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VOL. IV.

ABANDONMENT to ZONING LAWS

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applies only to cases in which, by the exhibition of his warrant, the constable could satisfy the plaintiff that the injury complained of could not be ascribed to him, and does not apply to a case where the complaint is based on a false return of service.—Jadwin, Aplnt., v. Bell and Gallagher, 108 Super. Ct. 543, Trexler, P. J.; 165 Atl. 511.

Where plaintiff, in an action for malicious prosecution, avers in the pleadings that defendant is a constable, having previously given notice that suit would be brought, the natural inference is that it is a suit against defendant in his official capacity, and the notice must comply with the requirements of the Act of March 21, 1772, 1 Sm. Laws 365, Section 6.—**Wallace v. Hayes**, 16 D. & C. 5$27, Keller, P. J.

VI. OFFICIAL BONDS

(D) LIABILITY OF SURETIES

1. Conditions Precedent.

3366, See P. & L. II.; Quar. Dig. I. 318.

A good and sufficient affidavit of defense is requisite only when the statement of claim exhibits a **prima facie** right to have judgment entered for the plaintiff. In an action upon a constable's bond for failure of the constable to execute a landlord's warrant to distrain for rent and to pay over the amount due, the statement of claim did not sufficiently aver the particulars in which there was a failure to execute the writ and perform his duties, and therefore it does not appear that there was a failure to perform some official duty. In what the constable did, he would be acting, down until the time when the appraisement was to be made, not in his official character as constable, but in the character of the use plaintiff's bailiff, and his actions would not be covered by the constable's bond, which only covers his official acts as constable.—**Comth., for Use, v. Miller and Surety Co.**, 11 Wash. 150, Brownson, P. J.

VII. FEES AND COMPENSATION

(B) FOR SERVICE OF WARRANTS

3374, P. & L. II.; Quar. Dig. III. 339.

Under the provisions of the General Borough Act of 1927, re-enacting Sections 1 and 2 of Article III, of the Act of May 14, 1915, P. L. 312, a high constable of a borough has the same powers as any other constable in the county and is entitled to compensation from the county for the service of warrants or other legal process, if he has qualified himself for the performance of those duties by filing the usual constable's bond approved by the Court of Quarter Sessions.—**Wingard v. Armstrong County,** 18 D. & C. 743, Graff, P. J.

(D) FOR SERVICE OF SUBPOENAS

3375, See P. & L. II.; Quar. Dig. III. 339.

A constable may not serve himself with a subpoena to appear as a witness and charge either a fee for making service or mileage for doing so.—**Comth. v. Pflaumer,** 16 D. & C. 193, Boyer, J.

CONSTITUTION OF THE UNITED STATES

III. PROHIBITION ON THE STATES

(C) PROVISIONS OF THE FOURTEENTH AMENDMENT

1. Acts Impairing Vested Rights and Liberties of Citizens.

3430, See P. & L. III.; Quar. Dig. II. 289.

The Act of June 26, 1919, P. L. 639, as amended by the Act of May 10, 1921, P. L. 435, does not contravene the Fourteenth Amendment to the Constitution of the United States. The freedom of speech which is secured by the Constitution does not confer an absolute right to speak, without responsibility, whatever one may choose, or an unrestricted and unbridled license giving immunity for every possible use of language and preventing the punishment of those who abuse this freedom.—Comth. v. Lazar, Aplnt., 103 Super. Ct. 417, Baldridge, J. Affirming Q. S. Philadelphia County; 157 Atl. 701.

2. Regulations Within Police Power of State.

3433, P. & L. III.; Sup. VII. 533.

Where an ordinance shows that a use is not opposed to public health, safety or general welfare, or is not a nuisance, and is in harmony with public interest and the general scope of the zoning ordinance, but the consent of a given set of individuals must be procured before land may be devoted to such cause, the delegation of such power to these individuals is repugnant to the due process clause of the Fourteenth Amendment. The reason for holding consent ordinances invalid are: the consent provision is an unlawful dele-

gation of legislative authority and discretion, with no rule or standard to guide those whose decision will control; it is not possible to check or correct the acts of the persons who may or may not consent; consent or refusal may be the result of favoritism, caprice, or malice, and no responsibility can be placed on those who act in the matter.—Perrin's Appeal (Board of Adjustment's Appeal), 305 Pa. 42, Kephart, J. Affirming C. P. Allegheny County; 156 Atl. 305. To same effect, see Goodman's Appeal, 305 Pa. 55, Kephart, J. C. P. Allegheny County; 156 Atl. 309.

The Solicitation for Charities Act, 13 May, 1925, P. L. 644, does not vest such arbitrary power in the Department of Welfare as to make it unconstitutional.—**Comth. v. Creighton, et al.,** 25 Berks 268, Schaeffer, P. J.

3. Discrimination Among Citizens and Persons Within State Limits.

3435, See P. & L. III.; Quar. Dig. IV. 77.

The action of the Legislature in making a special provision for a particular school of medical practitioners, in respect to qualifications and licensure, and not making such special provision for another branch of the healing art, is not an arbitrary exercise of discretion, nor does it offend the XIV Amendment.—**Steinbach v. Metzger,** 80 Pitts. 51, Gibson, D. J.

IV. RULES OF STATE COMITY

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

2. Requirements for the Practice of Medicine and Surgery.

3449, See P. & L. III.; Sup. VII. 535.

The right of the Commonwealth, in the interest of the health and safety of its people, to regulate the practice of medicine and surgery, used in the broad and comprehensive sense, and to prescribe the conditions under which persons may pursue the profession of the healing art, diagnose diseases and prescribe medicines or administer treatment for their cure, healing and alleviation, is well recognized as part of its police power.—**Intoxicating Liquors,** 22 Del. 34, MacDade, J.

V. FEDERAL LAWS AND GUARANTIES AND RESERVED RIGHTS OF STATES

(A) FEDERAL LAW SUPREME

3451, See P. & L. III.; Sup. I. 1089.

Order of United States Fuel Administrator directing delivery of coal not mandatory, but non-compliance would subject coal to government requisition. Coal miner's delivery of coal pursuant to order of United States Fuel Administrator *held* agreement to terms of resulting contract including price as fixed by administrator, and therefore could not constitute taking of private property without just compensation.—Dupont de Nemours & Co. v. Hughes, *et al.,* 50 Fed. (2nd) 821, Woolley, C. J., C. C. A., 3rd Circuit. Reversing 37 Fed. (2nd) 725.

(C) RESERVED RIGHTS OF STATES

2. Right of Legislation Where Congress Has Failed to Exercise a Right.

3453, See P. & L. III.

Prior to the Transportation Act of 1920, the Interstate Commerce Commission had no power to so control intrastate rates as to render ineffective a state's regulation thereof, whether by constitution or statute, in so far as it forbade a carrier charging a higher rate for transporting persons or property to a nearer station than to a more distant one in the same direction.—Comth., *ex rel.,* v. Central R. R. Co. of N. J., *et al.,* Aplnts., 308 Pa. 274, Simpson, J.; 162 Atl. 311.

CONSTITUTION OF PENNSYLVANIA

I. BILL OF RIGHTS

(C) CRIMINAL LEGISLATION

1. Libel.

3460, See P. & L. III.; Quar. Dig. III. 343.

The Act of June 26, 1919, P. L. 639, as amended by the Act of May 10, 1921, P. L. 435, is not in violation of the Fourteenth Amendment of the Federal Constitution, nor does it violate Article I, Section 7, of the Constitution of Pennsylvania, its provisions being such as tend to assure peace and harmony in the community and a healthy condition of society.—**Comth. v. Goodman,** 16 D. & C. 253, Reed, P. J., O. C., S. P.

(D) ACCUSATION, TRIAL AND PUNISHMENT

2. Twice in Jeopardy.

3464, See P. & L. III.; Sup. VII. 540.

