THE

QUARTERLY DIGEST

of

PENNSYLVANIA DECISIONS

THE ONLY OFFICIAL—AUTHORIZED—SUPPLEMENT

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.

Published Quarterly By

J. H. CABRERA

1024 Walnut Street, Philadelphia, Pa.

Phone Pennypacker 8690

consolidation when both suits are at issue.—Weil v. Irwin Ehrlich & Co., 11 D. & C. 379, Gordon, Jr., J.

CONSPIRACY

I. NATURE AND ESSENTIALS

3327, See P. & L. II.; Sup. V. 659; Quar. Dig. II. 283.

CONSTABLES

I. FEES AND COMPENSATION

(A) CONSTITUTIONAL RIGHTS IN RESPECT OF

3373, See P. & L. II.; Sup. VII. 527; Quar. Dig. II. 284.

A constable employed by a county treasurer to collect delinquent taxes, is entitled to receive only 5 per cent commission. If he charges 10 per cent the treasurer may recover the excess in *assumpsit* on his bond, under Sec. 13, Act of 1851.—Comth v. Houk, *et al.*, 96 Super. Ct. 363, Linn, J. Affirming C. P. Lawrence County.

Where a constable levies upon property of a defendant and fails to make sale thereof, he has no right of action against plaintiff for costs. He must look in the first instance to the property levied upon.—Lybarger v. Haupt, 9 Northumb. 6, Potter, P. J.

CONSTITUTION OF THE UNITED STATES

I. POWERS OF CONGRESS

3389, See P. & L. III.; Sup. V. 668; Quar. Dig. I. 318.

Under the second clause in Section 7, of Article 1, of the Constitution of the United States, a bill which is passed by both houses of Congress during the first regular session of a particular Congress and presented to the President less than ten days (Sundays excepted) before the adjournment of that session, but is neither signed by the President nor returned by him to the house in which it originated, does not become law in like manner as if he had signed it. The United States Constitution, in giving the President a qualified negative over legislation—commonly called a veto—entrusts him with an authority and imposes upon him an obligation that are of the highest importance, in the execution of which it is made his duty not only to sign bills that he approves in order that they may become law, but to return bills that he disapproves, with his objections, in order that they may be reconsidered by Congress.—Methow, *et al.*, v. U. S., 77 Pitts. 385, Sanford, J.; U. S. Supreme Court.

The House of Representatives, not having been in session when the bill was delivered to the officer or agent, could neither have received the bill and objections at that time, nor having entered the objections upon its journal, nor have proceeded to reconsider the bill, as the Federal Constitution requires; and there is nothing in the Constitution which authorizes either house to make a *nunc pro tunc* record of the return of a bill as of a date on which it had not, in fact, been returned.—Methow, *et al.*, v. United States, 77 Pitts. 385, Justice Sanford.

On a writ of *habeas corpus,* relator averred that he was arrested under a warrant by reason of an alleged contempt; and that, by reason of his refusal to disclose his private and individual affairs to the special committee, the United States Senate had illegally and without authority adjudged him to be in contempt. The return to the writ denied that the Senate had adjudged him in contempt and averred that the warrant by which he was held simply required that he be brought to the bar of the Senate to answer questions pertaining to the matter under inquiry, etc. The United States District Court discharged the writ, which order the Court of Appeals reversed. The United States Supreme Court reversed this order and affirmed the District Court.—Barry, *et al.*, v. U. S. *ex rel.* Cunningham, 77 Pitts. 401, Sutherland, J.; U. S. Supreme Court.

(A) SUFFRAGE AND ELECTIONS

1. Powers of the Senate.

3454, See P. & L. III.; Sup. I. 1090.

Article 1, Section 5, Clause 1, of the Federal Constitution, confers upon the United States Senate the power to judge of the elections, returns and qualifications of its members. This necessarily involves the ascertainment of facts, the attendance of witnesses, the examination of such witnesses, with the power to compel them to answer pertinent questions, to determine the facts and apply the appropriate rules of law, and, finally, to render a judgment which is beyond the authority of any other tribunal to review. In exercising this power the Senate may

appoint a committee to investigate and report, or itself take testimony. The jurisdiction of the Senate to adjudicate a claim to membership immediately attached when the applicant presented his credentials and claimed all the rights of membership. Whether, pending this adjudication, the credentials should be accepted, the oath administered, and the full right accorded to participate in the business of the Senate, was a matter within the discretion of the Senate. The temporary deprivation of equal representation which results from the refusal of the United States Senate to seat a member pending inquiry as to his election or qualifications does not deprive a state of its "equal suffrage" in the constitutional sense. In exercising the power to judge of the elections, returns and qualifications of its members, the United States Senate acts as a judicial tribunal, and the authority to require the attendance of witnesses is ni no wise inferior under like circumstances to that exercised in a court of justice. This includes the power to issue a warrant of arrest t ocompel such attendance. It was not necessary, as a prerequisite to the issue of a warrant of arrest, that a subpoena first should have been issued, served and disobeyed. If, in the exercise by the Senate of an indubitable power, judicial interference can be successfully invoked, it can only be upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law. —Barry, et al., v. United States ex rel. Cunningham, 77 Pitts. 401, Justice Sutherland.

II. FOURTEENTH AMENDMENT

(A) DUE PROCESS OF LAW

3430, See P. & L. III.; Quar. Dig. I. 318; II. 290.

Where a judgment *n. o. v.* has been entered for defendant because plaintiff's own case disclosed that he could not maintain his action, plaintiff cannot complain that when a jury renders a verdict on disputed facts the court cannot enter judgment *n. o. v.* without violating the 14th Amendment of the Federal Constitution.—Coffey v. The Maccabees, 292 Pa. 58, Schaffer, J. Affirming 91 Super. Ct. 136.

The Druggist and Pharmacist Act of May 13, 1927, P. L. 1009, and its predecessors, relate to a public business, and will not be held unconstitutional as in conflict with the 14th Amendment.—Liggett Co. (Louis K.) v. Baldridge, Atty.-Genl., *et al.*, 22 F. (2nd) 993, Dickinson, D. J. Reversed by the U. S. Supreme Court.

A State statute stipulating that "A railroad company shall be liable for any damage done to persons, stock, or other property, by the running of the locomotives, or cars, or other machinery of such company, or for damage done by any person in the employment and service of such company, unless the company shall make it appear that their agents have exercised all ordinary and reasonable care and diligence, the presumption in all cases being against the company," was held to be unreasonable and arbitrary and violates the due process clause of the Fourteenth Amendment. Judgment reversed.—Western & Atlantic R. R. v. Henderson, *et al.*, 77 Pitts. 417, Butler, U. S. Sup. Ct.

