. . . . No township, ward, district or borough shall elect more than two justices . . . without the consent of the qualified electors." B. alleged that this section required the election of at least two justices in every ward. *Held*, that the section was only permissive, not mandatory, and that the case was governed by the act of 1851. Judgment of ouster affirmed.—Comm. v. Morgan, 178 Pa. 198 (1896).

(707) In a proceeding by A., a landlord, against B., his tenant, the case was tried before one magistrate and a jury, under § 12 of the act of Feb. 5, 1875 (P. L. 56; P. &. L. Dig. 2854), which provided that "where, by law, two aldermen are now required to hear and determine any matter brought before them, the same jurisdiction shall be exercised by one magistrate." Judgment for A. On *certiorari* to the magistrate, it was contended by B. that the said act was unconstitutional, and contrary to art. V., § 12, in reducing the number of members of a magistrate's court, and increasing its civil jurisdiction. Judgment affirmed.—Gallagher v. Maclean, 6 D. R. 315 (1897), Wiltbank, J.

2. Magistrates' Courts in Philadelphia.

(a) Number of Courts.

Section 12 of Article V. of the constitution provides that there shall be established in Philadelphia a magistrate's court for each thirty thousand inhabitants. This sec-

tion did not of its own force establish the courts therein provided for, but legislation for such purpose was necessary. (708)

(708) The act of February 5, 1875 (P. L. 56, § 1; P. & L. Dig. 2849), provided that "there are hereby established in Philadelphia twenty-four courts, not of record, of police and civil causes, with jurisdiction not exceeding $100, and additional courts shall be established from time to time so as to provide one such court for each thirty thousand inhabitants of said city, and each of said courts shall be held by one magistrate." The act further declared it to be "the duty of councils on or before the 1st day of March, 1875, and on or before the 1st day of January of every fifth year thereafter, and whenever else it may be necessary, to fix the general location of each of said courts, by declaring between which streets or roads it shall be, so as to be most convenient for suitors and for the despatch of public business." In mandamus proceedings against the judges of the common pleas, to compel them to issue certificates of election to magistrates elected, under this act, it was *held*, that additional courts could not be established by the city of Philadelphia, as it required legislative action to establish any such additional courts.—Cahill's Petition, 110 Pa. 167 (1885), Mercur, C. J.; s. c. 20 Atl. 414, 16 W. N. C. 485.

(b) *Fees, Fines, and Penalties.*

Section 13 of Article V. of the constitution provides that all fees, fines, and penalties paid into magistrates' courts in Philadelphia shall be paid into the county treasury, and repeals the act of June 2, 1871 (P. L. 290), which provided that fines imposed for cruelty to animals should be paid to the society for the prevention of cruelty to animals. (709)

(709) The act of June 6, 1871, provided that all fines imposed by aldermen for cruelty to animals were to be paid by such aldermen to the society for the prevention of cruelty to animals. In mandamus proceedings against a magistrate, in which the society was the relator, *held*, that this act was abrogated by the constitutional provision that all fees, fines, and penalties in magistrates' courts should be paid into the county treasury.—Comm. v. Randall, 2 W. N. C. 210 (1875), Thayer, P. J.; s. c. 10 Phila. 451, 23 Pitts. L. J. 78.

3. Summary Convictions.

Section 14 of Article V. of the constitution provides that in cases of summary conviction or judgments for penalties either party may appeal upon allowance of the appellate court, or judge thereof, upon cause shown. (710–712)

The right of appeal in such cases is not given as a matter of right, but only upon allowance of the appellate court, which, in summary convictions, is properly the court of quarter sessions (713); and the appeal will not be granted where good reason therefor is not shown. (714)

This section, instead of restricting, enlarges the right of appeal, and is intended to secure it within certain limits from future legislative changes; hence, an appeal has been held to lie to the common pleas without allowance from a judgment of a justice of the peace imposing a penalty, where such right of appeal existed before the constitution of 1874 (715); nor is this section restricted to such cases as were without the right of appeal, prior to the adoption of the constitution; it embraces all appeals from judgments, for penalties, or of summary conviction. (716)

(710) A. filed a petition for rule to show cause why a mandamus should not issue to B., a justice of the peace, commanding him to grant an appeal to the petitioner, in a suit before B. for the recovery of a penalty for violation of a borough ordinance. The justice claimed that the right to grant an appeal in such case was vested by art. V., § 14, of the constitution, in a court of record or judge thereof. Judgment discharging the rule affirmed.—McGuire v. Shenandoah Borough, 109 Pa. 613 (1885), Mercur, C. J.; s. c. 16 W. N. C. 311.

(711) A. instituted an action against B. to recover the penalty provided for peddling in the county of Lehigh without a license. Judgment was entered for B. by the alderman before whom the case was tried. A. presented his petition for an appeal, which was dismissed by the court. On appeal to the supreme court, *held*, affirming judgment, that the right of appeal in cases of summary conviction was not given as a matter of right, but only upon allowance by the appellate court.—Comm. v. Eichenberg, 140 Pa. 158 (1891); s. c. 21 Atl. 258.

See Comm. v. Johnston, 1 Pa. C. C. 22 (1885), White, P. J.; s. c. 16 W. N. C. 349.

(712) A. was summoned before a justice of the peace and judgment was entered against him for a penalty imposed by statute. A. requested the justice to certify an appeal to the common pleas and tendered costs. The justice refused, and A. applied to the common pleas to compel him to certify the appeal. Mandamus refused on the ground that art. V., § 14, of the constitution provided that the right of appeal could be obtained only by allowance of the appellate court. Affirmed.—Comm. v. Courtney, 174 Pa. 23 (1896), Williams, J.; s. c. 38 W. N. C. 2, 43 Pitts. L. J. 322.

(713) An information was filed against B. for

selling goods on Sunday. He was convicted before an alderman. On appeal to the court of common pleas, *held*, that his conviction was a summary conviction, within the meaning of art. V., § 14, of the constitution, and of the act of April 17, 1876 (P. L. 29; P. & L. Dig. 2609), and that as, under such act, his appeal should have been taken to the quarter sessions, the appeal to common pleas must be quashed.—Comm. v. Rosenthal, 3 Pa. C. C. 26 (1887), Ewing, P. J.; s. c. 3 Pa. C. C. 669.

(714) Judgment was entered against A. for the amount of a statutory penalty, by a justice of the peace. A. was not present at the hearing, and made no defence. He applied to the common pleas for the allowance of an appeal from the said judgment, alleging that the magistrate had not proceeded according to the rules of evidence,—that A. was innocent of the offence charged, and that the person prosecuting had no legal right to do so. An appeal was refused. Affirmed, on the ground that A.'s averments did not amount to a reason why he did not make a defence, but merely to a denial of his liability to the penalty, and, since he had an opportunity to make his defence, an appeal was properly refused under art. V., § 14, of the constitution.—Comm. v. Menjon, 174 Pa. 25 (1896), Williams, J.; s. c. 38 W. N. C. 3, 43 Pitts. L. J. 322.

(715) B. was convicted before a justice of the peace of selling liquor on Sunday, and the penalty of $50 prescribed by the act of February 26, 1855 (P. L. 53; P. & L. Dig. 1248), was imposed. B. appealed, without allowance by the court. On a rule to quash the appeal, it was claimed that the new constitution had taken away the right of appeal which had been held to exist under the act of 1885, by repealing all former acts on the subject. *Held*, that art. V., § 14, of the constitution, instead of restraining, enlarged the right of appeal. Rule discharged.—Comm. v. Brunner, 3 Pa. C. C. 28 (1887), Schuyler, P. J.; s. c. 1 Lehigh Val. L. R. 377.

(716) A. was summoned, at the instance of the commonwealth, before a justice of the peace, for a breach of the act of May 21, 1885 (P. L. 22, §2; P. & L. Dig. 3265), relating to the sale of oleomargarine, and judgment was entered against him for the statutory penalty. A. took an appeal from this judgment to the common pleas, but failed to have said appeal allowed by a judge of the common pleas. A rule was taken to have the appeal stricken off, on the ground that art. V., § 14, of the constitution provides that, "in all cases of judgment in suit for a penalty before a magistrate court not of record, either party may appeal . . . upon allowance of the appellate court or a judge thereof upon cause shown." A. contended that the provision related only to those cases in which an appeal was not allowed at all, prior to the constitution, and did not change the practice with respect to those cases where an appeal could have been taken prior to 1874, without allowance of the appellate court. A.'s contention was overruled, and the rule made absolute. Affirmed.—Comm. v. McCann, 174 Pa. 19 (1896), Williams, J.; s. c. 38 W. N. C. 1, 43 Pitts. L. J. 321.

(H) JUDICIAL DISTRICTS.

Section 5 of Article V. of the constitution is as follows: "Whenever a county shall contain forty thousand inhabitants, it shall constitute a separate judicial district, and shall elect one judge learned in the law; and the general assembly shall provide for additional judges, as the business of the said district may require.

"Counties containing a population less than is sufficient to constitute separate districts, shall be formed into convenient single districts, or, if necessary, may be attached to contiguous districts, as the general assembly may provide."

The first paragraph above quoted does not of itself constitute a county a judicial district when such county contains forty thousand inhabitants, but merely indicates a certain basis upon which it may be declared so by the legislature (717–718); and the proper time at which to create a separate judicial district out of such county is at the next succeeding session of the courts after the decennial census, which shows that the county has the requisite population. (719)

A person who is convicted cannot, by a special plea to the jurisdiction, impeach the constitutionality of the act which designates the county in which the court was held, as a separate judicial district, on the ground that it contains less than the requisite number of inhabitants. (720)

The privilege of electing an additional law judge is not restricted to districts formed of single counties containing forty thousand inhabitants; such a judge may be chosen in a district composed of more than one county; the phrase "single districts," in the provision relating to the formation of districts out of counties having less than the population requisite to constitute them separate districts, is not used in the sense of districts having but a single law judge. (721)

The attachment of a county to another containing forty thousand inhabitants, and formed by law into a separate judicial district, does not take away the latter county's character as a separate judicial district within the intendment of the constitution. (722)

(717) The county of Lackawanna, at the time it was erected, contained more than forty thou-

sand inhabitants. The inhabitants elected A. additional law judge. A. brought a rule to show cause why a writ of mandamus should not be awarded to B. and C., president judge and additional law judge of the Forty-Fifth circuit, out of which the county had been erected, compelling them to issue to him a certificate of election. *Held*, that the fact that the county contained forty thousand inhabitants did not of itself constitute such county a judicial district. Mandamus refused.—Comm. v. Handley, 106 Pa. 245 (1884), Clark, J.

(718) At an election for judges in a district composed of two counties, A. and B. were elected and given proper certificates. The election was contested by C. and D., who resided in one of the counties, which they contended formed a separate judicial district. A. and B. showed that they had received a majority of the votes in that county, which alone had more than the requisite number of voters entitling it to form a separate judicial district under art. V., § 5, of the constitution. The legislature, however, had taken no steps to form the separate district. Decree for A. and B. affirmed.—Bredin's Appeal, 16 W. N. C. 481 (1885), Mercur, C. J.

(719) The act of April 17, 1878 (P. L. 17, § 13; P. & L. Dig. 1010), created the county of Lackawanna out of the county of Luzerne. The new county contained more than forty thousand inhabitants at the time of its organization. A citizen of the county of Lackawanna prayed for a mandamus to the judges of Luzerne county to meet and organize the courts of Lackawanna county. The answer of the judges averred the appointment by the governor of a separate president judge for the new county, who had assumed the duties of his office. *Held*, under art. V., § 5, of the constitution, that the mere fact that the county contained more than forty thousand inhabitants did not of itself constitute the county a separate judicial district; that the proper time at which to create such separate districts was at the next succeeding session after each decennial census; and that, until such time, the new county remained a part of the same district as formerly. Mandamus issued.—Comm. v. Harding, 87 Pa. 343 (1878), Agnew, C. J.; s. c. 2 Law Times (N. S.), 209, 6 W. N. C. 305.

(720) A prisoner indicted for murder, by a special plea to the jurisdiction impeached the constitutionality of the act of assembly which designated the county in which he was tried as a separate judicial district, on the ground that the county contained less than the number of inhabitants requisite under art. V., § 5, of the constitution. On demurrer, judgment was given for the commonwealth. Affirmed.—Coyle v. Comm., 104 Pa. 117 (1884), Clark, J.

(721) The local act of April 9, 1874 (P. L. 54), designated a certain judicial district as composed of three counties, and authorized the election of an additional law judge for this district. In a murder trial before such additional law judge, exceptions were taken to the sentence, on the ground that the act under which the judge was elected was unconstitutional, in that, under art. V., § 5, there could be no additional law judge in "single" districts composed of more than one county, as distinguished from "separate" districts composed of but a single county, for which districts only provision was made for an additional law judge. *Held*, that the act was not in conflict with the constitution, as the words "single districts" do not mean districts having but a single law judge.—Turner v. Comm., 86 Pa. 54 (1878), Gordon, J.; s. c. 5 W. N. C. 497.

(722) The act of April 9, 1874 (P. L. 54; P. & L. Dig. 2455, n.), provided that Fayette, a county of over 40,000 inhabitants, should compose the fourteenth judicial district, to which Greene county was attached. B. was elected an associate judge, not learned in the law, of Fayette county. *Quo warranto* proceedings were instituted against B. on the ground that Fayette county, being a separate district, within the intendment of the first sentence of art. V., § 5, of the constitution, the office of associate judge was abolished therein, by the third sentence of art. V., § 5. The defendant contended that Fayette county was not a separate district, as Greene county was attached thereto. *Held*, that the term "attached" was used to indicate that the separate district character of the large county, with which a smaller one is connected, shall not be lost by reason of the connection. Judgment of ouster.—Comm. v. Dumbauld, 97 Pa. 293 (1881), Paxson, J. (Mercur, Gordon, and Greene, JJ., dissenting); s. c. 13 Lanc. Bar, 5, 28 Pitts. L. J. 213, 38 L. I. 54, 9 W. N. C. 369.

(I) UNIFORM LAWS AS TO COURTS.

Section 26 of Article V. of the constitution provides that all laws relating to courts shall be uniform; under this section, an act relating to courts which is not uniform in its operation is unconstitutional. (723)

This section is prospective, and does not repeal existing laws relating to courts. (724)

An act authorizing the submission of a cause to a referee, whose decision shall be binding, does not create a new court. (725)

(723) The act of June 12, 1893 (P. L. 459, § 1; P. & L. Dig. 2308), provided that children under sixteen years of age charged with crime should be separately confined, and that all cases involving the trial or commitment of such children should be heard and determined by the courts

separate and apart from the trial of other criminal cases, of which sessions a separate record and docket should be kept. *Held*, that this was a law relating to courts which was not of uniform operation, and was therefore unconstitutional.—Courts for Trial of Infants, 3 D. R. 753 (1893), —Yerkes, P. J.; s. c. 11 Lanc. L. R. 174, 14 Pa. C. C. 254.

(724) A special act of April 14, 1851 (P. L. 622), for the county of Schuylkill, authorized the taking of judgment in certain cases where no affidavit of defence was filed. On rule to show cause why a judgment taken for want of affidavit should not be set aside, it was urged that said act had been abrogated by art. V., § 26, of the constitution. Rule discharged.—Bright v. Oakdale Coal Co., 31 L. I. 141 (1874), Pershing, P. J.; s. c. 6 Leg. Gaz. 269, 10 Phila. 609.

(725) On appeal from an award of viewers appointed by a court of quarter sessions, the case was submitted by agreement filed, to the decision of a referee, under the provisions of the act of May 14, 1874 (P. L. 166; P. & L. Dig. 192). After report filed, the court of common pleas refused to hear exceptions on the ground that no power was given them by said act to review the referee's findings. On error it was argued that the act of 1874 was in conflict with art. V., § 26, of the constitution which prohibits the creation of other courts to exercise the powers vested in the common pleas. *Held*, constitutional. Judgment reversed on another ground.—Philadelphia v. Linnard, 97 Pa. 242 (1881), Trunkey, J.

VI. REMOVALS FROM OFFICE.

Under section 4 of Article VI. of the constitution, the power to remove officers appointed by the governor, with the advice and consent of the senate, is vested solely in the governor (726); but an appointee to fill a vacancy in an elective office is not such an appointed officer as may be removed at the pleasure of the appointing power. (727)

A collector of delinquent taxes and the superintendent and matron of a poor farm are public officers removable at the pleasure of the appointing power, within the meaning of this section (728–729); but a policeman is not. (730)

This section did not abrogate a prior act giving to the court of quarter sessions power to remove school directors in case of neglect of duty (731); and under it power to remove members for misbehavior may be given to city councils. (732)

(726) In *quo warranto* proceedings to test the right of A. to the office of city recorder, the relator showed that A. had been removed from office by the governor (and had been notified thereof), under the power conferred by the governor by art. VI., § 4, of the constitution. A. answered that he had been appointed by the governor by and with the advice and consent of the senate; and that the section in question provided that appointed officers could be removed only by the power which appointed them; that the governor could not, therefore, remove him without the concurrence of the senate. Judgment of ouster affirmed.—Lane v. Comm., 103 Pa. 481 (1883), Mercur, C. J. Affirming 16 Phila. 102, 13 W. N. C. 29.

(727) C., the governor of the state, appointed A. to fill the office of recorder of deeds of the city of Philadelphia, which had become vacant by the death of the incumbent. Before the term for which A. had been appointed expired, B. became governor, and requested the opinion of the attorney-general as to his power to remove A. *Held*, that the office held by A., being elective in its character, did not come within the constitutional provision of art. VI., § 4, giving the governor power to remove appointed officers, even though the incumbent had been appointed to fill the vacancy.—Curley's Case, 4 D. R. 207 (1895), McCormick, Atty.-Gen.

(728) The act of March 24, 1870 (P. L. 544), provided for a collector of delinquent taxes to be appointed by the receiver of taxes. B., the receiver of taxes, removed C., a deputy, and appointed D. in his place. The select council refused to approve D.'s bond, contending that B. had no right to remove C. D. prayed for a mandamus to compel the select council to approve his bond, and contended that, under art. VI., § 4, the receiver of taxes had a right to remove C. Decree ordering mandamus affirmed.—Houseman v. Comm., 100 Pa. 222 (1882), Green, J.; s. c. 12 W. N. C. 505, 39 L. I. 403, 30 Pitts. L. J. 205.

(729) A. was appointed superintendent of a poor farm, and his wife was appointed matron. At the next meeting the poor board reconsidered their votes, by which these persons had been elected, and elected other persons. A. and his wife claimed that their appointment was a contract between themselves and the poor board, and brought suit for the balance of their salaries for a year. *Held*, that A. and his wife were "appointed officers," within the meaning of art. VI., § 4, of the constitution, and were removable at the pleasure of the appointing power, *i. e.*, the poor board. Judgment on verdict for amount of compensation for time actually spent in service, and motion for new trial denied.—Thomas v. Scranton Poor Dist., 4 C. P. Rep. 155 (1887), Hand, P. J.

(730) The act of June 1, 1885 (P. L. 37; P. & L. Dig. 577), provided that no policeman or fireman should be dismissed without his written consent except by the decision of a court. B., a policeman, claimed that he was dismissed without a compliance with the act. It was contended that the act was unconstitutional, as it seemed to violate the provisions of art. VI., § 4. *Held*, that, as policemen were not public officers, within the meaning of the provisions of the constitution relative to removals, the act was constitutional.

—Comm. v. Stokley, 19 Phila. 282 (1887), Biddle, J.; s. c. 44 L. I. 462.

(731) The act of May 8, 1854 (P. L. 617, § 9; P. & L. 761), provided that, if all the members of a board of school directors should neglect or refuse to perform any duty enjoined by law, the court of quarter sessions of the proper county might, upon complaint in writing, declare their seats vacant, and appoint others in their stead until the next annual election of directors. The act of April 22, 1863 (P. L. 523, § 1; P. & L. Dig. 762), provided that the school directors should meet and organize the board within ten days from the first Monday of June in each year. Taxpayers petitioned the quarter sessions to remove school directors for neglect of duty. It was contended that the court had no power to do so, as the acts in question had been abrogated by art. VI., § 4, of the constitution. Decree granting prayer of petition affirmed.—Butler Twp. School Dist., 158 Pa. 159 (1893), Dean, J. (Mitchell, J., dissenting); s. c. 27 Atl. 849, 33 W. N. C. 290.

(732) The fourth section of the act of May 23, 1889 (P. L. 277; P. & L. Dig. 632), provided that each branch of councils should have power and authority to vacate the seat of any of its members for misbehavior, neglect of duty, or misdemeanor. A. was removed from councils under this act, and petitioned for a mandamus to compel his reinstatement, contending that the act of 1885, conflicted with art. VI., § 4, of the constitution. Mandamus refused.—Comm. v. Sanderson, 1 D. R. 714 (1891), Archbald, P. J.; s. c. 11 Pa. C. C. 593.

VII. OATH OF OFFICE.

The official oath required by section 1 of Article VII. of the constitution must be taken by a county treasurer before he will be entitled to any of the fees of his office. (733)

A judgment on a verdict of murder in the first degree will not be arrested, on the ground that the grand jury had been selected by commissioners who had not taken and filed the oath required by section 1 of Article VII. of the constitution, where it appears that the commissioners had taken the proper oath before the deputy recorder and left it with him. (734)

The hiring by a candidate for office of persons to electioneer for him is not a violation of the election laws within the sanction of that clause of the constitutional oath of office whereby the party swears that he has not knowingly violated any election law, directly or indirectly (735); but the use of money to reimburse voters for travelling expenses and time lost in going to vote for a candidate, and in the purchase of whiskey to influence votes, is a violation of the election laws within the meaning of the constitution, and money so spent for a candidate cannot be recovered from him. (736)

Section 1 of Article VII. of the constitution does not require municipal officers to take the oath of office prescribed thereby. (737)

(733) A county brought an action against the purchaser of unseated lands for the amount of county and road taxes assessed and due on the same, and the costs and charges claimed by the county treasurer. *Held*, reversing the lower court, that as the said treasurer had not taken the oath of office prescribed by art. VIII. of the constitution of 1790 (art. VII., § 1, of constitution of 1874), suit could not be maintained to recover the fees of said officer.—Riddle v. Bedford County, 7 S. & R. 386 (1821), Duncan, J.

(734) In a trial of B. for murder in the first degree, B. moved to have the judgment arrested on the ground that the grand jury had been selected by jury commissioners who had not taken and filed in the office of the prothonotary the oath of office prescribed by art. VII., § 1, of the constitution. It appeared that the commissioners had taken, reduced to writing, and signed the oath of office before the deputy recorder, in his office, and had there left it before the beginning of their official terms. Judgment refusing motion affirmed.—Comm. v. Valsalka, 181 Pa. 17 (1897).

(735) A. was elected sheriff of a certain county, and took the oath prescribed by art. VII., § 1, of the constitution. He was indicted for perjury upon the ground that he had hired persons to electioneer for him. *Held*, reversing the lower court, that this was not in violation of the constitution, as a candidate was permitted to use any lawful means to procure his election.—Williams v. Comm., 91 Pa. 493 (1880), Trunkey, J.; s. c. 9 W. N. C. 113, 27 Pitts. L. J. 101.

(736) A. brought suit against B. for "$6.50, money borrowed at the instance of B., and used for him in paying travelling expenses for elections, and for men to leave their work and to go to the primary election for defendant, and for liquor bills," etc., "and for $2.00 paid for one gallon of whiskey furnished at the instance of B." B. defended on the ground that the money had been used unlawfully, in procuring his election, in violation of art. VII., § 1, of the constitution, and therefore could not be recovered. Judgment for B.—Howard v. Jacoby, 3 Pa. C. C. 436 (1882), Elwell, P. J.; s. c. 14 Lanc. Bar, 31.

(737) A., a police constable of a municipality, commissioned for a period of one year, was dismissed during his term of office by B., the mayor of the city, for unfaithful performance of his duties. A. petitioned for a writ of *quo warranto*

against B., to show cause why he occupied the office of mayor, alleging that, though B. had taken the oath of office customary in the municipality, he had failed to take that prescribed by art. VII., § 1, of the constitution. The lower court held that the constitution did not require municipal officers to take the oath. Judgment dismissing the petition affirmed. — Comm. v. McCarter, 98 Pa. 607 (1881), Green, J.

VIII. SUFFRAGE AND ELECTIONS.

(A) THE RIGHT OF SUFFRAGE.

1. Limitations of Legislative Power Over the Suffrage.

Under section 1 of Article VIII. of the constitution, prescribing the qualifications of electors, no constitutional qualification of an elector can be abridged, added to, or altered by legislation ; and an act which has the effect of depriving of a vote persons who, under the constitution, are entitled to vote, or which in terms deprives an elector of his right to vote, is unconstitutional. (738–739)

But the exercise of the elective franchise may be regulated by the legislature (740–741) ; accordingly, the legislature has the power to prescribe the form and nature of the proof by which unregistered electors must establish the existence of a right to vote under the constitution. (742)

Section 1 of Article VIII. repeals all general acts prescribing different qualifications for voters (743) ; but, where an act incorporating a borough required a certain period of residence within the borough as a qualification for electors at borough elections, such requirement was not changed by this section of the constitution. (744)

(738) The act of April 4, 1868 (P. L. 30), provided that no one could vote at an election unless his name was on the registry list. The registry lists were made out ten days before election, and an elector had to make affidavit that he had resided in the district ten days in order to have his name placed thereon. As the effect of this was to require twenty days' previous residence in the district in order to entitle a man to vote, instead of ten days, as provided by art. III., § 1, of the constitution of 1790 (see art. VIII,, § 1, of the constitution of 1874), the act was declared unconstitutional.—Page v. Allen, 58 Pa. 338 (1868), Thompson, C. J. (Agnew and Read, JJ., dissenting).

(739) A deserter from the army was refused the right of elective franchise under the act of June 4, 1866 (P. L. 1107). *Held*, reversing the lower court, that the constitution of 1790 (see art. VIII., § 1, of the constitution of 1874), did not leave it to the legislature to determine who should be excluded, but prescribed who should not be, and therefore the act was void, as depriving electors of their constitutional rights.—McCafferty v. Guyer, 59 Pa. 109 (1868), Strong, J. (Agnew and Read, JJ. dissenting).

(740) The act of April 17, 1869 (P. L. 49, §§ 1–4), provided for the registration of qualified electors, and the placing of their names on an assessors' list, and further provided that the assessors' list should be the only evidence of the fact of qualification on the day of election. A bill was brought to restrain the officers of a city from carrying out the law, on the ground that it was unconstitutional, as it might deprive qualified citizens of the right to vote, and therefore prevent freedom of elections. *Held*, reversing the lower court, that, as this act did not subvert any of the true electors' rights, but merely provided means which the legislature believed would prevent frauds, it was constitutional.—Patterson v. Barlow, 60 Pa. 54 (1869), Agnew, J. (Thompson, C. J., and Sharswood, J., dissenting); s. c. 1 Leg. Gaz. 108, 16 Pitts. L. J. 137.

The act of April 17, 1869 (P. L. 49, § 1–4), was repealed by the act of January 30, 1874 (P. L. 30), which was amended by the act of May 29, 1891 (P. L. 134 ; P. & L. Dig. 1730 *et seq.*), the act of 1891, which practically re-enacted the act of 1869, was itself repealed by the act of June 10, 1893 (P. L. 419 ; P. & L. Dig. 1736 *et seq.*).

(741) The act of June 19, 1891 (P. L. 349), regulating elections, provided that the names of the candidates nominated by any political party which at the preceding election had polled 3 per cent. of the largest vote cast for any office of the state, or in that portion of it for which the nomination was made, should be printed on the official ballot. The act also provided that each voter should indicate his choice by either secretly marking the names of certain candidates singly, or by designating a group of candidates all together by a single mark, or by inserting other names. A., a citizen, contested an election under this act, on the ground that the effect of the act was to give to one class of voters an advantage in making nominations and exercising the elective franchise, which it denied to others ; and that, by reason of such inequality and discrimination, it was in conflict with art. VIII., §§ 1–7, of the constitution of 1874. *Held*, affirming the lower court, that, as this act preserved the right of each elector to vote for whom he pleased, it was not in conflict with the constitution.—De Walt v. Bartley, 146 Pa. 529 (1892), Paxson, C. J. ; s. c. 24 Atl. 185, 30 W. N. C. 121. Affirming 1 D. R. 199.

(742) A. filed a petition contesting the election

of B. as court clerk, alleging fraudulent voting by persons not duly qualified. B.'s answer set up that those who voted were duly qualified, as witnessed by affidavits filed by them, stating *seriatim*, that they had fulfilled every qualification required by the constitution, art. VIII., § 1. A. showed that the act of January 30, 1874 (P. L. 31, § 10), required further and other facts to be stated, and the examiners so found, and excluded certain votes; and their finding was confirmed by the court. B. appealed, contending that the act of 1874 could not be mandatory, but only directory, as, if mandatory, it was in conflict with the constitution, which prescribed the qualifications of voters, and was self-executing. Judgment affirmed, on the ground that the act was mandatory, and also constitutional, because the method of determining the existence or lack of the constitutional qualifications was left by art. VIII. to the legislature, the section not being self-executing.—Cusick's Election, 136 Pa. 459 (1890), Paxson, C. J.; s. c. 26 W. N. C. 425. Affirming s. c. 1 Lack. Jur. 265.

(743) Section 16 of the act of April 3, 1861 (P. L. 320; P. & L. Dig. 419), required voters at a borough election to have resided within the borough for six months immediately preceding the borough election, and to have paid a borough tax within one year. *Held*, that, as the qualifications for a voter under this act were different from those required by art. VIII., § 1, of the constitution of 1874, the act was abrogated thereby.—Rishel v. Luther, 2 D. R. 769 (1893), Krebs, P. J.

(744) The act incorporating the borough of Easton prescribed that persons who should have resided within the same for one year immediately preceding the election should be qualified to vote for the borough officers. At a certain borough election three persons who had not resided a year in the borough voted, and the election was contested for that reason. It was claimed that the act was set aside by the constitution of 1874. *Held*, affirming the lower court, that the act was still in force, and that the votes should not be counted.—Wolverton's Election Case, 1 Walk. 48 (1883).

2. Assessment and Payment of Tax.

Under the constitutional provisions relating to the assessment and payment of tax as qualifications for voting, the tax must have been personally assessed before the period limited in the constitution; the mere fact that a tax has been laid before that period, if it has not also been assessed upon the party at the proper time, does not entitle him to vote. (745)

The constitutional requirement that tax shall have been paid at least one month before election does not prohibit the payment and receipt of tax within the prescribed time, but only renders payment within that time inoperative to qualify the person so paying, to vote; hence tax offered within one month of election should be received and receipted for. (746)

The act of April 17, 1866 (P. L. 969; P. & L. Dig. 1841), providing that the deputy receiver of taxes shall collect city and state taxes, and prohibiting him from receiving one of these taxes alone, does not prohibit the payment of a single tax to the receiver of taxes, and hence does not interfere with the constitutional right of a citizen to pay only one tax in order to be entitled to vote; the act is therefore constitutional. (747)

(745) A.'s vote was refused, in an election, on the ground that he had not paid a tax which had been assessed at least six months previous to the election, as required by art. III., § 1, of the constitution of 1790 (which has been changed by reducing the time for assessment to two months previous to the election, by art. VIII., § 1, of the constitution of 1874). A tax was laid more than six months previous to the election, but A. had not been personally assessed until the day before the election. In a suit against B., the election officer, for refusing to receive A.'s ballot, A. contended that the laying of the tax was sufficient. *Held*, that the tax must also be personally assessed, otherwise the voter was disqualified. Judgment for B.—Catlin v. Smith, 2 S. & R. 267 (1816), Tilghman, C. J.

(746) The petitioner went on the thirty-second day before the election to pay his tax, but, as his name had been omitted from the list, the receiver refused to accept the tax. The assessor refused to rectify the mistake, alleging that he had no authority then to change the list. On revision of the list by the court, the name was inserted, but the receiver again refused to take the tax, on the ground that it was offered within the time before election prescribed in the constitution for payment. On application to the court to direct the receiver to receive the tax, it was *held*, that the receiver should receive taxes at any time when offered, as art. VIII., § 1, of the constitution of 1874 does not prohibit the payment of a tax within thirty days of the election, but only provides that such payment shall not be sufficient to enable the taxpayer to vote.—Connolly's Case, 5 W. N. C. 8 (1877), Mitchell, J.

(747) A petition was filed for a mandamus against the receiver of taxes and his deputy to compel them to receive and receipt for A.'s county poll tax. The petition averred the tender of said tax to the deputy, and his refusal to accept it. Defendants demurred, on the ground that the act of April 17, 1866 (P. L. 969; P. & L. Dig. 1841), provided that the deputy receiver should collect the city and state taxes, and A. not having tendered both, he was not authorized to take only one. A. contended that the act was in conflict

with art. III., § 1, of the constitution of 1790, which provided that a state or county tax should be paid in order that a person may enjoy the rights of an elector (see art. VIII., § 1, clause 4 of the constitution of 1874), and therefore interfered with A.'s right to vote. *Held*, that, although the deputy was authorized to receive only the two taxes together, the act did not interfere with A.'s constitutional right to pay the single tax to the receiver, and was therefore constitutional. Mandamus granted as to the receiver and denied as to the deputy.—Comm. v. Peltz, 1 Brewst. 159 (1867), Brewster, J.; s. c. 6 Phila. 330, 24 L. I. 325.

See, also, Election Law, 9 Phila. 497 (1872), Allison, P. J.

3. Residence.

Under Art. VIII., § 1, of the constitution, requiring residence within the election district, a person who has an office in an election district, but does not eat or sleep therein, is not entitled to vote there. (748)

The presence of a student at an educational institution is not, of itself, such a residence as is required by the constitution for the specified period as a qualification for voting; it must be shown in addition that the student has abandoned his prior residence; this was held to be the law before the constitution of 1874, and the same principle is embodied in Art. 8, § 13, of said constitution, which was intended not to change, but to explain the existing law. (749–751)

An act providing that soldiers may vote at such place as may be designated by their commanding officers is unconstitutional, as authorizing voting outside of the voter's election district. (752)

Paupers who have been discharged from the almshouse but remain under contract of service for hire, are entitled to vote as residents of the almshouse precinct. (753)

The requirement as to residence within the election district does not prevent a citizen from voting for, and holding the office of, school director, in a district to which he has been attached and in which he is taxed for educational purposes, though he is a resident of another election district; and the act, passed prior to the constitution of 1874, attaching him to such district and conferring such privilege therein is not abrogated by such constitution. (754)

The requirement that voters shall have resided in the election district for a period of two months, requires a residence of two full calendar months. (755)

The provisions of the general borough act of April 3, 1851 (P. L. 320, § 16; P. & L. Dig. 419), requiring electors offering to vote at a borough election to have resided six months in the borough and to have paid a borough tax, were repealed by section 1 of Article VIII. of the constitution. (756)

(748) A. applied for a citation to the assessor to register him as a voter, alleging that he had resided in a certain election district at least two months immediately preceding the election. It appeared that A. had an office in such district, but neither ate or slept therein. *Held*, that he was not such a resident as to be entitled to vote.—Leaman's Application, 8 Lanc. L. R. 405 (1891), Patterson, J.; s. c. 4 Del. Co. 567.

(749) On a case stated in an election contest, the point at issue was whether the votes of certain students at college should be counted. The students whose votes were in question were of two classes (1) those who were not supported by their parents, were emancipated from their fathers' families, and had left the homes of their parents, intending never to return to them as permanent abodes; (2) those who were supported by their parents, visited their parents' homes during vacation, and might or might not return there after graduation. The students had lived from one to three years at the college, had come to the place for no other purpose than to receive a collegiate education, and intended to leave after graduation. They had been assessed, and had paid tax before election. The supreme court *held*, affirming the lower court, that said students were not entitled to vote in the college district; and their votes were excluded from the count.—Fry's Election Case, 71 Pa. 302 (1872), Agnew, J.