The double jeopardy clause of the United States Constitution, as interpreted by the United States Supreme Court, is not binding upon the Supreme Court of Pennsylvania.—Comth., Aplnt., v. Simpson, 310 Pa. 380, Schaffer, J.; 165 Atl. 498.

A municipal ordinance prohibiting an unnaturalized foreign-born resident within the city to own or be in possession of a shotgun, rifle, pistol or other firearms conflicts with the Act of 1923, P. L. 359, and is unenforceable. Any municipal ordinance which prohibits an offense prohibited by an Act of Assembly is in conflict with Article I, Section 10, of the Constitution. When it involves a misdemeanor, it may well be conceded that it would not be placing the culprit twice in jeopardy, but the result is very like unto it, if he is made liable to prosecution before two tribunals for the same offense and must twice respond for a fine which takes his property or in default subjects him to imprisonment.—**Firearms, In Re,** 79 Pitts. 470, Shull, Dep. Atty.-Gen.

3. Searches, Seizures and Warrants of Arrest.

3467, P. & L. III.; Quar. Dig. I. 324.

Seizure of property without search warrant is not deemed unreasonable when there is cause to believe that contraband things are being unlawfully transported.—United States v. Kaier Co., 61 Fed. (2nd) 160, Thompson, C. J.

A confidential relationship exists between a bank and a depositor, and the bank records of the personal account of a member of a governmental commission are his private property, protected by the Fourth Amendment to the Constitution of the United States and by Article 1, Section 8, of the Constitution of Pennsylvania, from examination in the course of investigation of the conduct of the commission, except under a warrant issued for probable cause and supported by oath or affirmation.—**Shelby v. Second Natl. Bank of Uniontown,** 19 D. & C. 202, Hudson, P. J.

11. Ex Post Facto Laws.

3479, See P. & L. III.; Sup. VII. 543.

An ex post facto law is one that punishes as a crime, an act done before its passage, which when committed, was not punishable; that aggravates a crime by making it a greater offense than when committed; that changes the punishment, by inflicting a greater punishment than the law annexed to the offense when committed; or that alters the rules of evidence by requiring less or different testimony to convict than was required at the time of the commission of the offense. A statute which relates to procedure, or penal administration, or prison discipline, is not an ex post facto law, notwithstanding its effect may be to enhance the severity of the punishment. A statute which mitigates the penalty is not an ex post facto law.—**Comth. v. One General Motor Co.'s Truck,** 22 Del. 394, MacDade, J.

12. Punishment for Crime.

3480, See P. & L. III.

The Act of May 20, 1921, P. L. 968, providing that any person who shall shoot at and kill a human being in mistake for game or any wild creature shall be guilty of a misdemeanor, is not in violation of the Fourteenth Amendment to the Federal Constitution, nor of Article 1, Section 9. of the Constitution of Pennsylvania, as depriving the defendant of his liberty or property without due process of law.—Comth. v. Shovlin, 16 D. & C. 549, Valentine, J.

(E) RIGHT OF PRIVATE PROPERTY

5. Due Process of Law.

3508, P. & L. III.; Quar. Dig. III. 344.

Statute authorizing service on non-resident motor vehicle owners in accident cases by serving Secretary of Revenue and sending copy of process to defendant's last known address by registered mail held not denial of due process.—**Carr v. Tunis,** 4 Fed. Supp. 142, Watson, D. J.

7. Eminent Domain; Public Purpose.

3517, See P. & L. III.; Sup. V. 681.

Article XVI, Section 8, of the Constitution, imposes consequential damages on municipal and other corporations and individuals invested with the privilege of taking property for public use, but the Commonwealth is not mentioned in this article, and therefore no such liability is imposed on the State by the Constitution.—Soldiers and Sailors Memorial Bridge, 308 Pa. 487, Kephart, J. See 36 Dau. 240, Hargest, J.; 162 Atl. 309.

Damage that is merely consequential upon a change in grade of a street does not constitute a taking of property within the provisions of Article I, Section 10, of the Constitution, and are a matter of legislative grace and not of right.—McGarrity, Admr., Aplnt., v. Comth., 311 Pa. 436, Kephart, J.; 166 Atl. 895.

A person has a private right of property in his holdings and that private right of property cannot be invaded by either the Commonwealth or the city without compensation being made.—Paasch v. Penna. State Harbor Com., 15 Erie **300, Rossiter, P. J.**

10. Municipal Regulations.

3534, See P. & L. III.

The exercise by a city of the third class of the power granted to it by Acts of June 27, 1913, P. L. 568, and May 27, 1919, P. L. 310, to prevent construction of passageways for self-propelled vehicles "over and across sidewalks" in a congested section of the business district in such city, does not deprive the owner of a property which fronts on a street in such section, of a valuable property right without due process of law in contravention of the Fourteenth Amendment of the Constitution of the United States, where there is vehicular ingress to and egress from such property on a street not in the restricted section. — Farmers - Kissinger Market House Co., Inc., Aplnts., v. Reading, *et al.*, 310 Pa. 493, Maxey, J.; 165 Atl. 398.

A municipal ordinance which prohibits the erection of further gasoline filling stations in a single block, where four such stations and a garage are already in operation, is discriminatory and unconsttiutional.—**Coane v. City of Phila., et al.,** 16 D. & C. 159, Ferguson, P. J.

(G) IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

1. General Rules.

3539, P. & L. III.; Quar. Dig. III. 344.

If the lien of a mortgage has attached to a property, a later statute is unconstitutional and void, in so far as it would, if sustained, impair that lien.—Scranton Lack. Trust Co., to Use, v. Scranton Lack. Trust Co., Guardian, *et al.*, 310 Pa. 125, Simpson, J.; 165 Atl. 42.

A statute impairing the obligation of a contract the enforcement of which would be against public policy, under existing conditions, does not violate Article I, Section 10, of the Constitution of 1874, prohibiting legislation impairing the obligation of existing contracts. The Act of May 18, 1933, P. L. 826, permitting a Court of Common Pleas in a meritorious case to stay a writ of execution against a residence or farm occupied by the owner, does not violate Article I, Section 10, of the Constitution of 1874, since it woud be inequitable and against public policy to enforce the contract waiving stay of execution, under the emergency conditions existing at the time of its passage.—**Brodt, et ux., v. Price,** 19 D. & C. 574, Shull, P. J.

4. Retrospective Laws.

3565, See P. & L. III.; Sup. V. 683.

The General Assembly may legislate retroactively without constitutional objection, except in penal matters or where such legislation impairs the obligation of contracts.—**Derbyshire's Estate,** 16 D. & C. 200, Lamorelle, P. J.

II. THE LEGISLATURE

(A) LEGISLATIVE POWER

1. In General.

3576. See P. & L. III.; Sup. V. 685.

For a full discussion of the power of the Legislature over appropriations, distinguishing between appropriations for ordinary expenses of government and preferential appropriations for charities, hospitals, normal schools, unemployment relief, etc., see Comth., *ex rel.* Schnader, v. Liveright, Secretary of Welfare, *et al.*, 308 Pa. 35, Kephart, J.; 161 Atl. 697.

The means to be employed to promote the public safety are primarily in the judgment of the legislative branch of the government, and so long as the means have a substantial relation to the purpose to be accomplished, and there is no arbitrary interference with private rights, the courts cannot interfere with the exercise of the power by enjoining regulations made in the interest of public safety which the legislature has duly enacted.—Farmers-Kissinger Market House Co., Inc., Aplnt., v. Reading, *et al.*, 310 Pa. 493, Maxey, J.; 165 Atl. 398.

The Legislature, in the exercise of its police power for the promotion of the public welfare, may prescribe the qualifications to be required of persons in order that they may be authorized to engage in the practice of certain professions or occupations requiring special knowledge or skill, or intimately affecting the public welfare. The licenses awarded to such persons may be revoked in the interest of the public welfare for good cause shown.—Magill v. Dept. of Public Instruction, 37 Dau. 251, Wickersham, J.

