THE

QUARTERLY DIGEST

of

PENNSYLVANIA DECISIONS

Supplementary to

PEPPER AND LEWIS' DIGEST OF DECISIONS

Containing the

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

Published Quarterly By

J. H. CABRERA

1024 Walnut Street, Philadelphia, Pa.
PHONE WALNUT 8690

publishers alleging violation of a contract for their sale and distribution, with intent to ruin plaintiff's business, it was held that plaintiff's claim alleged no cause of action.—Miller v. Post Pubg. Co., 266 Pa. 533 (1920). Affirming C. P. Chester County.

CONSTABLES

I. DUTIES

(A) PROCESS; RETURN

3349, See P. & L. II.; Sup. VII. 526.

No such functionary is known in a city of the second class as a "deputy constable," in legal proceedings.—Durkin v. Gavin, 24 Lack. Jur. 355 (1923), Newcomb, J.

A constable's return of service, full and complete on its face, cannot be set aside or contradicted in certiorari proceedings.—Altenberg v. Shreve Chair and Lumber Co., 1 D. & C. 472 (1921), Prather, P. J. Following Holly v. Travis, 267 Pa. 136. Reversing 71 Super. Ct. 527.

(B) ACTIONS AGAINST

1. Act of 1772.

3359, See P. & L. II.; Sup. VII. 527.

A compulsory non-suit was entered in a suit against a landlord and a constable for wrongful eviction, when plaintiffs had failed to give the six days' notice to the constable required by Act of March 21, 1772.—Haugh, et. rex., v. Hamilton, 71 Pitts. 549 (1922), Drew, J.

2. For Malfeasance in Office.

Where a constable executes a landlord's warrant and refuses to pay a wages claim, the form of action is trespass for malfeasance of office.—Roup v. Simpson, 2 Wash. 150 (1922), Cummins, J.; 36 York 93. (See Yeager v. Tool, 1 Dau. 120).

Where a constable, having arrested a liquor trucker, without a warrant, and he discontinues prosecution for $500 and a barrel of whiskey, a conviction of extortion will stand.—Comth. v. Sykes, 16 Del. 97 (1922), Broomall, J.

3. Malicious Prosecution.

When a constable at the instance of the district attorney swears out a warrant on a criminal charge and instead of taking defendant to the alderman who issued it, and defendant is committed to jail, but afterwards tried and acquitted of the charge, it is error for the court to direct a verdict for the defendant.—The question of malice under the facts was for the jury.—Herr v. Lollar, 268 Pa. 109 (1920), Frazer, J. Reversing C. P. Lancaster County.

(C) BOND

1. Liability of Sureties.

3366, See P. & L. II.; Sup. I. 1065.

A surety on the bond of a constable duly appointed by the court may not be relieved as such surety during the period for which the appointment was made by simply presenting a petition to the court and having a rule issued upon the constable to show cause why the surety should not be discharged. An application in such a case should be made under the Act of 1917, P. L. 1001. A constable appointed by the court is entitled to hold office until the next general election.—Ferguson's Case, 13 Westm. 53. See Smith's Case, 4 D. & C. 60.

3. Removal.

1059, See P. & L. Sup. I.

A constable is not a township officer. On petition for his removal on a criminal charge, he need file no answer. The proper procedure is an inquiry by the judge, hearing testimony.—Smith's Case, 3 Wash. 1 (1922), Brownson, J.; 16 Del. 211; 4 D. & C. 60.

4. Fees.

For constables' fees, see Weaver's Petn., 71 Pitts. 770 (1923), Wanner, P. J.; 37 York 65.

CONSTITUTION OF THE UNITED STATES

I. POWERS OF CONGRESS

(A) TAXATION AND LICENSE REGULATIONS

1. Distinction Between Tax and Penalty.

3392, See P. & L. III.; Sup. VII. 530.

When Congress terms an imposition a tax, the court will not hold it to be a penalty. The added tax is not a denial of due process of law.—Lipke v. Lederer, 274 Fed. R. 493 (1921), Dickinson, D. J.; Idem, Ketterer v. Lederer, 269 Fed. R. 153 (1920), Dickinson, D. J.

(B) PROHIBITIONS ON THE STATES

1. Ex Post Facto Laws.

3405, See P. & L. III.; Sup. VII. 530.

The term *ex post facto* is limited to penal statutes and does not apply to the Act of June 7, 1917, P. L. 447, called the Fiduciaries Act, with reference to the lien on a decedent's estate for his debts.—Myers v. Lohr, 72 Super. Ct. 472 (1919), Keller, J. Modifying C. P. Allegheny County.

2. Prohibition Enforcement.

The fourth and fifth amendments of the Constitution of the United States contain no restrictions on the powers of the states, but were intended to operate

solely on the Federal government and the Federal Court so that these amendments cannot be urged as a defense in a prosecution in a State court for a violation of the provisions of the Pennsylvania Enforcement Act of March 27, 1923.—Comth. v. Rubin, 82 Super. Ct. 315 (1923), Porter, J. Affirming Q. S. Armstrong County; (71 Pitts. 921). Appeal to Supreme Court allowed.

3. Judgments and Decrees.

Under Article IV., Sec. 1, of the Constitution of the United States, a judgment or decree rendered in one state by a court having jurisdiction of the parties and of the subject matter has the same force and effect when pleaded or offered in evidence in the courts of any other state as it has by law and usage in the state where it was rendered, and if conclusive there, is conclusive everywhere in the United States. When a court has jurisdiction it has a right to decide every question which occurs in the cause, and whether its decision be correct or not, its judgment until reversal is regarded as binding in every other court.—Scranton Trust Co. Exr., v. Richardson, Ex-x., 25 Lack. Jur. 293 (1924), Maxey, J.

2. Laws Impairing the Obligation of Contracts.

3406, See P. & L. III.; Sup. VII. 530.

The provision in Section 10, Art. I. of the Constitution of the United States, declaring that "No State shall pass any law * * * impairing the obligation of contracts," has no application in Pennsylvania since the Act of July 26, 1913, P. L. 1374, called the Public Service Company Law, which vested in the Public Service Commission the power of setting aside the contracts of public service companies with municipalities. An order of the Public Service Commission annulling a contract between the borough of Wilkinsburg and the Pittsburgh Rys. Co. with respect to fares and service, is not in conflict with Section 9, Art. XVII, as to municipal contract, nor Section 10, Art. I. nor Art. XIV. of the U. S. Constitution. It is based on the police power in Section 3, Art. XVI.—Wilkinsburg Boro v. Public Service Commission, 72 Super. Ct. 423 (1919), Trexler, J. Affirming Com.; McKeesport v. Pittsburgh Rys. Co., 72 Super. Ct. 435 (1919), Trexler, J.; Foltz v. Public Service Com., 73 Super. Ct. 24 (1919), Williams, J.

When the city of Scranton by ordinance consented to permit a street railway company to use the city streets, under Section 9, of Art. XVII., of the Constitution, at rates of fare contracted between the city and the railway corporation, "it is conclusively presumed to have known at the time the consenting ordinance was passed that the sovereign police power of the state to modify its terms would be supreme whenever the general well-being of the public so required."—Scranton v. Public Service Commission, 268 Pa. 192 (1920), Brown, C. J. Affirming 73 Super. Ct. 192.

Contracts made by public service corporations are not classed with those personal and private contracts the impairment of which is forbidden by the U. S. Constitution. Such contracts are held not inviolable. Where a street railway system is in the hands of a receiver, the court will not anticipate the public service commission's order fixing reasonable rates and fares.—American Brake Shoe & Foundry Co. v. Pittsburgh Rys. Co., 270 Fed. R. 812 (1921), Orr, D. J.

(C) PROVISIONS OF THE FIRST AND FOURTEENTH AMENDMENTS

1. The Right of Free Speech.

3430, See P. & L. III.; Sup. VII. 531.

An ordinance of a city forbidding the use of its streets for public meetings, without a permit, does not violate the 14th amendment of the Federal Constitution.—Duquesne City v. Fincke, 269 Pa. 112 (1920), Simpson, J. Affirming County Ct. Allegheny County.

