THE QUARTERLY DIGEST

of

PENNSYLVANIA DECISIONS

Supplementary to

PEPPER AND LEWIS' DIGEST OF DECISIONS

Containing the

Most recent Decisions of all the Courts of Justice in Pennsylvania, reported, including the Supreme and Superior Courts, Courts of Common Pleas, the District Reports, Workmen's Compensation and Public Service Commission, Making the most Complete Digest of Recent Cases.

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in the constable's bond, but rather out of a failure to perform a statutory duty, and the action must be against the constable in trespass.—Com., **ex rel.** Snyder v. Quinn, 8 Northumb. 1 (1926), Lloyd, J.

In an action in trespass, plaintiff claimed damages of the defendant, averring misfeasance in his office as constable in the execution of a landlord's distress warrant, by refusing to pay to the plaintiff the amount of the latter's claim for wages. In an affidavit of defense raising questions of law, in lieu of a demurrer, defendant contended: (1) that the statement and the notice of claim attached thereto gave no information from which it could be inferred that the alleged services were such as are within the provisions of the Act of Assembly creating a lien, and (2) that it gave no particulars either as to the character of the work performed, the terms of employment, or the rate of wages. Deciding both questions of law against the defendant, **Held,** (1) that the averment that the claim was for "labor and services as a manual laborer' 'as employee in a garage sufficiently indicated the nature of the service; and (2) that there is nothing in the law requiring that the terms of the employment or the rate of wages be set out.—Hartenstine v. Dickinson, 19 Berks 15 (1926), Stevens, J.

An action against a constable and the surety on his bond based upon the refusal of the constable to assist in making appraisement and sale of goods and chattels distrained for rent, after distress had first been made by plaintiff, is improperly brought and can not be maintained if entered against both the constable and his surety. The action must first be brought against the constable alone.—Com., **ex. rel.,** Snyder v. Quinn, 40 York 46 (1926), Lloyd, J.

III. REMOVAL FROM OFFICE

1069, See P. & L. Sup. I.; Quar. Dig. I. 318.

A deputy constable, appointed under Sec. 355, of Act of Assembly approved July 14, 1917, P. L. 840, for a township, can only be removed under Sec. 192, of the same act, by petition signed by not less than 25 freeholders of said township, and upon petition to remove in order to give the court jurisdiction such fact must be made to appear, otherwise the petition will be dismissed.—Glessner's Appaintment as Depty. Constable, 3 Som. 137 (1926), Berkey, P. J.

Section 15, of the Act of May 27, 1841, P. L. 400, which provides for the removal from office of any constable, on petition of his surety, when the court is satisfied that from habits of intemperance or neglect of duty, he is unfit and incompetent to dischaarge his official duties, does not authorize the court to remove a constable because of malfeasance in office. Section 1, Article 2, Chapter 8, of the Borough Act of May 14, 1915, P. L. 312-412, authorizes the Court of Quarter Sessions, on petition of the borough council, to fill vacancies occurring in any borough office; but where, upon the petition of the electors of a borough, the Court of Quarter Sessions improvidently appointed a borough constable, and no action was taken by the borough council in the matter, it was presumed that the borough council was satisfied with the appointment as made, and the court refused to remove the appointee upon the petition of his surety.—Livingston's Petition, 39 York 205 (1926), Niles, P. J.

CONSTITUTION OF THE UNITED STATES

I. COMITY OF STATES

(A) FULL FAITH AND CREDIT

3405, See P. & L. III.; Quar. Dig. I. 318.

A judgment in **personam** rendered in one state without having acquired jurisdiction of the person of the defendant is not enforceable in other states under the full faith and credit clause of the Constitution of the United States. But this principle does not obtain where the defendant had raised the question of failure of service upon him in the court in which the judgment was entered, and that question had been decided against him; such a decision is an adjudication of the question of jurisdiction, and the defendant in a suit against him in the court of another state on the judgment cannot again raise the question of lack of personal service.—Berger v. Cohn, 8 D. & C. 354 (1926), Henninger, P. J.

Defendant was required to answer an affidavit of defense overruled in a suit upon the judgment of the Appellate Court of the Kingdom of Italy. With that power the United States of America is at peace, and amicable relations have long existed between the two nations. Hence this case does not come within the "full faith and credit" clause of th Federal Constitution, relative to the judgments of the various States constituting the Union.—Santarelli v. Santarelli, 73 Pitts. 602 (1925), Swearingen, J.

The "full faith and credit" clause of the Federal Constitution does not require the State of Pennsylvania to hold valid a decree in divorce where libellant left her matrimonial domicile in Washington with cause and went to California, where, relying on constructive or extra-territorial service upon respondent, and procured a dercee in default of respondent's appearance.—Kraemer's Estate, 19 Berks 349 (1927), Marx, P. J.

(B) LAWS IMPAIRING THE OBLIGATION OF CONTRACTS

(C) "THE CONTRACT CLAUSE"

3405, See P. & L. III.; Quar. Dig. I. 318.

"The contract clause" of the U. S. Constitution is an inhibition on the power of a State and not a limitation on the power of Congress, which may by its laws impair the obligation of a contract. The contention that Congress had no power, under the Constitution, to enact the phases of the Lever Act (U. S. Comp. Stats., Sec. 3115⅛ q), applicable to fixing the

price of commodities, was not sustained. The Food and Fuel Act of Aug. 10, 1917, and the Executive Order, in pursuance thereof, fixing the price of coal, were based on the war power of Congress and not police power.—Highland v. Russell Car & Snow Plow Co., 288 Pa. 230 (1927), Kephart, J. Affirming 87 Super. Ct. 235 (I. Quar. Dig. 84).

The mattress and shoddy act of June 14, 1923, P. L. 802, infringes the 14th amendment, in so far as it relates to the use of shoddy in the manufacture, etc., of mattresses and other bed articles of use and comfort.—Weaver v. Palmer Bros. & Co., U. S. Supreme Court, Mar. 8, 1926, Butler, J. (Holmes, Brandeis and Stone dissenting).

The Supreme Court of the United States must decline jurisdiction of an appeal under Section 250, of the Judicial Code, if the record does not present a constitutional or statutory question substantial in character and properly raised in the lower court. A contention that a covenant between private individuals forbidding the sale of certain real estate to persons of the negro race violates the 5th, 13th and 14th Amendments to the Federal Constitution, is entirely lacking in substance and color of merit, and therefore the Supreme Court of the United States has no jurisdiction of an appeal which attempts to present such question to the court. A contract between private individuals that certain property shall not be sold to persons of the negro race is not prohibited by the 5th, 13th and 14th Amendments to the Federal Constitution. U. S. Rev. Stat., Sections 1977, 1978 and 1979, providing that all persons shall have equal rights with white citizens to make contracts and acquire property, do not prohibit or invalidate contracts between private citizens forbidding the sale of real estate to persons of the negro race. Mere ereror of a court in a judgment entered after full hearing does not constitute a denial of due process of law.—Corrigan v. Buckley, 74 Pitts. 537 (1926), Sanford, U. S. Sup. Ct. J.

II. DUE PROCESS OF LAW

(A) IMMUNITY UNDER FOURTH AMENDMENT

1. Evidence Against Oneself.

3405, See P. & L. III.; Quar. Dig. I. 318.

The use in evidence of papers and records voluntarily surrendered by a wholesale liquor dealer on demand of agents under the Volstead Law, is not unlawful.—A. Guckenheimer & Bros. Co. v. U. S., 3 F. (2nd) 786, Woolley, C. J. Affirming W. D. Pa.

(B) TRIAL BY JURY

1. Indictment.

320, See I. Quar. Dig.

The United States Supreme Court reversed an order of the United States District Court discharging the relator from the custody of the State authorities, where he had been tried and convicted by one jury on two indictments charging two separate murders. This conviction had been affirmed by the Pennsylvania Supreme Court. No writ of error or **certiorari** was taken from this affirmance. The court below held that he had been denied his constitutional rights of due process when tried for two murders at one time. Where a conviction of murder had been affirmed by the Pennsylvania Supreme Court, it was held, so far as the law of Pennsylvania was concerned, to be most imporper for the United States District Court, on a writ of **habeas corpus,** to attempt to go behind that decision to construe statutes as opposed to it, and to hear evidence that the practice of the State had been the other way. In so delicate a matter as interrupting the regular administration of the criminal law of the State by this kind of attack, too much discretion cannot be used, and it must be realized that it can be done only upon definitely and narrowly limited grounds. It is within the legislative power of Pennsylvania to authorize the trial of two indictments, charging separate and distinct murders at one and the same time. This would not be a denial of due process of law. The same principle applies to the limiting of challenges on indictments.—Ashe v. U. S. of A. Ex Rel. Valotta, 74 Pitts. 185 (1926), Holmes, J.

