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AN EXAMINATION

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OP THE

CONSTITUTION OF PENNSYLVAMA.

EXHIBITING THE DERIVATION AND HISTORY OF ITS SEVERAL PROVISIONS,

WITH

OBSERVATIONS AND OCCASIONAL NOTES THEREON, REFERENCES TO JUDICIAL AND OTHER OPINIONS UPON THEIR CONSTRUCTION AND APPLICATION, TO STATUTES FOR THEIR ENFORCE-MENT, AND TO PARALLEL PROVISIONS IN THE CONSTITUTIONS OF OTHER

AMERICAN STATES.

BY

CHARLES R. BUCKALEW.

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HENRY W. PALMER,

ATTORNEY-GENERAL OF PENNSYLVANIA,

This Volume,

PREPARED IN AID OF THE STUDENT

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PENNSYLVANIA CONSTITUTIONAL LAW AND HISTORY,

IS RESPECTFULLY DEDICATED

BY THE AUTHOR.

New-Year Day, 1883.

• • •

THE object of this volume is to furnish information, drawn from various sources, bearing upon the origin, purpose, construction, and application of the several provisions of the Constitution of Pennsylvania, and, where that object is not directly accomplished, to point out the sources of such information in aid of those readers who may have occasion to prosecute further investigation. The principal features of the work as executed, briefly set forth, are the following:—

1. At the head of each Article is placed an analysis of its contents, consisting of the section headings of the Article brought into one connected view, and those headings, which are in the nature of marginal readings, have been carefully revised and made more accurate and complete than in ordinary editions of the Constitution.

2. The text of the Constitution is printed in conspicuous type, so as to catch the eye readily, while the matter added under each section and in the notes, is broken into divisions by sub-headings which, briefly, indicate the nature or subject of each. Cross references between sections which have intimate relations with each other are also furnished in proper cases, and at the end is given a table of the judicial decisions referred to in the progress of the work.

3. A leading feature of the work is the accurate references to Convention Debates, with occasional ones to the Convention Journal, enabling the student to command, at

once, all the information which those records afford upon any section or provision of the Constitution. Heretofore it has been difficult to examine the Convention debates. and extract from them what was relevant and important upon any question, in part because of bad work in indexing the volumes containing them; but by the arranged references, now given, those debates may be subjected to convenient use. It is possible to overrate the debates and proceedings of the Convention as sources of information regarding the Constitution, but there is little danger that there will be any undue weight assigned to them by the courts or by the Legislature. They furnish evidence, more or less important according to circumstances, not only of the intent and purpose with which the several provisions of the Constitution, and especially the new ones, were framed and agreed to by the Convention, but also of the purpose and intent of the people in adopting, ordaining, and establishing them as provisions of the fundamental law. In case, therefore, of doubt or difficulty in the interpretation or application of any provision of the Constitution, they may be resorted to for information, which, if obtainable from them, will be legitimate and relevant, and may be most instructive and useful.

4. The ascertaining of the origin of the several provisions of the Constitution, and where they have a history tracing that history in constitutional documents, is another conspicuous feature of the work. By this means we secure not only an element of historical interest, but valuable aid for the exposition of the existing text; for a rule, sanctioned by authority, is, that where a Constitution is the successor of a former one, the old text may be considered in construing the new. In fact the old instrument, and its progenitors if it have any, will have transmitted traits of character, trains of thought, and shades of meaning to the new instrument, and in many cases new material

embraced in the latter cannot be well understood, in the relations in which it is placed, without referring to the former instrument, or instruments, from which its fellow provisions or associated material have been derived.

5. Where proper, and probably useful, copious references are given to parallel provisions in the Constitutions of other States and in that of the United States, and these are extended to State Constitutions adopted since 1873, save only the recent Constitution of Louisiana, a copy of which was not obtained. Where the substance of a provision of the Pennsylvania Constitution is contained in the Constitutions of other States, and it is desired to make its investigation thorough and complete, the reader will discover at a glance the States into which his researches are to extend. For the practices and judicial decisions of those States, relating to such provisions, must always command respectful attention from us, and in the case of any one of them which we have borrowed from another State, its anterior construction in the State of its origin, will come to us with commanding force.

6. Whenever the standard works of Judge Cooley and of Judge Story upon constitutional law cover the subject matter of any section, the suggestion is made to the reader to consult their works, and accurate references are furnished to him for that purpose. In fact, the elaborate treatise by Judge Cooley upon Constitutional Limitations, may be held to be an indispensable companion volume to the present one, in any thorough examination of those provisions of the Pennsylvania Constitution which are of general acceptance in the American States.

7. In proper connection with sections are cited the decisions of the Supreme Court of Pennsylvania upon constitutional questions, particularly the more recent ones, and these are arranged, mostly, in chronological order. In a few instances, the decisions bearing upon an

important question, have been subjected to particular examination.

8. Most of the general statutes enacted by the Legislature since 1873 for the enforcement of the Constitution, are cited at the proper places, and some of the more important ones are given in full.

9. Observations of an explanatory or expository character are added under most of the sections, and in several cases notes of some length, upon important questions, are appended to the Articles to which they appropriately belong.

For the successful working of the Constitution-for its fair construction and faithful enforcement—reliance must be placed, mainly, upon the Legislature and upon the courts of justice. The Constitution had not a friendly greeting when it came into existence in January, 1874. from all in public authority who owed to it allegiance and support. In some material respects it has not yet been carried into execution, and in others it has not had the application intended by those who framed it. But. notwithstanding all this, it may be confidently claimed for it that it has secured to the people many substantial benefits, reformed many abuses, promoted integrity in the public service, and placed the means of doing great good within reach of those entrusted with the powers of government, which, properly used, will secure honor to them and prosperity to the State.

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CONSTITUTIONAL DOCUMENTS.

ROYAL CHARTER: Charter, King Charles the Second to William Penn, for the Province of Pennsylvania, dated at Westminster the 4th day of March, in the 33d year of the King's reign (1681). Colonial Records, I. 17; Penna. Archives, 2d Series, VII. App. *a, fac simile*: Conventions and Constitutions of Pa. (by Gov. Shunk), 9; Franklin's edition of Charters and Laws (1742), 3; Carey & Bioren's ed. Laws, VI. App. 1; Smith's Laws Pa. V. App. 406; Duke of York's Book of Laws, 81.

CHARTER OF 1682: The Frame of Government of the Province of Pennsylvania; declared, granted, and confirmed by William Penn to the Freemen, Planters, and Adventurers of the said Province, 25th of April, 1682. Colonial Records, I. 29; Conv. and Con. Pa. 17; Duke of York's Book of Laws, 91.

LAWS AGREED UPON IN ENGLAND: Signed and sealed by William Penn, Governor and Proprietary of the Province of Pennsylvania, and the Freemen of said Province, 5th of May, 1682. Col. Rec. I. 37; Conv. and Con. Pa. 26; Carey & Bioren's ed. Laws, VI. App. 31; Smith's Laws Pa. V. App. 416; Dake of York's Book of Laws, 99.

CHARTER OF 1683: The Frame of Government of the Province of Pennsylvania and Territories thereunto annexed, in America; dated 2d April, 1683. Col. Rec. I. 42; Conv. and Con. Pa. 21-6, in notes; Duke of York's Book of Laws, 155, 488-91.

MARKHAM CHARTER: The Frame of Government of Pennsylvania and the Territories thereunto belonging; passed by Governor

ONSTITUTIONAL DOCUMENTS.

Markham, 7th No. 26, in note ; Duk

mber, 1696. Col. Rec. 48; Conv. & Con. Pa. of York's Book of Laws, 245, 568.

CHARTER OF F granted by Willi: vania and Territo Adventurers, and dated at Philadely and Con. Pa. 31 Carey & Bioren': App. 413. VILEGES OF 1701: The Charter of Privileges, Penn, Proprietary and Governor of Pennsyls thereunto belonging, to the Freemen, Planters, ler Inhabitants of said Province and Territories; a, 28th October, 1701. Col. Rec. II. 56; Conv. 'ranklin's ed. Charters and Laws (1742), 17; d. Laws, VI. App. 11; Smith's Laws Pa. V.

N. B.—The for reckoning; the G by Act of Parlian oing dates are according to the Old Style of orian, or New Style, having been established t, 11th March, 1752.

1776: Constitution of the Commonwealth of ablished by the General Convention elected

l at Philadelphia July 15, 1776, and continued

.), XII. 52; Conv. & Con. Pa. 54; Smith's

1790: Constitution of the Commonwealth of

ed and established in the name of the People

th, and proclaimed by the Convention which

nber, 1790. Penna. Archives (1790), XII.

Penna.

September 28th, in the same year.

CONSTITUTION (Pennsylvania, as for that purpose, h by adjournments Archives (1790, A Laws Pa. V. App.

24.

Constitution o Pennsylvania, orde of said Commonwe framed it, 2d Sep 12; Conv. & Con. & Johnson's Dig. Journal Conv. 187.

AMENDMENTS O Pennsylvania, proj adopted by popula 1837-8, XIII. 230 a. 296; Smith's Laws Pa. III. xxxv.; Parke
9; Debates, Convention 1837-8, XIII. 230;
[with Amendments to that time), 3, 18.
1838: Amendments to the Constitution of

ed by a Convention of limited powers, and vote, 9th October, 1838. Debates, Conv. 260.

SUBSEQUENT AM DMENTS: tion between 1838 1 1873 n

DMENTS: There were added to the Constitu-1 1873 nine Amendments, which will be found in the volumes of pamphlet laws for the proper years, having been proposed by the Legislature for popular adoption pursuant to one of the Amendments of 1838, numbered Article X. of the old Constitution.

1. Judiciary Amendment of 1850, relating to the election and tenure of judges: Art. V. § 2. Conv. Jour. of 1873, pp. 8-9.

2. Four Amendments in 1857: Art. XI. §§ 1-7; XII; I. 2, 4, 5, 7; I. 26. Conv. Jour. 15-16; 16; 3, 4; 6.

3. Three Amendments in 1864: Art. III. § 4; XI. 8; XI. 9. Conv. Jour. 8, 16.

4. Amendment of 1872, for election of State Treasurer: Art. VI. 6. Conv. Journ. 18.

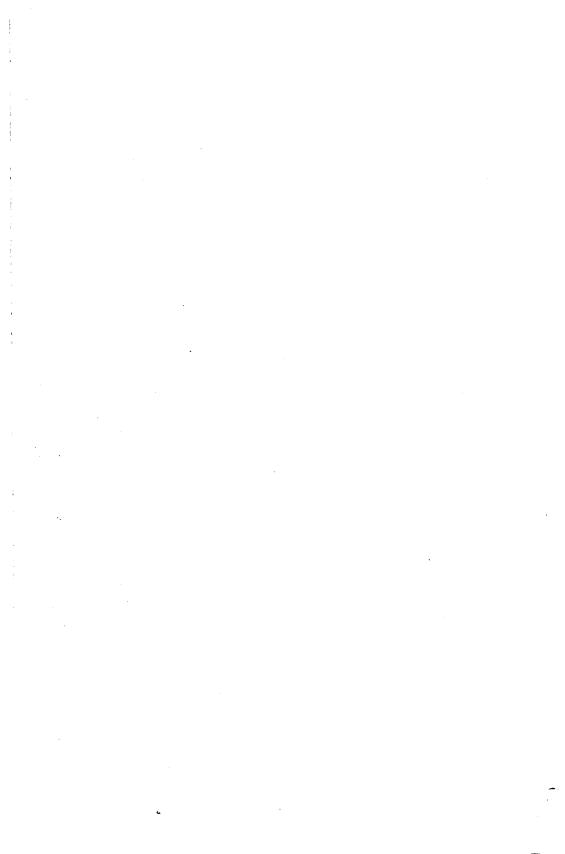
The several editions of Purdon's Digest of Laws will show the text and form of the Constitution at the times when they were respectively issued; and the same remark will apply to digests compiled by McKinney and Dunlop, not now in common use.

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CONSTITUTION

OF THE

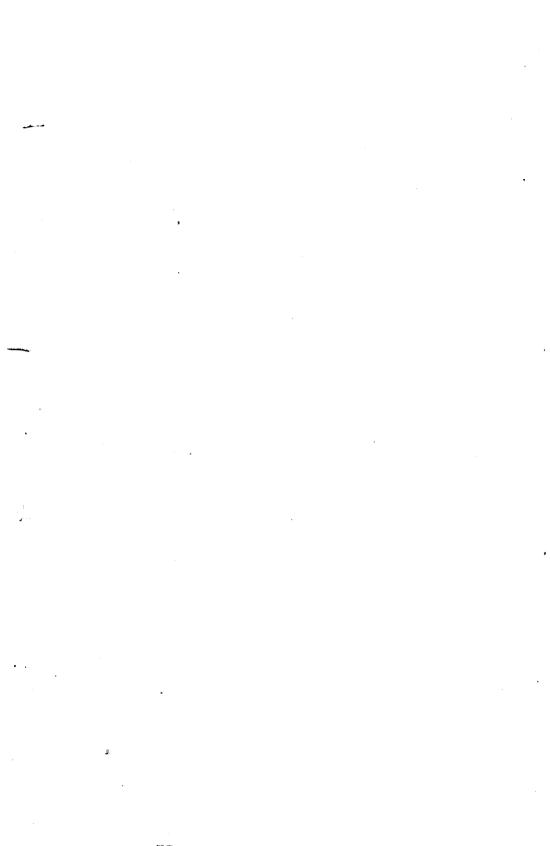
COMMONWEALTH OF PENNSYLVANIA

OF 1874.

PREAMBLE.

We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious Liberty, and humbly invoking His guidance, DO ORDAIN AND ESTABLISH THIS CONSTITUTION.

Reported, Conv. Jour. 424, Conv. Deb. III. 195. Considered and amended, 4 Conv. Deb. 758-71; 5 Id. 633-4; 7 Id. 251-3.



CONSTITUTION.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION

- 1. Equality and rights of men.
- 2. All power inherent in the people-Their right to reform government.
- 3. Natural rights of conscience and freedom of worship.
- 4. Religious belief not to disqualify for office.
- 5. Freedom of elections.
- 6. Trial by jury.
- 7. Freedom of the press.
- 8. Searches and seizures limited.
- 9. Rights of defence and privileges in criminal prosecutions.
- Criminal informations limited— Twice in jeopardy—Appropriations of private property to public use.
- 12. Limitation upon suspension of laws.
- 13. No excessive bail or fines, or cruel
- punishments, to be permitted. 14. Prisoners bailable—Habeas corpus.

SECTION

- 15. No commission of over and terminer.
- 16. Imprisonment of insolvent debtors limited.
- 17. Laws *ex post facto*, or impairing contracts, and irrevocable grants, forbidden.
- 18. No legislative attainder of treason or felony.
- 19. Attainder not to work corruption of blood, or forfeiture beyond life— No forfeiture for suicide, or in case of death by casualty.
- 20. Rights of meeting and petition.
- 21. Right to bear arms.
- 22. Subordination of the military to the civil power.
- 23. Quartering of troops.
- 24. No titles of nobility—Official tenure limited.

25. Emigration permitted.

26. Article excepted from powers of government.

[Preamble.]

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, We declare, That:

DERIVED: Constitution of 1790, Article IX.

COMPARE: Con. of Ala. I.; Cal. (1879), I.; Conn. I.; Ky. XIII.; Mo. II. N. Car. I.; R. I. I.; Tex. I.; Va. I.

1

[Equality and rights of men.]

Section 1. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

DERIVED: Constitution of 1790, Art. IX. §1. A similar section in the Constitution of 1776, c. i. § 1, does not contain the words "and reputation," and instead of the words "inherent and indefeasible," has the words "natural, inherent and unalienable." The similarity of this section to a clause in the Declaration of Independence is obvious. The Convention which formed the Constitution of 1776, met on the 15th of July and adjourned finally on the 28th of September of that year, so that its work was performed when the language of the Declaration was fresh in men's minds.

COMPARE: Article I. § 1, of each of the following Constitutions: Alabama, California, Connecticut, Florida, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Missouri, Nebraska, Nevada, New Jersey, North Carolina, Ohio, South Carolina, Vermont, Virginia, West Virginia, and Wisconsin. Also, Con. Arkansas, II. 2; Colorado, II. 3; Delaware, Preamble; Illinois, II. 1; Kentucky, XIII. 1, 2, 3; and New Hampshire, I. 1, 2, 3, 4. The declaration in the Virginia Constitution antedates all the others and the Declaration of Independence, having been adopted in Convention 12th of June, 1776. It is as follows: "That all men are by nature equally free and independent, and have certain inherent rights of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." See Bentham's Works, i. 154.

[All power inherent in the people-Their right to reform government.]

Section 2. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they think proper.

 D_{ERIVED} : Constitution of 1790, Article IX. § 2. Constitution of 1776, Preamble: "All government ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals who compose it to enjoy their natural rights, and the other blessings which the

Author of existence has bestowed upon Man; and whenever these great ends of government are not obtained, the people have a right, by common consent, to change it, and to take such measures as to them may appear necessary to promote their safety and happiness." The same Constitution, in its first chapter, contains the following sections : § 3. "The People of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same ;" § 4. "All power being originally inherent in, and consequently derived from the People, therefore all officers of Government, whether legislative or executive, are their trustees and servants, and at all times accountable to them;" and § 5. "Government is, or ought to be, instituted for the common benefit, protection and security of the people, nation, or community, and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of the community; and the community hath an indubitable, unalienable and indefeasible right to reform, alter or abolish Government in such manner as shall be, by that community, judged most conducive to the public weal."

The substance of the section, like that of the preceding one, will be found in the Declaration of Independence.

COMPARE: Con. Ala. I. 3; Ark. (1874), II. 1; Cal. I. 2; Col. (1876), II. 1, 2; Conn. I. 2; Del. Preamble; Fl. Dec. of R. 2; Ind. I. 1; Iowa, I. 2; Ky. XIII. 4; Me. I. 2; Md. Dec. of R. I. 4, 6; Mass. I. 4, 5, 7; Minn. I. 1; Mo. (1875), II. 1, 2; Nev. I. 2; N. J. I. 2; N. Car. I. 2, 3; O. I. 2; Or. I. 1; S. Car. I. 3; Tenn. I. 1; Va. I. 4, 5; Vt. I. 6, 7; W. Va. III. 2, 3. See. also, Kan. Bill of R. 2; N. H. I. 1, 7, 8, 10; R. I. I. 1. The authorship of the Virginia Declaration of Rights is imputed to George Mason, the correspondent and friend of Jefferson.-Bancroft, Hist. U. S viii. 380; Randall's Life of Jefferson, i. 195; Hough's Am. Con. II. 424. That Declaration being the first in order of time of Declarations of Rights in American Constitutions, it may be mentioned that it was reported to the Virginia Convention of 1776, on the 27th of May, by a committee of which Archibald Cary, Henry Lee, Patrick Henry, Edmund Randolph, James Madison, and George Mason, with twenty-eight other gentlemen of distinction, were members, and was adopted by the Convention on the 12th of June. Its 4th and 5th sections, as they yet remain in the Constitution of Virginia, were obviously drawn upon by the Pennsylvania Convention of the same year, in preparing the declaratory sections in our Constitution of 1776, above cited. They are as follows :----

"§ 4. That all power is vested in, and consequently derived from, the people; that magistrates are their trustces and servants and at all times amenable to them.

"§ 5. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government that is best which is capable of producing the greatest degree of happiness and safety and is most effectually secured against the danger of maladministration; and that when any government shall be found inadequate, or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to alter, reform, or abolish it in such manner as shall be judged most conducive to the public weal."

CONSULT: Cooley on Con. Lim. 29. "As a practical fact the sovereignty is vested in those persons who are permitted by the Constitution of the State to exercise the elective franchise." Id. 30: "The power to revise or amend Constitutions resides in the great body of the people as an organized body politic, who, being vested with ultimate sovereignty and the source of all State authority, have power to control and alter the law which they have made at their will. But the people, in the legal sense, must be understood to be those who, by the existing Constitution, are clothed with political rights, and who, while that instrument remains, will be the sole organs through which the will of the body politic can be expressed." Id. 176: "Where fundamental rights are declared by the Constitution, it is not necessary at the same time to prohibit the legislature, in express terms, from taking them away. The declaration is itself a prohibition, and is inserted in the Constitution for the express purpose of operating as a restriction upon legislative power." Sec, also, Id. 172-3.

JUDICIAL OPINION: Wells v. Bain, 25 Sm. 22; Woods's Appeal, Id. 59; contra, Convention Committee Report, Conv. Deb. viii. 732, 742.

[Natural rights of conscience, and freedom of worship.]

Section 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given to any religious establishments or modes of worship.

DERIVED: Constitution of 1790, Art. IX. § 3. Con. of 1776, chap. i. § 2: "That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences and understandings: And that no man ought, or of right can be, compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to or against his own free will and consent: Nor can any man who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen on account of his religious sentiments, or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by, any power whatever, that shall in any case interfere with, or in

ART. I.]

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any manner control, the right of conscience or the free exercise of religious worship." Same Constitution, chap. ii. § 45: "Laws for the encouragement of virtue and prevention of vice and Immorality shall be made and constantly kepp in force, and provision shall be made for their due execution: And all religious societies or bodies of men, heretofore united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they were accustomed to enjoy, or could of right have enjoyed, under the Laws and former Constitution of this State."

Laws agreed upon in England (5 May, 1682), § 35. "That all persons living in this Province, who confess and acknowledge the one Almighty and Eternal God, to be the creator, upholder and ruler of the world, and that hold themselves obliged in conscience to live peaceably and justly in civil society, shall in no way be molested or prejudiced for their religious persuasion or practice in matters of faith and worship, nor shall they be compelled, at any time, to frequent or maintain any religious worship, place or ministry whatever."

Penn's Charter of Privileges of 1701, Art. I. reaffirms the above with some additions, as follows : "Because no people can be truly happy though under the greatest enjoyment of civil liberties, if abridged of the freedom of their consciences as to their religious profession and worship, and Almighty God being the only Lord of conscience, Father of lights and spirits, and the Author as well as object of all divine knowledge, faith and worship, who only doth enlighten the mind and persuade and convince the understandings of people, I do hereby grant and declare, that no person or persons inhabiting in this Province or Territories, who shall confess and acknowledge one Almighty God, the creator, upholder and ruler of the world, and profess him or themselves obliged to live quietly under the civil government, shall be in any case molested or prejudiced in his or their person or estate, because of his or their conscientious persuasion or practice, nor be compelled to frequent or maintain any religious worship, place or ministry, contrary to his or their mind, or to do or suffer any other act or thing contrary to their religious persuasion:" And the last division of Article viii. further declares : "Because the happiness of mankind depends so much upon the enjoying of liberty of their consciences as aforesaid, I do hereby solemnly declare, promise and grant, for me, my heirs and assigns, that the first article of this Charter, relating to liberty of conscience, and every part and clause therein, according to the true intent and meaning thereof, shall be kept and remain, without any alteration, inviolably forever."

JAMES MADISON TO WILLIAM BRADFORD, JR., OF PHILADELPHIA, APRIL 1, 1774: "Our Assembly [of Virgina] is to meet on the first of May, when it is expected something will be done in behalf of the dissenters. Petitions I hear are already forming among the persecuted Baptists, and I fancy it is in the thoughts of the Presbyterians also to intercede for greater liberty in matters of religion. For my part I cannot help being very doubtful of their succeeding in the attempt. The affair was on the carpet during the last session, but such incredible and extravagant stories were told in the House of the monstrous effects of the enthusiasm prevalent among the sectaries, and so greedily swallowed by their enemies, that I believe they lost footing by it; and the bad name they still have with those who pretend too much contempt to examine into their principles and conduct, and are too much devoted to the ecclesiastical establishment to hear of the toleration of dissentients, I am apprehensive will be again made a pretext for rejecting their requests.

"The sentiments of our people of fortune and fashion on this subject are vastly different from what you have been used to. That liberal, catholic and equitable way of thinking as to the rights of conscience which is one of the characteristics of a free people, and so strongly marks the people of your Province, is but little known among the zealous adherents to our hierarchy. We have, it is true, some persons in the Legislature of generous principles both in religion and polities, but number not merit you know is necessary to carry points there. Besides, the clergy are a numerous and powerful body, have great influence at home by reason of their connection with and dependence on the Bishops and Crown, and will naturally employ all their art and interest to depress their rising adversaries, for such they must consider dissenters who rob them of the good-will of the people, and may in time endanger their livings and security.