2. Due Process of Law.

Under the corrective opinion of the U. S. Supreme Court in Ben Avon Boro v. Ohio Valley Water Co., 253 U. S. 827, reversing 260 Pa. 289, due process of law required that some judicial tribunal upon its own independent judgment of both the law and the facts shall determine whether rates fixed by the Public Service Company are confiscatory or not; and such tribunal being the Superior Court, the independent exercise of this power, which was the same as in the beginning, was affirmed in due course of law.—Ben Avon Boro v. Ohio Valley Water Co., 271 Super. Ct. 346 (1921), Simpson, J. Affirming 75 Super. Ct. 290.

The 14th Amendment to the U. S. Constitution is not violated where the party complaining has the same opportunity as others in like position, to present his claim or defense in due course of law; as where property is assessed for street

paving.—Philadelphia v. Crew-Levick Co., 278 Pa. 218 (1923), Simpson, J. Affirming C. P. 5, Phila.

The Workmen's Compensation Act does not conflict with the Constitution of the U. S. nor the treaty with Italy, as amended February 13, 1913.—Liberato v. Royer & Herr, 81 Super. Ct. 403 (1923), Porter, J. Reversing C. P. Dauphin County, citing Maiorano v. B. & O. R. Co., 216 Pa. 402.

Under the Fourteenth Amendment, in a case before the Public Service Commission, the test is whether the utility is deprived of its property or a part of its value in the return allowed. The rule is just compensation; and the standard is the present value.—Erie City v. Pub. Serv. Com., 278 Pa. 512 (1924), Kephart, J. Reversing 81 Super. Ct. 65.

A decree does not violate the 14th Amendment of the U. S. Constitution, as to due process of law, which gives complainant an adequate legal remedy.—People's Nat. Gas Co. v. Pub. Serv. Com., 279 Pa. 252. Affirming 79 Super. Ct. 560 (1924), Simpson, J.

The trial, conviction and sentence of defendant of murder in the first degree was illegal and without that due process of law guaranteed by the XIV Amendment, where there were two distinct homicides and two distinct indictments, but both were tried together and before the same jury. This was a denial of the time-honored right of a prisoner to a separate trial on each indictment involving his life, which has been recognized for centuries, upheld by the courts as a continuous expression of the consciousness of the people, unchanged in the progress and development of the law, is basic, fundamental, and absolute, and involved in the very conception of free government. Defendant discharged on *habeas corpus*.—U. S. *ex rel.* Valotta v. Ashe, 72 Pitts. 1057, Thomson, J. (See Comth. v. Valotta, 279 Pa. 84, Quar. VI. 1152. (Appeal to U. S. Supreme Court allowed).

Section 25, Act of Congress, Aug. 8, 1917, was a constitutional provision necessary to exercise of war powers and an indictment for conspiracy to sell coal at a higher price than that fixed by executive order.—U. S. v. Penna. Central Coal Co., 66 Pitts. 617 (1918), Thomson, D. J.

Section 2, of Act of Congress, Oct. 22, 1919, against profiteering in food, was held to be in conflict with the 6th Amendment to the Federal Constitution and its enforcement restrained by injunction.—Lamborn v. McAvoy, 29 D. R. 744 (1920), Thompson, U. S. D. J.; (cf. 29 D. R. 551).

The Act of May 25, 1921, P. L. 1131, violates the Fourteenth Amendment.—Comth. v. Stevenson, 4 D. & C. 321 (1923), Shull, P. J.

The refusal of a clerk of the U. S. District Court to file a **praecipe** for entry of an appearance for a corporation defendant, without his paying the fee provided by law, is not a denial of defendant's constitutional right "to have the assistance of counsel for his defense."—U. S. v. Phila. & R. Ry. Co., 268 Fed. R. 697 (1916), Dickinson, D. J.

(D) THE 18TH AMENDMENT

1. Prohibition Law.

The eighteenth amendment to the U. S. Constitution and the Act of Congress to enforce it do not conflict with the restrictive and punitive parts of the Act of May 13, 1887, P. L. 108, of Pennsylvania.—Comth. v. Vigliotti (No. 1), 75 Super. Ct. 366 (1921), Henderson, J. Affirming Q. S. Fayette County, affirmed 271 Pa. 10, affirmed U. S. Supreme Court.

The word "unconstitutional" means that the act assailed is in conflict with some provision of the Constitution; not that it is contrary to sound principles of legislation. The Act of Congress, enforcing the eighteenth amendment, is not a denial of due process of law, by reason of the imposition of a special tax upon a violator of the law and injunction to restrain its collection refused.—Ketterer v. Lederer, 269 Fed. R. 153-1010 (1920), Dickinson, D. J.

The words "concurrent power," as used in the Eighteenth Amendment to the Constitution of the United States, authorize either the State or the Federal government to carry the amendment into effect; and if the State law imposes severer restrictions than the Federal law, the State law may be enforced within the confines of the state. Wine containing any percentage of alcohol does not come within the Non-alcoholic Drink Act of March 11, 1909, P. L. 15, as amended by the Act of June 16, 1919.—Virginia Dare Wine, 22 Dau. 31 (1920), Schaffer, Atty.-Gl.

Intoxicating liquors lawfully acquired prior to February 1, 1920, and stored in a warehouse by the owner, for his own consumption as a beverage, can be removed therefrom to his dwelling for his private use and for his guests.—Street v. Lincoln Deposit Co., 68 Pitts. 721 (1920), Clarke, J., 254 U. S. 88.

An injunction was made permanent to restrain a proceeding for possession under Act of 1863, P. L. 1125 (1864), by a landlord on the ground that it involved the application of the 18th Amendment to the U. S. Constitution and

the Volstead Act, and an intricate question of law was raised thereby.—Steiner v. Central Title & Trust Co., 3 Erie 245 (1921), Hirt, J.

II. THE NINETEENTH AMENDMENT

(A) FEMALE SUFFRAGE

1. Distinctions of Sex Abolished.

The Constitutional Amendment XIX, to the U. S. Constitution, does not by its own force invest women with the right or duty to serve as jurors in a State whose statutes provide that men shall constitute juries. The constitutional jury, handed down by the Common Law of England, consists only of men, good and true.—State of Idaho v. Kelley, 72 Pitts. 897 (1924), Lee, J.; Supreme Court of Idaho. *Cf.*, Comth. v. Maxwell, 271 Pa. 378, *contra*.

The right of trial by jury applies only in what are called "Cases at Common Law," and not in cases in equity, nor in maritime cases, nor always in bankruptcy cases. Therefore a motion to transfer an equity case to the law side was denied.—U. S. v. American Brewing Co., 17 Del. 1.

The XIX Amendment abolishes all distinctions of sex in state constitutions and law, as to right to vote.—Woman Suffrage, 2 Erie 91. Opin. Schaffer, Atty.-Gl. (1920).

For illuminating discussion of "hornbook" and constitutional law, see Comth. v. Miles B. Kitts, 3 Erie 66 (1921), Bouton, P. J., and Comth. v. Maxwell, 3 Erie 77 (1921), Rossiter, P. J., the latter reversed in 271 Pa. 378; II Quar. 359.

CONSTITUTION OF PENNSYLVANIA

I. BILL OF RIGHTS

(A) INHERENT RIGHTS

1. Right of Petition.

3459, See P. & L. III.; Sup. VII. 538.

A provision in a by-law of a beneficial society which denies to a member the constitutional right of petition to the legislature and imposes forfeiture is contrary to the Bill of Rights and will be declared null and void.—Spayd v. Ringing Rock Lodge of B. of Railroad Trainmen, 270 Pa. 67 (1921), Moschzisker, C. J. Affirming 74 Super. Ct. 139, which reversed C. P. Montgomery County.

2. Right of Public Assemblage.

An ordinance of a city forbidding the holding of public meetings on its streets without a permit, does not violate Sections 7 and 20 of the Bill of Rights.—Duquesne City v. Fincke, 269 Pa. 112 (1920), Simpson, J. Affirming County Ct. Allegheny.

3. Effect of Police Power on Private Rights.

The Acts of June 18, 1895, P. L. 203; April 22, 1903, P. L. 244, and June 5, 1919, P. L. 399, relating to vaccination of school pupils, are constitutional and mandamus will lie to enforce a duty, against school directors.—Comth. v. Wilkins, 271 Pa. 523 (1922), Simpson, J. Reversing C. P. Dauphin County; see 75 Super. Ct. 305.