2. Delegation of Power.

3579, See P. & L. III.; Sup. III. 365.

The Act of April 28, 1903, P. L. 332, as amended by the Act of April 7, 1927, P. L. 161, requiring the consent of the state council of education to the annexation of territory to a municipality, is constitutional and does not violate Article II, Section 1, of the Constitution, relating to the delegation of legislative power, nor Article III, Section 20, relating to special commissions. The Act of 1903, as amended, contains no delegation of legislative functions. The function of the Legislature is to make laws and law is a "rule of action." The fact that the state council of education must give its consent to annexation, is not a law, but a direction as to when the law shall become operative. The Legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make its own action depend. Mr. Chief Justice Frazer filed a dissenting opinion.—Baldwin Township's Annexation; Baldwin Township's Appeal, 305 Pa. 490, Maxey, J. Affirming Q. S. Allegheny County; 158 Atl. 272.

The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. —Gima, Aplnt., v. Hudson Coal Co., 310 Pa. 488, *per curiam;* 165 Atl. 850. To same effect, see Shott, Aplnt., v. Hudson promisee, at the instance of the promisor, has done, forborne or undertaken to do anything real, or whether he has suffered any detriment, or whether in return for the promise he has done something that he was not bound to do or has promised to do some act or has abstained from doing something.—Union Trust Co. v. Long, Aplnt., 309 Pa. 470, Linn, J.; 164 Atl. 346.

The Act of April 18, 1929, P. L. 549, as amended by the Act of June 23, 1931, P. L. 1185, relating to the matter of voting machines, does not offend against Section 20, of Article III, of the Constitution, which provides that the Legislature shall not delegate to any special commission any power to make, supervise or interfere with any municipal improvement, money, property or effects, or to perform any municipal function whatever.—Clark, *et al.,* Aplnts., v. Beamish, *et al.,* 313 Pa. 56, *per curiam;* 169 Atl. 130.

The Department of Labor and Industry may, with the approval of the Industrial Board, under Section 2214 (c), of the Administrative Code of 1929, promulgate a rule requiring manufacturers using hair in articles within the provisions of the Act of June 14, 1923, P. L. 802, as amended by the Act of April 14, 1925, P. L. 237, to state on tags attached to such articles the kind of hair used and, if two or more kinds, the percentage of each, under the authority of Section Nine of the act; such a rule is a reasonable enforcement of Sections Six and Seven of the statute and does not amount to delegation of legislative power to an executive officer.—**Tags on Bedding and Upholstery, In Re,** 17 D. & C. 141, Moss, Dep. Atty.-Gen.

(C) POWERS OF EACH HOUSE

1. In General.

3583, P. & L. III.; Sup. V. 687.

A committee appointed by a branch of the State Legislature to investigate the relations existing between public utility companies and the Public Service Commission has no authority to require the production of the personal bank records of a member of the commission against whom no charges have been preferred, unless it is shown that the purpose is to secure evidence enabling the committee to recommend remedial legislation on the subject involved. The power to issue a subpoena conferred upon each branch of the General Assembly by the Resolution of June 13, 1842, P. L. 491, includes the right to issue a subpoena duces tecum. The Senate of Pennsylvania is a continuing body, and its committees therefore have authority to act during a recess of the Legislature. An investigation is not legislation within the meaning of Article III, Section 25, of the Constitution of Pennsylvania, restricting legislation at a special session of the General Assembly to those subjects designated in the Governor's proclamation calling the session, and either branch of the Legislature may properly appoint a committee to conduct an investigation of a subject not mentioned in the Governor's call.—**Shelby v. Second Natl. Bank of Uniontown,** 19 D. & C. 202, Hudson, P. J.

III. LEGISLATION

(A) PASSAGE OF BILLS

3585, See P. & L. III.; Quar. Dig. III. 344.

The reading of bills, in the course of their consideration, is a legislative function. The signing of them by the presiding officer, prior to their being certified to the other house or to the Governor, is likewise a legislative function. —**Constitution Defense League v. Shannon, et al.,** 34 Dau. 267, Hargest, P. J. In determining whether an Act of Assembly, passed at a special session, is constitutional, the court must determine whether it is germane to the subject stated in the Governor's call. His entire proclamation must be construed to answer that question.—**Comth., ex rel. Atty-Gen., v. Liveright,** 35 Dau. 179, Hargest, P. J.

(B) FORM OF BILLS

3586, See P. & L. III.; Quar. Dig. III. 344.

The Act of June 7, 1917, P. L. 429, relating

to the descent and distribution of the real and personal property of persons dying intestate is constitutional. The title to this act is immediately followed by a "table of contents" which for constitutional purposes should be considered as belonging to the title, and the inclusion of "Section 3. Widow's share in lieu of dower; share in land aliened by husband" is sufficient notice of the subject matter of the act.—Brdigeford v. Groh, *et ux.*, Aplnts., 102 Super. Ct. 138, Keller, J. Affirming C. P. No. 2, Philadelphia County.

The Act of July 18, 1919, P. L. 1049, entitled "an act authorizing * * * commissioners * * * to erect a Soldiers and Sailors Memorial Bridge * * * providing for acquiring any property necessary by eminent domain, and making an appropriation to carry out the provision of this act," gives no notice in its title that consequential damages can be collected from the Commonwealth erecting the bridge for injuries caused by a change of grade of a street occupied by the bridge, to an abutting owner of property, who claimed that his property was damaged by interference with access and diminution of light, and is unconstitutional.—Soldiers and Sailors Memorial Bridge, 308 Pa. 487, Kephart, J. See 36 Dau. 240, Hargest, J.; 162 Atl. 309.

An act is not unconstitutional because it devolved duties upon certain officers without due notice to them in the title, where their duties would naturally come within the duties specified in the act.—Comtr., *ex rel.* Schnader, v. Liveright, Secretary of Welfare, *et al.*, 308 Pa. 35, Kephart, J.; 161 Atl. 697.

The Act of February 21, 1873, P. L. 147, providing for the erection of water works in Sewickley Borough by commissioners, does not violate the constitutional amendment of 1864, P. L. 1054, providing that the subject of a bill must be stated clearly in the title, in so far as it authorizes the supplying of water outside the limits of Sewickley Borough, the title of the act not indicating the territory to be supplied.—Edgeworth Water Co., Aplnt., v. Sewickley Boro, *et al.*, 309 Pa. 425, Schaffer, J.; 164 Atl. 523.

Article III, Section 3, of the State Constitution, does not require the title of a statute to be an index to its contents, but presupposes a reasonably inquiring state of mind, which will follow the trail indicated by the main part of a title into the body of the act. For the purpose of legislation, a reasonable classification of subjects is permissible, but is not permitted where the classification is arbitrary or is a mere excuse for evading the constitutional provision.—Comth. v. Great American Indemnity Co., 312 Pa. 183, Simpson, J.; 167 Atl. 793.

Where a statute provides for compensation by the Commonwealth for consequential damages by reason of the taking of land, the legislative intent so to do must be clearly set forth in the title of the act.—McGarrity, Admr., Aplnt., v. Comth., 311 Pa. 436, Kephart, J.; 166 Atl. 895.

Under Article III, Section 3, of the Pennsylvania Constitution, a statute is unconstitutional if its subject is not clearly expressed in its title. The title, however, need not embody all the distinct provisions of a bill in detail, nor serve as an index or digest of its contents. It is sufficient if the title fairly gives notice of the real subject of the act so as reasonably to lead to an inquiry into what is contained in the body of the bill.—Gulf Refg. Co. v. School District of Phila., Aplnt., 109 Super. Ct. 177, Parker, J.; 167 Atl. 620.