"You are happy in dwelling in a land where those inestimable privileges are fully enjoyed, and the public has long felt the good effects of this religious as well as civil liberty. Foreigners have been encouraged to settle among you. Industry and virtue have been promoted by mutual emulation and mutual inspection; commerce and the arts have flourished, and I cannot help attributing those continual exertions of genius which appear among you to the inspiration of liberty and that love of fame and knowledge which always accompany it. Religious bondage shackles and debilitates the mind, and unfits it for every noble enterprize, every expanded prospect. How far this is the case with Virginia will more clearly appear when the ensuing trial is made."—Writings of Madison, i. 13.

The struggle for religious freedom in the Legislature of Virginia, in which he bore a conspicuous part, is traced in his subsequent correspondence: Writings, i. 88, 116, 118, 129-30, 154, 155, 159-60, 162-9, 175, 208, 213-14. See, also, Jefferson's Works, i. 45; ii. 66-7; viii. 137, 138.

COMPARE: Con. U. S. Amdt. 1; Ala. I. 4, 5; (1875), I. 4; Ark. I. 23; (1874), II. 24; Cal. I. 4; Col. (1876), II. 4; Conn. I. 34; VII. 1, 2; Del. Preamble, I. 1; Fl. Dec. of R. 5, 23; Ga. I. 6, 12; Ill. II. 3; Ind. I. 2, 3, 4, 7; Iowa, I. 3, 4; Kan. Bill of R. 7; Ky. XIII. 5, 6; La. 12; Me. I. 3; Md. Dec. of R. 36; Mass. II. 1, 2; Amdt. 11; Mich. IV. 39, 41; Minn. I. 16, 17; Miss. I. 23; Mo. I. 9, 10, 11; (1875), II. 5, 6, 7; Neb. I. 16; (1875), I. 4; Nev. I. 4; N. H. I. 4, 5, 6; N. J. I. 3, 4; N. Y. I. 3; N. Car. J. 26; O. I. 7; Or. I. 2, 3, 6, 7; R. I. I. 3; S. Car. I. 9, 10; Tenn. I. 3; Tex. I. 4; (1876), I. 6; Va. I. 18; V. 14; Vt. I. 3; II. 41; W. Va. III. 15; Wis. I. 18, 19.

CONSULT: Story on Con. §§ 1870-79; Cooley, Con. Lim. 467-77.

ART. I.]

"The Revolution changed the relation of the religious denominations to the State. In New England, Congregationalism was the established religion, and every citizen was required to aid in the support of some church. In all the southern colonies the Episcopal Church was equally favored, and partially so in New York and New Jersey. Only in Pennsylvania, Rhode Island, and Delaware, were all the Protestant sects on an equality as to their religious rights."—*Patton's Hist. U. S.* 523.

[Religious belief not to disqualify for office.]

Section 4. No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this .Commonwealth.—See Art. VII., "Oath of Office."

DERIVED: Constitution of 1790, Art. IX. § 4. In the Constitution of 1776, chap. i. § 2, it was declared: "Nor can any man who acknowledges the being of a God, be justly deprived of any civil right as a Citizen, on account of his religious sentiments or peculiar mode of religious worship;" but by the same Constitution, chap. ii. § 10, a special declaration was required of each Representative in the General Assembly, to be made and subscribed by him before taking his seat, which was as follows: "I do believe in one God, the Creator and Ruler of the Universe, the rewarder of the good and the punisher of the wicked, and I do acknowledge the Scriptures of the Old and New Testament to be given by Divine Inspiration." To this requirement was added the provision: "and no further or other religious test shall ever, hereafter, be required of any civil officer or magistrate in this State."

Laws agreed upon in England, § 34: "That all Treasurers, Judges, Masters of the Rolls, Sheriffs, Justices of the Peace, and other officers and persons whatsoever relating to courts or trials of causes, or any other service in the government, and all members elected to serve in Provincial Council and General Assembly, and all that have right to elect such members, shall be such as profess faith in Jesus Christ, and that are not convicted of ill fame, or unsober and dishonest conversation, and that are of one and twenty years of age at least; and that all such, so qualified, shall be capable of the said several employments and privileges as aforesaid." The following section is one of guaranty to all persons in the province who acknowledge God, etc., against religious persecution or compulsory attendance upon, or contribution to, any religious ministry or place of worship.

In the Convention of 1873 several motions to amend the section were rejected. 5 Conv. Deb. 561-6; 7 Id. 253-5.

COMPARE: Con. U. S. VI. 3; Ala. (1875), I. 4; Ark. I. 21; (1874), II. 26; Col. (1876), II. 4; Del. I. 2; Ga. I. 6; Ind. I. 5; Iowa, I. 4; Kan. Bill of R. 7; La. 12; Me. I. 3; Md. Dec. of R. 37; Mass. I. 23; Minn. I. 17;

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Miss. I. 23; Mo. I. 9; (1875), I. 5; Neb. I. 16; (1875), I. 4; N. J. I. 4; O. I. 7; Or. I. 4; R. I. I. 3; Tenn. I. 4; Tex. I. 3; Va. V. 14; W. Va. III. 11; Wis. I. 19. Disbelief in the being of God disqualifies: Miss. XII. 3; N. Car. VII. 5; S. Car. XIV. 6; Tenn. IX. 2; Tex. (1876), I. 4.

CONSTRUCTION: The Legislature shall not disqualify any person for holding office on account of, or for want of, religious belief, who acknowledges the being of a God and a state of future rewards and punishments, but may disqualify atheists and those who deny a future state ot rewards and punishments. It may also be fairly argued that the section itself disqualifies such, or, in other words, implies their disqualification; and the requirement, by the Constitution, of official oaths from public officers, confirms this view. For a liberal interpretation of the words... "a future state," etc., see Convention Debates above referred to. The section is of little practical importance in the present state of civil society, and may properly be dropped in any future revision of the Constitution.

DR. FRANKLIN'S OPINION: In a letter written by this eminent man at Passy (near Paris), 21st August, 1784, supposed to have been addressed to Dr. Priestley in recital of the contents of a prior lost letter, there is the following reference to the Pennsylvania Constitution of 1776: "I agreed with you in sentiment concerning the Old Testament, and thought the clause in our Constitution which required the members of Assembly to declare their belief that the whole of it was given by divine inspiration, had better have been omitted. That I had opposed the clause, but being overpowered by numbers, and fearing more might in future times be grafted on it, I prevailed to have the additional clause that no further or more extended profession of faith should ever be exacted. I observed to you too, that the evil of it was the less, as no inhabitant, nor any officer of government except the members of Assembly, was obliged to make the declaration."—Life and Writings, by Sparks, X. 134.

[Freedom of elections.]

Section 5. Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

DERIVED: The first clause from Constitution of 1790, Art. IX. § 5; the second reported by the Committee on the Declaration of Rights of the Convention of 1873. 3 Conv. Deb. 195; 4 Id. 646, 670. The second, or new clause, was considered in Convention with particular reference to an alleged interference by United States Marines, upon requisition of the U. S. Marshal, with a popular election in Philadelphia. 4 Conv. Deb. 670-76. The same transaction was referred to and strongly denounced by Gov. Geary in his annual message to the Legislature, at the session of 1871. Sen. Jour. 36; Ex. Docs. 1870, p. 38. But it may be questioned whether the new clause has added anything to the original meaning or force of the section.

The 7th section of the Declaration of Rights in the Constitution of 1776, was as follows: "All elections ought to be free, and all free men having a sufficient, evident, common interest with and attachment to the community, have a right to elect officers or to be elected into office." And by the 32d section of chap. ii. of the same Constitution, it was provided: "That all elections, whether by the people or in General Assembly, shall be by ballot, free and voluntary; and any elector who shall receive any gift or reward for his vote in meat, drink, moneys or otherwise, shall forfeit his right to elect for that time and suffer such other penalty as future laws shall direct; and any person who shall directly or indirectly give, promise or bestow any such reward to be elected, shall be thereby rendered incapable to serve for the ensuing year."

In the *Markham Charter* of 1696, it was declared: "That all elections of Representatives shall be free and voluntary; the electors who receive any reward or gift for giving a vote shall forfeit their right to vote for that year."

Laws agreed upon in England, § 3: "All elections of members or representatives of the people and freemen of the province of Pennsylvania, to serve in Provincial Council or General Assembly, to be held within the said province, shall be free and voluntary; and the elector that shall receive any reward or gift, in meat, drink, moneys or otherwise, shall forfeit his right to elect; and such person as shall directly or indirectly give, promise or bestow any such reward as aforesaid, to be elected, shall forfeit his election and be thereby incapable to serve as aforesaid."

English Bill of Rights, 1689: "Elections of members of Parliament ought to be free."

COMPARE: Con. Ala. (1875), I. 34; Ark. I. 19; (1874), III. 2; Cal. (1879), XX. 11; Col. (1876), II. 5; Del. I. 3; Ill. II. 18; Ind. II. 1; Ky. XIII. 7; Md. Dec. of R. 7; Mass. I. 9; Mo. I. 14; (1875), I. 9; Neb. (1875), I. 22; N. H. I. 11; N. Car. I. 10; Or. II. 1, 8; S. Car. I. 31; Tenn. I. 5; Tex. (1876), XVI. 2; Vt. I. 8; II. 34; Va. I. 8.

CONSTRUCTION: The Court of Common Pleas of Allegheny County, in 1873, upon considering an objection made to it, that the Convention act of 1872, in providing for the election of members of the Constitutional Convention upon the plan of the limited vote, violated the provision of the Constitution for free and equal elections, expressed the following opinion: STOWE, J.—" A careful consideration of this provision"—that elections shall be free and equal—" and a comparison of it with similar and kindred provisions of the Constitutions of other States, satisfies me that no such limitation as was suggested is contemplated by the provision. I understand it to be nothing more than a declaration that the election shall be public, and open to all duly qualified alike, without discrimination as to individuals or classes." Woods's Appeal, 75 Pa. St. R. 66-7. This construction of the section challenges respectful attention, and may be accepted as a timely contribution towards the definition of the words in question; but it is manifestly incomplete. The words "free and equal," contained in the section, judged by their history and use in constitutional documents, have a much broader meaning-a wider sweep-than that assigned to them by the They strike not only at privacy and partiality in popular eleccourt. tions, but also at corruption, compulsion, and other undue influences by which elections may be assailed; at all regulations of law which shall impair the right of suffrage rather than facilitate or reasonably direct the manner of its exercise, and at all limitations, unproclaimed by the Constitution, upon the eligibility of the electors for office. And they exclude not only all invidious discriminations between individual electors, or classes of electors, but also between different sections or places in the State. Elections are to be fairly held, at reasonable times and places, to be wholly uncoerced and uncorrupted, and all electoral rights thereat are to be completely respected and enforced. That the provision extends to eligibility for office, and with reference thereto establishes equality of rights among electors, is shown not only by one of the above citations from the Constitution of 1776, but by the provisions referred to in the Constitutions of Massachusetts, New Hampshire, South Carolina, and Vermont.

By the English Bribery Act of 1854 (17 and 18 Vict. c. 102), treating at elections was forbidden, and was defined to be, the providing meat, drink, or other entertainment to any person voting or abstaining from voting; and undue influence or interference by intimidation, abduction, or otherwise, with the freedom of electors, was also forbidden. Penalty for either of those offences, ± 50 , recoverable with costs, by any person who should sue therefor. By the same Act conveyances might be provided for voters, but no payment of voters' expenses was permitted.

Menaces of spiritual censure or punishment constitute undue influence at elections. The Charleroix and Bonaventura Election Cases (Dominion of Canada), N. Amer. Review, No. 259, pp. 572-4.

CONSULT: Cushing, Law and Practice of Legislative Assemblies, 181-92; Patterson v. Barlow, 10 Sm. 54.

[Trial by jury.]

Section 6. Trial by jury shall be as heretofore, and the right thereof remain inviolate.

DERIVED: Constitution of 1790, Art. IX. § 6. The Constitution of 1776, chap. i. § 11, declared: "That in controversics respecting property, and in suits between man and man, the parties have a right to trial by jury which ought to be held sacred;" and chap. ii. § 25, of the same Constitution, further declared: "Trials shall be by jury as heretofore, and it is recommended to the Legislature of the State to provide by law against every corruption or partiality in the choice, return, or appointment of juries."

Laws agreed upon in England, \gtrless 8: "All trials shall be by twelve men, and as near as may be peers or equals, and of the neighborhood, and men without just exception. In cases of life there shall be first twenty-four returned by the Sheriff for a grand inquest, of whom twelve at least shall find the complaint to be true, and then the twelve men or peers, to be likewise returned by the Sheriff, shall have the final judgment; but reasonable challenges shall be always admitted against the said twelve men or any of them."

Declaration of Independence: "He"—the King of Great Britain—"has combined with others to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws, giving his assent to their acts of pretended legislation. . . For depriving us, in many cases, of the benefits of trial by jury. For transporting us beyond seas to be tried for pretended offences." Magna Charta, 39.

COMPARE: Con. U. S. III. 2, cl. 3; Amdts. 6, 7; Ala. I. 13; (1875), I. 7, 12; Ark. I. 6, 8, 9; V. 37; (1874), II. 7, 8; Cal. I. 3; (1879), I. 7; Col. (1876), II. 23; Conn. I. 21; Del. I, 4, 7; Fl. Dec. of R. 4; Ga. I. 7; V. 13, cl. 1, 2; Ill. II. 5, 9; Ind. I. 13, 20; Iowa, I. 9, 10; Kan. Bill of R. 5, 10; Ky. XIII. 8, 12; La. 6; Me. I. 6, 7; Md. Dec. of R. 20, 21, 23; Mass. I. 12, 15; Mich. VI. 27, 28; Minn. I. 2, 4, 6; Miss. I. 7, 12; Mo. I. 17, 18, 19; (1875), I. 22, 23, 28; Neb. I. 5, 7; (1875), I. 6, 11; Nev. I. 3; N. H. I. 15, 16, 17, 20, 21; N. J. I. 7, 8; N. Y. I. 1, 2, 7; N. Car. I. 13, 19; O. I. 5, 10; Or. I. 11, 17, 18; R. I. I. 10, 15; S. Car. I. 11, 13, 14, 18, 34; Tenn. I. 6, 8, 9; VI. 14; Tex. I 8, 12; (1876), I. 10, 15; Vt. I. 10, 12; Va. I. 10, 13; W. Va. I. 9, 13, 14; Wis. I. 5, 7. Many of these references have application also to section 9 of this Article.

CONSULT: Story on Con. § 1768-81; Cooley, Con. Lim. 319-28; Penn's Case, 6 Howell's State Trials, 951; Bushell's Case, 9 Vaughn, 135; Broom's Const. Law, 120 and note.

JUDICIAL OPINION-RECENT CASES: Rhines v. Clark, 1 Sm. 96; Haines v. Levin, Id. 412; Dunmore's Appeal, 2 Sm. 374; Haines's Appeal, 23 Sm. 169; Rauch v. Com., 28 Sm. 490; Lawrence v. Borm, 5 Norris, 225; Simpson v. Neill, 8 Norris, 183; 7 W. N. C. 85; Wyn-

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coop v. Cooch, 8 Norris, 450; 7 W. N. C. 53; Kane v. Com., 8 Norris, 522; 7 W. N. C. 149; Com. v. Eagles, 7 W. N. C. 324; Nicholson v. Com., 15 Norris, 503; 8 W. N. C. 381; Lavery v. Com. (decided in Supreme Court, Dec. 11th, 1882). See also, Emerick v. Harris, 1 Binn. 424; Doebler v. Com., 3 S. & R. 237; Trimble's Appeal, 6 Watts, 133; *in re* Pennsylvania Hall, 5 Barr, 204; Long v. Young, 7 Casey, 310; Warren v. Com., 1 Wright, 45; Byers v. Com., 6 Wright, 89; Com. v. Shaw, 1 Pittsburgh, 492.

[Freedom of the press.]

Section 7. The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature, or any branch of Government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. No conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury; and in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the Court, as in other cases.

Reported, as in old Constitution, by Committee on Declaration of Rights of Convention of 1873, Jour. 424; 3 Con. Deb. 195. Considered and amended, 4 Con. Deb. 687-93, 711-33; 5 Id. 584-9, 591-623; 7 Id. 263-7.—See, also, Deb. Conv. of 1838, XII. 4-12.

DERIVED: Constitution of 1790, Art. IX. § 7, which was identical in terms with this section except in the third division. That was as follows: "In prosecutions for the publication of papers *investigating* the official conduct of officers or men in a public capacity, or where the matter published is proper for public information, *the truth thereof may be given in evidence*, and in all indictments for libels," etc.

The Constitution of 1776 declared the freedom of the Press in two of its sections. Chap. i. § 12: "The people have a right to the freedom of speech and of writing and publishing their sentiments, therefore the freedom of the press ART. I.] .

ought not to be restrained;" and chap. ii. § 35: "The printing press shal be free to every person who undertakes to examine the proceedings of the Legislature, or any part of Government."

COMPARE: Con. U. S. Amdt. 1; Ala. I. 6, 14; (1875), I. 5, 13; Ark. I. 2; (1874), II. 6; Cal. I. 9; Col. (1876), II. 10; Conn. I. 5, 6, 7; Del. I. 5; Fl. Dee. of R. 10; Ga. I. 9; Ill. II. 4; Ind. I. 9, 10; Iowa, I. 7; Kan. Bill of R. 11; Ky. XIH. 9, 10; La. 4; Me. I. 4; Mo. Dec. of R. 40; Mass. I. 16; Mich. IV. 42; VI. 25; Minn. I. 3; Miss. I. 4; Mo. I. 27; (1875), II. 14; Neb. I. 3; (1875), I. 5; Nev. I. 9; N. H. I. 22; N. J. I. 5; N. Y. I. 8; N. Car. I. 20; O. I. 11; Or. I. 8; R. I. 1. 20; S. Car. I. 7, 8; Tenn. I. 19; Tex. I. 5, 6; (1876), I. 8; Vt. I. 13; Va. I. 14; W. Va. I. 7, 8; Wis. I. 3.

CONSULT: Story on Con. §§ 1880-92; Cooley, Con. Lim. 414-66.

RECENT CASES: Barr v. Moore, 6 Norris, 385; 6 W. N. C. 273; Kane v. Com., 8 Norris, 522; 7 W. N. C. 149; *Ex parte* Steinman and Hensel, 14 Norris, 220; 9 W. N. C. 145. See also, Respublica v. Oswald, 1 Dall. 325; Runkle v. Mayer, 3 Yeates, 520; Respublica v. Dennie, 4 Yeates, 269.

[Searches and seizures limited.]

Section-8. The people shall be secure in their persons, houses, papers, and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation subscribed to by the affiant.

DERIVED : Constitution of 1790, Art. IX. § 8, except the concluding words — "subscribed to by the affiant"—which were added by the Convention of 1873 on report of its Committee on the Declaration of Rights. Jour. 424; 3 Conv. Deb. 195.

Constitution of 1776, chap. i. § 10: "The people have a right to hold themselves, their houses, papers and possessions free from search or seizure, and therefore warrants without oaths or affirmations first made, affording sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are contrary to that right and ought not to be granted."

COMPARE: Con. U. S. Amdt. 4; Ala. I. 7; (1875), I. 6; Ark. I. 12; Cal. I. 19; Col. (1876), II. 7; Conn. I. 8; Del. I. 6; Fl. Dec. of R. 20; Ga. I. 10; Ill. II. 6; Ind. I. 11; Iowa, I. 8; Kan. Bill of R. 15; Ky. XIII. 11 La. 9; Me. I. 5; Md. Dec. of R. 26; Mass. I. 14; Mich. VI. 26; Minn. I. 10; Miss. I. 14; Mo. I. 23; (1875), I. 11; Neb. I. 18; (1875), I. 7; Nev. I.

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18; N. H. I. 19; N. J. I. 6; N. Car. I. 15; O. I. 14; Or. I. 9; R. I. I.
6; S. Car. I. 22; Tenn. I. 7; Tex. I. 7; (1876), I. 9; Vt. I. 11; Va. I. 12;
W. Va. III. 6; Wis. I. 11.

CONSULT: Story on Con. § 1901; Cooley, Con. Lim. 299-308.

JUDICIAL OPINION: Conner v. Commth., 3 Binn. 38; Wakely v. Hart, 6 Binn. 316.

[Rights of defence and privileges in criminal prosecutions.]

Section 9. In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demandthe nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or information a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property unless by the judgment of his peers or the law of the land.

DERIVED: Constitution of 1790, Art. IX. § 9; Constitution of 1776, chap. i. § 9, the same in substance though not identical in terms.

Laws agreed upon in England, § 6: "In all courts all persons, of all persuasions, may freely appear in their own way and according to their own manner, and there personally plead their own cause themselves, or if unable, by their friends." See also § 8, cited under section 6 above.

Charter of 1701, § 5: "All criminals shall have the same privileges of witnesses and counsel as their prosecutors." See, also, § 6 of same Charter.

COMPARE: Con. U. S. Amdts. 5, 6, 14, cl. 1; Ala. I. 8; (1875), I. 7; Ark. I. 8, 9; (1874), II. 10; Cal. I. 8; (1879), I. 13; Col. (1876), II 16; Conn. I. 9; Del. I. 7; Fl. Dec. of R. 9; Ga. I. 3, 7; Ill. II. 2, 9, 10; Ind. I. 13, 14; Iowa, I. 9, 10; Kan. Bill of R. 10; Ky. XIII. 2, 12; La. 6; Me. I. 6; Md. Dec. of R. 20, 21, 22, 23; Mass. I. 10, 12, 13; Mich. VI. 28, 32; Minn. I. 6, 7; Miss. I. 2, 7; Mo. I. 18; (1875), II. 22, 23, 30; Neb. I. 7, 8; (1875), I. 11, 12; Nev. I. 8; N. H. I. 15, 17; N. J. I. 8; N. Y. I. 6; N. Car. I. 11, 13, 17; O. I. 10; Or. I. 11, 12; R. I. I. 10, 13; S. Car. I. 13, 14; Tenn. I. 8, 9; Tex. I. 8, 16; (1876), I. 10, 19; Vt. I. 10; Va. I. 10; W. Va. III. 10, 14; Wis. I. 7, 8 See references under § 6, *ante*, for additional provisions in State Constitutions securing the right of trial by jury.

CONSULT: Story on Con. §§ 1782-94; 1938-58; Cooley on Con. Lim.---Right to be heard by Counsel, 313, 330-38; Hear and meet witnesses, 318-19; Speedy public trial, 311-12; Not compelled to give evidence against himself, 313-17; Judgment of peers-law of the land, 351.

Magna Charta: "No free man shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or anyways destroyed; nor will we go upon him, nor will we send upon him, unless by the lawful judgment of his peers or by the law of the land."

RECENT CASES: Howser v. Commth., 1 Sm. 338; Stroud v. Philada., 11 Sm. 255; Application of the Judges, 14 Sm. 33; Kramer v. Merks, 14 Sm. 151; Craig v. Kline, 15 Sm. 399; Palairet's Appeal, 17 Sm. 479; Richards v. Rote, 18 Sm. 248; Rutherford's Case, 22 Sm. 82; Saxton v. Mitchell, 28 Sm. 479; Philada. v. Scott, 31 Sm. 80; Waddell's Appeal, 3 Norris, 90; 4 W. N. C. 29; Kane v. Com., 8 Norris, 522; 7 W. N. C. 149; *Ex parte* Steinman and Hensel, 14 Norris, 220; 9 W. N. C. 145; Loewi v. Haedrich, 8 W. N. C. 70. See also, Galbreath v. Eichelberger, 3 Yeates, 515; Norman v. Heist, 5 W. & S. 171; Menges v. Wertman, 1 Barr, 218; Brown v. Hummel, 6 Barr, 87; Cathcart v. Com., 1 Wright, 109; Fetter v. Wilt, 10 Wright, 460.

[Criminal informations limited—Twice in jeopardy—Appropriations of private property to public use.]