An order of the Public Service Commission annulling a contract between a municipality, fixing the rate of fares, and a street railway company, seeking the privilege of using the public streets, does not violate Section 9 of Art. XVII., since it is a power held to be derived from Sec. 3, Art. XVI. of the Constitution.—Wilkinsburg Boro v. Public Service Commission, 72 Super. Ct. 423 (1919), Trexler, J. Affirming Com.; McKeesport v. Pittsburgh Rys. Co., 72 Super. Ct. 435; Foltz v. Public Service Com., 73 Super. Ct. 24; Scranton v. Public Service Com., 268 Pa. 192. Affirming 73 Super. Ct. 192; American Brake Shoe & Foundry Co. v. Pittsburgh Rys. Co., 270 Fed. R. 812 (1921), Orr, D. J.

There is a conclusive presumption that a contracting city anticipated the consequences of police powers, when it granted the use of the streets to a corporation. —Scranton City v. Pub. Serv. Com., 268 Pa. 192. Affirming 73 Super. Ct. 192 (1920), Brown, C. J.

The Woner Act, May 5, 1921, P. L. 407, was held constitutional.—Comth. v. Alderman, 79 Super. Ct. 277 (1922), Trexler, J. Affirming Q. S. Crawford County.

A summary conviction of one who broke a municipal ordinance by holding a meeting on the public streets without a permit of the mayor, was sustained. Such an ordinance in the public interest does not violate State or Federal constitutions, but is designed to preserve the public peace and safety from riot and anarchy. —Comth. v. Danich, 68 Pitts. 534 (1920), Kennedy, P. J.

(B) UNREASONABLE SEARCHES AND SEIZURES

3467, See P. & L. III.; Sup. VII. 541.

In pursuance of the 18th Amendment and the laws passed thereunder, a state policeman violates no constitutional provis-

ion in seizing an automobile on the highway without a warrant, which is transporting intoxicating liquors.—Comth. v. Rubin, 82 Super. Ct. 315, Porter, J.

See U. S. Constitution, Supra.

The seizure of cocaine found in the home of defendant and her conviction partly on the evidence of the drug found, were sustained.—Comth. v. Mae Grasse, 80 Super. Ct. 480 (1923), Gawthrop, J. Affirming Mun. Ct.

A fortune teller who sold small bags as charms, made no objection to the seizure of her articles of trade, when arrested. She can not urge her constitutional right against such seizure on appeal.—Comth. v. O'Malley, 81 Super. Ct. 100 (1923), Henderson, J.

A motion to continue a preliminary injunction against the captain of state police, to restrain the force from seizing automobiles from which the marks were obliterated, was denied and the bill dismissed. The Act of June 30, 1919, P. L. 702, (Sec. 7), authorizing such course, does not conflict with Sections 8, 9 and 10 of Art. I. of the Constitution.—Knepper v. Wilhelm, 49 C. C. 5 (1920), Bechtel, P. J.

To justify search and seizure, without warrant, the officer must have direct personal knowledge.—Comth. v. Turnkey, Etc., 3 D. & C. 633 (1923), McDevitt, J. For a thorough, comprehensive opinion on this subject, see Comth. v. Kekic, 26 Dau. 147 (1923), Fox, J.

1. Excessive Bail Prohibited.

3469, See P. & L. III.; Sup. VII. 541.

Although Section 13, Art. I. of the Constitution, providing that excessive bail shall not be required, etc., relates to criminal cases, the principles apply to civil proceedings as well.—Scranton City v. People's Coal Co., 274 Pa. 63 (1922), Simpson, J. Affirming C. P. Lackawanna County.

(C) THE RIGHT OF TRIAL BY JURY

3470, See P. & L. III.; Sup. VII. 541.

Sections 48 and 49 of the Criminal Code of Procedure of March 31, 1860, providing for jury trial, do not violate Sections 8 or 9 of the Bill of Rights. A "jury of the vicinage" does not mean county. It means the vicinity, or the place near which the crime was committed, and if that be within 500 yards of the county line, the accused may be tried in either county. Verdict of guilty of murder in the first degree sustained.—Comth. v. Collins, 268 Pa. 295 (1920), Brown, C. J. Affirming O. & T. Adams County.

The Act of June 7, 1907, P. L. 440, providing for a proceeding in equity against a municipality and certain of its officers, does not violate the provisions of the Constitution preserving the right of trial by jury, a right that the parties may waive.—Wright v. Barber, 270 Pa. 186 (1921), Simpson, J. Affirming C. P. Susquehanna County.

The public service company law does not deprive the defendant of the right of trial by jury when he has waived it under Act of April 22, 1874, P. L. 110, nor of due process of law or equal protection of the laws. The provision in Sec. 5, Art. V. that a reparation order shall be deemed *prima facie* evidence of the facts therein stated and the amount awarded is justly due, denies the defendant no right when he makes no attempt to rebut it.—New York & Pa. Co. v. New York Central R. Co., 267 Pa. 65 (1920), Simpson, J. Affirming C. P. Clinton County.

The Wills Act of March 15, 1832, P. L. 146, does not conflict with the constitutional right of trial by jury, in relation to issues *d. v. n.*—Fleming's Estate, 265 Pa. 399 (1919), Walling, J. Affirming O. C. Allegheny County.

The Act of April 23, 1903, P. L. 274, creating a branch of the Court of Quarter Sessions, termed a Juvenile Court, does not violate the provisions of the Constitution as to trial by jury, the State acting as *parens patriae* in reformation.—Comth. v. Carnes, 82 Super. Ct. 335 (1923). Reversing Q. S. Armstrong County.

An imposition of costs payable by the prosecutrix, when her complaint was dismissed under Act of May 27, 1919, P. L. 306, was held not violative of the constitutional right of trial by jury.—Comth. v. Berella, 9 Westm. 165 (1920), McConnell, P. J.

The Act of July 26, 1913, P. L. 1369, providing for an injunction against the owner of a building used for prostitution is not unconstitutional on the ground that it denies a defendant the right of trial by jury.—Alderdice v. Gordon, 28 D. R. 492 (1919), Shafer, P. J.; (67 Pitts. 356; 33 York 61). See Minser v. Indiana County, 29 D. R. 121.

(D) RIGHT TO IMMUNITY FROM FURNISHING EVIDENCE AGAINST ONESELF

3477, See P. & L. III.; Sup. VII. 542.

On appeal from a conviction of murder in the first degree, the same was reversed because, on the trial, in violation of Art. I, Section 9, of the Constitution, the defendant was requested to produce a letter written to him and his wife by an attorney, believed to be incriminating, which was refused, and evidence of its contents admitted by the trial judge.—Comth. v. Valeroso, 273 Pa. (2) 213 (1922), Schaffer, J. Reversing O. & T. Luzerne County.

(E) RIGHT OF PROPERTY

3482, See P. & L. III.; Sup. VII. 543.

The escheat law of June 7, 1915, P. L. 878, is within the sovereign power of the State to take charge of property abandoned or unclaimed for a period of time and does not violate either Section 10 or Section 17 of Article I. of the Constitution.—Germantown Trust Co. v. Powell, Union Trust Co. v. Powell, 265 Pa. 71 (1919), Frazer, J. Affirming C. P. Dauphin County.

The Act of July 21, 1919, P. L. 1084, prohibiting and punishing the advertisement of cures for venereal diseases, is not in conflict with Sec. 1, Art. I. of the Constitution, but within the police power.—Com. v. Redmond, 2 Erie 207 (1920), Wagner, J.

Sec. 3, Act May 18, 1917, P. L. 241, as to fraudulent conversion of property, is not unconstitutional. Motion to quash dismissed.—Comth. v. Ebersole, 38 Lanc. 88 (1921), Landis, P. J.

Section 14, of the Act of July 7, 1913, as to reckless driving of automobiles, is constitutional.—Comth. v. Druschell, 14 Del. 571.

(F) LAWS AFFECTING THE COURSE OF JUDICIAL PROCEDURE

3497, See P. & L. III.; Sup. VII. 543.

The Act of June 12, 1913, P. L. 481, is not in conflict with Section 7 of Art. III, of the Constitution, as to changing the rules of evidence in courts. It was entirely competent for the legislature to declare that evidence of certain things shall be sufficient *prima facie,* to show intention to defraud.—Comth. v. Berryman, 72 Super. Ct. 479 (1919), Keller, J. Reversing Q. S. Allegheny County.

Sections 34 and 35 of the Act of 1901, P. L. 431, violate Sec. 7, Art. III, of the Constitution in so far as they attempt to extend the remedy from one **in rem.** to one **in personam.**—Ott v. Mark Construction Co., 47 C. C. 287 (1918), Fuller, P. J.; (20 Luz. 183).