2. Speedy Trial.

The Sixth Amendment of the Constitution of the United States and Sec. 9, of Article I, of the Constitution of Pennsylvania, guarantee the defendant in a criminal prosecution a speedy public trial by an impartial jury of the vicinage. A speedy trial is one conducted according to fixed rules, regulations and proceedings of law, free from vexatious, capricious and oppressive delays. It is a denial of the right to a speedy trial for the court to grant an arbitrary continuance, where the accused is ready for and demands trial and may be lawfully tried, or solely because the prosecuting attorney finds himself unprepared with the evidence to convict because of the disappearance of a material witness if the defendant is not responsible for such disappearance. Where the district attorney is unable to dispose of a prosecution because of the disappearance of a material witness, the rights of the Commonwealth may be preserved by the entry of a **nolle prosequi,** thus permitting a new prosecution within the period allowed by law.—Comth. v. Gassel, alias Hassel, 19 Berks 372 (1927), Stevens, J.; 10 D. & C. 59.

3405, See P. & L. III.; Quar. Dig. I. 318; II. 1829.

The 6th Amendment of the Constitution of the United States and Section 9, of Article I, of the Constitution of Pennsylvania, guarantees the defendant in a criminal prosecution a speedy public trial by an impartial jury of the vicinage, which is one conducted according to fixed rules, regulations and proceedings of law, free from

vexatious, capricious and oppressive delays. It is a denial of the right to a speedy trial for the court to grant an arbitrary continuance, where the accused is ready for and demands trial and may be lawfully tried, or solely because the prosecuting attorney finds himself unprepared with the evidence to convict because of the disappearance of a material witness, if the defendant is not responsible for such disappearance.—Comth. v. Cassel, alias Hassel, 10 D. & C. 59, Stevens, J.

(C))INTERSTATE COMMERCE

The Act of July 17, 1919, P. L. 1003, as amended by the Act of May 20, 1921, P. L. 997, requiring licenses to sell steamship tickets, etc., does not violate the U. S. Constitution as to commerce. Judgment of the Superior Court (85 Super. 149) reversed and that of the Dauphin County Court re-instated.—Comth. v. Disanto, 285 Pa. 1 (1925), Kephart, J.

The Securities Act of Pennsylvania is a proper exercise of the police power to prevent fraud and does not violate the Eleventh Amendment of the U. S. Constitution. It is not an unlawful interference with interstate commerce. Bill dismissed.—Wrigley Pharmaceutical Co., et al., v. Cameron, 16 F. (2nd) 290 (1926), Johnson, D. J.

III. POLICE POWER

(A)) LIMITATION UPON

3430, See P. & L. III.; Quar. Dig. I. 320.

The United States being a government of limited power, does not possess a general police power; that remained with the states in the interest of welfare, health, morals and safety. House v. Mayes, 219 U. S. 270-81). Under the "Due Process of Law Clause, 5th Amendment, the same limitation on the powers of Congress as is placed upon the states by the Fourteenth Amendment. Regulation is due process of law, but it must be reasonable. "Regulation that is unreasonable, or that in certain situations fixes prices at less than a reasonable return, is not due process, but is confiscation, under the 'war power,' just as unfair return is confiscation under the police power." The measure of reasonable compensation is not the inflated price of war times. "Market price is the Common Law rule when the value may be easily and fairly accurately ascertained. It is based on stable values, which do not exist during war." The terms of an isolated contract, without more, do not fix nor are they evidence of market price, fair return, cost plus, or a reasonable price.—Highland v. Russell Car & Snow Plow Co., 288 Pa. 237 (1927), Kephart, J. Affirming 87 Super. Ct. 235; I. Quar. Dig. 84.

IV. FOURTEENTH AMENDMENT

1. Mattress Act.

3405, See P. & L. III.; Quar. Dig. I. 318.

The Act of June 14, 1923, P. L. 802, so far as it regulates and condemns the use of shoddy in the manufacture of comfortables, "is purely arbitrary and violates the due process clause of the Fourteenth Amendment." It cannot be sustained as a reasonable regulation of health. It is held "that transmission of disease producing bacteria is almost entirely by immediate contact with, or close proximity to, infected persons; that such bacteria perish when separated from human or animal organisms; and that there is no probability that such bacteria of vermin likely to carry them survive after the perioid usually required for gathering of the material, the production and the manufacture and the shipping of comfortables. This evidence tends strongly to show that in the absence of sterilization or disinfection there would be little if any danger from use of shoddy and may be eliminated by sterilization."—Weaver v. Palmer Bros. & Co., U. S. Supreme Ct., March 8 (1926), Butler, J. (Holmes, Brandeis and Stone dissenting). Affirming W. D. of Penna. See a former adjudication upon an injunction, Palmer Bros. & Co. v. Weaver, 3 F. (2nd) 333.

(B) ARBITRARY HEALTH PROVISION

3430, See P. & L. III.; Quar. Dig. I. 320.

The guaranty of "due process of law in the 14th amendment does not prevent a State Court from following the course of adjudications in the State Courts as to matters within the sole jurisdiction of the State, as, for example, the administration of trusts.—Harkness' Estate, 5 D. & C. 351 (1924), Van Dusen, J.

Thr Securities Act of June 14, 1923, P. L. 779, is not in conflict with the 14th Amendment of the Federal Constitution.—Comth. v. Moore, 5 D. & C. 738 (1925), Barnett, P. J. The Act of June 14, 1923, P. L. 802, relating to the use of "shoddy" in the manufacture of goods for human use, is unconstitutional and not a proper exercise of the police power in the interest of public health. It makes a faulty classification and an unjust discrimination guaranteed by the XIV Amendment to the Federal Constitution, as to the manufacture of prohibited articles.—Palmer Bros. Co. v. Weaver, 73 Pitts. 337 (1925), Schoonmaker, D. J.; 7 Erie 87.

The Act of May 13, 1925, P. L. 649, providing for the sale of real estate held by entireties and the division of the proceeds betwen the husband

and wife after their divorce, is in conflict with the due process clause of the 14th Amendment of the Federal Constitution, in so far as it affects an estate created prior to the passage of the act. The act is valid as to estates which vest after its passage.—75 Pitts. 608; Clements v. Kandler, 9 D. & C. 310, Evans, P. J. The paying of money to a creditor of the Sesqui-Centennial Association is not a violation of the 14th Amendment of the U. S. Constitution, of which a creditor not included as a distributee, can complain. Neither has the city controller any duties in the premises.—Plumly v. Hadly, 9 D. & C. 281.

The Act of May 13, 1925, P. L. 649, concerning sale of estates by entirety, violates the Fourteenth Amendment of the U. S. Constitution, as to due process of law, in so far as to such estate that vested before its passage; but not as to those vesting after its passage.—Clements v. Kandler, 11 Cambria No. 38, P. 10, Evans, P. J. The Act of May 2, 1925, does not violate Section 1, of Article 4, of the Amendments to the Constitution of the United States, which provides that no state shall deprive any person of life, liberty or property without due process of law nor deny to any person the equal protection of the laws.—Comth. v. Central Natl. Bank, 31 Dau. 80, Wickersham, J.

V. THE EIGHTEENTH AMENDMENT

(A) CONCURRENT JURISDICTION

322, See Quar. Dig. I.

The XVIII Amendment to the Federal Constitution contemplates that the manufacture of intoxicating liquor for beverage purposes may be denounced as a criminal offense, both by the Federal law and by the State law; and that these laws may not only co-exist but be given full operation, each independently of the other, so that defendant was legally convicted in a State court, while under indictment for the same offense in the Federal court. The provision in section 256, of the Federal Judicial Code, has no bearing on the authority of a State court to entertain an accusation for an offense against a State law. That provision relates to offenses "cognizable under the authority of the United States." Where the same act offends both a State and the United States, each has jurisdiction.—Hebert, *et al.*, v. State of Louisiana, 74 Pitts. 814 (1926, Van Devanter, U. S. S. C. J.

CONSTITUTION OF PENNSYLVANIA

I. BILL OF RIGHTS

(A) DUE PROCESS OF LAW

3508, See P. & L. III.; Quar. Dig. I. 328.

1. POLICE POWER.

Police power should not be confused with eminent domain, under which power compensation is given for property taken, injured or destroyed, whilst under the police power no payment is made for a diminution of use, even though it amounts to an actual taking or destruction. Regulation, under it, when doubtful, should be investigated as a proper exercise of the power. It does not extend to an arbitrary, unnecessary or unreasonable intermeddling with the private ownership of property. An ordinance held unconstitutional.—White's Appeal, 287 Pa. 259 (1926), Kephart, J. Affirming 85 Super. Ct. 502.

Section 32, of the Act of May 1, 1923, P. L. 122, known as the Zoning Ordinance for cities of the second class, regulating the building line of streets, is unconstitutional and cannot be sustained as a lawful exercise of the police power, in that it is the taking of property without due process of law, and cannot be justified on the grounds of public welfare, safety and health and general public benefit. Constitutionality of zoning ordinances generally not decided.—White's Appeal, 85 Super. Ct. 362; 73 Pitts. 599.