Section 10. (1) No person shall for any indictable offence be proceeded against criminally by information except in cases arising in the land and naval forces, or in the militia when in actual service in time of war or public danger, or by leave of the Court, for oppression or misdemeanor in office; (2) No person shall for the same offence be twice put in jeopardy of life or limb; (3) Nor shall private property be taken or applied to public use without authority of law and without just compensation being first made or secured. (3) See Art. XVI. § 8.

Reported to Convention of 1873 by Committee on the Declaration of Rights, Jour. 425; 3 Conv. Deb. 195-6. Considered and amended, 4 Conv. Deb. 733-9, 747-55; 5 Id. 625-30; 7 Id. 298-300.

DERIVED: Constitution of 1790, Art. IX. § 10. In the third division the word "first," and the words "or secured," are new; the word "private" before "property" is substituted for the words "any man's," and the words "authority of law" for the words "the consent of his representatives." See also Amendment of 1838; Art. VII. § 4 of old Constitution.

(3) Constitution of 1776, chap. i. § 8: "Every member of society hath a right to be protected in the enjoyment of life, liberty and property, and ţ

therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service when necessary, or an equivalent therefor: But no part of a man's property can be justly taken from him, or applied to public uses, without his own consent or that of his legal representatives."

See Deb. Conv. of 1838, XII. 27.

COMPARE the several divisions of the section with the following Constitutions :—

		Crim Information. (1)	Twice in Jeopardy. (2)	Private Property. (3)
U.S		Amdt. 5	Amdt. 5	Amdt. 5.
Ala		I. 10	I. 11	I. 25; X111. 5.
" (1875)		I. 9	I. 10	I. 24; XIV. 7.
Cal	• •	I. 8	1.8	I. 8.
" (1879)		I. 8	I. 13	I. 14.
Col. (1876)		I. 8	I. 18	II. 14, 15.
Conn	• •	1.9		I. 11.
Del	• •	I. 8	I. 8	I. 8.
Fl. Dec. of R.	• •	9	9	9.
Ga			I. 8	I. 20.
III		II. 8	II. 10	II. 13; XI. 14.
Ind			I. 14	I. 21.
Iowa		I. 11	I. 12	I. 18.
Kan				XII. 4.
Ку	• •	XIII. 13	XIII. 14	XIII. 14.
La	• •	6	6	110.
Me		I. 7	I. 8	I. 21.
Md. Dec. of R.	• •	32		III. 40.
Mass	• •	I. 28		I. 10.
Mich			VI. 29	XV. 9, 15; XVIII
		T -	x _ '	2, 14.
Minn	• •	I. 7	I. 7	I. 13; X. 4.
Miss	• •	I. 31	I. 5	I. 10.
Mo	• •	I. 24	I. 19	I. 16.
" (1875) .	• •	I. 12	I. 23	I. 20, 21; XII. 4.
Neb	• •	I. 8	I. 8	I. 13.
" (1875)	• •	I. 10	I. 12	I. 21; XI. 6.
Nev	• •	I. 8	I. 8	I. 8; VIII. 7.
N.H	• •	Ť	I. 16	I. 12.
N. J	• •	I. 9	I. 10	I. 16; IV. 7, cl. 9 (8).
N. Y	• •	I. 6	I. 6	I. 6, 7.
N. Car.	• •	1. 12	-	-
Ohio	· .	I. 10	I. 10	I. 19; XIII. 5.
Or	• •	-	I. 12	I. 19; XI. 4.
R. I	• •	I. 7	I. 7	I. 16.
S. Car	• •	I. 19	I. 18	I. 23; XII 3.
Tenn	• •	I. 14	I. 10	I. 21.

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				I	Crim. nformation. (1)	Twice in Jeopardy. (2)	Private Property. (3)
Tex.					I. 8	I. 12	I. 14.
" ((1876)				I. 10	I. 14	I. 17.
Vt.	•				I. 17		I. 2, 9.
Va.	•	•					V. 14.
W. V	a.	•				III. 5	XI. 12.
Wis.	•	•	•	•		I. 8	XI. 2; I. 13.

CONSULT: (1) Story on Con. §§ 1782-6. (2) Id. § 1687; Cooley on Con. Lim. 325-8. (3) Story on Con. § 1790; Cooley on Con. Lim. 523-71.

JUDICIAL OPINION-RECENT CASES : Snyder v. Penna. R. R. Co., 5 Sm. 340; Com. v. Penna. Canal Co., 16 Sm. 41; Waddell's Appeal, 3 Norris, 90; 4 W. N. C. 29; Bachman's Appeal, 9 Norris, 207; City of Reading v. Althouse, 12 Norris, 400; 9 W. N. C. 22; In re 22d Street, 11 W. N. C. 465; East Union v. Conroy, 11 W. N. C. 533.See also McClenachan v. Curwen, 6 Binn. 509; Harvey v. Thomas, 10 Watts, 66; Case of Philada. & Trenton R. R. Co., 6 Whar. 25; City of Pittsburg Case, 2 W. & S. 320; Monongahela Nav. Co. v. Coons, 6 W. & S. 113; Henry v. Pittsburg & Allegheny Bridge Co., 8 W. & S. 85; Pittsburg v. Scott, 1 Barr, 309; Harvey v. Lloyd, 3 Barr, 331; Com. v. Wood, 10 Barr, 97; Mifflin v. Railroad Co., 4 Harris, 192; Yost's Report, 5 Harris, 524; Sharpless v. Mayor of Philada., 9 Harris, 147; Watson v. Pittsburg & Connellsville R. R. Co., 1 Wright, 479; Hatermehl v. Dickerson, 28 Legal Intel. 268. The following older cases relate mostly to the first and second divisions of the section : Respublica v. Griffiths, 2 Dall. 112; Same v. Wray, 3 Dall. 490; Same v. Prior, 1 Yeates, 206; Same v. Burns, Id. 370; Same v. Montgomery, Id. 419; Com. v. Commissioners, 1 S. & R. 382; Com. v. Clue, 3 Rawle, 498; McCreary v. Com., 5 Casey, 323.

[Free administration of justice-Suits against the Commonwealth.]

Section 11. (1) All courts shall be open, and every man for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay. (2) Suits may be brought against the Commonwealth in such manner, in such courts, and in such cases as the Legislature may by law direct.

DERIVED: Constitution of 1790, Art. IX. § 11. Constitution of 1776, chap. ii. § 26: "All courts shall be open and justice shall be impartially ad-2 ministered, without corruption or unnecessary delay." The context is directed against excessive fees or compensation of court officers, and against extortion by them.

Laws agreed upon in England, § 5: "All courts shall be open, and justice shall neither be sold, denied nor delayed." § 7: "All pleadings, processes and records in Courts, shall be short and in English, and in an ordinary and plain character, that they may be understood and justice speedily administered."

Magna Charta: "To none will we sell, to none will we deny or delay, right or justice."

COMPARE: (1) Con. Ala. I. 15; (1875), I. 14; Ark. I. 10; Col. (1876), II. 6; Conn. I. 12; Del. I. 9; Ga. I. 5; Ill. II. 19; Ind. I. 12; Kan. Bill of R. 18; Ky. XIII. 15; La. 10; Me. I. 19; Md. Dec. of R. 19; Mass. I. 11; Minn. I. 8; Miss. I. 28; Mo. I. 15; (1875), II. 10; Neb. I. 9; (1875), I. 13; N. H. I. 14; N. Car. I. 18, 35; O. I. 16; Or. I. 10; R. I. I. 5; S. Car. I. 15; Tenn. I. 17; Tex. I. 11; (1876), I. 13; Vt. I. 4; W. Va. III. 17; Wis. I. 9.

(2) Con. Ala. I. 16; (1875), I. 15; Ark. I. 17; Cal. (1879), XX. 6; Del. I. 9; Tenn. I. 17; United States, III. 2; Amdt. 11.

CONSULT: (2) Story on Con. §§ 1675-8, 1679-89, 1697-8; Cooley, Con. Lim. 11, 12.

[Limitation upon suspension of laws.]

Section 12. No power of suspending laws shall be exercised unless by the Legislature or by its authority.

D_{ERIVED}: Constitution of 1790, Art IX. § 12. English Bill of Rights of 1689: "That the pretended power of suspending of laws or the execution of laws, by regal authority, without consent of Parliament, is illegal."

COMPARE: Con. Ala. I. 23; (1875), I. 22; Del. I. 10; Ind. I. 26; Ky. XIII. 16; Me. I. 13; Md. Dec. of R. 9; Mass. I. 20; N. H. I. 29; N. Car. I. 9; O. I. 18; Or. I. 23; S. Car. I. 24; Tenn. XI. 8; Tex. I. 20; (1876), I. 28; Vt. I. 15; Va. I. 9.

CONSULT: Cooley, Con. Lim. 391.

[No excessive bail or fines, or cruel punishments, to be permitted.]

Section 13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

DERIVED: Constitution of 1790, Art. IX. § 13. Constitution of 1776, chap. ii. § 29: "Excessive bail shall not be exacted for bailable offences, and all fines shall be moderate." See, also, §§ 38 and 39.

Laws agreed upon in England, § 18: "All fines shall be moderate, and saving men's contentments, merchandise or wainage."

English Bill of Rights of 1689; Con. U. States, Amdt. 8.

COMPARE: Con. U S., Amdt. 8; Ala. I. 17, 18; (1875), I. 16, 17; Ark. I. 7; Cal. I. 6; Col. (1876), II. 20; Conn. I. 13; Del. I. 11; Fl. Dec. of R. 7; Ga. I. 16, 21; Ill. II. 11; Ind. I. 16, 18; Iowa, I. 17; Kan. Bill of R. 9; Ky. XIII. 17; La. 8; Mc. I. 9; Md. Dec. of R. 16, 25; Mass. I. 26; Minn. I. 5; Miss. I 8; Mo. I. 21; (1875), II. 25; Neb. I. 6; (1875), I. 9; Nev. I. 6; N. H. I. 18, 33; N. J. I. 15; N. Y. I. 5; N. Car. I. 14; O. I. 9; Or. I. 13, 15, 16; R. I. I. 8, 14; S. Car. I. 16, 38; Tenn. I. 16, 32; Tex. I. 11; (1876), I. 13; Vt. II. 33; Va. I. 11; W. Va. III. 5; Wis. I. 6.

CONSULT: Story on Con. §§ 1903, 1904; Cooley, Con. Lim. 328-30.

[Prisoners bailable—Habeas corpus.]

Section 14. (1) All prisoners shall be bailable by sufficient sureties, unless for capital offences when the proof is evident or presumption great; (2) and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

DERIVED: Constitution of 1790, Art. IX. §14. (1) Constitution of 1776, chap. ii. § 28; Laws agreed upon in England, § 11.

COMPARE: (1) Con. Ala. I. 18; (1875), I. 17; Cal. I. 7; (1879), I. 6; Col. (1876), II. 19; Conn. I. 14; Del. I. 12; Fl. Dec. of R. 8; Ill. II. 7; Ind. I. 17; Iowa, I. 12; Kan. Bill of R. 9; Ky. XIII. 18; La. 7; Me. I. 10; Amdt. 2; Miss. I. 8; Mo. I. 20; (1875), II. 24; Neb. I. 6, 8; (1875), I. 9. Nev. I. 7; N. J. I. 10; O. I. 8; Or. I. 14; R. I. I. 9; S. Car. I. 16; Tenn. I. 15; Tex. (1876), I. 11; Wis. I. 8.

(2) Con. U. S. I. 9, cl. 2; Ala. I. 19; (1875), I. 18; Cal. I. 5; Col. (1876), II. 21; Conn. I. 14; Del. I. 13; Fl. Dec. of R. 6; Ga. I. 13; Ill. II. 7; Ind. I. 27; Iowa, I. 13; Kan. Bill of R. 8; Ky. XIII. 18; La. 7; Me. I. 10; Mich. IV. 44; Miss. I. 3; Mo. I. 22; (1875), II. 26; Neb. I. 8; (1875), I. 8; Nev. I. 5; N. H. II. 91; N. J. I. 11; N. Y. I. 4; N. Car. I. 18, 21; O. I. 8; Or. I. 24; R. I. I. 9; S. Car. I. 17; Tenn. I 15; Tex. I. 10; (1876), I. 12; W. Va. III. 4; Wis. I. 8.

CONSULT: (1) Story on Con. § 1948; Cooley, Con. Lim. 309, 310. (2) Story on Con. §§ 1338-42; Cooley, Con. Lim. 338-48; Writings of Madison, I. 194-5, 426-7.

In Convention of 1776, the day before final adjournment, the following resolution was adopted: "*Resolved*, That it be recommended to the first General Assembly of this State, to make a law similar to the *Habeas Corpus* Act of 1

England, for the security of the personal liberty of the inhabitants." Conv. and Con. of Pa. 54.

See Com. v. Lemley, 10 Pittsburg Leg. Jour. 122.

[No commission of over and terminer.]

Section 15. No commission of over and terminer or jail delivery shall be issued.

DERIVED: Constitution of 1790, Art. IX. § 15; Con. Del. I. 14, the same.

[Imprisonment of insolvent debtors limited.]

Section 16. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law.

DERIVED: Constitution of 1790, Art. IX. § 16; Constitution of 1776, chap. ii. § 28.

COMPARE: Con. Ala. I. 22; (1875), I. 21; Ark. I. 14; Cal. I. 15; Col. (1876), II. 12; Ga. I. 18; Ill. II. 12; Ind. I. 22; Iowa, I. 19; Kan. Bill of R. 16; Ky. XIII. 19; Minn. I. 12; Miss. I. 11; Mo. I. 29; (1875), II. 16; Neb. I. 15; (1875), I. 20; Nev. I. 14; N. J. I. 17; N. Car. I. 16; O. I. 15; Or. I. 20; R. I. I. 11; S. Car. I. 20; Tenn. I. 18; Tex. I. 15; (1876), I. 18; Wis. I. 16.

CONSULT: Story on Con. §§ 1111-15; Cooley, Con. Lim. 341.

By Act of 3 Feb. 1819, re-enacted 13 June, 1836, females were not to be imprisoned for debt. A general Act abolishing imprisonment for debt was passed 12 July, 1842. *P. Laws*, 339.

[Laws ex post facto, or impairing contracts, and irrevocable grants, forbidden.]

Section 17. (1) No *ex post facto* law, (2) nor any law impairing the obligation of contracts, (3) or making irrevocable any grant of special privileges or immunities, shall be passed. *See Art. XVI.* \S 10.

DERIVED: Constitution of 1790, Art. IX. § 17: "No ex post facto law, nor any law impairing contracts, shall be made." This was reported by Committee on Declaration of Rights, of Convention of 1873, amended by the addition of the third clause above; Jour. 425. Subsequently, upon the consideration of the section in Convention, the words "the obligation of" were inserted before the word "contracts," to make the language agree with that of a similar provision in the Constitution of the United States; 5 ART. I.]

Conv. Deb. 631. The Convention refused to extend the prohibition to remedies upon contracts; 5 Id. 632. See Con. Ill. (1870), II. 14.

Irrevocable bank charters were forbidden by one of the Amendments of 1838, Art. I. § 25.

COMPARE: (1) Con. U. S. I. 9, cl. 3; Md. Dec. of R. 17; Mass. I. 24; N. H. I. 23; N. Car. I. 32.

(1 & 2) Con. U. S. I. 10, cl. 1; Ala. I. 9, 24; Ark. I. 13; Cal. I. 16; Fl. Dec. of R 17; Ind. I. 24; Iowa, I. 21; Ky. XIII. 20; Me. I. 11; Mich. IV. 43; Minn. I. 11; Miss. I. 9; Mo. I. 28; Neb. I. 12; Nev. I. 15; Or. I. 22; R. I. I. 12; S. Car. I. 14, 21; Tenn. I 11, 20; Tex. I. 14; (1876), I. 16; W. Va. III. 4, 11 at end; Wis. I. 12.

(1, 2 & 3) Ala. (1875), I. 23; Col. (1876), II. 11; Ill. II. 14; Mo. (1875), II. 15; Neb. (1875), I. 16.

(3) Con. Cal. (1879), I. 21.

CONSULT: (1) Story on Con. §§ 1345, 1373; Cooley, Con. Lim. 264-73. (2) Story on Con. § 1373; Cooley, Con. Lim. 273-94.

Fæderalist, No. XLIII. (Dawson's ed. I. 310): "Bills of attainder, ex post facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the State Constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters."

JUDICIAL OPINION-RECENT CASES : (2) Tyson v. School Directors, 1 Sm. 9; Attorney General v. Germantown & Perkiomen Road, 5 Sm. 466; Penrose v. Erie Canal Co., 6 Sm. 46; Journeay v. Gibson, Id. 57; Grim v. Wessenberg School District, 7 Sm. 433; Com. v. Pittsburg & Connellsville R. R., 8 Sm. 26; City of Erie v. Erie Canal Co., 9 Sm. 174; Houston v. College, 13 Sm. 428; Com. v. Penna. Canal Co., 16 Sm. 41; Williams's Appeal, 22 Sm. 214; Koontz v. Franklin, 26 Sm. 154; Thompson v. Com., 31 Sm. 314; 3 W. N. C. 196; Drew v. N. Y. & Erie R. R. Co., 32 Sm. 46; Union Pass. Railway Co. v. Philada., 4 W. N. C. 303; Long's Appeal, 6 Norris, 114; Johnson v. Crow, 6 Norris, 184; 6 W. N. C. 33; Craig v. First Presbyterian Church, 7 Norris, 42; 6 W. N. C. 421; Canal Co. v. Gilfillan, 12 Norris, 95; 7 W. N. C. 179; Duncan v. Penna. R. R. Co., 7 W. N. C. 551; Fahnestock v. Wilson, 9 W. N. C. 385. See also Deichman's Appeal, 2 Whar. 396; Hepburn v. Kurts, 7 Watts, 300; Evans v. Montgomery, 4 W. & S. 218; Chadwick v. Moore, 8 W. & S. 49; Bolton v. Johns, 5 Barr, 145; Danner v. Shissler, 7 Casey, 289; Juniata Township Case, Id. 301; Wharton v. Philada., 9 Casey, 202; Plank Road Co. v. Davidson, 3 Wright, 435; In re Opening of 22d Street, 39 Leg. Intel. 128; In re Towanda Bridge Company, 10 Norris, 216. Ex post facto laws: Commonwealth v. Duffy, 15 Norris, 506.

9

[No legislative attainder of treason or felony.]

Section 18. No person shall be attainted of treason or felony by the Legislature.

DERIVED: Constitution of 1790, Art. IX. § 18.

COMPARE: Con. U. S. I. 9, cl. 3, and 10, cl. 1; Ala. I. 21; (1875), I. 20; Cal. I. 16; Conn. I. 15; Fl. Dec. of R. 17; Iowa, V. 21; Ky. XIII. 21; Me. I. 11; Md. Dec. of R. 18; Mass. I. 25; Mich. IV. 43; Minn. I. 11; Mo. I. 26; (1875), II. 13; Neb. I. 12; Nev. I. 15; S. Car. I. 21; W. Va. III. 4; Wis. I. 12.

CONSULT: Story on Con. §§ 1848, 1844, 1878; Cooley, Con. Lim. 259-62.

[Attainder not to work corruption of blood, or forfeiture beyond life. No forfeiture for suicide, or in case of death by casualty.]

Section 19. (1) No attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth. (2) The estates of such persons as shall destroy their own lives, shall descend or vest as in cases of natural death, and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

DERIVED: Constitution of 1790, Art. IX. § 19.

Laws agreed upon in England, § 25: "The estates of capital offenders, as traitors and murderers, shall go, one-third to the next of kin to the sufferer, and the remainder to the next of kin to the criminal." See, also, § 24.

Charter of 1701, § 8: "If any person through temptation or melancholy shall destroy himself, his estate, real and personal, shall notwithstanding descend to his wife and children, or relations, as if he had died a natural death; and if any person shall be destroyed or killed by casualty, or accident, there shall be no forfeiture to the Governor by reason thereof."

In Provincial Council, 20th February, 1684, William Penn, Proprietary and Governor, presiding: "Whereas, the verdict of the Coroner's jury was, that Benj. Acrod killed himself with drink, which might give the Province a pretence to his estate therein: The Proprietary and Governor relinquishes all his claim thereunto, in Council, and desired the Council to take care that some person be appointed to take care of the estate of the said Acrod, for the payment of his debts, and the remainder to be disposed of according to law, &c." -1 Colonial Records, 94.

COMPARE: (1) Con. U. S. III. 3, el. 2; Ala. I. 21; (1875), I. 20; Ark. I. 13; Del. I. 15; Ga. I. 24; Ill. II. 11; Ind. I. 30; Kan. Bill of R. 12; Ky. XIII. 22; Me. I. 11; Md. Dec. of R. 27; Minn. I. 11; Mo. I. 26; ART. I.]

(1875), II. 13; Neb. I. 12; O. I. 12; Or. I. 26; S. Car. I. 21; Tenn. I. 12; Tex. (1876), I. 21; W. Va. III. 18; Wis. I. 12.

(2) Con. Del. I. 15; Ky. XIII. 23; Mo. I. 26; (1875), II. 13; N. H. II. 88; Tenn. I. 12; Tex. (1876), I. 21; Vt. II. 38.

CONSULT: (1) Story on Con. §§ 1299, 1300.

[Rights of meeting and petition.]

Section 20. The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address or remonstrance.

DERIVED: Constitution of 1790, Art. IX. § 20. Constitution of 1776, chap. i. § 16: "The people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the Legislature for redress of grievances by address, petition or remonstrance."

English Bill of Rights, 1689: "That it is the right of the subject to petition the King, and all commitments and prosecutions for such petitioning are illegal."

COMPARE: Con. U. S. Amdt. 1; Ala. I. 27; (1875), I. 26; Ark. I. 4; Cal. I. 10; Col. (1876), II. 24; Conn. I. 16; Del. I. 16; Fl. Dee. of R. 11; Ill. III. 17; Iowa, I. 20; Kan. Bill of R. 3; Ky. XIII. 24; La. 5; Me. I. 15; Md. Dec. of R. 13; Mass. I. 19; Mich. XVIII. 10; Miss. I. 6; Mo. I. 8; (1875), II. 29; Neb. I. 4; (1875), I. 19; Nev. I. 10; N. H. I. 32; N. J. I. 18; N. Y. I. 10; N. Car. I. 25; O. I. 3; Or. I. 27; R. I. I. 21; S. Car. I. 6; Tex. I. 19; (1876), I. 27; Vt. I. 20; W. Va. III. 16; Wis. I. 4.

CONSULT: Story on Con. §§ 1893-5; Cooley, Con. Lim. 349, 433-4.

[Right to bear arms.]

Section 21. The right of the citizens to bear arms in defence of themselves and the State, shall not be questioned.

DERIVED: Constitution of 1790, Art. IX. § 21: Constitution of 1776, chap. i. § 13. English Bill of Rights, 1689: "That the subjects which are Protestants may have arms for their defence, suitable to their conditions, and as allowed by law."

COMPARE: Con. U. S. Amdt. 2; Ala. I. 28; (1875), I. 27; Ark. I. 5; Col. (1876); II. 13; Conn. I. 17; Fl. Dec. of R. 22; Ga. I. 14; Kan. Bill of R. 4; Ky. XIII. 25; Me. I. 16; Md. Dec. of R. 28; Mass. I. 17; Mich. XVIII. 7; Miss. I. 15; Mo. I. 8; (1875), II. 17; N. Car. I. 24; O. I. 4;

ART. I.

Or. I. 28; R. I. I. 22; S. Car. I. 28; Tenn. I. 26; Tex. I. 13; (1876), I. 23; Vt. I. 16.

CONSULT: Story on Con. §§ 1896-8; Cooley, Con. Lim. 350. And see, Wright v. Comm'th, 27 P. F. Sm. 470; Com. v. McNulty, 28 Leg. Intel. 389.

STATUTES: An act passed 8th May, 1876, P. Laws, 146, provides for a severe punishment for any person who shall, "playfully or wantonly, point or discharge a gun, pistol, or other firearm at any other person" within this Commonwealth.

The Act of 18th March, 1875, P. Laws, 33, is directed against the carrying of deadly weapons concealed upon the person, with intent therewith unlawfully and maliciously to do injury to any person; and authorizes a jury to infer the intent from the fact of carrying such a weapon so concealed.

[Subordination of the military to the civil power.]

Section 22. (1) No standing army shall in time of peace be kept up without the consent of the Legislature, (2) and the military shall in all cases, and at all times, be in strict subordination to the civil power.