(750) In the municipal election for the spring of 1875, in the township in which Lincoln University is situated, twenty-five students of the university voted; and it was admitted that their votes determined the election of township officers. In a contest of the election in the quarter sessions, it appeared that, as to fifteen of the students, either there was no information, except that they had come to the institution from without the district, or that they had come to the institution as minors, with parents living, and with no evidence of having emancipated from their parents' control. As to nine others, it appeared that they had come to the institution either after attaining their majority, or before they were of age and without parents living, and with no intention of returning to the places of their former residence. Another had graduated and was a teacher in the institution, intending to remain, or to remain so long as sufficiently compensated. On the evidence of abandonment of former residence by the latter ten, they were *held* entitled to vote; the other fifteen were found not so entitled. Decree declaring the result of the election in accordance with their decision.—Lower Oxford Contested Election, 1 Chest. Co. 253 (1875), Butler, P. J.

(751) An application was made to the common pleas to have struck from the registry list of voters the names of certain students of the seminary of St. Charles Borromeo, in the election district.

At the hearing, it appeared that certain of the students were in the preparatory department, while others had become affiliated, and were a part of the ecclesiastical body, on their way to receive the final consecration of the priesthood. The court, while holding that they had no power to strike off the names and that they should remain on the list subject to the determination by the election board of the students' right to vote, *held*, that those in the preparatory department were not entitled to vote by their mere presence in the college, without other actual places of residence in the district, and that the affiliated students could not vote because of their presence at the college for a competent period, without having elected the college as their place of residence, where they had actually been for the period required by the constitution, and where they had assumed, or intended to assume, all the rights, duties, and responsibilities of citizenship.—Lower Merion Election Case, 1 Chest. Co. 257 (1880), Ross, P. J.

(752) The act of July 2, 1839 (P. L. 519, § 43), provided that soldiers might exercise the right of suffrage at such place as might be appointed by the commanding officer of the troop or company to which they should respectively belong. Several citizens contested the election of B. for district attorney on the ground that the act was unconstitutional under art. III., § 4, of the constitution of 1790 (see art. VIII., § 6, of the constitution of 1874). *Held*, reversing the decree of lower court, that the act was unconstitutional as permitting the elector to vote elsewhere than in his election district.—Chase v. Miller, 41 Pa. 403 (1862), Woodward, J. (Thompson, J., dissenting).

(753) The question was presented to the quarter sessions whether ninety-three persons living at the almshouse were paupers in the sense of the constitution, art. VIII., § 12 (see § 13 of art. VIII., constitution of 1874). It appeared that said persons had been discharged as paupers, but remained in the institution under contract of service for hire. *Held*, that they were entitled to vote as residents of the precinct.—Registry Lists, 10 Phila. 213 (1874), Ludlow, J.; s. c. 31 L. I. 332.

(754) The special acts of April 8 and April 13, 1867 (P. L. 876-1237), annexed certain farms and sections adjoining the borough of Y. to the school district of that borough, and provided that the owners of such farms should have the privileges of the said borough "for educational purposes," should be taxed therein for school purposes, and should be allowed to vote for and hold the office of school directors in said borough. In an election for school director, the votes of the owners of such farms, etc., were not counted, as it was claimed that their right to vote was abrogated by art. VIII., § 1, of the constitution of 1874, requiring residence in the election district in which the person offers to vote. *Held*, affirming the lower court, that their votes should have been counted.—Colvin v. Beaver, 94 Pa. 388 (1880), Mercur, J.; s. c. 9 W. N. C. 396.

(755) In a contested election case, it was shown that two men, who came into the district to reside on December 16, had voted at an election held on February 15, following. *Held*, that they were not qualified voters.—Reifsnyder v. Musser, 12 W. N. C. 155 (1881), Elwell, P. J.

(756) At a borough election held in 1893, the election board gave the certificate of election to A. The election was contested by B. on the ground that some votes were cast by men who had not the requirements according to the act of April 3, 1851. By this act all electors must have resided six months within the borough and paid a borough tax. A. contended that this act was repealed by the constitution of 1874, art. VIII., § 1, which specifically prescribed the qualifications of voters. Petition of B. dismissed.—Rishel v. Luther, 2 D. R. 769 (1893), Krebs, P. J.

See, also, Election Law, 9 Phila. 497 (1872), Allison, P. J.

(B) LOCATION OF POLLING PLACES.

Under section 1 of Article VIII. of the constitution, polling places for an election district must be located within the district. (757–758; but see 759–760)

(757) An election was contested upon the ground that votes were cast at a polling place which had been fixed outside of the election district. *Held*, that this rendered the votes illegal, as in violation of art. VIII., § 1, of the constitution, providing that every voter should have resided in the election district where he shall offer to vote.—Yonkin's Contested Election, 2 Pa. C. C. 550 (1886), Sittser, P. J.

(758) Elections for certain townships were held in adjacent boroughs which constituted separate election districts. The elections were contested on the ground that the votes were illegal under art. VIII., § 1, of the constitution of 1874. *Held*, that the elections were illegal, and the votes cast were not counted.—Smith v. Higby, 12 Pa. C. C. 423 (1892), Henderson, P. J.; s. c. 2 D. R. 311.

(759) A certain election was contested under art. VIII., § 1, of the constitution of 1874, upon the ground that votes were cast at a polling place which had been fixed outside of the election district. *Held*, that this did not render the votes illegal, if the electors were qualified to vote.—Kinnear's Contested Election, 2 Pa. C. C. 666 (1882), Brown, P. J.

(760) At a certain election votes were cast by properly qualified electors of the district at the polling places appointed for such district, but such polling places were outside of the district. The election was contested on the ground that it was contrary to art. VIII., § 1, of the constitution of 1874. The votes were *held* legal.—Metzger's Case, 2 D. R. 301 (1890), Rockefeller, P. J. (Mayer, P. J., dissenting).

The qualification in art. VIII., § 1, of the constitution of 1874, that an elector "shall have resided in the election district where he shall offer to vote at least two months preceding the election" simply prescribed the qualification of voters, and did not attempt to define or limit election districts, nor to locate polling places, and did not prohibit a qualified elector from casting his ballot at the polling place designated for his district, although it was in a borough adjoining the township in which he resided.—Election Instructions, 2 D. R. 299 (1888), Barnett, P. J.

(C) POWER OF QUARTER SESSIONS TO CREATE ELECTION DISTRICTS.

Section 11 of Article VIII. of the constitution provides that "townships, and wards of cities or boroughs, shall form or be divided into election districts of compact and contiguous territory, in such manner as the court of quarter sessions of the city or county in which the same are located may direct."

Under this section the power to form election districts, and to prescribe the manner of proceeding therefor, is vested in the courts of quarter sessions, notwithstanding an act of the legislature prescribing a certain procedure, or in the absence of a petition duly sworn to, or of any petition (761–762); and such power may be exercised by such courts at any time they deem proper. (763)

This section is not violated by the act of May 14, 1874 (P. L. 159; P. & L. Dig. 386), prescribing the manner in which courts of quarter sessions should divide boroughs into wards. This act is not within the meaning of said section. (764)

(761) A petition was filed praying the court of quarter sessions to divide a certain township into two election districts. The court made the necessary order, which was excepted to, on the ground that the court had not proceeded by the appointment of commissioners as prescribed in the act of May 18, 1876 (P. L. 178; P. & L. Dig. 1767), which act also provided that the court should confirm the report of the commissioners, unless exceptions thereto were filed within a given time. It was contended, on the other hand, that this act was in conflict with art. VIII., § 11, of the constitution, providing that townships should be divided into election districts in such manner as the court of quarter sessions might direct. The lower court sustained the contention and held that the power to divide townships into election districts was still in the quarter sessions. Judgment affirmed.—Bern Twp., 115 Pa. 615 (1887); s. c. 9 Atl. 62, 19 W. N. C. 485.

(762) A petition to divide a borough into two election districts was excepted to because it was not sworn to. The court of quarter sessions overruled the exceptions on the ground that it had jurisdiction to make the division under art. VIII., § 11, of the constitution, and could act without any petition.—North Chester Election Dist., 3 Pa. C. C. 247 (1887), Clayton, P. J.; s. c. 3 Del. Co. 154.

(763) The date of an election was fixed for the 26th of September. On the 1st of September the court of quarter sessions divided a certain ward into two election districts. B. was elected district attorney, and his election was contested on the ground that the division was improper, because it was made at so late a period that no legal and proper register could be had, and that, therefore, an undue election had resulted. *Held*, that the division complained of did not render the election illegal, and that such division could be made whenever thought proper by the court.—Contested Election of Dist. Atty., 22 Pitts. L. J. 109 (1874), Pearson, P. J.

(764) The act of May 14, 1874 (P. L. 159; P. & L. Dig. 386), provided a method by which the courts of quarter sessions should divide boroughs into wards. In a proceeding under the act, it was contended that it was unconstitutional, as violating art. VIII., § 11, of the constitution, providing that townships and boroughs should be divided into election districts in such manner as the court of quarter sessions might direct. *Held*, that the purpose of the act was not within the scope of the constitutional provision, and there was no violation.—Eighth Ward of Norristown, 3 Pa. C. C. 475 (1887), Swartz, J.; s. c. 19 W. N. C. 510, 3 Montg. Co. 89.

(D) MUNICIPAL ELECTIONS.

Section 3 of Article VIII. of the constitution provides that "all elections for city, ward, borough, and township officers for regular terms of service shall be held on the third Tuesday of February." Under this section city elections should be held on the third Tuesday of February of the same year in which the elections would be held under the city charters. (765)

(765) Before the adoption of the constitution of 1874 elections for city officers of Pittsburg were held on the first Tuesday in December. The constitution, of 1874 provided in art. VIII., § 3, that all elections for city officers should be held "on the third Tuesday of February." Under the old system an election would have been held in December, 1874, and in February, 1874, B. was elected mayor to serve three years from February 1, 1875. On the third Tuesday of February, 1875, another election was held, and A. was elected mayor. B. refused to give up the office, and A. brought *quo warranto*. The lower court held that B. was entitled to the office, having been lawfully elected, as the effect of the constitution was to set back the time of election from December to February of the same year. Judgment

affirmed.—Comm. v. McCarthy, 3 W. N. C. 477 (1876).

(E) BALLOTS.

Section 4 of Article VIII. of the constitution provides that "all elections by the citizens shall be by ballot;" and that "every ballot shall be numbered in the order in which it shall be received." The fact that a ballot is not numbered as provided for in this section does not necessarily invalidate such ballot, where no fraud is alleged. (766)

(766) A certain municipal election was contested upon the ground that some of the ballots counted were not numbered, as required by art. VIII., § 4, of the constitution. It was not alleged that there was any fraud in the election, or that such ballots were cast by electors not qualified. *Held*, that the numbering provided for in the constitution was merely intended for a safeguard against fraud, that the fact that a ballot was not numbered did not necessarily render such ballot illegal, and that the contest could not be sustained.—Dougherty's Contested Election, 6 Pa. C. C. 507 (1889), Mehard, P. J.

(F) UNIFORMITY OF ELECTION LAWS.

Section 7 of Article VIII. of the constitution provides that "all laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the state, but no elector shall be deprived of the privilege of voting by reason of his name not being registered."

In the absence of express legislation, the constitution did not repeal an act establishing a special system of voting in certain counties. (767–768)

The "Ballot-Reform Act," of June 19, 1891 (P. L. 349), providing that certificates of nomination of township and borough officers shall be filed at a different time and with different officers from the certificates of nomination of all other officers, does not violate this section. (769–770)

(767) In a contested election case it was contended that art. VIII., § 7, of the constitution did not, in the absence of legislation to carry out its provisions, affect a special act relating to voting in certain counties, and under which the election in question was held. Judgment accordingly.—Terry's Contested Election Case, 3 W. N. C. 31 (1874), Elwell, P. J.

(768) The special act of April 6, 1868 (P. L. 729), established in Luzerne and Wyoming counties a system of voting different from that which prevailed throughout the rest of the state. In conformity with this act, B. was elected prothonotary. His election was contested on the ground that it was contrary to art. VIII., § 7, of the constitution. The lower court held that, in the absence of legislation repealing or supplying this act, it was not abrogated by the constitution of 1874. Decree affirmed.—Wright v. Barber, 5 W. N. C. 444 (1878); s. c. 25 Pitts. L. J. 188.

(769) An injunction was asked against county commissioners to restrain them from incurring expenses of election under the act of June 19, 1891, on the ground that the act, in failing to provide for elections other than of public officers, violated art. VIII., § 7, of the constitution, requiring election laws to be uniform. Injunction refused.—Ripple v. Commissioners of Lackawanna Co., 1 D. R. 202 (1892).

(770) The act of June 19, 1891, regulating elections, provided that certificates of nomination for all offices, except township and borough offices, should be filed with the county commissioners at least forty-two days before the election, while, in the case of township and borough offices, the certificates were to be filed with the auditors of the townships and boroughs. A bill in equity was filed by taxpayers praying for an injunction to restrain the county commissioners from proceeding under the act on the ground that it was a violation of art. VIII., § 7, of the constitution, requiring uniformity in election laws throughout the state. Bill dismissed.—Meredith v. Lebanon County, 1 D. R. 220 (1892), McPherson, J.

See, also, De Walt v. Commissioners of Phila. County, 1 D. R. 199 (1892).

The act of June 19, 1891 (P. L. 349); was repealed by the act of June 10, 1893 (P. L. 419, P. & L. Dig. 1757, *et seq.*).

(G) BRIBERY AND VIOLATION OF ELECTION LAWS.

Section 8 of Article VIII. of the constitution provides that "any elector who shall receive, or agree to receive, for himself or for another, any money, reward, or other valuable consideration for his vote at an election, or for withholding the same, shall thereby forfeit the right to vote at such election."

Under this section the courts have power to purge the ballot box of votes cast by persons who have given or received a consideration for a vote, notwithstanding such persons have not been convicted of, or have not admitted, the bribery. (771)

Section 9 of Article VIII. of the constitution provides that "any person who shall, while a candidate for office, be guilty of bribery, fraud, or wilful violation of any election law, shall be forever disqualified from holding an office of trust or profit in this commonwealth."

Under this section, a writ of *quo warranto* may issue against a public officer for bribery, fraud, or wilful violation of any election law, without a preliminary conviction for the offence in the quarter sessions, and the question as to whether such offence has been committed can be tried in the *quo warranto* proceedings. (772)

The act of June 8, 1881 (P. L. 70; P. & L. Dig. 1744), entitled "An act to prevent bribery and fraud at nominating elections, nominating conventions, returning boards, county or executive committees, and at the election of delegates to nominating conventions in the several counties of the commonwealth," is a lawful exercise of legislative power, and is an election law within the meaning of section 9 of Article VIII. of the constitution; and an officer convicted of bribery under this act is rightly deprived of his office. (773)

(771) An election for judge was contested on the ground that certain persons had voted who had received a compensation for their votes. It was contended by the contestants that the court had the right to reject such votes under art. VIII., § 8, of the constitution. The respondent contended that such votes could not be rejected unless the persons casting them had been convicted of bribery, or had confessed before the election board, and further, that art. VIII., § 8, of the constitution had constituted the election board, and not the court, the tribunal to determine whether or not an elector had received or paid a consideration for a vote. *Held*, that, both inferentially, and by a fair construction of all the sections of the constitution bearing on the subject, and of the act of assembly authorizing tribunals for trying contested elections, such tribunals had the power to purge the ballot box of all such votes.—White's Contested Election, 4 D. R. 363 (1895).

(772) A writ of *quo warranto* against A. was issued under art. VIII., § 9, of the constitution, at the relation of the attorney-general. The information charged that A. had been elected high sheriff of a certain county, and that while he "was a candidate he was wilfully and corruptly guilty of bribery, fraud, and the wilful violation of the election laws of the commonwealth." The writ was quashed upon the ground that the defendant should have been legally adjudged guilty of the crimes charged in the information, before proceedings could be started to deprive him of his office. *Held*, error, as such previous conviction was not necessary.—Comm. v. Walter, 83 Pa. 105 (1876), Paxson, J.; s. c. 3 W. N. C. 376, 25 Pitts. L. J. 78, 34 L. I. 105.

(773) The attorney-general obtained a writ of *quo warranto* under the act of June 8, 1881, against B., who had been elected county commissioner, charging him with bribery under the act of 1881. B. contended that the act was not an election law, within the meaning of art. VIII., § 9, of the constitution. Judgment of ouster against B. affirmed.—Leonard v. Comm., 112 Pa. 607 (1886), Paxson, J.; s. c. 4 Atl. 220, 17 W. N. C. 481, 33 Pitts. L. J. 441, 43 L. I. 226.

(H) OVERSEERS OF ELECTIONS.

Section 16 of Article VIII. of the constitution provides for the appointment of "overseers of elections" to supervise the proceedings of election officers, decide differences, etc. The "Ballot-Reform Act" of June 19, 1891 (P. L. 349), in excluding overseers of elections from viewing the count, did not violate this section. (774)

(774) A bill was filed to restrain county commissioners from incurring expenses of an election under the act of June 19, 1891 (repealed June 10, 1893,—P. L. 419; P. & L. Dig. 1736 *et seq.*), upon the ground that such act excluded state overseers of election from viewing the count, thereby depriving them of a necessary privilege for the performance of their duty, and was therefore in violation of art. VIII., § 16, of the constitution. Injunction refused.—Ripple v. Commissioners of Lackawanna, 1 D. R. 202 (1892).

(I) TRIAL OF ELECTION CONTESTS.

Section 17 of Article VIII. of the constitution provides that the trial and determination of contested elections shall be by the courts of law or by one or more of the law judges thereof.

This section, in connection with the act of May 19, 1874 (P. L. 208; P. & L. Dig. 886), repeals any local or special laws inconsistent with the section. (775)

This section does not take away from the respective houses of the legislature the power conferred on them by Art. II. of judging of the elections and qualifications of their members, but merely provides a method of procuring and furnishing to each house the necessary evidence; and the act of May 19, 1874, passed to give due effect to these provisions, and providing that contested elections shall be tried and determined by the courts of common pleas, contains nothing indicating an intention to authorize a review by a superior court on *certiorari* of the conclusion of the common pleas in such a case. (776)

(775) The act of May 19, 1874, divides the cases in which elections may be contested into four classes. The fourth class includes all other officers except members of the general assembly, whether elected by the qualified voters of the counties, cities, townships, boroughs, wards, school districts, or any other division of the state. The act also provides that the fourth class of cases shall be tried and determined by the court of quarter sessions of the peace of the county in which the election shall be contested. A motion was made to dismiss a petition to a court of quarter sessions, contesting the election of a councilman, on the ground that, by the city charter, councils were made the judges of their own elections, and that this was not repealed by article VIII., section 17, of the constitution. Motion overruled.—Braun's Contested Election Case, 22 Pitts. L. J. 201 (1875), Ewing, J.

(776) A *certiorari* was taken to a decree of the

common pleas in a contested election of a state senator adjudging that A. had received the greatest number of legal votes cast, and was entitled to the certificate of election. It was contended by the plaintiff in the *certiorari* that, though the act of assembly relating to contested election cases in terms allowed no appeal, plaintiff was entitled to a review on *certiorari*. *Held*, quashing the writ, that art. VIII., § 17, was not intended to take from each house the power given by art. II., § 9, to judge of the elections and qualifications of its members, but merely to provide a method for procuring and presenting to the respective houses the necessary evidence and information, and that the act of May 19, 1874, passed with a view to give due effect to the provisions of the constitution cited, contained nothing indicating an intention of the legislature to authorize a review of the conclusion of the common pleas on *certiorari*. —M'Neill's Contested Election, 111 Pa. 235 (1886), Mercur, C. J.

The case of Ewing v. Filley, 43 Pa. 384 (1862), Lowrie, C. J., deciding that an act providing a certain form of proceedings without a jury in cases of contested elections was not unconstitutional is of no importance since the passage of the constitution of 1874, which expressly allows such proceedings in art. VIII., section 17.

IX. TAXATION AND FINANCE.

See, also, the title "Taxation," *infra*.

(A) THE RIGHT TO TAX.

1. Taxation an Inalienable Right.

A legislature cannot alienate the right of taxation so as to bind future legislatures. (777–778)

(777) The act of May 16, 1857 (P. L. 519), provided for the sale of the main line of the public works, the minimum price thereof to be $7,500,000, and also provided that if the Pennsylvania Railroad Company purchased such main line, and, in addition to the price at which it was knocked down, paid $1,500,000, then the Pennsylvania Railroad Company should be forever discharged by the commonwealth from the payment of all tonnage taxes and all other taxes whatever, except for school, city, county, borough, and township purposes. A., a taxpayer, filed a bill to restrain the consummation of a sale to the Pennsylvania Railroad Company on the ground that the legislature had no power to bargain away its right to tax the company. Injunction granted.—Mott v. Pennsylvania R. Co., 30 Pa. 9 (1858), Lewis, C. J.; s. c. 5 Pitts. L. J. 68.

(778) A certain bank was incorporated under the act of April 27, 1852 (P. L. 443, § 1), which provided that the capital stock of such banks should not be subjected to taxation for any other than state purposes. The act of January 4, 1859 (P. L. 828, § 4), empowered the city in which the bank was situated to levy, assess, and collect for the use of the city an annual business tax on all banks, brokers, etc. In pursuance of this act the city levied a tax upon the bank. In an action of debt for the amount of such tax, the bank contended that the act of 1859 was unconstitutional as impairing the obligation of the state's contract with the bank. *Held*, that the act was constitutional, and judgment was given for the city. Affirmed.—Iron City Bank v. Pittsburgh, 37 Pa. 340 (1861), Woodward, J.

2. Uniformity of Taxation.

(*a*) *The Right to Classify.*

Article IX., § 1, of the constitution provides that "all taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

This section does not take away from the legislature the right to designate the land lying in a specific district as of a certain class, for purposes of taxation, and the courts cannot declare such classification void unless the violation of the constitution is clear. (779)

Classification of property, with different taxes upon each class, is not opposed to this section. (780–781) Thus, an act imposing upon the franchises of corporations of a certain class a graduated tax, according to the value of such franchises (782), or imposing a tax on the nominal value of corporation bonds (783), or providing for the rating of corporations for taxation according to dividends declared, or actual value of the stock (784), or providing for a license tax of a given sum for every car operated by street railway companies (785), is constitutional.

An act abolishing state taxes as to certain classes of corporations, but retaining them as to others, does not violate this section (786); nor does an act which taxes all persons, natural and artificial, but excepts one particular class of corporations from its operation. (787) A previous act which constituted foreign insurance companies a special class by themselves, and imposed a tax upon them, was not abrogated by this section. (788)

A tax upon certain classes of merchants only does not conflict with this section (789–792), nor does an ordinance exacting a license tax from all persons engaged in a particular business. (793)

An act levying a tax on the fees of cer-

tain county officers is not unconstitutional if uniform throughout the class thus created. (794)

The section does not prevent the imposition of a license fee on bicycles to the exclusion of other vehicles. (795)

(779) The act of April 6, 1867 (P. L. 846), for the consolidation of the city of Pittsburgh, required the assessors to return real estate used for agricultural purposes marked "rural," such real estate to be assessed at two-thirds the rate for city taxation. The act of April 1, 1868 (P. L. 565), repealed the act of 1867, and designated particular districts among others, X., as "rural," and subject to a tax of only two-thirds the regular city rate. The city levied and was about to collect the regular city rate on A.'s land, in X. district, alleging that the classification of the act of 1868 was abrogated by the constitutional provision that all taxation should be uniform, as it was in clear violation of such provision. A. filed a bill for an injunction to restrain the collection. Injunction granted, and decree affirmed. —Roup's Case, 81* Pa. 211 (1874).

(780) The act of April 14, 1868 (P. L. 1127), provided that, in addition to the taxes collectible under existing laws, owners of ore-beds situated in a certain township, should pay to the road supervisors one and one-half cents for every ton of ore mined and carred away over the roads of the township. In an action to recover this tax the defendant contended that the tax was so unequal and unjust, because assessed only upon a given class of property owners, and its mode of enforcement so uncertain, that its imposition was unconstitutional. Judgment for plaintiff affirmed.—Weber v. Reinhard, 73 Pa. 370 (1873), Sharswood, J.

(781) The act of March 18, 1875 (P. L. 15), classified property in cities of certain classes and levied different rates of taxation upon each class. A writ of *quo warranto* was issued to test the right of A., the tax collector appointed under said act, to his office, on the ground that the act was special legislation with regard to taxation, and violated art. IX., § 1, of the constitution, *Held*, that the act was constitutional and judgment for A.— Comm. v. Halstead, 1 Pa. C. C. 335 (1886), Hand, P. J.

This case was reversed on the ground that the act of 1875 violated article III., § 7, of the constitution.—18 W. N. C. 385 (1886), Green, J.

(782) The A. company appealed from a tax settlement under the act of April 24, 1874 (P. L. 68 ; P. & L. Dig. 4451), which taxed coal corporations, in the state, on their franchises, according to the amount of coal mined, contending that the act was void under art. IX., § 1, of the constitution, because it did not impose a uniform tax on the coal companies on which the tax was imposed. *Held*, that the tax was a franchise tax, not a property tax on the coal itself, and was therefore uniform, within the classes created. Judgment for the commonwealth affirmed.—Kittanning Coal Co. v. Comm., 79 Pa. 100 (1875), Agnew, C. J. ; s. c. 3 Foster, 23, 7 Leg. Gaz. 293, 32 L. I. 346, 22 Pitts. L. J. 178.

(783) The act of June 30, 1885 (P. L. 193 ; P. & L. Dig. 4456), required the treasurers of corporations to assess a three-mill tax upon the nominal value of corporation bonds and retain the same out of the dividends payable to the bondholders. The A. company failed to follow the provisions of the act, and appealed from a tax settlement against it, alleging that the act was unconstitutional, because it discriminated against one corporation in favor of another in the same class, the nominal value of whose bonds was less than that of the first corporation. *Held*, that the tax was on the bondholders and not on the corporation, and that it was competent for the legislature to make them a separate class so long as the tax was uniform in its operation as regarded them. Judgment for A. was reversed.—Comm. v. Delaware Div. Canal Co., 123 Pa. 594 (1889), Clark, J. ; s. c. 16 Atl. 584, 23 W. N. C. 216, 46 L. I. 191.

Followed in Coal Ridge Improvement & Coal Co. v. Jennings, 127 Pa. 397 (1889) ; s. c. 17 Atl. 986 ; Comm. v. Lehigh Val. R. Co., 129 Pa. 429 (1889), Clark, J. ; s. c. 18 Atl. 406, 410 ; Comm. v. Delaware & H. Canal Co., 150 Pa. 245 (1892). This section of the act of 1885 is unconstitutional under the federal constitution so far as it affects foreign corporations. See New York, L. E. & W. R. Co. v. Comm., 153 U.S. 628 (1894), Harlan, J. ; s. c. 14 Sup. Ct. 952 ; Delaware & H. Canal Co. v. Comm., 156 U. S. 200 (1895), Fuller, C. J. ; s. c. 15 Sup. Ct. 258.

(784) The act of June 7, 1879 (P. L. 112 ; P. & L. Dig. 4461, note), provided for taxation of corporations. Section 4 of the act provided that corporations which declared more than 6 per cent. dividend a year should be taxed one-half a mill on the dollar of stock for each 1 per cent. of dividend declared, and that corporations which did not declare dividends to that amount should be taxed three mills on each dollar of actual value of the stock. The A. company appealed from a tax settlement made under this act on the ground that the act was not uniform in its operation upon corporations affected by it, because of the method of computing the tax prescribed thereby. *Held*, that the act was not in conflict with the constitutional provision that taxation should be uniform. Affirmed.—Comm. v. Brush Electric Light Co., 145 Pa. 147 (1891), Williams J. ; s. c. 22 Atl. 844, 28 W. N. C. 527.

See, also, Comm. v. United States Electric Lighting Co., 7 Pa. C. C. 90 (1889), Simonton, P. J.

(785) The act of May 23, 1889 (P. L. 277, art. V., § 3 ; P. &L. Dig. 4564), gives the city of A. the right to impose an annual tax upon each car operated by street-railway corporations. In an action

by A. against the B. company for the amount of the tax, the affidavit of defence set up that the tax was unconstitutional because not uniform. Judgment for plaintiff.—Harrisburg City v. East Harrisburg Pass. Ry. Co., 4 D. R. 683 (1895), McPherson, J.

(786) The act of June 30, 1885 (P. L. 193, § 20; P. & L. Dig. 4452, note), declared "that the taxes laid upon manufacturing corporations by and under the revenue laws of this commonwealth be, and the same are hereby, abolished as to such corporations, and the laws under which such taxes are laid and collected, be and the same are hereby repealed so far, and so far only, as they apply to and affect manufacturing corporations, provided that the provisions of this act shall not apply to corporations engaged in the manufacture of malt, spirituous, or vinous liquors, or in the manufacture of gas." Under this act the A. brewing company was assessed, and appealed from the auditor-general's tax settlement. *Held*, that the tax was uniform and constitutional; and judgment against A. was affirmed.—Comm. v. Germania Brewing Co., 145 Pa. 83 (1891); s. c. 22 Atl. 240.

(787) The act of June 30, 1885 (P. L. 193; P. & L. 4456), provided for taxation of all loans held by persons, natural or artificial, but excepted building and loan associations from its operation. In a bill to restrain a tax collector from levying said tax, it was averred that the act was unconstitutional because it excepted building and loan associations. Bill dismissed. Decree affirmed.—Fox's Appeal, 112 Pa. 337 (1886), Paxson, J. (Mercur, C. J., dissenting); s. c. 4 Atl. 149, 17 W. N. C. 449, 43 L. I. 214. Affirming 3 Lanc L. R. 49; s. c. 1 Lehigh Val. L. R. 169.

(788) The tenth section of the act of April 4, 1873 (P. L. 20, § 10; P. & L. Dig. 4464), imposed an annual tax of 3 per cent. upon all premiums received within Pennsylvania by foreign insurance companies transacting business here. The insurance commissioner settled a tax against the B. insurance company, under the act, and the company appealed to the common pleas on the ground that the statute was special legislation respecting taxation. *Held*, that the legislature had power to make foreign insurance companies a class by themselves for purposes of taxation. Judgment for commonwealth affirmed.—Germania Ins. Co. v. Comm., 85 Pa. 513 (1877).

(789) An act of assembly authorized the borough of Johnstown, for the purpose of obtaining a police force, to assess upon each saloon keeper in the borough an annual tax. A., a saloon keeper of said borough, filed a bill for an injunction against the collection of the tax, alleging that no such tax had been assessed or levied on any citizens of the borough except the saloon keepers, and that the tax was unconstitutional. Bill dismissed. Affirmed.—Durach's Appeal, 62 Pa. 491 (1870), Sharswood, J.

(790) The act of April 2, 1872 (P. L. 740), authorized the councils of Wilkesbarre to impose a tax for police purposes upon certain classes of property and certain kinds of business. A., a merchant on whom the tax was levied, filed a bill to restrain its collection, contending that the act was unconstitutional as singling out for taxation a certain class of citizens. Bill dismissed, on the ground that all merchants of the classes named in the act were taxed alike. *Held*, no error.—Butler's Appeal, 73 Pa. 448 (1873), Mercur, J.

(791) An act of assembly provided for the appointment of a gas inspector for the county of Allegheny, and levied a tax upon the gas companies in that county to pay the salary of such officer. After the adoption of the constitution of 1874, the A. gas company refused to submit to the assessment, claiming that the act was in conflict with the constitution, and was abrogated thereby. The city brought an action against A. for the tax. *Held*, that the act was still in force, not being repugnant to any constitutional provision, and judgment for plaintiff was affirmed.—Pittsburgh Gas Co. v. Allegheny County, 25 Pitts. L. J. 155 (1878).

(792) The city of Pittsburg had by law the power to impose a brokerage tax. By city ordinance such a tax was imposed upon merchandise and real-estate brokers, but no tax was imposed upon other classes of brokers. A., a broker taxed under said ordinance, contended that while the legislature could put all the members of a given business or profession into a separate class, it could not draw the line of distinction within a class. On case stated to determine the validity of the tax, *held*, that the act was constitutional. Judgment for the city affirmed.—Pittsburg v. Coyle, 165 Pa. 61 (1894), Green, J.; s. c. 30 Atl. 452.

See, also, as to the constitutionality of the act of May 13, 1887 (P. L. 108, § 8), regulating liquor licenses, Hoffman v. Bowman, 1 D. R. 562 (1889), McPherson, J.

(793) A borough passed an ordinance requiring persons peddling milk in the borough to pay a license fee. A case stated was made up to determine the constitutionality of the tax. *Held*, that this was not a discrimination between different persons of the same class, and the ordinance was therefore valid.—Danville Borough v. Weaver, 4 D. R. 768 (1895), Ikeler, P. J.

(794) The act of May 6, 1874 (P. L. 125; P. & L. Dig. 4500), required that clerks of orphans' courts, registers of wills, and recorders of deeds should, after deducting their necessary expenses, pay into the treasury of the commonwealth 50

per cent. of their fees in excess of $2,000. A., the register of wills of B. county, appealed to the common pleas from the auditor-general's settlement of the amount due by him to the state, and contended that the act was unconstitutional as imposing taxes which were not uniform. *Held*, that the legislature had power to make such a classification of the objects of taxation as it had done in this case, and appeal dismissed. Affirmed.—Comm. v. Anderson, 178 Pa. 171 (1896), Sterrett, C. J.; s. c. 39 W. N. C. 132.

(795) A borough ordinance imposed a license fee of one dollar on each resident bicycle owner: B. filed a bill in equity praying for an injunction restraining the arrest of any offenders against said ordinance, and that the ordinance be declared illegal and contrary to art. IX., § 1, of the constitution, contending that bicycles could not be singled out of the general class of vehicles. Bill dismissed.—Green v. Erie, 6 D. R. 697 (1897), Morrison, J.; s. c. 19 Pa. C. C. 491.

(*b*) *Uniformity Within the Class.*

An act providing for taxation which is uniform as to all the members of a class is constitutional. (796–797)

The requirement of uniformity throughout a given class does not demand the same method of assessment throughout the class; substantial, not literally exact, uniformity of result is what the constitution requires. (798)

The assessment of an income tax is in conflict with this section because it is not uniform on the same class of subjects. (799)

A direct inheritance tax, which exempts from taxation estates of less than a given amount, is void for lack of uniformity. (800–801; but see 802)

A "collateral inheritance tax" is not a tax within the meaning of this section, and therefore the exemption of any estate valued at a less sum than $250 does not conflict with the constitution. (803)

A penalty for non-payment and a rebate allowed for payment in advance do not prevent a tax from being uniform. (804)

An ordinance requiring hawkers of market products to take out a license, and exempting those holding mercantile licenses within the municipality is in violation of this section. (805)

A tax on merchants which exempts all those whose sales are less than a certain sum is unconstitutional as lacking uniformity. (806)

An act allowing owners of property a rebate from taxes because of assessments paid by them for the paving of a street is valid, if it in fact relieves them of the excess of cost over the special benefits received by reason of the paying. (807)

An act providing for graduated license fees does not impose taxation which is not uniform. (808–810)

A percentage tax on the par value of the capital stock of all corporations of a given class is constitutional. (811)

The fact that a tax operates harshly upon certain members of the class subject to the payment of it is no reason for declaring the law under which it is levied unconstitutional, if it operates uniformly on all members of the class. (812)

(796) The twenty-first section of the act of June 1, 1889 (P. L. 420; P. & L. Dig 4451, n.), provided for a tax upon the stock of corporations, joint-stock companies, etc. This act constituted them a distinct class for taxation, and the tax upon their stock was uniform throughout the class. A., joint stock company, appealed from a tax settlement under the act, alleging that the making of the capital stock of corporations a distinct class of investments for the purpose of taxation was unconstitutional. Judgment against A. affirmed.—Comm. v. National Oil Co., 157 Pa. 516 (1893), Williams, J.; s. c. 27 Atl. 374, 33 W. N. C. 137.