III. FULL FAITH AND CREDIT

3442, See P. & L. III.; Quar. Dig. II. 286.

The well settled law is that in the absence of fraud or collusion a judgment or decree of a court of competent jurisdiction, regular on its face, cannot be impeached in a collateral proceeding in the same or another court. It is conclusive as to every fact directly adjudicated, or which was necessarily involved in or was material to the adjudication, and must be given full faith and credit in other jurisdictions as to all matters in controversy, pursuant to the provisions of the Constitution of the United States, Article IV, Section 1, and the Act of Congress, May 26, 1790, Revised Statutes, 905.—Comth. *ex rel.* Rogers v. Daven, *et al.*, 96 Super. Ct. 556, Baldridge, J. Affirming Mun. Ct. of Phila. (Keller and Cunningham dissent for want of a basic hearing).

CONSTITUTION OF PENNSYLVANIA

I. BILL OF RIGHTS

(A) INHERENT RIGHTS; POLICE POWER

1. Giving Testimony Against One's Self.

3459, See P. & L. III.; Sup. VII. 538; Quar. Dig. II. 293.

Expert testimony that the driver of an automobile was intoxicated, he having voluntarily submitted himself to an examination, is not an infraction of Sec. 9, Art. I, of the Constitution, which provides that "in all criminal prosecutions the accused cannot be compelled to give evidence against himself." The constitutional provision may be waived by consent of the person accused, express or implied.—Comth. v. Cox, 10 D. & C. 678, Williams, P. J.

Under Article I, Section 9, of the Constitution, which provided that a man can not be compelled to give evidence against himself, it does not permit the State Police, acting as fire marshal, under the Act of July 1, 1919, P. L. 710, Section 4, to summon anyone and compel their attendance and use such testimony thus secured thereafter in the prosecution of the person so

summoned.—Comth. v. Viachos, **et al.**, 16 Westm. 33, Dom, J. The Act 27 April, 1927, P. L. 414, authorizing the Pennsylvania State Police, prison wardens, etc., to take photographs and finger prints of any person in custody charged with the commission of crime, is not an **ex post facto** law within the prohibition of Art. I, Sec. 17, of the Constitution of Pennsylvania, as applied to a person twice convicted of a misdemeanor before the passage of the said statute. It does not annex a greater punishment.—Bloom v. Clemmens, 21 Berks 3, Mays, J.

2. Police Power.

292, See Quar. Dig. II.

The Public Service Commission, in the exercise of police power, may abolish a grade crossing and order a township to pay a share of the expenses.—Comth. v. Washington Twp., **et al.**, 10 D. & C. 687, Stewart, P. J.

While citizens of another state may not prosecute a suit in law or equity against one of the United States, such action being in violation of the Eleventh Amendment to the Constitution of the United States, suits may be prosecuted against officers of a State to prevent the enforcement of an unconstitutional enactment of such State or the illegal application of such enactment by the officers of the State. Where a company, engaged in the sale of its commodity and its treasury stock by use of circulars sent through the mails from its office in one State to residents of another State, is required to produce its officers before the State Commissioner of Banking to be examined, as provided for in a Securities Act, and files a bill in equity to restrain the Commissioner of Banking from instituting and prosecuting any civil or criminal actions under the provisions of the Securities Act, the bill will not be dismissed on the grounds that plaintiff has an adequate remedy at law. In such a case, however, the bill was dismissed against the Commissioner of Banking of Pennsylvania for the reason that the Securities Act of Pennsylvania is not a violation of the Constitution of the United States, and its application to plaintiff is not an illegal interference with interstate commerce. The Pennsylvania Securities Act is a police measure intended to prevent fraud in the sale of securities, and its control or effect on interstate commerce is merely incidental.—Wrigley Company v. Cameron, 8 Northumb. 312, Johnson, D. J.

Section 720, of the Act of May 14, 1925, P. L. 752, providing a penalty for failure to report the killing of a deer or other animal for the prevention of destruction of property, is a reasonable exercise of the police power and does not violate the constitutional rights of citizens to protect their own property.—Comth. v. Haugh, 12 D. & C. 795, Fleming, P. J.

(B) FREEDOM OF PRESS

3460, See P. & L. III.; Quar. Dig. II. 291.

The Sedition Act of June 26, 1919, P. L. 639, as amended by the Act of May 10, 1921, P. L. 435, does not violate Sections 2, 7, 9, 10, 13 or 26, of the State Constitution, nor 14th Amendment of the Federal Constitution.—Comth. v. Widowich, *et al.*, 295 Pa. 311, Kephart, J. Affirming 93 Super. Ct. 323.

(C) EQUALITY OF OPPORTUNITY

3503, See P. & L. III.; Sup. VII. 544; Quar. Dig. II. 291.

The Act of May 13, 1925, P. L. 644, regulating the solicitation of money or property for charitable, religious or other benevolent purposes, is in conflict with the equality of opportunity in acquiring property guaranteed by Article I, Section 1, of the State Constitution, in that, by reason of the exemptions contained in Section 11, it creates a discrimination between citizens without any just or reasonable ground to sustain the classification and amounts to an arbitrary denial to one person of rights which are given to another. The whole act falls, as the exemption makes the act itself so uncertain in its application that it cannot be presumed that the Legislature would have passed it without the exemptions.—Comth. v. McDermott, 10 D. & C. 618.

(D) IMPAIRMENT OF OBLIGATION OF CONTRACTS

3539, See P. & L. III.; Sup. V. 683.

Article I, Section 17, of the Constitution of Pennsylvania, and Article I, Section 10, of the Constitution of the United States, which forb'd the impairment of the obligation of contracts, have no relation to the contract of marriage. The General Assembly may legislate on the subjects of marriage and divorce, and determine what effect a divorce shall have upon the property rights, present and prospective, of either spouse, even if the marriage was contracted and the property purchased before the legislation was passed.—Scaife v. McKee, *et al.*, 298 Pa. 33, Simpson, J. Affirming C. P. Allegheny County.

II. LEGISLATION

(A) FORM OF BILLS; TITLES

3586, See P. & L. III.; Quar. Dig. II. 295.

The Alcohol Permit Law, of Feby. 19, 1926, P. L. 16, is not defective in title nor unconstitutional, since it falls within the police power.—Premier Cereal & Beverage Co. v. Penna. Alcohol Permit Board, 292 Pa. 127, Walling, J. Affirming C. P. 5, Phila.