The Act of April 27, 1927, P. L. 398, which amends sub-sections four and five of Section one of the Act of July 9, 1901, P. L. 614, is unconstitutional except as it relates to the service of certain process in actions at law against foreign corporations. The provision of an amendatory act, which comes under the scope of the title of the act amended, need not be referred to in the title of the amendatory act. Where, however, the title of the amendatory act states with accurate phrasing that its object is confined to but one branch of the subject, it cannot include some other.—First National Bank of Johnstown v. Teachers Protective Union, Aplnt., 109 Super. Ct. 467, Trexler, P. J.; 167 Atl. 435.

In determining whether the title of an act satisfied the requirements of Article III, Section 3, of the Constitution of Pennsylvania, it is necessary to take into consideration the titles of all previous statutes amended by the act under consideration and mentioned in its title. The title of the Act of April 26, 1929, P. L. 829, sufficiently expresses its subject within the requirements of Article III, Section 3, of the Constitution of Pennsylvania.—**Comth. v. Cutchall, et al.,** 16 D. & C. 283, Bailey, P. J. Though a statute may have many provisions

for carrying out its unified subjects, there is no violation of the restrictions of Art. III, Sec. 3, of the Constitution of 1874, if those provisions are all connected with and germane to the one general subject. A title of an act need only name the real subject of the legislation and designate that subject with sufficient clearness so that one of a "reasonably inquiring state of mind" would be put on inquiry as to the body of the act.—**Constitution Defense League v. Waters,** 36 Dau. 291, Hargest, P. J. Act June 9, 1931, amendment to General County Act of May 2, 1929, P. L. 1278, giving counties authority to lease land for aviation field purposes, and to appropriate moneys, is not unconstitutional as lacking title to show purpose. Maintenance of airports having been declared a public function, title of act was notice that it covered legislation affecting counties, and satisfies constitutional requirement. County has right and authority to appropriate county moneys to assist included city, Wilkes-Barre, in maintaining air field. Airport in modern city essential for commercial opportunities through air commerce.—**Reinhart v. MacGuffie,** 28 Luz. 3, Jones, J.

(D) LOCAL, SPECIAL AND CLASS LEGISLATION

1. Relating to Counties, Cities, Etc.

3623, See P. & L. III.; Quar. Dig. III. 349.

A county is merely a subdivision of the state government. It is not a sovereign or an independent entity within the State. It cannot rebel against the acts of the sovereign power and refuse to obey them, unless such orders violate the fundamental law—the Constitution. A municipality cannot question the State's authority or discretion when dealing with affairs relating to government or the care of its property. Municipal corporations are agents of the State, invested with certain subordinate governmental functions for reasons of convenience and public policy. They are created, governed, and the extent of their powers determined by the Legislature, and subject to change, repeal, or total abolition at its will. They have no vested rights in their office, their charters, their corporate powers, or even their corporate existence. The fact that the action of the State towards its municipal agents may be unwise, unjust, oppressive or violative of the natural and political rights of their citizens, cannot be made the basis of action by the judiciary.—Comth., *ex rel.,* v. Walker, *et al.,* Aplnts., 305 Pa. 31, Kephart, J.; 156 Atl. 340.

The Act of May 6, 1929, P. L. 1157, relating entirely to a special procedure in favor of mortgagees created by the early acts, does not provide any additional special remedy, but merely gives another writ to enforce the same right; it does not violate Article III., Section 7, of the Constitution prohibiting the passage of any local or special law "authorizing the creation, extension or impairing of liens * * * or providing or changing methods for the collection of debts, or the enforcing of judgment, or prescribing the effect of judicial sales of real estate." The Act of 1929 does not change the nature of the action, which was to collect a mortgage debt on default. It merely changes the mode of procedure or the remedy. Procedure is a matter of statutory regulation, and the Legislature, unless prevented by the Constitution, may alter it at will, provided the obligations of the contracts are not impaired; but, where the remedy is not entirely taken away, no contract is impaired. Where an act concerns merely the mode of procedure, it is applied, as of course, to litigation existing at the time of its passage.—West Arch B. & L. Assn. v. Nicholas, 303 Pa. 434, Kephart, J. Affirming C. P. No. 1, Philadelphia County.

The Act of May 8, 1929, P. L. 1643, entitled "An act relating to the collection of city, county, school and poor taxes within the territorial limits of cities of the second class A," etc., is not special nor local legislation regulating and reclassifying counties, school districts and poor districts, contrary to Article III., Section 7, of the Constitution. The purpose of the Act of 1929 was to provide one collector to whom all city, county, school and poor taxes collectible from taxables within the territorial limits of cities of the second class A should be paid. The fact that there is at present but one city in the State whose population brings it within the second class A, is not sufficient to render the act special legislation as within the natural progress of events other cities may come into the class.—Comth., *ex rel.,* Aplnt., v. Matthews, 303 Pa. 163, Frazer, C. J. Reversing C. P. Lackawanna County.

The Talbot Act for the relief of the poor does not violate Article III, Section 7, of the Constitution, prohibiting any local or special law regulating the affairs of counties. The act appropriates funds to all political subdivisions charged with the care of the poor, and no one in particular is singled out.—Comth., *ex rel.* Schnader, v. Liveright, Secretary of Welfare, *et al.,* 308 Pa. 35, Kephart, J.; 161 Atl. 697.

Boroughs are regarded as a class apart from other municipal divisions and legislation applying to municipal claims in boroughs as distinguished from municipal claims generally is not special legislation.—Borough of New Wilmington v. Sinclair Estate, *et al.*, 105 Super. Ct. 331, Trexler, P. J.; 161 Atl. 461.

Under the terms of the Act of April 26, 1929, P. L. 842, no expenses of the commission appointed thereby, incurred subsequent to Feb. 1, 1931, may be paid by the fiscal officers of the Commonwealth, although such expenses are for attendance at the convention of second class township supervisors or before the Legislature for the purpose of explaining and advocating the passage of bills presented by the commission in its report required by the act. The commission created by the Act of April 26, 1929, P. L. 842, is required thereby to make its report to the Legislature not later than Feb. 1, 1931, and the submission of that report concludes its work; it is under no duty to appear either before the Legislature or at a convention of township supervisors in an effort to explain, justify or advocate the passage of the legislation proposed by it.—**Commission for Revision of Township Law,** 15 D. & C. 24, Schnader, Atty.-Gen.

The Acts of April 7, 1927, P. L. 148, and April 11, 1929, P. L. 508, relating to the poor district of Clinton County, are not within the prohibition of the Constitution of Pennsylvania, Article III., Section 7, and are valid enactments. Article III., Section 7, of the Constitution, does not prohibit local or special legislation relating to poor districts, which are quasi-municipal corporations distinct from any of those enumerated in that section. In construing a constitutional provision, the courts may not add thereto or supply words omitted in order to work out a thought which the people themselves had the opportunity to express had they so desired. A statute cannot be declared unconstitutional unless there is such a clear usurpation of a power prohibited as to leave no reasonable doubt, and the burden to show a violation of the Constitution is on him who alleges the invalidity of the act.—**Loganton Boro Poor Dist. v. Clinton Count,** 15 D. & C. 280, Baird, P. J.

The Act of 1929, P. L. 549 (voting machines), as amended by the Act of 1931, P. L. 1185, does not violate Art. 3, Section 7, of the Constitution of 1874, providing that there shall be no local or special law regulating the affairs of counties, cities, townships, wards, boroughs or school districts, for the act is general in its application.—**Commissioners of Phila. v. Beamish, Secy. of Comth. of Penna.,** 36 Dau. 172, Wickersham, Chancellor.

Act of May 29, 1931, known as the Water Supply District Law, is within the prohibition of Sec. 1, XIV, amendment to the Federal Constitution; conflicts with Art. I, Sec. 2; Art. II. Sec. 1; and Art. IX, Sec. 1, of the State Constitution; would defeat the protection of rights of property guaranteed under our system of government and is, therefore, inoperative, unconstitutional, and of no effect. Such act also violates Art. III, Sec. 20, State Constitution, as to delegation of power in supervising municipal improvements, levy of taxes and municipal functioning. It does not legislate for a municipality already in existence, but aims to create a new municipal corporation circumventing and preventing other municipalities already in being, radical departure from long established policy in Pennsylvania as to municipalities, and creation of a municipality without voice or vote of the people.—**Incorporation Wyoming Val. W. Sup. Dist., In Re,** 27 Luz. 191, McLean, J.