Sec. 11 of the Practice Act 1915 is constitutional.—Chisholm v. Nicola Building Co., 27 D. R. 99; 65 Pitts. 425.

Section 11, of the Practice Act, May 14, 1915, 483, is constitutional and went into effect January 1, 1916.—Chisholm v. Nicola Building Co., 27 D. R. 99 (1917), Davis, J.; (65 Pitts. 425).

The Act of May 28, 1915, P. L. 616, authorizing suit against the Commonwealth for damages caused by the erection of a dam by the Commission of Soldiers' Orphans' Schools, is void. The Commonwealth is not liable for the negligence of its officers.—Sleichter v. Comth., 22 Dau. 58, 59 (1920), Kunkel, P. J.; (48 C. C. 539).

(G) DUE PROCESS OF LAW

3508, See P. & L. III.; Sup. VII. 544.

A law which would make water rates legislatively fixed conclusive would violate the constitutional provision guaranteeing that no one shall be deprived of his property without due process of law.—Barnes Laundry Co. v. Pittsburgh, 266 Pa. 24 (1920), Moschzisker, J. Reversing C. P. Allegheny County, in part.

II. LEGISLATION

(A) FORM OF BILLS; TITLES

1. Title a Part of the Bill.

3586, See P. & L. III.; Sup. VII. 546.

Under Section 3 of Art. III. of the Constitution the title of an Act of Assembly is a part of it and must be considered in determining its scope.—Matis v. Schaeffer, 270 Pa. 141 (1921), Simpson, J. Affirming C. P. Northampton County.

2. Titles Held to Give Sufficient Notice of Purpose.

The title of the Act of June 2, 1915, P. L. 736, gives sufficient notice as to employers and their liability. The title need not be an index of the contents of an act of assembly.—Qualp v. James Stewart Co., 266 Pa. 502 (1920), Kephart, J.

The title of the Act of March 11, 1909, P. L. 19, relating to warehouse receipts, is sufficient.—Comth. v. Rink, 267 Pa. 408 (1920). Affirming 71 Super. Ct. 579, 585.

The title of the intestate act of July 11, 1917, P. L. 755, does not violate Sec. 3, Art. III. of the Constitution.—Langerwisch's Estate, 267 Pa. 319.

The Act of March 10, 1921, P. L. 16, amending Sec. 12, Practice Act, 1915, P.

L. 483, does not offend Sec. 3, Art. III, of the Constitution, as to title. The act performs a manifest purpose to remove a patent absurdity in the original act.—Roads v. Dietz, 80 Super. Ct. 507 (1923), Gawthrop, J. Affirming C. P. Schuylk.

The Acts of July 5, 1917, P. L. 682, and March 21, 1919, P. L. 20, do not violate Art. III. of the Constitution, either as to title or local legislation. The authority to refund assessments illegally collected is not special legislation.—Rubinsky v. Pottsville, 81 Super. Ct. 105 (1923), Henderson, J. Affirming C. P. Schuylkill County.

The Code of June 27, 1923, P. L. 498, is not in conflict with Sec. 3, Art. III., of the Constitution, by reason of defective title.—Comth. v. Snyder, 279 Pa. 234 (1924), Moschzisker, C. J. Affirming 26 Dau. 320.

The Acts of May 5, 1915, P. L. 273, and May 17, 1919, P. L. 207, relating to life insurance, are constitutional as to notice in title.—Irving Bank v. Alexander, 280 Pa. 466 (1924), Kephart, J. Affirming C. P. 2, Phila.

The Act of June 20, 1919, P. L. 521, relating to inheritance tax, is constitutional as to title. It does not include taxation of a *bona fide* and unconditioanl transfer by deed or gift, fully consummated.—Spangler's Estate, 281 Pa. 118 (1924), Simpson, J. Reversing O. C. Lancaster County.

The Act of June 29, 1923, P. L. 975, does not violate Section 6, Art. III., of the Constitution, relating to legislation, as to amendment of laws.—Comth. v. Sweeney, 281 Pa. 550 (1924), Sadler, J. Reversing O. & T. Philadelphia.

The Act of June 7, 1923, P. L. 498, known as the Administrative Code, does not offend Article III. of the Constitution as to title, reserving special features in it for future consideration, when questioned.—Comth. v. Snyder, 279 Pa. 234. Affirming C. P. Dauphin County.

Act June 20, 1919, P. L. 519, burial of soldiers; Hoover & Son v. Dauphin County, 22 Dau. 176; June 25, 1895, P. L. 308, as to divorce; Heller v. Heller, 47 C. C. 571; June 12, 1878, P. L. 207, as to preference of wages; Brown Bros. v. Mehrton, 27 D. R. 919 (1918), Corbet, P. J.

The Township Building Code of June 17, 1919, does not violate Sec. 3, Art. III., of the Constitution, as to title. A conviction of one by a justice of the peace, for not having first obtained a certificate of occupancy, under its provisions was affirmed.—Lower Merion Twp. v. Harrison, 40 Montg. 42 (1924), Williams, J.

The Act of June 12, 1878, P. L. 207, giving a construction to wages claimants' preference, does not violate Sec. 3, Art. III, of the Constitution, as to title.—Brown Brothers v. Mehrton, 27 D. R. 919 (1918), Corbet, P. J.

The title to an act of assembly need not be a complete index to its contents to comply with Art. III., Sec. 3, of the Constitution. The title of the Act of May 10, 1923, P. L. 183, as to salaries of solicitors of the sheriffs in counties of the fourth class is sufficient.—Hallman v. Montgomery County, 40 Montg. 215 (1924), Williams, J.

The Act of June 20, 1919, P. L. 521, does not contravene Sec. 3, Art. III., of the Constitution. Under it, where decedent, in his lifetime, transferred property in good faith, which was fully consummated by convyeance of the title and absolutely, with exclusive possession, although in contemplation of death, it is not liable to the tax.—Spangler's Estate (No. 2), 39 Lanc. 252 (1924), Smith, P. J.

The Act of May 10, 1923, P. L. 183, relating to salaries, is not in conflict with Sec. 3, Art. III., of the Constitution, as to title.—Hallman v. Montgomery County, 40 Montg. 220.

The Securities Act of June 14, 1923, P. L. 779, does not violate Sec. 7, Art. III., of the Constitution; nor the 14th Amendment or Sec. 10, Art. I., of the U. S. Constitution.—Phillips v. Cameron, 27 Dau. 204 (1924), Wickersham, J.; Power Finance Corp. v. Cameron, 27 Dau. 228.

The Act of May 26, 1891, P. L. 119, which legalizes wills of burial places in perpetuity, is not in conflict with Sec. 3, Art. III., of the Constitution, as to title. It effectuates a charitable use and a will creating it less than 30 days before the death of the testator is ineffectual under Sec. 6, Act of June 7, 1917, P. L. 403.—Boyd's Estate, 5 Erie 303. (See case for illuminating discussion of acts and cases appertaining).

3. Titles Held Insufficient.

3586, See P. & L. III.; Sup. VII. 548.

A change in the law, not indicated in the title, will render it unconstitutional.—Strain, Admr., v. Kern, 277 Pa. 209 (1923), Simpson, J. Affirming C. P. 4, Phila.

The title of the Act of July 6, 1917, P. L. 751, as amendatory of the Act of June 27, 1913, P. L. 568, is insufficient in that it fails to give notice of the provision requiring a borough council to pass an appropriate ordinance asking annexa-

tion when three-fifths of the taxable inhabitants so request.—Comth. v. Dale Boro, 272 Pa. 189 (1922), Sadler, J. Reversing C. P. Cambria County.

An order refusing a certificate of public convenience to a taxicab applicant was affirmed. The Hebrew question is not one in contemplation of Art. I. Sec. 3, of the Constitution. — Halperin v. Pub. Serv. Com., 81 Super. Ct. 591 (1923), Gawthrop, J.

The Act of May 10, 1917, P. L. 162, validating certain tax liens, is invalid, since its title gives no notice of the extension of time for filing, three months after its approval.—Keystone State Building & Loan Assn. v. Butterfield, 74 Super. Ct. 582 (1920), Keller, J. Affirming C. P. Beaver County. See, also, Comth. v. Dale Boro, 272 Pa. 189 (1922).