See, also, as to the constitutionality of the act of June 8, 1891 (P. L. 229; P. & L. Dig. 445, note), supplementary to the act of June 1, 1889.—Comm. v. Mill-Creek Coal Co., 157 Pa. 524 (1893), Williams, J.; s. c. 27 Atl. 375; Comm v. Edgerton Coal Co., 164 Pa. 284 (1894); s. c. 30 Atl. 125, 35 W. N. C. 205. Affirming 14 Pa. C. C. 449,

(797) The act of June 7, 1879 (P. L. 112, § 4; P. & L. Dig. 4444), imposed a tax on the capital stock of all corporations, with certain exceptions. A., a corporation of the state, appealed from the settlement of the auditor-general of the amount due by A. on the capital stock, contending that the act was unconstitutional, because it produced a lack of uninformity of taxation. *Held*, that the tax was uniform throughout the class affected: and appeal quashed.—Comm. v. United States Electric Light Co., 7 Pa. C. C. 90 (1889), Simonton, P. J.

(798) The fourth section of the act of June 30, 1885 (P. L. 193; P. & L. Dig. 4451, n.), required the treasurers of corporations to assess a three-mill tax upon the nominal value of corporate loans, to deduct the same from interest paid thereon, and to return the same into the state treasury. The first section of the act made all mortgages and moneys in the hands of solvent debtors, etc., taxable at the rate of three mills on the dollar, actual value. The A. company appealed from a tax settlement under the act, alleging that the act was unconstitutional because it made all loans a class for the purpose of taxation, and then provided a different method for

the assessment of the tax on corporate loans from that prescribed for private loans. *Held*, reversing the judgment, that the method of assessment need not be the same throughout the class, so long as substantial uniformity of result was obtained, and the court being of opinion that the difference of assessment did not produce substantial difference in result, judgment was entered against A.—Comm. v. Delaware Division Canal Co., 123 Pa. 594 (1889), Clark, J.; s. c. 16 Atl. 584, 23 W. N. C. 216, 46 L. I. 191.

(799) The act of March 18, 1875 (P. L. 7; P. & L. Dig. 4564), authorized cities of the third class to assess taxes, not exceeding 1 per cent. per annum, upon all persons, real and personal property, etc., within said cities taxable for state or county purposes. Under the provisions of this act, the city of B., by ordinance, directed that a certain tax should be imposed upon all personal property and all objects and things assessed as unclassified. In pursuance of this provision, the assessors were directed to assess all offices and posts of profit, professions, trades, and occupations according to the income derived from each. A., a citizen of B., filed a bill to enjoin the collection of the tax on incomes, alleging that it fixed a different standard of assessment for each citizen, and was therefore in conflict with art. IX., § 1, of the constitution. Injunction refused. Decree reversed.—Banger's Appeal, 109 Pa. 79 (1885), Paxson, J.

(800) On an adjudication *sur* executor's account it appeared that a part of the personal estate had not been distributed, and the question was raised whether the balance was subject to the direct inheritance tax imposed by the act of May 12, 1897 (P. L. 56; P. & L. Dig. Supp. 558), on all personal property above the value of $5000, passing by will or intestacy to other than collaterals. *Held*, that said act violated art. IX., § 1, of the constitution requiring uniform taxes on the same classes of subjects, and was therefore void.—Blight's Estate, 6 D. R. 459 (1897), Hanna, P. J.; s. c. 19 Pa. C. C. 426.

(801) On exceptions to the adjudication of an executor's account because the direct inheritance tax provided for by the act of May 12, 1897 (P. L. 56), had not been deducted, it was contended that the act was not a violation of art. IX., § 1, of the constitution. Exceptions dismissed.—Portuondo's Estate, 6 D. R. 748 (1897), Ferguson, J. (Ashman, J., dissenting).

(802) On the adjudication of an executor's account the auditing judge deducted from the estate the tax imposed by the act of May 12, 1897 (P. L. 56; P. & L. Dig. Supp. 558), on all personal property above the value of $5000, passing by will or intestacy to other than collaterals. It was urged that the act was a violation of art. IX., § 1, of the constitution. *Held*, that the act was constitutional—Lacey's Estate, 6 D. R. 499 (1897), Ashman, J.

(803) The collateral inheritance tax act of May 6, 1887 (P. L. 79; P. & L. Dig 4485), provided that no "estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax." On exceptions to an auditor's report refusing to award the register of wills the amount of the tax, it was claimed that this exemption offended against the constitutional provision that all taxes should be uniform. *Held*, that this "tax" so called, was not a "tax" in the ordinary sense of the word or the meaning of the constitution, but was rather in the nature of a taking or retention of a part of that which the state, if it saw proper, might claim and keep *in toto*; and that the act was constitutional.—Mixter's Estate, 28 W. N. C. 182 (1891), Wickham, P. J.; s. c. 8 Lanc. L. R. 256.

(804) The act of April 4, 1872 (P. L. 936), authorized the receiver of school taxes of Scranton to abate five per cent. on taxes paid within a limited time, and to impose ten per cent. additional when they were not paid within an advertised period. A bill for an injunction against the collection of such taxes was filed by a taxpayer, who contended that the act was unconstitutional, since of those citizens who were entitled to be taxed on the same basis, some would have to pay a greater amount than others. Injunction refused.—Second Nat. Bank of Scranton v. Walsh, 4 Luz. L. Reg. 110 (1875), Dana, J.

(805) A city ordinance provided that thereafter it should be unlawful to hawk about, sell, or expose for sale in any street or alley in the city, certain articles of produce, without first procuring a license. The act excepted from its provisions persons holding mercantile licenses within the city. The defendant, who was convicted and fined for violation of this ordinance, appealed to the common pleas, and contended that the ordinance was in violation of art. IX., § 1, of the constitution, because it was not uniform in its operation. A rule to strike off the appeal was discharged.—Allentown v. Diefenderfer, 7 Del. Co. 85 (1897), Albright, P. J.

(806) The city of A. passed an ordinance taxing merchants of every sort, but exempting all whose annual sales were less than a given sum. On case stated to determine the liability of A., a merchant, for the tax, it was contended that the ordinance was void because it violated art. IX., § 1, requiring tax laws to be uniform throughout the class affected. Judgment was entered for A. on the ground that the tax was not uniform.—Williamsport v. Stearns, 2 D. R. 351 (1893), Metzger, P. J; s. c. 12 Pa. C. C. 625.

(807) On case stated between A. and the city of B., it appeared that by an act of May 9, 1871 (P. L. 630), B. was given the right to discriminate in the levy of taxes, "between property fronting on or adjacent to any street or streets which shall have been previously paved in whole or in part, at the expense of the owner or owners thereof." The city passed an ordinance allowing a rebate to those taxpayers who had paid assessments covering the whole cost of the paving of streets on which their property abutted. A. contended that this ordinance was invalid because it rendered taxation unequal, contrary to the provision of the

constitution. *Held*, affirming the judgment, that the act was constitutional in so far as it sought to relieve those abutting on streets of the excess of the cost of paving which they had paid over the benefits received by reason of the paving.—Erie v. Griswold, 5 Super. Ct. 132 (1897), Rice, P. J.

(808) The act of June 10, 1881 (P. L. 109, § 1), prohibited peddling without a license in cities of the second class, and permitted the councils of the city to fix the amount of license. The city of P., by ordinance, fixed graduated license fees, and imposed a penalty for selling without license. In an action to recover the penalty, the defence was that the act and ordinance were unconstitutional, as the graduation of the tax made it unequal on the same class of persons. Judgment for plaintiff was affirmed.—Kneeland v. Pittsburg, 11 Atl. 657 (1887).

(809) The act of April 22, 1889 (P. L. 39, § 1; P. & L. Dig. 4577), gave to boroughs the power to levy and collect a license tax on vehicles used in carrying persons or property for pay. The borough of A. passed an ordinance providing a graduated tax, according to the number of horses used. In an action against B. for the amount of the tax, the defence was that the tax was void because not uniform. Judgment for plaintiff.—Gibson v. Coraopolis Borough, 8 Lanc. L. R. 359 (1891), Collier, J.; s. c. 39 Pitts. L. J. 64.

(810) A city passed an ordinance which imposed license taxes varying in amounts upon different kinds of industries. A., a citizen, filed a bill to restrain the enforcement of the ordinance, alleging that the tax was not uniform on all subjects of taxation throughout the district wherein the law operated. *Held*, that the constitution did not require the tax to be uniform throughout the district, except on the same class of subjects, and bill dismissed.—Hadtner v. Williamsport City, 15 W. N. C. 138 (1883), Cummin, P. J.

(811) The act of June 8, 1891 (P. L. 229; P. & L. Dig. 4467), provided that any bank incorporated by the state or the United States might in lieu of all taxation, except upon its real estate, collect from its shareholders and pay into the state treasury a tax of eight mills on the par value of all its shares. On appeal from a tax settlement under the act, judgment was entered for the commonwealth, overruling the contention of the defendant that said tax was not uniform because one bank might make more money by the use of its capital than another, and thus reduce the amount of its tax. Judgment affirmed.—Comm. v. Merchants' & Manufacturers' Nat. Bank, 168 Pa. 309 (1895), Williams, J.; s. c. 31 Atl. 1065.

(812) The act of March 10, 1871 (P. L. 304), created a certain township a district of the city of Allegheny. On a bill in equity, filed to restrain the collection of city taxes levied upon such property, it appeared that the lands were not then, nor at the time of the suit, improved city property, but suburban and rural lands used as farms. *Held*, that, although the operation of the law was harsh, it was within the power of the legislature to pass it, and an ordinance assessing such property for city taxes was constitutional. A decree dismissing the bill was affirmed.—Hewitt's Appeal, 88 Pa. 55 (1879), Mercur, J. (Agnew, C. J., and Trunkey, J., dissenting); s. c. 26 Pitts. L. J. 137.

(c) *Acts which Produce Uniformity.*

Where an act providing for taxation is a supplement to another act, and the two acts construed together produce uniformity, the constitution is not contravened. (813)

(813) The act of June 30, 1885 (P. L. 193; P. & L. Dig. 4456), imposed a tax upon moneys at interest, mortgages, etc., held by natural persons, but the provision of the act did not extend to corporations. On the theory that this made the act unequal in the burdens it imposed, A., a taxpayer, filed a bill for an injunction against the collection of the tax. The bill was dismissed. On appeal, *held*, that this act should be considered with the act of June 7, 1879 (P. L. 112; P. & L. Dig. 4451 n.), to which it was a supplement, and as the act of 1879 imposed a tax upon the property of corporations, artificial persons, etc., similar to that imposed upon the property of natural persons by the act of 1885, the latter act did not violate the constitution. Decree affirmed.—Fox's Appeal, 112 Pa. 337 (1886), Paxson, J. (Mercur, C. J., dissenting); s. c. 4 Atl. 149, 43 L. I. 214, 17 W. N. C. 449.

3. Requirement of Uniformity Prospective.

The provisions of Article IX. of the constitution with respect to taxation are prospective, and annul nothing that the legislature had done prior to adoption of the constitution by special or local act. (814–816) The article did not become immediately operative, but depended on subsequent legislation to repeal local and special acts then in existence. (817)

(814) The act of February 25, 1870 (P. L. 241), authorized a certain township to collect a tax for every ton of ore mined and carried away with teams over the roads of the township. In an action of assumpsit against a mining corporation to collect such tax, it was claimed that the act was repealed by the constitution. *Held*, that the constitutional provision that all taxes should be uniform did not of itself repeal special laws, but only made it mandatory on the legislature to

pass general laws for uniform taxation, and judgment for plaintiff was affirmed.—Lehigh Iron Co. v. Lower Macungie Twp., 81 Pa. 482 (1876), Agnew, C. J.; s. c. 3 W. N. C. 29, 33 L. I. 273, 8 Leg. Gaz. 133.

(815) A. sued the county of B. to recover damages for the destruction of property by a mob. The act of March 20, 1849 (P. L. 184; P. & L. Dig. 3180), supplementary to act of May 31, 1841 (P. L. 417, § 10; P. & L. Dig. 3180), made B. liable to any one suffering damage from such cause. B. contended that the acts of 1841 and 1849 were unconstitutional because inconsistent with the constitution of 1874, art. IX., §§ 1, 2, 8, and 10, since they made it possible to raise the debt of the city beyond the constitutional limit and produced lack of uniformity of taxation. *Held*, affirming the judgment, that the clauses of the constitution mentioned were prospective only in their operation, that the acts were valid, and that A. could recover.—Allegheny County v. Gibson, 90 Pa. 397 (1879), Paxson, J.

(816) A gas company owned land on which its plant was erected, and which was a necessary part of the general equipment, and formed a part of the capital stock of the company on which a state tax was paid. After the adoption of the constitution of 1874, a county tax was assessed on the land, which the company refused to pay. On a case stated the above facts appeared, and it was further conceded that prior to the constitution of 1874 the land was not taxable under the company's charter. It was contended that art. IX., § 1, of the constitution made it liable, as it was not included in any of the classes exempted by that section. *Held*, reversing the lower court, that the land was not taxable, as art. IX., § 1, was only prospective in its operation.—Coatsville Gas Co. v. Chester County, 10 W. N. C. 328 (1881), Mercur, J.

(817) A bill in equity was filed by certain citizens of the city of Scranton to prevent the collection of county taxes in violation of § 42 of the act of April 23, 1866 (P. L. 1034). The bill was resisted on the ground that art. IX., § 1, of the constitution requiring that all taxes should be uniform on the same class of subjects, repealed special laws granting exemptions, including the act of 1866. Injunction granted and decree affirmed.—Ruth's Appeal, 10 W. N. C. 498 (1881). Affirming 1 Lack. L. Rec. 311.

4. Local and Special Legislation.

An act prescribing a system of taxation for cities of a given class is not a local tax law in contravention of Article IX., § 1, the power to levy and collect taxes being a corporate power which has uniformly been held capable of classification. (818)

An act providing a method for the collection of local taxes within each borough or township, but not extending to state and county taxes (819), or a general law regulating the collection of taxes, which exempts from its operation the collections of taxes under certain local laws (820), is not in conflict with this section.

(818) The act of March 22, 1877 (P. L. 16; P. & L. Dig. 4545), prescribed a system of taxation for cities of the second class. A. tendered to B., the treasurer of X., a city of the second class, his taxes, less 5 per cent. under the provisions of a prior loan. B. refused to receive them, as the tender was not in accordance with the act of 1877. A. petitioned for a mandamus to compel B. to receive the tax as tendered, averring that the act was unconstitutional as special tax legislation, because it applied to cities of one class only. Mandamus refused. Decree affirmed.—Comm. v. Macferron, 152 Pa. 244 (1893), Williams, J.; s. c. 25 Atl. 556, 31 W. N. C. 320, 40 Pitts. L. J. 251.

(819) The act of June 25, 1885 (P. L. 187; P. & L. Dig. 4603), provided for the collection of local taxes within each borough and township, but its operation did not extend to state and county taxes. An alternative mandamus was issued out of the supreme court directing the common pleas to approve the bond of a collector appointed under the act. *Held*, that, as the act was uniform in its operation upon the subjects with which it dealt, and did not affect the collection of state taxes, it was not class legislation, but a general law, and the bond was approved.—Comm. v. Swab, 8 Pa. C. C. 111 (1890), Simonton, P. J.

See, also, Keim v. Devitt, 3 Pa. C. C. 250 (1887), Rockefeller, P. J.; Comm. v. Lackawanna Co. Commrs., 7 Pa. C. C. 173 (1889), Archbald, P. J.; *contra*, Hannick's Bond, 3 Pa. C. C. 254 (1887), Hand, P. J.

But see, as to the constitutionality of the act of 1885, with regard to county taxes, Bennett v. Hunt, 148 Pa. 257 (1892); s. c. 23 Atl. 1121; Comm. v. Lyter, 162 Pa. 50 (1894), Fell, J.; s. c. 29 Atl. 352.

(820) The act of June 25, 1885 (P. L. 187; P. & L. Dig. 4603), regulated the collection of school taxes in the several boroughs and townships of the commonwealth, but provided that it should not apply to any taxes the collection of which was regulated by local law. A., the tax collector, elected under the act of 1885, took out a writ of mandamus to compel the school board of A. county to deliver to him the tax duplicate. The answer set up that the board was governed by a local act, and that if the act of 1885 exempted the local act from its operation it was itself a local act and unconstitutional. On appeal, *held*, that the act was a general act though it excepted local acts from its operation, and rule for mandamus discharged.

—Evans v. Phillipi, 117 Pa. 226 (1887), Clark, J.; s. c. 11 Atl. 630, 3 Montg. Co. 180.

Overruling Evans v. Witmer, 4 Lanc. L. R. 105 (1887), Livingston, P. J.

5. Local Taxation for Local Benefits.

The legislature may impose on a particular municipality the liability to pay for improvements by which it alone is benefited. (821–823)

The assessment of the cost of an improvement in a street upon the owners of property benefited thereby is not local taxation, in violation of this section of the constitution. (824–825)

Where property owners along a street have paid the original cost of paving or grading, they cannot be again assessed to pay the cost of repaving and regrading, as this would be a local tax for the general benefit (826–827); and the same is true of the re-construction of municipal sewers. (828)

Owners of property benefited by the vacation of a street or the change of a turnpike into a public road can be assessed to pay damages to the owners of property injured thereby. (829–830)

An act providing for assessment of the cost of improvements in streets upon adjoining property which lays the same burden per foot front on suburban property as is laid upon property in the heart of a city is not valid. (831–832)

Benefits from the opening of a street for a public purpose cannot be assessed against property not in the immediate vicinity of such street. (833)

Owners of property benefited by the opening of a street can be assessed to pay damages to the owners of property injured (834), but not for the cost of the opening or for general borough purposes. (835)

(821) The act of April 3, 1848 (P. L. 332), authorized the commissioners of Bradford county to add $500 annually, until 1857, "to the usual county rates and levies of the borough of Towanda in said county, for the purpose of defraying the expenses of erecting the courthouse and jail," then in process of erection in that borough. In an action by the tax collector against B., a citizen, to recover the tax, B. contended that the tax was unconstitutional, because unequal. Judgment for plaintiff affirmed.—Kirby v. Shaw, 19 Pa. 258 (1852), Gibson, J. (Lewis, J., dissenting).

(822) The acts of April 5, 1866 (P. L. 523), and April 5, 1867 (P. L. 816), appointed commissioners to build a free bridge over the Schuylkill at Philadelphia, authorized the city to create a loan for the purpose, and required the councils to provide for the payment of the loan and its interest. The city filed a bill against the commissioners and the councils to enjoin the construction of the bridge or negotiation of the loans, alleging that the acts of assembly amounted to a tax on the citizens for a local improvement without their consent, which was claimed to be unconstitutional. Bill dismissed, on the ground that it was competent for the legislature to impose a local tax to pay for a local benefit. Decree affirmed.—Philadelphia v. Field, 58 Pa. 320 (1868), Read, J. (Thompson, C. J., and Sharswood, J., dissenting).

(823) The act of August 5, 1870 (P. L. [1871] 1548; P. & L. Dig. 87, note), provided for the erection of public buildings in the city of P. and the assessment of a tax to pay therefor. A. paid the tax levied upon him, under protest, and brought action against B., the tax collector, to recover the same, alleging that the tax was unconstitutional. Judgment for B. was affirmed.—Lea v. Bumm, 83 Pa. 237 (1877); s. c. 3 W. N. C. 335.

(824) The act of April 6, 1870 (P. L. 967), conferred upon the city of Meadville the power of paving its streets and collecting the cost from the owners of adjoining properties. In a *scire facias sur* claim for such paving, B., a property owner, contended that the act was unconstitutional, as authorizing unequal local taxation, since he did not derive as much benefit as others did from the opening of the street. Judgment for the city was affirmed, on the ground that no question of unequal taxation was involved, as the paving was a purpose purely local.—Huidekoper v. Meadville City, 83 Pa. 156 (1876); s. c. 3 W. N. C. 469.

See, also, Howard v. Pittsburgh, 38 Pitts. L. J. 87 (1889), Ewing, P. J.

(825) The act of April 5, 1867 (P. L. 841), gave to the city of Wilkesbarre the power to pave or grade any of its streets, and assess the cost thereof on adjacent property owners. A., a citizen, filed a bill praying an injunction against the collection of the tax, on the ground that it was local taxation. Bill dismissed. Decree affirmed.—Beaumont v. Wilkesbarre City, 142 Pa. 198 (1891); s. c. 21 Atl. 888. Affirming 6 Kulp, 121.

(826) A. owned property on Broad Street, in the city of Philadelphia. The street was paved with cobble-stones, in the style universally adopted for years in the paving of the best avenues. The act of March 23, 1866 (P. L. 299), provided that the city could repave the said street, and assess the costs against the abutting property owners. This was done, and a lien filed against A.'s property for the cost of the improved pavement. On the trial of a *sci. fa.* on the lien, the defence

was that the act was unconstitutional. Judgment for plaintiff was reversed on the ground that a local tax for general purposes is unconstitutional.—Hammett v. Philadelphia, 65 Pa. 146 (1869), Sharswood, J. (Read and Williams, JJ., dissenting); s. c. 3 Leg. Gaz. 261.

(827) The property owners in the city of Pittsburgh had paid the cost of paving and grading the streets. The act of May 13, 1871 (P. L. 840), provided for the repaving and regrading of the streets of the city, and for the assessment of part of the cost thereof upon abutting property owners, in case viewers appointed for that purpose should report that the benefit was local. A., a property owner, excepted to the report of viewers appointed to assess damages, alleging that the act of 1871 was unconstitutional, and that the proviso that the viewers must find the benefit a local one in order to render the property owners liable was an attempt to evade the constitution; art. IX., § 1. Exceptions were dismissed. *Held*, error.—Orphan Asylum of Pittsburgh's Appeal, 111 Pa. 135 (1886), Gordon, J.; s. c. 3 Atl. 217.

(828) Article XIII., § 1, of the act of May 23, 1889 (P. L. 277; P. & L. Dig. 622), authorized the re-construction of sewers in cities of the third class, and the assessment of the cost thereof upon the owners of the lots or lands along or through which such sewers ran. In *sci. fa. sur* lien for the re-construction of a sewer by the city of A. against B., the defence was that the act authorized local taxation for general purposes and was void. Judgment for the city was reversed. —Erie v. Russell, 148 Pa. 384 (1892), McCollum, J.; s. c. 23 Atl. 1102, 30 W. N. C. 26.

(829) The act of May 3, 1870 (P. L. 1298), provided that a certain turnpike should become a public road, and created a corporation of seven commissioners to take charge, make improvements, levy and collect taxes, etc., upon property within certain distances on each side of the road. A bill was filed to restrain the collection of the tax, on the ground that the benefit was general and not confined to those only whose land lay near the road. A master reported that the road would be a general public benefit. Injunction granted, on the ground that this amounted to local taxation for a general benefit and was void. Decree affirmed.—Washington Avenue, 69 Pa. 352 (1871), Agnew, J.

(830) The act of April 21, 1858 (P. L. 385; P. & L. Dig. 4202), provided for the assessment of damages for vacating streets, and for the apportionment of such damages among and against owners of property benefited thereby, and not against the land itself. A., against whom benefits were assessed, appealed from the award, and his exceptions were sustained on the ground that the assessment of benefits against the owners of lots benefited was local taxation and void. *Held*, error.—Vacation of Centre St., 115 Pa. 247 (1887), Sterrett, J.; s. c. 8 Atl. 56, 19 W. N. C. 89, 44 L. I. 231.

Overruling Merrifield v. Scranton, 5 Pa. C. C. 388 (1888), Connoly, J.

(831) The act of April 2, 1870 (P. L. 796), provided that the costs of certain municipal improvements in streets should be assessed upon adjoining property by the foot-front rule. Under this provision the frontage rule of compact city lots was applied to farm property and town lots. A., a suburban property owner, objected. On a case stated to determine A.'s liability, *held*, reversing the court below, that the act was unconstitutional in so far as it applied to suburban property, since it applied an unequal and burdensome tax upon the owners of such property.—Seeley v. Pittsburg, 82 Pa. 360 (1877), Agnew, C. J. (Paxson, J., dissenting).

(832) Certain acts of assembly authorized the extension and grading of public avenues between a city and a borough, and directed that the cost should be apportioned and assessed on the property fronting on said avenues according to the foot-front rule. One of said avenues passed through a rural section. Upon the trial of a *sci. fa. sur* municipal claim, to recover an assessment against a lot fronting on the avenue, the lower court gave judgment for defendant on the ground that the acts were unconstitutional. Affirmed.—Scranton v. Pennsylvania Coal Co., 105 Pa. 445 (1884), Gordon, J.

(833) A city opened a street, as an approach to a public bridge, and assessed benefits on the proprietors of land not in the immediate vicinity of the street so opened. Exceptions were taken to the award, on the ground that such assessment was unconstitutional taxation Award set aside. —Walnut St., 10 Pa. C. C. 173 (1891), Allison, P. J.

(834) The act of April 21, 1858 (P. L. 385; P. & L. Dig. 4202), provides for the assessment of damages for the opening, widening, and vacating of streets and for the apportionment of the cost of the same among the owners of land benefited. Upon the vacation of a street, B., an abutting owner, was asessed for benefits. B. excepted to the report of the jury of view, and obtained a rule to show cause why the appointment of the jury should not be quashed. The court dismissed the exceptions and discharged the rule. On appeal, B. contended that the acts of 1858 was unconstitutional, and that in vacating streets the city was not bound to pay the damages, and therefore had no authority to impose a special tax for the payment of such damages upon individuals. Judgment affirmed.—Howard Street Vacation, 142

Pa. 601 (1891), Mitchell,J. Affirming 34 W. N. C. 491, 520.

(835) A jury, appointed to assess damages for the opening of an alley, reported no damages, but assessed certain properties for contributions. The owners of the property excepted, upon the ground that, no damages having been assessed, they were not liable for contribution, as they could not be taxed for the expenses of opening the street or alley, or for the general purposes of the borough. The report was set aside.—Sycamore Alley, 9 Pa. C. C. 61 (1890), Hemphill, J.

6. Double Taxation.

Where a tax is imposed upon the gross receipts of a railroad company, and such gross receipts consist in part of tolls paid by other railroad companies, which have themselves paid a like tax, this is not double taxation in conflict with Article IX., § 1, of the constitution (836) ; nor is a tax upon the gross receipts of an express company, when part of such receipts is paid out to railroad companies which pay a similar tax. (837)

It is not double taxation, repugnant to the constitution, for the state to impose a tax upon corporate bonds held by a corporation which is already subject to a state tax upon its net earnings. (838)

No question of double taxation arises in the case of a corporation whose capital stock is taxed by the state, and whose realty, held for its legitimate corporate uses, is attempted to be taxed by a county, whether such county has (839) or has not a right, irrespective of the question of double taxation, to tax such land. (840)

(836) Section 7 of the act of June 7, 1879 (P. L. 112), supplied by the act of June 1, 1889 (P. L. 420; P. & L. Dig. 4460), required each railroad company to pay a tax of eight-tenths of 1 per cent. on its gross receipts for tolls and transportation. In an action by the commonwealth against the A. railroad company for such tax, the court found that part of the gross receipts taxed was a sum paid by another company, B., for the privilege of running trains and carrying passengers over a section of A.'s road, and that another part was paid by the C. company for the right to use a section of a road which A. held under lease, and that each of these companies had paid to the state a tax upon its gross receipts. The A. company had paid the tax upon all of its receipts, except upon the sums received from the B. and C. companies. *Held*, that these rentals were receipts for tolls, within the meaning of the act of 1879, and the collection of a tax upon such rentals was not double taxation, in conflict with the constitution; and judgment for the commonwealth was affirmed.—Comm. v. New York, P. & O. R. Co., 145 Pa. 38 (1891) ; s. c. 22 Atl. 212.

(837) The act of June 7, 1879 (P. L. 112), supplied by the act of June 1, 1889 (P. L. 420 ; P. & L. Dig. 4460), required express companies to pay a tax of eight mills on the dollar on the "gross receipts" of such companies received from business done wholly within this state. A settlement under these acts was contested by an express company on the ground that as it paid out part of its gross receipts to railroad companies, which paid a similar tax, the acts in question provided for double taxation. Judgment for the commonwealth was affirmed.—Comm. v. United States Express Co., 157 Pa. 579 (1893), Sterrett, C. J.; s. c. 27 Atl. 396.

(838) The act of June 30, 1885 (P. L. 193 ; P. & L. Dig. 4456), requires the treasurer of a corporation doing business in the state of Pennsylvania to deduct a state tax in paying interest to residents of the state, upon any certificate of indebtedness. The act of June 1, 1889 (P. L. 420, § 27 ; P. & L. Dig. 4470), imposed a state tax upon the net earnings of certain corporations doing business within Pennsylvania, among which were mutual saving fund societies. B.'s corporation, doing business in Pennsylvania, was taxed under the act of 1885, for bonds held by mutual saving fund societies. On appeal from the settlement of the tax on its corporate bonds, B. contended that this amounted to a double taxation of the mutual saving fund societies, and that therefore these acts were repugnant to art. IX., § 1, of the constitution. Judgment for the commonwealth was affirmed.—Comm. v. New York, L. E. & W. R. Co., 150 Pa. 234 (1892).

(839) On appeal by the A. cemetery company, from a tax settlement, the company contended that it could not be taxed by the state because taxes had already been levied on its real estate by the county; that its only property was real estate, and a tax on capital stock was therefore a tax on its realty, and double taxation such as is forbidden by art. IX., § 1, of the constitution. Judgment for the commonwealth was affirmed, on the ground that no question of double taxation was involved in the case.—Comm. v. Hillside Cemetery Co., 170 Pa. 227 (1895),

(840) A gas company paid taxes upon its capital stock, part of which consisted of real estate necessary for its purposes. The county subsequently proposed to tax the real estate as real estate. A case stated was made up for the opinion of the court on the county's right so to tax the land, the contention being that to allow such a tax would be unconstitutional as it would be double taxation. *Held*, reversing the judgment, that no question

of double taxation was involved, as the county had no right to tax land held by a corporation for public purposes.—Coatesville Gas Co. v. Chester County, 97 Pa. 476 (1881), Mercur, J.; s. c. 10 W. N. C. 328.

7. Taxation for Private Purposes.

Taxation for any private purpose is unconstitutional. (841–843)

The bounty acts, authorizing a tax to be laid by municipalities to pay bounties to those who would volunteer for service in the United States Army, were held to be constitutional as authorizing a tax for a public purpose. (844–845)

The legislature may order obligations of a county, previously paid by a tax laid upon a certain class of individuals, to be paid out of the county treasury, if said payments are for the benefit of all the citizens. (846)

(841) A. was drafted into the service of the United States, and paid the required commutation money to the collector of internal revenue. An act of the legislature required the school directors of A.'s township to levy a tax and repay A. The township had offered no bounty. After notice, the school directors of A.'s township refused to pay him, or to levy and collect a tax for that purpose. Upon A.'s petition, a rule was granted on the said school board to show cause why a peremptory mandamus should not issue to them to compel payment. The answer to the rule averred that the act was unconstitutional, on the ground that it authorized a tax for private purposes. Peremptory mandamus awarded. Reversed.—Kelly v. Marshall, 69 Pa. 319 (1871), Agnew, J.

(842) An act of assembly empowered the owners of Greenwich Island to assess and collect from each owner or possessor thereof two shillings for each acre of land held, in order to keep the outside banks in good repair, and raise a fund to defray sundry contingent and yearly expenses accruing therein. A supplementary act made it the duty of the managers, as often as it might be necessary, to estimate the expenses for making, repairing, and keeping in good repair every bank on this land, to ascertain the owners and possessors thereof, and rate and assess each fairly and equally per acre; and provided, further, that, "if any one shall refuse or neglect to make payment within thirty days from the date of such demand, it shall be the duty of the said treasurer to levy or cause to be levied the said tax, and costs attending such levy." In an action of replevin for goods seized for non-payment of taxes, *held*, that the act was unconstitutional, as authorizing taxation for a private purpose; and judgment was entered for defendant.—Maynes v. Rutherford, 9 W. N. C. 221 (1880), Ludlow, P. J.

(843) The act of March 30, 1870 (P. L. 673), authorized the commissioners of the county of Allegheny to pay a debt contracted by an ex-sheriff for the purpose of supplying the prisoners in jail with bread. A petition for a mandamus against the controller of the county to compel payment was refused, the court holding that the act, being a law authorizing the payment of a private debt, was unconstitutional. Affirmed.—Faas v. Warner, 96 Pa. 215 (1880), Green, J.; s. c. 9 W. N. C. 412, 28 Pitts. L. J. 348, 38 L. I. 374.

(844) A township being unable to procure volunteers for the bounty prescribed by the bounty law of August 24, 1864 (P. L. 1022; see P. & L. Dig. 435, n.), certain citizens advanced money for the payment of larger bounties. The act of March 8, 1865 (P. L. 288), provided for the collection of a certain tax for the purpose of repaying these loans. A., a taxpayer, filed a bill to restrain the levy of a tax for this purpose, on the ground that it was a tax for the benefit of a class of private citizens. A decree dismissing the bill was affirmed.—Weister v. Hade, 52 Pa. 474 (1866), Agnew, J. (Woodward, C. J., and Thompson, J., dissenting).

(845) During a pending draft for soldiers, a public meeting of citizens was held, and it was decided to raise subscriptions in order to pay a bounty in excess of the amount to be paid by the school directors under the general bounty act. Several citizens pledged themselves to raise bounties for volunteers, and did so voluntarily. Subsequently the act of February 14, 1868 (P. L. 145), authorized the school directors to levy a tax to repay such subscriptions. On bill in equity to restrain the collection of the tax, *held*, that the act was constitutional; and a decree dismissing the bill was affirmed.—Hilbish v. Catherman, 64 Pa. 154 (1870), Agnew, J. (Thompson, C. J., dissenting).

See, also, Washington County v. Berwick, 56 Pa. 466 (1868), Agnew, J.; Felty v. Uhler, 5 Leg. Op. 173 (1873), Walker, J.; Hampton Twp. School Dist. v. Grubb, 20 Pitts. L. J. 93 (1873).

(846) An order drawn on the treasurer of a county, for payment of money due for military services, was dishonored by said treasurer, and A. brought an action to recover the amount thereof, under the act of May 25, 1878 (P. L. 147), which provided that all outstanding orders should be paid by the respective counties out of their funds. Said orders had previously been paid out of a fund raised by a tax paid by those who had been drafted for duty and had procured substitutes. Said tax was repealed by the act of 1878. It was contended that the act of 1878 was unconstitutional, in that it created liabilities against counties where none existed. *Held*, that the act was constitutional; and judgment for plaintiff

was affirmed.—Armstrong County v. Coleman, 99 Pa. 6 (1881), Paxson, J.; s. c. 39 L. I. 281.

8. Retrospective Laws Curing Irregularities in Taxation.

Where the legislature has antecedent power to authorize a tax, it can cure, by a retrospective law, an irregularity or want of authority in levying it. (847–849)

(847) The township of X., by resolution of a meeting of its taxpayers, levied a tax on each taxpayer for the purpose of offering bounties to those who would enlist in the United States Army. A. paid the tax under protest, and, pending a suit by him to recover back the amount thereof, an act of assembly was passed making the tax legal. This act was interposed as a defence to an action by A. to recover the tax. A. contended that the legislature had no power by a retrospective act to legalize what was at the time of its assessment and levy an illegal tax. Judgment for defendant was affirmed.—Grim v. Weissenberg School Dist., 57 Pa. 433 (1868), Sharswood, J.

(848) An ordinance of the city of Pittsburg levied a tax for park purposes, which was assessed on B.'s property. There were certain irregularities and defects in the levying of the tax. These were cured by the act of March 25, 1878 (P. L. 8; P. & L. Dig. 4565). B. filed a bill to enjoin the collection of the tax on the ground that it could not be made legal by a retroactive law. Injunction refused. Decree affirmed.—Hewitt's Appeal, 88 Pa. 55 (1879), Mercur, J.; s. c. 26 Pitts. L. J. 137.

(849) Under the authority of the act of May 24, 1887 (P. L. 204; P. & L. Dig. 556, n.), a city paved a certain street. Subsequently the act was declared unconstitutional. The act of May 23, 1889 (P. L. 277; P. & L. Dig. 623), authorized assessments and re-assessments for the cost of local improvements already made or in process of completion. Under this act the city assessed upon property owners on the street the cost of paving done under the act of 1887. On a case stated to determine the right of the city to collect the assessment, *held*, that such assessment was rendered valid by the act of 1889, as the legislature had the power to authorize the assessment originally. Affirmed.—Chester City v. Black, 132 Pa. 568 (1890); s. c. 19 Atl. 276, 25 W. N. C. 480.