Dogs are subject to the police power. The Act of May 11, 1921, P. L. 522, as to lisenses, is constitutional, in general, although Sec. 39 may not be. The general provisions are unaffected by it.—Comth. v. Haldeman, 288 Pa. 81 (1927), Walling, J. Affirming 88 Super. Ct. 284; Quar. Dig. II. 981.

An act is unconstitutional which involves a classification which unwarrantably interferes with equality of opportunity of "acquiring, possessing and protecting property," guaranteed b ySection 1, Act I., of the Constitution, although assumed to be done by virtue of the Police Power. The Act of May 25, 1921, P. L. 1131, to regulate the practice of the profession of engineering and of land surveying, etc., offends in paragraph (g), Section 24, by an unwarranted exemption of a certain class; and it further offends Section 3, Art. III., in attempt to embrace engineers and land surveyors, two different subjects in one bill.—Comth. v. Humphrey, *et al.*, 288 Pa. 280 (1927), Moschzisker, C. J. (Comth. v. Stevenson, 4 D. & C. 321, and Stevenson v. State Board, 28

Lack. Jur. 1, incidentally affirmed). See this case for a learned discussion of State Police Power.

The Act of May 20, 1921, P. L. 968, providing that it shall be unlawful for any person to shoot at or wound or kill a human being in mistake for either game or a wild creature of any description ,and imposing penalties, does not violate the Constitution of the State of Pennsylvania or the Constitution of the United States. —Commonwealth v. Miller, 8 D. & C. 445 (1926), Fox, J.

2. Protection of Person From Giving Evidence Against Himself.

3459, See P. & L. III.

The Act of May 20, 1921, P. L. 968, providing that it shall be unlawful for any person to shoot at or wound or kill a human being in mistake for either game or a wild creature of any description, and imposing penalties, does not violate the Constitution of the State of Pennsylvania or the Constitution of the Unted States.—Com. v. Miller, 29 Dau. 153 (1926), Fox, J.

An estate by entireties is not affected by divorce. The Act of May 13, 1925, P. L. 649, authorizing a trustee to sell such an estate after divorce, is a violation of the constitutional provision as to due process of law.—Ebersole v. Goodman, 7 D. & C. 605 (1925), Bailey, P. J.

Due process of law means that the state must afford a person accused of a crime the due administration of its established course of judicial procedure, and this includes the established procedure in drawing juries. A prisoner convicted of murder is entitled to a new trial, where it appears that three of the jurors who returned the verdict against him were neither talesmen nor jurors on the official list of jurors and that their names were not drawn from the jury-wheel. In such case it is immaterial that the integrity of the three jurors was not questioned, that they had no knowledge of their names being improperly drawn, and that defendant had not, before entering his plea, raised any question as to the drawing, summoning and returning of the jurors. A fraudulent drawing and impaneling of jurors is not such a mere "defect or error in drawing, summoning or returning of jurors" as is waived under the Act of Feb. 21, 1814, 6 Sm. Laws 111, by a defendant in a murder case in going to trial.—Comth. v. Stallone, 8 D. & C. 61 (1926), Maxey, J.

Sec. 9, of Art. I., of the Declaration of Rights, provides that in all criminal prosecutions the accused cannot be compelled to give evidence against himself. This privilege protects a person from any disclosure sought by legal process against him as a witness, but does not prohibit the taking of the finger prints of the accused without his consent, nor the use of them at trial for comparison with finger prints found at the scene of the crime. "The constitutional inhibition has reference to testimonial utterances by the defendant and may not be used to prevent the establishment of the truth as to the existence or non-existence of certain marks of identity.—Comth. v. Rocci, 18 Berks 274 (1926), Schaeffer, P. J.

(B) TRIAL BY JURY

4476, See P. & L. III.; Quar. Dig. I. 325.

On an indictment for assault and battery, one count being that defendant did "unlawfully cut, stab and wound the prosecutor," it was held to be a crime cognizable at the common law and that defendant could not waive his right to a jury trial under the Pennsylvania Constitution. He could plead guilty, but could not be tried by a judge without a jury.—Comth. v. Hall, 75 Pitts. 737, Porter, P. J. Reversing Q. S. Phila. County. See this case for an illuminating discussion of the Common and Statute Laws. (See 74 Pitts. 766).

Under the Constitution and Laws of Pennsylvania the Court of Quarter Sessions has no jurisdiction in a criminal case, where the defendant has pleaded not guilty, to try the case without a jury, and no waiver on part of defendant can confer such jurisdiction.—Comth. v. Hall, 291 Pa. 341, Moschzisker, C. J. Affirming 75 Pitts. 737.

The Act of May 27, 1919, relating to assault and battery cases, is unconstitutional in so far as it provides for the imposition of costs upon a discharged defendant, and is in conflict with Art. I., Sec. 6, of the Constitution, which guarantees to a defendant the right of trial by jury. —Comth. v. Reynolds, 26 Lack. Jur. 133 (1925), Edwards, P. J.

On a trial and conviction of murder, it was **Held,** that the fraudulent drawing and placing of thirty-eight persons on the regular panel from which jurors were chosen for defendant's trial constituted such a violent departure from the due administration of the Commonwealth's established course of judicial procedure as to amount to a violation of the 14th Amendment to the Constitution of the United States, decreeing that no state "shall deprive any person of life, liberty or property, without due process of law," and a violation of Sec. 9, Art. I., of the Constitution of Pennsylvania, providing that no accused shall "be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land"; and that said fraudulent drawing and impaneling of jurors was not a mere "defect or error in drawing, summoning or returning * * * of jurors" which would, under the Act of February 21, 1814, 6 Sm. L. 111, be waived by the defendant's going to trial, but that it constituted a fundamental invasion of the prisoner's inalienable right to have the jury drawn from a list of jurors selected in the manner prescribed by law. A new trial was therefore granted.—Commonwealth v. Stallone, 26 Lack. Jur. 275 (1925), Maxey, J.

(C) IMMUNITY FROM TESTIFYING

Section 9, of Article I, of the Declaration of Rights, provides that in all criminal prosecutions the accused cannot be compelled to give evidence against himself. This privilege protects a person from any disclosure sought by legal process against him as a witness, but does not prohibit the taking of the finger-prints of the accused without his consent, nor the use of them at trial for comparison with finger-prints found at the scene of the crime. "The constitutional inhibition has reference to testimonial utterances by the defendant and may not be used to prevent the establishmenet of the truth as to the existence or non-existence of certain marks of identity."—Comth. v. Rocci, 9 D. & C. 389, Schaeffer, P. J.

II. LEGISLATION

(A) FORM OF BILLS

1. Title.

3586, See P. & L. III.; Quar. Dig. I. 328.

Section 4, Act May 19, 1915, P. L. 543, is unconstitutional, so far as it relates to choses in action, not expressed in the title. —Roberts v. Cauffiel, 283 Pa. 64 (1925).

The Declaratory Judgment Act of June 18, 1923, P. L. 840, is constitutional and not in violation of the right of trial by jury. —Kariher's Petn. (No. 1), 284 Pa. 455 (1925), Moschzisker, C. J. Reversing C. P. Lawrence County, 73 Pitts. 961. See Cleary v. Quaker City Cab Co., 285 Pa. 241.

The Act of May 17, 1921, P. L. 682, is defective in title, so far as Sec. 344, relating to actions against insurance companies, is concerned.—Spector v. Northwestern Fire and Marine Ins. Co., 285 Pa. 464 (1926), Schaffer, J. Reversing C. P. No. 5, Phila.

The title to the Act May 20, 1921, P. L. 959, amending the Township Code of July 14, 1917, P. L. 840, does not violate Sec. 3, Art. III, of the Constitution.—Blanchard v. McDonnell, 286 Pa. 283 (1926), Schaffer, J. Reversing C. P. Luzerne County.

The Act of May 10, 1923, P. L. 183, authorizing sheriffs in fourth class counties to appoint a solicitor, violates Sec. 3, Art. III., as to title, and Sec. 7, Art. III., of the Constitution, because special and local legislation.—Graeff v. Schlottman, 87 Super. Ct. 387 (1926), Henderson, J. Reversing 21 Sch. 398; 7 D. & C. 269.

An injunction to restrain the supervisors of a second class township from making contracts and levying a tax for the purchase of fire apparatus and the construction of a building to house it, was reversed, the law being constitutional and fire protection covered by the title of the Township Act of 1917.—Blanchard v. McDonnell, 286 Pa. 283 (1926), Schaffer, J. Reversing C. P. Luzerne County.

Section 6, of the Act of June 12, 1878, P. L. 196, limiting prosecutions of bank officials to four years, violates Sec. 3, Art. III., of the Constitution, in its title, by failure to give notice.—Comth. v. Bell, 88 Super. Ct. 216 (1926), Gawthrop, J. Affirming Q. S. Allegheny.