The following were held insufficient: May 20, 1921, P. L. 976, as to boroughs; Burke v. Throop Boro, 23 Lack. Jur. 138; Sec. 3, Act June 13, 1883, P. L. 111, children in almshouse; Harris v. Bradford County Comrs., 22 Lack. Jur. 277; Lewis Estate, 30 D. R. 391.

Paragraph (c) of Sec. I, Act June 20, 1919, P. L. 521, which imposes a tax on the transfer of property in the lifetime of the grantor, to take effect in possession or enjoyment at or after his death, violates Section 3, Art. III, of the Constitution, its purpose not being clearly expressed in the title.—Spangler's Estate, 38 Lanc. 488 (1923), Smith, P. J.; 71 Pitts. 456.

The Act of May 25, 1921, P. L. 1131, regulating surveying, engineering, etc., violates Sec. 3, Art. III, as to title.—Comth. v. Stevenson, 4 D. & C. 321 (1923), Shull, P. J.

The Act of May 20, 1921, P. L. 976, was declared void for defective title, in that it proposed to amend and also repeal a given section of the borough code, which can in no sense be deemed a clear expression of any legislative purpose.—Burke v. Throop Boro, 23 Lack. Jur. 138. Newcomb, J.

Section 3, of the Act of June 13, 1883, P. L. III, relating to children in alms and poorhouses, is in conflict with Sec. 3, Art. III, of the Constitution, as the purpose thereof was not clearly expressed in the title. The County Commissioners were restrained from erecting buildings for that purpose.—Harris v .Bradford County Commissiones, 30 D. R. 834 (1920), Edwards, P. J.; (22 Lack. Jur. 277. (But see Act of May 16, 1921, P. L. 666).

Where the title of acts did not give notice of a grant of power to a cemetery company, no such power could be implied under Sec. 3, Art. III, Constitution of Pennsylvania.—Lewis Estate, 30 D. R. 391 (1920), Smith, P. J.

The Act of July 8, 1919, P. L. 764, is in conflict with Sec. 3, Art. III, of the Constitution, its title not giving notice of its limitations as to unnaturalized foreign born persons.—Seltzer's Petition, 2 D. & C. 242 (1922), Koch, J.

The Act of May 5, 1921, P. L. 399, giving dentists exclusive right to X-ray the human jaws, is a violation of Art. III, Sec. 3, of the Constitution, because of lack of notice of X-rays in the title.—Heron v. Comth., 71 Pitts. 281 (1922), Shafer, P. J.

Section 4, of the Act of May 19, 1915, P. L. 543, violates Section 3, Article III., of the Constitution, so far as "choses in action" are concerned, no mention being made of this kind of property, which is not covered by the word "goods" in the title.—McMullin v. Phillips, D. & C. 650.

The title of the Act of June 4, 1901, P. L. 20, offends Sec. 3, Art. III., of the Constitution, as to water rates. **Expressio unius est exclusio alterius**, and in the absence of any reference to water rents, or rates in the title, all prvoisions in the act purporting to exempt property from liability to lien for water rents or rates are nugatory."—Pittsburgh v. Young Women's Christian Assn., 72 Pitts. 977-980; 73 Pitts. 32.

(B) LOCAL AND CLASS LEGISLATION

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

1. Cities and Counties.

The Supreme Court, assuming original jurisdiction by consent of the parties, held that the Act of June 25, 1919, P. L. 581, providing for the government of cities of the first class, was neither a special or local law, nor violative of the obligation of contracts, nor an unlawful delegation of power, nor in conflict with Art. IX. Section 9, relating to incurring of public indebtedness by Philadelphia.—Kraus v. Phila., 265 Pa. 425 (1919), Simpson, J.

The Act of June 22, 1917, P. L. 636, authorizing the city of Philadelphia to sue the Commonwealth in the Court of Common Pleas of Philadelphia County, to recover election expenses, is not a local or special law and does not violate Section 7, Art. III. of the Constitution.—Philadelphia v. Commonwealth of Pennsylvania, 270 Pa. 353 (1921), Moschzisker, C. J. Reversing C. P. No. 5, Phila.

The Act of July 17, 1919, P. L. 1001, attempting to fix fees for prothonotaries in counties of less population than 70,000, violated Section 7, Art. III., of the Constitution.—Sieber v. Juniata County, 79 Super. Ct. 247 (1922). Affirming C. P. Juniata County, on opinion of Barnett, J.

So is Act June 1, 1915, P. L. 685, relating to interest in municipal damage suits.—O'Brien v. Miners Mills, 21 Luz. 93; McManamon v. Ash-

ley Boro, 21 Luz. 96. And Act July 17, 1919, P. L. 1001 ,as to fees of prothonotary, Sieber v. Juniata County, 30 D. R. 449.

The Act of June 1, 1915, P. L. 685, providing that interest in addition to damages, at the rate of six per cent, shall be charged when a municipality takes private property for public use, violates Sec. 7, Art. III. of the Constitution, being special legislation. Verdict reduced.—O'Brien v. Miners Mills Boro, 21 Luz. 93 (1920), Woodward, J. Accord: McManamon v. Ashley Boro, 21 Luz. 96 (1920), Woodward, J.

The Act of June 20, 1919, P. L. 519, amending the Act of June 7, 1915, P. L. 870, providing for burial of soldiers, etc., at county expense, is constitutional, notwithstanding badly drafted. Under it, a county in which the soldier died is not liable to contribution, the amount being in excess of $250.—Hoover & Son v. Dauphin County, 22 Dau. 176, 179 (1920), Hargest, P. J.

The Act of April 6, 1921, P. L. 107, amending the 16th Sec., Act May 31, 1911, P. L. 468, is constitutional, imposing liability on the county for changes in state highways.—Durante's Petition, 3 D. & C. 351 (1923), Corbet, P. J.

The Act of July 17, 1919, P. L. 1001, as to fees of a prothonotary, is a local act and in conflict with Sec. 7, Art. III. of the Constitution.—Sieber v. Juniata County, 30 D. R. 449 (1920), Barnett, P. J.

2. Special Legislation.

3623, See P. & L. III.

The Acts of May 8, 1876, P. L. 139; April 10, 1905, P. L. 134, and May 1, 1913, P. L. 132, authorizing attachment of wages for boarding, violate Sec. 7, Art. III, of the Constitution, being special legislation.—Schmidt v. Schmidt, 37 York 78; 5 Erie 109; 3 D. & C. 461, Edwards, P. J.

Section 2, of the Act of June 4, 1901, P. L. 431, is not unconstitutional as violating Art. III, Section 7. Rule to strike off a lien for repairs discharged.—D'Armond v. Haviland, 35 Montg. 69 (1918), Swartz, P. J.; (8 Leh. 189).

3. Affecting Classes of Persons, Etc.

3639, See P. & L. III.; Sup. VII. 507.

The Act of May 19, 1915, P. L. 543, is not unconstitutional. Section 4 does not violate Sec. 7, of Art. III. of the Constitution.—Mason-Heflin Coal Co. v. Currie, 270 Pa. 221 (1921), Simpson, J. Affirming C. P. 2, Phila.

One who has paid his license fee of $1,000 for the privilege of selling liquor for a year is not entitled to recover it from the county when prohibition set in. It would violate Sec. 3 of Art. III. of the Constition, it is held.—Riffle's Petition, 74 Super. Ct. 410 (1920), Henderson, J. Affirming Q. S. Allegheny County; Burkel's Petition, 74 Super. Ct. 416 (1920).

The Act of May 6, 1915, P. L. 261, relating to attorneys, violates Sec. 7, Art. III. of the Constitution.—Laplaca v. Phila. R. T. Co., 265 Pa. 304 (1919), Frazer, J. Affirming 68 Super. Ct. 208, which reversed Mun. Ct. Phila.

The Intestate Act of July 11, 1917, is a general law and does not violate Clause 16, Sec. 7, Art. III.—Langerwisch's Estate, 267 Pa. 319 (1920). Affirming O. C. Monroe County.

The Act of May 5, 1915, P. L. 248, in regulation of veterinary science and practice, is constitutional, as an exercise of police power.—Comth. v. Heller, 277 Pa. 539 (1923). Affirming 80 Super. Ct.