(B) EXEMPTIONS FROM TAXATION.

1. Property Used for Public Purposes.

Article IX., § 1, of the constitution provides that "the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity."

Under this section and the acts passed in pursuance thereof, municipal property used for public purposes, and from which no revenue is derived, is not taxable (850); but municipal property from which revenue is derived is taxable. (851) City property not used for public purposes cannot be taxed without legislative action authorizing such taxation. (852)

A building occupied by part of the National Guard as an armory is used for public purposes, and is exempt from municipal taxation, even though it be occasionally let for the purposes of a public hall. (853)

A waterworks plant which is owned by a ward of a city, and the profits of which go into the city treasury and are credited against the amount of municipal taxes due by such ward, is liable to taxation. (854)

The numerous cases dealing with the construction of the act of May 14, 1874 (P. L. 158), and the subsequent acts passed in pursuance of art. IX., § 1, of the constitution, will be found digested under the title "Taxation," *infra*.

(850) A city owned a piece of land, upon which was erected an engine-house, used exclusively for the purposes of the city fire department, and necessary therefor. The fire department was maintained by the city, and no revenue whatever was derived therefrom. The county assessed a tax on the property, and demanded payment thereof. A case was stated between the county and the city, to determine the right of the county to levy the tax. Judgment for the city was affirmed.—Erie County v. Erie City, 113 Pa. 360 (1886), Green, J.; s. c. 6 Atl. 136, 18 W. N. C. 309. Affirming 1 Pa. C. C. 540, 17 W. N. C. 396, 43 L. I. 477.

(851) A city owned property upon which were erected water works used to supply the city with water. Certain revenues were derived from the water works, and were expended by the water commissioners in enlarging the works and extending the water supply. The county levied a tax on the property, which the city refused to pay, on the ground that the property was used for public purposes. Judgment entered for the city on case stated was reversed.—Erie County v. Commissioners of Water Works, 113 Pa. 368 (1886), Green, J.; s. c. 6 Atl. 138.

(852) County taxes were assessed against certain property which was owned by a city, but was not used for municipal purposes. The city refused to pay the taxes, and the property was advertised for sale. On motion for injunction, *held*, that, although by art. IX., § 1, of the con-

stitution, city property not used for public purposes could be taxed, such section did not execute itself, and legislative action was necessary to authorize the levying of taxes against such property, and as there had been no such action the property could not be taxed. Injunction granted.—New Castle City v. Lawrence County Treasurer, 2 D. R. 95 (1892), Martin, J.

(853) A corps of the National Guard of Pennsylvania occupied a certain building as an armory, but such building was occasionally let for the ordinary purposes of a public hall. The building was assessed for taxation, and the tax collector was about to proceed for the collection of the tax, when the corps filed a bill for an injunction to restrain him from so doing. Injunction granted.—National Guard v. Tener, 13 W. N. C. 310 (1883).

(854) B., the councilmen of a certain ward of a city, constituted a quasi-corporation, the object of which was to furnish the inhabitants of the ward with water at a rent to be fixed by the corporation. The profits of the corporation were to be paid into the city treasury, and be held on account of the municipal taxes against the ward. In an amicable action by A., the tax collector, against B., to recover county taxes, B. denied any legal liability for the tax. A. contended that under art. IX., § 1, defendants were liable, as they did not come within any of the classes therein exempted. Judgment for A., as the citizens of the ward were the real beneficiaries of the works, and B. could not be called a municipal corporation. Judgment affirmed.—Chadwick v. Maginnes, 94 Pa. 117 (1880), Sterrett, J.

2. Places of Religious Worship.

Buildings used for public worship are exempt from taxation, so long as they are actually used for worship. (855–856)

But land on which a church is being erected is not exempted from taxation by the constitution. (857)

A parsonage is not a place for public worship, even though erected upon ground appurtenant to a church. (858–859)

(855) A tax was levied upon land on which was a church used for daily public worship, and buildings used for charitable instruction and for the shelter of Sisters of Mercy. The bishop asked for an injunction to restrain the collection of such tax, as the institution was exempted by the constitution. Injunction granted.—O'Hara v. Greenwalt, 26 Pitts. L. J. 174 (1879), Handley, P. J.; s. c. 1 Lack. L. R. 443.

(856) A church building which had been exempted from taxation, was abandoned as a church in April, 1890. In May, 1890, the property was assessed for the year 1890. One month later, the church conveyed the property to A., who filed a bill in equity to restrain the collector of taxes from levying and collecting said tax. It was contended for the defendant that, under art. IX., § 1, of the constitution, and the act of May 14, 1874 (P. L. 158; P. & L. Dig. 4654), the exemption of church property from taxation continued only while it was used as a place of actual religious worship. Injunction refused. Decree affirmed.—Moore v. Taylor, 147 Pa. 481 (1892), Sterrett, J.; s. c. 29 W. N. C. 495.

(857) Land on which a cathedral was in course of construction, was assessed for taxation. On a case stated for the opinion of the court whether such property was not exempt under art. IX., § 1, of the constitution and the act of May 14, 1874 (P. L. 158; P. & L. Dig. 4654), judgment holding that it was not exempt was affirmed.—Mullen v. Erie County Commissioners, 85 Pa. 288 (1877), Agnew, C. J. (Mercur, J., dissenting). Affirming 85 Pa. 291, 34 L. I. 454.

The act of June 4, 1879 (P. L. 90, § 1; P. & L. Dig. 4660), provides that buildings in course of construction shall be exempt if they are exempted when completed.

(858) A parsonage was erected on ground appurtenant to a church. A case was stated to determine whether it was subject to payment of county taxes. It was shown that said parsonage was owned by the church, and that the rector lived therein, that privilege being considered a part of his salary. Judgment for the county, as this could not be considered an actual place of worship. Affirmed.—Church of Our Saviour v. Montgomery County, 29 Pitts. L. J. 5 (1881); s. c. 10 W. N. C. 170, 13 Lanc. Bar, 57.

(859) An archbishop filed a bill in equity to restrain the tax collector from levying taxes upon the parsonage of a church, showing that said parsonage was sometimes used for divine worship, and also for the solemnizing of marriages and for baptism. *Held*, that such occasional services did not make it a regular stated place of worship such as was exempted from taxation under the constitution. Bill dismissed.—Wood v. Moore, 1 Chest. Co. 265 (1881), Futhey, P. J.

3. Institutions of Purely Public Charity.

A poor farm supported wholly by a county (860), or a poorhouse (861), being a public charity, is exempt from taxation.

But institutions of charity to be exempted from taxation need not necessarily be those controlled by a municipal corporation or the state, but may be private institutions if they are operated purely for public charity and not for private gain; thus a free library (862), or an association for the purpose of aiding poor young women (863), is exempt from taxation.

A charity restricted to certain classes is a public one, if the persons to be benefited within those specified classes are indefinite (864), but not if its benefits are restricted

by the will of its managers. (865) A free home for disabled members of a certain society or order is not a charity within the meaning of Article IX., section 1, of the constitution. (866)

Institutions only partly charitable are not exempt. (867–868)

An institution of learning whose fees are reduced to a small sum by reason of gifts and endowments, and which aims to educate youth at the least possible expense to them, but not free of expense, is not a charity within the meaning of the section. (869)

Property attached to a charitable institution and necessary for its conduct is exempt (870); but property not attached is not exempt (871), even though it has become detached by the opening of a street through the property. (872)

Where part of a property is used for purposes of charity, and part is rented out, the former part only is exempt from taxation. (873) And where an institution which was exempted from taxation by special legislation prior to 1874 derives an income from its property, it is not a charity exempted by the constitution from taxation, and is liable for taxes on such property. (874)

The assessment of a charitable institution for the cost of street curbing is not a tax from which it is exempted by the constitution. (875)

(860) The act of March 29, 1824 (P. L. 200), authorized the citizens of B. county to elect three poor directors, and said directors were authorized to take and hold land. Certain lands were acquired, and buildings and improvements made thereon, such property being known as the "poorhouse property," and being sustained and supported by a tax levied on the county. The act of April 5, 1848 (P. L. 337), provided that the real estate belonging to the county should be taxed for road purposes. On a case stated, *held*, affirming the court below, that the poorhouse property could not be taxed under this act, since the institution was purely a public charity.— Cumru Twp. v. Berks County Poor Directors, 112 Pa. 264 (1886), Gordon, J.; s. c. 3 Atl. 578, 43 L. I. 306.

(861) The directors of a school district levied a tax against the property held by the directors of the poor of a city and used as a poorhouse. On a case stated, by the school directors against the directors of the poor, judgment was entered for the latter, as the poorhouse was a public charity.— Greenfield School Directors v. Greenfield Poor Directors, 5 Luz. L. Reg. 116 (1876). Harding, P. J.

(862) A library company was incorporated and held a library, grounds, and buildings in trust. The use of the books was permitted to all persons within the library free of charge, and persons who desired to take out books paid a small amount for that privilege. The income derived was applied to the purchase of new books, and the directors and officers received no compensation for their services. The library company moved for an injunction to restrain the county collector from levying on the property of the company, alleging that it was exempt. Injunction granted. Decree affirmed.— Donohugh's Appeal, 86 Pa. 306 (1878); s. c. 5 W. N. C. 196, 35 L. I. 104.

(863) A certain association for the purpose of aiding poor young women maintained a boarding-house and restaurant at nominal prices, and carried on an employment agency. It also boarded women free, if they were unable to get work. Its income came largely from private donations. In a case stated to determine the right of the county to tax the association, judgment in favor of the association was affirmed.— Philadelphia v. Women's Christian Ass'n., 125 Pa. 572 (1889), Paxson, C. J.; s. c. 17 Atl. 475.

(864) An orphan asylum was created by a devise in the will of A. The beneficiaries were divided into three very restricted classes and preference in admission given accordingly, but the persons to be benefited were indefinite within those specified classes. On a case stated to determine the liability of the asylum to taxation, judgment was entered in favor of the county. Reversed.— Burd Orphans' Asylum v. Upper Darby School Dist., 2 Del. Co. 141 (1880), Green, J. (Gordon, Trunkey, and Sterrett, JJ., dissenting).

Overruling Burd Orphan Asylum v. Upper Darby School Dist., 90 Pa. 21 (1879), Trunkey, J. (Sharswood, C. J., and Mercur and Paxson, JJ., dissenting); s. c. 8 W. N. C. 1.

(865) In an amicable action in the form of a case stated, against the B. institute for the recovery of taxes, it appeared that the institute was a private corporation for the promotion and diffusion of general and scientific knowledge amongst the community at large, and that it maintained a library and museum. All benefits were restricted to members elected by ballot and such other persons as the directors might in their discretion permit. *Held*, affirming the lower court, that the institution was not a "purely public, charity," and was therefore not exempt from taxation.— Delaware County Institute of Science v. Delaware County, 94 Pa. 163 (1880); s. c. 8 W. N. C. 449.

(866) In a *sci. fa.* on a claim for taxes against a Masonic home, it was contended that the home was exempt from taxation, as it was a charity.

It was shown at the trial that the home was for the benefit of Freemasons only. *Held*, that it was not a charity within the meaning of the constitution; and judgment for defendant reversed.—Philadelphia v. Masonic Home, 160 Pa. 572 (1894), Dean, J.

(867) Certain property was held by a Roman Catholic corporation in trust, and used as a charity school, in which children were instructed mainly in the Roman Catholic faith, although the school was open to all children without distinction of sex, race, or religious belief. Only such children as were able to do so were required to pay tuition. Instruction was given altogether by Sisters of Charity, who lived in the buildings, and who also educated gratuitously certain novices and postulants living with them. An injunction was granted to restrain the collection of taxes from the corporation on the ground that it was a purely public charity. Decree reversed.—Miller's Appeal, 10 W. N. C. 168 (1881).

(868) A church academy was founded and endowed by public and private charity, but substantially maintained by tuition fees, although it had a free scholarship fund. The trustees of the academy claimed that its property was exempt from taxation under art. IX., § 1, of the constitution, and the act of May 14, 1874 (P. L. 158; P. & L. Dig. 4654), and filed a bill for an injunction to restrain the collection of the tax, claiming that it was sufficient to bring the academy within the constitutional exemption that the institution was founded by charity, though it was not so maintained. Injunction granted. Decree reversed.—Hunter's Appeal, 1 Mona. 1 (1888), Sterrett, J.; s. c. 22 W. N. C. 361.

(869) In a case stated wherein the county of Mercer was plaintiff and Thiel College defendant, it appeared that the latter was an incorporated college founded and endowed by the gifts of citizens and managed by a board of trustees, whose chief object was to furnish education to the youth of both sexes at as reasonable a rate as possible, but not granting free tuition, in which the public or any particular class had an absolute right to participate. *Held*, affirming the lower court, that the college was not such an institution of purely public charity as was exempted from taxation by art. IX., § 1, of the constitution.—Thiel College v. Mercer County, 101 Pa. 530 (1883), Gordon, J.; s. c. 13 W. N. C. 245, 14 Lanc. Bar, 206.

(870) On a case stated to determine whether Lafayette College was subject to a tax, it was not denied that the college itself was exempt under art IX., § 1, of the constitution and the act of May 14, 1874 (P. L. 158; P. & L. Dig. 4654), but it was sought to tax the president's house, the professors' dwellings, the residence of the gardener, and certain vacant lots, all contained in one enclosure, and all declared by the trustees necessary for the proper carrying on of the institution. Judgment for the college.—Northampton County v. Lafayette College, 128 Pa. 132 (1888), Williams, J.; s. c. 24 W. N. C. 521. Affirming 5 Pa. C. C. 407, 1 North. Co. 212.

(871) The act of March 30, 1864 (P. L. 136), supplementary to the act of March 9, 1855 (P. L. 66), incorporating a certain institute, provided that the "cabinet collections and lot of ground on which it is erected, belonging to the said institution, with any gifts, bequests, or endowments, so long as the same shall be used for free lectures, shall be exempt from taxation." This exemption was repealed by the act of April 8, 1873 (P. L. 64). A piece of property, not annexed to the institution, was conveyed to the directors in trust, as an endowment for the institution. The institute filed a bill to restrain the collection of taxes on said property. Injunction refused, as the act of May 14, 1874 (P. L. 158; P. & L. Dig. 4655), passed to carry out the intention of the constitution, in enumerating the institutions of learning, benevolence, or charity intended to be included, restricts the exemption to the institution itself, "with the grounds thereto annexed, and necessary for the occupancy and enjoyment of the same." Decree affirmed.—Wagner Free Institute v. Philadelphia, 132 Pa. 612 (1890), Mitchell, J.; s. c. 19 Atl. 297, 25 W. N. C. 437.

(872) A portion of the lot upon which the building of a charitable institution was situated became detached from the rest of the lot by reason of the opening of a street through the property. Subsequently the city imposed a tax upon such detached portion of the lot for benefits conferred by paving the street. On *sci. fa. sur* claim for said assessment, *held*, that such detached portion of the lot was not exempt from taxation and judgment for the city.—Philadelphia v. Ladies' United Aid Soc., 1 D. R. 249 (1892); s. c. 12 Pa. C. C. 346.

(873) Certain taxes were assessed by the city of Philadelphia against the building of the Young Men's Christian Association. A bill was filed to restrain the collection of such taxes. A part of the premises was in actual use for the purpose of charity; but other portions were rented to and occupied by strangers for business or traffic. On bill filed to restrain the collection of the taxes, *held*, that the former portion was exempt, but the latter portions were liable to taxation.—Young Men's Christian Ass'n v. Donohugh, 7 W. N. C. 208 (1879), Allison, P. J.; s. c. 13 Phila. 12.

(874) On appeal by a charitable society from a decision of a board of revision of taxes, it appeared that the society's property had been exempted from taxation by a special act passed February 18, 1869 (P. L. 210). It was contended by the society that this act was not affected by art. IX., § 1, of the constitution, or by the act of

May 14, 1874 (P. L. 158; P. & L. Dig. 4654), passed in pursuance of said section. It appeared that the society derived a stated income from its property. Appeal dismissed.—German Society v. Philadelphia, 4 W. N. C. 213 (1877).

(875) In *scire facias sur* municipal claim for curbing laid in front of the property of the B. hospital, the affidavit of defence set up that B. was an institution of purely public charity and was exempt from taxation, and that the claim for curbing was a tax laid on B. and was unconstitutional. Judgment for plaintiff was affirmed, on the ground that the claim for curbing was an assessment and not a tax within the meaning of art. IX., § 1, of the constitution.—Philadelphia v. Pennsylvania Hospital, 143 Pa. 367 (1894), Sterrett, J.; s. c. 28 W. N. C. 434. Affirming 8 Pa. C. C. 72, 7 Lanc. L. R. 107.

4. Places of Burial.

The exemption from taxation authorized by Article IX., section 1, of places of burial not used for private profit, does not extend to a municipal assessment for laying a sidewalk (876), or water mains. (877)

(876) The city of A. levied an assessment for the laying of a sidewalk in front of a graveyard, after refusal on the part of the trustees to lay said walk or pay for the same as required by a city ordinance. A *sci. fa.* was issued, and in a case stated to determine the validity of the assessment, the trustees showed that the graveyard was not conducted for private gain, but as a charity, and claimed that by art. IX., § 1, of the constitution, it was exempt from taxation. Judgment for defendants was refused, on the ground that municipal assessments were not taxes within the meaning of the said section.—Newcastle City v. Jackson, 172 Pa. 86 (1895), Green, J.

(877) On *sci. fa. sur* municipal claim against a cemetery company for laying water pipe in a street, the defendant corporation claimed that the assessment amounted to no more than a tax, since it was not for an improvement to its property, but solely for the city's benefit, that the pipe was laid. The city contended that as this was not a sum exacted by the state or city in aid of its governmental duties, it did not fall within the meaning of art. IX., § 1, of the constitution. Judgment for plaintiff was affirmed.—Philadelphia v. Union Burial Ground Society, 178 Pa. 533 (1897), Green, J. (Williams, J., dissenting); s. c. 39 W. N. C. 351.

5. Exemptions in General.

Article IX., § 2, of the constitution provides that "all laws exempting property from taxation, other than property above enumerated (*i. e.* property mentioned in § 1), shall be void."

This section repeals all exemptions from taxation not included in § 1. (878–880)

The legislature may, when the state receives a fair equivalent, commute taxes on taxable property. (881–882)

The provisions of this section do not disturb decisions of the courts that certain land necessary to the operation of a railroad corporation is a part of such franchise, and is not subject to local taxation as real estate. (883)

The exemption of "notes or bills for work or labor done" from the operation of the act of June 30, 1885 (P. L. 193; P. & L. Dig. 4456), which provided for a tax upon moneys at interest, mortgages, etc., was in conflict with the constitution, and therefore could not stand.—Fox's Appeal, 112 Pa. 337 (1886), per Paxson, J. (Mercur, C. J., dissenting); s. c. 4 Atl. 149, 17 W. N. C. 449, 43 L. I. 214. Affirming 3 Lanc. L. R. 49.

(878) Certain acts exempted the owners of property, in a certain district, from the payment of road taxes, without any consideration for such exemption. In 1875, the township brought suit for the tax, claiming that art. IX., §§ 1 and 2, of the constitution of 1874 repealed the said acts, since there was no express exemption of said acts from the operation of those sections. The defendants contended that the acts amounted to a contract with the property owners, and the rights thereunder could not be impaired. *Held*, that, as there was no consideration, there was no impairment of the obligation of contract, and the acts were repealed. Judgment for plaintiff.—Londonderry Twp. v. Berger, 2 Pears. 230 (1875), Pearson, J.

(879) A camp-meeting association was incorporated before 1874 by an act which exempted all of its property from taxation. After the constitution of 1874, a tax was levied on that part of the land owned by the camp-meeting association, which was not used for religious purposes. The act of incorporation was set up in defence to an action for the tax. *Held*, that the act was repealed by art. IX., § 2, of the constitution, and judgment was entered for plaintiff.—Luzerne County v. Camp-Meeting Ass'n, 3 Kulp, 175 (1884), Rice, P. J.; s. c. 13 Luz. L. Reg. 390.

(880) The act of April 18, 1864 (P. L. 454), exempted the property of a certain library company from taxation. After the adoption of the constitution, stores owned by the company were assessed for taxes. *Held*, in an action to collect said taxes, that the statute exempting this property was rendered void by art. IX., § 2, of the constitution of 1874, and judgment for plaintiff affirmed.—Mercantile Library Hall Co. v. Pittsburg, 11 Atl. 667 (1887). Affirming 3 Pa. C. C. 519.

(881) The act of March 31, 1870 (P. L. 42; P. & L. Dig. 319), provided that in case any bank or savings institution should elect to collect annually from the shareholders thereof a tax of 1 per cent. upon the par value of all the shares of said bank or savings institution, and pay the same

into the state treasury, the shares, capital, and profits of the bank should be exempt from all other state taxation. On a case stated to determine the right of the state to levy a tax in disregard of said act, on the ground that it was an exemption from taxation within the prohibition of art. IX., § 2, of the constitution, judgment against the commonwealth was affirmed.—Lackawanna County v. First Nat. Bank of Scranton, 94 Pa. 221 (1880); s. c. 9 W. N. C. 549, 12 Lanc. Bar, 162, 1 Chest. Co. 164.

(882) The act of June 7, 1879 (P. L. 112), provided that any bank which should pay into the state treasury six-tenths of one per cent. of the par value of all its stock could thus render its stockholders exempt from any tax on such stock. In equity proceedings against the tax collector, it was contended that the act was in conflict with art. IX., § 1, of the constitution. *Held*, that the act was constitutional, and decree granting a preliminary injunction affirmed.—Truby's Appeal, 96 Pa. 52 (1880), Sharswood, C. J.

(883) The act of April 8, 1873 (P. L. 64; P. & L. Dig. 4659), was entitled "An act to repeal all laws exempting real estate from taxation." This act was held not to affect decisions of the courts that certain land necessary to the exercise of the franchise of a railroad corporation was a part of such franchise, and not real estate subject to local taxation under the existing law. After the adoption of the constitution of 1874, the tax assessor of a ward of the city of A. levied on said real estate, claiming that the decision upon the act of 1873 was nullified by art. IX., § 2. Judgment entered against the city on a case stated was affirmed.—Northampton Co. v. Lehigh Coal & Nav. Co., 75 Pa. 461 (1874), Sharswood, J.

See, also, Luzerne County v. Lehigh Coal & Nav. Co., 5 Luz. L. Reg. 5 (1875), Handley, J.; s. c. 8 Leg. Gaz. 47.

(C) MUNICIPALITIES NOT TO BECOME STOCKHOLDERS OR LEND CREDIT.

1. Holding Stock in, or Appropriation of Money to, a Corporation.

Article IX., § 7, providing that "the general assembly shall not authorize any county, city, borough, township, or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual," is wholly prospective in its operation, and does not effect acts passed before the adoption of the constitution. (884)

It does not prevent municipalities from engaging, under legislative authority, in a manufacturing business for the benefit of the public, such as is usually conducted by a private corporation (885), or from negotiating a loan for the purpose of increasing the works used in such business. (886)

An act providing for the investment of city funds in the stock of a corporation (887), or for payment by a county for the treatment of pauper patients in a private incorporated hospital (888), is unconstitutional.

An act authorizing a court, instead of a city council, to appropriate funds from a city treasury to any institution is unconstitutional and void. (889)

Prior to the adoption of this section into the constitution, subscriptions to the stock of a corporation by a municipality were held constitutional. See Riddle v. Phila., etc., R. R. Co., 1 Pitts. 158 (1854), Knox, J.; Comm. v. Perkins, 43 Pa. 400 (1862), Read, J.

The bounty acts, authorizing borough and township authorities to raise money for bounties to be paid to volunteers for the United States army, were held not to violate similar provisions in the former constitution. See Speer v. Blairsville School Directors, 50 Pa. 150 (1865). Agnew, J.; Ahl v. Gleim, 52 Pa. 432 (1866); Hilbish v. Catherman, 64 Pa. 154 (1870), Agnew, J.

(884) Section 4 of the act of March 29, 1851 (P. L. 289), provided for an annual appropriation not exceeding $100 to be paid to an incorporated agricultural society by the county in which it was situated. In an action of debt by the society to compel the county to pay the said amount, judgment was entered for plaintiff, on the ground that the act was not repealed by art. IX., § 7, of the constitution, as the operation of that article was prospective only. Judgment affirmed.—Indiana County v. Argicultural Soc., 85 Pa. 357 (1877); s. c. 4 W. N. C. 481.

(885) The act of May 20, 1891 (P. L. 90; P. & L. Dig. 407), authorized any borough then incorporated, or which might thereafter be incorporated, to manufacture electricity for the use of the inhabitants of the borough. A bill was filed by a taxpayer to restrain the erection of an electric light plant by the borough of B., on the ground that the act of 1891 was unconstitutional as authorizing boroughs to appropriate money contrary to art. IX., § 7. Bill dismissed. Decree affirmed.—Linn v. Chambersburg Borough, 160 Pa. 511 (1894); s. c. 28 Atl. 842.

(886) The city of P. authorized persons to subscribe to the stock of a corporation to be organized for the purpose of constructing and operating gas works in the said city. Subsequently the city took possession of the works, and issued certificates of loan to the stockholders in lieu of their stock, as the gas works became

the property of the city exclusively. The city afterwards proposed to increase its indebtedness for the purpose of enlarging the works. On a bill for an injunction to prevent such increase, it was claimed that the city was subscribing to the stock of a corporation, and that its action was therefore in conflict with the constitution. *Held*, that the city was the sole owner and operator of the gas works, and that the constitutional prohibition did not extend to such a case; and the bill was dismissed.—Wheeler v. Philadelphia, 77 Pa. 338 (1875), Paxson, J.; s. c. 1 W. N. C. 178, 7 Leg. Gaz. 35, 32 L. I. 41, 22 Pitts. L. J. 101.

(887) The city of Philadelphia, by express legislative authority, subscribed for stock in the Pennsylvania Railroad Company. In 1857 the constitutional amendment was adopted prohibiting the legislature from giving any municipality power to subscribe for the stock of any company. In 1863 the city passed an ordinance allowing the railroad to retain a certain part of the dividends due the city upon such stock for the purpose of a municipal subscription to the stock of an ocean steamship company. On a bill for an injunction to restrain the city from carrying out the arrangements, *held*, that the constitutional amendment of 1857 forbade any further loan, and injunction granted. Decree affirmed.—Pennsylvania R. Co. v. Philadelphia, 47 Pa. 189 (1864), Read, J.

(888) The act of May 21, 1874 (P. L. 220), provided that it should be lawful for managers or trustees of any hospital for the cure of the sick and injured, which was duly incorporated in any city or borough containing a population of 20,000 inhabitants, to make requisition upon the commissioners of the county for the support of such poor patients under treatment in the hospital, as were unable to pay for their own treatment. On a case stated between the A. hospital and B. county, *held*, affirming the lower court, that the act was unconstitutional, and that the hospital had no right to any sum from the county. —Wilkesbarre City Hospital v. Luzerne County, 84 Pa. 55 (1877), Agnew, C. J. (Sharswood and Paxson, JJ., dissenting); s. c. 4 W. N. C. 178, 6 Luz. L. Reg. 161, 34 L. I. 304.

(889) An act was passed authorizing an application to the court of common pleas and the issuance of an order thereon by said court for the payment of such sum as they might deem expedient, out of the city treasury of P., to "Homes for Friendless Children," situated in the said city. An application was made, and was opposed on the ground that to grant the prayer would be to evade the spirit of the constitution, art. IX., § 7, which provides that the legislature shall not authorize any city to appropriate money to any corporation, institution, or party, the "home" in question being a corporation. Application refused.—Northern Home for Friendless Children, 2 W. N. C. 349 (1876), Biddle, J.

2. Loan of Credit to a Corporation or Individual.

Article IX., § 7, of the constitution provides that no municipality shall loan its credit to any corporation, association, institution, or individual.

A contract between a city and a railroad that the city is to make certain changes by which both the city and the railroad will be benefited, with an agreement that the railroad is to reimburse the city one-half of the amount expended, is not a loan of the city's credit. (890)

A purchase of judgments by a borough for the purpose of setting them off against other judgments, when it appears that such transaction is merely for the purpose of enabling the holder of the first judgments to collect his debt, is in conflict with this section. (891)

A city may, notwithstanding this section, appropriate money to a committee of citizens for the investigation of the advisability of constructing a proposed public work. (892)

(890) A city, by ordinance, authorized the creation of a loan for the purpose of ridding the city of railroad grade crossings. It appeared that part of the money was to be expended in an improvement for the advantage of a certain railroad company, which, by the terms of the contract, was to reimburse the city one-half the expenditure. On a bill in equity, to restrain the city from entering into the transaction, *held*, that this was not a loan of the city's credit to a corporation, and the ordinance and creation of the loan were valid. Bill dismissed.—Brooke v. Philadelphia, 162 Pa. 123 (1894), Dean, J. (Sterrett, C. J., dissenting); s. c. 29 Atl. 387, 34 W. N. C. 341.

(891) A. held certain judgments against the borough of B. C. held certain judgments against A. The borough obtained from C. an assignment of his judgments against A., and proposed to set off such judgments against those which A. held. It appeared that this had been done at the instance of C., for the purpose of realizing upon his judgments against A. On rule to show cause why the judgments bought from C. should not be set off against those held by A. against the borough, the rule was made absolute. Reversed, on the ground that the transaction was a loan of the credit of the borough, and was therefore in conflict with the constitution.—Earley's Appeal, 103 Pa. 273 (1883), Gordon, J.; s. c. 40 L. I. 352, 31 Pitts. L. J. 71.

(892) A petition was filed for a peremptory mandamus to B., the controller of the city of P., to compel him to sign a warrant for the payment to the relators of a certain sum. Relators averred that the said sum had been appropriated by councils of P. to the relators, who were a committee of citizens of P., for the purpose of having a survey made and estimates prepared for the construction of a proposed ship canal, which, it was admitted, would be of great public and commercial benefit to the city of P., if constructed. B.'s answer set up that the ordinance appropriating said sum to the relators was unconstitutional because forbidden by art. IX., § 7, of the constitution. Peremptory mandamus issued.—Comm. v. Pittsburgh, 183 Pa. 202 (1897).

(D) MUNICIPAL DEBTS.

1. Increase without Popular Vote.

Article IX., § 8, of the constitution provides that no municipality or incorporated district shall incur any new debt, or increase its indebtedness, to an amount exceeding two per cent. upon the assessed valuation of property, without the assent of the electors thereof at a public election, in such manner as shall be provided by law; and that the indebtedness of a municipality shall never exceed seven per cent. on such assessed value.

Public officers are not, by this section, deprived of the power to make improvements, provided they keep within the limits of the two per cent. increase. (893–894)

The meaning of the section is that since the constitution went into effect a municipality cannot, without the assent of the electors, increase its debt in the aggregate more than two per cent. of the assessed value of the property, not that any particular increase shall not exceed two per cent. (895–896)

The article specially provided for cities which had reached the limit of seven per cent. at the time of adoption of the constitution, allowing them by special legislative authority to increase their debt three per cent. additional. (897) This provision was of a temporary character; and if a city whose indebtedness then exceeded the seven per cent. limit subsequently reduced its debt below that limit, it at once passed into the category of all the other cities of the state, and thereafter could only create or increase its indebtedness in the same manner that they could. (898)

Any increase of a city's liability to pay out money is an increase of indebtedness, within the meaning of this section. (899–900)

An injunction is properly granted to restrain a school district from increasing its indebtedness more than two per cent. without a popular vote upon the question. (901)

Bonds issued by a municipality in excess of two per cent. of the assessed valuation without a popular vote, are void, and no action can be maintained thereon. (902)

This section did not repeal a pre-existing law limiting the amount of indebtedness for a school sub-district to less than two per cent. of the assessed value of property therein. (903)

Whether a contract by a city to pay rent in future years is an increase of debt or not, a court will not, on the ground that the legal limit of debt has been passed, enjoin payment of the rent, so long as the money is actually or potentially in the treasury, and has been duly appropriated, the purpose of the contract being part of the ordinary administration of the government. (904)

The provision of section 8, Article IX., of the constitution, that the debt of any city "shall never exceed seven per cent. upon the assessed value of the taxable property therein;" and section 2 of the act of April 20, 1874 (P. L. 65; P. & L. Dig. 567), providing that any city may increase its indebtedness to an amount "not exceeding two per cent. upon the assessed value of the taxable property therein,"—mean the valuation fixed by the city authorities as a basis of taxation for city purposes, and not the valuation made by county officers for county purposes. (905)

(893) A bridge was erected across a river in a certain county. Subsequently an act was passed authorizing the county commissioners to purchase the bridge and issue bonds therefor. At the time the bonds were issued, the county indebtedness was between two and three per cent. of the assessed value of the property, and the increased indebtedness did not exceed two per cent. In covenant on the bonds, for interest due thereon, the defence was that the county commissioners had not power to authorize the increase of debt, because the county already owed more than two per cent. *Held*, that the commissioners might incur such debt so long as the total increase did not reach two per cent. Judgment for defendant reversed.—Pike County v. Rowland, 94 Pa. 238 (1880), Trunkey, J.; s. c. 9 W. N. C. 241.

(894) The act of March 12, 1867 (P. L. 412), and

its supplement of April 15, 1867 (P. L. 1253), gave to the borough of Easton authority to construct public water works, and to issue bonds to raise the money necessary for that purpose, such bonds not to exceed a specified amount. On petition for mandamus, to compel the issuing of the bonds, after the adoption of the constitution of 1874, it was contended that the issuing of the bonds under authority of the said acts was not prohibited by the new constitution, as the amount of the bonds did not increase the total indebtedness more than two per cent. of the assessed valuation of the property in the borough. Judgment dismissing the petition was reversed.—Ackerman v. Buchman, 109 Pa. 254 (1885), Sterrett, J.; s. c. 6 Atl. 218.

(895) A bill was filed for an injunction to restrain a city from making a proposed increase of its indebtedness. It appeared that the increase proposed was not by itself equal to two per cent. on the assessed valuation of the property in the city, but that the amount of such increase, added to other increases which had been made since the constitution of 1874 went into effect, would be more than two per cent. upon such assessed valuation. Injunction granted.—Wilkesbarre City's Appeal, 109 Pa. 554 (1885), Mercur, C. J.; s. c. 16 W. N. C. 484, 42 L. I. 415, 4 Kulp, 1.

See, also, Nankivil v. Yeosock, 7 Kulp, 518 (1895), Rice, P. J.

(896) A. *et al.*, taxpayers of the city of B., filed a bill for an injunction to restrain the city from making a loan which, it was averred, would make the increased municipal debt more than two per cent. of the assessed value of the property in the city, on the ground that such a loan would be contrary to art. IX., § 8, of the constitution. B. contended that the article of the constitution cited merely meant that a city could increase the indebtedness up to 7 per cent., without a popular vote, provided it did not increase it more than two per cent. at one time. *Held*, reversing the court below, that the limit of two per cent. fixed by the constitution was an absolute limit beyond which a city could not go without a popular vote, and seven per cent. was the final limit beyond which it could not go even by a popular vote. Injunction granted.—Pepper v. Philadelphia, 181 Pa. 566 (1897), Sterrett, C. J.; s. c. 40 W. N. C. 377.

(897) Section 11 of the act of May 23, 1874 (P. L. 230), provided that "the councils of any city of the first class, the debt of which now exceeds seven per centum upon the assessed value of the taxable property therein, shall be and they are hereby authorized to increase the said debt one per centum upon such valuation." A bill was filed to restrain the city of P. from increasing its debt one per cent., on the ground that the limit fixed by the constitution was seven per cent., which limit P. had passed before the adoption of the constitution. Bill dismissed on the ground that this very contingency was provided for by art. IX., § 8, of the constitution, which allows a further increase, under such circumstances, by express authority of the legislature.—Wheeler v. Philadelphia, 77 Pa. 338 (1875), Paxson, J.; s. c. 1 W. N. C. 178, 7 Leg. Gaz. 35, 32 L. I. 41, 22 Pitts. L. J. 101.