DERIVED: Constitution of 1790, Art. IX. § 22. Constitution of 1776, chap. i. § 13: ". . As standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; and the military should be kept under strict subordination to, and governed by the civil power."

Declaration of Independence: "He," the King of Great Britain, "has kept among us, in times of peace, standing armies, without the consent of our Legislatures: He has affected to render the military independent of, and superior to, the civil power."

Con. Va. (1776), I. 15. English Bill of Rights, 1689: "That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law."

COMPARE: Con. Ala. I. 30; (1875), I. 28; Ark. I. 16; Cal. I. 12; Del. I. 17; Iowa, I. 14; Kan. Bill of R. 4; Ky. XIII. 26; Me. I. 17; Md. Dec. of R. 29, 30, 31; Mass. I. 17, 28; Minn. I. 14; Nev. I. 11; N. H. I. 25, 26, 34; N. Car. I. 24; O I. 4; S. Car. I. 25, 28; Tenn. I. 24, 25; Vt. I. 16, 17; Va. I. 15; W. Va. III. 12.

(2) Con. Cal. (1879), I. 12; Col. (1876), II. 22; Conn. I. 18; Fl. Dec. of R. 13; Ill. III. 15; Ind. I. 33; Mich. XVIII. 8; Miss. I. 25; Mo. I. 32; (1875), II. 27; Neb. I. 17; N. J. I. 12; Or. I. 28; R. I. I. 18; Tex. I. 17; (1876), I. 24; Wis. I. 20.

See Common'th v. Small, 2 Casey, 33.

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[Quartering of troops.]

Section 23. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time war, but in a manner to be prescribed by law.

DERIVED: Constitution of 1790, Art. IX. § 23.

COMPARE: Con. U. S. Amdt. 3; Ala. I. 31; (1875), I. 29; Ark. I. 16; Cal. I. 13; (1879), I. 12; Col. (1876), II. 22; Conn. I. 19; Del. I. 18; Fl. Dec. of R. 14; Ill. III. 16; Ind. I. 34; Iowa, I. 15; Kan. Bill of R. 14; Ky. XIII. 27; Me. I. 18; Md. Dec. of R. 31; Mass. I. 27; Mich. XVIII. 9; Mo. I. 32; (1875), II. 27; Neb. (1875), I. 18; Nev. I. 12; N. H. I. 27; N. J. I. 13; N. Car. I. 36; O. I. 13; Or. I. 29; R. I. I. 19; S. Car. I. 29; Tenn. I. 27; Tex. (1876), I. 25; W. Va. III. 12.

CONSULT: Story on Con. §§ 1899, 1900; Cooley, Con. Lim. 308.

[No titles of nobility-Official tenure limited.]

Section 24. (1) The Legislature shall not grant any title or nobility or hereditary distinction, (2) nor create any office, the appointment to which shall be for a longer term than during good behavior.

DERIVED: Constitution of 1790, Art. IX. § 24.

COMPARE: (1) Con. U. S. I. 9 cl. 7; Conn. I. 20; Ind. I. 35; Kan. Bill of R. 19; Md. Dec. of R. 42; Mo. I. 31; N. Car. I. 30; O. I. 17; Or. I. 30; S. Car. I. 39; Tenn. I. 30; W. Va. III. 19.

(1 & 2) Con. Ala. I. 32; (1875), I. 30; Del. I. 19; Ky. XIII. 28; Me. I. 23; Mass. I. 6: And (2), N. H. I. 9; Va. I. 6.

CONSULT: Story on Con. §§ 1350-52; Cooley, Con. Lim. 17, 33.

[Emigration permitted.]

Section 25. Emigration from the State shall not be prohibited.

DERIVED: Constitution of 1790, Art. IX. § 25. Constitution of 1776, chap. i. § 15: "All men have a natural, inherent right to emigrate from one State to another that will receive them, or to form a new State in vacant countries, or in such countries as they can purchase, whenever they think that thereby they may promote their own happiness."

Royal Charter to Penn, 22 8, 9; Declaration of Independence.

COMPARE: Con. Ala. I. 33; (1875), I. 31; Ind. I. 36; Ky. XIII. 29; Or. I. 31; Vt. I. 19. Concessions agreed upon between Penn and adventurers and purchasers of the province 11th July, 1681, O. S. § 20: "That no person leave the province without publication being made thereof in the market-place three weeks before, and a certificate from some justice of the peace of his clearness with his neighbors and those he has dealt withal, so far as such an assurance can be attained and given: And if any master of a ship shall, contrary hereunto, receive and carry away any person that hath not given that public notice, the said master shall be liable to all debts owing by the said person so secretly transported from the province." Directed against absconding debtors, and not to check emigration.

[This article excepted from powers of government.]

Section 26. To guard against transgressions of the high powers which We have delegated, We declare that everything in this Article is excepted out of the general powers of Government, and shall forever remain inviolate.

DERIVED: Constitution of 1790, Art. IX. § 26. Constitution of 1776, chap. ii. § 46: "The Declaration of Rights"—constituting chap. i. of that Constitution—"is hereby declared to be a part of the Constitution of this Commonwealth, and ought never to be violated on any pretence whatever."

Con. Va. (1776), § 21, of Bill of Rights, (Art. I.), and Preamble to same.

COMPARE: Con. U. S. Amdts. 9, 10; Ala. I. 38; (1875), I. 39; Cal. I. 21; (1879), I. 22; Col. (1876), II. 28; Del. I. at end; Fl. Dec. of R. 24; Iowa, I. 25; Kan. Bill of R. 20; Ky. XIII. 30; La. 14; Me. I. 24; Md. Dec. of R. 45; Minn. I. 16; Miss. I. 32; Mo. (1875), II. 32; Neb. I. 20; (1875), I. 26; Nev. I. 20; N. J. I. 19; N. Car. I. 37; O. I. 20; Or. I. 36; R. I. I. 23; S. Car. I. 41; Tex. I. 23; (1876), I. 29; Va. Bill of Rights, Preamble, and § 21.

See Laws agreed upon in England, 22 1, 39.

RECENT CASES: Wells v. Bain, 25 Sm. 39; Wood's Appeal, Id. 59; (Contra, Resolutions Constitutional Convention, 8 Conv. Deb. 732, 742); Union Pass. Railway Co. v. Philadelphia, 8 W. N. C. 377.

ARTICLE II.

THE LEGISLATURE.

SECTION	SECTION
1. The legislative power vested.	9. Presiding officers-each House to
2. Biennial elections-Filling vacan-	choose its other officers, and judge of
cies.	the election and qualifications of its
3. Legislative terms.	members.
4. Biennial meetings-Special sessions.	10. Quorum.
5. Qualifications of members.	11. Powers of each House.
6. Disqualified for appointment to office	12. Journals—Yeas and nays.
-civil officers, State or Federal, not	13. Open sessions.
be members.	14. Adjournments.
7. Conviction of certain crimes to dis-	15. Privileges of members.
qualify for membership, or for hold-	
ing office.	17. Representative districts.
8. Compensation of members.	18. Apportionments.

[The legislative power vested.]

Section 1. The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

Considered, Conv. Deb. I. 327-31.

DERIVED: Constitution of 1790, Art. I. § 1.

HISTORY: The Charter of King Charles the Second to William Penn, § 4, granted to Penn and his heirs, and to his and their deputies and lieutenants, power to ordain, make and enact, and under his and their seals to publish any laws whatsoever for the public use of the province of Pennsylvania or for any other end appertaining either unto the public state, peace or safety of said province, or unto the private utility of particular persons, according to their best discretion, by and with the advice, assent and approbation of the freemen of the said province, or the greater part of them, or of their delegates or deputies, whom for the enacting of the said laws, when and as often as need should require, the said William Penn and his heirs should assemble in such sort and form as to him and them should seem best.

By Penn's Frame of Government of 1682, § 1, it was provided: That the government of the province should, according to the powers of the patent, consist of the Governor and Freemen of the said province, in form of a provincial Council and General Assembly, by whom all laws should be made, officers chosen and public affairs transacted, in the manner thereinafter declared. The constitution and powers of the provincial Council, as they are set forth in that Frame of Government, and in succeeding ones, may be reserved for examination under the head of the Executive article; for although the Council was electable by the freemen and to be concerned in the preparation of laws, it was yet, substantially, an executive body. The General Assembly was constituted by the 14th section of that Frame of Government, and was to consist of a single House of not more than two hundred members, chosen annually by the freemen of the province. Its powers, however, were doled out to it with a sparing and cautious hand. The members were to meet yearly on the 20th of April, in the capital town or city of the province, where during eight days they might freely confer with one another, and if any of them should desire, meet with committees of the provincial Council for the purpose of proposing alterations or amendments of bills submitted to them by the Governor and Council. On the ninth day from the time of their meeting, after the reading over of the proposed bills by the Clerk of the Council, and after the occasions and motives for them should be opened by the Governor or his deputy, the members were to proceed to vote upon the bills and approve or reject them. Twothirds of all the members of the Assembly were required to constitute a quorum. It was, in fact, a body to assent to bills and not to frame them; it could originate no bills, nor regularly amend them, and was openly subjected to the domination, more or less complete, of the Governor and Council. Provision was, however, made in the 16th section of the same instrument, that the General Assembly for the first year should or might consist of all the freemen of the province, and that in future times, as population should increase, the number of members of Assembly might be enlarged to any number above two hundred and not exceeding five hundred.

By Penn's Frame of Government of 1683, the power of initiating laws by the Governor and Council was retained. The General Assembly was to consist of Representatives chosen yearly by the freemen on the 10th day of March, six in number from each county, to meet on the 10th day of May following their election, in the capital town or city of the province, etc. The consideration of bills and the manner of assenting thereto by the Assembly were to be as before. The number of Representatives in Assembly might be increased from time to time by statute, but should never exceed two hundred.

By the Frame of Government of 1696, commonly called the Markham Charter, the number of Representatives to be chosen for each county was changed from six to four. The following new and important provision appears in this charter: "That the Representatives of the freemen, when met in Assembly, shall have power to prepare and propose to the Governor and Council all such bills as they, or the major part of them, shall at any time see needful to be passed into laws within the said province and territories: *Provided always*, that nothing herein contained shall debar the Governor and Council from recommending to the Assembly all such bills as they shall think fit to be passed into laws, and that the Council and Assembly may, upon occasion, confer together in committees when desired." Further, provision was made for the sitting of the Assembly and its committees upon their own adjournments, to prepare and propose bills, redress grievances, and impeach criminals, etc., until the Governor and Council should dismiss them.

The Penn Charter of Privileges of 1701 (granted upon the delivery up or surrender to the Proprietary of the Charter or Frame of Government of 1683), contained in its second division new provisions relating to the General Assembly of the province and territories. The Assembly was to consist of Representatives chosen from the several counties, four from each, on the first day of October of each year, to meet at Philadelphia on the 14th of the same month, with power to choose a speaker and their other officers, to judge of the qualifications and elections of their own members, to sit upon their own adjournments, appoint committees, prepare bills in order to pass into laws, impeach criminals and redress grievances, and to have all other powers and privileges of an Assembly according to the rights of the free-born subjects of England and as was usual in any of the King's plantations in America. The quorum was again fixed at two-thirds, and the number of members might be increased if the Governor and Assembly should agree thereto.

The Constitution of 1776, chapter ii. § 2, again vested the supreme legislative power of the Commonwealth in a single House of Representatives, to be designated "the General Assembly of the Representatives of the Freemen of Pennsylvania." The members were to be chosen annually on the second Tuesday of October by the freemen of the Commonwealth, by ballot, and were to meet on the fourth Monday of the same month, § 9. Cities and counties were to be represented as such in the General Assembly, § 7, and on the first Tuesday of November, 1776, and on the second Tuesday of October in each of the years 1777 and 1778, the city of Philadelphia and each county should choose six Representatives; but in the last-named year and every seventh year thereafter, a new apportionment of members, based upon returns of taxables in the several cities and counties, and proportioned thereto, was to be made, § 17.

The reasons for and against the division of a Legislature into two houses or branches, are stated in Bentham's Works, ii. 307 to 310, in the essay upon Political Tactics. The reasons in the affirmative are supplied by Dumont.

The opinion of Franklin upon any political question is entitled to profound respect; but his opinion in favor of a single House, in the organization of the Legislature, was no doubt influenced by colonial usage and by a habit of antagonism to proprietary influence in the colonial Council.— Works of Franklin, by Sparks, v. 165.

[Biennial elections—Filling vacancies.]

Section 2. (a) Members of the General Assembly shall be chosen at the general election every second year. (b) Their term of service shall begin on the first day of December next after their election. (c) Whenever a vacancy shall occur in either House, the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term.

Reported, Conv. Journ. 197, 410; Deb. I. 238. Considered and amended, Conv. Deb. I. 327, 331-4, 337-47, 355-61, 364-74, 380-408, 409-29; V. 338-47.

HISTORY AND CONSTRUCTION: (a) The time of election is changed by this provision, read in connection with Article VIII. § 2, from the second Tuesday of October to the Tuesday next following the first Monday of November; and is fixed for every second year instead of annually.

By the colonial charter of 1682 the annual time for electing representatives was fixed upon the 20th day of February, §§ 2, 3, 14; by the charter of 1683 on the 10th day of March, §§ 2, 13; and by the charter of 1701, § 2, upon the 1st day of October. By the Constitution of 1776, chapter ii. § 9, and by the Constitution of 1790, Article I. § 2, the time was fixed on the second Tuesday of October. At all times, down to 1874, Representatives have been chosen for one year terms and have met annually. ART. II.]

(b) Prior to 1874, no time for commencement of legislative terms had ever been expressly fixed, and it has been questioned whether the terms of members commenced with their election or upon the day fixed by the Constitution for their meeting in General Assembly. The words, "unless sooner convened by the Governor," contained in the 10th section, Article I. of the Constitution of 1790, would seem to establish the former construction, so that a proclamation of the Governor convening the two Houses in extraordinary session, between an October election and the first Tuesday of December following (or first Tuesday of January following, under amendment of 1838), would have been properly addressed to the members elect and not to their predecessors.

In the Convention of 1873, the Committee upon the Legislature reported that the terms of members should begin on the first day of January succeeding their election, 1 Conv. Deb. 238, but upon consideration, afterwards, the first day of December was substituted on motion of Mr. Simpson, of Philadelphia. Id. 331-2, 337-45.

(c) The provisions for issuing writs to fill vacancies, by the presiding officers of each house, is substantially the same as the 19th section, Article I. of the Constitution of 1790. A proposition by the Committee on the Legislature that the Governor should be authorized to issue such writs, was upon full consideration rejected by the Convention of 1873. 1 Conv. Deb. I. 238, 426-9; 5 Id. 338, 345-7.

[Legislative terms.]

Section 3. Senators shall be elected for the term of four years, and Representatives for the term of two years.

Reported, Conv. Jour. 197,410, Deb. I. 238. Considered, Conv. Deb. I. 429-30, 433-5. And see references under § 2, above.

DURATION OF TERMS: The question of the duration of senatorial and representative terms, and the question of biennial sessions of the Legislature, are closely connected; they were, in fact, considered together by the Convention and produced prolonged debates. The report of the legislative committees, extending legislative terms and fixing biennial sessions, was made to the Convention on the 15th of January, 1873, 1 Conv. Deb. 238, and was taken up for consideration in committee of the whole on the 22d of the same month. Id. 327. Seven days of session were then mostly consumed in debate upon those propositions and upon amendments offered, resulting in the sustainment of the report. On the 9th of June, the consideration of the report was resumed, on second reading, 5 Conv. Deb. 338, when an amendment for the annual election of members was rejected, 34 to 54, and another for annual sessions by a vote of 34 to 55.

The Senate was first established by the Constitution of 1790, Article I., in which it was provided that Senators were to hold for four-year terms, and be divided into four classes in such manner that one-fourth of their number should be chosen yearly, §§ 5, 9. But by one of the amendments of 1838, senatorial terms were reduced to three years, and Senators were to be so classified that one-third of their number should be chosen every year, Article I. §§ 5, 9.

[Biennial meetings-Special sessions.]

Section 4. (a) The General Assembly shall meet at 12 o'clock, noon, on the first Tuesday of January every second year, and at other times when convened by the Governor, (b) but shall hold no adjourned annual session after the year 1878. (c) In case of a vacancy in the office of United States Senator from this Commonwealth, in a recess between sessions, the Governor shall convene the two houses, by proclamation, on notice not exceeding sixty days, to fill the same.

Proposition of Mr. Hunsicker, of Montgomery, Conv. Deb. I. 183; Rep. Id. 238. Considered and amended, Id. 435-52; V. 348-50.

HISTORY AND CONSTRUCTION: (a) The time for the annual meeting of the General Assembly under the Charter of 1682, § 14, was the 20th of April; under that of 1683, § 3, on the 10th of May, and under that of 1701, § 2, on the 14th of October. The Constitution of 1776, chapter ii. § 9, fixed the time for meeting, on the 4th Monday of October, and that of 1790, Article I. § 10, on the first Tuesday of December, "unless sooner convened by the Governor." One of the amendments of 1838, was the striking out of the word "December" in the 10th section of the first article, and inserting the word "January." The time fixed by that amendment is retained in the Constitution of 1874, except that it is made biennial instead of annual, and that the hour of meeting as well as the day is designated. Under the old Constitution, by usage, the Senate met at 3 o'clock P. M., and the House of Representatives at noon, on the first day of the session: Both Houses will, hereafter, meet at noon.

A general power to the Governor to convene the General Assembly on extraordinary occasions was conferred by the Constitution of 1790, Article II. § 12.

ART. II.]

(b) The prohibiting adjourned annual sessions after the year 1878, originated with Mr. Cochran, of York. He moved an amendment in committee of the whole, fixing the prohibition after the year 1876, which was lost; but renewing his amendment on second reading with the year changed to 1878, it was agreed to by a vote of 53 to 37; after which the word "annual" was inserted on motion. 1 Conv. Deb. 383, 426; 5 Id. 348-50.

(c) The clause relating to senatorial vacancies was proposed and agreed to on second reading. 5 Conv. Deb. 350. The word "casual" before the word "vacancy," in the amendment as adopted, was afterwards struck out, so that the provision should apply to vacancies occasioned by regular expiration of senatorial terms, as well as to others.

The vacancies provided for in this clause, are evidently those which may exist in a recess between sessions, whether they shall happen to occur during a recess or not. It follows that if a vacancy shall exist during a legislative session and shall not be filled before the adjournment, it will be the duty of the Governor, in recess, to convene the Legislature to fill it.¹

The Act of 11th January, 1867 (P. L. 18), fixes time of electing Senators, etc., and regulates the filling of vacancies.

[Qualifications of members.]

Section 5. Senators shall be at least 25 years of age and Representatives 21 years of age. They shall have been citizens and inhabitants of the State four years, and inhabitants of their respective districts one year, next before their election (unless absent on the public business of the United States or of this State), and shall reside in their respective districts during their terms of service.

Considered and amended, Conv. Deb. I. 452-3; V. 350-53.

HISTORY: The qualifications of age, citizenship, and residence heretofore required of Senators and Representatives, have been the following :

¹ The power of the Governor under rather a violation of the whole spirit session, in order to continue the senatorial service of a person appointed by him to fill a vacancy.

the Constitution of the United States and purpose of this section, for the to fill a senatorial vacancy, is not at all Governor to delay calling a special interfered with by this section, which only provides for bringing the Legislature into session at fit times. It would, however, be an abuse of power, or

Of Senators: Under Constitution of 1790, Article I. § 8, precisely the same as in above section save only the requirement of residence in their districts during their terms of service; but this latter requirement was one of the amendments of 1838, Art. I. § 8.

Of Representatives: By Constitution of 1776, chapter ii. § 7, they must have resided in their respective districts for two years before their election. By Constitution of 1790, Article I. § 3, they were to be 21 years of age, to have been citizens and inhabitants of the State three years, and inhabitants of their districts one year before their election, unless absent on the public business, etc. Residence in their respective districts, during their terms of service, is now added to former requirements.

[Disqualified for appointment to office-Civil officers, State or Federal, cannot be members.]

Section 6. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this Commonwealth, and no member of Congress or other person holding any office (except of attorney-at-law or in the militia) under the United States or this Commonwealth, shall be a member of either House during his continuance in office.

Considered, Conv. Deb. V. 353, 361.

DERIVED mostly: Constitution of 1790, Art. I. § 18: But there are two omissions in the text as compared with that Constitution; the one producing an important change, the other being an evident but unimportant mistake. In that Constitution after the word "Commonwealth" where it first occurs in the section, appear the words : "which shall have been created or the emoluments of which shall have been increased during such time." By the dropping of those words the prohibition, which was special and confined to new offices and to those of increased compensation, becomes general and extends to all civil offices under the Commonwealth whether old or new, and whether increased in compensation or not. The prohibition in its original form, and still more in its extended form, is judicious, because it increases the independence of members, will often secure them from the imputation of improper motives, and tends strongly to the maintenance of integrity in public life. The word "appointed" in this section must have a strict or limited construction so that it shall not include an election by a popular vote to any civil office. For although in a general sense an election is an appointment, the words elected and appointed are here presented in contrast and distinguished from each other in signification, and besides the reason of the prohibition does not apply to a popular election.

The other omission from this section is of the words, "in Congress or," after the word "continuance" near the end of the section. As membership in Congress is not in constitutional language an office, those words should have been retained; but their omission can hardly lead to any error of construction.

Amendment of 1838 (Art. VI. § 8), the original of the first change abovementioned, read as follows: " . . . No member of the Senate or of the House of Representatives shall be appointed by the Governor to any office, during the term for which he shall have been elected."

JUDICIAL OPINION: Commth. v. Pyle, 6 Harris, 519.

[Conviction of certain crimes to disqualify for membership, or for holding office.]

Section 7. No person hereafter convicted of embezzlement of public moneys, bribery, perjury, or any other infamous crime, shall be eligible to the General Assembly, or capable of holding any office of trust or profit in this Commonwealth.

Reported, Conv. Jour. 197, 411; Deb. I. 238. Considered and amended Conv. Deb. V. 353-6.

DERIVED: Constitution of Illinois, Art. IV. § 4.

[Compensation of members.]

Section 8. The members of the General Assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for service upon committee or otherwise. No member of either house shall, during the term for which he may have been elected, receive any increase of salary or mileage under any law passed during such term.

Reported, Conv. Jour. 198, 411; Deb. I. 239, V. 358. Considered and amended, Conv. Deb. I. 328, 471-6, 482-502, 506-15; V. 358; VII. 313.

DERIVED in part: Constitution of 1790, Art. I. § 17: "The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the Commonwealth."

Constitution of 1776, chap. ii. § 17, at end: "The wages of the Representatives in General Assembly and all other State charges shall be paid out of the State treasury " Markham Charter (1696), § 6: "Every member now chosen or hereafter to be chosen, by the freemen aforesaid, to serve in Council, and the Speaker of the Assembly, shall be allowed five shillings by the day during his and their attendance, and every member of the Assembly shall be allowed four shillings by the day during his attendance upon the service of the Assembly, and every member of Council and Assembly shall be allowed towards their travelling charges after the rate of two pence each mile both going to and coming from the place where the council or assembly is or shall be held, all which sums shall be paid yearly out of the county levies by the county receivers respectively."

Constitution of the United States, Art. I. § 6, cl. 1: "The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States."

CONSTRUCTION: This section was, in substance, proposed by Gen. White, of Indiana, upon the second reading of the Article (in conformity with the views of the Committee on Legislation, 1 Conv. Deb. 511), and was agreed to by the Convention upon the distinct understanding that it would exclude daily pay to members at any session. 1 Conv. Deb. 513; 7 Id. 313. It plainly provides for session salaries with mileage, the same to be fixed by law prospectively, and forbids all other forms or kinds of compensation. The last division of the section was necessary to prevent an increase of compensation to members by their own votes, pending their terms of service, because the 13th section of the article on legislation does not apply to them. They are not "public officers" within the meaning of that section. The question raised and determined in the case of Philadelphia County v. Sharswood, 7 W. & S. 16, or any similar one, can hardly arise under the present Constitution.