The Act of April 5, 1917, P. L. 38, authorizing a suit against the Commonwealth for work and labor done, is invalid because it is in conflict with Sec. 7 of Art. III of the Constitution. The Act of March 30, 1811, P. L. 145, prescribes the practice and procedure in such cases, by a commission on claims consisting of the auditor general and state treasurer, who are authorized to examine and adjudicate them.—Souder v. Commonwealth, 22 Dau. 54 1920), Kunkel, P. J.; (48 C. C. 534; 29 D. R. 254; 68 Pitts. 218. Accord: Somerset Contracting Co. v. Comth., 48 C. C. 537. See also Sleichter v. Comth., 22 Dau. 58. 59; 48 C. C. 539; and D'Armond v. Haviland, 35 Montg. 69; 8 Leh. 189.

The Act of June 10, 1881, P. L. 117, making it arson for a tenant to set fire to the landlord's buildings, does not violate Sec. 6, of Art. III, of the Constitution.—Comth. v. Levine, 3 D. & C. 439 (1923), Terry, P. J.

The Old Age Pension Act, of May 10, 1923, was in conflict with Section 18, Art. III., of the Constitution.—Busser v. Snyder, et al., 27 Dau 231. Affirmed in 282 Pa. 440.

4. Elections, Courts and Corporations.

3642, See P. & L. III.; Sup. VII. 559.

The Act of July 8, 1919, P. L. 745, amending Section 13 of the primary election law of July 24, 1913, P. L. 1001, is sufficient in title and does not violate Section 5 of Art. I. declaring that elections shall be free and equal, nor Section 7, Art. VIII. requiring uniformity of elections.—Wasson v. Wood, 265 Pa. 442 (1919). Affirming C. P. Dauphin County, on opinion of Kunkel, P. J.

The Act of March 27, 1923, P. L. 34, is not unconstitutional for that it declares that "when proof has been given in evidence" of the transportation of intoxicating liquors it shall be *prima facie* evidence that it was so transported to be used as a beverage.—Comth. v. Amato,

82 Super. Ct. 149 (1923), Porter, J. Affirming Q. S. Venango County.

The voting by mail scheme in the Act of May 22, 1923, P. L. 309, violates Section 4, Art. VIII., of the Constitution, by disclosing the voter's intention and destroying the secrecy of the ballot.—Bare's Appeal, 39 Lanc. 265 (1924), Sadler, J. Affirming 39 Lanc. 13, Quar. V. 931.

(C) CHANGING, INCREASING OR DECREASING COMPENSATION OF PUBLIC OFFICERS

3648, See P. & L. III.; Sup. VII. 560.

Registration commissioners of Pittsburgh are public officers whose salaries cannot be increased or diminished in defiance of Section 13, Art. III. of the Constitution. —Comth. v. Moore, 266 Pa. 100 (1920). Affirming 71 Super. Ct. 365; Vide VII. Sup. 560.

A county commissioner appointed to fill a vacancy is entitled to the salary which the law fixed at the time of his appointment and is not restricted by Art. III. Sec. 13, to the salary fixed for his predecessor in office.—McKinney v. Northumberland County, 75 Super. Ct. 581 (1921). Affirming C. P. Northumberland County.

The Act of May 10, 1921, P. L. 432, giving the County Treasurer the ten per cent. on hunters' licenses, is constitutional.—Schuylkill County v. Gruhler, 82 Super. Ct. 392 (1923). Affirming C. P. Schuylkill County.

Poor directors elected or appointed under a special law are subject to Sec. 13, Art. III, of the Constitution, prohibiting legislation increasing or decreasing salaries.—Shirk v. Directors of the Poor, 11 Berks 126-150 (1919), Endlich, P. J. Following Comth. v. Moffitt, 238 Pa. 255.

Under the popular use of language and understanding, Sec. 5, of Art. XIV., of the State Constitution, does not exclude the second assistant district attorney of Berks County, appointed under Act of July 17, 1919, P. L. 995, from his compensation of $2,000 per annum. Mandamus to county treasurer to pay.—Matten v. Bachman, 13 Berks 84. **Cf.:** Maginnis v. Schlotum, 76 Super. Ct. 124. Affirmed in 271 Pa. 305. Reversing Schuylkill County.

(D) APPROPRIATIONS

1. Denominational or Sectarian Institutions.

3655, See P. & L. III.; Sup. VII. 560.

The constitutional prohibition in Sec. 18 of Article III. against appropriation by the legislature of moneys of the state "to any denominational or sectarian institutions," applies to all such institutions and means what it says. See case for learned discussion.—Collins v. Kephart, 271 Pa. 428 (1921), Mochzisker, C. J. Reversing C. P. Dauphin County.

The fact that for upwards of forty years the legislature of Pennsylvania has been appropriating public money to sectarian and denominational institutions, under the guise of public charity, does not warrant the violation of Section 18, Art. III. of the Constitution, or stamp it with legality, because acquiesced in.—Collins v. Kephart, 271 Pa. 428 (1921), Moschzisker, C. J. Reversing C. P. Dauphin County.

The constitutional prohibition against appropriating public money to sectarian institutions, as expounded in Collins v. Kephart, 271 Pa. 428, does not apply to St. Vincent's Hospital, Erie, because it is chartered as a non-sectarian institution and is not exclusively Roman Catholic, the name of a church saint and the fact that the ground is leased from a sisterhood of the church not being sufficient to invalidate the appropriation.—Collins v. Lewis, 276 Pa. 436 (1923). Affirming C. P. Dauphin Co. Cf. Duquesne University v. Lewis, 26 Dau. 242 (1923), Wickersham, J.

III. ELECTIONS

(A) DISTRICTS

3709, See P. & L. III.

Section 2, Art. VIII. providing that townships shall be formed or divided into election districts of compact and contiguous districts, is not impinged by cutting off a small strip of a township and incorporating it with a borough.—Incorporation of Boro of Forest Hills (No. 1), 72 Super. Ct. 419 (1919), Trexler, J. Affirming Q. S. Allegheny County.

The Act of May 22, 1923, P. L. 309, which permits persons absent from their regular polling places on election day to cast their votes outside of their election district, is unconstitutional and void, being in conflict with Article 8, Section 1 of the Constitution, which requires that an elector must vote in propria persona in the election district in which he resides. There is no provision in the Constitution exempting electors, other than those engaged in military service, from this requirement. Article 8, Section 4, of the Constitution, as amended on November 5, 1901, which provides for voting by other method than by ballot, does not authorize a change of the place where electors shall exer-

cise their right to vote.—Bare's Contested Election, 39 Lanc. 13 (1924), Hassler, J. Affirmed 39 Lanc. 265.

IV. TAXATION AND FINANCE

3715, See P. & L. III.; Sup. VII. 565.

1. Municipality Defined.

The word "municipality," in Section 15, Art. IX. of the Constitution, does not embrace a school district within its meaning as to debt limitation.—Long v. Cheltenham School District, 269 Pa. 472 (1921), Simpson, J. Affirming C. P. Montgomery County.

The Act of May 25, 1921, P. L. 1125, amending Act of June 17, 1917, P. L. 840, as to assessments for municipal improvements, is not unconstitutional. Such assessments are a form of taxation and the property owner is protected as in other cases.—Mt. Lebanon Twp. v. Robinson, 72 Pitts. 545 (1924), Rowand, J.

2. Care of Poor.

There is nothing in Section 7, Art. IX. of the Constitution, prohibiting municipalities from becoming corporate stockholders, that prevents the Directors of the Poor of a county assisting to maintain poor colored children in a home incorporated for their care and maintenance. The board neither lends to nor becomes a member of the body.—Colored Children's Home v. Cambria County Poor District, 72 Super. Ct. 107 (1919), Orlady, P. J. Reversing C. P. Cambria County.

3. Uniformity of Taxation.

The Acts of May 27, 1919, P. L. 310, and June 27, 1913, P. L. 568, authorizing the levying of a tax on merchants, including grocers, in cities of the third class, is not in conflict with Section 7 of Article III. as special and local, nor Section 1 of Article IX. as violating uniformity.—Clouser v. Reading, 270 Pa. 92 (1921), Schaffer, J. Affirming C. P. Berks County.

4. School District Debt.

3715, See P. & L. III.; Sup. VII. 566.

Where a new school district is created, the assumption by it of the due share of the indebtedness of the old district is not such an increase of indebtedness as is contemplated by Section 8, Art. IX, of the Constitution.—Pittston Twp. Sch. Dist. v. Dupont Boro Sch. Dist., 275 Pa. 183 (1922), Simpson, J. Affirming C. P. Luz.