The Act of May 20, 1921, P. L. 1010, authorizing the merger of water companies, and the Act of May 17, 1923, P. L. 251, authorizing the sale of the franchises and property of one water company to another, are sufficient in title and are not unconstitutional because their titles do not show a repeal of the Act of June 7, 1907, P. L. 455.—Reeves, *et al.*, v. Phila. Suburban Water Company, 287 Pa. 376 (1926), Schaffer, J. Affirming C. P. Chester County.

The subject matter of Section 6, of the Act of June 12, 1878, P. L. 196, is sufficiently set forth in the title to comply with Sec. 3, Art. III., of the Constitution. Where the title states that the act is a supplement to a designated earlier statute, any provision germane to the earlier statute and could have been constitutionally inserted therein, may be placed in the supplement, though not specifically legislated upon in the earlier statute.—Comth. v. Bell, 288 Pa. 29 (1927), Simpson, J. Affirming 88 Super. Ct. 216.

Section 28, of Chapter VI, Article VII, of the Borough Code, permitting boroughs to assess property lying outside the borough for municipal improvements on streets entirely within its limits, but which form the boundary of the borough, does not violate Article III, Section 3, of the Constitution of Pennsylvania. Article III, Section 3, of the Constitution, does not require that a general act, consolidating many statutes enacted over a course of years with reference to some broad subject of legislation, shall in its title refer to all the other subjects collaterally affected by the passage of the various statutes to be consolidated. Those affected by such legislation were put upon notice of its effect on them when the

statutes were originally enacted in compliance with Article III, Section 3, of the Constitution, with the subjects of legislation clearly expressed in their respective titles. It is not necessary to repeat them again in the title of the consolidated act, provided the subject is germane to the general subject as it existed when the consolidated statute was passed. The title of a consolidating act must be passed upon in the light of the legislation already existing on the subject at the time of its passage.—Williamsburg Boro v. Bottonfield, 90 Super. Ct. 203 (1927), Keller, J. Affirming C. P. Blair County.

The title of the Act of February 1, 1866, P. L. 8, as "a supplement" to the Allegheny Prison Act ,of March 23, 1865, P. L. 607, complied with the constitutional amendment of 1864, providing that all acts shall contain but one subject, which must be clearly expressed in its title, which was incorporated in the Constitution of 1874. The further supplement of March 8, 1871, P. L. 184, was germane and constitutional.—Comth. v. Jones, 90 Super. Ct. 489 (1927), Trexler, J. Affirming Q. S. Venango County.

The Act of February 19, 1926, P. L. 16, relating to permits to manufacture and deal in alcoholic liquids, is constitutional. Its title is not in conflict with Article III, Section 3, of the Constitution, and the subject matter is properly within the powers of the Legislature, its purpose being to aid in the enforcement of the XVIII Amendment to the Federal Constitution. The denial of a trial by jury did not conflict with the Constitution.—Premier Cereal & Beverage Co. v. Alcohol Permit Board, 76 Pitts. 105, Walling, J. Affirming C. P. 5, Phila.

The amendment which the Act of June 14, 1923, P. L. 718, purports to make in Section 36, of the Act of June 30, 1919, P. L. 678, is unconstitutional, because not covered by the title of the amending act.—Parson v. Downer, 9 D. & C. 246. Accord: Mancuso v. Pultrosky, 9 D. & C. 279.

The Act of May 1, 1923, P. L. 117, does not violate Section 7, Article III, of the Constitution of Pennsylvania, as being a special law for the creation of liens or changing the method for the collection of debts: The Act is constitutional.—Bartholomew v. Westmoreland Limestone Co., 76 Pitts. 49, Rowand, J.

The Act of Feb. 19, 1926, P. L. 16, relating to the Alcohol Permit Board, does not violate Section 3, Article III, as to title.—Premier Cereal & Beverage Co. v. Penna. Alcohol Permit Board, 9 D. & C. 554, Martin, P. J.

The injunction clause of the Liquor Prohibition Act of March 27, 1923, P. L. 34, does not violate Section 3, Art. III., of the Constitution.—Comth. v. Dietz, 73 Pitts. 193 (1925), Rowand, J. Nor is Section 35(b), of the Act of June 7, 1917, P. L. 447, providing that an action for personal injuries may be brought against the executors of the wrong-doer.—Renard v. Kier, 6 D. & C. 375 (1924), Swearingen, J.

The Act of April 20, 1905, P. L. 237, relating to the responsibility for the care of condemned turnpikes, does not violate the Constitution as to title nor any other section. Mandamus granted to compel the county commissioners to repair the road.—Comth. v. Clearfield County Comrs., 7 D. & C. 2 (1925), Chase, P. J.

The Act of May 10, 1923, P. L. 183, provides that in all counties of the fourth class the solicitor of the sheriff shall receive a salary of five hundred dollars per annum. If a title to an act of assembly fairly gives notice of the subject of an act so as to reasonably lead to an inquiry into the body of the bill, it is all that is necessary. It need not be an index of the contents.—Graeff v. Schlottman, 21 Schuyl. 398 (1925), Koch, J.

One who challenges the constitutionality of an act and does not show that he is injuriously affected, is met by the presumption that the act is constitutional. An affidavit of defense averring that the Act of June 15, 1923, P. L. 809, is defective in title, was held insufficient as to the question of law raised.—Cameron v. Fishman, 29 Dau. 74 (1926), Fox, J.

The omission from the title of the Act of June 20, 1919, P. L. 525, of any reference to that portion of the act which purports to confer exclusive jurisdiction in desertion and non-support cases upon the County Court of Allegheny County, renders unconstitutional so much of clause "d," Section seven, of such act as attempts to confer such exclusive jurisdiction which by virtue of the Act of June 12, 1919, P. L. 455, is concurrently vested in magistrates and justices of the peace. This is in direct conflict with Article III, Section 3, of the Constitution of Pennsylvania, prohibiting the passage of any bill containing more than one subject, which shall be clearly expressed in its title, in that it attempts to transfer jurisdiction in a certain class of cases from one branch of the judicial department of the Commonwealth to another without reference to such transfer in the title. Failure to comply with the Act of April 6, 1899, P. L. 32, which requires that all acts of Assembly quoting a statute or part of a statute for amendment, the words stricken out, or the words added, shall be printed in the Pamphlet Laws in distinct type, different from the type used for the remainder of the words quoted, may not of itself be vitally material, yet, as an aid to seeking the intention of the Legislature, it emphasizes the proposition that no repeal was intended.—Commonwealth v. Shaughnessey, 74 Pitts. 365 (1926), Kennedy, P. J.

Section 10, of the Act of April 27, 1925, P. L. 254, amending the Automobile Act of June 30, 1919, P. L. 678, providing for the first time that "any persons who shall impersonate the holder of a learner's permit shall be guilty of a misdemeanor," is unconstitutional, inasmuch as it is not referred to in the title of the act. Where an act in its title enumerates specifically a number of sections of an act to be amended, but omits in its title one section which it amends in the body of the act, such section is unconstitutional.—Comth. v. Smith, 8 D. & C. 702 (1926), Hargest, P. J.

When the constitutionality of an Act of Assembly is attacked, all presumptions are in favor of its constitutionality. The rule is firmly established that nothing but a clear violation of the Constitution or a clear usurpation of power prohibited will justify the judicial department in pronouncing an Act of the Legislative department unconstitutional and void.—National Auto Serv. Corp. v. Barfod, 30 Dau. 147 (1926), Fox, J.

The Act of April 7, 1925, P. L. 179, amending Clause 46, of Section 3, of Article V, of the Act of the 27th of June, 1913, P. L. 568, is not unconstitutional because in its title no reference is made to the proposed increase of the maximum penalties for violation of city ordinances.—Bothwell v. City of York, 75 Pitts. 270 (1927), McPherson, P. J.; 40 York 161.

The Alcohol Board Act, of Feby. 19, 1926, P. L. 16, being supplementary to the Pinchot-Snyder Act, of 1923, is not unconstitutional for paucity of title, as to alcoholic liquors. Nor is it ineffective because it abolishes jury trials and technical rules of evidence before the board.—Premier Cereal & Beverage Co. v. Alcohol Permit Board, 75 Pitts. 681 (1927), Martin, P. J.

Sections 10, of each of the Acts of May 6, 1909, P. L. 434, and June 27, 1895, P. L. 403, relating to the participation of the county controller in the award of public contracts, are not unconstitutional because their provisions are not indicated in the titles of the acts. The use in the titles of the acts of the term "county controller" was of itself sufficient to put all the persons upon inquiry as to the measure of control over the business of other offices which the bill proposed to vest in the controller, the checks upon the business methods thereof to be established, and the proposed means of rendering the same effectual.—Lewis Plant & Glass Co. v. Washington County, 9 D. & C. 339, Brownson, P. J.

On appeal from the settlement of a bonus against a corporation, the assessment was sustained under Act of July 12, 1919, P. L. 914, which does not violate Sec. 3, Art. III., of the Constitution, as to title. The act gives to stock corporations a new privilege for which they charge a bonus on each share of stock issued.—Comth. v. Budd Wheel Co., 30 Dau. 118 (1926), Fox, J.