JUDICIAL OPINION: Commonwealth v. Butler, 11 Weekly Notes of Ca. 241; 39 Leg. Intel. 304. In this case the Supreme Court (Judge Trunkey dissenting and Judge Paxon absent) held that daily pay to members of the Legislature might be considered to be salary within the meaning of the Constitution, and a decision to the contrary, by Judges Pearson and Henderson of the Dauphin district, was overruled.

LEGISLATIVE PAY ACTS SINCE 1790: The Act of 13th of April, 1791, 3d Smith's Laws, 26, fixed the pay of members of the Senate and House at the sum of fifteen shillings (\$2) for every day they should attend upon their respective duties, and of the Speaker of each House, at twenty-two shillings and six pence (\$3) per day, while in attendance. Mileage also was allowed at the rate of nine pence per mile.

The Act of 8th of April, 1793, 3d Smith's Laws, 111, increased the

pay of speakers and members one dollar per day to each. The Act of 7th of February, 1814, 6th Smith's Laws, 106, increased the pay of speakers and members by the further sum of one dollar per day each, to be allowed from the commencement of the session for that year, and also fixed their mileage at five cents, in addition to the prior allowance, for each mile in journeying to and from the seat of government; but, by the Act of 18th of January, 1821, 7th Smith, 344, the last-mentioned Act was repealed, except so far as regarded the increase of mileage.

By the Act of 17th of April, 1843, § 10, P. Laws, 324, it was provided that, after the adjournment of the Legislature for that year, the pay of members at any session should be reduced to one dollar and fifty cents per day, for any additional time they should sit after one hundred days, and should be the same amount for an adjourned or extra session (with mileage), unless convened by proclamation of the Governor, in which case the ordinary full pay of three dollars should be allowed; but by the Act of 10th of May, 1850, § 56, P. Laws, 743, it was provided that the provisions of the said Act of 1843, reducing pay, should not apply to any session at which an apportionment of the State for members of the Legislature should be required by the Constitution; and by the seventh section of the general appropriation Act of 9th May, 1854, the above-mentioned provisions of the Act of 1843 were wholly repealed. This repeal, the habit into which the Legislature had fallen of voting extra compensation to their officers and employés in the closing hours of the session, and other circumstances, induced the introduction into the Senate by Mr. Buckalew, at the session of 1855, of a bill entitled "An Act to regulate the compensation of members and officers of the Legislature," Senate Journ. 102. That bill received very full consideration, and was assented to by both Houses; but, before action upon it by the Governor, it was transferred to, and inserted in, the general appropriation Act of that year, P. Laws, 495, of which Act it constitutes sections eight to nineteen inclusive.

THE SALARY ACT OF 1855: The Act of 1855, after repealing all prior compensation laws, provided in its ninth, tenth, and eleventh sections, that members should receive five hundred dollars per annum for their services, with mileage at the rate of fifteen cents per mile at each session, including adjourned and extra ones, and, in addition, at a regular session, twenty-five dollars, and at adjourned and extra sessions, ten dollars, for purchasing stationery, newspapers, and lights. By the twelfth section the Speaker of each House was to be allowed one dollar per day additional, and by the thirteenth, the members were to receive at extra sessions, when called by the Governor, three dollars per day for their services, and at adjourned and extra sessions, when not convened by him, one dollar and fifty cents per day.

The Act of 18th of May, 1857, § 86, P. Laws, 571, appropriated \$200 to each member for the session, in addition to the sum already provided by law, and by Act of 21st of April, 1858, § 4, P. Laws, 376, a like sum of \$200 was voted with the added provision: "and hereafter each member of the General Assembly shall receive the sum of \$700 per annum, in lieu of the salary now fixed by law." That salary of \$700 per annum was not changed by any permanent law before the adoption of the new Constitution, but sums in addition to it were annually voted, commencing with 1864, the amount being usually \$300. With that increase yearly added, the salary of members in 1872 and 1873, when the amendment of the Constitution was under consideration, stood at the sum of \$1000.

STATUTE: The Act 11th May, 1874, P. Laws, 129, fixes the compensation of members of the General Assembly at \$1000 for each regular and each adjourned annual session, not exceeding 100 days, and \$10 per day for time necessarily spent after expiration of the hundred days; but such additional time not to exceed 50 days at any one session. For each adjourned or special session the compensation to be \$10 per day. Mileage also to be allowed to members at each regular, adjourned, and special session, at the rate of 20 cents per mile from and to their homes, to be computed by the ordinary mail routes between their homes and the Capitol of the State. A proviso is added, that when any member shall absent himself, without leave, he shall not be entitled to compensation during such absence. By § 6, the Act was made to take effect the first day of December, 1874.

REMARKS UPON THE STATUTE: The Act of 1874 does not re-enact or continue those provisions of the Act of 1855, which allowed members certain amounts of money for purchasing stationery, newspapers, and lights, and to the Speakers of the two Houses \$1 per day, during sessions, for their services as presiding officers. The change made by the Constitution in the presidency of the Senate might properly be taken into account in framing a new pay-bill as a substitute for the Act of 1855, and in fixing the salary or compensation of the Lieutenant-Governor in a separate bill, but no change has occurred in the speakership of the House of Representatives inviting to any change of plan or policy in compensation laws. The Speaker, as a member of the House, is subject to all constitutional and statutory regulations of member's pay, but he is also an officer of the House, and as such has always received additional or distinct compensation. The House is to choose its Speaker and "other officers" (Art. II. § 9), whose compensation is to be fixed by law and to remain unchanged by any law passed after their election or appointment. Art. III. §§ 10, 11, 13.

The Act of 1874 fixed the pay of subordinate officers and employés of the two Houses at future sessions, but did not fix pay for presiding officers as such. By other Acts of the same session an annual salary was provided for the Lieutenant-Governor (P. Laws, 48, 150), but no provision was made for the Speaker of the House of Representatives beyond that of the sixth section of an Act (P. Laws, 131) for his "extra allowance," which was, however, confined to the immediate or pending session of 1874.

If, then, the Legislature has not, since 1873, prescribed by law the official compensation of the presiding officer of the House, as directed by the 10th section of the third Article of the Constitution, it follows that the compensation of that officer remains as fixed by previous law, namely, one dollar per day during sessions in addition to his pay as a member of the House. It is not to be presumed that the Legislature intended to deprive the Speaker of *all* pay for arduous official service, accompanied with much of responsibility, and that too in the face of a constitutional provision which appears to include him among officers of the House to whom compensation is to be made.

Independent of constitutional provision and of particular features of the Act of 1874 (to be presently mentioned), it may be fairly argued, that the provision of the Act of 1855, for an allowance of money to members, at each session, to purchase stationery, newspapers, and lights, remained in force; that inasmuch as the later statute fixed only salary, daily pay, and mileage, it did not repeal the former one or supply its place, as to allowances to members for their incidental or contingent expenses for stationery, newspapers, and lights. But the Act of 1874 contains in its last section a general repealing clause of former Acts and parts of Acts inconsistent with its provisions, and by its title (which, by virtue of Art. III. § 3, is to be considered a part of the Act), professes "to fix the compensation" of members of the Legislature-not a part of their compensation, but the whole. And when we turn to the section of the Constitution which that Act was intended to enforce, we find that members are to receive "no other compensation whatever," beside the salary and mileage which shall be fixed by law. It seems clear, then, that the Act of 1874, passed in obedience to the command of the 31st section of the Schedule to the Constitution, became, upon its enactment, the sole, exclusive compensation Act for members of the Legislature, and that its repealing clause extended to all prior compensation and allowance laws, including the contingency allowance provision of the Act of 1855. Compensation to members is properly for time spent, for service performed, and for personal expenses incurred for the public; but the forms of the compensation to be made to them for outlay, time and labor, are the two expressly fixed by the Constitution, namely, salary and mileage, which are declared to exclude all others.

ALLOWANCE ACTS OF 1870 AND 1879: The Act of 3d February, 1870, P. Laws, 13, authorized the Clerk of each House to receive from the postmaster at Harrisburg, all postage stamps for use in their respective Houses, and each Senator and Representative was to be entitled to receive of said stamps to an amount not exceeding \$100 for each regular session, and each chief clerk to receive to the same amount for the use of himself and his assistants. If this is to be considered a compensation Act, it was unquestionably swept away by the new Constitution and the Act of 1874. But it is not in theory or in form a compensation Act, but one to provide for postage payment upon public documents or mail matter. The stamps for use in the two Houses are to be furnished to members, and obviously for a public purpose, and only to the extent which that purpose requires, not exceeding \$100 to each member. There is, apparently, no authority intended or given for an appropriation of stamps beyond this public and proper use, and, therefore, the Act escapes the condemnation of the Constitution, and the repealing force of the Act of 1874. In fact, it was recognized as still in force subsequent to 1874, by the Act of 1875, which extended its provisions to the Lieutenant-Governor.

The Act of 12th June, 1879, P. Laws, 151, by its ninth section, allows to each Senator and Representative the sum of \$50 for each regular, and \$10 for each extra session, in lieu of stationery then allowed by law, to be paid to them in money and to be added to their salary and mileage by the chief clerks of the respective Houses in the usual manner; "and no stationery, printed matter used as stationery, nor any perquisite whatever, shall, hereafter, be furnished to the members of the Legislature by the Clerks, or any other officer thereof, at the expense of the State." Upon this Act, several questions arise :—

1. Was this intended to be a temporary or a permanent law? The first and second divisions of this 9th section, taken together, may, without much difficulty, be confined to the members of the Legislature of 1879, and be held to relate to allowances at the regular and at any extra session held by them; for there is an appropriation of "the said sums respectively," which can have relation only to the then pending representative term. But the third and last division of the section, excluding

thereafter an allowance of stationery or any perquisite whatever, is expressed in general and prospective terms, as if intended to be a permanent regulation.

2. Because the Act in this ninth section forbids "any perquisite whatever" to be furnished to members by the clerks, and by its tenth section repeals all inconsistent provisions of prior laws, it has been strongly argued that it wholly abrogates the postage-allowance Act of 1870, so far as members are concerned; that inasmuch as postage stamps were to be furnished to members by the clerks under the Act of 1870, they are to be considered a perquisite within the meaning of the later law. The argument is fair and forcible, if not unanswerable, if postage stamps are to be received by members as a part of their compensation-as an extra allowance or pay for service rendered and expenses incurred for the public-but we have seen that the Act of 1870 expressly provides that they shall be obtained for use in the respective Houses, and not for any private purpose or to be resold for private gain. In legal contemplation, therefore, the Act of 1870 authorizes no perquisite of office, and is not, upon an exact or literal interpretation of language, reached or affected by the Act of 1879.

3. Is the Act of 1879 in its allowance of commutation money to members, "in lieu of stationery now allowed by law," a valid Act? The clerks are directed to add the special allowance of \$50 or \$10 per session to each member's salary and mileage, and this direction gives to the Act the complexion of a salary enactment—an increase of pay in legitimate form. If, therefore, the subject matter of the provision in this sense had been expressed in the title, it might be held that constitutional forms were complied with, and with a prospective construction for the first division of the section, we would get a good pay Act supplementary to the Act of 1874.

If, by "stationery now allowed by law," mentioned in this provision, it was intended to refer to the Act of 1855, the reference was a mistake; for we have seen that that Act, in the particular in question, was not in force after 1874. If, however, the reference was to stationery in reasonable amounts for members' desks, for committee-rooms, etc., out of the public supplies for the Legislature, then the provision forbidding such stationery for such uses was unreasonable and wholly unfitted for execution.

[Presiding officers—each House to choose its other officers, and judge of the election and qualifications of its members.]

Section 9. (a) The Senate shall at the beginning and close of each regular session and at such other times as may

be necessary, elect one of its members President pro tempore, who shall perform the duties of the Lieutenant-Governor in any case of absence or disability of that officer, and whenever the said office of Lieutenant-Governor shall be vacant. The House of Representatives shall elect one of its members as Speaker. (b) Each House shall choose its other officers, and shall judge of the election and qualifications of its members. See Art. III. §§ 9, 10, 11; Art. IV. § 14; Art. VIII. § 17.

Reported, Conv. Jour. 198, 411; Deb. I. 239. Considered and amended, Conv. Deb. I. 328, 515-17; V. 358, 359-60; Revision Com. Rep. VII. 301. See also, 2 Id. 561-78; 5 Id. 240-41.

DERIVED, in part: Constitution of 1790, Art. I. § 11: "Each House shall choose its Speaker and other officers, and the Senate shall also choose a Speaker *pro tempore* when the Speaker shall exercise the office of Governor."

"§ 12. Each House shall judge of the qualifications of its members: contested elections shall be determined by a committee, to be selected, formed and regulated in such manner as shall be directed by law."

(b) See Constitution of 1776, chap. ii. § 9; Laws agreed upon in England, § 3; Markham Charter §§ 5, 9; Charter of 1701, § 2.

COMPARE: Con. U. S. Art. I. § 2, cl. 5; § 3, cl. 5; § 5, cl. 1.

CONSTRUCTION: That either House may remove at pleasure any officer of the House (except the Lieutenant-Governor), results from the clear words and certain meaning of the fourth section of the sixth Article. Officers of each House are *appointed* by the proper House, though the manner of appointing them may be by vote. Doubtless this power of removal would exist without express grant, and, like the power of appointment, may be regulated, though not impaired, by rule or statute.

It is not necessary that an appointment of an officer or employé of either House (except the Speaker of the House and President *pro tem.* of the Senate) should be directly by a vote of the proper House. "Each House shall *choose* its other officers," but may authorize their selection by the agency of its presiding officer or of a committee, subject of course to its express or implied approval; and in the practice of the two Houses, many of the subordinate officers and employés are selected by the chief officers under whom they are to serve.

The number, duties, and compensation of the officers and employés of the two Houses were fixed and regulated by the Act of 11th May, 1874, P. Laws, 129.

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(b) The last clause or division of this section, which declares that each House shall judge of the election and qualifications of its members, is to be read in connection with the 17th section of the eighth Article, which provides for the judicial trial and determination of contested elections. So read, it will appear that the power of each House to judge of the election and qualifications of its members is qualified and limited in any case of election contest. Some court of law, or one or more of the law judges of such court, to be designated by statute, must try and determine each case of contested election of a member, and the determination or judgment pronounced by such court, judge or judges, in any case, must be accepted and enforced by the proper House.

At the legislative session of 1874, Mr. Senator Wallace in one House and Mr. Representative Wolfe in the other, stated a general view of this subject which was perfectly sound. They held that the judicial trial of contested elections of members, provided for by the 17th section of the 8th Article, was a substitute for trial by legislative committee, provided for by the 12th section of the first Article of the old Constitution (Legislative Journal of Debates, 1874, pp. 1670, 1988, 1997). Trial by legislative committee was wholly abolished, upon most deliberate consideration, for all cases of contested election of members, because it had failed to secure justice and popular approval, and judges learned in the law were to try and determine all future contests. One of these two things was no more certainly intended by the new Constitution than the other; in fact the two propositions-to abolish the old plan of trial and to establish the new-were dependent upon each other, inseparably connected in Convention debate, and in popular contemplation. The old plan of the Grenville Act of 1770 substantially prescribed or authorized by the Constitution of 1790, was no longer to be relied upon as a protection against party violence and injustice in the Legislature. Committees, though drawn by lot and specially sworn, were not sufficiently independent of party, or far enough removed from the interests and passions of popular Houses, to accomplish the objects of the Constitution. They were to give way, but for what? To unchecked legislative will? To a majority vote in a popular House? Far otherwise. The movement of reform was not to be from committees with some pretence to a judicial character, into popular Houses prepared to act upon impulse, or for party interest, but in exactly the opposite direction-into courts of justice-to upright and competent judges. The example of England was not overlooked. The Grenville Act, amended by Peel, had been at last wholly abandoned by Parliament, and the decision of controverted elections of members of the House of Commons turned over to judges learned in the laws.

In this view the construction given to those words "election and," on behalf of the Executive Committee of the Convention, pending the election canvass upon the adoption of the Constitution, was both necessary and just. That construction was, that a power in each House to judge a prima facie right of membership pending a contest was a necessary and proper power and not at all in conflict with the 17th section of the 8th Article; that it would often happen that contests would be undetermined at the meeting of the Legislature, and in order to the filling up of seats and the transaction of business, provisional decisions upon rights of membership would have to be made, subject, however, to ultimate decisions thereon to be rendered by courts or judges, and that it might be held, in a proper sense, that each House would always judge of the election of its members, though bound to receive regular returns in uncontested cases and judicial decisions in contested ones, as conclusive upon its judgment. Thus the two provisions in question would be reconciled, while all pretence of power in either House to "try and determine" a contested election would be excluded.

This view is countenanced by the consideration that, if this measure of judgment were not permitted to each House, many seats might be kept vacant by contests begun for the express purpose of influencing or controlling the organization and action of the Legislature, and it is countenanced also by the fact before mentioned, that courts and judges are simply made to succeed legislative committees in cases of contested elections. Inasmuch as the jurisdiction of election committees under the old Constitution did not preclude judgment by the Houses appointing them upon *prima facie* rights of membership pending contests, there is no reason to hold that such right of judgment is precluded by the new. All that need be insisted upon is, that the "determination" of a court or judge, authorized to try a contested election, shall be just as conclusive under the new Constitution as was the determination of an election committee under the old.

The construction of this section on behalf of the Executive Committee of the Convention, above referred to, will be found in the Philadelphia *Press* of Dec. 12, 1873, and was as follows :---

"No doubt, in this case, the concluding section of the eighth Article on suffrage and elections, will have complete operation. Contested elections will be tried and determined by courts of law, or by judges thereof, and the Legislature must accept the decisions so made; but pending contests, and in cases not regularly contested, either House may be called upon to judge a *prima facie* right of membership, or to pass upon qualifications of membership, which have not received judicial deART. II.

termination. Otherwise, the Houses might be unable to organize and proceed to business, or seats therein might remain vacant."

In other States it has not been thought to be incongruous, or otherwise objectionable, to accompany an express grant of judging-power to legislative Houses, with a provision equally express, that contested elections of members shall be determined as shall be directed or prescribed by law—whether by a court, judge, committee, or otherwise.

"Each House of the General Assembly shall be judge of the qualifications, elections, and returns of its own members; but a contested election shall be determined in such manner as shall be directed [or prescribed] by law." Constitution of Ala. (1868), IV. 6; Iowa (1857), III. 7; Ky. (1850), II. 20; La. (1868), 34; Tex. (1869), III. 15; (1876), III. 8. See also, Constitution of Ohio (1850–51), II. 6, 21. In these cases, except in that of Ohio, the limitation or qualification of judgingpower follows immediately upon the grant of the power, and is caught by the eye at the first glance; but it would be equally commanding and effectual if it were placed in a different position.

The word "determine" is certainly a fit word to express the idea of a conclusive judgment—a decision which ends controversy. To "try and determine" a contested election is to hear the case and decide it to assume jurisdiction over it, hear evidence, consider all questions of law and fact properly raised by the parties, and to pronounce, in due course, a final judgment.

The determination of a gubernatorial election contest by a committee under the 2d section of the 4th Article, will be a conclusive and final decision, as were all the determinations made by committee of legislative election contests under the 12th section of the first Article of the old Constitution, from which section this word "determined" in our present section was no doubt derived.

The grant of power to each House to judge of the election of its members is in general terms, but there is a clear restriction upon it deducible from the 17th section of the 8th Article. In other words, the grant is limited and controlled by the context—by another part of the same instrument in which the grant is contained. Cooley on Con. Lim. 64; Story on Con. § 424; Manly v. State, 7 Md. 135.

But if the character or extent of the grant were doubtful upon a consideration of the words conferring it, and of the context, a sure conclusion would be reached by contemplating the object to be accomplished, and the mischief to be guarded against by the 17th section of the 8th Article, as well as by considering that section as the successor and substitute for the 12th section of the 1st Article of the old Constitution. Cooley on Con. Lim. 65. The prior state of the law will, sometimes, furnish the clue to the real meaning of an ambiguous or doubtful provision, and it is especially important to look into it if the Constitution is the successor to another, and in the particular in question, essential changes have, apparently, been made. People v. Blodgett, 13 Mich. 147. It is not at all necessary here to resort to the rule asserted in Quick v. Whitewater Township, 7 Ind. 570, that if two provisions of a written Constitution are irreconcilably repugnant, that which is last in order of time and in local position is to be preferred; for the true view to be taken of the provisions in question is, that they are not antagonistic, but harmonious parts of a general plan of constitutional regulation.

STATUTE: General contested elections Act of 19th May, 1874, P. Laws, 208. The eleventh and the four next sections relate to contested elections of members of the General Assembly and provide: 1st. That each contest shall be tried and determined by the Court of Common Pleas of the county in which the person returned as a member shall reside: 2d. That upon petition of at least 20 citizens of the senatorial or representative districts made to such court within 30 days after an election, complaining of an undue election or false return, and accompanied by an affidavit of at least five of the petitioners to the truth of the petition, the court if in session, or the president judge thereof, in vacation, shall fix a time for hearing the complaint, and if the court shall not be in session the president judge shall direct the court to convene for the hearing, of all which notice of not less than 10 days shall be given to the person returned : 3d. That the court shall have power to compel the attendance of witnesses and the production of books and papers upon the hearing, to appoint commissioners to take depositions, and to postpone all other business to the hearing and determination of the case; and 4th. That the court shall promptly "decide which of the candidates voted for received the greatest number of legal votes, and is entitled to the certificate of election," and "the Secretary of the Commonwealth shall, on the day of the meeting of the next General Assembly, or if in session, then immediately upon its reception, deliver to the Speaker of the proper House the certified copy of the decision of the court."

Thus far the validity of the statute cannot be questioned; it is in all respects conformed to the Constitution, and provides a plan which is intelligible, convenient, and complete.

But the statute goes on to provide, that any claimant to a seat who shall feel aggrieved by the decision of the court in his case, may present his petition to the proper House within 10 days after the meeting of the ART. II.]

Legislature, or within 10 days after the decision shall have been made in his case, if the Legislature shall then be in session, setting forth his claim to the seat; which petition shall have appended thereto the affidavit of the petitioner, setting forth that he verily believes that he was duly elected to the seat, and that the statements set forth in his petition are just and true to the best of his knowledge and belief, and said petition shall also be signed by at least 20 qualified electors of the proper county, 5 at least of whom shall make affidavit to the truth of the petition, and on presentation the petition shall be referred to a standing Committee on Elections, which committee shall proceed to hear the claims of the contestant and respondent, and report the facts and a resolution expressing the decision of the committee for the consideration of the House, and the vote of the proper House on the claims of the contestant and respondent shall be final; Provided, That no resolution deciding such question shall be adopted unless it shall receive the votes of a majority of all the members elected to the House considering the same.

Plainly these provisions of the statute are in open defiance of the above section of the Constitution, because they provide for the legislative "trial and determination" upon appeal of cases of contested election of members, and allow force and effect to judicial decisions rendered thereon only when they shall be accepted or acquiesed in by the litigant parties.

The ultimate, operative decision in every case of appeal will be pronounced by the Senate or House of Representatives upon report of a committee appointed by itself, and in the absence of those securities for intelligent and impartial judgment which, beyond all question, it was the purpose of the Convention to provide.

REMARKS UPON THE STATUTE: This statute plainly embodies a compromise between two opposing opinions, but in a case where no compromise can rightfully be made, because either one of the opinions in question wholly excludes the other. It may be contended in argument that the power of each House to judge of the election of its members being a power granted in general terms is to be construed as coextensive with the terms employed, and therefore without restriction and exclusive, or it may be contended that the power conferred upon courts or judges, designated by statute, to try and determine controverted elections of members, is, within the limit of its terms, exclusive, and therefore restrictive of the general grant of judging-power to the respective Houses; but it cannot be contended upon any principle of reason that the power to try and determine such contests is conferred upon *both* House and court. And yet this is precisely what the statute undertakes to do, conferring upon the Court original and upon the House appellate jurisdiction.

The scheme of the statute is extremely objectionable upon practical grounds. It tends to prolong and greatly increase the expense of contests, and to trench upon the right of popular representation in the Legislature. The successive provisions—30 days for filing a petition of contest, the taking of testimony, the hearing in court, the decision and its transmission through the Secretary of the Commonwealth and presiding officer to the proper House—insure all of delay and deliberate and orderly action that need be required. To add a ten days' provision for filing an appeal petition, a reference of the petition and a hearing of the case *de novo* before committee, to be followed by a committee report and debate thereon in the House, is to decree that delay and expense shall be extreme, and to incur the peril of prolonged misrepresentation of the people of the district from which the contest comes.