That state officials proposed to demand payment of state's deposit from defunct depository bank and its surety and to subrogate surety to state's right against band held not to violate constitutional provision against releasing corporation's obligations to Commonwealth.—**Stewart v. Natl. Sur. Co., et al.,** 1 Fed. Supp. 972, Welsh, D. J.

2. Legislation Affecting Classes of Persons.

3639, See P. & L. III.; Quar. Dig. II. 301.

The Act of May 6, 1925, P. L. 526, which levies an eight mill tax upon the gross premiums received by insurance companies, but excepts companies doing business on the mutual plan, without any capital stock and purely mutual benefit associations, does not violate the uniformity clause of the State Constitution, or the Fourteenth Amendment of the Federal Constitution, owing to the differences in the companies.—Comth. v. Girard Life Ins. Co., Aplnt., 305 Pa. 558, Schaffer, J. Affirming C. P. Dauphin County; 158 Atl. 262.

The Act of May 1, 1929, P. L. 1216, providing for the licensing of real estate brokers, is not unconstitutional as special legislation or as violating equal rights granted by the Constitution because it exempts from its operation attorneys and justices of the peace, real estate brokers being a proper subject of classification.—Young, Aplnt., v. Dept. of Pub. Inst., 105 Super. Ct. 153, Gawthrop, J.; 160 Atl. 151.

The Act of March 10, 1927, P. L. 27, and its amendment of May 8, 1929, P. L. 1681, in so far as they relate to the destruction of trees and plants in order to protect other plants from pests or infection, constitute a valid exercise of the police power of the State in aid of that class of property which, in the judgment of the Legislature, is of greater value to the public.—**Comth. v. Hawbaker,** 17 D. & C. 253, Davidson, P. J.

4. Elections; Courts, Corporations.

3642, See P. & L. III.; Quar. Dig. II. 304.

The Voting Machine Act of April 18, 1929, P. L. 549, as amended by the Act of June 23, 1931, P. L. 1185, applies uniformly to all municipalities in the State, and is therefore not such local or special legislation regulating municipal affairs as is forbidden by Art. III, Sec. 7, of the Consti-

tution.—Clark, *et al.*, Aplnts., v. Beamish, *et al.*, 313 Pa. 56, *per curiam;* 169 Atl. 130.

The Act of June 23, 1931, P. L. 931, establishing a separate Orphans' Court for Lehigh County, is constitutional and is not local or special legislation. The power of the Legislature was not exhausted by the Judicial Apportionment Act of May 21, 1931, P. L. 167, so as to render it impotent to create a new court until after the decennial census of 1940.—**Comth., ey rel., v. Wehr,** 14 Leh. 370, Reno, P. J.

5. Liens. —

3644, See P. & L. III.; Sup. VII. 559.

The Act of April 22, 1927, P. L. 351, exempting ice cream cabinets, ice cream containers and appurtenances thereto, leased, loaned, hired or conditionally sold, from levy or sale on execution or distress for rent does not violate the provisions of Article 3, Section 7, of the Constitution of Pennsylvania of 1874. A landlord has no lien upon the goods on the leased premises except such as arises after a distress is made, and the act cannot be said to impair any lien. It is a reasonable exercise of legislative power to provide that after certain preliminaries of notice to the landlord are complied with, that ice cream cabinets and the appurtenances accompanying them shall not be liable to distress for rent.—Rieck-McJunkin Dairy Co. v. Sachs Real Estate Co., Aplnt., 102 Super. Ct. 293, Trexler, P. J. Affirming C. P. Allegheny County.

The Act of April 22, 1903, P. L. 255, in so far as it requires as a condition precedent to any contract for public work the execution of a bond for the protection of all sub-contractors, is valid and constitutional and is not special legislation providing or changing methods for the collection of debts, in violation of Article III, Section 7, of the Constitution of 1874.—Greenfield, Inc. (Arthur), v. Great Amer. Indemnity Co., 16 D. & C. 225, Gordon, Jr., J. The Act of May 23, 1907, P. L. 228, entitled "An Act concerning liens fo manufacturers and throwers of cotton, woolen and silk goods," as amended by the Act of May 20, 1913, P. L. 271, is unconstitutional as special or class legislation, in so far as it attempts to give a lien on goods placed in the hands of manufacturers for work done upon other goods in the past, the possession of which had been delivered.—**Alpha Silk Co. v. Hatco Silk Throwing Co.,** 33 Lack. Jur. 130, Lewis, J.

(E) NOTICE OF LEGISLATION

3646, See P. & L. III.; Quar. Dig. IV. 79.

For a full discussion of the right of the Governor to call a special session of the Legislature, and of the matters which the Legislature may pass upon at such special session, see Comth., *ex rel.* Schnader, v. Liveright, Secretary of Welfare, *et al.*, 308 Pa. 35, Kephart, J.; 161 Atl. 697.

The call of the Governor for a special session of the Legislature contained no suggestion as to public utility regulation, improper conduct of public utility companies, or of public service commissioners. The Legislature, during the special session, passed an act which made an appropriation to cover the expenses of a committee of the Senate to investigate into matters relating to the Public Service Commission. In a taxpayers suit to enjoin payment of any of the funds thus appropriated, it was held, that the act violates Section 25, of Article III, of the Constitution of 1874, which prohibits the enacting, at a special session, of any legislation not within the call of the Governor.—**Williams v. Martin, et al.,** 36 Dau. 399, Hargest, P. J.

(H) CHANGING COMPENSATION OF PUBLIC OFFICERS

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

The Legislature cannot indirectly bring about a reduction of judicial salaries. Where a judicial district consisting of three counties is divided into three judicial districts, the salary of the president judge of the original district previously fixed for a term cannot be decreased, when he becomes president judge of that one of the districts bearing the same number as that of the district so divided.—Bailey v. Waters, Aud.-Gen., *et al.*, Aplnts., 308 Pa. 309, *per curiam;* 162 Atl. 819.

The legislature, under the 13th section of Article III, of the Constitution, is powerless to increase or diminish salaries of public officers after their election and cannot delegate to the Court of Common Pleas in certain counties the power to regulate such salaries. To hold such legislation constitutional would be permitting the legislature to do by indirection that which the constitutional mandate provides it may not do.—Drake's Appeal, 106 Super. Ct. 383, Gawthrop, J.; 163 Atl. 37.

The salary of a county superintendent of schools who was elected or appointed to office prior to December 13, 1930, cannot be changed during the term on account of any change of population in his county as shown by the United States Census of 1930. County superintendents of schools are public officers within the meaning of Art. III., Section 13, of the Constitution of Pennsylvania. The status of a county as to population having been fixed remains so until it is officially changed by proper procedure. Any new classification would date as of December 13, 1930, the day on which the Census Bureau of the United States, Department of Commerce, officially promulgated the 1930 census figures for Pennsylvania.—**In Re School Salaries,** 79 Pitts. 121, O'Hara, Dep. Atty.-Gen. The salary of one commissioner as president judge of a judicial district embracing more than

one county may not be reduced by the division of the district and the designation of a single county as a judicial district bearing the same number as that of the former district so divided, although under a general statute previously enacted the salary of the president judge of the new district would be less than the salary previously received by him.—**Bailey v. Waters, Aud.-Gen.,** 16 D. & C. 160, Hargest, P. J. Where an Act of Assembly creates a county office with a fixed salary, and thereafter by amendment increases the salary of the position to a sum certain, the incumbent of the office is entitled to the increased salary.—**Broniszewski, v. County of Lackawanna,** 33 Lack. Jur. 33, Leach, J. Article III, Section 13, of the Constitution of Pennsylvania, which 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, does not apply to a municipal ordinance.—**Exceptions to the Report of the Borough Auditors for the Year 1931, In Re,** 17 Cambria 25, Greer, J. A borough ordinance is not a "law" within the meaning of Article 3, Section 13, of the Constitution of 1874, nor is a burgess a "public officer" as that term is used in the constitutional provision.—**Craft v. South Philipsburg Town Council,** 18 D. & C. 390, Fleming, P. J. The provisions in the General Appropriation Bill of 1933 which attempt to limit the salaries of state employes are unconstitutional because they violate Article III, Section 3, and Article III, Section 15, of the Constitution.—**Formal Opinion No. 81,** 37 Dau. 197, Schnader, Atty.-Gen.