The amendment which the Act of June 14, 1923 (P. L. 718), purports to make in Section 36, of the Act of June 30, 1919 (P. L. 678), is clearly unconstitutional and invalid because not covered by the title of the amending act, in which is given a list of the particular subjects respecting which it was proposed to amend the Act of 1919, and this list did not include the matters which the body of the amending act undertakes to insert in Section 36.—Parson v. Downer, 7 Wash. 28 (1926), Brownson, P. J.

The Act of May 25, 1921, P. L. 1131, entitled "An Act to regulate the practice of the profession of engineering and of land surveying; creating a State Board for the Registration of Professional Engineers and Land Surveyors; defining its powers and duties; imposing certain duties upon the Commonwealth and political subdivisions thereof in connection with public work; and providing penalties," is unconstitutional in that it contravenes Section 3, Article 3, of the Constitution of Pennsylvania, reading as follows: "No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title."—Stevenson v. State Board for Registration, &c., 28 Lack. Jur. 1 (1926), Maxey, J. Affirmed by Supreme Court, Jan. 24, 1927.

The Act of April 14, 1925, P. L. 234, entitled "An act relative to boarding houses for infants, providing for the licensing thereof," etc., is defective in title, in so far as it attempts in the 15th section thereof to repeal the 1st section of the Act of May 28, 1885, P. L. 27, which makes the taking of a female child under sixteen years of age for prostitution or sexual intercourse, or in marriage without the consent of parents, or guardians, a misdemeanor, and in this respect is unconstitutional and void. There is nothing in the title of the Act of 1925 to indicate any purpose to repeal the Act of 1885.—Comth. v. Lakey, 8 D. & C. 471 (1926), Reed, P. J.

Chapter 6, Article VII., Section 28, of the General Borough Act of May 14, 1915, P. L. 312, entitled "An act providing a system of government for boroughs and revising, amending and consolidating the law relating to boroughs," which provides for the assessment of benefits to property lying outside of the borough limits, where the improved street is entirely within the limits of the borough, but divides the borough from another municipality, is in violation of Article III., Section 3, of the Constitution of Pennsylvania, in that the subject of the section is not clearly expressed in the title. Aside from the fact that the subject of the above section is not covered by the title, a municipality cannot assess benefits against property outside of its municipal limits.—Williamsburg Borough v. Bottenfield, 7 D. & C. 771 (1926), Baldridge, P. J.

(B) LOCAL AND CLASS LEGISLATION

1. Special.

3623, See P. & L. III.; Quar. Dig. I. 333.

The Conditional Sale Act of June 7, 1915, P. L. 866, does not violate Sec. 7, Art. III, of the Constitution, as to special legislation.—Ridgeway Dynamo & Engine Co. v. Werder, 287 Pa. 358 (1926), Wal-

ling, J. Affirming C. P. Westmoreland County.

The Act of May 23, 1913, P. L. 354, giving to depositors of trust companies, priority on distribution of their assets, in course of liquidation by legal process, or otherwise, is not unconstitutional, as prohibited by Sec. 7, Art. III., in restraint of local and special legislation. Exceptions to account of Peter G. Cameron on assets of the Carnegie Trust Co., dismissed.—Cameron's Account, 287 Pa. 560 (1926), Simpson, J. (Kephart, J., dissenting, on the ground of interference with Sec. 23, of the Federal Reserve Act, and the 14th Amendment of the Constitution of the U. S., see p. 570).

The Act of March 29, 1923, P. L. 47, does not violate Article III., Section 7, of the Constitution, which provides that the General Assembly "shall not pass any special or local law authorizing the creation, extension or impairment of liens." It cannot be asserted that the act is a local or special law, inasmuch as it is not applicable to cities as well as boroughs.—Ligonier Boro v. Deeds, 74 Pitts. 491 (1925), Whitten, J.

The Acts of May 20, 1921, P. L. 994, and April 8, 1923, P. L. 52, were declared unconstitutional and those judgments were not appealed. The Act of March 23, 1925, P. L. 65, is unconstitutional because it offends against Article 3, Section 20, also against Article 14, Section 2, and Article 3, Section 7.—Advisory Board Appt., 22 Sch. 1926), Bechtel, P. J.

The National Automobile Service Corporation of Pennsylvania is within the provisions of the Act of May 10, 1921, P. L. 442, giving the Insurance Commissioner supervision and control and authority to examine automobile co-operative companies or associations. The Act of May 10, 1921, P. L. 442, is constitutional; it is not class legislation; it is not a delegation of legislative functions; it is not confiscatory.—National Automobile Service Corporation v. Barfod, 30 Dau. 147 (1926), Fox, J.

2. Persons.

3639, See P. & L. III.; Quar. Dig. I. 333.

The Old Age Assistance Law of May 10, 1923, P. L. 189, conflicts with Section 18, Art. III., of the Constitution, since it appropriates money for charitable or benevolent purposes to persons.—Busser v. Snyder, 282 Pa. 440 (1925), Kephart, J. Affirming C. P. Dauphin County.

The Securities Act of June 14, 1923, P. L. 779, does not violate Sec. 7, Art. III., of the Constitution, as to classification.—Comth. v. Moore, 5 D. & C. 738 (1925), Barnett, P. J.

(B) CLAUSE PROHIBITING SPECIAL COMMISSIONS

1. Zoning Laws.

The Zoning Act of May 1, 1923, P. L. 122, which empowers the mayor with the approval of the council to appoint a board of appeals, as well as those sections of the ordinance making provision for such a board, is not in conflict with Art. III, Section 20, of the State Constitution, which forbids the General Assembly to delegate to any special commission any power to make, supervise or interfere with any municipal improvement, money, property or effects, or to levy taxes or perform any municipal function whatever. The board of appeals cannot make zoning regulations, but only acts as the authorized agent of the city within certain limitations. —Junge's Appeal, 75 Pitts. 217 (1927), Keller, J.

2. Government By Commission.

The Act of April 17, 1913, P. L. 93, vesting in the Park Commission of Philadelphia power over parks and parkways, other than Fairmount Park ,that may thereafter be committed to their care and management by councils or individuals, is unconstitutional, in that it delegates to a special commission power to supervise and interfere with municipal property, in violation of Article III, Section 20, of the Constitution of 1874. The Act of 1913 also violates Article III, Section 9, of the Constitution, inasmuch as it applied only to the City of Philadelphia, and as no other city can ever in fact come within its provisions relating to the Park Commission, it is a local and special law relating to the affairs of cities.—Philadelphia v. Spangler, **et al.,** 9 D. & C. 577, Stern, J. (Gordon and Lewis, JJ., concurring).

(C) VALIDATING ACTS

1. When Constitutional.

The Legislature may validate acts done under a statute that is held unconstitutional, provided that the validating act is constitutional. The 12th Section of the Act of May 23, 1925, P. L. 65, validating proceedings and elections under Act of May 20, 1921, P. L. 944, authorizing the establishment of tuberculosis hospitals, is constitutional.—Comth. v. Woodring, *et al.,* 289 Pa. 437 (1927), Schaffer, J. Reversing C. P. Northampton County; Montgomery County Medical Society's Petition, reversed; Diller's Petition, affirmed. *(Ibid).*

The Act of May 12, 1925, P. L. 602, validating acts of a justice of the peace, who had not properly qualified, is unconstitutional, in so far as it attempts to validate matters which are jurisdictional in character, such as a hearing and imposition of a fine in a criminal case under the game laws.—Comth. v. Fye, 9 D. & C. 32 (1926), Keller, P. J.; 41 York 15.

The Legislature has no power to validate pro-

ceedings and elections held under a prior act which has been declared unconstitutional. The Act of March 23, 1925, P. L. 65, validating proceedings and elections held under the unconstitutional Acts of May 20, 1921, P. L. 944, and April 3, 1923, P. L. 52, is unconstitutional. The Act of March 23, 1925, P. L. 65, is not unconstitutional as violating Article III., Section 20, which forbids the delegation to any special commission of power to supervise municipal improvements or to levy taxes for municipal purposes. The Act of March 23, 1925, P. L. 65, violates Article III., Section 7, of the Constitution, which provides that "the general assembly shall not pass any local or special law regulating the affairs of counties, cities, townships, wards, boroughs or school districts." Where an act of assembly confers powers on counties, but permits one county to accept, and another to reject, the provisions of the act, the act itself is local or special legislation.—Schuylkill County Hospital, 8 D. & C. 407 (1926), Bechtel, P. J.

(D) APPROPRIATIONS

1. Sectarian Institutions.

3655, See P. & L. III.; Quar. Dig. I. 335.