The Act is defective in not determining by whom the contested seat is to be filled, if filled at all, pending the contest. If it is to be filled throughout by the person returned elected, there will be a strong inducement held out to him and to his party, in case the court shall decide against him, to present an appeal petition which shall continue him in his seat by continuing the contest. If a decision of the court in favor of a contestant shall be held to give to such contestant a prima facie right to the seat, although the decision shall be appealed from, then a contrary decision ultimately pronounced by the House will turn him out and reinstate the displaced member. Seats cannot properly be made or left vacant by contests in ordinary cases; for if this were allowed, contests would often be instituted in order to affect the composition and balance of party power-of the two Houses. Besides, the Houses ought not to be weakened and the people left unrepresented by vacancies in membership.

The proviso of the 15th section appears to be unauthorized. The Constitution provides that a majority of all the elected members of each House shall be necessary to the passage of a bill, Art. III. 4, 5, or to the proposing of an amendment to the Constitution, Art. XVIII. In other cases, particularly designated, it requires for valid, affirmative action a two-thirds vote of all elected members of each House, Art. III. 17, 26; IV. 15, 16, or a two-thirds vote of all the members of the Senate, Art. IV. 8. But doubtless a majority of a quorum of either House (a quorum voting) may choose the officers of the House under the section of the Constitution now being considered, or perform any other official act as a House in all cases where the Constitution has not otherwise directed. Even the two-thirds vote required for the expulsion of a member, Art. II. § 11, is clearly but a two-thirds vote of a quorum of members present and voting, and by express provision, Art. II. 10, a majority of either House will constitute a quorum—in other words, will constitute a House, and have general capacity for the transaction of business. The Legislature, therefore, cannot enact a law which shall require a majority of all the members elected to the Senate or House—in ether words, a full quorum instead of a majority of a quorum—to seat or unseat a member in an election contest. (See Cushing, Law and Prac. Leg. Assemblies, §§ 249, 250, 251 n.) Nor would such an Act be convenient or expedient even if the power to pass it existed; for it must often happen, under such a regulation of power, that no decision whatever could be arrived at or made.

[Quorum.]

Section 10. A majority of each House shall constitute a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members.

DERIVED: Constitution of 1790, Art. I. § 12; Conn. U. S. Art. I. § 5. Under the Colonial Charters and the Constitution of 1776, the quorum for the House of Representatives was *two-thirds*: Charter 1682, § 14; Charter 1683, § 13; Charter 1696 (Markham), toward the end; Charter 1701, § 2, and Constitution of 1776, chap. ii. § 10 (and see § 12).

The provisions in the Constitution of 1790 and Constitution of the United States, above referred to, contemplate the regulation by statute of the power of a minority present to compel the attendance of absent members. But the question arises, under the present section, whether the power cannot be regulated by mere rule or resolution in the absence of statutory enactment.

CONSULT: Cushing, Law and Prac. Leg. Assemblies, §§ 246-63, 361, 369-70, 1995.

[Powers of each House.]

Section 11. Each House shall have power to determine the rules of its proceedings, and punish its members or other persons for contempt, or disorderly behavior in its presence, to enforce obedience to its process, to protect its members against violence or offers of bribes or private solicitation, and with the concurrence of two-thirds to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the Legislature of a free State, A member expelled for corruption shall not thereafter be eligible to either House, and punishment for contempt, or disorderly behavior, shall not bar an indictment for the same offence.

Reported, Conv. Jour. 198; Deb. I. 239. Considered, Conv. Deb. V. 360; Revision Com. Report on amended section, VII. 301.

COMPARE: Con. of 1790, Art. I. § 13; Con. U. S. Art. I. § 5, cl. 2; see, also, Charter 1701, § 2, at end, and Con. 1776, chap. ii. § 9.

CONSULT: Cooley, Con. Lim. 133-6; Prin. Con. Law, 48 in note; Cushing, Law and Prac. Leg. Assemblies, §§ 773-94.

CONSTRUCTION: The authority of each House to protect its members "against violence, or offers of bribes or private solicitation," is new as an express provision, though no doubt conferred to a certain extent, in former Constitutions, inasmuch as such power of self-protection is "necessary for the Legislature of a free State." The extent to which this power may be exerted is not defined, nor is it, perhaps, fitted for exact definition, but clearly it is limited by principles of necessity and convenience. Neither House, by virtue of this power, can punish for an assault upon one of its members, committed in a recess between sessions, nor should it interpose its power in any case where protection can be more surely and conveniently afforded by ordinary process of law. The power in question, being strictly one of self-defence, is not to be changed into an instrument of passion or agression. Like other powers of government, it is to receive a reasonable construction, and not one which shall justify any exercise of extreme or dangerous authority. But that this power is more extensive as to place and time than the power to punish for disorderly behavior, is evident: for, the violence, offer of a bribe or private solicitation against which protection will be required, will rarely be committed, offered, or attempted in the presence of either House or during an actual sitting, but elsewhere and at other times. Therefore, during sessions at least the care of each House over its members will properly extend to whatever place they may be, in the course of public duty, and to intervals of time between actual sittings. An assault upon a member at his lodgings may disable him for attendance in the House, and his corruption or seduction there will as certainly impair his independence and usefulness as a member, as if it were accomplished upon the floor of the House, and during an actual sitting.

The power of each House to punish for contempt is also a power

"necessary to the Legislature of a free State," and, though conferred in express terms by this section, would have existed as an implied or inherent power in each House in the absence of formal grant. The power is not confined to contempts committed in the presence of either House, though at first glance such may seem to be the import of the provision. The words, "in its presence," as they are found in the section, must be held to relate to "disorderly behavior" alone and not to contempts also, for the reason that it is not to be supposed that the Convention of 1873 intended to restrict the power of punishment for contempts by making it an express instead of an implied power, and for the further reason that as the power in an extended sense, is necessary and proper "for the Legislature of a free State," its emasculation is not to be accepted unless most explicitly decreed by the text of the Constitution. The punctuation of this clause should therefore always be with a coma after the word "contempt," and an omission of all pause after the word "behavior."

The power of expulsion is continued unchanged from the old Constitution, and to expel a member will not require a vote of two-thirds of all the members, but only of two-thirds of those voting upon the question, a quorum being present and voting.

[Journals-Yeas and nays.]

Section 12. Each House shall keep a journal of its proceedings, and from time to time publish the same, except such parts as require secrecy, and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journal.

DERIVED: Constitution of 1790, Art. I. § 14, except the words, "from time to time," which are substituted for "weekly." Compare, Con. 1776, c. ii. § 14, and Con. U. S. Art. I. § 5, cl. 3.

[Open sessions.]

Section 13. The sessions of each House and of committees of the whole shall be open, unless when the business is such as ought to be kept secret.

DERIVED : Constitution of 1790, Art. I. § 15. Compare Con. 1776, chap. ii. § 13.

For an exhaustive statement of the reasons for publicity in legislative proceedings, see Bentham's Works, ii. 310.

[Adjournments.]

Section 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Considered, Conv. Deb. I. 517; V. 360-61.

DERIVED: Constitution of 1790, Art. I. § 16.

CONSTRUCTION: It has long been held that the three days' limitation in this section is exclusive of Sundays, and such is the settled construction. Therefore, whether natural or secular days were intended by the authors of the limitation, is not now a question of practical importance.

JUDICIAL OPINION: West Philada. Pass. Ry. Co. v. Union Pass. Railway Co., and Barcroft v. Same, 29 Leg. Intel. 196; 4 Leg. Gaz. 193.

[Privileges of members.]

Section 15. The members of the General Assembly shall in all cases except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

Considered, Conv. Deb. I. 517-18.

DERIVED: Constitution of 1790, Art. I. § 17, with the addition of the words, "violation of their oath of office." Compare Con. U. S. Art. I. § 18.

[Senatorial districts.]

Section 16. (a) "The State shall be divided into fifty senatorial districts of compact and contiguous territory as nearly equal in population as may be, and each district shall be entitled to elect one Senator. (b) Each county containing one or more ratios of population shall be entitled to one Senator for each ratio, and to an additional Senator for a surplus of population exceeding three-fifths of a ratio, (c) but no county shall form a separate district unless it shall contain four-fifths of a ratio, except where the adjoining counties are each entitled to one or more Senators, when such county may be assigned a Senator on less than four-fifths and exceeding one-half a ratio; (d) and no county shall be divided unless entitled to two or more Senators. (e) No city or county shall be entitled to separate representation exceeding one-sixth of the whole number of Senators. (f) No ward, borough, or township shall be divided in the formation of a district. (g) The senatorial ratio shall be ascertained by dividing the whole population of the State by the number 50."

Reported, Conv. Jour. 198, Deb. I. 239. Considered and amended, Conv. Deb. I. 518-20; II. 165-82, 186-212, 214-48, 250-81, 284-301, 308-25; V. 361-73, 407-22, 424-67, 468, 501-18, 521-55, 635, 638-58; VII. Revision Com. Rep. 301, 305-8, 314-15, 326, 329-30, recommitted; VIII. 76-9, 96-122; Broomall's Res. 327, 382-5, 447-61, 690-91.

COMPARE: Constitution of 1790, Art. I. §§ 5, 6, 7; Amendment of 1838, Art. I. § 7; Third Amendment of 1857.

CONSTRUCTION: (a) "The State shall be divided:"—The whole fifty districts will be State districts and not sub-districts or divisions—primary, not secondary—and all equal in right, privilege, position, and dignity. It follows that all the general provisions which follow, whether of privilege or regulation, apply to every district without exception.

"Districts of compact and contiguous territory:"—What is compact must be contiguous and something more; but "contiguous" slips into the text from the Third Amendment of 1857. It is retained, but is superfluous in view of the stronger new word which precedes it. That word, "compact," does not mean merely, adjoining or connected, but joined together, substantially united and consolidated. Applied to territory it excludes all disconnection or slight connection of parts, or any considerable attenuation or distortion of form. That territory is compact which is, figuratively speaking, packed together or compressed into a form approaching those of bodies of least extension, as round or square. The case admits only of approximation to exactness, but good faith alone is required for a substantial execution of the rule of the Constitution.

In Article V. § 5, where judicial districts are provided for, a requirement is inserted, that counties of less than 40,000 inhabitants "shall be formed into *convenient* single districts;" for it was foreseen, that after the establishment of counties of over 40,000 inhabitants into separate districts, the smaller counties remaining could not, in all cases, be formed into single districts of compact territory. The rule of convenience and not of compactness, or even contiguity was therefore prescribed for judicial districts composed of counties of the second class. It is true that another reason may be mentioned for this difference, namely, that the danger of gerrymandering is not as great in the case of a judicial as of a political apportionment, but it is pretty certain that the reason first mentioned, being both palpable and imperative, was the controlling one. The counties of Union, Montour, and Snyder might be made to constitute a convenient judicial district, but the district, so made, could not be described as a compact one.

"As nearly equal in population as may be:"—That is, as nearly as may be, regard being had to the limitations upon the principle of equality, or rather upon its application, contained in this section. Those limitations are five in number, and will be presently considered. For the present it may be observed, that population here spoken of is evidently population as ascertained at each successive decennial census of the United States, accepting that taken in 1870 as an approximate basis for the apportionment of 1874. See the next two sections.

(b) "Each county:"—The word county in this and the next section, as in other parts of the Constitution, includes the city of Philadelphia; for Philadelphia is both a city and county. Art. V. \S 6, 8, etc.

"Shall be entitled:"—The word entitled, used here and in other divisions of the section, is one of settled constitutional use and meaning. Constitution of 1790, Art. I. §§ 3, 4, 7; Art. III. §1; Third Amendment of 1857. In every instance of its former use there is a complete exclusion of all legislative control over a right asserted, and in the present section wherever this term appears, there is a right of representation declared which is unqualified and absolute.

(c) "But no county shall form a separate district unless it shall contain four-fifths of a ratio:"—Here the implication is irresistible that a county containing less than a full ratio of population, but not less than four-fifths of a ratio, may be made a separate district by the Legislature. In the preceding division of the section counties containing one or more ratios of population, having been provided for, this division deals with those containing less, but confines its prohibition of separate county districts to those which fall below four-fifths of a ratio, and even as to them a qualification is found in the words which follow :—

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THE LEGISLATURE.

" Except where the adjoining counties are each entitled to one or more Senators, when such county may be assigned a Senator on less than fourfifths and exceeding one-half of a ratio : "-But what counties " are each entitled to one or more Senators" within the meaning of this clause? Unquestionably those with a full ratio of population or more, as expressly declared in a prior division of the section. A county with less than a full ratio, but more than four-fifths of a ratio, cannot be said to be entitled to one or more Senators within the meaning of this clause, because it is not included in the class above mentioned, and the clause immediately preceding the present one does not confer such right upon A mere power in the Legislature to make such counties separate it. districts will not establish for them a right to separate representation, or in the exact language of the clause under consideration, "entitle them to one or more Senators." The power must be exerted before the result will follow, and being a discretionary power, it may never be exerted at all.

(d) The non-division of counties is continued as a general rule, from the old Constitution; but the former exception of Philadelphia is necessarily extended to embrace any county entitled to two or more Senators. For all such counties must be divided in order to execute the plan of single districts prescribed by the first division of this section.

(e) The only practical effect of this provision, at present, is to limit Philadelphia to eight Senators. The word "separate" appears to have been placed in this section at a time when it was proposed to allow the junction of territory from Philadelphia with Delaware County to form a senatorial district. It was then intended that the *separate* representation of the city as to amount should not be reduced by such use of a portion of her territory. As the section now stands, the word is useless, because Philadelphia and all other large counties must have separate representation.

(f) In the non-divisibility of wards, boroughs, and townships in forming senatorial districts, we have a valuable security against unfairness, especially in cities and in counties densely populated. In part this provision is new, and in part is borrowed from the Third Amendment of 1857.

(g) This provision is necessary in order to fix beyond dispute the rule by which senatorial ratios shall be ascertained at decennial apportionments.

The general construction to be given to this section is principally determined by the first clause. That, read in connection with the 18th section, confers fully the power of apportionment upon the Legislature, while all that follows in this section limits or regulates the exercise of the power. "The State shall be divided," etc. The 18th section says this shall be done by the Legislature. A power is conferred, and with it a duty imposed, and that power is to be exercised, and that duty performed according to the regulations and subject to the limitations which follow. These are :—

1. The 50 districts, with one Senator each, to be each composed of compact and contiguous territory.

2. They are to be equal in population as nearly as may be.

3. Each county with a ratio of more of population to have a Senator for each ratio and an additional one for a fraction of three-fifths.

4. No county under four-fifths of a ratio to be a separate district, unless it shall have more than half a ratio and be wholly surrounded by counties above a full ratio each.

5. A county with less than a ratio, but with more than four-fifths not to be *entitled* to separate representation, but the Legislature may make it a district, or join it with another county, as circumstances and the other provisions relating to apportionment shall require.

6. No county shall be divided unless entitled to two or more Senators.

7. No city or county shall be entitled to more than eight Senators.

8. No ward, borough, or township to be divided in forming a senatorial district.

9. To fix senatorial ratio, divide the whole population of the State by the number 50.

Upon the 4th point above we have the highest authority, of which the case admits, independent of the text of the section itself. Accompanying the pamphlet of the Constitution, as submitted to the people, was a "Statement and Exposition" of the changes contained in the new instrument, carefully prepared by the Committee on Revision and Adjustment, pursuant to a resolution of the Convention, and signed and attested by the President and chief clerk. As an official paper, in view of which the popular vote upon the Constitution was taken, and by which presumably that vote was influenced, its construction of any clause of the Constitution is entitled to great weight. In its explanation of this 16th section of the legislative Article (Constitution Pamphlet, p. 40) it says: "A full senatorial ratio will entitle a county to separate representation, but the Legislature may assign a Senator to a county with less than four-fifths of a ratio which shall be wholly surrounded by counties *entitled of right* to separate representation."

HISTORY, ETC.: The Constitution of 1790 contained the following provisions in regard to Senators and senatorial districts :---

1. The number of Senators was never to be less than one-fourth nor more than one-third the number of Representatives, Article I. § 6. As the number of Representatives was never to be less than 60 nor more than 100, § 4, the number of Senators could never be less than 15 nor more than 33.

2. Senators were to be chosen by the citizens of Philadelphia and of the several counties, § 5, and from districts to be formed by the Legislature every seventh year, §§ 6, 7.

3. Senators were to be apportioned to districts according to the number of taxable inhabitants in each, § 6.

4. Senatorial districts were to contain, respectively, such number of taxable inhabitants that no district should be entitled to elect more than four Senators, § 7.

5. When a senatorial district should be composed of two or more counties, such counties should be adjoining, and neither the city of Philadelphia, nor any county, should be divided in forming a district, § 7.

By one of the amendments of 1838, the provision above mentioned that no district should be entitled to elect more than four Senators, was changed and made to read as follows: "No district shall be so formed as to entitle it to elect more than two Senators, unless the number of taxable inhabitants in any city or county, at any time, be such as to entitle it to elect more than two; but no city or county shall be entitled to elect more than four Senators," § 7.

Further changes were made by the Third Amendment of 1857. The words, "of Philadelphia and of the several counties," were struck from the fifth section, and in the seventh section the prohibition upon the division of the city of Philadelphia in forming districts was removed and the following new provision added at the end: "The city of Philadelphia shall be divided into single senatorial districts, of contiguous territory, as nearly equal in taxable population as possible, but no ward shall be divided in the formation thereof." Another change as to Senators was produced by that division of the Third Amendment of 1857, which fixed the number of Representatives at 100; for the number of Senators thereafter could not be less than 25, or one-fourth the number of Representatives.

It will now be seen that the Constitution of 1874 increases the number of Senators from 33 (the highest possible number under the old Constitution) to 50; that for the first time in this State it requires single districts alone in senatorial representation; that it dictates decennial instead of septennial senatorial apportionments, based upon population instead of taxables; establishes a plain rule for ascertaining at all times the senatorial ratio of distribution; fixes county representation in the Senate as far as practicable, and prescribes reasonable regulations, mostly new in their terms or application, for the formation of senatorial

[Representative districts.]

Section 17. (a) The members of the House of Representatives shall be apportioned among the several counties (b) on a ratio obtained by dividing the population of the State as ascertained by the most recent United States census, by 200. (c) Every county containing less than five ratios shall have one Representative for every full ratio, and an additional Representative when the surplus exceeds half a ratio; (d) but each county shall have at least one Representative. (e) Every county containing five ratios or more shall have one Representative for every full ratio. (f)Every city containing a population equal to a ratio shall elect separately its proportion of the Representatives allotted to the county in which it is located. (q) Every city entitled to more than four Representatives, and every county having over 100,000 inhabitants, shall be divided into districts of compact and contiguous territory, each district to elect its proportion of Representatives according to its population, (h) but no district shall elect more than four Representatives."

Reported, Conv. Jour. 198; Deb. I. 239-40. Considered and amended, Conv. Deb. V. 658-77, 678-715, 752-7; VII. 20-50, 58-79, 82-114; Com. Appd. 115-16; Report, 150-52, 155-88; Revision Com. Rep. 301-2, 304-5, 309-12; Recommitted, 330; Rep. VIII. 76, 121-2. See also references to 1st, 2d, and 5th vols. of Debates, under next preceding section.

COMPARE: Constitution of 1776, chap. ii. § 17; Constitution of 1790, §§ 2, 4; Third Amendment of 1857. See also, Charter of 1682, §§ 14, 16; Charter 1683, §§ 13, 15; Charter of 1701, § 2. See Cessna's Case, 1862, House Journal.

districts.

CONSTRUCTION: (a) The apportionment is to be "among the several counties," that is, the general distribution is to be to counties as such and not at all to divisions of counties or to cities. The distribution of Representatives obtained by certain counties, to divisions thereof, or to districts therein, is a subsequent question, and not at all involved in this clause.

(b) That "the most recent United States Census" here intended, is a *decennial* one, appears plainly from section 18. The number 200 as a divisor for obtaining the representative ratio was adopted by the Convention, on motion of Gov. Curtin.

(c) The allowance of representation to small counties for fractions of a ratio though such representation is disallowed to large counties, was fully considered by the Convention on several occasions and is plainly necessary to just representation. 5 Convention Debates, 466, 543, 546.

(d) The separate representation of the smallest counties of the State has the argument of uniformity in its favor, and it excludes, as to those counties, all opportunity of gerrymandering; but it is open to question upon other grounds, and may be regarded as one of the debatable provisions of the Constitution.

(e) There may be attempts to break over this rule or to evade its application in future apportionments, in cases where the fractions of large counties are large; but the rule is imperative, and, applied to the census returns, will always fix conclusively the *quantum* of representation for such counties.

(f) The provisions before given for fractional representation will have no application to cities within counties, or to divisions or districts of cities or counties. A surplus fraction of over one-half a ratio will or will not carry an additional Representative to such city or district according to circumstances and not of course. If, at an apportionment, a county which has a city within it should have a total population of 66,000, the representative ratio being 20,000, it would be entitled to three Representatives in the general distribution for the whole State. Then suppose the city within the county should have 32,000 and the remaining parts of the county 34,000 inhabitants, it is plain that in the division of representation between the city and those remaining parts, the city would be entitled to but one Representative. If it were a separate county, it would get two Representatives, because its population would exceed a ratio and a half, but in the divi-

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sion between it and the rest of the county, the latter would have the better right to a second Representative because of superior numbers. And so in regard to all legislative districts, formed of divisions of cities or counties, there is no fixed fraction of a general ratio upon which, or with reference to which, representation is to be allowed. In brief, the division of Representatives between a county and a city contained within it, or between districts of a city or county, is a secondary distribution wholly distinct from the general one to counties, and is to be made upon a principle of just proportion between local populations.

(g) A question arises upon this division which was not probably foreseen. The division appears to prescribe that every county with more than 100,000 inhabitants shall be divided as a county into representative districts. But will this apply where a city within a county shall be entitled to separate representation to such an extent that the county will have left to it but four Representatives or less? Inasmuch as the following provision is, in substance, that districts may be made to elect as many as four Representatives each, and as the evident object of the section is to prevent the election of more than that number from any district made by the Legislature, it would seem that there ought to be no further division of the county after the separation of the city from it. In such a case, does not the separation of the city substantially comply with the requirement that the county shall be divided into districts? Against the evident general purpose are we to hold that so much of the county as lies outside of the city must be divided into districts of less than four members each?

This may become a practical question as to several counties in future apportionments, but in the apportionment of 1874 it had relation only to the county of Berks. That county was entitled to six Representatives, of which the city of Reading 'obtained two, and the county, exclusive of the city, was not divided.

In the making of *all* representative districts (as in the case of senatorial districts) "compact and contiguous territory" is required. All gerrymandering as to the form or territorial composition of districts is plainly forbidden.

(h) This provision, though one of limitation, will not prevent gerrymandering in the formation of districts, nor would gerrymandering be excluded if single districts were required, as experience clearly proves. So long as discretion shall be left to the Legislature, it is possible that that discretion will be abused, and it is not at all likely that a plan of single districts would have, in regard to fairness, any advantage over the ¢

plan of plural ones permitted by this clause. Gerrymandering is unquestionably one of the most flagrant evils and scandals of the time, involving notorious wrong to the people and open disgrace to republican institutions, and the Convention was in fault in not providing more adequate guards against it. Upon this most important subject their work was but partly performed. All their limitations upon the divisibility of counties in the forming of senatorial and representative districts were well advised, but they should have gone further, and cut up wholly the system of legislative apportionments (as was proposed) or, retaining it, have prescribed plural districts with minority representation. Either of these remedies would have been appropriate, but their application, or the application of either, was unfortunately left to the future.

Single districts were not required by this clause of the section, for general reasons fully stated in the Convention Debates. 2 Conv. Deb. 194-5, 197-8.

HISTORY, ETC. : A House of Representatives alone constituted the General Assembly under provincial charters and under the Constitution of 1776. By the charter of 1682, § 14, the number of Representatives was not to exceed 200, but the number to each county was not fixed. By the 16th section it was further provided, that the first General Assembly might consist of all the freemen of the province, and that afterwards the number 200 should be increased, as the country should increase in people, but not to a greater number than 500. The first Assembly met at Chester, December 4, 1682, on the call of William Penn, and consisted of as many of the freemen of the province and "the three lower counties" as chose to attend, when an Act of union was passed annexing the three lower counties (now constituting the State of Delaware) to the province proper of Pennsylvania, for purposes of legislation. The session continued but three days.