5. Bonds and Securities.

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

The amendment of Art. IX. (Section 4), of the Constitution, is an unimpeachable part of that body, P. L. 1921, P. 1238, relating to the issue of bonds, and does not violate Sec. 5, Art. IX., the electors having ratfied it.—Hollinger v. King, 282 Pa. 157 (1925), Moschzisker, C. J. Affirming 27 Dau. 310.

The Act of June 6, 1923, P. L. 494, relating to the issuance of bonds, is unconstitutional in that it failed to specify the purpose of issuing them.—Hollinger v. King, 282 Pa. 157 (1925), Moschzisker, C. J. Affirming 27 Dau. 310.

The Securities Act of June 14, 1923, P. L. 779, does not violate Section 7, Art. III., of the Constitution, by its classification of dealers.—N. R. Bagley Co., Inc., v. Cameron, 282 Pa. 84 (1925), Moschzisker, C. J. Affirming 27 Dau.

The Act of March 30, 1906, P. L. 75, authorizing the issuance of bonds for county bridges, is unconstitutional, because not mentioned in the governor's call for a special session of the legislature.—Schuylkill County Bridges, 48 C. C. 167 (1919), Berger, J.; (16 Sch. 36); 22 D. R. 690.

6. Miscellaneous Cases.

All exemptions of property from taxation other than those enumerated in Section 1 of Article IX. of the State Constitution, are wiped out by reason of Section 2, and thereby the Act of April 15, 1834, P. L. 509, is revived, and all offices, trades, professions, occupations, including the occupation of farming, are liable to taxation.—Mulberger v. Indiana County, 71 Pitts. 964 (1923), Langham, P. J.

An ordinance of the city of Reading to levy and collect license taxes for general revenue purposes, on trades, etc., was sustained, the Act of 1919 not being obnoxious to Section 7, Art. III. of the Constitution, as local legislation, nor Sec. 1, Art. IX.—Clouser v. Reading, 13 Berks 99 (1920), Endlich, P. J; Kemmerer v. Reading, 13 Berks 102.

An injunction was granted to restrain defendant school district from exceeding the debt limitation in Sec. 8, Art. IX. of the Constitution. Sec. 15, Art. IX, though valid, does not apply to a school district.—Long v. Cheltenham Twp. School Dist., 36 Montg. 253 (1920), Miller, J.

The County Treasurer of Berks County, being salaried ,as provided by classification of Section 5, Art. XIV, Constitution, is required, by Act of March 31, 1876, P. L. 13, to turn over to the use of the county all fees collected by him as County Treasurer.—Bachman's Case, 14 Berks 165 (1922), Endlich, P. J.

7. Inheritance Taxes.

Under the Act of June 20, 1919, P. L. 521, called the Transfer Tax Act, "the clear value" which is the basis of taxation is the amount left, after deducting the amount of the Federal Estate Tax, under Acts of Congress of Sept. 8, 1916, and March 3, 1917 (39 Stats. 777, 1002), and the funeral expenses. Section 2, of the Act of 1919, is in conflict with Section 1, Art. IX, of the State Constitution, as to uniformity.—Smith's Estate (Jennie), 29 D. R. 917 (1920), Gest J. Accord: Kirkpatrick's Estate, 70 Pitts. 329 (1922), Miller, P. J. Citing in accord, Smith's Estate, 29 D. R. 917.

8. Refunding Taxes.

The Acts of July 5, 1917, P. L. 682, and March 21, 1919, P. L. 20, being of general application, are not unconstitutional, and by virtue thereof plaintiff, who paid an assessment for street paving when the court decided that there was no liability, may recover from the city.—Rubinsky v. Pottsville, 18 Sch. 107 (1922), Koch, J.; 1 D. & C. 503.

(B) INTER-COUNTY BRIDGES

3715, See P. & L. II.; Quar. VII. 1360.

1. Cost of Construction.

The Act of July 9, 1901, P. L. 620, relating to inter-county bridges is unconstitutional, as far as it would impose one-half the cost of reconstruction on the Commonwealth, violating Sec. 3, Art. III., of the Constitution, in its title.—Union County v. Northumberland County, 281 Pa. 62 (1924), Walling, J. Affirming C. P. Union County.

The Act of May 11, 1921, P. L. 479, in relation to the taxation of anthracite coal lands, does not violate Section 1, Art. I., of the Constitution, nor Sec. 1, Art. XIV., of the Amendments of the U. S. Constitution.—Comth. v. Mill Creek Coal Co., 11 Corp. 266 (1922), Hargest, P. J.; Comth. v. Phila. & R. C. & I. Co., 11 Corp. 279.

(C) CONDEMNATION OF LAND FOR AVIATION

The Act of May 21, 1923, P. L. 295, is constitutional in so far as it authorizes County Commissioners to acquire, by purchase or condemnation, land within the County for the purpose of establishing and maintaining an airdrome or aviation landing field for airships at public expense, and to enter into an agreement with a municipality within the County to share in the cost thereof, where there was no purpose to lease said airdrome to any person, either to the Government of the United States, or any individual or corporation, but to maintain and control the same jointly by proper regulation for the benefit of the citizens of the County.—Wightman v. Allegheny County, 72 Pitts. 929 (1924), Evans, J.

(D) ADMINISTRATIVE CODE AND OTHERS

Every act of assembly should be construed in a manner to sustain its constitutionality, if it can be fairly done. The administrative code, which abolished the Meade Memorial Commission, is not unconstitutional.—Piccirilli v. Lewis and Snyder, 27 Dau. 319 (1924), Hargest, P. J. Affirmed in Supreme Court.

When a part of a law is unconstitutional, the remainder may stand unaffected, especially where the act itself declares "as a legislative intent that this act would have been adopted had such unconstitutional provision not been included therein."—Comth. v. Mill Creek Coal Co., 11 Corp. 266 (1922), Hargest, P. J.; Comth. v. Phila. & R. C. & I. Co., 11 Corp. 279. Affirmed in U. S. Supreme Court.

The Declaraory Judgment Act of June 18, 1923, P. L. 840, does not violate Sec. 17, Art. I; or Sec. 27, Art. V., of the Constitution.—Brookvill's Election For Bonding, 5 D. & C. 54 (1924), Corbet, P. J.

V. PUBLIC OFFICERS

(A) WHO ARE PUBLIC OFFICERS

1. Assistant District Attorney.

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

Under the Act of March 31, 1876, P. L. 13, an assistant district attorney is not a clerk, and one appointed under the Act of July 17, 1919, P. L. 995, is a public officer and entitled to the full salary of $2,500 a year.—Maginnis v. Schlottman, 271 Pa. 305 (1921). Affirming 76 Super. Ct. 124, which reversed 16 Sch. 340; 49 C. C. 355; 36 Montg. 305.

2. Removal of Burgess.

There being no legislative provision, a burgess cannot be removed by council, but only as provided in Section 4, Art. VI. of the Constitution.—Comth. v. Reid, 265 Pa. 328 (1919), Simpson, J. Reversing C. P. Lackawanna County.

(B) INCOMPATIBLE

3761, See P. & L. III.; Sup. VI. 569.

The office of senator or representative is incompatible with that of judge of the Court of Common Pleas, under Sec. 6, Art. II., of the Constitution.—Judges in Re, 72 Pitts. 388 (1924), Brown, Depy. Atty.-Gl.

(C) APPOINTMENT AND REMOVAL

1. Appointment.

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

On **quo warranto**, where the relator was elected tax collector and failed to qualify by giving bond, and the county commissioners declared a vacancy and filled it by appointing respondent, who qualified, but thereafter relator filed a bond, claimed the office and brought this suit, judgment was given for respondent. The Act of May 17, 1917, P. L. 221, provides for such a vacancy and Sec. 4, Art. VI. of the Constitution did not help relator.—Comth. v. Floyd, 21 Luz. 298 (1921), Fuller, P. J.; (13 Mun. 52).

In filling a vacancy caused by the death of a magistrate in Philadelphia, the Governor should commission a person of the same political party as the one deceased belonged to in order to comply with Sec. 12, Art. V of the Constitution, and the Act of February 5, 1875, P. L. 56 (Sec. 9).—Magistrates in Philadelphia, 22 Dau. 138 (1920), Schaffer, Atty.-Gl.