(898) The debt of Philadelphia, at the time of the adoption of the constitution of 1874, had reached seven per cent. Subsequently it was partly paid off, and fell below that ratio. It was then proposed to borrow a certain sum, which would render the city's increase of debt, since the adoption of the constitution, more than two per cent., and certain taxpayers filed a bill to enjoin the borrowing of such a sum. The city answered that the proviso in section 8 applied to the city, as its debt exceeded seven per cent. in 1874, and it therefore had the right to increase its debt by an amount equal to three per cent. of the assessed valuation. *Held*, reversing the court below, that the proposed increase was unconstitutional without a popular vote, as the provision relied on by the city was of a temporary character only, and as Philadelphia had reduced its debt below seven per cent. it passed into the category of all other cities of the commonwealth, and it was subject to the same rules as governed them. Injunction granted.—Pepper v. Philadelphia, 181 Pa. 566 (1897), Sterrett, C. J.

(899) A city, whose indebtedness was already more than 7 per cent. of the assessed value of the property therein, entered into a contract with a certain person to erect a market-house. The contract provided that the city should pay an annual rental equal to 6 per cent. on the entire cost of the building and value of the real estate for twenty-five years, with an option to purchase the property at any time during that term. A bill was filed to restrain the consummation of the contract, as it was not shown that the annual revenues of the city were sufficient to defray the expense to be incurred. The city contended that the proposed contract did not amount to an increase of indebtedness within the constitutional prohibition. Injunction granted. Decree affirmed.—Erie City's Appeal, 91 Pa. 398 (1879), Gordon, J.; s. c. 27 Pitts. L. J. 75.

(900) A city, whose indebtedness exceeded the amount authorized by the constitution, entered into a contract for a water supply system to be paid for in annual instalments. It was not shown how the city was to meet the annual expense thus to be created. On bill filed an injunc-

tion was issued to restrain the execution of the contract, on the ground that it was an increase of indebtedness.—Brown v. Corry City, 4 D. R. 645 (1895), Gunnison, P. J.

(901) The school directors of a certain school district entered into a contract for the erection of a schoolhouse, the cost of which would increase the indebtedness of the school district nearly four per cent. upon the assessed valuation, without any popular vote upon the question of such increase of indebtedness. Upon petition of a taxpayer of the district, a preliminary injunction was granted, but was afterwards dissolved. On appeal, *held*, that the injunction should have been continued.—Luburg's Appeal, 1 Mona. 329 (1889), Sterrett, J.; s. c. 17 Atl. 245, 23 W. N. C. 454.

(902) A certain borough issued bonds, to an amount which exceeded two per cent. of the assessed valuation of the property in the borough, without submitting the question of such increase of indebtedness to a popular vote. A., a *bona fide* holder of one of the bonds, brought suit thereon for interest due, and obtained judgment. Reversed, as such bonds were given for a debt made absolutely illegal by the constitution, and would not support an action.—Millerstown Borough v. Frederick, 114 Pa. 435 (1886), Clark, J.; s. c. 7 Atl. 156, 34 Pitts. L. J. 193.

(903) Section 66 of the act of February 12, 1869 (P. L. 150), provided that at no time should the indebtedness of any school sub-district of the city of Pittsburgh for borrowed money exceed $50,000. The act of April 20, 1874 (P. L. 65), provided that any school district might increase its indebtedness to an amount in the aggregate not exceeding two per cent. upon the assessed value of property taxed therein. A bill was filed to restrain a sub-district of Pittsburgh from borrowing a sum in excess of $50,000. Injunction refused. Decree reversed.—Hutchinson's Appeal, 4 Penny. 84 (1884), Trunkey, J.; s. c. 32 Pitts. L. J. 181.

(904) A bill was filed for an injunction to restrain the city of P. from paying rent under a contract entered into between the city and one B., for the lease by the city of a fire-engine house for a term of ten years. The bill alleged that there was not money in the city treasury to meet this yearly recurring charge, and that the city had reached and passed the legal limit of indebtedness. Bill dismissed, as it was not necessary to decide the binding force of the agreement, because so long as councils annually appropriated enough to meet the rent there could be no reason to enjoin the carrying out of the lease.—Booth v. Weiss, 15 Phila. 159 (1881), Mitchell, J.

(905) A bill in equity by A. *et al.*, to restrain the city of Pittsburg from borrowing money and issuing bonds therefor, alleged that the defendant had adopted the city valuation as the legal basis on which to determine the amount of the debt, whereas the county valuation was the proper basis. *Held*, the basis adopted was proper and bill dismissed.—Bruce v. Pittsburg, 166 Pa. 152 (1895), Dean, J.; s. c. 30 Atl. 891, 42 Pitts. L. J. 335.

2. Voting on Increase.

When it is proposed to increase the indebtedness of a town for several objects, the question of the increase for each purpose should be submitted separately to popular vote. (906)

(906) A certain town passed an ordinance providing for an election to increase the bonded debt of the town for several different objects; but the sum needed for all of these objects was combined into one lump sum, and the election was to be for or against the increase. On a bill by a taxpayer for an injunction, *held*, that the proposed election was in conflict with the constitution, as the questions of the increase for each purpose should have been submitted separately. Injunction granted.—Bloomsburg Town Election, 4 D. R. 671 (1895) Ikeler, P. J.

3. Ascertainment of Indebtedness.

The debt of a city is properly ascertained by subtracting from its total indebtedness the amount of the certificates of the funded debt of the city held in the sinking fund. (907)

Assessments on offices, posts of profits, occupations, and trades are properly included within the assessed value of property, within the meaning of this section. (908)

(907) A city proposed to increase the amount of its indebtedness, and a bill was filed for an injunction, upon the ground that such increase would make the total indebtedness of the city more than 7 per cent. of the assessed value of the property of the city. It appeared that the uncancelled evidences of the debt of the city amounted to very nearly 7 per centum, but that these evidences of indebtedness, to a very large amount, had been purchased by the city and were in the sinking fund; that the outstanding evidences of indebtedness amounted only to something more than 4 per cent., and that, taking such outstanding indebtedness as the debt of the city, the proposed increase would not make the total indebtedness 7 per centum. Injunction refused. Decree affirmed.—Brooke v. Philadelphia, 162 Pa. 123 (1894), Dean, J. (Sterrett, C. J., dissenting); s. c. 29 Atl. 387, 34 W. N. C. 341.

Followed in Bruce v. Pittsburg, 166 Pa. 152 (1895), Dean, J.; s. c. 30 Atl. 831, 42 Pitts. L. J. 335.

(908) A city entered into a contract for the erection of public buildings. It was alleged that the contract would increase the debt incurred

since January 1, 1874, to more than two per cent. of the assessed valuation of the property. This was denied, and the matter was referred to a master. The master included, in his computation of the assessed valuation, assessments on offices, posts of profit, trades, occupations, etc., and reported that the proposed increase would not make the total debt incurred more than two per cent. of such assessed valuation. The report was sustained. Decree affirmed.—Brown's Appeal, 111 Pa. 72 (1886), Mercur. C. J.; s. c. 2 Atl. 77, 17 W. N. C. 42, 33 Pitts. L. J. 269.

(E) TAXATION FOR PAYMENT OF MUNICIPAL DEBTS.

Article IX., § 10, of the constitution provides that "any county, township, school district or other municipality, incurring any indebtedness, shall, at or before the time of so doing, provide for the collection of an annual tax, sufficient to pay the interest, and also the principal thereof within thirty years." This section does not apply to ordinary current expenses. (909–911)

A municipality cannot increase its indebtedness without providing for payment of principal and interest as required by this section (912); and bonds issued for an increase of debt, without a tax levy previously provided to meet them, are void, though if they are issued to meet an existing debt, the holder may recover as for money loaned, as there has only been a substitution of one creditor for another. (913)

A borough which enters into a contract involving an expenditure in excess of the revenue applicable thereto incurs an indebtedness, within the meaning of this section. (914)

(909) The court of quarter sessions having issued a mandamus directed to the supervisors of a township compelling them to levy an assessment for the purpose of discharging a debt incurred in making and repairing a road, a taxpayer issued a *certiorari*, claiming that the proceedings were contrary to art. IX., § 10, of the constitution, because the township, under that section, must levy a tax to meet the debt before creating it. The proceedings were affirmed on the ground that this section could not have been meant to apply to the ordinary and incidental expense of building and repairing roads, as this expense was not a fixed and ascertained debt.—Lehigh Coal and Navigation Co.'s Appeal, 112 Pa. 360 (1886), Gordon, J.

(910) A borough made a contract with an electric light company to furnish lights for the borough streets for a certain price per year, and the council increased the rate of taxation in order to pay the rental of the lights. A bill was filed by the taxpayers to restrain the collection of the increased taxes, on the ground that the contract increased the indebtedness, and necessitated a special tax, which could not be assessed without obtaining the consent of the voters, as provided by art. IX., § 10, of the constitution. *Held*, affirming the court below, that the lighting of the streets was a current expense, and the consent of the voters was not necessary. Bill dismissed.—Wade v. Oakmont Borough, 165 Pa. 479 (1895), Dean, J.

(911) The city of B. was about to award a contract for paving to X., when A. filed a bill for an injunction on the ground that the city had not the power to increase its indebtedness, which already exceeded two per cent. of the assessed value, without submitting the question to popular vote, of levying a tax to meet the increase. The city showed that the contract was a mere current expense and that there was money sufficient to pay for said paving in the treasury, or forthcoming from taxes regularly levied by the city. Bill dismissed. Decree affirmed.—Reuting v. Titusville, 175 Pa. 512 (1896).

(912) The school controllers of a certain district sought to increase the indebtedness thereof by the erection of new schoolhouses. No provision was made for the collection of an annual tax to pay the interest and principal of such indebtedness. On bill for an injunction, filed by a taxpayer, *held*, that the action of the school controllers was in conflict with the constitution, and injunction was granted.—Witherop v. Titusville School Board, 7 Pa. C. C. 451 (1889), Henderson, P. J.

(913) A certain borough being in debt for the cost of legal proceedings, the council thereof appointed two of their number to ascertain the amount of their indebtedness and borrow money to pay the same. As a result of this resolution, $500, less than two per cent. of the assessed valuation, was borrowed from A. and bonds were issued to A. for the amount; but no provision for the collection of an annual tax to pay the interest and principal was made, according to the provisions of the constitution and act of April 20, 1874 (P. L. 65; P. & L. Dig. 567). In an action by A. for interest on said bonds, *held*, that they were void, but that A. could maintain his action for money loaned, since it appeared that the money he had subscribed was used to pay a prior valid indebtedness, thus merely exchanging one creditor for another; and judgment for A. was affirmed.—Rainsburg Borough v. Fyan, 127 Pa. 74 (1889); s. c. 17 Atl. 678.

(914) A. *et al.*, taxpayers, filed a bill against the borough of B. to restrain it from entering into a proposed contract for electric lighting. Com-

plainants showed that the current revenues of the borough would not be sufficient to meet the increased expense that would be entailed by said contract, and further, that the borough authorities had not levied a tax to meet the interest on the increase of debt that would result, over and above current revenues, as required by art. IX., § 10, of the constitution. Injunction granted.—Davis v. Doylestown Borough, 3 Pa. C. C. 573 (1887), Yerkes, P. J.

(F) STATE SINKING FUND.

An act authorizing the state treasurer to cancel bonds of a railroad company held in the state sinking fund, and to accept other bonds in their stead, was held not to be a violation of Art. XI., § 4, of the old constitution (corresponding to Art. IX., § 11, of the constitution of 1874), which provided for the maintenance of the sinking fund. (915)

(915) An act of assembly authorized the state treasurer to cancel certain bonds of the X. railroad company which were given by said company on the purchase by it of part of the state canals, and to accept other securities in their stead. These bonds properly belonged to the state sinking fund. On bill in equity to restrain proceedings under the act it was contended that the act was unconstitutional, being in violation of the sinking fund clause, art. XI., § 4, of the old constitution. Decree dismissing bill, affirmed.—Gratz v. Pennsylvania Railroad Co., 41 Pa. 447 (1861), Strong, J.

X. SECTARIAN INFLUENCE IN PUBLIC SCHOOLS.

Section 2 of Article X. of the constitution provides that "no money raised for the support of the public schools of the commonwealth shall be appropriated to or used for the support of any sectarian school."

Religious exercises of a sectarian character in the public schools of the state are prohibited by this section (916); but reading from King James' version of the Bible and singing Protestant hymns are not such sectarian exercises as are forbidden. (917)

To authorize the interference of the courts, there must be proof that sectarian instruction is imparted during school hours. (918)

(916) A school director filed a bill against the principal of the public school of his district, in which he alleged that the said principal conducted religious exercises at the opening hour of the school in one of the school rooms, such exercises being in the form usually followed by the Methodist Episcopal Church of that vicinity, and prayed for an injunction restraining defendant from holding such exercises. *Held*, that such exercises were contrary to art. X., § 2, of the constitution; and injunction granted.—Stevenson v. Hanyon, 4 D. R. 395 (1895), Gunster, J.; s. c. 42 Pitts. L. J. 381, 16 Pa. C. C. 186.

(917) The directors of a public school authorized reading from the King James' version of the Bible, and singing Protestant hymns during the opening exercises. They provided a room where Catholic children might remain during such exercises. On bill for an injunction, *held*, that this was not a violation of the constitution. Bill dismissed.—Hart v. Sharpsville Borough School Dist., 2 Chest. Co. 521 (1885), Mehard, P. J.; s. c. 2 Lanc. L. R. 346.

(918) Certain citizens of the school district of A. filed a bill to restrain the officers of the district from employing as teachers Sisters of the Order of St. Joseph of the Roman Catholic Church. The petition set forth that the catechism of the Roman Catholic Church was taught before and during school hours, and that the petitioners were unwilling to subject their children to such religious influences, and that, therefore, they were deprived of the benefits of public-school education, and that the employment of said teachers was in violation of art. X., § 2, of the constitution. There was no proof that religious sectarian instruction was imparted during school hours. Petition dismissed. Decree affirmed.—Hysong v. Gallitzin Borough School Dist., 164 Pa. 629 (1894), Dean, J. (Williams, J., dissenting); s. c. 30 Atl. 482, 42 Pitts. L. J. 159.

XI. MILITIA.

Section 1 of Article XI. of the constitution provides that "the freemen of this commonwealth shall be armed, organized, and disciplined for its defence, when and in such manner as may be directed by law. The general assembly shall provide for maintaining the militia by appropriations from the treasury of the commonwealth, and may exempt from military service persons having conscientious scruples against bearing arms."

See the title "Militia," *infra*.

XII. PUBLIC OFFICERS.

(A) APPOINTMENT.

Section 1 of Article XII. of the constitution provides that "all officers whose selection is not provided for in this constitution, shall be elected or appointed as may be directed by law."

The legislature may provide for new officers, to be appointed by the governor. (919)

(919) The act of April 12, 1867 (P. L. 76), provided for the appointment of police officers in mining regions, upon petition of 100 citizens in

such region. The appointments were to be made by the governor, and he was also to fix the salaries of such officers, which were to be paid out of the county treasury. A. was appointed by the governor, and brought an action against the county to recover compensation for his services. The defendant contended that the act was unconstitutional. Judgment for A. affirmed.—Northumberland County v. Zimmerman, 75 Pa. 26 (1874), Sharswood, J.

(B) INCOMPATIBLE OFFICES.

Section 2 of Article XII. of the constitution provides that "no person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this state to which a salary, fees, or perquisites shall be attached," and that "the general assembly may by law declare what offices are incompatible."

The offices of postmaster and county commissioner are incompatible; but where a postmaster is elected a county commissioner, and thereupon resigns as postmaster, he may hold the office of commissioner. (920)

Under the acts declaring certain state offices to be incompatible with federal offices in pursuance of the above provision of the constitution, the office of township treasurer, not being mentioned in those acts, is not incompatible with an office held under the federal government (921); and when a person is the owner of a newspaper which is selected for publishing the orders, resolutions, and rules of congress, such employment is not incompatible with the office of alderman. (922)

(920) B. was postmaster of a certain town, and while holding such office was elected a county commissioner. The district attorney filed his suggestion and relation averring these facts, and praying for a writ of *quo warranto*, alleging that the offices were incompatible under art. XII., § 2, of the constitution. *Held*, reversing the lower court, that the two offices were incompatible; but, as B. had resigned his position as postmaster before answering, he could not be ousted from his position as county commissioner.—De Turk v. Comm., 129 Pa. 151 (1889), McCollum, J.; s. c. 18 Atl. 757, 25 W. N. C. 57.

(921) Rule to show cause why the appointment of A., a federal officer, as township treasurer, should not be revoked. The act of May 15, 1874 (P. L. 186; P. & L. Dig. 3255 *et seq.*), specified certain offices which were incompatible with federal offices, but did not specify the office of township treasurer. *Held*, that the legislature had not, as authorized by art. XII., § 2, of the constitution, declared the office of township treasurer incompatible with a federal office, and rule discharged.—Hanover Twp. Treasurer, 5 Kulp, 98 (1888), Woodward, J.

(922) On a rule to show cause why an information in the nature of a *quo warranto* should not be filed against B. to inquire by what authority he exercised the office of alderman of Philadelphia, it appeared that B. was the owner of a newspaper which had been selected as one among a number designated for publishing the orders, resolutions, and rules of congress. It was contended that such employment was incompatible with art. II., § 8, of the constitution of 1790 (see art. II., § 12, of the constitution of 1874). *Held*, that such employment was not incompatible with the office of alderman. Rule discharged.—Comm. v. Binns, 17 S. & R. 219 (1828), Tod, J., Huston and Smith, JJ. (Rogers, J., and Gibson, C. J., dissenting).

As to state offices declared by the legislature to be incompatible with federal offices, in pursuance of the above provision of the constitution, see acts of May 15, 1874 (P. L. 186; P. & L. Dig. 3256 *et seq.*), and May 18, 1876 (P. L. 179; P. & L. Dig. 3258).

XIII. ESTABLISHMENT OF NEW COUNTIES.

Section 1 of Article XIII. of the constitution provides that the line of a new county formed shall not "pass within ten miles of the county seat of any county proposed to be divided."

The words "county seat" in this section have reference to the town in which the courthouse is standing, not the courthouse itself. (923)

(923) The opinion of the attorney-general was requested as to the interpretation of the constitutional phrase "county seat." *Held*, that, whether interpreted by the language of the statutes or by popular understanding, the county seat must be taken to mean the place or town in which the courthouse of the county was situated, and not the courthouse itself.—County Seat, 4 D. R. 319 (1895), McCormick, Atty.-Gen.

XIV. COUNTY OFFICERS.

(A) WHO ARE COUNTY OFFICERS.

Section 1 of Article XIV. of the constitution designates the county officers. Under this section, and the act of March 31, 1876, passed in pursuance thereof, the office known as "city treasurer" in Philadelphia was changed from a municipal into a county office. (924)

But that section, making the district attorney a county officer, has not affected the force of the act of March 12, 1866 (P. L. 85; P. & L. Dig. 1630), giving the court the right in certain cases to appoint

a special district attorney. The legislature cannot abolish the office but can control the officer, and if he refuse to act it may afford a remedy. (925)

The office of city controller of Philadelphia is a county office under this section of the constitution, and the act of March 31, 1876 (P. L. 13, § 17; P. & L. 4257). (926)

(924) The office designated as "city treasurer within the city and county of Philadelphia" became vacant, and the governor appointed A. to fill the vacancy. The city council appointed B. A. instituted *quo warranto* proceedings against B. to inquire by what right he claimed to exercise the office in question. It was contended by A. that by art. XIV., § 1, of the constitution of 1874, and the act of March 31, 1876 (P. L. 13; P. & L. Dig. 86, n.), the office in question was changed from a mere municipal office to a county office, and the power to fill a vacancy therein was vested in the governor under the act of May 15, 1874 (P. L. 186; P. & L. Dig. 3255), which gave to the governor the power to fill any vacancy in any office created by the constitution or laws of the commonwealth, where no other provision was made for the filling of such vacancy. Judgment for B. reversed.—Comm. v. Oellers, 140 Pa. 457 (1891), Paxson, C. J. (Williams, Mitchell, and Green, JJ., dissenting); s. c. 21 Atl. 1085, 48 L. I. 252.

(925) An indictment was signed by a specially appointed district attorney as authorized by the act of March 12, 1866 (P. L. 85), the regular district attorney having refused to act. On appeal from an order quashing the indictment it was contended that, since the adoption of the constitution of 1874, the district attorney was a constitutional officer and could not be deprived of any of his authority by a mere act of legislature. Order quashing the indictment reversed.—Comm. v. McHale, 97 Pa. 397 (1881), Paxson, J.; s. c. 11 W. N. C. 57.

(926) A., the incumbent of the office of city controller of Philadelphia, was elected governor and the city councils filled the vacancy by electing B. controller. On *quo warranto* to test the right of B. to the office, it was contended that the office of city controller was not a county office, and that councils, and not the governor, had the right of appointment. *Held*, that the office was, by virtue of art. XIV., § 1, of the constitution, and section 17 of the act of March 31, 1876 (P. L. 13), a county office, a vacancy in which was to be filled by the governor. Judgment of ouster affirmed.—Taggart v. Comm., 102 Pa. 354 (1883), Mercur, C. J. (Gordon, J., dissenting).

(B) TERM OF OFFICE.

Section 2 of Article XIV. of the constitution provides that county officers shall hold their offices for a certain term, "and until their successors shall be duly qualified." Under this section, an incumbent has no right to hold over after his successor has been elected and qualified, even though there is a contest over such election (927); but when the county officer elected to succeed the incumbent dies before being qualified, no vacancy exists to be filled by appointment and the incumbent is entitled to the office. (928)

(927) At an election for county treasurer in a certain county, A. was returned as elected and qualified, but the election was contested. B., the incumbent, claimed to hold over until the contest was settled. A. brought a writ of *quo warranto* against B. to inquire by what authority he claimed to exercise the office, and why he should not be removed. *Held*, that A. was entitled to enter upon the duties of the office, notwithstanding the fact that his election was contested.—Comm. v. Troxel, 4 Pa. C. C. 449 (1888), Furst, P. J.; s. c. 20 W. N. C. 549.

(928) A. was elected prothonotary of a common pleas court under the amendment of 1838 to art. VI., § 3, of the constitution of 1790 [see art XIV., § 2, of the constitution of 1874], to serve for three years, and until his successor should be duly qualified. At the next general election B. was elected as his successor, but died a few days after the election and before qualifying. The governor then appointed C. to fill the supposed vacancy. On *quo warranto* by C. against A., judgment was given for A., on the ground that as B. had not fully qualified before his death, no vacancy existed, and the appointment was a nullity.—Comm. v. Hanley, 9 Pa. 513 (1848), Rogers, J.

(C) COMPENSATION.

Section 5 of Article XIV. of the constitution provides that "the compensation of county officers shall be regulated by law, and all county officers who are or may be salaried, shall pay all fees which they may be authorized to receive, into the treasury of the county or state as may be directed by law. In counties containing 150,000 inhabitants, all county officers shall be paid by salary, and the salary of any such officer and his clerks heretofore paid by fees, shall not exceed the aggregate amount of fees earned during his term and collected by or for him." This section does not repeal existing laws on the subject of compensation of county officers, but merely directs the method of compensation to be adopted by future

legislation (929); and the provisions are sufficiently complied with by an act prior to the constitution, which fixes the salaries of county officers, and such an act is not repealed thereby. (930–932)

Officers who are salaried in accordance with this section cannot receive any fees for services for the county, as such officers (933); but a salaried county officer may retain fees which he has received for services rendered to the state as an officer, agent, or employee thereof. (934)

Where a county by the last decennial census has a population sufficient to bring it within the operation of a certain rule as to county officers, and after the census, but before a certain officer goes into office, there is such a change in the county, caused by a legislative act, as makes it certain beyond any doubt that the county has not, after such change, the population necessary to bring it within the operation of the rule, said officer is not entitled to receive the salary or emoluments to which he would be entitled if the county were within the operation of the rule. (935)

Where a county officer has been elected before but his term extends after the population of the county exceeds 150,000, he is not entitled to fees, but is to be paid by salary after the population reaches that limit. (936)

(929) A., the district attorney of the city and county of P., petitioned for a mandamus to B., the city solicitor, to compel him to certify that A.'s fee bill for a given month was correct, so that A. could have a warrant drawn for the same. B. admitted the correctness of the bill, but contended that, as the new constitution, art. XIV., § 5, provided that all county officers in counties having over 150,000 inhabitants were to be compensated by salary and not by fees, A. had not a right to the fees provided for by acts prior to the constitution. *Held*, that this section did not repeal existing laws as to the compensation of such officers, but only provided the method of compensation which must be adopted in case new laws on the subject were passed. Judgment for A.—Sheppard v. Collis, 1 W. N. C. 494 (1875), Thayer, P. J.; s. c. 10 Phila. 430, 32 L. I. 239.

The act of March 31, 1876 (P. L. 13, § 1; P. & L. Dig. 4248), provides that the fees of office received by every county officer in counties containing over 150,000 inhabitants shall belong to the county except those levied for the state, which shall belong to the state.

(930) The local act of April 9, 1873 (P. L. 583), provided that the sheriff of Luzerne county should be entitled to certain fees. The act of June 12, 1878 (P. L. 187; P. & L. Dig. 2040, n.), was passed to carry into effect the provisions of art. XIV., § 5, of the constitution of 1874, but applied only to counties having a certain population. Luzerne county did not fall within the operation of this act at the time that it was passed, but some time later, through a division of the county, the population was reduced so as to bring it within the limits prescribed by that act. The county sued A., the sheriff, to recover fees received by him under the act of 1873 in excess of those allowed by the act of 1878. *Held*, that he was still entitled to the fees prescribed by the act of 1873. Judgment for A. affirmed.—Lackawanna County v. Stevens, 105 Pa. 465 (1884), Mercur, C. J. Followed in O'Malley v. Luzerne County, 13 Luz. L. Reg. 188 (1884); s. c. 3 Kulp, 97. Reversing 13 Luz. L. Reg. 91, 3 Kulp, 41.

(931) A. was elected to the office of county treasurer of X. county. The compensation of that office prior to A.'s election was, under the act of April 15, 1834 (P. L. 537, § 41, P. & L. Dig. 1046), fixed by the county commissioners at 2¼ per cent. on all money received and paid out. Under the act the commissioners and auditors of the county had the right to fix the compensation of the county treasurer. At a meeting of the county commissioners and auditors it was resolved that the compensation of A. be fixed at 1¼ per cent. of all money received and paid out by him. On a feigned issue to determine to which compensation A. was entitled, the court entered judgment against the county for a sum equal to 2¼ per cent. of the money received and paid out by A. It was contended that art. XIV., § 5, of the constitution of Pennsylvania, providing that the compensation of county officers shall be regulated by law, did not affect the act of 1834, therefore the commissioners and auditors had the right to change the compensation of that office. Judgment for A. reversed.—Crawford County v. Nash, 99 Pa. 253 (1882), Paxson, J.

(932) The local act of May 1, 1861 (P. L. 450), fixed the salary of the treasurer of Allegheny county at $4,000 per annum, and the local act of May 11, 1870, increased such salary to $4,500. The act of March 31, 1876 (P. L. 13; P. & L. Dig. 4248), and its supplement of June 13, 1883 (P. L. 113; P. & L. Dig. 4248, n.), were passed to carry into effect art. XIV., § 5, of the constitution, relative to the salaries of county officers. A., the treasurer of Allegheny county, brought suit to recover his salary at the rate prescribed by the latter acts. *Held*, reversing the lower court, that, as the acts of 1861 and 1870 fully carried out the constitutional provision that county officers should be paid by salary, and were not repealed by the acts of 1876 and 1883, A. was entitled to recover salary at the rate of $4,500 per annum.—Bell v. Allegheny County, 149 Pa. 381 (1892), Heydrick, J. (Mitchell, J., dissenting); s. c. 24 Atl. 209, 30 W. N. C. 193, 39 Pitts. L. J. 402.

(933) The act of June 24, 1885 (P. L. 160; P. & L. Dig. 4073), provided that when a recorder of deeds had failed, during his official term, to authenticate the record of any deed, mortgage, or other instrument by adding thereto the proper certificate over his signature, his successor in office should certify or sign the same, and should receive therefor a fee of 12 cents for each certificate, to be paid by the county. The recorder of deeds in Philadelphia county was a salaried officer, but in an amicable action against the city of Philadelphia, that officer claimed fees under the act of 1885. It was contended that the act was in violation of art. XIV., § 5, of the constitution, providing that county officers should be paid by salary. Judgment for defendant affirmed.—Pierie v. Philadelphia, 139 Pa. 573 (1891), Paxson, C. J.; s. c. 21 Atl. 90, 27 W. N. C. 285. Affirming 7 Lanc. L. R. 182, 8 Pa. C. C. 278.

(934) B. was treasurer of Philadelphia, and paid into the treasury all fees of every kind received by him, and received a stated salary. He also collected certain revenues for the commonwealth, and for this was allowed a certain commission. The city claimed that, under art. XIV., § 5, of the constitution, such commission should be paid into the city treasury; and B. claimed that he was entitled to retain the commission. *Held*, affirming the court below, that B. was entitled to retain the fees received by him for services performed for the commonwealth, as in performing such services he did not act in his capacity as a city or county officer, but as the officer, agent, or employee of the commonwealth. —Philadelphia v. Martin, 125 Pa. 583 (1889); s. c. 17 Atl. 507.

(935) By the decennial census of 1870 Luzerne county had a population of 160,900. The act of March 31, 1876 (P. L. 13; P. & L. Dig. 4248), passed to carry into effect art. XIV., § 5, of the constitution, provided that all county officers in counties containing over 150,000 inhabitants should receive salaries, and pay their fees into the county treasury. In 1878, Lackawanna county was erected out Luzerne county, said Lackawanna county having a population of 80,000 when erected. In 1879, A. was elected prothonotary of Luzerne county, and entered upon the duties of his office in January, 1880. In an action by A. against the county, A. claimed that he was entitled to the salary provided for in the act of 1876. Judgment for defendant affirmed.—Munroe v. Luzerne County, 32 Pitts. L. J. 1 (1883), Mercur, C. J.

(936) On a case stated to determine whether a county officer should be compensated by fees or salary, it appeared that he had been elected before but that his term extended after the population of the county had been officially ascertained to exceed 150,000. *Held*, that according to art. XIV., § 5, of the constitution he was to be paid by salary after the population exceeded the number fixed by that instrument.—Darte v. Luzerne County, 10 Pa. C. C. 604 (1891), Rice, P. J.

See Rymer v. Luzerne County, 142 Pa. 108 (1891).

(D) COUNTY COMMISSIONERS.

Section 7 of Article XIV. of the constitution provides for the election of county commissioners and the filling of vacancies in the office.

Under this section, elections for county commissioners can be held only every third year after 1875, and the general rule applies that a vacancy occurring within three months before the general election cannot be filled at such election. (937)

(937) In pursuance of the act of April 17, 1878 (P. L. 17; P. & L. Dig. 1009), the governor established the county of Lackawanna by proclamation on August 21, 1878, and on the following day appointed B., one of the county commissioners, to hold office until his successor should be duly elected and qualified. At the elections, on the first Tuesdays of November in 1878 and 1879, A. was elected and re-elected to that office. A. brought *quo warranto* against B. to show by what warrant he held the office of county commissioner of Lackawanna county. *Held*, affirming the lower court, that, according to art. XIV., § 7, of the constitution, the county commissioners should be elected in 1875 and every third year thereafter, and B. was entitled to hold the office until his successor should be duly elected in 1881 and qualified, the election in 1878 having been unauthorized, because the vacancy had occurred less than three months before such general election.—Comm. v. Gaige, 94 Pa. 193 (1880).

XV. CITIES.

(A) CHARTERS.

Article XV., § 1, of the constitution provides that "cities may be chartered whenever a majority of the electors of any town or borough having a population of at least 10,000 shall vote at any general election in favor of the same."

This section does not apply to the annexation of adjacent territory to a city. The legislature has power to enlarge, divide, or change the boundaries of municipal corporations without referring the question of choice to the vote of the inhabitants (938–939), but the submission of such a question to a vote is not unconstitutional. (940)

A city charter should be granted where a majority of the electors voting at an elec-

tion for the purpose are in favor of the city charter, even though the number of votes for such charter is not a majority of the electors of the borough. (941)

(938) A piece of land was transferred from a township to the city of Pittsburg, by virtue of the act of April 6, 1867 (P. L. 846). The city levied taxes on the land, and the owner appealed on the ground that the legislature had not power to bring his land within the city and render it liable to such taxes. *Held*, affirming the court below, that the legislature had power thus to extend the city limits, and that, by the transfer, the land became subject to the city rate of taxation.—Kelly v. Pittsburg, 85 Pa. 170 (1878), Gordon, J. (Agnew, C. J., and Sterrett, J., dissenting); s. c. 25 Pitts. L. J. 93.

(939) The act of May 24, 1887 (P. L. 204), provided that, upon petition of three-fifths of the taxable inhabitants of certain territory adjacent to a city, such territory might be annexed to the city. Proceedings were had under the act to annex the township of C. to the city of A. The township had less than 10,000 inhabitants. It was contended that the legislature could not authorize the annexation of such territory because of art. XV., § 1, since the population was below the constitutional limit. Proceedings affirmed, on the ground that the section in question had no application to annexation.—Carbondale Twp.'s Appeal, 5 Pa. C. C. 339 (1888), Archbald, J.; s. c. 5 Lanc. L. R. 305.

(940) The act of April 6, 1867 (P. L. 846), provided for the extension of the boundaries of the city of Pittsburg. By the second section, the territory which it was proposed should be consolidated was divided into three districts, and the question of consolidation left to the voters of these districts, with the provision that if a majority in any district was against consolidation, that district was not to form part of the city. One district alone voted for consolidation. A. filed a bill complaining that the act was unconstitutional, and prayed that the election to be held for officers in the district voting in favor of consolidation should be enjoined. Bill dismissed.—Smith v. McCarthy, 56 Pa. 359 (1867), Thompson, J.

(941) An election was held in the borough of A., upon the question whether such borough should be chartered as a city. The majority of votes cast at the election was for a city charter, but the number of votes for such charter was not a majority of the total number of electors in the borough. *Held*, that a city charter should be issued.—York Borough Case, 3 Pa. C. C. 514 (1887), Snodgrass, Deputy Atty.-Gen.

(B) CONTRACTING DEBTS.

Article XV., § 2, of the constitution provides that "no debt shall be contracted or liability incurred by any municipal commission, except in pursuance of an appropriation previously made therefor by the municipal government."

This did not repeal the obligation previously imposed on the city councils of Philadelphia by the legislature to raise annually the amount required by the public buildings commission for the erection of the public buildings. (942)

(942) The act of August 5, 1870 (P. L. [1871] 1548; P. & L. Dig. 87, note), provided for a commission for the erection of public buildings in Philadelphia. The commissioners were authorized to make all needful contracts for the construction of such buildings, and to make requisitions upon the councils of the city prior to the first day of December of each year for the amount required by them for the succeeding year. The act also provided that the councils should levy a special tax to raise the amount required. After the constitution of 1874 went into effect, the councils refused to levy the tax after requisitions had been made, claiming that so much of the act as required the levying of such a tax was repealed by the provisions of art. XV., § 2, of the constitution. The commission petitioned for a peremptory mandamus to councils to compel them to make the appropriation needed, and to levy the tax provided for in the act. Writ refused. Judgment reversed.—Perkins v. Slack, 86 Pa. 270 (1878), Trunkey, J. (Paxson and Sharswood, JJ., dissenting); s. c. 5 W. N. C. 153. Reversing 34 L. I. 220.

(C) SINKING FUND.

Article XV., § 3, of the constitution provides that "every city shall create a sinking fund, which shall be inviolably pledged for the payment of its funded debt."