The second Assembly met at Philadelphia on the 12th of March, 1683, and was composed of nine members from each of the counties of Philadelphia, Bucks, and Chester, in the province, and the same number from each of the "lower counties" of New Castle, Kent, and Sussex, thereafter called "the territories" until their separation from the province.

By the charter of 1683, \$ 13, 15, the number of Representatives was fixed at six for each county (including the territories), but the whole number might be increased by statute to any number not exceeding 200, to be apportioned equally to the divisions of the country or number of the inhabitants. By the Markham Charter of 1696, the number of Representatives for each county was reduced to four, 1 Col. Rec. 49, and that number was continued by the charter of 1701, § 2, with an additional provision that the Governor and Assembly might increase the number if they should 'agree, 2 Col. Rec. 57-8.

By the Constitution of 1776, chap. ii. §§ 7, 17, six Representatives were to be chosen annually by the city of Philadelphia and by each county, for the years 1776 to 1778 inclusive, and in the latter year, and every seventh year thereafter, an apportionment of Representatives was to be made by the General Assembly to the city of Philadelphia and to each county, based upon returns of taxable population in each, and in proportion thereto. The number of Representatives after the year 1778 does not seem to have been fixed, but as ten counties were organized in 1776, the number at each of the first three sessions would be 66.

By the Constitution of 1790, Article I. § 4, provision was made for an enumeration of the taxable inhabitants of the State within three years after the first meeting of the General Assembly and within every subsequent term of seven years. Upon returns of those enumerations, septennially, Representatives were to be apportioned "among the city of Philadelphia and the several counties, according to the number of taxable inhabitants in each," the number to be fixed by the Legislature at each apportionment, but never to be less than 60, nor more than 100 : each county then existing to have at least one Representative, but no county thereafter erected to be entitled to separate representation until it should contain a full ratio of taxable inhabitants.

Lastly, we have the Third Amendment of 1857, which, so far as it related to Representatives, took position as the 4th section of the first Article of the Constitution, supplanting the corresponding section in the Constitution of 1790. It was as follows :---

"Section 4. In the year 1864, and in every seventh year thereafter, Representatives to the number of 100 shall be apportioned and distributed equally throughout the State, by districts, in proportion to the number of taxable inhabitants in the several parts thereof, except that any county containing at least 3500 taxables may be allowed a separate representation; but no more than three counties shall be joined, and no county shall be divided in the formation of a district. Any city containing a sufficient number of taxables to entitle it to at least two Representatives shall have a separate representation assigned to it, and shall be divided into convenient districts of contiguous territory of equal taxable population, as near as may be, each of which districts shall elect one Representative." Provision was further made by the amendment for a temporary apportionment to continue until the year 1864.

A leading principle which has obtained in apportionments in Pennsylvania from the earliest times has been the representation of taxable population in the General Assembly. The Constitution of 1776 announced, chap. ii. § 17, that "Representation in proportion to the number of taxable inhabitants, is the only principle which can at all times secure liberty, and make the voice of a majority of the people the law of the land," and to apply that principle provided for septennial enumerations of taxables and apportionments based thereon. Less thoroughly applied in colonial charters and legislation, it was yet substantially regarded and held in constant respect therein. It was re-asserted by the Constitution of 1790, remained unmolested by the Convention of 1838, and was re-indorsed by the Third Amendment of 1857. And yet it was wholly swept away by the Convention of 1873, without serious objection in any quarter, and the principle of the representation of the whole population accepted in its stead.

Representation by counties was another principle prominent in all former regulations of apportionment. With but two recent exceptions, no county has ever been divided in the formation of senatorial or representative districts, and counties have mostly enjoyed separative representation in the House. The fact was otherwise as to the latter point after 1790, and prior to 1857, as to all counties below a representative ratio, erected after the former date, and as to many small counties, even after the latter date (and some large counties have been of necessity connected with small ones), but, as far as possible, and with some disregard of the principle of numbers, separate representation has been maintained. Philadelphia City, after 1857, and the city of Pittsburg, after 1871, constituted the only cases of the division of municipalities in apportionments, until the adoption of the new Constitution.

These principles of municipal unity and of separate representation in representative apportionments, are conspicuous in the Constitution of 1874, and receive from it new and extended application. With two exceptions, these principles are completely applied. Each county is to have one or more Representatives, as its population may require, separate from all other counties; it is to be independent of all others in all matters of Representative nomination and election. And then, no county is to be divided into representative districts unless its population shall exceed 100,000, or unless there shall be included within it a city containing one or more representative ratios of population. In 1874, 58 counties out of 66 were indivisible under this regulation, the exceptions being the counties of Philadelphia, Allegheny, Luzerne, Lancaster, Schuylkill, Berks, Erie, and Dauphin. Of these, the six first named had each more than 100,000 inhabitants, Philadelphia was both a city and county, and the others contained within their boundaries cities entitled to separate representation.

The division of populous cities into representative districts, was first required by the Third Amendment of 1857. The provision, already cited, was, that cities containing at least two ratios of taxable population should be divided into single representative districts; a provision applicable at once upon its adoption to Philadelphia, and which became applicable to Pittsburg when the apportionment of 1871 came to be made. The Constitution of 1874 extends this provision, and in modified form applies it to all cities with one or more representative ratios of population, as well as to counties of more than 100,000 inhabitants. All such cities are to be separated from the counties in which they are located for representative purposes, and, whenever they shall be entitled to more than four Representatives, they shall be divided into representative districts of not more than four members each. Counties of more than 100,000 inhabitants are also to be divided, into representative districts of not more than four members each, so that the undue concentration of political power at any point in the State will be checked or prevented.

[Apportionments.]

Section 18. The General Assembly at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the State into senatorial and representative districts agreeably to the provisions of the two next preceding sections.

Reported, in substance, Conv. Jour. 198, 412; Deb. I. 139; Considered, Conv. Deb. VII. 188-91, 192-219.

Apportionment Acts since 1790:

Act of 22d April, 1794.

Act of 27th February, 1801: Senators 25, ratio of taxables for a Senator, 4607; Representatives 86, ratio of taxables for a Representative, 1350.

Act of 21st March, 1808: Senators 31, ratio 4500; Representatives 95, ratio 1500.

Act of 8th March, 1815: Taxables 163,780; Senators 31, ratio 5250; Representatives 97, ratio 1750.

Act of 28th March, 1822: Taxables 208,512; Senators 33, ratio 6318; Representatives 100, ratio 2100.

Act of 20th April, 1829: Senators 33, ratio 7700; Representatives 100, ratio 2544.

Act of 16th June, 1836, P. Laws, 794: Senators 33, ratio 9256; Representatives 100, ratio 3057.

Act of 14th April, 1843, P. Laws, 247: Senators 33, ratio 11,746; Representatives 100, ratio 3876.

Act of 15th May, 1850, P. Laws, 777: Senators 33, ratio 14,743; Representatives 100, ratio 4865.

Act of 20th May, 1857, P. Laws, 619: Senators 33, ratio 17,011; Representatives 100, ratio 5796.

Special apportionment of Philadelphia into single senatorial and representative districts, pursuant to one of the Constitutional Amendments of 1857: P. Laws, 1858, p. 465.

Special apportionment for counties of Bedford, Somerset, Cumberland, and Perry, creating each a separate representative district in alleged conformity with the requirements of the Constitution: Passed 11th April, 1862, P. Laws, 502.

Act of 5th May, 1864, P. Laws, 258, and supplement to the same, P. Laws, 1014: Senators 33; Representatives 100.

Act of 6th May, 1871, P. Laws, 252, and supplement to same, P. Laws, 259: Senators 33; Representatives 100.

Act of 19th May, 1874, based upon population pursuant to the new Constitution, P. Laws, 197: Senators 50; Representatives 201. The Act after making temporary provision for filling vacancies in the Senate, and for adjusting senatorial terms, provided that Senators should be chosen from even-numbered districts in 1878, and from the odd-numbered districts in 1880, for regular four-year terms, and that Representatives should be chosen in 1874, and biennially thereafter.

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ARTICLE III.

LEGISLATION.

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- 1. Passage of bills.
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- 3. A bill to contain but one subject, expressed in the title.
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- 18. Appropriations for charitable purposes, etc., limited.
- 19. Appropriations for widows and orphans of soldiers.
- 20. Power over municipal administration not to be delegated to any commission or private corporation or association.
- 21. No limitation of damages for certain injuries, nor of time for bringing suits therefor.
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- 28. Changing location of State capital.
- 29. Soliciting or receiving bribes by members of the Legislature.
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- 31. Solicitation of members of the Legislature or public officers.
- 32. Witnesses in cases of bribery and solicitation—Punishment for those offences.
- 33. Interested members shall not vote.

[Passage of bills.]

Section 1. (a) No law shall be passed except by bill, (b) and no bill shall be so altered or amended on its



passage through either House as to change its original purpose.

(a) COMPARE: Con. Cal. (1879), IV. 15; Ind. IV. 1; Kan. II. 20; Neb. (1875), III. 10; Nev. IV. 23; N. Y. III. 14; Wis. IV. 17. See, also, Md. III. 29.

(b) DERIVED : Pa. Senate Rule, XV.; House Rule, 42.

The entire section copied: Con. Ala. (1875), IV. 19; Ark. (1874), V. 21; Col. (1876), V. 17; Mo. (1875), IV. 25; Tex. (1876), III. 30.

[Reference and printing of bills.]

Section 2. No bill shall be considered unless referred to a committee, returned therefrom and printed for the use of the members.

DERIVED: Con. of Ill. IV. 13; Pa. Senate Rule XXVIII.; House Rules, 35, 36.

COMPARE: Con. Ala. (1875), IV. 20; Cal. (1879), IV. 15; Col. (1876), V. 20; Mo. (1875), IV. 27; Tex. (1876), III. 37.

CONSTRUCTION: It is not required that a bill shall be *reported* by a committee, for, upon proper occasion, a committee may be *discharged*. But the power of a House to discharge its committee, to whom a bill has been referred, is not to be used to evade the Constitution. Consideration of bills by committee is plainly intended, and only when such consideration cannot be had or a committee delays action upon a bill unreasonably, will a discharge of the committee, or a sharp order upon it to report, be justifiable. See 5 Conv. Deb. 242-3.

"It is sometimes the custom that bills should be printed before the debate; but this is not the case except upon special motion, which motion is sometimes rejected; and when printed they are only distributed to members of Parliament. In this respect there is a fundamental error; the printing ought to be the rule, and also the public sale of such bills." Bentham's Works, ii. 353.

[A bill to contain but one subject, expressed in the title.]

Section 3. No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in the title. See § 15 of this Article.

Considered, 5 Conv. Deb. 243-6.

DERIVED: First Amendment of 1864, Art. XI. § 8, of the old Constitution: "No bill shall be passed by the Legislature containing more than one subject, which shall be clearly expressed in the title, except appropriation bills."

COMPARE: Con. Ala. IV. 2; Ark. V. 22; Cal. IV. 25; (1879), IV. 24, 34; Ga. III. 4, v.; Ill. IV. 13; Ind. IV. 19; Iowa, III. 29; Kan. II. 16; Ken. II. 37; Md. III. 29; Mich. IV. 20; Minn. IV. 27; Mo. IV. 32; (1875), IV. 28; Neb. II 19; (1875), III. 11; Nev. IV. 17; N. J. IV. 7, div. 4; O II. 16; Or. IV. 20; S. Car. II. 20; Tenn. II. 17; Tex. XII. 17; Va. V. 15; W. Va. VI. 30. See also, Fl. IV. 30; La. 114; N. Y. III. 16; Or. IX. 7; Wis. IV. 18.

JUDICIAL OPINION: Blood v. Marcelliott, 3 Sm. 391; In re Church Street, 4 Sm. 353; Com. v. Green, 8 Sm. 226; Yeager v. Weaver, 14 Sm. 425; Penna. R. Rd. Co. v. Riblet, 16 Sm. 164; Eby's Appeal, 20 Sm. 311; Dorsey's Appeal, 22 Sm. 192; Wheeler v. Philadelphia, 27 Sm. 338; Allegheny County Home, 27 Sm. 77; State Line and Juniata R. Rd. Co.'s Appeal, Id. 429; Allegheny City v. Moorehead, 30 Sm. 118; Mauch Chunk v. Magee, 31 Sm. 433; 3 W. N. C. 33; Union Passenger Railway Co.'s Appeal, 32 Sm. 91; Beckert v. Allegheny City, 4 Norris, 191; Craig v. First Presbyterian Church, 7 Norris, 42; 6 W. N. C. 421; Dewhurst v. City of Allegheny, 14 Norris 437; 38 Leg. Intel. 23; Horstman v. Kauffman, 1 Outerbridge, 147; 8 W. N. C. 73; 9 Id. 513; McKeesport Bor. v. Owens, 6 W. N. C. 492; Loewi v. Haedrich, 8 W. N. C. 70; 2d Nat. Bank of Titusville v. Caldwell, 39 Leg. Intel. 414.

CONSTRUCTION: The objects had in view in the adoption of this section and in the adoption of the Amendment of 1864 which it re-enacts, were to prevent "log-rolling" and fraud, trickery, or surprise in legislation. Every measure is to stand upon its own merits without borrowing strength from another, and the members of each House, and still more the public, are to have notice by its very title of the contents or nature of a bill. The construction of the section, therefore, must be such as will promote the attainment of these objects, and the words must not be weakened by nice refinements or distinctions, or wrested from their plain and natural import. But, on the other hand, we are not to suppose that the section was intended to embarrass the passage of fair and necessary laws, or to encumber the titles of bills with unnecessary or prolix recitals or suggestions of their contents. A title to a bill is not designed to furnish an index, abstract, or summary of the bill, but only to characterize it, and state the subject to which it relates. But one subject can be included in a bill, and the title must clearly inform us what that subject is. Beyond this the section does not go.

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But in a given case it may be difficult to say what is the subject matter of a bill, to be clearly expressed in the title, under this provision of the Constitution. Avoiding prolixity of statement, and consulting clearness of expression, the question will still remain as to the degree of fulness and particularity required. As cases shall arise and undergo discussion in courts of justice, rules to aid us upon this question, with illustrations of their application, will be gradually supplied. But the reluctance with which courts, even of the highest grade, yield to an argument against the validity of a statute upon constitutional grounds, will admonish us that judicial decisions are not alone to be consulted in the construction of this section. The annulment of a statute by judicial authority is commonly productive of inconvenience, and where the objection made against the statute is only to its form, a judge will be inclined, and properly so, to sustain the statute. It is for the Legislature itself, primarily and mainly, to see to it that the bills passed by it are in all respects, both as to form and substance, conformed to the Constitution.

Titles open to objection on constitutional grounds may be classed as follows: 1. Those which are vague, uncertain, indeterminate in expression and meaning; 2. Those which are too general—of too wide a sweep —not specific; 3. Those which indicate only a part of the bill; 4. Those which express or suggest a falsehood, or otherwise mislead by the terms used; and 5. Those which, for any other reason, do not fairly and fully express the subject matter of the bill. Redundant language in titles is to be deprecated as a source of inconvenience in the examination of bills and laws, but will not be fatal unless it produces obscurity or leads to mistake.

CONSULT: Cooley on Con. Lim. 141-50, 81-3.

[Bills to be read on three days—Amendments to be printed—Yeas and nays on passage.]

Section 4. (a) Every bill shall be read at length on three different days in each House; (b) all amendments made thereto, shall be printed for the use of the members before the final vote is taken on the bill, (c) and no bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the persons voting for and against the same be entered on the journal, (d) and a majority of the members elected to each House be recorded thereon as voting in its favor.

Considered, 5 Conv. Deb. 246-7.

(a) DERIVED: Pa. Senate Rule, XIV.; House Rule, 36.

COMPARE: Conv. Ala. IV. 15; (1875), IV. 21; Ark. V. 21; (1874), V. 22; Cal. (1879), IV. 15; Col. (1876), V. 22; Fl. IV. 15; Ga. III. 4, v.; Ill. IV. 13; Ind. IV. 18; Kan. II. 15; Ken. II. 29; La. 42; Md. III. 27; Minn. IV. 20; Miss. IV. 23; Mo. IV. 23; (1875), IV. 26; Neb. II. 19; (1875), III. 11; Nev. IV. 18; O. II. 16; Or. IV. 19; Tex. III. 24; (1876), III. 32; Va. V. 10; W. Va. VI. 29. See, also, Mich. IV. 19; N. J. IV. 4, 6; N. Car. II. 25.

The Provincial Charter of 1682, § 20, provided: "That, unless on sudden and indispensable occasions, no business in Provincial Council, or its respective committees, shall be finally determined the same day that it is moved." But this provision was not retained in the charter of the following year.

CONSULT: Cooley on Con. Lim. 80, 81, 139-40; Dumont in Bentham's Works, ii. 360, 353-4.

(b) DERIVED: Con. of Ill. IV. 13. COMPARE: Con. Cal. (1879), IV. 15; Col. (1876), V. 22; Mo. (1875), IV. 29; Neb. (1875), III. 11.

(c) To the same effect: Con. Ala. (1875), IV. 21; Ark. V. 21; (1874),
V. 22; Cal. (1879), IV. 15; Col. (1876), V. 22; Fl. IV. 15; Ill. IV. 12;
Ind. IV. 18; Iowa, III. 17; Kan. II. 10; Md. III. 28; Mich. IV. 19;
Minn. IV. 13; Mo. IV. 24; (1875), IV. 31; Neb. (1875), III. 10; Nev.
IV. 18; N. J. IV. 4, 6; N. Y. III. 15; VII. 12, cl. 3; O. II. 9; Or. IV.
19. Compare, also, Ga. III. 14; Miss. IV. 1; N. Y. VII. 14; Amdt. (1874), III. 21; Tex. III. 24; Va. X. 11; W. Va. VI. 31.

See Art. II. § 12, ante, and Cooley on Con. Lim. 140-41.

(d) COMPARE: Ala. (1875), IV. 21; Ark. (1874), V. 22; Cal. (1879),
IV. 15; Ill. IV. 12; Ind. IV. 25; Iowa, III. 17; Md. III. 28; Mich. IV.
19; Minn. IV. 13; Mo. IV. 24; (1875), IV. 31; Neb. II. 11; (1875), III.
10; Nev. IV. 18; N. J. IV. 4, 6; N. Y. III. 15; O. II. 9; Tenn. II. 18;
W. Va. VI. 31, 32.

[Concurrence between Houses in amendments and conference reports, to be by yeas and nays, entered on journals.]

Section 5. No amendment to bills by one House shall be concurred in by the other, except by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof; and reports of committees of conference shall be adopted in either House only by the vote of a majority of the members elected thereto,

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taken by yeas and nays, and the names of those voting recorded upon the journals.

DERIVED: Con. of W. Va. VI. 31.

COMPARE: Con. Ala. (1875), IV. 22; Col. (1876), V. 23; Mo. (1875), IV. 32.

[Revival, amendment, and extension of laws.]

Section 6. No law shall be revived, amended, or the provisions thereof extended or conferred, by a reference to its title only; but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length.

Сомраке: Ala. IV. 2; Ark. V. 23; Cal. IV. 25; (1879), IV. 24; Col. (1876), V. 24; Fl. IV. 14; Ga. III. 6, el. 3; Ill. IV. 13; Ind. IV. 21; Kan. II. 16; La. 115, 116; Md. III. 29; Mich. IV. 25; Mo. IV. 25; (1875), IV. 33, 34; Neb. II. 19; (1875), III. 11; Nev. IV. 17; N. J. (1875), IV. 7, par. 4; N. Y. proposed in 1868, III. 14; Amdt. (1874), III. 17; O. II. 16; Or. IV. 22; Tenn. II. 17; Tex. XII. 18; (1876), III. 36; Va. V. 15; X. 16; W. Va. VI. 30.

JUDICIAL OPINION: Donohugh v. Roberts, 11 W. N. C. 186; 2d Nat. Bank of Titusville v. Caldwell, 39 Leg. Intel. 414.

[Limitations upon local and special legislation.]

Section 7. The General Assembly shall not pass any local or special law:—

(1) Authorizing the creation, extension, or impairing of liens.

Reported, Conv. Jour. 344. Considered, 2 Conv. Deb. 590-93.

This clause can hardly apply to liens of the State. See 2 Conv. Deb. 593, and § 24 of this Article.

COMPARE: Con. Cal. (1879), IV. 25, cl. 24; Mo. (1875), IV. 53; Tex. (1876), III. 56, cl. 1.

(2) Regulating the affairs of counties, cities, townships, wards, boroughs, or school districts. See clause (19) below.

COMPARE: Con. Cal. (1879), IV. 25, cl. 9; Col. (1876), V. 25, cl. 5; Mo. (1875), IV. 53, cl. 2; Tex. (1876), III. 56, cl. 2.

Similar prohibitions in Constitutions, adopted prior to 1873, follows :---

Indiana (1851), IV. 22, cl. 10, and Nevada (1864), IV. 20, cl. 9: "Regulating county and township business."

Florida (1868), IV. 17: "Regulating county, township, and municipal business."

Illinois (1870), IV. 22, cl. 6: "Regulating county and township affairs."

West Virginia (1872), VI. 39, cl. 5: "Regulating or changing county or district affairs."

And special laws are forbidden which shall provide "for the management of common schools" (Ill. IV. 22, cl. 13), or "for supporting common schools, and for the preservation of school funds," (Ind. IV. 22, cl. 13, and Or. IV. 23, cl. 11).

A later amendment of the Constitution of New Jersey (1875), IV. 7, div. 11, cl. 3, reads as follows: "Regulating the internal affairs of towns and counties; appointing local offices or commissions to regulate municipal affairs."

In the Pennsylvania provision the word "affairs" is the important one to be examined. It was obviously borrowed from the two Constitutions which were, in 1873, of most recent formation, in which it was made to supply the place of the word "business" found in the earlier Constitutions above mentioned. This substitution of a French for a Saxon word—"affairs" for "business"—was probably made in consequence of judicial opinions which had assigned a somewhat restricted effect to the word business as found in the earlier Constitutions, and was intended to give to the prohibition upon local legislation a more extended application. It may be held that the word business, in this connection, will not relate to the organization, revision, or external relations of municipalities and districts, but only to their internal administration and management; and so in Eitel v. The State, 33 Indiana, 201, it was decided that "an Act creating a criminal court for a particular county, was not in conflict with the prohibition upon special legislation" of the Indiana Constitution. And see Cooley on Constitutional Limitations, 128–9, and notes.

JUDICIAL OPINION : Burns v. Clarion County, 12 Sm. 422; Wheeler v. Philadelphia, 27 Sm. 338; Kilgore v. Magee, 4 Norris, 401; 5 W. N. C. 61; Commonwealth v. Patton, 7 Norris, 258; 7 W. N. C. 6; Montgomery v. The Commonwealth, 10 Norris, 125; Scowden's Appeal, 15 Norris, 422; 11 W. N. C. 28; 38 Leg. Intel. 12.

In Scowden's Appeal it was held, that the Act of 12th June, 1879, P. Laws, 154, which authorized the holding of special sessions of the courts of Crawford County away from the county-seat of that county, offended against this second division of the seventh section. The Court condemned it also upon the ground that it conflicted with the fourth section of the fourteenth Article, which requires prothonotaries, clerks of the courts, sheriffs, etc., to keep their offices at the county-seat of their respective counties. Perhaps an argument might also be presented against that statute resting upon the additional ground that it was opposed to the first clause of the 26th section of the judiciary Article, and the careful student of our existing constitutional system will, upon reading the statute, be strongly disposed to indorse its condemnation by the Court.

EXECUTIVE OPINION: The following bills, passed at the session of 1879, were vetoed by Governor Hoyt, after the adjournment, because they were, in his view, opposed to the above clause of the 7th section:

A bill entitled "A Supplement to an Act entitled an Act authorizing the election of commissioner's clerk in the county of York." The bill provided for the election of a commissioner's clerk for that county at the general election of 1879, and every third year thereafter, whose term was to commence on the first Monday of January following his election.