In Collins v. State Officials, the power of the State Welfare Bureau to contract with St. Agnes Hospital, a Philadelphia R. C. hospital, to furnish it from the state appropriation for charities a sum to cover daily service, is in conflict with Section 18, of Art. III., of the Constitution.—Collins v. Martin, 29 Dau. 338 (1926), Wickersham, J. Judge Wickersham, of the Dauphin County Court, based his decision on the Supreme Court decision in Collins v. Kephart, 271 Pa. 428, in the matter of a Lutheran hospital, similar to this case.

A contract made between the Department of Welfare of the Commonwealth of Pennsylvania and a denominational or sectarian institution for the **per diem** payment for services rendered in the care and treatment of the sick and injured violates Article III., Section 18, of the Constitution, which forbids the making of any appropriation "for charitable, educational or benevolent purposes * * * to any denominational or sectarian institution, corporation or association." It cannot be accomplished by indirection, as provided by Act of April 13, 1925, P. L. 159. See Appropriations, **supra.**—Collins v. Martin, Aud. Gen., 8 D. & C. 239 (1926). Wickersham, J. Affirmed.

The Act of July 18, 1919, appropriating the sum of $60,000.00 to the Mercy Hospital, of Johnstown, is in violation of Section 18 of Article III. of the Constitution of Pennsylvania, and is void. The Act of May 27, 1921, making an appropriation to the Mercy Hospital, of Johnstown, is in violation of Section 18, of Article III., of the Constitution of Pennsylvania, and is void, since it is a sectarian institution, under control of the Sisters of Mercy, a Roman Catholic body, subject to such hierarchy.—Mercy Hospital v. Lewis, Auditor General, 27 Dau. 346 (1924), Wickersham, J.

The Mothers' Assistance Act, of May 28, 1923, P. L. 459, does not violate Sec. 18, Art. III., of the Constitution, as to appropriations.—Mothers' Assistance Act, 6 D. & C. 78 (19253, Woodruff, Atty.-Gl.

(E) ELECTIONS, COURTS AND CORPORATIONS

1. Jurisdiction.

3642, See P. & L. III.; Quar. Dig. I. 334.

The Act of June 7, 1901, P. L. 493, is not unconstitutional because it enlarges equity jurisdiction to abate a nuisance resulting from improper plumbing, without such enlargement of power appearing in its title. Nor does it violate the Fourteenth Amendment to the U. S. Constitution.—New Castle City v. Elizabeth Withers, 291 Pa. 216, Schaffer, J. Affirming C. P. Lawrence County.

2. Process in Courts.

Section 35, Act of June 4, 1901, P. L. 434, providing for process against the contractor personally, is unconstitutional, on authority of Sterling Bronze Co. v. Syria Improvement Co., 226 Pa. 475. Execution stricken off.—Brader v. Snyder, 11 Leh. 90 (1924), Reno, P. J.

The sections of the Pinchot Prohibition Act of 1923 declaring places where the law is violated to be a public nuisance that may be enjoined ,are constitutional.—Comth. v. Dietz, et al., 7 D. & C. 25 (1925), Rowand, J.

Section 1, of Article 4, of the Constitution of the United States, requires that full faith and credit be given in each state to the judicial proceedings of every other state.—Lee v. Knight, 41 York 121, Stock, J.

The Act of May 13, 1925, P. L. 649, in relation to estates by entireties, is constitutional, but it does not aapply to such estates acquired before its passage.—Eva Clements v. Kandler, 11 Cambria, No. 38, p. 10, Evans, P. J.; 75 Pitts. 608.

3. Method of Collecting Debts.

Section 36, of the Automobile Act of June 14, 1923, P. L. 718, authorizing suits to be brought in the county where an accident occurs, is not unconstitutional as violating Article III, Section 7, of the Constitution, which forbids local legislation "pjroviding or changing methods for the collection of debts or enforcing of judgments."—Thompson v. Bean, 39 York 186 (1925), Prather, P. J.; 7 D. & C. 209.

The Act of May 6, 1915, P. L. 261, having been declared unconstitution in La Placa v. P. R. T. Co., 265 Pa. 304 (Quar. Dig. I. 334), a petition to fix a lien for an attorney cannot be entertained. —Silverman's Estate, 22 Sch. 70 (1926), Wilhelm, P. J.

IV. TAXATION AND FINANCES

(A) COAL EXCISE

3715, See P. & L. III.; Quar. Dig. I. 337.

The provision of the Act of June 15, 1911, P. L. 955, which gives priority of lien for money collected by corporations, under the tax laws of May 20, 1921, P. L. 1021, and June 15, 1923, P. L. 839, is unconstitutional, since it does not apply to individuals and violates the rule of uniformity.—Schoyer v. Comet Oil & Refg. Co., 284 Pa. 189 (1925), Kephart, J. Affirming C. P. Allegheny.

The taxation of coal, called anthracite, under Act of May 11, 1921, P. L. 475, as settled by the State Tax authorities, was held to be valid under Sec. 1, Art. IX., of the Constitution, and it is not a question to be passed upon by a jury whether or not there was a reasonable basis of placing anthracite coal in a separate class for taxation.—Comth. v. Hudson Coal Co., 28 Dau. 245 (1925), Hargest, P. J.

(B) UNIFORMITY

3715, See P. & L. III.; Quar. Dig. I. 337.

The Act of June 3, 1915, P. L. 807, providing that whenever any borough or incorporated town re-paves a street, or part thereof, which had already been paved at the expense of the entire municipality, the municipality may collect from the abutting property owners one-third of the cost of such re-paving in the same manner as if the re-paving were an original paving, is unconstitutional. It was error to hold that the owners were estopped from raising the question because signers of the petition for improvement. — Towanda Boro v. Swingle, 90 Super. Ct. 82 (1927), Porter, P. J. Reversing C. P. Bradford County.

The Act of June 21, 1919, P. L. 570, as amended by the Acts of May 11, 1921, P. L. 503, and May 1, 1923, P. L. 122, is constitutional, insofar as it confers upon cities of the second class the right to pass zoning ordinances. By this act, the Legislature has given such cities the power to provide for municipal zones. The zoning ordinance of the City of Pittsburgh, approved August 9, 1923, is in accordance with the authority conferred with the Act of June 21, 1919, P. L. 570, and its amendments, and the fact that certain clauses thereof have been declared unconstitutional, does not strike down the whole ordinance. A provision that there shall be a side yard on each side of a one family dwelling or double house, one of which shall be at least three (3) feet wide, and the total width of both side yards shall be not less than ten (10) feet, is constitutional. Such a provision is not contrary to the fifth and fourteenth amendments of the Federal Constitution or Sections one or ten of Article I, of the Constitution of Pennsylvania. The Act of May 1, 1923, P. L. 122, which provides for the appointment of a board of appeals to review decisions of the officer charged with the enforcement of such zoning ordinance, does not violate Art. III, Sec. 20, of the Constitution of Pennsylvania.—Junge's Appeal (No. 2), 89 Super. Ct. 548 (1927), Keller, J. Reversing C. P. Allegheny; 75 Pitts. 217.

The Acts of June 25, 1885, Sec. 7, P. L. 187, and May 1, 1909, P. L. 71, are constitutional. The Legislature may not by arbitrary discrimination subject certain property to tax and exempt other property of the same class and similarly situated from an equal burden.—Beideman v. Phila. & West Chester Traction Co., 18 Del. 188.

Under Article III, Section 22, of the Constitution, and the Act of June 7, 1917, P. L. 447, a trust company or other fiduciary is not authorized to invest trust funds in a bond or bonds of a private corporation through the medium of participation certificates issued by the mortgagee. A bond to be considered a legal investment must be the bond of an individual, and, if it is one of a series, the series of bonds must be issued by an individual. The Act of April 6, 1925, P. L. 152, has no relation to such certificates.—Trust Company Investments, 9 D. & C. 335, Wagner, Dep. Atty.-Gl.

Sec. 23, of Act June 1, 1889, P. L. 420, does not violate Sec. 1, Art. IX., of the Constitution, as to uniformity of taxation, nor the 14th Amendment of the Federal Constitution.—Comth. v. Quaker City Cab Co., 29 Dau. 90 (1926), Wickersham, J.

(C) LICENSE OF DOGS NOT A TAX

3715, See P. & L. III.; Quar. Dig. I. 338.

The Act of May 11, 1921, P. L. 522, providing for the licensing of dogs, is constitutional and does not conflict with Art. IX., requiring uniformity of taxation, it not being a tax.—Comth. v. Haldeman, 88 Super. Ct. 284 (1926), Trexler, J. Affirming Q. S. Cumberland County.

If a part of a law is unconstitutional and it be severable from the remainder, the whole act will not be overturned.—Comth. v. Haldeman, 88 Super. Ct. 284 (1926), Trexler, J. Affirming Q. S. Cumberland County.

The Act of June 1, 1889, P. L. 420, does not

violate Section 1, Art. IX., of the Constitution ,as to uniformity nor the 14th Amendment of the U. S. Constitution, as to due process of law.—Comth. v. Quaker City Cab Co., 287 Pa. 161 (1926), Walling, J. Affirming C. P. Dauphin County.