The Act of May 25, 1897, P. L. 85, entitled "An act punishing the sending of anonymous communications of a libelous, defamatory, scurrilous or opprobrious nature," does not violate Article I, Section 7, of the Constitution. Nor is the act un-

constitutional as being defective in title. There is nothing in the Constitution that prohibits the Legislature from enacting that defamatory matter or a libel of an aggravated nature, published so as to conceal the identity of the author, is of itself malicious and negligent. The Legislature may also provide that such matter is so negligent and malicious that the jury should not accept any justification as an excuse; but the jury must ultimately decide both the questions of law and fact.—Comth. v. Foley, 292 Pa. 277, Kephart, J. Affirming 90 Super. Ct. 473, which affirmed Q. S. Schuylkill Co.; see Quar. Dig. II. 1012; Comth. v. Wilhelm, 292 Pa. 283.

The Act of May 14, 1925, P. L. 762, does not violate Sec. 3, of Art. III, of the Constitution, in regard to notice.—Comth. v. Reese, *et al.*, 293 Pa. 398, Schaffer, J. Reversing C. P. Schuylkill County.

The title to the General Township Act of July 14, 1917, P. L. 840, sufficiently expresses the purpose of the statute to vest in the township treasurer, in townships of the first class, the collection of all taxes payable by residents of the townships. As Section 274, of the act, is a specific provision relating to the collection of taxes in townships of the first class, it must be sustained as against the general language of Section 2, even though, broadly construed, the two sections would seem to be inconsistent on that point.—Comth. v. Macelwee, *et al.*, 294 Pa. 569, Simpson, J. Affirming C. P. Northumberland County.

A. was indicted for appealing to the public for funds and selling merchandise to the public to raise money for an alleged charitable or benevolent purpose, without having secured a certificate from the Department of Public Welfare, contrary to the provisions of the Act of May 13, 1925, P. L. 644. He moved to quash the indictment on the ground that the act is unconstitutional because, in conflict with Article III., Section 7, of the Pennsylvania Constitution forbidding the Legislature to pass any local or special legislation, it exempts certain religious and charitable organizations from the requirements of registration. *Held,* That the exemptions were not unreasonable or discriminatory and that the Act of May 13, 1925, P. L. 644, is constitutional.—Comth. v. McDermott, 94 Super. Ct. 470, Keller, J. Reversing Mun. Ct.

The Act of March 5, 1925, P. L. 23, applies to decisions on questions of jurisdiction over the defendant and also the cause of action for which the suit is brought, whether they were rendered before or after the passage of the statute. It does not offend Art. III., Section 3, of the Constitution of Pennsylvania. (See title explained).—Spector, *et al.*, v. Hanover Fire Ins. Co., 295 Pa. 390, Simpson, J.

The Act of June 7, 1915, P. L. 894, entitled "An act relating to and regulating the plotting by cities of the first class of parks and parkways in built-up sections thereof," gives sufficient notice in the title that it relates to and regulates the plotting of the parkway, and the time within which that act should be deemed an actual taking of the land included in the improvement and is not unconstitutional.—Philadelphia Parkway Opening, 295 Pa. 538, Frazer, J. Affirming C. P. 3, Phila.

The Act of March 27, 1923, P. L. 34, is not violative of Article 3, Section 3, of the Pennsylvania Constitution, providing that "no bill * * * shall be passed containing more than one subject, etc." Nor is it unconstitutional as being a delegation of the legislative power by the General Assembly in violation of Article 2, Section 1, of the Constitution of Pennsylvania.—Comth. v. Garhus, 96 Super. Ct. 450, Gawthrop, J. Affirming v. S. Lycoming County.

The Act of March 27, 1923, P. L. 34, does not violate Article II, Section 1, of the State Constitution, as delegating to the Congress of the United States, by allowing it to define intoxicating liquors, power to legislate for the Commonwealth of Pennsylvania.—Cofth. v. Gardner, 297 Pa. 498.

The Act of April 10, 1929, P. L. 479, is constitutional. Actions of trespass, as well as those in *assumpsit,* are within the purview of the statute. That the suits referred to in it are to "continue, both before and after judgment, according to equitable principles," is no more than to say that they are to proceed according to the long settled principles of Pennsylvania jurisprudence. The statute is procedural in its nature, and hence it is applicable to pending as well as to future

litigation. The procedure under the act considered and fully set forth. Mr. Justice Frazer dissented as to the power of the Supreme Court to prescribe rules of practice for the lower courts.—Vinnacombe, *et ux.*, v. Philadelphia and American Stores Co., *et al.*, Aplnts., 297 Pa. 564, Simpson, J. Affirming C. P. No. 2, Philadelphia County.

The Act of June 25, 1919, P. L. 581, entitled "An Act for the Better Government of Cities of the First Class of this Commonwealth," is constitutional and gives sufficient notice of the provisions contained in Section 23, of Article XIX, of the act, making a violation of the provisions of the act, relating to political activity or the interference with the conduct of an election on the part of employees of a city, a misdemeanor. The title of the act sufficiently indicates an intention of the Legislature to provide in the body of the act that which it deemed necessary and appropriate to accomplish its purpose. The duties of employees are directly involved in the administration of city governments, and it is natural to expect that the act will declare the consequences for the failure to perform those duties. The fact that a title of an act does not expressly declare that a violation of its provisions is made a penal offense is not a valid objection as to its constitutionality, where it is natural to expect that the act will declare a penalty for a violation of the duties it imposes.—Comth. v. Baldwin, 97 Super. Ct. 288, Gawthrop, J. Affirming Q. S. Philadelphia County.

Section 2, of the Act of April 27, 1925, P. L. 286, relating to certificates of title to motor-vehicles and liens thereon, is unconstitutional, inasmuch as the provision or purpose of the section is not referred to in the title of the act.—Clarence Hoffman Motor Co. v. Hess, **et al.**, 10 D. & C. 179, Sayers, P. J. The Act of June 14, 1923, P. L. 718, which purported to amend Section 36, of the Act of June 30, 1919, P. L. 678, by requiring a receipted bill for repairs to be produced in an action before a justice of the peace for damages to an automobile, is unconstitutional because the attempted amendment is not covered by the title of the amending act.—Frye v. Lanning, 10 D. & C. 727, Brownson, P. J.

The title of the Act of April 26, 1921, P. L. 282, gave sufficient notice of the purpose of the act, regulating annexation of territory of a township to a borough.—Upper Merion Township v. Bridgeport Boro, 44 Montg. 129, Knight, J.

The Act of July 11, 1923, P. L. 1047, relating to annexation to cities of the third class, is constitutional. The notice required by Section 2, of the Act of June 11, 1923, is sufficient if it gives notice of the presentation to the court of the petition for annexation; it need not state the time of the hearing on the petition.—Spring Garden Twp's Annexation to York, 42 York 189, Henry, P. J.