2. Removal.

The Chief of the Bureau of City Property in Philadelphia is an "appointed officer," under Section 4, Art. VI of the Constitution, and removable at the pleasure of the power which appointed him. He does not come within the shield of Act of June 25, 1919, P. L. 581.—Arthur v. Phila., 30 D. R. 676 (1921), Rogers, J.; (13 Mun. 133).

Where township road supervisors were charged with incurring indebtedness beyond the limitation of the Constitution and of illegal expenditure of township moneys, a rule to show cause why they should not be removed, issued by the Quarter Sessions Court, was held justified under provisions of Sec. 192 of the Act of 1917, P. L. 840, and Section 8, Art. IX of the Constitution.—Hollenback Township Supervisors, In Re, 22 Luz. 15 (1922), McLean, J.

(D) SALARIES

3761, See P. & L. III.

The attorney for the board of registration commissioners is a public officer. There is no distinction between this officer and that of a county solicitor, citing Lancaster County v. Fulton, 128 Pa. 48. He is subject to Sec. 13, Art. III., of the Constitution, relating to salaries.—Alworth v. Lackawanna County, 25 Lack. Jur. 328.

A clerk of the Court of Quarter Sessions, who resigned and was re-appointed after the salary raiser of June 29, 1923, P. L. 944, was held entitled to the advance, on a construction of Sec. 13, Art. III., of the Constitution, which did not contemplate such indirect official action.—Branch v. Berger, 11 Leh. 61 (1924), Reno, P. J. The Act of July 11, 1923, P. L. 1054, providing salaries for county officers in counties of the fifth class, does not violate Sec. 5, Art. XIV., of the Constitution.—Comth. v. Wert, 11 Leh. 66 (1924), Reno, P. J., and Iobst, J. Affirmed Mar. 20, 1925.

1. Salary Board.

3764, See P. & L. III.; Sup. VII. 569.

The Act of April 27, 1915, P. L. 13, relating to a salary board for a county, is void in so far as it purports to vest in the court the power to review the action of a salary board organized to consider, fix and determine the number and compensation of county employes in respect to any material fact involved. The court will not review its performance of ministerial duties.—Appeals from Salary Board, 66 Pitts. 553 (1918), Carpenter, J.

2. Compensation.

The Act of April 18, 1923 (No. 52), relates to carrying out Art. XIV of the Constitution, with reference to salaries of county officers and clerks.

Section 13, Art. III, of the Constitution, does not apply to tax collectors in boroughs and ordinances fixing their salaries. An ordinance not returned by the burgess at the next regular meeting of council with his disapproval, becomes valid without it, upon its publication. A verbal veto to the clerk is not of any force.—Sefler v. McKee's Rocks Boro, 66 Pitts. 373 (1918), Evans, J.

VI. COUNTY OFFICERS

(A) COMPENSATION

3764, See P. & L. III.; Sup. VII. 569.

A district attorney of a county is not entitled to compensation for services in appeals in criminal cases, beyond his fixed salary. Insofar as the Act of May 19, 1887, P. L. 138, is in conflict with this, it violates the Constitution.—Slattery v. Hendershot, 267 Pa. 402 (1920). Affirming 72 Super. Ct. 240, which reversed C. P. Luzerne County.

An assistant district attorney is not a clerk under the meaning of Section 5, Art. XIV. of the Constitution. He is a public officer and is entitled to a full salary fixed by Act of July 17, 1919, P. L. 995.—Maginnis v. Schlottman, 76 Super. Ct. 124 (1921), Trexler, J. Reversing C. P. Schuylkill County.

VII. PRIVATE CORPORATIONS—THE SOVEREIGN

(A) CORPORATE PRIVILEGES

(See Corporations, Infra.)

3971, See P. & L. III.; Sup. VII. 570.

1. State Highways.

The state is sovereign and is not liable for damages for a change of grade of a state highway, when no law imposes them. Section 8, Art. XVI. in respect to eminent domain and compensation for the taking of private property, has no application to the improvement of a state highway. It embraces only corporations.—State Highway Route No. 72, 265 Pa. 369 (1919), Walling, J. Affirming Q. S. Allegheny County.

2. Public Service Commission.

An order of the Public Service Commission refusing permission to a telephone company to enter territory allotted to another company does not violate Section 12, Art. XVI. of the Constitution.—Perry County Tel. & Tel. Co. v. Pub. Serv. Com., 265 Pa. 274 (1919), Frazer, J. Affirming 69 Super. Ct. 529.

3. Telephone Company Absorbing Telegraph Company.

3771, See P. & L. III.; Sup. VII. 570.

A telegraph company which has surrendered its powers as such, may acquire the capital stock, franchises and lines of a telegraph company, as a telephone company, under the Act of May 20, 1921, P. L. 949, amending the Act of July 22, 1919, P. L. 1123, without violating Sec. 12, Art. XVI of the Constitution, prohibiting the consolidation of telegraph companies. In 1873 telephones were not in use.—Mitchell v. Public Service Com., 276 Pa. 390 (1923). Affirming 80 Super. Ct. 120, on opinion of Keller, J.

4. Sale of Unissued Stock.

A corporation may sell unissued shares of treasury stock at less than par, in good faith, without violation of Section 7, Art. XVI of the Constitution.—Commercial Box and Envelope Co. v. McFadden, 27 D. R. 674 (1918), Monaghan, J.

VIII. AMENDMENTS

(A) ONCE IN FIVE YEARS

1. Time.

3813, See P. & L. III.; Sup. VII. 572.

Because on November 6, 1923, there was submitted to a vote of the people an amendment to the Constitution of Pennsylvania which was approved by them, and whereas the Constitution, in Art. XVIII, expressly provides that "No amendment or amendments shall be submitted oftener than once in five years," the joint resolution No. 5, P. L. 1121 (1923), which proposed to amend Section 4, Art. IX, so as to authorize the issuance of bonds to the amount of $35,000,000, for compensation to those who served in the army, navy or marine corps,, during the European war, was unauthorized and invalid and the Secretary of State enjoined from certifying the amendment to be placed on the ballot at the election in November, 1924.—Comth. ex. rel. Armstrong, et al. v. King, Simpson, J. Reversing Dauphin County, May 5, 1924, 282 Pa. 157.

Under Art. XVIII., constitutional amendments cannot be submitted to the voters oftener than once in five years.—Armstrong v. King, 281 Pa. 207 (1924), Simpson, J. Reversing C. P. Dauphin County. See, also, Hollinger, et al., v. King, et al., 282 Pa. 157. Affirming 27 Dau. 294.

The Act of April 3, 1923 (No. 34), provides that amendments to the State Constitution may be submitted and how, either at the municipal or general election time.

CONTEMPT

I. WHAT CONSTITUTES CONTEMPT

(A) THE COURT JUDGE OF CONTEMPT

3820, See P. & L. III.; Sup. VII. 574.

When the lower court has decided that it has not been held in contempt, it is not reviewable.—Seidman's Estate, 270 Pa. 465 (1921), Schaffer, J. Affirming C. P. Lackawanna County.

An order adjudging defendants in contempt, in attachment, for disobedience of a decree in equity, was affirmed on appeal. The decree was interpreted in the light of the purpose intended; to preserve the inhabited streets of the City of Scranton from being enchasmed in the black regions below.—Scranton City v. Peoples Coal Co., 274 Pa. 63 (1922), Simpson, J. Affirming 23 Lack. Jur. 17.

Dismissal of rule for attachment for disobedience of decree, reversed.—State Grand Lodge ,Etc. v. Morrison, 277 Pa. 41 (1923), Kephart, J. Reversing C. P. 1, Phila.

(B) ATTEMPT TO CORRUPT JUROR

3820, See P. & L. III.

When offer is made to corrupt a juror at the entrance to the court house grounds, the person commits the contempt in the constructive presence of the court.—Joulwan's Contempt, 18 Sch. 261 (1922), Bechtel, P. J.; D. & C. 188. There must be some substantive evidence of an attempt to influence the juror.—Comth. v. Casey, 18 Sch. 365.

(C) WITNESS

3820, See P. & L. III.; Quar. VIII. 1608.

The refusal of a witness to answer is not contempt of court where an answer would probably subject him to prosecution.—Myers and Brei v. Commonwealth, 83 Super. Ct. 383 (1924), Keller, J. Reversing C. P. Erie County. (See this case for an instructive review of authorities).

An attorney-at-law, who in good faith advised his client to claim his constitutional right to remain silent and not incriminate himself by his own testimony, is not