The tax required by this section can be levied in addition to other taxes which a city is authorized to levy. (943)

(943) The city of A. had by its charter the power "to levy and collect annually for certain purposes any tax not exceeding two per centum on the dollar of the valuation assessed." Under the act of April 20, 1874 (P. L. 65; P. & L. Dig. 567), the city proposed to levy, in addition to the two per cent. tax, a tax of three mills for the sinking fund. On proceedings for an injunction to prevent such additional levy, *held*, that, under the acts authorizing the tax for a sinking fund, and art. XV., § 3, of the constitution, requiring every city to create such a sinking fund, such tax could be levied in addition to the other taxes which the city was authorized to levy. Decree granting injunction reversed.—Wilkesbarre's Appeal, 116 Pa. 246 (1887), Gordon, J.

XVI. PRIVATE CORPORATIONS.

(A) CERTAIN CHARTERS TO BE VOID.

Article XVI., § 1, of the constitution provides that, "all existing charters or grants of special or exclusive privileges, under which a *bona fide* organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this constitution, shall thereafter have no validity."

This section is not a law impairing the obligation of a contract, within the meaning of the United States constitution. (944)

Where, under an act granting an exclusive privilege of maintaining a ferry, it is found that the grantee has maintained only a skiff-crossing, which has sufficiently met the public demand, and there is no evidence of bad faith, the grant is not affected by the provisions of this section. (945)

(944) A corporation chartered in 1867 was not fully organized until 1882, when a writ of *quo warranto* was awarded upon suggestion of the attorney-general that the charter had been invalidated by art. XVI., § 1, of the constitution. The defendants answered that their charter was in the nature of a contract and could not be impaired. Decree of ouster affirmed.—Chincleclamouche Lumber Co. v. Comm., 100 Pa. 438 (1882), Trunkey, J.; s. c. 12 W. N. C. 357.

(945) A., by act of legislature, was granted in 1851 the exclusive privilege of maintaining a ferry, between certain points. In 1885 B. proceeded to run a ferry between the same points, whereupon A. filed a bill in equity to restrain him from so doing. B.'s defence was that A.'s privilege was nullified by article XVI., § 1, of the constitution. The case was referred to a master, and it was found that although A. for many years maintained only a skiff-crossing, yet there was no public demand for other transportation; and there was no evidence of bad faith towards the state or the public. Decree for A. affirmed.—Douglass' Appeal, 118 Pa. 65 (1888), Paxson, J.

As to the right of a private individual under this section to proceed against a corporation which has failed to organize, see Lejee v. Continental R. R. Co., 2 W. N. C. 170 (1875), Allison, P. J.; s. c. 32 L. I. 386.

(B) RIGHT OF EMINENT DOMAIN.

Article XVI., § 3, of the constitution provides that the exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the general assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals.

The legislature may grant to the owners of mines or mills near a railroad or navigable water the right to build a railroad thereto over intervening land (946), or give school directors authority to appropriate land for schoolhouse sites. (947) A corporation may be given the right to clear up and erect dams in a public stream, and to collect toll thereon, as the purpose is an improvement for the use of the public as a highway. (948) The legislature may provide for the vacation and sale of a cemetery which is no longer used for interments, and obstructs the growth of a city. (949)

This section extends the right of eminent domain to the corporate franchises of a toll bridge, and by virtue of its provisions such a bridge can be taken for use as a free bridge. (950)

See, also, the title "Eminent Domain," *infra*.

(946) The act of May 5, 1832 (P. L. 501; P. & L. Dig. 3993), provided that if the owner or owners of lands, mills, quarries, coal mines, etc., in the vicinity of any railroad, canal, or slack-water navigation, and not more than three miles distant therefrom, should desire to build a railroad thereto over any intervening lands, he, they, or their engineers might enter upon any lands and mark out a route; and might present a petition to the court of common pleas; and that viewers should thereupon be appointed; and, if such viewers should deem the proposed road necessary for public or private purposes, they should report what damages would be sustained by the owners of the intervening lands. Under the act B. petitioned for viewers to assess damages for entry upon A.'s land. From their report A. appealed. *Held*, that this act in effect gave the owners of lands, coal mines, etc., near to public highways, the right of eminent domain and was constitutional. Judgment affirmed.—Harvey v. Thomas, 10 Watts, 63 (1840), Gibson, C. J.

See, also, Hays v. Risher, 32 Pa. 169 (1858), Woodward, J.

(947) The act of April 9, 1867 (P. L. 51; P. & L. Dig. 774), gave to school directors the right to enter upon and appropriate property for schoolhouse sites, and provided that for all damage done and suffered, or which should accrue to the owners of such land by reason of such taking, the funds of the district which might be raised by taxation should be pledged and deemed to be security. A school board took A.'s land under the act, and A. brought ejectment. Judgment for defendants was affirmed, as the taking provided for

by this act was for a public purpose, and ample security for compensation was provided, and the act was therefore constitutional.—Long v. Fuller, 68 Pa. 170 (1871), Read, J.; s. c. 3 Leg. Gaz. 101, 18 Pitts. L. J. 267.

(948) An act of assembly incorporated the B. improvement company, and gave it the right to clear up and erect dams in a certain river, which was a public highway. The corporation was given power to collect a toll for all logs floated on the stream. A., who had floated logs down the stream, filed a bill against the B. company to restrain it from collecting toll from him or selling his logs to pay said toll, he alleging that the act was unconstitutional. Decree for B. affirmed, as the improvement of the stream was for the use of the public as a highway, and the act was therefore constitutional.—Bennett's Branch Improvement Co.'s Appeal, 65 Pa. 242 (1870), Thompson, C. J.

(949) The act of April 13, 1867 (P. L. 1234), provided for the vacation and sale of a certain cemetery, which had not been used for purposes of interment for some time. The act showed that the growth of the city and other causes had rendered it necessary that the land occupied by the cemetery should be vacated. It also provided for the removal of the bodies to other cemeteries, and for the payment of compensation to lot owners in the cemetery. Certain lot holders filed a bill for an injunction, on the ground that the act was unconstitutional. A decree granting an injunction was reversed.—Kincaid's Appeal, 66 Pa. 411 (1871), Sharswood, J.

(950) An act of assembly provided for the taking of toll bridges by counties. Under said act a petition was filed and proceedings begun to assess the damages for such a taking. Exceptions were filed by the bridge company to the report of the viewers assessing the damages, on the ground that the act was unconstitutional, because the bridge was already a toll bridge and therefore dedicated to a public use, and to make it free was not to dedicate it to any higher use. The exceptions were dismissed on the ground that art. XVI., § 3, gave the legislature a right to exercise the right of eminent domain and the police power, for the benefit of the public, and gave it the right, for that purpose, of taking the property of corporations as well as of individuals. Judgment affirmed.—Towanda Bridge Co., 91 Pa. 216 (1880).

(C) POLICE POWER OF STATE.

Article XVI., § 3, of the constitution provides that "the exercise of the police power of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well-being of the state."

The power to regulate railroad crossings is properly vested in the courts (951), and an act giving to street railroads the right to cross other railroads at grade will be construed as giving the right subject to such power of the courts. (952)

(951) The act of June 19, 1871 (P. L. 1360; P. & L. Dig. 3931), required that "in all proceedings in courts of law or equity of this commonwealth, when they relate to crossings of railroads, it shall be their duty to ascertain and define by their decree the mode of such crossing which will inflict the least practicable injury upon the rights of the company owning the road which is intended to be crossed. And if in the judgment of such courts it is reasonably practicable to avoid a grade crossing they shall by their process prevent a crossing at grade." The A. railroad applied for an injunction under the act, which was resisted on the ground that the act was unconstitutional. Injunction granted, as the act was a proper exercise of the police power of the state.—Philadelphia & E. R. Co. v. Catawissa R. Co., 1 Walk. 81 (1871), Thompson, C. J.

(952) The act of May 14, 1889 (P. L. 211, § 18; P. & L. Dig. 4023), provided that street railroads incorporated under its provisions should have the right to cross at grade, diagonally or transversely, any other railroad. On a motion to enjoin such a crossing, *held*, that the act of 1889 must be construed with reference to the provisions of the act of June 19, 1871 (P. L. 1360; P. & L. Dig. 3931), giving to the courts power to regulate the manner of crossing, as any other construction would render the act of 1889 void as an attempt to divest the police power of the state. Injunction granted.—Delaware & H. Canal Co. v. Scranton & P. Traction Co., 4 D. R. 287 (1895), Woodward, J.

(D) ELECTIONS.

Article XVI., § 4, of the constitution provides that, "in all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer."

This section does not confer the right of cumulative voting on stockholders in a corporation chartered before the adoption of the constitution of 1874, and which has never accepted the provisions of such constitution (953–954); and such acceptance must be in the manner prescribed by the legislature in order to confer the right of cumulative voting. (955–956) The voting in corporations chartered since the adoption of the constitution may be cumulative. (957)

(953) The charter of a corporation, incorporated before 1874, provided that each share of stock should entitle the holder to one vote. At an election after 1874, votes were cast according to the cumulative system, and of such votes A. received a majority. Those votes were rejected, and B., who had received more single votes than A., was declared elected. On *quo warranto* by A., *held*, reversing the judgment, that as the corporation had never accepted the benefit of any legislation since the adoption of the constitution, the provision therein for cumulative voting did not apply to it.—Hays v. Comm., 82 Pa. 518 (1877), Gordon, J. (Woodward, J., dissenting); s. c. 3 W. N. C. 549, 24 Pitts. L. J. 101.

(954) On a petition for appointment of a master to conduct an election in a private corporation, the main question in dispute was as to the right of cumulative voting. *Held*, that as the corporation was chartered before 1874, and had never accepted the provisions of the constitution of 1874, by taking the benefit of any legislation since that time, the members had no right of cumulative voting.—Dick v. Lehigh Val. R. Co., 4 D. R. 56 (1895), Arnold, J.

Contra, Comm. v. Lintsman, 23 Pitts. L. J. 122 (1876), Sterrett, P. J.

(955) The charter of a corporation, incorporated before 1874, provided that "in all elections of directors each stockholder shall have one vote for every share of stock which he may hold." After the adoption of the new constitution, the directors accepted its provisions, but did not call a meeting of stockholders for the purpose, as provided by the act of April 17, 1876 (P. L. 30, § 6). On a contest over an election, *held*, reversing the court below, that, as the act of 1876 had not been complied with, the constitutional provision for cumulative voting could not apply.—Baker's Appeal, 109 Pa. 461 (1885), Sterrett, J.; s. c. 16 W. N. C. 445, 42 L. I. 226, 33 Pitts. L. J. 30. Reversing 14 W. N. C. 560.

(956) The charter of a private corporation, incorporated in 1845, provided that "each shareholder shall be entitled to one vote for every share of stock held by him or her, not exceeding five shares, at any election or meeting of the stockholders." The act of June 11, 1879 (P. L. 139, § 1; P. & L. Dig. 447), provided that in such corporations as the one in question every stockholder should be entitled to one vote for every share of stock held by him. After the passage of such act the corporate elections were held in accordance with its provisions. A., a stockholder, claimed the right of cumulative voting, which was denied him. On case stated, *held*, that there had not been such an acceptance of the constitution by the corporation as gave its members the right of cumulative voting provided by it.—Hunsicker v. Perkiomen & S. Turnpike Road Co., 1 Montg. Co. 41 (1885), Boyer, P. J.

(957) The A. company was incorporated in 1876. At an election for directors, certain stockholders voted in a cumulative manner, and the votes beyond the number of shares of stock held by them were rejected. On *quo warranto*, to test the right of officers elected at said election, *held*, that each stockholder was entitled to as many votes for each share of stock as there were directors to be elected, and might cumulate such votes on one or more candidates if he marked his ballot so as to clearly indicate his wishes to the election officers. Judgment affirmed.—Pierce v. Comm., 104 Pa. 150 (1883), Gordon, J.; s. c. 14 W. N. C. 97, 31 Pitts. L. J. 103. Affirming 30 Pitts. L. J. 286.

(E) FOREIGN CORPORATIONS.

Article XVI., § 5, of the constitution provides that "no foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served."

This article did not affect existing laws providing for the service of process upon the agents of foreign corporations (958); and where a foreign corporation transacting business in Pennsylvania fails to establish an office in this state, in compliance with this section and the act of April 22, 1874 (P. L. 108; P. & L. Dig. 2175), passed in pursuance thereof, service of process may be made upon any agent of the corporation in this state, in accordance with the act of March 21, 1849 (P. L. 216; P. & L. Dig. 2179). (959)

A sale by a foreign corporation to a resident of this state, and delivery within the state, is not "doing business" in the state, within the meaning of this section. (960)

A corporation sending travelling salesmen through the state must comply with the section. (961)

(958) Process was served on the agent of a foreign corporation which had complied with the provisions of art. XVI., § 5, of the constitution and of the act of April 22, 1874 (P. L. 108; P. & L, Dig. 2175), but the agent was not the one named in the statement filed in the office of the secretary of the commonwealth. On a rule to set aside the service of process it was contended that the prior legislation authorizing service upon any agent of the foreign corporation had been repealed by the constitution and the act of April 22, 1874. Rule discharged.—Retterly v. Howe Machine Co., 4 W. N. C. 525 (1877), Harding, P. J.

(959) The act of March 21, 1849 (P. L. 216; P. & L. Dig. 2179), provides that in the commencement of a suit against any foreign corporation, the process may be served upon any officer, agent, or engineer of such corporation who shall be in this state. The act of April 22, 1874 (P. L. 108; P. & L. Dig. 2175), passed in pursuance of

article XVI., § 5, of the constitution, provides that before any foreign corporation shall do business, it shall file with the secretary of the commonwealth a statement showing, among other things, the names of its authorized agents in the commonwealth. The B. company, which owned real estate in this commonwealth, which was leased to others for the quarrying of slate on royalty, never filed a statement, appointing an agent on whom process might be served in Pennsylvania. A *scire facias sur* mortgage was served upon B. by giving to an agent of the company a copy of the writ personally, with notice of its contents, in accordance with the provisions of the act of 1849. The defendant took a rule to set aside the return of the service, on the ground that it did not appear that the agent served had been appointed formally an agent of the company; and it was contended that the act of 1849 was superseded by article XVI., § 5, of the constitution and the act of 1874. Rule absolute. Judgment reversed.—Hagerman v. Empire Slate Co., 97 Pa. 534 (1881), Mercur, J,

(960) The A. company, a New York corporation, sued B. in Pennsylvania for goods sold to him in New York and delivered to him in Pennsylvania. B. set up as a defence that the A. company had no known place of business within the state. *Held*, that the transaction was not "doing business in the state" by the A. company, within the meaning of the constitutional requirement; and judgment for A.—Wile v. Onsel, 1 D. R. 187 (1891), Morrison, J.; s. c. 10 Pa. C. C. 659.

(961) On application to the attorney-goneral for his opinion as to whether a foreign corporation which sent its agents into this state to transact business was required to have an agent with power to accept service, *held*, that where a foreign corporation seeks to do business in Pennsylvania, although by travelling solicitors, it must, in accordance with art. XVI., § 5, of the constitution, have a known place of business and an authorized agent upon whom process may be served.—Gould's Manuf'g Co.'s Case, 14 Pa. C. C. 179 (1894), Hensel, Atty.-Gen.; s. c. 3 D. R. 606.

(F) STOCK AND LOANS.

1. Increase of Indebtedness.

Article XVI., § 7, of the constitution provides that "no corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice, given in pursuance of law."

Where a mortgage is given by a corporation to secure an indebtedness contracted in the regular course of business, it is not an "increase of indebtedness," within the meaning of this section. (962–964)

This provision does not apply to the sale of mortgage bonds of a railroad company, for which it receives the money for construction and equipment; such a debt is not fictitious though the securities may turn out to be so. (965)

(962) A bank gave a mortgage to A., who was a director, as collateral security for a large deposit made by him. The mortgage was properly executed, except that there was no meeting of the stockholders to ratify it. Later the bank assigned for the benefit of creditors. B., to whom A. had assigned the mortgage, sued out a *scire facias* against the assignee of the bank. Judgment was entered for defendant, on the ground that the mortgage was an "increase of indebtedness," within the meaning of the constitutional prohibition against increases of indebtedness without a previous meeting of the stockholders. Judgment reversed.—Ahl v. Rhoads, 84 Pa. 319 (1877), Woodward, J.; s. c. 4 W. N. C. 483, 34 L. I. 392.

(963) A corporation having become indebted to A. in the course of business, a resolution was passed authorizing the directors and officers to execute and deliver to A. a bond secured by mortgage on all its property to secure such indebtedness and any renewals and increases thereof. On a *scire facias* on the mortgage it was contended that it was invalid, as having been executed without the notice required by the constitution of an increase of the corporation's indebtedness. *Held*, that the liabilities which the mortgage secured were not such an "increase of indebtedness" as was meant in the constitution; and judgment for plaintiff was affirmed.—Manhattan Hardware Co. v. Phalen, 128 Pa. 110 (1889), McCollum, J.; s. c. 18 Atl. 428.

(964) A bill in equity was filed by A. and B. as shareholders of a corporation against the officers thereof, alleging that a mortgage had been made to C. of the property of the corporation without the consent of the directors or stockholders thereof, and praying for a decree that the mortgage be delivered up and cancelled. The case was referred to a master, who found that the company were indebted for a balance of purchase-money due on the property covered by the mortgage, and that C. had advanced the money to pay off such indebtedness, for which advance the mortgage had been executed. The master recommended a decree dismissing the bill. Exceptions were filed, and, after hearing, the bill was dismissed. Decree affirmed.—Powell v.

Blair, 133 Pa. 550 (1890); s. c. 19 Atl. 559. Affirming 7 Pa. C. C. 492.

Contra, Rothschild v. Rochester & P. R. Co., 1 Pa. C. C. 620 (1886), Mayer, P. J.

(965) A railroad corporation issued bonds to raise the alleged cost of construction for a larger amount than it could lawfully issue under its charter. The bonds were sold to *bona fide* purchasers, and a mortgage executed to A. in trust to secure them. In an equity proceeding by A. to enforce the mortgage, the court ordered a sale of the railroad franchises, etc. The property was sold, divested of lien, the proceeds paid into court, and a master appointed to settle and adjust the accounts. The bondholders claimed the fund, and the general creditors claimed a right to a *pro rata* share. The master's report distributing the fund among the bondholders was affirmed by the court. *Held*, that the mortgage was a valid lien, as the indebtedness secured by the mortgage was not fictitious, though the securities might be fictitious. Decree affirmed.—Fidelity Insurance, Trust & Safe-Deposit Co. v. Western Penn. & S. C. R. Co., 138 Pa. 494 (1891), Williams, J.; s. c. 21 Atl. 21.

2. Meeting to Vote on Increase.

The want of notice of a proposed increase of capital stock of a corporation cannot be taken advantage of by one who is not injured thereby. (966)

Bonds issued by a corporation the day after its organization, in accordance with a resolution passed at the organization meeting, are within the inhibition of this section of the constitution. (967)

The notice required by the section, of a meeting to vote on increase of the capital stock, can be waived by unanimous consent of all the stockholders, but the holding of such meeting cannot be waived. (968)

(966) A meeting of stockholders of a corporation was held without the notice prescribed by the constitution, but all the stockholders were present. A resolution was unanimously passed to increase the capital by issuing common and preferred stock. A stockholder pledged 1,000 shares of the common stock with a bank, and on his becoming insolvent the shares were sold and the bank purchased them. At that time all the net earnings were being applied to the payment of dividends on the preferred stock, which dividends did not reach the amount guaranteed. The bank filed a bill in equity alleging that the increase of stock was without authority of law, and praying that the preferred stock be declared void, as notice of the meeting to increase the stock had not been served on its predecessor in title. Bill dismissed, as there was actual notice, though it was obtained in a manner other than that prescribed by the constitution; and the bank was not prejudiced by want of formal notice. Affirmed.—Columbia Nat. Bank's Appeal, 16 W. N. C. 357 (1885), Paxson, J.; s. c. 33 Pitts. L. J. 20.

(967) A corporation at its organization meeting resolved to issue bonds, and these bonds were issued the day following the meeting. Upon suit by a bondholder to recover the amount of certain of the bonds, the defence was that the bonds were void under art. XVI., § 7, of the constitution, providing that 60 days' notice of meeting of stockholders shall be given according to law. Judgment for defendant was affirmed.—Maas v. Pennsylvania, P. & N. E. R., 1 Mona. 497 (1889).

(968) On request of the deputy secretary of the commonwealth for advice, *held*, that the notice required in article XVI., § 7, of the constitution, of a meeting to vote an increase of the capital stock of a corporation, could be waived by the unanimous consent of all the stockholders, but that the meeting itself could not be waived.—Tally-on-Top Salesbook Co.'s Case, 2 Lack. L. N. 40 (1895), McCormick, Att'y-Gen.

3. What Corporations Are Affected.

A street railway company is such a private corporation as to be subject to this section. (969)

A corporation which was chartered before the adoption of the constitution, and has not accepted its provisions, is not within the meaning of this section (970–971), but the provision applies to a corporation chartered since the adoption of the constitution, though it is chartered under an act which was in force before the constitution, and contained no such provision. (972)

This section applies to acts done in New York by a corporation formed by the consolidation of two corporations, one of Pennsylvania, and the other of New York. (973)

(969) A street railway company, incorporated under the act of May 14, 1889 (P. L. 211; P. & L. Dig. 4015), at a meeting of the holders of a majority of its stock, held after eight days' notice, voted to increase its capital stock. A motion for an injunction was made on the ground that the 60 days' notice required by art. XVI., § 7, of the constitution had not been given. It was contended that the constitutional provision referred to private corporations, and did not include street railways. Injunction granted.—Shepp v. Norristown Pass. Ry. Co., 2 D. R. 679 (1893), Swartz, P. J.; s. c. 13 Pa. C. C. 254, 9 Montg. Co. 81.

(970) A bank, incorporated prior to the adoption of the new constitution, was authorized by its charter to borrow money by mortgage of its

real estate. The bank did not accept any benefit from legislation after the adoption of the constitution of 1874. It mortgaged its bank building, and afterwards made an assignment for the benefit of creditors. Proceedings were instituted to foreclose the mortgage, when the assignee obtained a preliminary injunction to restrain the proceedings, on the ground that the debt was unlawfully created, the bank not having complied with the provisions of art. XVI., § 7, of the constitution, prescribing the mode in which the indebtedness of corporations is to be incurred, and the act of April 18, 1874 (P. L. 61; P. & L. Dig. 957), enacted to carry the section into effect. On appeal, preliminary injunction dissolved.—Lewis v. Jeffries, 86 Pa. 340 (1878), (Trunkey, J., dissenting). Reversing 23 Pitts. L. J. 198.

(971) A railroad company incorporated prior to 1874 had, under its charter, unrestricted power to increase its indebtedness, and did not accept any benefit from legislation after the adoption of the constitution. In 1885 it issued bonds without conforming to the provisions of art. XVI., § 7, of the constitution, and the act of April 18, 1874 (P. L. 61; P. & L. Dig. 957), regulating the manner in which the stock and indebtedness of a corporation may be increased. A bill in equity was filed by certain stockholders to have the bonds declared void. Bill dismissed, as the corporation had in no way indicated its intention to accept the provisions of the constitution. Affirmed.—Gloninger v. Pittsburg & C. R. Co., 139 Pa. 13 (1891), Green, J. (Sterrett, J., dissenting); s. c. 21 Atl. 211, 27 W. N. C. 497, 38 Pitts. L. J. 407.

(972) After 1874 a connecting railroad company was chartered under the act of April 4, 1868 (P. L. 62), which contained no provision as to sixty days' notice of increase of stock. The company increased its stock according to section 6 of the act, but without giving the sixty days' notice required by the constitution of 1874 and the act of April 18, 1874 (P. L. 61; P. & L. Dig. 957). The opinion of the attorney-general was requested as to the validity of such increase. *Held*, that the increase was not valid.—Chartiers Connecting R., 1 Pa. C. C. 270 (1886), Snodgrass, Dep. Atty.-Gen.

(973) Several railroad companies of the states of New York and Pennsylvania consolidated, by authority of the legislatures of these states, and formed one company. The entire line was then mortgaged in New York for the payment of a debt, not contracted in accordance with art. XVI., § 7, of the constitution and the act of April 18, 1874 (P. L. 61; P. & L. Dig. 957). This mortgage was foreclosed, and the entire line was sold to B., who organized another corporation for the purpose of operating these lines. The stockholders of the old company filed a bill in equity to restrain B. and the new corporation from interfering with the operation of the several lines, and for the appointment of a receiver, on the ground that the indebtedness, being created contrary to the constitution, the sale to B. was void. B. contended that the constitutional provision and the act of 1874 did not apply to acts of the consolidated corporation, done in New York. Injunction granted. Decree affirmed.—Pittsburgh & State Line R. Co. v. Rothschild, 4 Cent. 107 (1886).

(G) TAKING OR INJURING PRIVATE PROPERTY.

See, also, the title "Eminent Domain," *infra*.

1. Damages to be Paid or Secured in Advance.

Article XVI., § 8, of the constitution provides that "municipal and other corporations and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured, or destroyed by the construction or enlargement of their works, highways, or improvements, which compensation shall be paid or secured before such taking, injury, or destruction."

All damages given by this section must be paid or secured in advance (974–976), and a mere tender of a bond, without its having been approved, is not sufficient. (977)

In the case of cities and counties, the power of taxation possessed by such corporations is adequate security for any damages, direct or consequential, which may be assessed against them, and no additional security need be given; all that is required is that an adequate remedy against the corporation shall be provided by the legislature. (978–983) But where the power of taxation is so limited as to be inadequate to pay the damages within a reasonable time, an injunction will be granted to restrain the taking of the property until security for compensation is given. (984)

The provisions of the section do not apply to the case where duties are conferred upon individuals, as a commission, instead of privileges being conferred; for such commission acts merely as agent of the state. (985)

The section does not apply to passenger railway companies, not invested with the right of eminent domain. (986)

(974) A water company attempted to appropriate the water of a stream without paying or securing damages to riparian owners injured thereby. On application of such owners, showing that no provision had been made for their compensation, an injunction was granted. On

appeal, decree affirmed.—Shenandoah Co.'s Appeal, 2 W. N. C. 46 (1875).

(975) Under the right of eminent domain, a railroad company took an unopened street, without first compensating the abutting property owners as required by art. XVI., § 8, of the constitution. On motion of a property owner, who showed that he would be injured by such taking, an injunction was refused. Decree reversed, and injunction granted.—Beidler's Appeal, 1 Mona. 336 (1889), Sterrett, J.; s. c. 17 Atl. 244, 23 W. N. C. 451.

(976) The A. turnpike company obtained an injunction to restrain the B. street railway company from laying tracks across its turnpike. B. procured the appointment of viewers under section 17 of the act of May 14, 1889 (P. L. 211; P. & L. Dig. 4022), who made an award, which was confirmed, and the damages found by them were paid into court. No security was entered for the payment of any other damages. The court then dissolved the injunction. A. appealed from the decree dissolving the injunction. *Held*, that the decree was erroneous, as it did not provide for the entering of security for the payment of a just compensation, as it might be finally ascertained upon hearing of the appeal, and that section 17 of the act of 1889, in so far as it failed to provide for proper security, was unconstitutional.—Harrisburg, C. & C. Turnpike Rd. Co. v. Harrisburg & M. E. Ry. Co., 177 Pa. 585 (1896), Williams, J.; s. c. 39 W. N. C. 86.

(977) A railroad company, desiring to appropriate land of A., tendered him a bond to secure damages. A. refused the bond, and the company entered upon his land for the purpose of constructing its road. Subsequently the bond tendered was approved by the court of common pleas and filed. A. brought trespass for the entry upon his land. *Held*, that the corporation had no constitutional right to enter upon the land until payment was made or secured, and that the mere tender of a bond was not a compliance with the constitutional requirement; and judgment for A. affirmed.—Dimmick v. Brodhead, 75 Pa. 464 (1874), Agnew, C. J.; s. c. 31 L. I. 117, 21 Pitts. L. J. 142, 5 Lanc. Bar, 51.

Before the adoption of this section, consequential damages, even when there was a statutory liability therefor, were not required to be secured in advance. See Spangler's Appeal, 64 Pa. 387 (1870), Thompson, C. J.; Koch v. Williamsport Water Co., 65 Pa. 288 (1870), Thompson, C. J.; s. c. 2 Leg. Gaz. 196; Spring Garden Street, 7 Phila. 393 (1870), Paxson, J.; s. c. 27 L. I. 350; Hatermehl v. Dickerson, 8 Phila. 282 (1871), Finletter, J.; s. c. 28 L. I. 268. But where the property was actually taken by a corporation other than municipal, the contrary was true. See Yost's Report, 17 Pa. 524 (1851), Lewis, J.; McClinton v. Pittsburgh, F. W. & C. Ry., 66 Pa. 404 (1870), Agnew, J.; Colgan v. Allegheny Ry. Co., 3 Pitts. 394 (1872), Kirkpatrick, J.

(978) An act was passed authorizing the city of B. to lay out a certain street. A.'s land was taken for this purpose, and he brought an action of trespass against the city, alleging that the act authorizing the taking was unconstitutional, under the clause of the constitution which provided that damages must be paid or secured prior to the taking of land, because said act did not provide that compensation should be made to property owners before the taking. It was admitted that the act provided an adequate remedy against the city for the recovery of any damages occasioned by the taking. Judgment for A. was reversed, on the ground that it was sufficient if A. was secure of his damages by pursuing the method of collecting them prescribed by the act.—Pittsburgh v. Scott, 1 Pa. 309 (1845), Rogers, J.

(979) On a motion to dissolve a preliminary injunction restraining the officers of a city from laying out a street until the damages caused thereby should be ascertained and paid, as required by the constitution, it appeared that an adequate remedy for the recovery of such damages had been provided. Injunction dissolved.—Bates v. Titusville City, 29 L. I. 277 (1872), Lowrie, P. J.; s. c. 3 Pitts. 434.

(980) One of the road supervisors of a township entered upon A.'s land and removed earth and gravel for the purpose of repairing the road, without any agreement or offer to pay for the same. In trespass against the township by A., it was contended that art. XVI., § 8, of the constitution required actual prepayment or security before any entry upon or taking of adjoinning land. Judgment for the township, as there was sufficient security in ths case of a municipality, and an adequate remedy was provided.—Marshall v. Lower Towamensing, 15 W. N. C. 235 (1883), Dreher, P. J.

(981) The act of April 22, 1856 (P. L. 525; P. & L. Dig. 394), conferred upon boroughs certain powers relative to the opening of streets. It did not provide that compensation to the owner should be ascertained or paid before the property was appropriated, but provided adequate remedy by which compensation could be obtained without delay. A. filed a bill for a preliminary injunction, claiming that the act of 1856 was unconstitutional, as it did not provide for compensation to be secured before the street was opened. Rule discharged.—Geissinger v. Hellertown Borough, 1 Lehigh Val. L. R. 41 (1885), Meyers, P. J.

(982) The commissioners of a certain county proposed to remove a county bridge and put a new one in its place. A., the owner of a mill upon the stream, filed a bill for injunction alleging that the erection of the new bridge would cause damage to his mill. Injunction granted. Decree reversed, as compensation for whatever damages might be inflicted was fully secured by the constitution and by the county's power of

taxation.—Delaware County's Appeal, 119 Pa. 159 (1888), Paxson, J.; s. c. 13 Atl. 62, 21 W. N. C. 112. Reversing 3 Pa. C. C. 605.

(983) The city of Philadelphia passed an ordinance directing the construction of a sewer in X. street, which was plotted across land of A. A. moved for an injunction restraining such construction until his damages should be paid or secured. *Held*, that the power of taxation vested in municipal corporations was a sufficient security to A. for any property taken or injured; and motion refused.—Bromley v. Philadelphia, 8 Pa. C. C. 600 (1890), Arnold, J.; s. c. 20 Phila. 302.

(984) A. filed a bill in equity to restrain the burgess and council of a borough from laying out and constructing a street through her property under the act of February 18, 1853 (P. L. 547), on the ground that the act was unconstitutional, because it did not make any provision for compensation by the borough to A., for the land taken and injury done. Respondents contended that the act was constitutional, as the taxing power of the borough was sufficient security for the payment of A.'s damages. *Held*, that while the act was constitutional in accordance with the respondents' contention, yet as the borough's taxing power appeared in this case to be inadequate to meet, within a reasonable time, the claims that would accrue for damages, an injunction would be granted, pending the entry of security by the borough to cover A.'s damages.—Keene v. Bristol Borough, 26 Pa. 46 (1856), Knox, J.

(985) The legislature passed an act appointing A. and B. commissioners to widen and straighten certain streets in the borough of X. A. and B. reported certain changes in the lines of streets, to the court of quarter sessions, and on petition of the borough's council the court made an order for the change of said lines. C., a property owner, some of whose property would be taken by the proposed change, excepted to the granting of the petition on the ground that no security had been entered or payment made for his damages. The exceptions were overruled. On *certiorari*, *held*, that the constitutional provision did not apply to cases where duties were imposed on individuals by the state, and no privileges were granted, on the ground that the disinterestedness of the parties and the fact that they were really the agents of the state, which was taking the property, made security unnecessary. Proceedings affirmed.—Yost's Report, 17 Pa. 524 (1851), Lewis, J.

See, also, Hatermehl v. Dickerson, 8 Phila. 282 (1871), Finletter, J.; s. c. 28 L. I. 268.

(986) The B. passenger railway company was chartered under the act of May 23, 1878 (P. L. 111), to construct a railway in a certain borough, and an ordinance was passed permitting the construction and operation of the line. A., a property owner, applied for an injunction to restrain B. from constructing its railway on a street in front of his land, and the court granted a preliminary injunction as prayed for, until the defendants should tender to A. a bond with adequate security, according to law. On motion to dissolve the injunction, it was contended that plaintiff was entitled to such security, under art. XVI., § 8, of the constitution. *Held*, that this section only applied to corporations having the right of eminent domain, which B. had not. Injunction dissolved.—Dutton v. Norristown Pass. Ry Co., 1 Montg. Co. 4 (1885), Boyer, P. J.

2. Damages Not Limited to Amount of Bond.

As the amount of damages under section 8 is to be determined by a jury according to the course of the common law, the amount of the bond given as security and approved by the court does not limit the amount recoverable in such cases. (987)

(987) On the trial of an appeal from the assessment of damages for taking land under the right of eminent domain, the defendant offered in evidence the bond given by it in the condemnation proceedings and approved by the court, for the purpose of limiting the amount of damages recoverable by the plaintiff. The plaintiff objected, on the ground that under article XVI., § 8, of the constitution, the recovery was not limited to the amount of the bond. Objection sustained. *Held*, no error.—Michael v. Crescent Pipe Line Co., 159 Pa. 99 (1893), Sterrett, C. J.

3. Requisites of Acts Conferring the Right of Eminent Domain.

An act conferring the right of eminent domain need not state specifically that compensation must be made for property taken, injured, or destroyed. (988-989)

(988) The act of June 14, 1887 (P. L. 383, § 4), provided for the incorporation of certain companies, and conferred upon them the right of eminent domain. It failed to make provision for compensation for land taken, or to designate the method of determining the damages suffered thereby. A society incorporated under the act attempted to take land and erect buildings thereon which would shut out the light from the buildings owned by A. A. filed a bill for an injunction on the ground that the act was unconstitutional in not providing a method for obtaining compensation for damages to property. Bill dismissed, on the ground that the act was constitutional, as the plaintiffs had their remedy by action at common law to recover damages. Decree affirmed.—Rees's Appeal, 12 Atl. 427 (1888).

(989) A street railway company, incorporated under the act of May 14, 1889 (P. L. 211; P. & L. Dig. 4023), proposed to construct its tracks along a certain street. Property owners along the

street filed a bill in equity praying for a preliminary injunction, on the ground that the act was unconstitutional in not providing for the payment of damages to owners of property injured. Injunction refused. Decree affirmed.—Lockhart v. Craig St. Ry. Co., 139 Pa. 419 (1891); s. c. 21 Atl. 26.

See, also, Delaware & L. W. R. Co. v. Wilkesbarre & W. S. R. Co., 6 Kulp, 342 (1891), Rice, P. J.; s. c. 1 D. R. 627, 11 Pa. C. C. 165; Penna. R. Co. v. Braddock Electric Ry. Co., 1 D. R. 626 (1892), Stowe, P. J.