The last clause of the Act of 1927, apportioning the tax among the several beneficiaries in proportion to the tax paid by each under the Act of 1919, is unconstitutional, as such apportionment is not disclosed in the title of the act. It is also unconstitutional, inasmuch as it measures the tax by a valuation based on the whole estate, in which the legatee may have but a small interest. Such a method would be confiscatory. Classification cannot be made arbitrarily. It must always proceed upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed. The remainder of the act may be upheld as constitutional, as it is self-contained, inasmuch as the imposition of the tax, the rate and the method of collection are wholly independent of the apportionment clause.—Knowles' Estate, 11 D. & C. 621, Henderson, J. Affirmed 295 Pa. 571; 77 Pitts. 225.

The constitutional provisions relating to titles of Acts of Assembly do not require the title to give notice of penalties or other punishment for violation. The Act of June 25, 1919, P. L. 581, entitled "An act for the better government of cities of the first class of this Commonwealth," contains sufficient notice in its title of the creation of the offense of taking an active part in political campaigns while an employee of a city of the first class. Motion to quash indictment overruled.—Comth. v. Baldwin, 12 D. & C. 98, Alessandroni, J.

The Act of April 25, 1850, P. L. 569, is not unconstitutional, because the title of the act gives no notice of the subject matter of Section 21. The amendment of 1857, to the Constitution of 1838, provided for the first time that no bill shall be passed by the Legislature containing more than one subject which shall be expressed in the title. It could not affect the Act of 1850, previously passed. No right of way can be acquired, since the passage of the Act of 1850, where such way passes through unenclosed woodland.—Hartman, **et ux., et al.**, v. Webster, 32 Dau. 312, Hargest, P. J.

Defendants were guilty of violating a city ordinance regulating street parades, processions and street assemblages or meetings, where a meeting was held after a permit had been refused by the proper city officials. Prohibiting street assemblages without a permit is a proper exercise of the police power and violates neither the Federal nor State constitutions. A city ordinance bearing the title "An ordinance regulating street parades, processions and street assemblages or meetings," related to one subject and one only, and the title was sufficient to support a fine or imprisonment for a violation thereof. The ordinance was not invalid or void

because the title did not indicate that a penalty was imposed for its violation.—Comth. **ex rel.** Kerns, **et al.**, 78 Pitts. 132, Jones, J.

The Act of May 9, 1929, P. L. 1684, is not repugnant to the requirement of Article III, Section 3, of the Constitution of Pennsylvania, that the subject of an act shall be clearly expressed in its title, in so far as certain duties as to returns of unpaid taxes are imposed upon county tax collectors; these provisions are connected with and germane to the subject-matter expressed in the title, which is the sale of lands by county treasurers for unpaid taxes. Section 9, of the Act of May 9, 1929, P. L. 1684, violates the 14th Amendment to the Constitution of the United States, in that it affords the taxable no opportunity to be heard in opposition to confirmation of the sale of his property by the county treasurer, except as to the regularity of the proceedings by the treasurer, and in that no other opportunity is given elsewhere in the act to object at any other stage of the proceedings to irregularities or errors prior to certification of the unpaid taxes to the treasurer. Due process of law, required by the 14th Amendment to the Constitution of the United States, means a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. A statute is not unconstitutional merely because it authorizes a ministerial act by which possession of property is taken before the right to it has been judicially determined, if an opportunity to be heard is given before final judgment. Not decided, whether the Act of May 9, 1929, P. L. 1684, is retroactive so as to apply to taxes assessed for the year 1929.—Bowers v. Smith, County Treas., 14 D. & C. 220, Fleming, P. J.

(B) LOCAL AND CLASS LEGISLATION

3623. See P. & L. III.; Quar. Dig. II. 300.

The portion of Section 7, of the Act of 1876, giving to a county official the right of appeal from the action of the salary board to the Court of Common Pleas, is not unconstitutional. Upon such appeal the Court of Common Pleas passes upon the questions of fact involved **de novo.**—County Controller, 8 Wash. 76, Cummins, J. 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., 42 York 2, Rowand, J.

The Act of June 8, 1874, P. L. 274, is not unconstitutional in that it makes no provision for the adjustment of indebtedness when a portion of Ross Township was annexed to the City of Pittsburgh, because it impaired the obligation of the contracts of the township school board with its bondholders. It was doubted whether Ross Township could raise the constitutional question. —Ross Township Annexation, 77 Pitts. 1, Gray, J.

1. Inheritance Tax Act.

The Act of May 7, 1927, P. L. 859, supplementing the Inheritance Tax Act of June 20, 1919, P. L. 521, is constitutional, and is intended to secure for the benefit of Pennsylvania that percentage of Inheritance Tax under the Federal Revenue Act of 1926, Section 301, whereby the several states may by appropriate legislation obtain a part of that tax levied under the Federal statute. It imposes no additional burden upon any estate, or beneficiary, but provides solely for its distribution. Without this act, Pennsylvania would not share in the Federal Inheritance tax imposed upon the estates of her decedents.—Knowles' Estate, 77 Pitts. 225; 295 Pa. 571, Moschzisker, C. J. Affirming O. C. Phila..

The Act of May 7, 1927, relating to the inheritance tax, does not conflict with the Constitution.—Knowles' Estate, 77 Pitts. 225; 295 Pa. 571, Moschzisker, C. J. Affirming O. C. Phila.

The Act of May 20, 1921, P. L. 1023, amending Section 101, of the School Code of May 18, 1911, P. L. 309, providing for the approval by the State Board of Education of the creation of fourth class school districts created under certain circumstances, is unconstitutional as infringing upon the rights of the citizens to vote for school directors. If a new school district be not established in a new borough formed out of parts of two adjoining townships, but the property within it continued as part of the two townships, as permitted at the option of the State Board of Education, then the residents of the new borough will be deprived of the right to vote in so far as the election of school directors is concerned, though such privileges exist in the case of all qualified taxpayers in other fourth-class districts.—New Britain Borough School District, 295 Pa. 478, Sadler, J. Affirming C. P. Bucks County.

The Act of May 13, 1925, P. L. 644, requiring the licensing of persons who solicit money for charitable, etc., purposes, does not offend Sec. 7, Art. III, of the Constitution, by reason of exemptions in Section II. Classification is a legislative function.—Comth. v. McDermott and Levy, *et al.*, 296 Pa. 299, Frazer, J. Affirming Mun. Ct.