(I) APPROPRIATIONS

3655, See P. & L. III.; Quar. Dig. III. 352.

Article III, Section 18, of our State Constitution, forbids state aid to institutions affiliated with a particular religious sect or denomination, or which are under the control, domination or governing influence of any religious sect or denomination. That patients are received in a hospital without regard to their religious affiliations; that ministers and rabbis of other denominations than the one which dominates and controls the hospital, are permitted to visit the patients therein, and perform religious rites to them, if desired; and that some, or even a majority, of the directors, the doctors and employees of the hospital, do not belong to the sect which has such governing influence, are matters to be considered in determining whether or not a hospital is a sectarian institution, but they are not necessarily controlling, and cannot, in and of themselves, defeat the provision of our State Constitution.—Constitutional Defense League v. Waters, *et al.,* 308 Pa. 150, Simpson, J.; 162 Atl. 216.

Legislation making appropriations for the relief of the poor is not an exercise of the police power.—Comth., *ex rel.* Schnader, v. Liveright, Secretary of Welfare, *et al.,* 308 Pa. 35, Kephart, J.; 161 Atl. 697.

The Act of June 26, 1931, P. L. 106, which appropriates a specified maximum to an executive department to be paid to certain hospitals therein designated in specified amounts for the maintenance of such hospitals by reimbursing them at a fixed rate for the cost of medical services rendered by them to described persons entitled to such service free of charge, is not unconstitutional in violation of Article III, Section 3, of the Constitution, providing that no bill, except general appropriation bills, shall be passed containing more than one subject.—Constitutional Defense League, Aplnt., v. Waters, 309 Pa. 545, Linn, J.; 164 Atl. 613.

The St. Francis Hospital, of Pittsburgh, is a denominational or sectarian institution, under the domination, control and governing influence of a particular religious sect or denomination. The Act of May 3, 1929, appropriating money to the St. Francis Hospital, is unconstitutional and void.—**Constitution Defense League v. Waters, Auditor General, et al,** 34 Dau. 238, Wickersham, Chancellor. Article III, Section 18, of the Constitution of Pennsylvania, does not change nor affect the system of poor relief long established in this Commonwealth. An appropriation by the Legislature for feeding or clothing persons or communities temporarily in need of financial assistance, by reason of unemployment, sickness, advanced age or otherwise, is forbidden by Article III, Section 18, of the Constitution of Pennsylvania, whether such appropriation is made directly or through a State department, commission or other agency, or to a municipal or private corporation, for distribution to such persons or communities. A political subdivision of the Commonwealth, whether a county, city, borough, township or poor district, is a "community" within the meaning of Article III, Section 18, of the Constitution.—**Appropriation for Unemployment Relief, In Re,** 15 D. & C. 673, Schnader, Atty.-Gen.; 79 Pitts. 611.

IV. THE EXECUTIVE

(A) PRIVILEGES OF THE GOVERNOR

3663, See P. & L. III.; Quar. Dig. II. 309.

A committee constituted by resolution of the Senate may not call before it for examination and cross-examination the Governor of the Commonwealth, nor should he voluntarily appear before such a committee and submit to examination by it. The Governor may submit in writing to a legislative committee such information as he desires and may voluntarily appear in person before the committee to read his statement.—**Appearance of the Governor Before Senate Investigating Committee,** 15 D. & C. 273, Schnader, Atty.-Gen. Under the Acts of March 5, 1791, 3 Smith's Laws 6, and February 19, 1873, P. L. 36, 57, the Gov-

ernor's discretion in the appointment of notaries is without limit. He is the judge not only of the persons to be appointed, but of the number also. He could refuse to appoint any particular person for any reason he might have, or for no reason at all. The same broad discretion applies to reappointments. Courts have no authority to command the Governor to appoint any particular person or to appoint any notary public. If the courts cannot restrain the Governor, they cannot restrain his appointee acting under his instructions. Fundamentally the Governor, whenever engaged in any duty of his office, is exempt from any process of the courts. —**Hamilton v. Pinchot, et al.,** 34 Dau. 363, Wickersham, J. Whether the General Assembly ought to be called together in extraordinary session is always a matter for the governor alone. How it shall be called, and what notice of the call is to be given, are also for him alone. But under the Constitution, when the General Assembly is convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session.—**Special Session of General Assembly, In Re,** 79 Pitts. 601, Schnader, Atty.-Gen.; also reported in 15 D. & C. 687. To same effect, see **In Re New Legislation,** 79 Pitts. 615. Where the Governor has the right to determine the emergency and to fix the time of a special session, he is limited to presenting to the Legislature the general subjects upon which the emergency requires legislation and cannot, by a multitude of details, tie the legislative mind down to such specific provisions as he thinks should be enacted into law.—**Comth., ex. rel. Atty.-Gen., v. Liveright,** 35 Dau. 179, Hargest, P. J.

(B) EXECUTIVE APPOINTMENTS TO FILL VACANCIES

4. Pardons and Remission of Forfeitures.

3666, See P. & L. III.

The Court of Quarter Sessions has no power to remit a fine after the completion of sentence. That power, under Sec. 9, Article IV, of the Constitution, is vested in the Governor.—**Comth. v. Smith,** 48 Montg. 164, Knight, J. The Governor's right to commute a sentence imposed, upon recommendation of the State Board of Pardons, is conferred upon him by the Constitution, and may not, therefore, be limited by act of the legislature.—**Parole from State Penitentiary, In Re,** 17 D. & C. 158, Schnader, Atty.-Gen. A provision in a general appropriation bill fixing the maximum salaries to be paid designated offices out of the amount so appropriated is not an appropriation, but an attempt to deprive the executive board of its powers under Section 709, of the Administrative Code of 1929, and is therefore invalid under Article III, Sec. 15, of the Constitution of 1874. The Governor may, under Article IV, Sec. 16, of the Constitution of 1874, disapprove a provision of the general appropriation bill purporting to fix the maximum salaries of certain State officers, and approve the remainder of the bill.—**Riders in Appropriation Bills,** 19 D. & C. 122, Schnader, Atty.-Gen.

V. THE JUDICIARY

(A) SCOPE OF JUDICIAL POWERS

1. In General.

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

In all civil litigation, the trial courts have the power to direct the procedure, except in such particulars as are controlled by constitutional or statutory provisions.—Shapiro v. Phila. (Aplnt), *et al.,* 306 Pa. 216, Simpson, J. Affirming C. P. No. 3, Philadelphia County; 159 Atl. 29.

In our fundamental scheme of government, courts will not intervene to hinder or influence the progress of legislation in any of its steps. The people must rely on the honesty of the members of the Legislature for the exercise of the powers conferred by the Constitution on the legislative department.—**Constitution Defense League v. Shannon, et al.,** 34 Dau. 267, Hargest, P. J.

(D) COURTS OF COMMON PLEAS

2. Judges.

3683, See P. & L. III.