The second proviso of Sec. 1, Act May 21, 1923, P. L. 288, offends against Sec. 6, Art. III., of the Constitution, and is void in so far as it attempts to extend, by reference to its title only, the liabilities possibly imposed by the Act of July 12, 1919, P. L. 914, under other circumstances.—Comth. v. Wayne Sewerage Co., 287 Pa. 42 (1926), Simpson, J. Affirming C. P. Dauphin County.

(D) DEBT LIMITATION

A city cannot effectively substitute for the requirements of Article IX., Section 6, of the Constitution of the State, a statement, binding upon no one, that an indebtedness which violates that provision, will, at some indefinite time in the future, "be provided for from the general city funds." If it can, then a municipality need only submit to its electors whether or not they will authorize an increase of indebtedness of $1,000, or any greater or less sum, and add the excess, however great, to its indebtedness, without providing any means for its payment; thus making of the constitutional provision a rope of sand, wholly insufficient to rescue the electors from the financial wreck of the municipality, which was the only purpose of its adoption. Injunction to restrain work on city contract granted.—McAnulty v. Pittsburgh, 73 Pitts. 970 (1925), Simpson, J.

On appeal from a decree fixing the proportion of indebtedness of a township when a borough was erected of a portion, the same was affirmed, the court holding that there was no increase in excess of the limitation of Sec. 8, Art. IX., of the Constitution.—Southmont Boro v. Upper Yoder Twp., 284 Pa. 287 (1925), Simpson, J. Affirming Cambria County.

1. Increase of Indebtedness.

A plaintiff who seeks to restrain the issue of municipal bonds on the ground that the issue exceeds the constitutional limit, must prove every element of his case by the weight and fair preponderance of the evidence. Section 8, of Article 9, of the State Constitution, divides municipal indebtedness into three classes with reference to amount: (1) debt more than seven per centum of the assessed value of taxable property; (2) debt not over two per centum of assessed value which may be created by the municipal authorities without approval by vote of the electors, and (3) debt over two and not exceeding seven per centum of the assessed value which may be incurred by the municipal authorities with the assent of the electors. The order in which this indebtedness is incurred is entirely immaterial. A temporary loan which is merely an anticipation, in good faith, of the probable revenues of the year in which the loan issued, sufficient to pay the loan when due, is not a municipal indebtedness within the meaning of the constitutional limitation upon the borrowing power of a municipality. Bonds issued by a borough, pursuant to the Act of June 5, 1915, P. L. 846, for construction and acquisition of water works, cannot be considered as a debt of the municipality.—Walters v. Tamaqua, et al., 23 Sch. 147 (1927), Berger, J.

Under Section 10, Article IX, of the Constitution of Pennsylvania, it is necessary that provision be made for the collection of an annual tax sufficient to pay the interest and also the principal of such indebtedness within thirty years. In determining whether any legislative or municipal act conflicts with the Constitution, its substance, not its form, must always be the test.—Myers, et al., v. Lancaster County Comrs., 9 D. & C. 139 (1926), Landis, P. J.

V. PUBLIC OFFICERS

(A) THE GOVERNOR

1. Power to Appoint.

3363, See P. & L. III.; Sup. VI., 562; Quar. Dig. I. 340.

Under Section 4, Art. VI., of the Constitution, the Governor has power to remove an alderman whom he had appointed, but who was not legally qualified by residence to hold the office.—Removal from Office, 72 Pitts. 891, Woodruff, Atty.-Gl. Section 4, Art. VI. ,of the Constitution, does not authorize the Governor to appoint one to fill the office of justice of the peace where the incumbent absented himself and his whereabouts were unknown.—Appointive Power, 73 Pitts. 69 (1925), Campbell, Dept. Atty.-Gl.

2. Power of Removal of State Officers.

Section 4, Art. VI., of the Constitution, conferring upon the Governor the power of removal of all appointed State officers, except judges and the State Superintendent of Public Instruction, does not empower him to remove a Public Service Commissioner who is "predominantly legislative." Writ of *quo warranto* dismissed.—Comth. v. Benn, 284 Pa. 421 (1925), Moschzisker, C. J. Accord: Comth. v. Shelly, 284 Pa. 443.

The Public Service Commission, being a body by which the duties performed are "primarily and predominantly legislative in character," and the power of removal

provided by Sec. 15, Art. IV., of the Act of 1913, P. L. 1396, says, "The Governor, by and with the consent of the Senate, may remove any Commissioner, etc.," an attempt to remove a Commissioner without compliance with this law is invalid.—Comth. v. Benn, 284 Pa. 421 (1925), Moschzisker, C. J. Accord: Comth. v. Shelby, 284 Pa. 443.

Section 217, Act of May 18, 1911, P. L. 309, does not violate Section 4, Art. VI., of the Constitution, as to tenure of office, the same relating to removal of school directors, for fracture of duties, the contention being that they could not be removed except convicted of some misbehavior or crime.—Georges Twp. School Directors, 286 Pa. 129 (1926), Sadler, J. Affirming C. P. Fayette County.

(B) ADMINISTRATIVE CODE

1. Auditor General.

The Administrative Code of June 7, 1923, P. L. 498, is not unconstitutional because of the change of duties of the Auditor General. The Attorney General has always been the legal advisor of all the executive departments.—Comth. v. Lewis, 282 Pa. 306 (1925), Simpson, J. Affirming C. P. Dauphin County. See, also, Piccirilli Bros. v. Lewis, 282 Pa. 328 (1925).

(C) ELIGIBILITY

1. Incompatible.

3761, See P. & L. III.; Quar. Dig. I. 340.

Under Article XII., Section 2, of the Pennsylvania Constitution, the sheriff of any county of Pennsylvania cannot hold any appointment of trust or profit under the United States and still continue to function as sheriff, nor could he be compelled to abandon the one and accept the other. Hence the executive order of President Calvin Coolidge relating to prohibition, issued May 8, 1926, so far as a sheriff is concerned, has no greater force or effect than if it had never been made. The rights and duties of sheriffs are clearly defined by Acts of Assembly, as well as what they shall do in a ministerial capacity. He is debarred under the Constitution from holding or exercising any office of trust or profit under the Federal government; and should he resign as sheriff, he would then be ineligible under the executive order of the President of the United States for the reason that he would not then be a state, county, or municipal officer.—Sterrett's Petition, 8 Erie 132 (1926), Rossiter, P. J.

Membership in the bar of a United States Court is not such an office or appointment of trust or profit under the United States, under Article XII., Section 2, of the Pennsylvania Constitution, as will preclude the holding or exercising of an office in this State, and he may be commissioned a notary public. The terms "office" and "appointment," as used in the Constitution, are synonymous. An "office" is an appointment with a commission; an "appointment" is an office without one. A member of the bar of a court is not clothed with any part of the sovereignty.—Notary Public, in re, 74 Pitts. 304 (1926), Campbell, Depty. Atty.-Genl.

(D) LIBEL OF OFFICERS

1. Act of 1897.

The Act of May 25, 1897, P. L. 85, penalizing the publication of defamatory statements without the writer's signature, is not restricted, like the Act of April 11, 1901, P. L. 74, Section 1, to libels of public officers or candidates for public office, nor is it repugnant to Article 1, Section 7, and, therefore, is not repealed by that act, of the Constitution of Pennsylvania. The Act of 1897 does not take away privileges secured by the Constitution; it merely provides a specific penalty not only for anonymous libel on a public officer or a candidate for public office, but also on a private individual. It must be read as though the constitutional provision was written into it.—Comth. v. Wilhelm, 90 Super. Ct. 473 (1927), Linn, J. Affirming Q. S. Schuylkill County. ?

VI. JUDICIARY

1. "Oldest in Commission."

(A) PRESIDENT JUDGE

3668, See P. & L. III.; Sup. VII. 563.

In the appointment of a president judge of the Common Pleas Court when a vacancy occurs, the judge "oldest in commission" is to be interpreted as "oldest in continuous service," so that the Governor is authorized to name the judge longest on the bench rather than the one "whose commission shall first expire," as provided in the Act of May 25, 1921, P. L. 1163. The Acts of 1901 and of 1921 are not constitutional to the extent that they attempt to provide, that, in case of a vacancy, the judge whose present commission will expire first, is entitled to be president judge.—In re President Judges, 73 Pitts. 1105 (1925), George W. Woodruff, Atty.-Gl.

(B) JUSTICE OF THE PEACE

1. Malfeasance.

3689, See P. & L. III.; Sup. VII. 564.

On a trial and conviction of a justice of the peace for official malfeasance, in that he refused to grant an appeal before and without hearing in a summary proceeding against violations of the Automobile Law, the provision therein for appeal was declared not to be in violation of

Sec. 14, Art. V., of the Constitution, Keller and Henderson dissenting on this point.—Comth. v. Yerkes, 86 Super. Ct. 5 (1925), Gawthrop, J.