If the constitutionality of Section 4, of the Act of May 5, 1927, P. L. 778, be attacked by an association which acquired a prior right to use a certain name, emblem or insignia and if the statute should be construed so as to destroy that

right, it would be the duty of the court to find the section unconstitutional, because in conflict with the Fourteenth Amendment of the Constitution of the United States. Rather than declare an Act of Assembly, or a section thereof, unconstitutional, it is the duty of the court to accept any reasonable construction that would not be in conflict with the Constitution. The right to register, under the Act of May 5, 1927, P. L. 778, is restricted to those who had a right to the use of the name which they desire to register or to the use of the emblem or insignia which they desire to register.—Philips, **et al.**, v. Johnson, Secy. Comth., 32 Dau. 233, Biddle, P. J.

2. Investment of Trust Funds.

The petition of a guardian for authority to invest part of his ward's income in life insurance policies on the minor's life was refused by the Orphans' Court. Article III, Section 22, of the Pennsylvania Constitution, prohibits the investment of trust funds in the bonds or stocks of private corporations. An insurance policy may be a bond of an insurance company under seal or it may be a contract under or not under seal. In legal contemplation, an insurance policy is a lesser security than a bond and is within the prohibited class. The Act of April 4, 1929, No. 150, authorizing guardians to expend parts of the incomes of minors in life insurance policies with leave of the Orphans' Court, is constitutional, being in conflict with Article III, Section 22, of the Pennsylvania Constitution, which prohibits the Legislature from passing any act authorizing the investment of trust funds in the bonds and stocks of private corporations.—Solomon's Petition, 77 Pitts. 545, Trimble, P. J.

(C) MUNICIPAL CLASSIFICATION

3623, See P. & L. III.; Sup. VII. 552.

Legislation limited to certain classes of cities is not unconstitutional where the matter involved is the regulation of the exercise of municipal powers, or concerns matters of local government. The Act of June 1, 1907, P. L. 378, is not unconstitutional because limited to cities of the third class.—Erie City's Appeal, 297 Pa. 260, Simpson, J. Reversing C. P. Erie County.

Section 4, of the Amendment to Article XV, of the Constitution of Pennsylvania (Pamphlet Laws, 1927, P. L. 1051), relating to a resubmission of a vote on the Consolidated City of Pittsburgh, is not mandatory and legislative enactment is necessary to enable the commissioners of Allegheny County to again submit the question. The Act of April 26, 1929, No. 363, merely provides for the method in which the submission of a question to voters shall be printed upon the ballot and requires the county commissioners to provide the proper ballots.—Metropolitan Plan, in Re, 77 Pitts. 481, Macfarlane, J.

(D) APPROPRIATIONS

1. Sectarian Institutions.

3655, See P. & L. III.; Sup. VII. 560; Quar. Dig. II. 303.

Public moneys cannot be appropriated to a foundling asylum and maternity hospital, where it appears that all of the officers, a majority of the board of trustees, and eighteen employes of the institution were Roman Catholics, that the board of trustees were self-perpetuating, that the employees were engaged and dismissed by the mother superior of a Roman Catholic order, that the institution was listed in the "Official Catholic Directory" as a Catholic institution, and that a chapel was maintained in the building of the institution, in which Catholic services were held daily. In such case it is immaterial that the institution had been established as a non-sectarian asylum and hospital, that the trustees sought to carry out a non-sectarian policy, and that they did not discriminate against any particular faith or religion in the conduct of the affairs of the institution.—Collins v. Martin, *et al.*, Aplnts., 302 Pa. 144, *per curiam*. Affirming C. P. Dauphin County.

The Act of May 12, 1925, purporting to make an appropriation of thirty-five thousand dollars to Roselia Foundling Asylum and Maternity Hospital, of the City of Pittsburgh, is in violation of Article III, Section 18, of the Constitution of Pennsylvania, and is void. The ordinary understanding of the phrase, sect or denomination, as used in Article III, Section 18, of the Constitution of Pennsylvania, is a church or body of persons, in some way united for the purposes of worship, who profess a common religious faith and are distinguished from those composing other such bodies by a name of their own.—Collins v. Martin, **et al.**, 31 Dau. 400, Wickersham, J.

(E) SPECIAL COMMISSIONS

1. Power Cannot Be Delegated.

3656, See P. & L. III.; Quar. Dig. II. 302.

The power to make a law cannot be delegated by the Legislature to any other body or authority. A statute cannot be made to comprehend the rules and regulations that may be promulgated from time to time by a department of government for the enforcement thereof. A misdemeanor cannot be created by rule of the Industrial Board of the Department of Labor and Industry under the Act of June 2, 1913, P. L. 396. The acts of the board in attempting to create misdemeanors by rules are an exercise of legislative authority which, by the Constitution, is exclusively vested in the General Assembly. The power to make a law, **i. e.,** "a rule of conduct prescribed by the supreme power of the State commanding what is right and prohibiting

what is wrong," cannot be delegated to any other body or authority: Locke's Appeal, 72 Pa. 491; Com. v. Quarter Sessions, 8 Pa. 391; Parker v. Com., 6 Pa. 507; Case of Borough of West Philadelphia, 5 W. & S. 281. "The law must be complete in all its terms and provisions when it leaves the legislative branch of the government, and nothing must be submitted to the judgment of the electors or other appointee of the Legislature except an option to become or not to become subject to its requirements and penalties:" O'Neil v. Insurance Co., 166 Pa. 72. The Legislature cannot inject bodily into the same statute all of the rules and regulations that might be from time to time promulgated by the proper department of the government for the enforcement thereof: Com. v. Dougherty, 39 Pa. Superior Ct. 338. The language of the act contradicts the suggestion that the rules of the board are purely executive or administrative, for the act provides that a violation of a rule shall constitute a misdemeanor, punished by fine or imprisonment.—Comth. v. Baldwin, 10 D. & C. 241, Hirst, J.

III. THE EXECUTIVE

(A) POWER AND PRIVILEGES OF THE GOVERNOR

3663, See P. & L. III.; Sup. VI. 562; Quar. Dig. II. 308.

The writ which shall be issued by the Governor to fill a vacancy now existing in the representation in Congress from Pennsylvania should direct the election to be held at the time fixed for holding the next general election in November and should be delivered to the sheriff, to whom the same may be directed in sufficient time to permit the sheriff to give the notice required by law. These provisions are mandatory. —In Re Congressman, 78 Pitts. 524, O'Hara, Dep. Atty.-Gen.

IV. COURTS

(A) ALTERING POWERS OR JURISDICTION

3675, See P. & L. III.; Sup. I. 1156.

The Act of March 5, 1925, P. L. 23, applying to jurisdiction of courts, does not offend against the Fourteenth Amendment to the U. S. Constitution, as denying any one due process of law. Plea raised by appearance *de bene esse.*—Specktor, *et al.,* v. Hanover Fire Ins. Co., 295 Pa. 390, Simpson, J. Appeal from C. P. 5, Phila., quashed.