The Secretary of the Commonwealth cannot legally accept nomination petitions for justice of the Supreme Court or judge in the Common Pleas and County Courts of Allegheny County of anyone who is not "learned in the law." This is required by the Constitution, as well as Acts of Assembly, and an affidavit as to eligibility for the office, as required by the Primary Act of July 12, 1913, P. L. 719, made by anyone not a lawyer is a false affidavit.—**Nomination Petitions, In Re,** 79 Pitts. 456, Schnader, Atty.-Gen. The omission of the phrase in the Pennsylvania Constitution of 1873 that the compensation of judges "shall not be diminished during their continuance in office," which all prior constitutions had contained, cannot, under the fundamental principles underlying the scheme of our government, be interpreted in such a way as to authorize the Legislature to reduce the salary of a judge, either directly or indirectly, by reapportioning his district, during his continuance in office. The Legislature may increase a judge's salary, but cannot decrease it during his term.—**Bailey v. Waters, Auditor Gen., et al.,** 80 Pitts. 41, Hargest, P. J.

(G) MAGISTRATES AND JUSTICES OF THE PEACE

3. Summary Conviction.

3691, See P. & L. III.; Sup. VII. 564.

The provisions of the Act of May 7, 1901, P. L. 132, amending Section 1, of the Act of June 25, 1895, P. L. 271, which allows an appeal on a summary conviction of disorderly conduct to the Court of Quarter Sessions without special allowance, is unconstitutional, being in conflict with Section 14, of Article 5, of the Constitution of the State of Pennsylvania.—**Comth. v. Campbell,** 47 Montg. 249, Corson, J. Under the provisions of Art. V, Sec. 14, of the Constitution, and those of the Act of 1876, P. L. 29, it is required that an allowance by the court, or judge thereof, upon cause shown as the prerequisite of an appeal in all cases of summary conviction.—**Comth. v. Wayne,** 14 Wash. 14, Brownson, P. J.; 6 Som. 361.

VIII. SUFFRAGE AND ELECTIONS

(A) THE RIGHT OF SUFFRAGE

2. Assessment and Payment of Tax.

3703, See P. & L. III.; Quar. Dig. III. 354.

The Act of May 13, 1931, No. 87, abolishes occupation taxes in counties of the second and third class, and in lieu thereof provides that such counties shall assess a poll tax of 50 cents on each resident or inhabitant in such county over the age of 21 years, which poll tax, it is provided, shall be collected by the treasurer and delinquent tax collector, with like powers, duty and authority as provided by law for the collection of taxes under the prior law. The Act of May 13, 1931, does not provide for a first certification of assessments to the county controller. An official certification of assessments from the board to either the county treasurer or the county collector of delinquent taxes, as provided in the act, is legal authority to issue tax receipts under such certification, and without such official certification they have no such authority—**Comth. v. Board for the Assessment and Revision of Taxes,** 79 Pitts. 453, Gray, J.

The Act of May 1, 1862, P. L. 450, governs the collection of taxes in Allegheny county and directs the county treasurer to give a receipt to any person on payment of the whole amount of taxes assessed against him. The Acts of May 13, 1931, P. L. 117, and May 22, 1933, No. 115, substituting the fifty cent poll tax for the occupational tax specifically provide that taxes shall be paid as "provided by law" and must be read in connection with the Act of 1861, which remains unrepealed. The purpose of a poll tax is to enable the one who pays it to vote, but nowhere in the statutes is there a suggestion that such tax may be paid independently of other taxes assessed against the same person. Until the Legislature sees fit to authorize separate payment of a part, the taxpayer must pay the whole, for the Act of 1861 so requires.—**Weil v. McGovern,** 81 Pitts. 379, Marshall, J.

3. Residence.

3705, P. & L. III.

The word "residence," as used in the constitutional and statutory provisions relating to the qualifications of an elector, is synonymous with "domicile," involving both fact and intention, and means the place to which he intends to return when away and where he intends to make his permanent or true home and to remain indefinitely, and not merely temporarily or for some special purpose.—**Comth., ex rel., v. Roblyer,** 17 D. & C. 729, Culver, P. J.

IX. TAXATION AND FINANCE

(A) THE RIGHT TO TAX

1. Taxation an Inalienable Right.

3715, P. & L. III.; Quar. Dig. III. 354.

The power to impose tax for the support of the government with the power of classification still belonging to the legislature under the constitution, the selection of the subjects thereof, their classification and the method of collection to be provided, are purely legislative.—**Jones Estate,** 23 Del. 593, Hannum, P. J.

2. Uniformity of Taxation.

3716, P. & L. III.; Quar. Dig. III. 354.

The Act of June 1, 1889, P. L. 420, as amended by the Act of April 25, 1929, P. L. 662, imposing a tax on the gross receipts of railroads, pipe lines, conduits, steamboats, street railways, or other devices for the transportation of freight, passengers, baggage or oil, except taxicabs, motor buses and motor omnibuses, does not violate the uniformity clause of Article IX, Section 1, of the State Constitution, by reason of the exceptions mentioned, the classification affected by the exceptions being reasonable and not arbitrary.—Comth. v. Lukens, Aplnt., 312 Pa. 220, Maxey, J.; 167 Atl. 167.

A license tax on transient retail merchants is not void for lack of uniformity because it imposes the same tax on all regardless of the size of the business or amount of business done.—**Kinderman v. City of Phila., et al.,** 19 D. & C. 71. Alessandroni, J.

4. Local and Special Legislation.

3727, P. & L. III.

The ordinance of the City of Philadelphia of May 26, 1927, requiring persons conducting business as transient retail merchants to obtain a license from the city and imposing a penalty of fine or imprisonment for failure to do so, and the empowering Act of June 12, 1931, P. L. 535, repealing and substantially re-enacting the Act of May 24, 1923, P. L. 442, as amended by the Act of May 13, 1925, P. L. 642, are valid and constitutional as tax measures. Transient retail merchants comprise a proper subject of classification as distinguished from retail merchants conducting a permanent business, since the latter are compelled to pay a tax during the entire year and to continue business during times of adverse conditions as well as of favorable conditions induced by seasonal influences, whereas transient merchants do not usually make large investments and are not subject to the same fixed charges and overhead nor to the mercantile tax imposed by the Commonwealth.—**Kinderman v. City of Phila., et al.,** 19 D. & C. 71, Alessandroni, J.

(B) EXEMPTIONS FROM TAXATION

3. Institutions of Purely Public Charity.

3740, See P. & L. III.; Sup. VII. 566.

The word "purely" used in connection with the words "public charity" in Article IX, Section 1, of the State Constitution, must be construed in its popular sense as meaning "completely, entirely, unqualifiedly."—Harrisburg v. Trustees of Harrisburg Academy, Aplnt., 308 Pa. 585, Drew, J.; 162 Atl. 815.

A building, used as the men's social service branch of the Salvation Army, having a workroom in the basement, rest rooms, office and storeroom on the second floor, and two dormitories, dining room and kitchen on the second floor, was held to be entirely exempt from city taxes, for the reason that it is a purely public charity. The Salvation Army of Pennsylvania is a corporation, chartered in Lycoming County,

and operates in various cities throughout the State, many of its buildings being owned in fee. Its real estate is exempt from local taxation, being within the meaning of Article IX, Section 1, of the Pennsylvania Constitution, as amended, and the Act of March 17, 1925, P. L. 39. It is not in any way used for the purpose of raising revenue to be applied to a charity located elsewhere, but is used entirely for the purpose of rehabilitating and restoring homeless and destitute men to a feeling of self-respect and to aid them until such time as they may find employment.—**Salvation Army's Appeal, 81 Pitts. 383,** Rowand, J.

(D) MUNICIPAL DEBTS

1. Increase Without Popular Vote.

3751, See P. & L. III.; Sup. VII. 566.

The funding or refunding of a debt previously created and existing, is not an increase of that indebtedness, but merely a continuation thereof, and may be so issued without recourse to submission of the matter of such refunding to the electors.—Comth., *ex rel.,* v. Cannon, Aplnt., 308 Pa. 321, *per curiam;* 162 Atl. 277.