4. What Corporations are Affected.

A county is within the meaning of this section, as to liability for consequential damages (990), but a township charged by special legislation with the payment of damages for the opening of public roads is not a corporation invested with the power of taking private poperty for public use within the meaning of the constitution, as the taking of the land and the laying out the road is done by the court of quarter sessions. (991) Nor is a township liable to property owners along the line of a public road for a change of grade in the road for the improvement of public travel. (992)

Corporations chartered before the adoption of the constitution are not subject to the provisions of this section (993; but see 994), unless chartered subsequent to the passage of an act or constitutional amendment reserving to the legislature the right to revoke, alter, or annul charters of incorporations thereafter granted. (995–997)

(990) A.'s property was injured by the erection of a bridge near it by a county. He brought action for consequential damages. The county claimed that it was not a "municipal or other corporation," within the meaning of the constitutional provision that such corporations must compensate for property injured. Judgment for A. was affirmed.—Chester County v. Brower, 117 Pa. 647 (1888), Paxson, J.; s. c. 12 Atl. 577, 20 W. N. C. 431. Affirming 1 Pa. C. C. 1.

(991) Under the act of March 17, 1845 (P. L. 184), all assessments for damages arising from the opening of public roads in Lehigh county were payable by the respective townships in which the roads were located. A. was the owner of certain lots in a township in that county. Upon petition to the court of quarter sessions, a public road was laid out and opened in front of his lot. A. brought trespass against the township to recover damages for injuries to his property caused thereby, and obtained judgment. *Held*, that the township was not such a corporation invested with the power of taking property for public use as was within the meaning of the constitution, but that the property was taken in right of the commonwealth, the township only having the duty of keeping the road up after it was opened by the court of quarter sessions. Judgment reversed.—Wagner v. Salzburg Tp., 132 Pa. 636 (1890), Williams, J.; s. c. 19 Atl. 294, 7 Lanc. L. R. 280.

(992) A township changed the grade of a public road opposite B.'s lands, by cutting it down several feet, thereby damaging B.'s property. In an action of trespass against the township, B. claimed to recover under the provision of art. XVI., § 8, of the constitution. *Held*, that the constitutional provision did not apply to such a case, as the road belonged to the state, and there was no taking of property. Judgment for the township affirmed.—Shoe v. Nether Providence Twp., 3 Supr. Ct. 137 (1896), Wickham, J.; s. c. 39 W. N. C. 437. Affirming 6 Del. Co. 291.

(993) A. was the owner of certain lands, which were taken by B., a railroad corporation, under the right of eminent domain bestowed on it by its charter. By a supplement to B.'s charter, granted in 1848, it was provided that in such cases the court should appoint five viewers whose report was only reviewable for irregularities upon the face of the record. The viewers were appointed and made an appraisement, from which A. appealed. B. contended that the proceedings must be governed by its charter, which contained no provision for appeal. A. set forth that art. XVI., § 8, of the new constitution would apply, and B. rejoined that the constitution could not impair the obligation of a charter contract granted prior to its framing, and containing no reservation of the right to alter or amend. Appeal stricken off.—Long v. Pennsylvania R. Co., 9 Lanc. Bar, 98 (1877), Patterson, J.

(994) The B. railroad entered upon A.'s land without first making compensation or giving any adequate security, having the right to do so under its charter, granted in 1837. A. filed a bill for an injunction. *Held*, that this provision of the charter being in violation of the constitution of 1838, art. VII., § 4 (similar to art. XVI., § 8, of the constitution of 1874), was abrogated thereby; and injunction granted.—Colgan v. Allegheny Val. R. Co., 3 Pitts. 394 (1872), Kirkpatrick, J.; s. c. 4 Lanc. Bar, No. 6, 19 Pitts. L. J. 152.

(995) A. brought suit against B., a railroad company, for consequential damages, for injuries to A.'s property resulting from B.'s exercise of the right of eminent domain. B. was chartered in 1833, and, by virtue of acts passed in 1861 and 1870, became the lessee of C., a company chartered in 1831. It was on C.'s line, and by virtue of authority given by acts passed in 1864 and 1872, that the injury to A. was done. B. claimed that under its charter of 1833, containing no reference to consequential damages, such damages could not be recovered. It was contended that as B.

was in this instance acting on land obtained and under powers conferred subsequent to the fourth amendment to the old constitution, passed in 1857, it was subject to such amendment in this case. The amendment of 1857 conferred on the legislature the power to alter, revoke, or annul any charter of incorporation thereafter granted. Judgment for A. affirmed.—Philadelphia & R. R. Co. v. Patent, 17 W. N. C. 198 (1886), Gordon, J.; s. c. 5 Atl. 747, 43 L. I. 89. Affirming 14 W. N. C. 545; s. c. 41 L. I. 224, 1 Lanc. L. R. 217.

(996) A. brought an action against B., a railroad company, for consequential damages. B. claimed that it was operated under a charter granted in 1846 and containing no provision for such damages. It was shown that the charter of 1846 only authorized B. to construct a road between certain points, and that the branch of the road on which the injury to A. arose was operated under an extension to B.'s charter in 1857. The act of May 3, 1855 (P. L. 423), reserved to the legislature the power to revoke, alter, or annul any charter of incorporation thereafter granted, as they might deem for the best interests of the state. It was contended that under this act, which became a part of B.'s new charter in 1857, B. came under the provisions of art. XVI., § 8, of the constitution, which provided for consequential damages. Judgment for A. affirmed.—Pennsylvania R. Co. v. Duncan, 111 Pa. 352 (1886), Gordon, J. (Paxson and Green, JJ., dissenting); s. c. 5 Atl. 742, 17 W. N. C. 193, 43 L. I. 86, 3 Lanc. L. R. 93. Affirmed by the supreme court of the United States, 129 Pa. 181 (1889), Blatchford, J.

(997) A. brought suit for damages against B., a railroad corporation, and showed that he was the owner of a small house and lot, and that B. had entered on his premises and run its roadway so close to his house as to deprive him of all easements of light and air, and made his ingress and egress most unsafe. It was shown that B. was formed by the consolidation in 1854 of three other companies, severally organized prior to the constitutional amendment, conferring power on the legislature to alter, revoke, or amend any charter of incorporation thereafter granted. Neither the charters of the consolidated companies nor the charter consolidating them into B. contained any provision for the recovery of consequential damages, and it was claimed that therefore no such damages could be recovered in this case. The charter of consolidation, however, contained a proviso that B. should be subject to all the provisions of the act of February 19, 1849 (P. L. 79; P. & L. Dig. 3945), which empowered the legislature for cause to resume, alter, or amend all privileges granted companies incorporated under it, and it was contended that the power thus reserved had been exercised by the people in their sovereign capacity when they adopted art. XVI., § 8, of the constitution of 1874, providing for consequential damages. Judgment for A. affirmed on appeal.—North Central Railway Co. v. Holland, 117 Pa. 613 (1888), Sterrett, J.

5. Consequential Damages.

Section 8 gives a right to consequential damages for injuries caused by the "construction or enlargement" of the works, highways, or improvements of "municipal and other corporations and individuals invested with the privilege of taking private property for public use." (998–1007), and such damages may be recovered, subsequent to the taking and use of property by a corporation, in a common-law action. (1008)

The right to consequential damages is subject to the limitation that the damage to be compensated must relate to the taking as its proximate cause. (1009)

Prior to the adoption of this section in the constitution of 1874, there existed no right to compensation for injuries consequent upon the exercise of the right of eminent domain, but only for an actual taking. (1010)

(998) "Were it necessary we would have no hesitation in holding that the provisions of art. XVI., § 8, of the new constitution, govern this case. That section provides for the making of compensation, not only for the taking of private property for public use, as was the case theretofore, but also for its injury or destruction."—Reading v. Althouse, 93 Pa. 400 (1880), Gordon, J.

(999) In an action by A. to recover damages for injuries caused to his property by the opening of a street, a special verdict was rendered, in which the jury found the direct damages, over and above all the advantages from the taking of land, alone to be $5,500, and damages consequent upon cuts, grades, fills, etc., $1,500. A judgment for the first amount only was reversed, and judgment ordered to be entered for both amounts.—Pusey v. Allegheny City, 98 Pa. 522 (1881), Gordon, J.; s. c. 13 Lanc. Bar, 146.

(1000) The owner of land abutting on a street upon which a railroad company was authorized to begin construction, filed a bill for an injunction to restrain the company until security for compensation should be given him. The injunction was granted on the ground that article XVI., § 8, of the constitution, giving compensation for property "taken, injured, or destroyed," gave a right to consequential damages.—Minnig v. New York, C. & St. L. R. Co., 11 W. N. C. 297 (1882), McDermitt, P. J.

(1001) A., a landowner, appealed from an assessment of damages for a lateral railroad, claim-

ing damages for consequential injuries from the use of the railroad. On rule to strike off the appeal, *held*, that under the constitution of 1874, A. was entitled to such damages if he could prove them. Rule discharged.—Chester Rolling Mills v. Grannan, 1 Del. Co. 379 (1882), Clayton, P. J.

(1002) A. brought action for injuries to his lands by reason of the construction of a highway. The defence was that there being no wrong in causing consequential injuries by the construction of public works, A. had no cause of action. *Held*, that under art. XVI., § 8, of the constitution, municipal corporations are liable for such damages.—Lloyd v. Philadelphia, 17 Phila. 202 (1884); s. c. 41 L. I. 428.

(1003) The B. company constructed its pipe line through land of A. Viewers were appointed under the act of June 2, 1883 (P. L. 310; P. & L. Dig. 3488), and awarded damages to A. for consequential injuries. Exceptions to the award, on the ground that the jury had no right to assess consequential damages, were dismissed.—Mayer v. Southern Pipe Lines Co., 5 York, 1 (1891), Latimer, P. J.

(1004) A. owned land along a creek in which a canal Company had constructed a dam to get a supply of water for the canal. The company subsequently constructed permanent splashboards on the top of the dam, and closed a chute in said dam, by reason of which the water was thrown back, and overflowed A.'s land, injuring his crops. In an action by A. to recover consequential damages, the defendant company contended that no recovery could be had for such consequential damages, under art. XVI., § 8, of the constitution. Judgment for A. was affirmed.—Fredericks v. Pennsylvania Canal Co., 148 Pa. 317 (1892); s. c. 23 Atl. 1067.

(1005) A. owned a wharf in Philadelphia, which extended into the river. The city owned an adjoining wharf. Under authority of the act of April 8, 1864 (P. L. 324), the city constructed a sewer opening into the dock between the wharves. Deposits from the sewer obstructed A.'s wharf, and he brought trespass to recover damages. The defence was that the sewer was wholly on the city's property, and that none of A.'s property had been taken for its construction. Judgment for A. was affirmed, on the ground that the constitution gives compensation for an injury consequent on the erection of works by a municipal corporation.—Butchers' Ice & Coal Co. v. Philadelphia, 156 Pa. 54 (1893), McCollum, J.; s. c. 27 Atl. 376.

(1006) A. was the owner of property fronting upon a certain street, which ran along the line of a railroad. Two cross streets, between which A.'s house was situated, were lowered by the city authorities, so that the streets would pass under the railroad, and access to A.'s property was thereby completely cut off. A. brought action for the damages consequent on this exercise of the right of eminent domain. Defendants contended that § 8, art. XVI., was inapplicable to the case, because A.'s property did not front on the streets which were lowered and was only consequentially affected. Judgment for A. affirmed.—Mellor v. Philadelphia, 160 Pa. 614 (1894), Sterrett, C. J.; s. c. 28 Atl. 991, 34 W. N. C. 182.

(1007) A city changed the grade of a street in order to construct sewers, and to abate a nuisance prejudicial to the health of the neighborhood. A., the owner of property upon the street, appealed from a report of viewers refusing to award him damages for loss caused him by such change. It was contended that the city was not liable because the change of grade was necessary to relieve the neighborhood of a nuisance. *Held*, affirming the judgment below, that under the constitution A. was entitled to recover for any injury which he might have sustained. Rudderow v. Philadelphia, 166 Pa. 241 (1895); s. c. 31 Atl. 53.

(1008) A. sued the B. railroad company for damages resulting from the erection of an elevated railroad along the street in front of his property. B. defended on the theory that noise, smoke, dirt, etc., resulting from the erection and use of the railroad, were annoyances, for which an action would not lie, at common law, on behalf of an individual. A. contended that as the street was taken under legislative authority, he had a remedy under art. XVI., § 8, of the constitution, and that he was not limited to such injuries as would have been actionable at common law, if B. had proceeded without legislative authority; and, further, that the said section of the constitution did not confine his damages merely to the injury consequent upon the taking of the street, but included damages consequent upon the operation of the road. Judgment for A. for the damages claimed was affirmed.—Pittsburg Junction R. Co. v. McCutcheon, 18 W. N. C. 527 (1886).

(1009) The city of B. and the C. railroad company agreed that in order to abolish a grade crossing the city should lower the grade of X. street, and B. should raise its tracks so as to clear the street. A.'s property fronted on the railroad, but did not extend to X. street, which crossed the railroad at right angles some distance from A.'s property. A jury of view was appointed to assess damages against the city occasioned by the change of grade of X. street. The jury awarded A. damages and the city appealed. It was admitted that the city was liable for damages consequent upon the change of grade of X. street, but it was contended that the proximate cause of the damage was the raising of the railroad tracks and not the change of grade of the

street. Judgment reversed.—Tucker & Frankford Sts., 166 Pa. 336 (1895), McCollum, J.

(1010) See, Philadelphia & Trenton R. Co., 6 Whart. 25 (1840), Gibson, C. J.; Monongahela Nav. Co. v. Coons, 6 W. & S. 101 (1843), Gibson, C. J.; Henry v. Pittsburg & A. Bridge Co., 8 W. & S. 85 (1844); O'Connor v. Pittsburgh, 18 Pa. 187 (1851), Gibson, C. J.; Reitenbaugh v. Chester Val. Ry. Co., 21 Pa. 100 (1853), Woodward, J.; Ridge Street, 29 Pa. 391 (1857), Woodward, J.; Faust v. Passenger Ry. Co., 3 Phila. 164 (1858), Strong, J.; Clark v. Birmingham & P. Bridge Co., 41 Pa. 147 (1862), Strong, J.; Yealy v. Fink, 43 Pa. 212 (1862), Strong, J.; Monongahela Bridge Co. v. Kirk, 46 Pa. 112 (1863), Read, J.; Wray v. Pittsburgh, 46 Pa. 365 (1863), Read, J.; Snyder v. Pennsylvania R. Co., 55 Pa. 340 (1867), Woodward, C. J.; Tinicum Fishing Co. v. Carter, 61 Pa. 21 (1869), Sharswood, J.; Canal Co. v. Shimp, 2 Leg. Gaz. 181 (1870); Freeland v. Pennsylvania R. Co,. 66 Pa. 91 (1870), Agnew, J.; affirming 2 Leg. Gaz. 85; Summy v. Pennsylvania R. Co., 2 Leg. Opin. 56 (1871); West Branch & Susq. C. Co. v. Mulliner, 68 Pa. 357 (1871), Thompson, C. J.; Struthers v. Dunkirk, W. & P. R. Co., 87 Pa. 282 (1878); Tinicum Fishing Co. v. Carter, 90 Pa. 85 (1879), Paxson, J.; Malone v. Philadelphia, 2 Penny. 370 (1882), Trunkey, J.

A corporation might be made liable for consequential damages prior to the constitution by a provision to that effect in its charter.—Bald Eagle Boom Co. v. Sanderson, 81* Pa. 402 (1876); Lycoming Gas & Water Co. v. Moyer, 99 Pa. 615 (1882), Gordon, J.; s. c. 11 W. N. C. 443.

6. No Consequential Damages Where There is No Taking.

Where no property has been taken by a corporation, but it has merely been given rights against another corporation which render the latter its debtor, section 8 of Article XVI. of the constitution does not apply. (1011)

Where a highway is permitted by an act of assembly to be surrendered by ordinance of a city to a railroad, which shall have theretofore purchased all the abutting property on both sides of the same, this is not a taking of property for public use, but a surrender to the owner of the fee of land which has been held for public use. (1012)

Under section 8 no damages can be recovered for the construction of a railroad on property purchased by, and belonging to, a railroad company, and situated on the opposite side of the street from the property claimed to be injured. (1013)

Where a structure rests entirely upon ground owned by defendant, and does not overhang plaintiff's land, damages cannot be recovered because the structure interferes with access to the plaintiff's land. (1014)

(1011) The A. company was incorporated to build a toll bridge. Subsequently the B. street railroad company was chartered, with a right to run its cars over said bridge. An act of assembly provided that in case the companies could not agree on the amount of toll to be paid by B. to A. the matter should be submitted to the court of quarter sessions, which should fix the amount of tolls. A case was stated in the quarter sessions and a decision filed, whereupon the A. company demanded a jury trial under art. XVI., § 8, of the constitution, and requested to be allowed to appeal for that purpose to the common pleas. This application was refused. On *certiorari*, the judgment was affirmed, on the ground that A.'s property had not been taken by the B. company so as to bring the case within section 8 of article XVI., but that B. was merely A.'s debtor for toll.—Monongahela Bridge Co. v. Pittsburgh & B. Ry. Co., 114 Pa. 478 (1887), Clark, J.

(1012) The act of April 15, 1869 (P. L. 965), authorized a city to vacate certain streets, and give them to certain railroad companies, provided said companies should first purchase all property which abutted on said streets along the portion of them desired to be surrendered. Under the authority of this act, a street was vacated, and occupied by a railroad company. A., whose property lay farther along such street, claiming that he was injured thereby, and was given a remedy by art. XVI., § 8, of the constitution, brought suit for damages. Judgment for defendant, on the ground that the property was not taken but surrendered to the owner of the land, was affirmed.—McGee's Appeal, 114 Pa. 470 (1887), Clark, J.; s. c. 8 Atl. 237.

(1013) A railroad company constructed an elevated railway on its own property, which was separated from A.'s property by a street 51 feet wide. A. brought action for damages and recovered judgment. *Held*, that art. XVI., § 8, of the constitution gave no right to compensation in a case where a corporation lawfully used its own ground for a lawful purpose; and judgment reversed.—Pennsylvania R. Co. v. Lippincott, 116 Pa. 472 (1887), Gordon, J. (Trunkey and Sterrett, J.J., dissenting); s. c. 9 Atl. 871, 19 W. N. C. 513, 34 Pitts. L. J. 475.

Followed in Santry v. Pennsylvania Schuylkill Valley R. Co., 4 Montg. Co. 144 (1888), Swartz, P. J.; Pennsylvania R. Co. v. Marchant, 119 Pa. 541 (1888), Paxson, J. (Sterrett, J., dissenting); s. c. 13 Atl. 690; Dooner v. Pennsylvania R. Co., 142 Pa. 36 (1891); s. c. 21 Atl. 755.

(1014) On the trial of an action of trespass by A. against B., an inclined plane company, for injuries to his dwelling-house, A. offered to show that B.'s structure interfered with access to his property. The structure was built on land previously owned by B., and did not overhang any of A.'s land. Offer refused. *Held*, no error, but

judgment reversed on other grounds.—Hartman v. Pittsburg Incline Plane Co., 159 Pa. 442 (1894), Sterrett, C. J.

7. For What Acts Damages Are Given.

(a) *Change of Grade of Street.*

Under section 8, a property owner has no right of action for a change of grade of a street until some change is actually made on the ground. Merely fixing a grade on a city plan gives no such right. (1015–1018)

A change from the original natural grade, where no different grade has ever been fixed by the authorities, is a change entitling property owners to compensation under section 8. (1019)

When the grade of a street is changed, a property owner is entitled to recover, damages for injuries sustained by him, though the change was made at his request and in the manner designated by him. (1020)

(1015) In 1871 a grade was established for a certain street, but no physical change was made until 1887. A., a property owner on the street, brought action for damages in 1891, and the city pleaded the statute of limitations. *Held*, that before the adoption of the constitution of 1874 A. had no right of action, and that, such right being given by that constitution, the statute only began to run when the physical change was made. Judgment for A.—Kershaw v. Philadelphia, 27 W. N. C. 341 (1891), Willson, J.; s. c. 20 Phila. 318, 10 Pa. C. C. 153, 48 L. I. 56.

(1016) In 1860 the court of quarter sessions confirmed a plan of a certain locality in Philadelphia. A. purchased property included in this plan. In 1878 a re-survey was had, and a new plan adopted. In 1885 the plan of 1878 was discarded, and the plan of 1860 reverted to. A. petitioned for the appointment of viewers to assess damages caused by the change of grade on the plans. It was contended by the city, that under article XVI., § 8, of the constitution of 1874, he could only recover for an actual change on the land, not for a change of plans. Judgment for the city was affirmed.—Change of Grade in Plan 166, 143 Pa. 414 (1891), Mitchell, J.; s. c. 22 Atl. 669, 673, 28 W. N. C. 406, 412, 48 L. I. 417, 418.

Followed in L. Street, 12 Pa. C. C. 406 (1892), Thayer, P. J.; s. c. 2 D. R. 179.

(1017) A plan was approved in 1871 fixing the grade of a certain street, but no physical change was made in the grade of the street until 1887. A jury of view was then appointed, and assessed damages in favor of B., a property owner. The city appealed. The case was put at issue in an action of trespass, and recovery sought under the provisions of art. XVI., § 8, of the constitution. A compulsory nonsuit was entered on the ground that B.'s claim was barred by the statute of limitations which commenced to run with the confirmation of the plan, in 1871. *Held*, that the right of action given by the constitution was for the establishment of a new grade on the land, and therefore no right of action accrued until a physical change was made. Judgment reversed.—Ogden v. Philadelphia, 143 Pa. 430 (1891), Mitchell, J.; s. c. 22 Atl. 694, 28 W. N. C. 413, 48 L. I. 417.

(1018) A street was laid out over land of A., but not opened. He petitioned for the appointment of viewers to assess damages, claiming that he was prevented from freely using his property thereby, as the act of May 16, 1891 (P. L. 80, § 12), provided that no person could recover damages for any building or improvement placed within the line of a street after it had been located. An order dismissing his petition, on the ground that there had been no such taking as was contemplated by the constitution, was affirmed.—Bush v. McKeesport City, 166 Pa. 57 (1895); s. c. 30 Atl. 1023.

(1019) A. presented a petition to the quarter sessions for the appointment of viewers to assess damages for the change of grade of a borough street. The borough contended that as the proprietor of the borough had formerly laid it out into lots and streets, and the borough itself had never fixed the grade of a particular street, it was not liable for damages for grading it the first time. A case stated was submitted to the court, and judgment was entered for A. Judgment affirmed on the ground that the change from the original natural grade was a change of grade just as clearly as if the change had been from a grade previously made by the authorities, and was within art. XVI., § 8.—New Brighton Borough v. United Presbyterian Church, 96 Pa. 331 (1880), Mercur, J. (Paxson, J. dissenting).

(1020) At the trial of an appeal from the report of viewers to assess damages for the change of grade of a street, the court was requested to charge that, if the jury believed that the change of grade was made at the request of the plaintiff, and as he had designated, and was of advantage to him, he was not entitled to recover. The court refused so to charge, on the ground that art. XVI., § 8, of the constitution, gave the right to damages if any injuries in excess of benefits were sustained. Judgment affirmed.—Lewis v. Darby Borough, 166 Pa. 613 (1895); s. c. 31 Atl. 335.

(b) *Entry upon Streets.*

Erecting electric-light poles (1021), or laying gas mains (1022–1023), upon streets, creates an additional servitude, and must be compensated under section 8.

Such additional servitude is not imposed, however, by a motor power company, which enters a street upon which a railway company has the right to lay tracks, in pursuance of an agreement with the latter, under the act of March 22, 1887 (P. L. 8; P. & L. Dig. 3181). (1024)

Making necessary repairs on a highway is not such construction, alteration, or enlargement of the highway as will give an abutting owner a right to damages against a township. (1025)

(1021) An electric light company erected poles along a public highway in front of A.'s land. On motion to dissolve a preliminary injunction restraining A. from chopping down the poles, it was argued that the said poles imposed no new servitude on the land, and did not amount to a taking thereof within the meaning of art. XVI., § 8, of the constitution, requiring compensation. Injunction continued on condition that plaintiff give bond to answer such damages as the erection of the poles might have caused.—Haverford Electric Light Co. v. Hart, 13 Pa. C. C. 369 (1892), Swartz, P. J.

(1022) A bill in equity was filed to restrain a gas company from laying pipes under a road running through complainant's land, and recently appropriated for the use of the public as a highway, on the ground that no compensation was made or offered by the defendant company although the laying of the pipes imposed an additional servitude upon the land, the fee of which was still in the complainant. A decree dismissing the bill was reversed.—Sterling's Appeal, 111 Pa. 35 (1886), Sterrett, J.

(1023) On motion to continue a preliminary injunction restraining an incorporated natural gas company from laying its pipes through city streets without first making compensation to the owners of the land, it was argued that the laying of gas mains imposed no additional servitude on the land and did not amount to a taking thereof within the meaning of art. XVI., § 8, of the constitution. Injunction granted.—Mallory v. Bradford City, 1 D. R. 670 (1892), Morrison, J.

(1024) The act of March 22, 1887 (P. L. 8; P. & L. Dig. 3181), provided for the formation of motor power companies, and authorized them to enter upon any street, upon which a passenger railway was, or might thereafter be constructed, with the consent of the railway company. C., a passenger railway company, under its charter, created branches to its main line, among which was one passing through X. street. A city ordinance authorized C. to use X. street, and another ordinance authorized B., a motor power company, with C.'s consent, to use said street for its tracks. A., an owner of property abutting on said street, filed a bill in equity, praying that B. be restrained from entering on said street, and contending that B.'s use of the street imposed an additional servitude upon A., for which he was entitled to compensation under article XVI., § 8, of the constitution. A decree granting the prayer was reversed.—Rafferty v. Central Traction Co., 147 Pa. 579 (1892), Green, J. Reversing 39 Pitts. L. J. 15.

(1025) A. brought suit against a township for alleged damages to his land caused by the making of necessary repairs on a highway and the consequent flowing of water on his land. Verdict was given against A., and a motion for a new trial on the ground that the injury to his land was such as was contemplated by art. XVI., § 8, of the constitution, as it was an enlargement of the works of a municipal corporation, was refused.—Warner v. Muncy Twp., 18 Pa. C. C. 582 (1896), Metzger, P. J.

(c) *Construction of Inadequate Sewer.*

A municipal corporation is not liable, under section 8 of the constitution, for damages to property caused by the inadequacy of a sewer constructed by it. (1026)

(1026) A. brought a common-law action, under the provisions of article XVI., § 8, of the constitution, to recover for damages occasioned by the backing up of water on a street in front of his premises, by reason of the insufficiency of a sewer constructed by the defendant. Judgment of nonsuit affirmed.—Bear v. Allentown, 148 Pa. 80 (1892).

8. Municipal Improvements.

(a) *Assessment of Benefits.*

Section 8 does not prevent the assessment of the damages caused by municipal improvements against property benefited thereby. (1027)

(1027) The act of May 16, 1889 (P. L. 228; P. & L. Dig. 600, n.), gave to cities of the second class the right to take property for public use, and institute proceedings to assess benefits as well as damages. A., whose property was about to be assessed for benefits by reason of the opening of a street, prayed for an injunction against such opening, on the ground that the act of 1889 was unconstitutional, under article XVI., § 8, claiming that under that section the municipal corporation must itself pay and not assess the damages for taking, on property which was benefitted. *Held*, that the act was constitutional. Bill dismissed.—Howard v. Pittsburg, 38 Pitts. L. J. 87 (1889), Ewing, P. J.

(b) *Special Statutory Methods of Assessing Damages Not Abrogated.*

Section 8 does not abrogate special methods of assessing damages previously provided by statute. (1028)

(1028) The act of March 21, 1836 (P. L. 134), provided a special method of assessing damages for land taken for the purpose of laying water pipes in the city of Lancaster. A. commenced

proceedings under the act of May 25, 1887 (P. L. 267), for the assessment of damages for land so taken by that city. *Held*, that the proceedings should have been under the act of 1836, and that such act was not affected by art. XVI., § 8, of the constitution of 1874.—Shroder's Assessment, 11 Lanc. L. R. 257, 390 (1894), Brubaker, J.

9. Appeals from Assessments.

Article XVI., § 8, of the constitution provides that "the general assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals" for property taken, injured, or destroyed in the exercise of the right of eminent domain.

This provision gave the right of appeal only to the owner of the property so taken, injured, or destroyed (1029–1030), but the acts of June 13, 1874 (P. L. 283; P. & L. Dig. 1849), and May 16, 1891 (P. L. 75; P. & L. Dig. 4218), made the right mutual (1031), so that any person or corporation in favor of or against whom such damages are assessed is entitled to an appeal. (1032–1037)

A property owner against whom benefits are assessed for municipal improvements may appeal. (1038)

(1029) A. petitioned for the appointment of viewers to inquire and determine whether he had suffered any damage by reason of a change of grade. The viewers were appointed under the act of May 24, 1878 (P. L. 129; P. & L. Dig. 4182), and reported that no damage had resulted to A. A. appealed from the award, and a motion was made to quash the appeal on the ground that the act of 1878 did not allow an appeal from the report of viewers. Judgment was entered on the award, and A. appealed from the judgment on the ground that article XVII., § 8, prohibited the general assembly from depriving any person of an appeal from any preliminary assessment of damages. Judgment reversed.—Millvale Borough v. Poxon, 123 Pa. 497 (1889), Hand, J.

(1030) On a rule to show cause why an appeal from a report of viewers should not be stricken off, because taken by the municipal corporation which had taken the property in question. *Held*, that the constitution gave a right of appeal from an assessment of damages for property taken, injured, or destroyed by the exercise of the right of eminent domain only to the owner of the property, and that the acts of June 13, 1874 (P. L. 283; P. & L. Dig. 1849), and May 26, 1891 (P. L. 116), made the right mutual. Rule discharged—Hanover Borough Alley, 4 D. R. 160 (1895), Latimer, P. J.

(1031) A municipal corporation appealed to the court of common pleas from the award of a jury appointed, under the act of May 16, 1891 (P. L. 75; P. & L. Dig. 4218), to assess damages for opening certain streets. A rule to strike off the appeal was discharged, on the ground that the doubt as to whether art. XVI., § 8, of the constitution, gave a right of appeal to the corporation taking property as well as to the party whose property was taken had been removed by the act of June 13, 1874 (P. L. 283; P. & L. Dig. 1849), which provided that an appeal might be taken by either party.—Gardner v. Chester City, 5 Del. Co. 237 (1893), Clayton, P. J.; s. c. 13 Pa. C. C. 4, 3 Lack. Jur. 119, 10 Lanc. L. R. 234, 7 York, 31.

(1032) A railroad company took lands of A., and viewers were appointed to assess damages. A. appealed from the assessment under the act of June 13, 1874 (P. L. 283; P. & L. Dig. 1849), which gave the right of appeal to either party. The company asked the court to strike off the appeal, on the ground that it had not accepted any benefits under the new constitution, and that the act of 1874 was not binding on it. The court struck off the appeal. From this order A. appealed on the ground that art. XVI., § 8, of the constitution, prohibiting the general assembly from depriving any person of the right of appeal from an assessment of damages against a corporation, and providing for a jury trial on demand, brought the company under the act of 1874. Order striking off the appeal reversed.—Long's Appeal, 87 Pa. 114 (1878), Gordon, J. (Paxson, J., dissenting); s. c. 35 L. I. 432, 10 Lanc. Bar, 83, 26 Pitts. L. J. 38.

(1033) A jury was appointed by the court of quarter sessions to review, and, if necessary, lay out, a public road to a point in the borough of B. They reported in favor of the road, and that no damages would be sustained by those through whose land it passed. A. appealed from this report, and an issue was framed as in trespass, with A. as plaintiff, and the borough as one of the defendants. On motion for a new trial, the borough contended that the appeal was unauthorized, as it had not been a party to the proceedings in court to open the road. *Held*, that the appeal was permissible.—Robinson v. South Chester Borough, 3 Del. Co. 176 (1883), Futhey, P. J.

(1034) A city appealed from the award of a jury appointed to assess damages in proceedings to compel the city to take a turnpike. It was contended that the city had no right of appeal, as ten citizens were the movers in the matter by petition, and the city did not take the property. *Held*, that such proceedings came under the provisions of art. XVI., § 8, of the constitution, regarding taking of private property for public use, and that such section and the act of June 13, 1874 secured to either party the right to appeal.—Frankford & B. Turnpike Road, 18 Phila. 444 (1885), Ludlow, P. J.; s. c. 42 L. I. 46.

(1035) A petition was presented for the opening of a certain street. Viewers were appointed, and assessed damages against the city and county, both of which appealed. On motion to strike off appeals, *held*, that in such proceedings, either party had the right to appeal under the constitution and the act of June 13, 1874.—Grant Street,

7 Pa. C. C. 84 (1889), Livingston, P. J.; s. c. 6 Lanc. L. R. 145.

(1036) Proceedings were commenced under the act of April 22, 1856 (P. L. 525; P. & L. Dig. 395), to assess damages against a borough for opening a street. An appeal was taken from the assessment and a motion made to strike it off. The act of 1856 gave no right of appeal from the award of viewers. *Held*, that the constitution of 1874, and the act of June 13, 1874, gave the right of appeal. —Opening Alley C, 7 Lanc. L. R. 292 (1890), Patterson, J.

(1037) An appeal from the report of viewers, in proceedings to widen and grade a street in a borough, under the act of May 16, 1891 (P. L. 75; P. & L. Dig. 4218), was taken by the borough. On rule to strike off the appeal on the ground that the act of 1891 gave boroughs no right of appeal, *held*, that such a right was given by the act of June 13, 1874, and art. XVI., § 8, of the constitution. Rule discharged.—Bechtel v. Bechtelsville Borough, 3 D. R. 713 (1894), Ermentrout, P. J.

As to the right of a county to appeal from an award of damages, in proceedings by the county to take the bridge of a corporation for public use, see Towanda Bridge Co., 91 Pa. 216 (1880).

(1038) A. appealed to the court of common pleas from the award of a jury of view as ascertaining damages to the property of B. caused by the vacation of a street, and assessing part of the same upon A. as an owner of property benefited. B. claimed that there was no right of appeal from an award of viewers in the case of the vacation of a street. *Held*, affirming the judgment, that A. was entitled to an appeal under the act of 1874 and art, XVI., § 8, of the constitution.—Hare v. Rice, 142 Pa. 608 (1891), Mitchell, J.; s. c. 21 Atl. 976, 28 W. N. C. 161, 38 Pitts. L. J. 454, 48 L. I. 244.

10. Trial by Jury.

Article XVI., § 8, of the constitution provides that the amount of damages from the exercise of the right of eminent domain, "in all cases of appeal shall on the demand of either party be determined by a jury according to the course of the common law."

Under this section the court of common pleas is bound to give an appellant from the award of a road jury, a jury trial according to the course of the common law. (1039).

The provisions of the section are carried out by the act of June 13, 1874 (P. L. 283; P. & L. Dig. 1849), providing for an appeal to the common pleas and a jury trial in that court. (1040–1041) If no appeal is taken to the common pleas, the right of jury trial is lost. (1042)

(1039) From the report of viewers appointed to assess damages for the opening of a street, B., one of the persons through whose property said street was to be opened, appealed to the common pleas, and demanded a jury trial. The court dismissed the appeal *pro forma*. A. appealed from their order, and contended that the constitution, art. XVI., § 8, guaranteed him a jury trial. Order reversed.—Bachler's Appeal, 90 Pa. 207 (1879), Trunkey, J.; s. c. 10 Lanc. Bar, 209.

(1040) Viewers were appointed to assess damages and benefits from the opening of a street. From their report A. appealed, and demanded a jury trial to assess his damages, which was refused by the court on the ground that by excepting to the first report of viewers, having the case referred back, and appearing before the viewers a second time, he had waived his right to an appeal and jury trial. *Held*, that the right to such jury trial was secured by the constitution, the provisions of which were carried out by the act of June 13, 1874 (P. L. 283; P. & L. Dig. 1849), which provided that an appeal might be taken to the court of common pleas. Judgment reversed.—Pusey's Appeal, 83 Pa. 67 (1877), Agnew, C. J.; s. c. 24 Pitts. L. J. 101.