V. LEGISLATURE

(A) POWERS

3676, See P. & L. III.; Sup. V. 685.

Article I, Section 17, of the Constitution of Pennsylvania, and Article I, Section 10, of the Constitution of the United States, which forbid the impairment of the obligation of contracts, have no relation to the contract of marriage. The General Assembly may legislate on the subjects of marriage and divorce, and determine what effect a divorce shall have upon the property rights, present and prospective, of either spouse, even if the marriage was contracted and the property purchased before the legislation was passed.—Scaife v. McKee, *et al.,* 298 Pa. 33, Simpson, J. Affirming C. P. Allegheny County.

VI. TAXATION AND FINANCES

(A) UNIFORMITY

1. Classification.

3715, See P. & L. III.; Quar. Dig. I. 337; II. 305.

An Act of Assembly will not be declared void, unless its violation of the Constitution is plain, clear and palpable, so as to preclude doubt or hesitation. The mere omission of several territorial divisions from the operation of a Tax Act will not condemn the statute as an unfair classification; nor will different methods of collection, nor the manner of collection of the same tax, provided the difference does not impose an unnecessary burden on those affected. The act permitting the retention of a five per cent fee by the taxpayer for prompt payment is for the welfare of the government, inasmuch as it has the effect of producing an immediate revenue for public use. There is no unfair classification merely because the fee is allowed in boroughs and not in cities, even though some boroughs may be as compactly built up as cities. In classifying municipalities for government purposes, the Legislature cannot be held to exact lines of demarcation either as to intensity of population or scope of territory. A division based on reasonable grounds, having a substantial relation to the subject dealt with, is all that is necessary.—Keator v. Lackawanna County, 292 Pa. 269, Kephart, J. Affirming C. P. Lackawanna County.

The annual tax imposed by the Act of June 7, 1923, P. L. 498, upon state forest lands for the benefit of counties which would otherwise suffer hardship from the exemption of such lands is not a tax, but a gratuity merely. Therefore the assessment of such lands when leased by the Commonwealth does not create a double tax thereon in violation of Article IX, Section 1, of the Pennsylvania Constitution, requiring uniformity of taxation

upon the same class of subjects within the territorial limits of the authority levying the tax.—Franklin County, 93 Super. Ct. 165, Gawthrop, J. Affirming C. P. Franklin County.

The Act of April 19, 1889, P. L. 37, entitled "An act authorizing appeals from assessments of taxes in this Commonwealth to the Court of Common Pleas," gives sufficient notice in its title of the provision of the act relating to the return of excess tax payments. Plaintiff recovered excess of school taxes levied on her property — Kaemmerling (S. Maude) v. New Castle Township School Dist., 297 Pa. 441. Affirming C. P. Schuylkill County.

The Act of April 27, 1925, P. L. 305, does not violate Article IX, Section 7, of the Constitution of Pennsylvania, which forbids an incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.—Downing, *et al.*, v. Erie School District, *et al.*, 297 Pa. 474, Sadler, J. Reversing C. P. Erie County.

The Act of May 7, 1927, does not offend against Article IX, Section 1, of the Constitution, relating to uniformity of taxation. The rule of uniformity does not apply to excise taxes, and they may be graduated according to a reasonable classification. Nor does it violate the constitutional mandate as to amending and reviving acts, inasmuch as it does not change nor revive an act, but is a supplement to the Act of 1919. And it does not violate the "due process" clause of the Federal Constitution, inasmuch as uniformity of taxation according to the classification made is all that is required. The Act of 1927 is not a special law changing the law of succession. In passing the Act of 1927, the Legislature did not delegate its authority to Congress.—Knowles' Estate, 11 D. & C. 621. Henderson, J. (See **supra**).

2. Debt Limitation.

The limitations on all municipalities to the power to create a debt or borrow money are as follows: First, there must be a lawful purpose for which the money is to be used or the debt created, and, second, the amount which can be borrowed is determined by reference to (a) the current revenues due or created within the year, and (b) the constitutional percentage authorized on the assessment value of property. Section 426, of the Act of July 14, 1917, P. L. 840, does not have the effect of authorizing debts beyond present revenues, except in cases of extraordinary emergency and those under Section 436. Section 436 must be confined to its proper subject-matter, which provides for work to be done to secure state reward for maintenance of township roads. Where a debt created in any year exceeds current revenues, and cannot be paid therefrom, the debt is void unless steps are taken to pay by bonds under the constitutional provision.—Georges Township v. Union Trust Co., 293 Pa. 364, Kephart, J. Reversing C. P. Fayette County.

The constitutional amendments of 1918 and 1923, in regard to debt increase and limitations, are construed *in extenso*, in Montgomery, Jr., v. Martin, *et al.*, 294 Pa. 25, Moschzisker, C. J. Affirming C P. Dauphin County; 31 Dau. 350.

The Act of 17 July, 1919, P. L. 1021, as amended by 9 April, 1921, P. L. 119, passed by the Legislature in pursuance to power conferred upon it by Article IX, Section 1, of the Constitution, is constitutional.—Boyle v. Westmoreland County, **et al.**, 16 Westm. 1, Copeland, P. J.

The Act of April 27, 1925, P. L. 305, authorizing a school district to make contracts of insurance with a mutual company, is in conflict with Article IX, Section 7, of the Constitution, which denies the authority of a municipality to become a stockholder or to loan its credit to any corporation or association. By such contract the school district becomes a member of the mutual company, having the status of stockholder, and becomes an insurer at least to the limit of liability fixed by the policy and, thereby loans its credit to the mutual company.—Downing, Executor, **et al.**, v. School District, 10 Erie 47, 1928, Hirt, J.; 42 York 31.

In construing an amendment to the Constitution, words must be taken in their plain, generally understood and popular meaning. If there were no constitutional restrictions, the Legislature could authorize borrowing in unlimited amounts. The people, at least since the constitutional amendment of 1857, have limited the right of the Legislature to authorize the borrowing of money on the credit of the State to the purposes mentioned in that amendment. In the Constitution of 1874, the people enlarged the amount of debt, which might be created to supply deficiencies in revenue, from seven hundred and fifty thousand dollars, as fixed in the amendment of 1857, to one million dollars. The authority conferered by the people, in the constitutional amendments of November 5, 1918, and November 6, 1923, is to issue bonds, not to re-issue bonds. Under Article IX, Section 4, or the Constitution of Pennsylvania, as amended November 5, 1918, the General Assembly has no authority to authorize the issue of bonds to more than the aggregate amount of fifty millions of dollars.—Montgomery v. Martin, 31 Dau. 350, Hargest, P. J. Affirmed, see S. C.