The Act of April 18, 1929, P. L. 549, as amended by the Act of June 23, 1931, P. L. 1185, does not, as applied to Philadelphia, violate Art. IX, Sec. 8, of the Constitution, limiting the total city debt, although it may be that a contract entered into by the Secretary of the Commonwealth for the purchase of voting machines for the city would result in creating a debt in excess of the constitutional limit, in which case such contract might be attacked as void.—Clark, *et al.,* Aplnts., v. Beamish, *et al.,* 313 Pa. 56, *per curiam;* 169 Atl. 130.

3. Ascertainment of Indebtedness.

3756, P. & L. III.; Sup. VII. 568.

In estimating the assessed value of property to determine the borrowing capacity of a municipality, the amount is not restricted to real estate, but the assessed value of occupations and professions must be included also. The net indebtedness of a municipality in determining its borrowing capacity includes all manner of debt due from it, floating and funded, less moneys in the treasury, and in sinking funds, liens and taxes and debts and obligations of every kind due to it and unpaid. Contracts for local improvements, the cost of which is to be borne wholly by the property benefited, form no part of the indebtedness of the municipality in determining its borrowing capacity.—Reidinger v. Ridley Park Boro, 23 Del. 464, MacDade, J.

(E) TAXATION FOR PAYMENT OF MUNICIPAL DEBTS

3757, P. & L. III.

Article IX, Section 10, of the Constitution of Pennsylvania, requiring a municipal division incurring indebtedness to provide for an annual tax to pay for same at or before the time of so doing does not invalidate all indebtedness of a township incurred without so providing for a tax at the time of incurring the debt. It provides only a mandatory rule of procedure which may be enforced by mandamus. Consequently, if the township recognizes the indebtedness by paying interest for some years, and subsequently issues a note to cover it, at the same time levying a tax to pay it, a taxpayer cannot thereafter enjoin its payment as a void debt.—Ohlinger, *et al.,* v. Maidencreek Twp. (*et al.,* Aplnt.), 312 Pa. 289, Kephart, J.; 167 Atl. 882.

XII. PUBLIC OFFICERS

(A) APPOINTMENT

3760, See P. & L. III.; Sup. VII. 569.

Where the appointment to public office is entirely within the governor's discretion, he may refuse to appoint for reasons best known to himself or for no reason, and what is true of original appointments is applicable to reappointments. A person is possessed of no right to be appointed a notary public, no matter how meritorious his appointment may be.—Harding, Aplnt., v. Pinchot, *et al.,* 306 Pa. 139, Frazer, C. J. Affirming C. P. Dauphin County; 159 Atl. 16.

XIV. COUNTY OFFICERS

(B) TERM OF OFFICE

3764, P. & L. III.; Quar. Dig. II. 311.

An election to fill a county office made vacant by the disqualification and ouster of the former office holder, is valid, though held within four years of the preceding regular election. The Act of May 2, 1929, P. L. 1278, as amended by the Act of June 9, 1931, P. L. 401, does not contravene Article XIV, Section 2, of the Constitution, which provides: "County officers shall be elected at the municipal elections and shall hold their offices for the term of four years * * * and until their successors shall be duly qualified; all vacancies not otherwise provided for, shall be filled in such manner as may be provided by law."—Comth., *ex rel.* Miller, Aplnt., v. Sommer, 309 Pa. 447, *per curiam;* 164 Atl. 515.

XVII. RAILROADS AND CANALS

(C) DISCRIMINATION

3808, See P. & L. III.; Sup. VII. 572.

The Constitution of Pennsylvania shows that the Commonwealth has adopted a policy, in its fundamental law, against charging, within the State of Pennsylvania, more for a shorter than

for a longer haul; and convenience and economic consideration to individual shippers cannot disturb that policy, nor can the court use it to interpret the plain language of the fundamental law.—**Comth., ex rel. Atty.-Gen., v. Central R. R. of N. J., et al.,** 35 Dau. 34, Hargest, P. J.

XVIII. AMENDMENT

3813, See P. & L. III.; Quar. Dig. II. 312.

Under Article XVIII, Section 1, of the Constitution, publication of an amendment to the Constitution must be made once a month for three months preceding the next general election in at least two newspapers in every county in which such newspapers are published. An interpretation which would limit the publication to one time three months previous to the election would not be in harmony with the obvious purpose of publication, which is to give the electors an abundant opportunity to be advised concerning the proposed amendment and to ascertain the policy of candidates for the General Assembly to be next afterwards chosen because they would have to pass upon the proposed amendment when it came before the assembly the second time.—Comth., *ex rel.* Atty.-Gen., v. Beamish, 309 Pa. 510, *per curiam;* supplemental opinion by Frazer, C. J.; 164 Atl. 615; 80 Pitts. 525.

A demurrer to a petition to require by an alternative writ of mandamus the Secretary of the Commonwealth to publish proposed amendments to the Constitution once a week for a period of three months prior to the general election in November was sustained and judgment was entered in favor of defendant, it being held that one publication "three months before the next general election in at least two newspapers in every county in which the newspaper shall be published" complied with Article XVIII, Section 1, of the Pennsylvania Constitution. The phrase "three months before the next general election" in Article XVIII, Section 1, of the Pennsylvania Constitution, is not ambiguous. The word "before" is plain and requires a publication "before" the three months begin, not during those months.—**Comth., ex rel. Schnader, v. Beamish, Sec. of Com.,** 80 Pitts. 375, Hargest, P. J., and Henry, P. J., S. P. Notice of proposed amendments to the Constitution of Pennsylvania must be given by publication in at least two newspapers, in every county in which such newspapers are published, by one advertisement appearing not less than three months before the next general election, as required by Article XVIII, Section 1, of the Constitution.—**Constitutional Amendments, In Re,** 80 Pitts. 336, O'Hara, Dep. Atty.-Gen. Constitution amendments may be proposed at special sessions of the General Assembly, even though their subject-matter is not included in the governor's proclamation. This for the reason that "constitutional amendments are not 'legislation,'" within the meaning of Article III, Section 25, of the Constitution.—**Special Session of General Assembly, In Re,** 79 Pitts. 601, Schnader, Atty.-Gen.; also reported in 15 D. & C. 687. To same effect, see **In Re New Legislation,** 79 Pitts. 615.

CONTEMPTS

I. WHAT CONSTITUTES CONTEMPT

(A) AS TO THE PROCEEDINGS IN WHICH COMMITTED

6. Disobedience of Decree for Payment of Money.

3823, See P. & L. III.; Quar. Dig. III. 361.

A petition for the discharge of a trustee, committed for failure to obey an order of the Orphans' Court directing repayment to the estate of moneys which he appropriated therefrom, will be refused, where petitioner testifies that he surrendered all his property in bankruptcy proceedings, that he has since received considerable sums as commissions on sales and has paid about $79,000 to persons whose claims were legally discharged but who were in want of the necessities of life, and where no restitution of the trust funds has been attempted, although petitioner has made payments on account of a discharged claim for the preparation of a family genealogy.—**Niccolls' Estate (No. 1),** 15 D. 7/8 C. 108, Dawson, P. J. Where an order has been entered requiring defendant, a corporation, to pay a certain sum to plaintiff, a copy of the decree being served upon the president and secretary of the company, attachment for contempt may properly issue against those officers, for failure to comply with the order after due notice and for permitting the money to be converted to their own use or to the use of the corporation instead of being paid in compliance with the decree.—**Colbert v. Edelstein & Bernstein, Inc., et al.,** 17 D. & C. 523, Smith, P. J.

9. Other Mandatory or Prohibitive Decrees.

3825, See P. & L. III.; Quar. Dig. II. 313.

Any crime of contempt was complete when defendant refused to answer questions propounded by Senate committee. But case involving refusal to answer questions already asked by Senate committee *held,* not ruled by Supreme Court opinion in