(1041) In 1873, the councils of Pittsburgh passed an ordinance for the opening of a certain street. The report of viewers to assess damages was confirmed by the councils in October, 1874, and later in the same month, A. filed an appeal to the quarter sessions, which court ordered the case certified to the common pleas for a jury trial. After verdict for A., the proceedings were dismissed for want of jurisdiction. On error, *held*, that the act of June 13, 1874, was intended to carry into effect the provisions of art. XVI., § 8, of the constitution, and that the common pleas had jurisdiction of the appeal. Order reversed, and judgment entered for A.—Williams v. Pittsburgh, 83 Pa. 71 (1877), Agnew, C. J.

(1042) A public road was laid out through land of A., and viewers were appointed to assess damages. A. excepted to their report, and made a demand on the court of quarter sessions for a trial by jury, but did not appeal to the court of common pleas, as required by the act of June 13, 1874 (P. L. 283; P. & L. Dig. 1849). The quarter sessions dismissed the exceptions and refused to make any order as to a jury trial. On *certiorari*, *held*, that as the proper court of which to demand a trial was the common pleas, and by failing to make such demand, A. had lost his right. Writ quashed.—Springdale Twp. Road, 91 Pa. 260 (1879), Paxson, J.

(H) REVOCATION OF CHARTERS.

Article XVI., § 10, of the constitution provides that "the general assembly shall have the power to alter, revoke, or annul any charter of incorporation now existing

and revocable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of this commonwealth, in such manner, however, that no injustice shall be done to the corporators. No law, hereafter enacted, shall create, renew, or extend the charter of more than one corporation."

Under the fourth amendment of 1857 to the constitution of 1838 (P. L. [1857] 811), which was to the same effect as this section, the legislature could revoke a right granted, after such amendment, to a corporation, to erect toll-gates within a mile of public bridges (1043); but could not repeal a charter granted prior to that amendment, in the absence of a repealing clause embodied in the charter. (1044)

Increasing the privileges or extending the powers of a corporation is not extending its charter in the sense of this section, which only applies to extension of the term of the charter. (1045)

An act which allows a corporation to maintain a suit on outstanding obligations of other persons due to such corporation, after the term of its existence has expired, is not in violation of this section. (1046)

A company chartered under the amendment of 1857 or the constitution of 1874 cannot claim immunity from police regulations imposed upon it by act of assembly, on the ground that such regulations are impairments of the obligations of contracts; and this is true though the charter makes no provision for alteration, amendment, or repeal. (1047)

(1043) The charter of a turnpike company provided that it should not erect any toll-gates within a mile of two public bridges over which its road passed. The act of April 3, 1867 (P. L. 734), repealed this provision, and the act of February 13, 1868 (P. L. 150), repealed the act of 1867. The company claimed that such repeal was unconstitutional and that it had the right to collect toll within a mile of such bridges. On a case stated, between the turnpike company and B., who had refused to pay toll at a gate within a mile of one of the bridges, *held*, that the act of 1868 was within the power given to the legislature by the constitutional amendment of 1857, to revoke charter rights which were injurious to the citizens of the commonwealth; and judgment for the company was reversed.—Zimmerman v. Perkiomen & R. Turnpike Co., 81* Pa. 96 (1873), Read, C. J.

(1044) The A. college was granted a charter in 1850, containing no repealing clause. By a subsequent act said charter was revoked. To a bill filed against said college to restrain it from exercising its corporate functions, A. demurred. Demurrer sustained.—Allen v. Buchanan, 9 Phila. 283 (1873), Agnew, J.

(1045) A. filed a bill in equity against the city of B. to restrain it from subscribing to the stock of the C. railroad company. B. relied on an act of assembly supplementary to the act chartering the C. company, which gave C. the right to increase its capital and authorized the city of B. to subscribe thereto. A. contended that this act was unconstitutional, because it violated art. I., §, 25 of the constitution of 1838 (see constitution of 1874, art. XVI., § 10), which provided that "no law shall create, renew, or extend the charter of more than one corporation." Bill dismissed, on the ground that the increase of capital of, or the conferring of a new power upon, a corporation was not within the prohibition.—Moers v. Reading City, 21 Pa. 188 (1853), Black, C. J. (Lewis and Lowrie, J.J., dissenting).

(1046) On *sci. fa. sur* mortgage by the A. company against B., the plea was *nul tiel* corporation, under which B. proved that the A. corporation had been chartered for ten years, and that the said term had expired. A. relied on the act of April 26, 1869 (P. L. 1223; P. & L. Dig. 466), providing that certain classes of corporations should have power to bring suits on mortgages, etc., notwithstanding their charters might have expired; the act not to be construed to allow a corporation to transact any new business, but only to wind up its affairs. B. contended that the act was void as in conflict with art. I., § 25, of the constitution of 1838 (art. XVI., § 10, constitution of 1874), which provides that "no law hereafter enacted shall create, renew, or extend the charter of more than one corporation." Judgment for A. was affirmed, on the ground that the act was not a grant or renewal of a charter but only a provision to facilitate winding up.—Cooper v. Oriental Savings and Loan Asso., 100 Pa. 402 (1882), Mercur, J.; s. c. 12 W. N. C. 332.

(1047) The A. insurance company was chartered after the constitutional amendment of 1857 (art. I., § 26; followed in art. XVI., § 10, of the constitution of 1874), giving the assembly the right to alter, revoke, or annul the charter of any company whose charter was thereafter granted or of companies formerly chartered which should accept the provisions of the constitution. Subsequently a statute was passed requiring all insurance companies to submit certain reports to an insurance commissioner. The A. company refused to comply therewith, on the ground that the act was a breach of its contract with the state. Complaint was made to the common pleas, and that court was asked to decree a suspension of the business of the company, in accordance with the act, until it obeyed the mandates of said act. Suspenion decreed, on

the ground that the reservation of the right of repeal carried with it the right of regulation.—Comm. v. Hock Age Mut. Ben. Asso., 10 Phila. 554 (1874), Pearson, P. J.; s. c. 31 L. I. 245.

(I) NOTICE OF APPLICATION FOR BANKING POWERS.

Article XVI., § 11, provides that "no corporate body to possess banking and discounting privileges shall be created or organized in pursuance of any law without three months' previous public notice, at the place of the intended location, of the intention to apply for such privileges, in such manner as shall be prescribed by law."

A bank desiring a renewal or extension of its charter is within the meaning of this section. (1048)

A loan association which takes premiums for its loans to members does not possess banking and discounting privileges, within the meaning of this section. (1049)

The exercise of banking or discounting privileges by a savings fund which has not complied with the requirements of this section, is invalid, and can form no basis for recovery on notes discounted. (1050)

(1048) A bank requested the advice of the attorney-general in regard to a renewal or extension of its charter. *Held*, that three months' notice must be given as required in art. XVI., § 11, of the constitution.—Renewal of Bank Charters, 14 Pa. C. C. 144 (1893), Hensel, Atty.-Gen.; s. c. 3 D. R. 700.

(1049) A. owned 13 shares, of the par value of $200 each, in a loan association. To secure an advance on such shares he bid a premium of 20 per cent. He actually received from the association $2,080, for which he gave a bond for $2,600 secured by mortgage. On *scire facias* on the mortgage he contended that the bond and mortgage were void, as the transaction was a discount, and the association could not make it, as it had never given the notice of application for banking powers required by art. I., § 25, of the constitution of 1838 (corresponding with art. XVI., § 11, of the constitution of 1874). The association demurred. Demurrer sustained on the ground that the association did not possess banking privileges. Affirmed.—Schober v. Accommodation Savings Fund & Loan Ass'n, 35 Pa. 233 (1860), Strong, J.

See, also, Building Association v. Seemiller, 35 Pa. 225, note (1858), Sharswood, P. J.; s. c. 15 L. I. 132; Lycoming Fire Ins. Co. v. Newcomb, 4 Leg. Gaz. 409 (1872), Elwell, P. J.

(1050) The A. savings fund society was duly incorporated by the common pleas under authority of an act of assembly. It bought certain notes at a discount, in the course of a regular discount business conducted by it. It subsequently brought suit thereon. The defence was that art. I., § 25, of the constitution of 1790 (see art. XVI., § 11, of the constitution of 1874), forbade any corporation possessing banking or discount privileges to be chartered without six months' public notice of the application for a charter; and that A. had never been so chartered. Judgment for defendant.—Manufacturers & Mech. Sav. & Loan Co., v. Conover, 5 Phila. 18 (1862), Hare, J.; s. c. 19 L. I. 116.

XVII. RAILROADS AND CANALS.

(A) CROSSINGS AND CONNECTIONS.

Section 1 of Article XVII. of the constitution provides that "every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination."

This section does not authorize a railroad to build a branch road in order to connect with another railroad not contiguous (1051), nor does the section change the policy of the state in regard to grade crossings (1052), and such crossings will be restrained by the courts when it is reasonably practicable to avoid them. (1053–1054)

Passenger railways are not within the meaning of this section. (1055)

(1051) The A. railroad company proposed to construct a branch about 800 feet long over land of B., in order to connect with another railroad. B. filed a bill for an injunction. *Held*, that such branch was not authorized by art. XVII., § 1, of the constitution. Injunction awarded.—Graff v. Evergreen R. Co., 2 Pa. C. C. 502 (1886), Stowe, P. J.

(1052) The A. company filed a petition for a decree permitting it to cross the B. company's track at grade. The testimony showed that an overhead crossing would greatly increase the cost of construction, damage private property, and prevent the A. company from making switchings for accommodation of factories or other business; and with proper precautions there would be but slight danger of collisions at a grade crossing. *Held*, that, although art. XVII., § 1, of the constitution had not changed the policy of the state as to avoiding grade crossings, a crossing at grade was proper in the case before the court. Decree affirmed.—Northern Cent. Ry. Co.'s Appeal, 103 Pa. 621 (1883), Sterrett, J.; s. c. 32 Pitts. L. J. 48.

(1053) The A. railroad company filed a bill praying a decree permitting it to cross the tracks of the B. railroad company at a certain point. The B. company claimed that such crossing would be injurious to it. *Held*, reversing the

court below, that, as it was practicable for the A. company to cross at a point where it would inflict less injury on the B. company, the decree as prayed for should not be granted.—Pittsburgh & C. R. Co. v. Southwest Pennsylvania Ry. Co., 77 Pa. 173 (1875), Mercur, J.; s. c. 32 L. I. 41, 22 Pitts. L. J. 106.

(1054) The A. railroad company located its road so as to cross the B. railroad company's tracks at two points at grade, and began construction. The B. company disputed the right to such crossing, and the A. company filed a bill for injunction restraining the B. company from interfering. It was shown that the A. company could locate its road so as to avoid any crossings whatever, but that such location would involve much expense. *Held*, reversing the lower court, that article XVII., section 1, of the constitution, gave no absolute right to railroads to cross each other at grade, and that the crossings claimed by the A. company should not be allowed.—Perry County Railroad Extension Co. v. Newport & S. V. R. Co., 150 Pa. 193 (1892), Paxson, C. J.; s. c. 24 Atl. 709, 30 W. N. C. 362.

(1055) The A. passenger railway company filed a bill for an injunction restraining the B. passenger railway company from connecting the tracks of the two companies. *Held*, that art. XVII., § 1, of the constitution, giving railroads the right to connect with other roads, did not apply to passenger railway companies. Injunction granted.—Norristown Pass. Ry. Co. v. Citizens' Pass. Ry. Co., 3 Montg. Co. 119 (1887), Mitchell, J.

(B) INSPECTION OF BOOKS.

Section 2 of Article XVII. of the constitution provides that every railroad and canal corporation organized in this state shall maintain an office therein where transfers of its stock shall be made, and where its books shall be kept for inspection by any stockholder or creditors of such corporation, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock and the amounts owned by them respectively, the transfer of said stock, and the names and places of residence of its officers.

This section does not give a stockholder the right to copy from the stock books of a corporation the names of the stockholders. (1056)

(1056) A. demanded that he be allowed to copy the names of the stockholders in a corporation in which he held stock as administrator of B. The corporation refused to allow this, and A. applied for a mandamus, contending that art. XVII., § 2, of the constitution gave him the right which he demanded. *Held*, reversing the lower court, that A. had no right to make such copy.—Comm. v. Empire Pass. Ry. Co., 134 Pa. 237 (1890), Green, J.; s. c. 19 Atl. 629, 26 W. N. C. 26, 7 Lanc. L. R. 411.

(C) DISCRIMINATION.

Section 3 of Article XVII. of the constitution provides that "no undue or unreasonable discrimination shall be made, in charges for, or in facilities for, transportation of freight or passengers within the state, or coming from or going to any other state."

The act of June 4, 1883 (P. L. 72, § 2; P. & L. Dig. 3990), was intended to carry out the provisions of this section, and the penalty provided by that act refers to discrimination either in rates or facilities. (1057)

This section of the constitution is self-efficient, and needs no legislation to carry it into effect. (1058)

This section only prohibits discrimination for like services and under like conditions in all material respects. (1059)

It is not such discrimination as is prohibited for a railroad company to charge, for fares paid on a train, a higher rate than for tickets purchased at a ticket office. (1060)

A contract of a railroad company to subscribe to the bonds of a coal company in consideration of receiving all its traffic does not offend against this section. (1061)

(1057) The act of June 4, 1883, provides that "no railroad company or other common carrier shall charge or receive from any person, company, or corporation, for the transportation of property, a greater sum than it shall charge or receive from any other person, company, or corporation," etc. "Nor shall any such railroad company or common carrier make any undue or unreasonable discrimination between individuals, or between individuals and transportation companies, or [in] the furnishing facilities for transportation. Any violation of this provision shall make the offending railroad company or common carrier liable to the party injured for damages treble the amount of injury suffered." An action was brought against a railroad company for damages for discrimination in rates under this act. The company claimed that the forfeiture applied only to discrimination in facilities. *Held*, that as the act was passed to carry out the provisions of art. XVII., § 3, of the constitution, the forfeiture applied to discrimination either in rates or facilities.—Wigton v. Pennsylvania R. Co., 20 Phila. 184 (1890), Biddle, J.

(1058) On demurrer to a bill in equity to enjoin a railroad company from charging excessive rates in violation of art. XVII., § 3, of the constitution, it was urged that the provision of the constitution required legislation to enforce it, and that therefore a court of equity had no jurisdiction. Demurrer overruled.—Central Iron Works v. Pennsylvania R. Co., 5 D. R. 247 (1895), Simonton, P. J.

(1059) A. brought action against a railroad company for discrimination in rates. He failed to prove that the discrimination was for a like service and under like conditions in all material respects. Judgment for defendant.—Paine v. Pennsylvania R. Co., 14 Pa. C. C. 38 (1893), Rice, P. J.

(1060) A railroad company adopted a regulation that fares paid to a conductor on a train should be five cents in addition to the price of tickets. A. got on a train without a ticket, and was ejected for refusing to pay the sum demanded. He brought trespass, alleging that the regulation of the company was discrimination in violation of art. XVII., § 3, of the constitution. *Held*, that there was no such violation.—Ritter v. Philadelphia & R. R. Co., 2 W. N. C. 382 (1876).

(1061) A coal company agreed to give all its traffic to the A. railroad company, in consideration of the A. company's subscribing to its bonds. The coal company afterwards arranged to give part of its traffic to the B. railroad company. The A. company filed a bill for injunction and for specific performance. It was contended that the agreement with the A. company offended against art. XVII., § 3, of the constitution. *Held*, affirming the lower court, that the agreement was valid.—Bald Eagle Val. R. Co. v. Nittany Val. R. Co., 171 Pa. 284 (1895), Dean, J.; s. c. 33 Atl. 239, 37 W. N. C. 89.

(D) CONSOLIDATION.

Section 4 of Article XVII. of the constitution provides that "no railroad, canal or other corporation, or the lessees, purchasers or managers of any railroad or canal corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any other railroad or canal corporation, owning, or having under its control, a parallel or competing line."

Under this section, a railroad company cannot directly or indirectly obtain a controlling interest in the stock of a parallel or competing railroad. (1062–1063)

A company which has a lease of a line between certain points may build a parallel road of its own between such points. (1064)

This section does not apply to street railways. (1065–1066)

(1062) The A. railroad company was constructing a line which, when completed, would be parallel and competing with that of the B. railroad company. Negotiations were commenced for a transfer of a controlling interest in the A. company's stock to the C. company, but the real consideration for such transfer was to be furnished by the B. company. The attorney-general filed a bill for an injunction in the name of the commonwealth. *Held*, that the proposed transaction was in violation of art. XVII., § 4, of the constitution. Preliminary injunction continued.—Comm. v. South Pennsylvania R. Co., 1 Pa. C. C. 214 (1886), Simonton, P. J.

(1063) The A. railroad company owned and operated a line of road competing with certain lines leased by the B. railroad company. The A. and B. companies commenced negotiations for the transfer of a controlling interest in the A. company's stock to the C. railroad company, the consideration to be furnished by the B. company. On proceedings by the attorney-general for injunction, *held*, that the proposed transaction was in violation of art. XVII., § 4, of the constitution. Preliminary injunction continued.—Comm. v. Beech Creek, C. & S. R. Co., 1 Pa. C. C. 223 (1886), McPherson, J.

(1064) A railroad company leased another railroad operating between two points. Afterwards the lessor constructed a road parallel to the leased line between the same points. The leased road filed a bill for injunction. Bill dismissed.—Catawissa R. Co. v. Philadelphia & R. R. Co., 3 D. R. 111 (1894), Thayer, P. J.; s. c. 14 Pa. C. C. 280, 34 W. N. C. 11.

(1065) Two street railway companies consolidated their lines, and proposed building sidings and curves for operating the two lines in connection with one another. A motion was made for an injunction on the ground that the consolidation was a violation of art. XVII., § 4, of the constitution. *Held*, that street railways were not included in the prohibition of that section. Injunction denied.—Shipley v. Continental R. Co., 13 Phila. 128 (1879), Ludlow, P. J.; s. c. 36 L. I. 450.

(1066) A stockholder in a street railway company filed a bill for an injunction restraining it from executing a proposed lease of its lines to a competing street railway. Injunction refused, on the ground that art. XVII., § 4, of the constitution, prohibiting the leasing of parallel and competing lines did not apply to street railways. Decree affirmed.—Gyger v. Philadelphia City P. Ry. Co., 136 Pa. 96 (1890), Green, J. (Sterrett, J., dissenting); s. c. 20 Atl. 399, 26 W. N. C. 437.

See, also, Gyger v. Philadelphia City P. Ry. Co., 17 Phila. 86 (1883), Mitchell, J.; s. c. 41 L. I. 4.

(E) ENGAGING IN OTHER BUSINESS.

Section 5, Article XVII., of the constitution provides that no incorporated company doing the business of a common carrier shall directly or indirectly . . . engage in any other business."

This section does not prevent a railroad company from owning stock in a mining company. (1067)

(1067) A. filed a petition with the secretary of internal affairs of Pennsylvania praying that proceedings by writ of *quo warranto* be commenced against the B. railroad company. It was alleged that B. owned and controlled the stock of a coal and iron company organized under Penn-

sylvania laws and thus violated art XVII., § 5, of the constitution. The department of internal affairs declined to certify the case to the attorney-general for action.—Hartwell v. Buffalo, etc., Railway Co., 6 D. R. 212 (1897); s. c. 19 Pa. C. C. 231.

(F) FREE PASSES.

Section 8 of Article XVII. of the constitution provides that "no railroad, railway, or other transportation company, shall grant free passes, or passes at a discount, to any person, except officers or employees of the company."

A bridge company is not included in the meaning of this section, and may grant free passes. (1068)

(1068) Certain stockholders in a bridge company filed a bill for an injunction to restrain the board of directors from issuing free passes. *Held*, that art. XVII., § 8, of the constitution prohibiting railroads from granting free passes was not applicable to bridge companies. Injunction denied.—Hasson v. Venango Bridge Co., 1 D. R. 521 (1892), Taylor, P. J.; s. c. 11 Pa. C. C. 383.

(G) STREET RAILWAYS.

Section 9 of Article XVII. of the constitution provides that "no street passenger railway shall be constructed within the limits of any city, borough, or township, without the consent of its local authorities."

This section did not abrogate charter rights to use certain streets without the consent of the municipal authorities, possessed by street railway companies incorporated before the adoption of the constitution of 1874. (1069–1070)

The assent of the owners of a turnpike road within the limits of a borough to the construction of a street railway thereon does not dispense with the necessity for the assent of the borough authorities. (1071)

A passenger railway entirely within the limits of a public park is not a "street railway," within the meaning of this section, although such park is within the limits of a city. (1072)

A street railway company chartered prior to 1874 is not brought within the provisions of this section by petitioning a borough council to pass an ordinance approving plans for a proposed extension and the acceptance of such ordinances. (1073)

(1069) A street railway company was incorporated in 1868, and by a borough ordinance was granted the right to construct a railway along a certain street, between designated points. The company had built its road only a part of the distance prior to the adoption of the constitution of 1874, and after its adoption proposed to complete the line without further authority. The borough obtained a preliminary injunction, contending that the right conferred upon the company was repealed by art. XVII., § 9, of the constitution. On hearing, the injunction was dissolved.—Pittston Borough v. Pittston Ry. Co., 6 Luz. L. Reg. 223 (1877), Handley, J.

(1070) The charter of a street railway company gave it the right to construct a railway through any streets of a certain borough. After the adoption of the constitution of 1874 the company proposed to construct a road along a street without the consent of the borough authorities. An injunction was prayed for, on the ground that the right conferred upon the company by its charter was repealed by art. XVII., § 9, of the constitution. *Held*, reversing the court below, that the injunction should not be granted.—Williamsport Pass. Ry. Co.'s Appeal, 120 Pa. 1 (1888), Paxson, J.; s. c. 13 Atl. 496.

(1071) A turnpike company granted to a passenger railway company the right to construct a railway along its road within the limits of a borough. The borough obtained a preliminary injunction to restrain the construction of such railway, on the ground that it had not consented thereto. On motion the injunction was continued.—Steelton Borough v. East Harrisburg Pass. Ry. Co., 11 Pa. C. C. 161 (1892), Simonton, P. J.; s. c. 1 D. R. 667.

(1072) The commissioners of Fairmount Park, in the city of Philadelphia, acting under legislative authority, granted a license for the construction of a passenger railway within the park limits. The city authorities filed a bill for injunction, claiming that as the park was within the city limits the railway could not be constructed without their consent. *Held*, that the proposed railway was not a street railway, within the meaning of art. XVII., § 9, of the constitution. Bill dismissed.—Philadelphia v. Fairmount Park Commissioners, 4 D. R. 445 (1895), Thayer, P. J.

(1073) A street railway company had, by charter, the right to use the streets of a borough without the consent of the borough authorities. After the adoption of the constitution of 1874 it desired to build an extension, and was forced to apply for an ordinance approving its plans as to the manner of building such extension. The ordinance approving the plans was passed. Afterwards the company proposed to occupy other streets without the consent of the borough authorities, and the authorities filed a bill for injunction, on the ground that the company was within the constitutional provision that streets could not be occupied without the consent of the municipal authorities. *Held*, that the accepting of the ordinance approving its plans was not such an acceptance of the benefits of legislation as to bring the company within the provisions of art. XVII. of the constitution. Preliminary injunction dissolved.—Harrisburg City Pass. R. Co. v. Harrisburg, 7 Pa. C. C. 593 (1890), Simonton, P. J.

(H) ACCEPTANCE OF THE ARTICLE.

Section 10 of Article XVII. of the constitution provides that "no railroad, canal, or other transportation company, in existence

at the time of the adoption of this article, shall have the benefit of any future legistion . . . except on condition of complete acceptance of all the provisions of this article."

Under an act giving to cities the power to contract with railroads to re-locate their lines for the benefit of such cities, a railroad may be authorized by a city to use certain streets, though such railroad has not accepted the provisions of this article. (1074)

(1074) A city, under the authority given to cities by the act of June 9, 1874 (P. L. 282; P. & L. Dig. 3928), to enter into contracts with railroads to re-locate their roads for the benefit of the cities, granted to a railroad company the right to build a road along certain streets. The company had by charter the right to build branch roads to suitable points. A property owner on a street which was to be used moved for an injunction on the ground that the company had never accepted the constitution of 1874, and therefore could not receive the benefits proposed. *Held*, that, as the building of the road would be for the interest of the city, it would not be enjoined because it would also benefit the company.—Duncan v. Pennsylvania R. Co., 7 W. N. C. 551 (1879), Hare, P. J.

(I) POWERS OF SECRETARY OF INTERNAL AFFAIRS.

Section 11 of Article XVII. of the constitution provides that the secretary of internal affairs "may require special reports, at any time, upon any subject relating to the business of railroads, canals, or other transportation companies."

Under this section the secretary of internal affairs may require such companies to file in his office topographical maps, with plans, profiles, etc., of their roads or canals. (1075)

(1075) On an application from the deputy secretary of internal affairs for instructions as to the power of the department of internal affairs to demand of railways and other corporations maps, profiles, etc., required by joint resolution of April 17, 1838 (P. L. 694), to be furnished for the office of the canal commissioner, *held*, that, under art. XVII., § 11, of the constitution, the secretary of internal affairs was vested with general supervision over transportation companies, and might require them to file in his office topographical maps, with plans, profiles, etc., of their roads or canals.—Railway Maps, 1 D. R. 577 (1892). Stranahan, Dep. Atty.-Gen.; s. c. 12 Pa. C. C. 33.

XVIII. AMENDMENTS.

The method provided by the constitution is not the only method by which a change or amendment can be effected. This may be done through a convention called by law to propose changes. (1076–1077) The powers of such a convention are limited to those given by the act calling it together (1078), but its acts within such powers cannot be reviewed by the courts. (1079)

There have been no adjudications under Article XVIII. of the constitution of 1874, relating to future amendments.

(1076) On a bill in equity filed in the supreme court to restrain the commissioners from holding an election under the act of April 11, 1872 (P. L. 53), providing for the calling of a convention to revise and amend the constitution, it was *held*, that under the provision in the declaration of rights that the people have an inalienable right to alter, reform, or abolish their government, in such manner as they may think proper, there are three known recognized modes by which the whole people—the state—can give their consent to an alteration of an existing lawful frame of government, viz.: (1) The mode provided in the existing constitution; (2) a law, as the instrumental process of creating the body for revision, and conveying to it the powers of the people; (3) a revolution.—Wells v. Bain, 75 Pa. 39 (1873), Agnew, C. J.; s. c. 21 Pitts. L. J. 65.

(1077) The act of April 11, 1872 (P. L. 53), provided for the calling of a convention to propose amendments to the constitution. In equity proceedings by certain citizens it was urged that the only way in which the constitution could be amended was that provided by art. X. of the constitution of 1838. *Held*, affirming the lower court, that the calling of a convention was an authorized method of amending the constitution.—Woods' Appeal, 75 Pa. 59 (1874), Agnew, C. J.; s. c. 22 Pitts. L. J. 45.

(1078) The act of April 11, 1872 (P. L. 53), providing for the calling of a convention to amend the constitution, provided that the amendments proposed should be submitted to the electors of state "in such manner as the convention shall prescribe," and that the election to decide on the amendments should "be conducted as the general elections now are." The convention appointed five commissioners to conduct the election in Philadelphia, in a method different from that prescribed by the general election laws. Certain citizens filed a bill in the supreme court, for an injunction restraining the commissioners from acting. *Held*, that the constitutional convention had exceeded its power in appointing such commissioners. Injunction granted.—Wells v. Bain, 75 Pa. 39 (1873), Agnew, C. J.

(1079) The act of April 11, 1872 (P. L. 53), providing for the calling of a constitutional convention, provided that "one third of all the members of the convention shall have the right to re-

quire the separate and distinct submission, to a popular vote, of any change and amendment proposed by the convention." A bill was filed to restrain any election as to the adoption of the constitution proposed by the convention, on the ground that the convention, after proper demand, refused to submit a certain article to a separate vote. *Held*, that the convention was the sole judge as to whether the demand for such submission had been made by the required number and in proper form.—Wells v. Bain, 75 Pa. 39 (1873), Agnew, C. J.

XIX. SCHEDULE.

(A) COURTS OF RECORD.

Section 11 of the schedule of the constitution provided that all courts of record, and all existing courts which are not specified in this constitution, should continue in existence until the first day of December in the year 1875, without abridgment of their present jurisdiction, but no longer.

This section referred only to courts which were to continue until December 1, 1875, and no longer, and, as the supreme court is a permanent court, constitutional provisions abridging its jurisdiction took effect when the constitution went into effect. (1080)

(1080) In 1874, A. petitioned the supreme court for a mandamus against the governor of the state. The governor demurred on the ground that the jurisdiction of the supreme court in cases of mandamus was limited by the constitution, which went into effect January 1, 1874, to writs against courts of inferior jurisdiction. A. contended that the supreme court's former jurisdiction in such cases was continued by section 11 of the schedule until December 1, 1875. Judgment for defendant on the demurrer.—Comm. v. Hartranft, 77 Pa. 154 (1874), Agnew, C. J.; s. c. 31 L. I. 404, 22 Pitts. L. J. 57.

(B) JUDICIAL DISTRICTS.

Article V., § 5, of the constitution, providing that "whenever a county shall contain forty thousand inhabitants, it shall constitute a separate judicial district," was not self-executing, but simply indicated a basis upon which, according to section 14 of the schedule, after each decennial census the legislature might create judicial districts. (1081)

Section 14 of the schedule provided that the general assembly should, at the next succeeding session after each decennial census, and not oftener, designate the several judicial districts, as required by the constitution.

Acts of the legislature providing that where new counties contain forty thousand inhabitants at the time of their erection they shall be at once proclaimed separate judicial districts, and judges therefor shall be elected at the next general election, do not offend against this section. (1082)

(1081) Luzerne county was divided, under the act of April 17, 1878 (P. L. 17, § 13; P. & L. Dig. 1010), which provided that the judicial districts, in cases of division of counties, should remain for the time being unchanged, and that the judges should meet at a certain time and organize the courts of the new county. On mandamus to the judges of Luzerne county to compel them to organize the courts of the new (Lackawanna) county, it was objected that, since the new county had more than 40,000 inhabitants, it was a separate district, and that the governor had already commissioned one A. as judge thereof. *Held*, that such commission was void, as there was no vacancy to be filled; that Lackawanna county remained a part of the judicial district of Luzerne until established separately by the legislature; and that the additional law judges of Luzerne must act as associates in Lackawanna. The mandamus was made peremptory.—Comm. v. Harding, 87 Pa. 343 (1878), Agnew, C. J.; s. c. 6 W. N. C. 305, 1 Lack. L. R. 137, 2 Law Times (N. S.), 209.

(1082) The act of March 13, 1879 (P. L. 6; P. & L. Dig. 1010), provided that, when a new county was erected which contained forty thousand inhabitants, it should immediately be proclaimed by the governor to be a separate judicial district, and the judges of the old county should be assigned to their respective districts. The act of June 11, 1879 (P. L. 139; P. & L. Dig. 1011), provided that when a new county was proclaimed a separate judicial district the qualified electors should at the next general election elect a judge of such district. The county of Lackawanna was erected and proclaimed a separate judicial district in 1879. At the next general election B. was elected judge of such district for a term of ten years from January 1, 1880. In 1883, A. was elected to the same office, and instituted mandamus proceedings against B. on the ground that the acts of 1879 conflicted with § 14 of the schedule to the constitution. *Held*, that the acts were valid; and mandamus refused.—Comm. v. Handley, 106 Pa. 245 (1884), Clark, J.

(C) JUDGES OF THE COMMON PLEAS.

Section 16 of the schedule to the constitution provides that "after the expiration of the term of any president judge of any court of common pleas, in commission at the adoption of this constitution, the judge of such court learned in the law and oldest in commission shall be the president judge thereof."

This applies not only to judges commissioned

before the adoption of the constitution, but to those commissioned afterwards. (1083)

(1083) In 1874, A. was commissioned as president judge of the third judicial district. The local act of May 10, 1881 (P. L. 18), provided for the election of an additional law judge of said district to be elected "in the manner prescribed by law for the election of the president judge," and "to hold his office for the same term as the president." Under this act B. was elected and commissioned as additional law judge. Subsequently, on the expiration of A.'s term, C. was elected as his successor. The governor commissioned B. as president judge, and C. as additional law judge. C. petitioned for a mandamus commanding the governor to deliver to him a commission as president judge. *Held*, affirming the lower court, that the action of the governor in issuing the commission to B., as president judge, was proper.—Comm. v. Pattison, 109 Pa. 165 (1885), Sterrett, J.; s. c. 2 Del. Co. 324, 2 Lehigh Val. L. R. 25.

(D) TRANSFER OF CAUSES.

Section 21 of the schedule of the constitution provided that the causes and proceedings pending in the court of *nisi prius*, court of common pleas, and the district court in Philadelphia should be tried and disposed of in the court of common pleas; and that the records and dockets of said courts should be transferred to the prothonotary's office of said county.

This section operated to stop all proceedings in the courts enumerated, and such proceedings were immediately to be transferred to the court of common pleas of Philadelphia; and a *nisi prius* case pending in the supreme court in Philadelphia on December 31, 1875, was to be transferred to the court of common pleas. (1084)

(1084) A bill in equity was filed in the supreme court under the act of June 16, 1836 (P. L. 784; P. & L. Dig. 4417), which gave the court original jurisdiction in certain cases. A master was appointed, and exceptions to his report were filed, pending the disposition of which the constitution of 1874 was adopted. A motion was made to fix a time for a hearing on exceptions to the master's report. The court refused to fix such time, and ordered that the case, being one pending in *nisi prius* in Philadelphia on December 31, 1875, should be transferred to the court of common pleas.—Kersey Oil Co. v. Oil Creek & A. R. Co., 3 W. N. C. 288 (1877).

(E) EXISTING OFFICERS.

Section 26 of the schedule of the constitution provided that all persons in office at the time of the adoption of the constitution, and at the first election under it, should hold their respective offices until the term for which they had been elected should expire, and until their successors should be duly qualified, unless otherwise provided in the constitution.

By the operation of this section, the term of an officer coming within its provisions was extended until his successor could be duly elected and qualified. (1085)

This section did not apply to an officer whose term of office expired after the constitution of 1874 went into effect, and before the first general election thereunder, but who was in office at the time of such general election, by virtue of a re-election before the constitution went into effect. (1086)

(1085) C. was elected and commissioned as alderman in a certain city for five years from November 7, 1873. Art. VIII., § 3, of the constitution of 1874 provided that all elections for ward officers should be held on the third Tuesday of February. The act of March 22, 1877 (P. L. 12; P. & L. Dig. 2533), passed to carry out the above provision, provided that aldermen whose terms of office under existing laws would expire prior to the first Monday of May should continue in office until the first Monday of May next ensuing, at which time officers elected should go into office. In February, 1878, B. was elected to fill C.'s place, and on November 7 of that year B. was commissioned for five years. In February, 1879, A. was elected to the position, and after the first Monday in May, 1879, brought *quo warranto* against B. *Held*, affirming the lower court, that the election of B. was unlawful, as by section 26 of the schedule and the act of 1877 the term of C. was extended to the first Monday of May, 1879, and that A. was entitled to the office.—Erb v. Comm., 91 Pa. 212 (1879), Mercur, J.; s. c. 27 Pitts. L. J. 43.

(1086) In 1871, A. was elected treasurer of Allegheny county, and commissioned for two years from the first Monday of March, 1872. In 1873, he was re-elected. At the general election in November, 1875, B. was elected to the office for a term of three years from the first Monday in January, 1876, under the provisions of the constitution of 1874. A. refused to give up the office, and claimed that the election in 1875 was illegal. On *quo warranto*, *held*, reversing the lower court, that the provisions of section 26 of the schedule of the constitution did not apply to A., because he was in office under his election in 1871, when the constitution went into effect, but was not in office under such election when B. was elected.—Comm. v. Kilgore, 82 Pa. 396 (1876), Agnew, C. J.