The provision in the various motor vehicle acts granting the right of appeal, before summary conviction by a justice of the peace, when accused formally waives a hearing, does not violate Sec. 14, Art. V., of the Constitution. Conviction of magistrate for denying this right, the charge being malfeasance in office, was affirmed. Comth. v. Yerkes, 285 Pa. 40 (1925), Walling, J. Affirming Superior Court, which affirmed Q. S. Delaware County.

VII. COUNTY OFFICERS

(A) TREASURER

3764, See P. & L. III.; Quar. Dig. I. 342.

Sections 9 and 11, Act July 12, 1919, P. L. 914, extending the provisions of the corporation bonus tax of the Act of 1899, does not offend Secs. 3 or 6, of Art. III., of the State Constitution, as to title.—Comth. v. Budd Wheel Co., 290 Pa. 380, Simpson, J. Affirming C. P. Dauphin Co., See II. Quar.

The provision in Sec. 5, Art. XIV, of the Constitution, does not prevent a county officer from retaining, for his own use, fees, commissions, etc., received by him for services rendered as agent for the Commonwealth; but such right to retain only accrues where the agency is created by express legislative designation. Under Act of May 16, 1921, P. L. 559, providing for the payment of 10 cents for a license to fish, the county treasurer is not so designated as agent and he cannot retain the fees.—York County v. Fry, 290 Pa. 310 (1927), Walling, J. Affirming C. P. York County.

The Act of 23d of March, A. D. 1925, P. L. 65, providing for the appointment of an advisory board for a tuberculosis hospital, is not unconstitutional, as being in conflict with Article 3, Section 20, of the Constitution of Pennsylvania. The twelfth section of the Act of 1925, **supra,** validates prior proceedings, held under the Act of 1921, submitting the question of the establishment of a hospital for tuberculosis to the people of Northampton County. It is the duty of the court to appoint the advisory board under the third section of the Act of 1925, **supra.**—Tuberculosis Hospital, in re, 20 Northam. 199 (1926), Bechtel, P. J.; 22 Sch. 152; 7 D. & C. 725.

(B) COMPENSATION OF OFFICERS

3648, See P. & L. III.; Quar. Dig. I. 335.

The Act of July 11, 1923, P. L. 1054, fixing the salaries of officers in certain counties, is not unconstitutional, but in accord with Section 34, of Art. III., and is a proper classification.—Comth. v. Wert, 282 Pa. 575 (1925), Simpson, J. Affirming 11 Leh. 66.

The Act of April 21, 1911, P. L. 76, relating to costs and fees of sheriffs, is not in conflict with Sec. 6, Art. III., of the Constitution. — Mayer v. Franklin County, 85 Super. Ct. 463 (Page Ed.). Affirming C. P. Franklin County.

The Act of May 10, 1923, P. L. 183, authorizing the appointment of solicitors for sheriffs in counties of the fourth class, is not local or special legislation, violating Sec. 7, Art. III., of the Constitution.—Graeff v. Schlottman, 7 D. & C. 269 (1926), Koch, J.; 21 Sch. 398.

Article III, Section 13, of the Constitution, does not prevent a constitutional officer from receiving additional compensation during his term of office for duties imposed upon him after assuming the office which are not germane to the original office, if a statute, in force when he was elected, provides for it. The office of director of the poor in a county of the sixth class, established under the provisions of the Act of May 12, 1921, P. L. 538, is a separate public office, though its functions are performed by the county commissioners.—Davis v. Lawrence County, 9 D. & C. 374, Hildebrand, P. J.

See Hallman v. Montgomery County, 6 D. & C. 239.

VIII. AMENDMENTS

(A) SUBMISSION TO VOTE

3813, See P. & L. III.; Quar. Dig. I. 343.

Mandamus was not awarded to compel the Secretary of the Commonwealth to submit to the voters an amendment to Sec. 4, Article IX., to increase the public debt, on the theory that such amendment related to a different subject matter than the other amendments submitted within the five years' limit.—Taylor v. King, 284 Pa. 235 (1925), Sadler, J. Affirming 28 Dau. 124.

After a constitutional amendment in regard to elections has been regularly adopted, it is too late to challenge the right to do so. A writ of *quo warranto* requiring a borough after change to a city of the third class, to show by what authority it did so, was dismissed on demurrer. Following Armstrong v. King, 281 Pa. 207, and Hollinger v. King, 282 Pa. 157.—Comth. v. Washington City, 284 Pa. 245 (1925), Simpson, J.

A proposed amendment of the Constitution

of Pennsylvania is not legislation and therefore not ruled by Sec. 25, Art. III. Such proposition may be presented and passed for the first time at a special session of the Legislature, although not mentioned in the Governor's proclamation calling the session. Apropos, Amendment of Art. XV, of the Constitution.—Sweeney v. King, Secy., 289 Pa. 92 (1927), Simpson, J. Affirming C. P. Dauphin County.

The Legislature, at a special session, may pass a joint resolution proposing an amendment to the Constitution, though the passage of such a resolution was not mentioned in the Governor's proclamation calling the special session. The Supreme Court of this State has drawn a clear distinction between the amendment of the Constitution and legislation.—Sweeney v. King, 30 Dau. 56 (1926), Hargest, P. J.; 74 Pitts. 877.

IX. PRIVATE CORPORATIONS

(A) PRIVILEGES

1. Registration.

3971, See P. & L. III.; Quar. Dig. I. 342.

On a question raised as to the constitutionality of the Act of June 8, 1911, P. L. 710, as to registration of foreign corporations, which was not raised below, the appellate court declined to consider it on appeal.—Consolidated Cigar Corp. v. Corbin, 285 Pa. 273 (1926), Moschzisker, C. J. Affirming C. P. No. 4, Phila.

CONTEMPTS

3820, See P. & L. III.; Quar. Dig. I. 344.

On appeal from an order in contempt of a decree, in equity, against a beneficial society, the defendant's liability to pay over the funds and transfer the stock did not arise by reason of any action taken by plaintiff under the constitution and laws of the order, but directly from the explicit terms of the decree of the court below. The decree, unappealed from and unreversed, was conclusive of all facts necessarily decided and of all facts which might have been averred and proved by either party to maintain a right of action or a defense. The proper procedure was an application to modify the decree.—State Grand Lodge Loyal Orange Inst. v. McMaster, *et al.*, 91 Super. Ct. 453, Cunningham, J. Affirming C. P. Allegheny County.

One who is adjudged in contempt of court and who pays the fine and purges himself thereof, cannot appeal.—Reap's Appeal, 88 Super. Ct. 147 (1926), Porter, P. J.

A defendant who has once been imprisoned for non-compliance with an order of court and is subsequently discharged after serving three months in jail, cannot again be re-committed for non-compliance under the original sentence.—Comth. v. Lobb, 42 Montg. 183 (1926), Knight, J.

Interference with a receiver appointed by the U. S. Court in his duties in bankruptcy, is a contempt of court.—Marcus, in Re, 21 F. (2nd) 480, Schoonmaker, D. J. It was termed "'civil contempt."—21 F. (2nd) 483.

Contemptuous conduct toward a judge in the discharge of his official duties is an offense against the court, the rights and authority of which it is the official duty of the judge to maintain in full force and dignity. Defiance of any court is disobedience to law and a challenge to the Commonwealth. Such a challenge unanswered means anarchy.—Commonwealth v. Reap, et al., 27 Lack Jur. 1 (1925), Maxey, J.

A rule for an attachment for contempt of court for failure to comply with a decree of court was made absolute, where defendants placed gates at the entrance of an alley, the court having prohibited defendants: "from obstructing in any manner the free and uninterrupted use of said alley by the original and intervening complainants or by any other persons entitled to use the same." Gates that had to be opened before entering the alley were an obstruction.—Mellon v. Oliver, 73 Pitts. 92 (1924), Shafer, P. J.

Defendant was found guilty of contempt of court and an attachment issued, where he had been restrained by a final decree from engaging in the same business, that of grinding tools, etc., "within the City of Pittsburgh," as the plaintiff. Defendant's excuse that he had to do something for the purpose of maintaining his family was insufficient to avoid the decree of the court.—Maturi, et al., v. Maturi, et al., 75 Pitts. 264 (1926), Swearingen, J.

CONTINUANCE

3845, See P. & L. III.; Quar. Dig. I. 346.

The action of the trial court in refusing a continuance because of an amendment of the statement of claim was not reversed, where it appeared that the defendant was fully prepared to meet the issue as made up, when tried, and he suffered no harm by refusal.—Santomieri v. Boyajian, 89 Super. Ct. 175 (1926), Linn, J. Affirming Mun. Ct. See, also, Frendlich v. Montgomery, 89 Super. Ct. 179.

In the absence of a clear abuse of discretion, a refusal to continue is not ground for reversal.—Comth. v. Magid, *et al.*, 91 Super. Ct. 513, Keller, J. Affirming Q. S.