A municipal ordinance authorizing an issue of $1,2000,000.00 bonds for street improvement purposes was void, where this issue increased the bonded indebtedness to $19,967,324.37, while the 2% maximum permissible without a vote of the electors was $19,023,159.20. The city could not, by virtue of Section 15, of Article IX, of the Constitution, exclude water bonds from the net indebtedness of the city in estimating the city's debt. In computing the net debt of a municipality, the whole object and purpose of Section 15, Article IX, of the Constitution, was to authorize the exclusion of, **inter alia**, water bonds only where the municipality has successfully operated, for a period of five years, a waterworks system newly acquired as a whole, whether by purchase or construction. In cases of construction, the five-year period for determining net revenue shall be "after the completion thereof," but, in case of acquisition, may be "either before or after the acquisition thereof." The Constitution describes a net municipal revenue for bonding purposes as the "net revenue derived from said property," **i. e.**, the waterworks property newly constructed or acquired. Manifestly, the words "said property" do not refer to those parts of the entire plant lately added, replaced or repaired, since it would be impractical, if not impossible, to determine net revenue accruing solely from such added or renewed parts. The entire waterworks is to be treated as a unit, the net earnings from which, over a test period, shall be sufficient to pay interest and sinking fund charges on the obligations issued for the construction or acquisition of such unit.—Hoffman v. Kline, **et al.**, 78 Pitts. 105, Marshall, J.

3. Bonds and Securities.

The securities commission is not a regulator of business. The Acts of June 14, 1923, P. L. 779, and April 13, 1927, P. L. 273, are intended to regulate the registration of stock and bond dealers and salesmen, rather than the issuance of securities, and do not contemplate the approval by the commission of the business expediency of the plan of financing a corporation whose securities are to be offered for sale by the dealer, but an investigation to determine whether the securities are being offered to the public honestly and in good faith without an intent to deceive or defraud. The securities commission errs in refusing to register a corporation as a dealer, where it appears that the company whose shares or certificates were to be dealt in, was in the nature of an investment trust, that the plan involved a management corporation which was to receive a commission for its services, and that two classes of certifiates were to be issued, as to which plan the commission objected that the management corporation was unnecessary, and was to receive too much for its services, that one class of certificates was to receive too small a return, and that holders of the certificate were denied a voice in the control and management of the trust fund. In such case, as no question was raised as to the applicant's business reputation, or as to the honesty of purpose with which the securities were offered to the public, and the commission based its refusal on the ground that it did not approve the plan of business, its refusal to register was unwarranted.—Insurance Shares Corporation v. Pennsylvania Securities Commission, Aplnt., 298 Pa. 263, Schaffer, J. Affirming C. P. Dauphin County.

4. Gift Tax.

A gift tax statute was not unconstitutional as being a direct tax.—Bromley v. McCaughin, 26 Fed. (2nd) 380), Dickinson, D. J.

(B) GASOLINE TAX

1. Municipalities.

3747, See P. & L. III.; Quar. Dig. II. 305.

The tax imposed by the Act of May 1, 1929, P. L. 1037, is a tax on liquid fuels and not on sales or transactiones. Taxes cannot be imposed. by a general act, on municipal property, unless such imposition is specifically authorized in the act. It is unreasonable for the Commonwealth to exact taxes from itself or its municipalities, the payment of which must be met by taxing the people of the same. There is a strong presumption that the Commonwealth never intended to tax itself for the purpose of performing its functions, and a municipality, being a subdivision of the Commonwealth, the presumption also pertains to it. It has been repeatedly held that the State can so tax, but the presumption can be overcome only by legislation specifically imposing the tax. Under the Act of May 1, 1929, P. L. 1037, gasoline purchased by the City of Philadelphia, intervening defendant, used in the performance of governmental functions, should not be taxed. Gasoline purchased by three bureaus and one department of said city and used in the performance of nongovernmental functions, should be taxed.—Comth. v. Pure Oil Co., 34 Dau. 105, Fox, J.

(C) MUNICIPAL CONTRACTS

3751, See P. & L. III.; Sup. VII. 560.

A contract to lease to a corporation a subway constructed for a city on plans and specifications approved by the corporation, at a rental under which the corporation pays quarterly, during the fifty years, the interest, state taxes and instalments sufficient to liquidate the total principal of the bonds issued by the city to finance the construction, is not a loan of its credit to a corporation such as is prohibited by Article IX, Section 7, of the Constitution.—

Appeal of City Club of Phila., 92 Super. Ct. 219, Linn, J. Reversing C. P. 2, Phila.

A bond issue authorized by the borough council without a vote of the electors is valid if the amount does not exceed 2 per cent of the assessed valuation of property within the municipality, notwithstanding the fact that there are already outstanding bonds in excess of that amount, if such latter bonds were all authorized by the electors. Under Section 8, of Article IX, of the Constitution, debts not exceeding 2 per cent of the assessed value of taxable property may be created by the municipal authorities without consent of the electors, and debts over 2 per cent and not exceeding 7 per cent may be created with the consent of the electors, and the order in which this indebtedness is incurred is immaterial. In estimating the total debt, it is not necessary to include a temporary loan made in anticipation of current revenues or bonds issued to acquire water-works, if the net revenues from the water-works have been sufficient for five years to pay interest and sinking fund or if such bonds are secured by liens upon the water-works and impose no liability upon the municipality.—Walters v. Tamaqua Boro, 10 D. & C. 366, Berger, J.

VII. PUBLIC OFFICERS

(A) ELIGIBILITY

7660, See P. & L. III.; Quar. Dig. II. 309.

A suspension of sentence on payment of costs after the entry of a plea of **nolo contendere** to a charge of forgery is not a conviction within the meaning of Article II, Section 7, of the Constitution of Pennsylvania, providing that no person convicted of such crime shall be eligible to hold any office of trust or profit in the State.—Wilner's Petition, 12 D. & C. 680, Woods, Atty.-Genl.

(B) APPOINTMENT AND REMOVAL

3760, See P. & L. III.; Sup. VII. 569; Quar. Dig. I. 340.

Whenever a constitution or a statute provides that a specified penalty "shall" be imposed "on conviction" of a particular offense, it becomes the duty of the court, *inter alia,* to inflict the penalty when sentencing the offender. The three subdivisions of Article VI, Section 4, of the State Constitution, are separate and distinct each from the others, and no legislation is required to enable any of them to be enforced. Under the authority of the first division of that section the court, before whom a public officer has been convicted of misbehavior in office, must, as a part of the sentence, remove him from office. The successor of an official removed from office is the only one who can thereafter legally perform the duties of the office.—Comth. *ex rel.* v. Davis, Aplnt., 299 Pa. 276, Simpson, J. Affirming C. P. Cambria County.

Under Section 4, of Article VI, of the Constitution of Pennsylvania, public officers convicted of misbehavior in office or of any infamous crime occurring during their term of office shall, upon conviction thereof, be removed from such office by the court, and such punishment shall be included as part of the sentence of the court. The criminal courts have inherent power to inflict punishment upon conviction of any person of a criminal act, and this carries with it the right to inflict all penalties whether provided by statute or by the Constitution, unless the Legislature specifically designates another method of procedure. Mandamus to compel performance of a ministerial act by a public officer may be entertained by the court, notwithstanding the fact that title to the office of some public official is involved and the question raised.—Comth. **ex rel.** Woods, Atty.-Gen., v. W. W. Davis, Treas. of Johnstown, Pa., 14 Cambria 31, Evans, P. J.

(C) ADMINISTRATIVE CODE

1. Investment of Funds.

309, See Quar. Dig. II.

Since the passage of the Act of April 13, 1927, P. L. 207, the provisions of which were reenacted by Section 701, of the Administrative Code of April 9, 1929, P. L. 177, no administrative department, board or commission of the State government may make any investment of funds in its charge or under its control without first obtaining the approval of the Governor thereto.—Investment of Funds by State Boards, 14 D. & C. 453, Schnader, Dep. Atty.-Gen.

2. Fiscal Code.

Under the Fiscal Code of April 9, 1929, P. L. 343, the Department of Revenue has no power to entertain a second petition for resettlement of a tax report after it has made a resettlement upon petition of the taxpayer. If the department is convinced that it has made an erroneous or illegal resettlement, it may within one year petition the Board of Finance and Revenue, under Section 1105, of the Fiscal Code, for authority to correct its error by making a further resettlement. The taxpayer's remedy, if he is unable to convince the Department of Revenue that it has erred, consists exclusively in the right to file a petition for review by the Board of Finance and Review, as provided in Section 1103, of the Code. The Board of Finance and Revenue may resettle a tax upon appeal by the taxpayer, but it does not have jurisdiction either to direct or to authorize the Department of Revenue to make a further resettlement.—Settlement of Tax Reports, 14 D. & C. 389, Schnader, Spec. Dep. Atty.-Gen.

VIII. JUDICIARY

1. Oldest in Commission.

(A) PRESIDENT JUDGE

3668, See P. & L. III.; Quar. Dig. II. 310.

(B) JUSTICE OF THE PEACE

1. Malfeasance.

3689, See P. & L. III.; Quar. Dig. II. 310.

IX. COUNTY OFFICERS

(A) TREASURER

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

X. AMENDMENTS

(A) SUBMISSION TO VOTE

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

XI. PRIVATE CORPORATIONS

(A) PRIVILEGES

1. Registration.

3971, See P. & L. III.; Quar. Dig. II. 313.

(B) CERTAIN CHARTERS VOID

3771, See P. & L. III.; Sup. VII. 570; Quar. Dig. II. 313.

The Act of May 13, 1927, P. L. 1009, violates Section 1, of the Fourteenth Amendment of the Federal Constitution, in that it prohibits any corporation from establishing, owning or conducting any pharmacies or drug stores, other than those owned or conducted by it at the time of the passage of the Act of 1927, unless all the members of such corporation are registered pharmacists. Liggett Co. v. Baldridge, 000 U. S. 000, followed.—Evans v. Baldridge, *et al.*, 294 Pa. 142.

CONTEMPTS

I. CONTEMPT OF COURT

(A) JUDGE OF THE LAW AND FACTS

3820, See P. & L. III.; Quar. Dig. II. 313.

The court is judge of both the law and the facts, in contempt proceedings. Where bankrupts, in disobedience of an order of the District Court, removed and concealed property, the proceeding for contempt is civil and they are not entitled to a trial by jury.—Mercur, *et al.*, v. Pennsylvania Trust Co. of Pittsburgh, 23 F. (2nd) 303, Woolley, C. J. Affirming W. D. Pa.

A person may be attached for contempt of court in failing to comply with an order against him, although such order has not been served upon him, if it appears that he has actual knowledge of the proceedings and of the order entered against him. Order reviewed.—Mersmore's Estate, 293 Pa. 63, Moschzisker, C. J. Affirming O. C. Fayette County.

The right to punish for contempt of court is inherent in all courts, but the manner of its exercise is regulated by the Act of June 16, 1836, P. L. 793. The scattering of cartoons of a candidate for office, over the county, or the general making of political speeches, cannot be punished as contempt as if done in open court. Such action would be nullifying Sections 26 and 27 of the Act of 1836. Contempt so punishable must be limited to acts done in or so near the court as to interfere with its immediate business.—Snyder's Case, 301 Pa. 276, Walling, J. Reversing Q. S. Schuylkill County.

No one can communicate with the grand jury, or any of its members, in relation to matters which are, or may be, proper for their inquiry, either on questions of law or fact. The grand jury are officers of the court under its legal direction, receive their instructions from it only, and are entitled to the protection of the court from all attempts to control, influence or bias them. Attempts to influence the grand jury are criminal in the eye of the law, a contempt of court and an obstruction to the administration of justice. Communications to the grand jury irregularly made are not excusable, because of a misguided zeal in the supposed furtherance of the public good.—Miehle's (Edith) Case, 10 D. & C. 558, Berger, J.

A rule to show cause why defendants should not be adjudged in contempt of court for their alleged failure to comply with a mandatory injunction requiring the removal of a fence erected on a passage between the houses of the parties was discharged without prejudice to renew the application, where defendants had not complied with the decree but evidence would not justify fining or imprisoning them.—Skowronski, et ux., v. Lewalski, et ux., 78 Pitts. 505, Ford, J.

To constitute a constructive contempt of an act not done in the presence of the court, but at a distance, such act should tend to degrade or belittle the court in the administration of justice or bring the court or judge or administration of justice into disrespect. As regulated by the Act of 16 June, 1836, P. L. 784, the punishment of imprisonment for contempt is limited to such contempts as are committed in open court, and all other contempts by fine only.—Comth. v. Tipchus, et al., 31 Lack. Jur. 226, Newcomb, P. J.

1. Imprisonment for Debt.

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

Failure to comply with an order of the court is a contempt of court. Imprisonment for the contempt is for the enforcement of a legal order and is not an imprisonment for a debt.—Comth. v. Lowenstein, 46 Montg. 30, Williams, P. J.

(B) COMMITTEE OF THE U. S. SENATE

1. Rule to Testify.

In the United States Senate Committee inves-