A bill entitled "An Act to prohibit the running at large of cattle, horses, mules, sheep, goats, and hogs, in several townships of the county of Lackawanna." The character of the bill is sufficiently indicated by the title.

A bill to repeal so much of a former Act in reference to the pay of surveyors as witnesses in Clearfield and Centre counties, as related to their pay in Clearfield County, and fixing their pay as witnesses in the several courts of Clearfield at \$2.50 per day with mileage.

"An Act to prevent cattle, horses, mules, sheep, and hogs from running at large in the township of West Donegal, in Lancaster County."

"An Act to authorize the Town Council of the borough of Bellefonte to purchase or acquire lands, tenements, water-power, rights of way or privileges to erect additional water-works for said borough."

"An Act relating to the assessment and payment of road damages in the boroughs of Berks County."

A bill entitled "A Supplement to an Act entitled an Act relative to the prison of Northumberland County, approved 4th April, 1878, amending and extending the 7th section of said Act." The bill related to the discharge of convicts from the county prison of Northumberland, in certain cases, without payment of costs.

"An Act to protect game, and prohibit trespassing upon inclosed, occupied, or improved lands, in Westmoreland County, in pursuit of game."

The following bills, passed at the session of 1881, were also vetoed by Governor Hoyt, after the adjournment of the Legislature, upon the same objection of incompatibility with the above second clause of the 7th section:

A bill regulating the election of prothonotaries, clerks of the several courts, registers of wills, and recorders of deeds, in counties constituting separate judicial districts, where one person was then by law electable to fill all of said offices. The bill provided that in counties indicated by the title (except those having cities of the first class) one person should be electable to fill the offices of prothonotary and clerk, of the courts of Quarter Sessions and Oyer and Terminer, and one other person to fill the offices of register, recorder, and clerk of the Orphans' Court.

A bill fixing the compensation for boarding prisoners in those counties of the State where there were no special laws in force regulating such compensation.

A bill to authorize commissioners of counties (except those having special laws regulating prisons, etc.) to discharge from prison persons confined therein, without proceedings under the insolvent laws.

All the foregoing bills appear to be clearly open to the objections made against them by the Governor, and surprise might be felt and expressed at the passage of some of them by the Legislature, if we did not remember that old habits, whether in legislation or individual conduct, are thrown off with difficulty, and often with reluctance. But the Governor's veto, June 29, 1881, of a bill to regulate the Democratic primary elections in Westmoreland County, does not seem to have been well considered in that part of it where objection is made to the bill on the ground that it related to the affairs of a county, etc., and attempted their regulation. There was another very sufficient objection to the bill, in the fact that it was unnecessary, its object being covered completely by a general law enacted at the same session, but surely the primary elections of a political party in Westmoreland County did not, in any legal sense, pertain to the "affairs" of that county or of any district within it.

(3) Changing the names of persons or places.

DERIVED: Con. of Ill. IV. 22, cl. 2.

COMPARE: Con. Cal. (1879), IV. 25, cl. 6; Mo. (1875), IV. 53, cl. 3; Neb. (1875), III. 15, cl. 2; Tex. (1876), III. 56, cl. 3.

In the following Constitutions the limitation is confined to changing the names of persons: Ark. V. 30; (1874), V. 24; Fl. IV. 17; Ga. III. 6, N.; Ind. IV. 22, cl. 6; Iowa, III. 30, cl. 3; Ky. II. 32; Md. III. 33; Mo. IV. 27; Nev. IV. 20; N. Y. (1874), Amdt. III. 18; N. Car. II. 13; Tenn. XI. 6; Va. V. 20; Wis. IV. 31.

(4) Changing the venue in civil or criminal cases.

COMPARE: Con. Ala. (1875), IV. 36: Ark. (1874), V. 24; Cal. (1879), IV. 25, cl. 4; Col. (1876), V. 25, cl. 9; Fl. IV. 17; Ill. IV. 22, cl. 9; Ind.

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IV. 22, cl. 4; Neb. (1875), III. 15, cl. 9; Nev. IV. 20, cl. 4; N. J. (1875), Amdt. IV. 7, div. 11, cl. 9; N. Y. (1874), Amdt. III. 18, cl. 4; Or. IV. 23, cl. 4.

See § 23 of this Article.

JUDICIAL OPINION: Lewis and Nelson's Appeal, 17 Sm. 153; Com. v. Patton, 7 Norris, 258; 7 W. N. C. 6; Scowden's Appeal, 15 Norris, 422; 11 W. N. C. 28; 38 Legal Intel. 12.

(5) Authorizing the laying out, opening, altering, or maintaining roads, highways, streets, or alleys. See clause (7) below.

Reported, Conv. Jour. 344. Considered, 2 Conv. Deb. 593-5.

DERIVED mostly: Con. Ill. IV. 22, el. 3.

COMPARE: Con. Cal (1879), IV. 25, cl. 7, 25; Col. (1876), V. 25, cl. 2; Ind. IV. 22, cl. 7; Iowa, III. 30; Mo. IV. 27; (1875), IV. 53, cl. 5; Neb. (1875), III. 15, cl. 3; N. J. (1875), Amdt. IV. 7, div. 11; N. Y. (1874), Amdt. III. 18, cl. 2; Or. IV. 23, cl. 7; Tex. (1876), III. 56, cl. 4; Wis. IV. 31, cl. 2; and as to "altering" highways, Ark. V. 40; Mich. IV. 23.

(6) Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State.

Reported, Conv. Jour. 344. Considered and amended, 2 Conv. Deb. 595-8.

COMPARE : Con. Cal. (1879), IV. 25, cl. 25; Col. (1876), V. 25, cl. 18; Ga. III. 6, v.; Ill. IV. 22, cl. 18; Mo. IV. 27; (1875), IV. 53, cl. 6; Neb. (1875), III. 15, cl. 19; N. Y. (1874), Amdt. III. 18, cl. 13; Tex. (1876), III. 56, cl. 5; W. Va. VI. 39, cl. 12; Wis. IV. 31, cl. 3.

(7) Vacating roads, town-plats, streets, or alleys.

COMPARE: Con. Ark. V. 40; (1874), V. 24; Cal. (1879), IV. 25, cl. 7; Col. (1876), V. 25, cl. 3; Fl. IV. 17; Ill. IV. 22, cl. 7; Ind. IV. 22, cl. 8; Iowa, III. 30, cl. 5; Mich. IV. 23; Mo. IV. 27; (1875), IV. 53, cl. 7; Neb. (1875), III. 15, cl. 4; Nev. IV. 20, cl. 7; N. J. (1875), Amdt. IV. 7, div. 11, cl. 2; Or. IV. 23, cl. 8; Tex. III. 25; (1876), III. 56, cl. 6; W. Va. VI. 39, cl. 3.

"It is the opinion of this Committee, that Acts of Assembly for vacating useless highways and roads, are also improper and unconstitutional. There should be an authority lodged with proper courts to vacate useless roads." Report of a Committee to the Council of Censors, and adopted in Council, 16th August, 1784, by a vote of 14 to 9. Conv. and Con. Pa., pp. 88, 113-14. (8) Relating to cemeteries, graveyards, or public grounds not of the State.

Reported, Conv. Jour. 344. Considered and amended, 5 Conv. Deb. 257-8.

COMPARE: Con. Cal. (1879), IV. 25, cl. 7; Mo. (1875), IV. 53, cl. 8; Tex. (1876), III. 56, cl. 7.

See Act of 19th May, 1874, P. Laws, 208, in relation to cemeteries and burial grounds in boroughs, and the supplements thereto of 13th May, 1876, P. Laws, 159, and 18th April, 1877, P. Laws, 54.

(9) Authorizing the adoption or legitimation of children.

COMPARE: Con. Ark. (1874), V. 24; Cal. (1879), IV. 25, cl. 31; Mo. (1875), IV. 53, cl. 9; Tex. (1876), III. 56, cl. 8: On adoption of children, La. 113; Tex. XII. 13: On legitimation of children, Ga. III. 6, div. 5; N. Car. II. 13; Tenn. XI. 6, and "constituting one person the heir-at-law of another," Wis. IV. 31.

(10) Locating or changing county seats, erecting new counties, or changing county lines.

Considered, 2 Conv. Deb. 598-603; 7 Id. 346-9.

COMPARE: As to locating or changing county seats: Con. Cal. (1879), IV. 25, cl. 21, XI.; Col. (1876), V. 25, cl. 4; Ill. IV. 22, cl. 5; Iowa, III. 30; Mo. (1875), IV. 53, cl. 10; IX. 2; Neb. (1875), III. 15, cl. 5; N. Y. (1874), Amdt. III. 18, cl. 3; Tex. (1876), III. 56, cl. 9; W. Va. VI. 39, cl. 4; Wis. IV. 31, cl. 5; and partial limitations upon legislative power in the removal of county seats, Mich. X. 8; Mo. IV. 30; Tenn. X. 4. See, also, Ill. X. 4; Or. I. 22; Wis. XIII. 8.

As to the erection of new counties under general laws, see Art XIII. post.

JUDICIAL OPINION : Com. v. Patton, 7 Norris, 258; 7 W. N. C. 6; Scowden's Appeal, 15 Norris, 422; 11 W. N. C. 28; 38 Leg. Intel. 12.

(11) Incorporating cities, towns, or villages, or changing their charters.

DERIVED: Con. of Ill. IV. 22, cl. 10.

COMPARE: Con. Cal. (1879), XI. 6; Iowa, III. 30; Mo. (1875), IV. 53, cl. 11; Neb. (1875), III. 15, cl. 10; N. Y. (1874), Amdt. III. 18, cl. 5; Tex. (1876), III. 56, cl. 10.

See clause (14) below, as to erection of boroughs, and Art. XV. post, as to erection of cities.

(12) For the opening and conducting of elections, or fixing or changing the place of voting. See Art VIII. § 7.

COMPARE: Con. Cal. (1879), IV. 25, cl. 11; Col. (1876), V. 25, cl. 15; Fl. IV. 17; Ill. IV. 22, cl. 15; Ind. IV. 22, cl. 16; Mo. (1875), IV. 53, cl. 12; Neb. (1875), III. 15, cl. 16; Nev. IV. 20, cl. 12; N. Y. (1874), Amdt. III. 18, cl. 9; Or. IV. 23, cl. 13; Tex. (1876), III. 56, cl. 11.

(13) Granting divorces.

COMPARE: Con. Ala. IV. 30; Ark. V. 39; (1874), V. 24; Cal. IV. 26; (1879), IV. 25, cl. 5; Col. (1876), V. 25; Fl. IV. 17; Ill. IV. 22; Ind. IV. 22, cl. 5; Iowa, III. 27; Kan. II. 18; Ky. II. 32; La. 113; Md. III. 33; Mich. IV. 26; Minn. IV. 28; Miss. IV. 22; Mo. IV. 27; (1875), IV. 53, cl. 13; Neb. II. 22; (1875), III. 15; Nev. IV. 20, cl. 5; N. J. IV. 7; N. Y. I. 10; N. Car. II. 12; O. II. 32; Or. IV. 23, cl. 5; S. Car. XIV. 5; Tenn. XI. 4; Tex. XII. 13, 37; (1876), III. 56, cl. 12; Va. V. 20; W. Va. VI. 39; Wist IV. 24.

One of the amendments of 1838 (Art. I. § 14, of the old Constitution), which was superseded by the above provision, was as follows: "The Legislature shall not have power to enact laws annulling the contract of marriage, in any case where by law the courts of this Commonwealth are, or hereafter may be, empowered to decree a divorce."

"It is the opinion of this Committee, that the dissolving of the bonds of marriage is another very improper exercise of legislative power, and an intrusion upon the judicial branch, and that, instead of passing Acts occasionally, there should be a power given to proper judges of determining on such applications." *Report of a Committee to Council of Censors, adopted in Council*, 16 Aug. 1784. Conv. and Con. of Pa., pp. 88, 113.

See Cooley on Con. Lim. 109-13, and Cronise v. Cronise, 4 P. F. Sm. 255.

(14) Erecting new townships or boroughs, changing township lines, borough limits, or school districts. See clause (11) above.

Reported, Conv. Jour 344. Amended, 5 Conv. Deb. 249. Con. Mo. (1875), IV. 53, cl. 14, the same.

(15) Creating offices, or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election, or school districts. See clause (18) below.

COMPARE: Con. Fl. IV. 17; Mo. (1875), IV. 53, cl. 15; Tex. (1876), III. 56, cl. 13.

See Burns v. Clarion County, 12 P. F. Sm. 422.

(16) Changing the law of descent or succession.

COMPARE: Cal. (1879), IV. 25, cl. 30; Col. (1876), V. 25, cl. 21; Ill.

IV. 22, cl. 21; Mo. (1875), IV. 53, cl. 16; Neb. (1875), III. 15, cl. 22; N. J. (1875), Amdt. IV. 7, div. 11, cl. 6; Tex. (1876), III. 56, cl. 14; W. Va. VI. 39, cl. 14.

(17) (a) Regulating the practice or jurisdiction of, or changing the rules of evidence in, any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery, or other tribunals; (b) or providing or changing methods for the collection of debts or the enforcing of judgments, or prescribing the effect of judicial sales of real estate. See Art. V. § 26.

(a) COMPARE: Con. Cal. (1879), IV. 25, cl. 1, 3; Col. (1876), V. 25, cl. 6, 7, 8; Fl. IV. 17; Ill. IV. 22, cl. 7, 8; Ind. IV. 22, cl. 1, 2; Mo. (1875), IV. 53, cl. 17; Neb. (1875), III 15, cl. 7, 8; Nev. IV. 20, cl. 1, 3; N. J. (1875), Amdt. IV. 7, div. 11, cl. 4; N. Y. (1874), Amdt. III. 18, cl. 7; Or. IV. 23, cl. 1, 3; Tex. (1876), III. 56, cl. 15; W. Va. VI. 39, cl. 7.

(b) This division, added in Convention, upon motions made by Mr. Hay and Judge Ewing, both of Allegheny. 2 Conv. Deb. 604. Con. Mo. (1875), IV. 53, cl. 17, and Tex. (1876), III. 56, cl. 15, the same.

Certain retroactive, remedial Acts, confirmatory of irregular judicial sales, do not seem to be forbidden by this provision. Lane v. Nelson, 29 P. F. Sm. 407; Story on Con. (4th ed.) §§ 1957, 1958, and notes; Cooley, Con. Lim. 370-82; General validating Act of 28th April, 1876, P. Laws, 50; Act of 6th May, 1879, P. Laws, 48, "to validate a certain sale of real estate by the administrators of James Hess, deceased." An examination of this question of legislative power will be found in note at the end of this article.

JUDICIAL OPINION: (a) Burns v. Clarion Co., 12 Sm. 422; (b) Menges v. Wertman, 1 Barr, 218, citing several prior cases; Lane v. Nelson, 29 Sm. 407.

(18) Regulating the fees or extending the powers and duties of aldermen, justices of the peace, magistrates, or constables. See clauses (15) and (17) above.

Reported, Conv. Jour. 345. Considered and amended, 2 Conv. Deb. 604-5.

COMPARE: Con. Col. (1876), V. 25, cl. 7; Mo. (1875), IV. 18; Tex. (1876), III. 56, cl. 10. As to fees or compensation of such officers, Cal. (1879), IV. 25, cl. 29; Fl. IV. 17; Ill. IV. 22, cl. 20; Ind. IV. 22, cl. 14; N. J. (1875), Amdt. IV. 7, div. 11, cl. 5; N. Y. (1874), III. 18, cl. 10;

and as to their jurisdiction and duties, Fl. IV. 17; Ill. IV. 22, cl. 8; Ind. IV. 22; Neb. (1875), III. 15, cl. 8; Nev. IV. 20; Or. IV. 23.

(19) Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes. See clauses (2) and (15) above.

Reported, Conv. Jour. 345. Considered and amended, 2 Conv. Deb. 605-7.

COMPARE: Con. Cal (1879), IV. 25, cl. 27; Col. (1876), V. 25, cl. 13; Ill. IV. 22, cl. 13; Ind. IV. 22, cl. 13; Mo. (1875), IV. 53, cl. 19; Neb. (1875), III. 15, cl. 14; N. J. (1875), Amdt. IV. 7, div. 11, cl. 10; Tex. (1876), III. 56, cl. 17; Wis. IV. 31, cl. 8.

(20) Fixing the rate of interest.

COMPARE: Con. Cal. (1879), IV. 25, cl. 23; Col. (1876), V. 25, cl. 14; Ill. IV. 22, cl. 14; Ind. IV. 22, cl. 15; Mo. (1875), IV. 53, cl. 20; Neb. (1875), III. 15, cl. 15; N. Y. (1874), Amdt. III. 18, cl. 8; Or. IV. 22, cl. 12; Tex. (1876), III. 56, cl. 18; W. Va. VI. 39, cl. 15.

(21) Affecting the estates of minors or persons under disability, except after due notice to all parties in interest, to be recited in the special enactment.

Reported, Conv. Jour. 345. Amended on motion of Judge Woodward, 2 Conv. Deb. 609, by adding the second division. See also, 5 Id. 313.

COMPARE: Con. Ark. V. 39, 40; Cal. (1879), IV. 25, cl. 17; Col. (1876), V. 25, cl. 16; Ill. IV. 22, cl. 16; Ind. IV. 22, cl. 17; Mo. IV. 27; (1875), IV. 53, cl. 21; Neb. (1875), III. 15, cl. 17; Nev. IV. 20, cl. 13; N. J. (1875), Amdt. IV. 7, div. 7; Or. IV. 23, cl. 14; W. Va. VI. 39, cl. 11; Wis. IV. 31, cl. 4.

"It is absolutely necessary that the Legislature should have the power to sanction the conversion of estates owned by infants and others. *Per* Gibson, C. J., in Menges v. Wertman, 1 Barr, 223. But the Price Act of 18th April, 1853, P. Laws, 513, will, in most cases, afford relief without resort to the Legislature. And see clause (28) below.

(22) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the treasury.

COMPARE: Con. Cal. (1879), IV. 25, cl. 15, 26; Col. (1876), V. 25, cl. 19; Ill. IV. 22, cl. 19; Md. III. 33; Mo. (1875), IV. 53, cl. 22; Neb. (1875), III. 15, cl. 20; Tex. (1876), III. 56, cl. 20; W. Va. VI. 39, cl. 13.

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(23) Exempting property from taxation. See Art. IX. 1, 2.

COMPARE: Con. Cal. (1879), IV. 25, cl. 20; Ill. IV. 22, cl. 23; Md. III. 33; Mo. IV. 27; (1875), IV 53, cl. 23; Tenn. XI. 8; Tex. (1876), III. 56, cl. 21; W. Va. VI. 39, cl. 17; Wis. IV. 31, cl. 4.

See general exemption Act, 14 March, 1874, P. Laws, 158.

(24) Regulating labor, trade, mining, or manufacturing.

Adopted on motion of Mr. Kaine, of Fayette, 2 Conv. Deb 611. Con. Mo. (1875), IV. 53, cl. 24, and Tex. (1876), III. 56, cl. 22, the same.

(25) Creating corporations, or amending, renewing, or extending the charters thereof.

Numerous provisions forbidding or limiting the exercise of legislative power in the creation of private corporations by special laws, are contained in State Constitutions. Those of general prohibition most similar in terms to the above, or identical with it, are: Ark. V. 48; Iowa, VIII. 1, 12; Kan. XII. 1; Mo. (1875), IV. 53, cl. 25; Neb. Cor. 1; (1875), XI. Mis. Cor. 1; N. J. (1875), Amdt. IV. 7, div. 11, cl. 11; O. XIII. 1; Tenn. XI. 8; and like ones, but with express exception of municipal corporations, Ala. XIII. 1; (1875), XIV. 1; Cal. IV. 31; Me. (1875), Amdt. IV. P. 3, § 14; Mich. XV. 1; Minn. X. 2; Mo. VIII. 4; Nev. VIII. 1. See also, Ga. III. 6, div. 5; Ill. XI. 1; Md. XI. 13; III. 48; Mich. XV. 10; N. Y. VIII. 1; (1874), VIII. 4; N. Car. VIII. 1; Wis. XI. 1; and as to altering charters, Mich. XV. 8; Mo. VIII. 2.

It is believed that the word "corporations," in the above clause, has the meaning expressly assigned to the same word by Article XVI. § 13, and does not include municipal bodies.

EXECUTIVE OPINION: A bill passed at the session of 1881, supplementary to the charter of the Salisbury Railroad Company, authorizing that company to extend its road, increase its capital stock, and negotiate a loan, was vetoed by Governor Hoyt on the 30th of June, 1881, because it was held by him to violate the above provision of the Constitution. In his reasoning he rejects the argument made for the bill, that it had an implied and sufficient sanction in the second section of the 16th Article. But did not that bill also offend against the next following clause of this section? It gave a right to lay down a railroad track over an extended line, and was a special privilege to a private corporation. ART. 111.]

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(26) (a) Granting to any corporation, association, or individual any special or exclusive privilege or immunity; (b) or to any corporation, association, or individual the right to lay down a railroad track. See Art. XVII. \S 9.

Reported in two clauses, Conv. Jour. 345. Con. Cal. (1879), IV. 25, cl. 19; Mo. (1875), IV. 53, cl. 26, the same.

(a) COMPARE: Con. Ala. (1875), IV. 23; Ill. IV. 22, cl. 23; Neb. (1875), III. 15, cl. 24; N. J. (1875), Amdt. IV. 7, div. 11, cl. 7; N. Y. (1874), Amdt. III. 18, cl. 12; Tenn. XI. 8.

(b) COMPARE: Con. Ill. IV. 22, cl. 22; Mo. IV. 27; Neb. (1875), III. 15, cl. 23; N. Y. (1874), Amdt. III. 18, cl. 11; Tex. (1876), III. 56, cl. 28.

(27) (a) Nor shall the General Assembly indirectly enact such special or local law by the partial repeal of a general law; (b) but laws repealing local or special Acts may be passed.

(a) Amendment of Mr. Broomall, of Delaware County, 2 Conv. Deb. 611; 5 Id. 252. (b) Amendment of Mr. T. H. B. Patterson, of Allegheny, 2 Conv. Deb. 621-2; 5 Id. 258.

(b) Public notice of bills-to repeal local or special Acts is provided for and required by Act of 12 February, 1874, P. Laws, 43. But the validity of that Act—its binding force upon the Legislature—may well be questioned. The power to repeal local and special Acts is not limited by the Constitution, and to limit it by statute—to fix by law a prerequisite to its exercise which will largely impair its efficiency—is to cripple the power and impede its exercise. A legislative rule requiring such notice might be proper, for upon fit occasion it could be relaxed, and it could be amended or dispensed with after trial, without the inconvenience and delay attendant upon the amendment or repeal of a statute.

(28) Nor shall any law be passed granting powers or privileges, in any case, where the granting of such powers and privileges shall have been provided for by general law, nor where the courts have jurisdiction to grant the same, or give the relief asked for.

DERIVED in part: Second Amendment of 1864 (Art. XI. § 9, of the old Constitution): "No bill shall be passed by the Legislature granting any powers or privileges, in any case, where the authority to grant such powers or privileges has been, or may hereafter be, conferred upon the courts of this Commonwealth."

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JUDICIAL OPINION: Wolfe's Appeal, 8 Sm. 471; Church Street, 4 Sm. 353; Clinton Street, 2 Brew. 599; People v. Bowen, 21 N. Y. 517.

In the report of this 28th division of the section, by the Committee on Legislation, Jour. 345, there was included a prohibition upon the passage of any local or special law, "where a general law can be made applicable." (Con. Ark. (1874), V. 25; Cal. (1879), IV. 25, cl. 33; Col. (1876), V. 25, cl. 24; Fl. IV. 18; Ill. iv. 22, cl. 24; Ind. IV. 23; Iowa, III. 30, cl. 6; Kan. II. 17; Md. III. 33; Mo. IV. 27; (1875), IV. 53, cl. 32; Neb. (1875), III. 15, cl. 24; Nev. IV. 21; Tex. (1876), III. 56, cl. 29; W. Va. VI. 39, cl. 19.) But, upon full consideration, this clause was struck out upon second reading, 5 Conv. Deb. 253-6, and the division left to stand as above. Clauses corresponding to this omitted one, which now have place in the Constitutions of fourteen States, do not seem to be well advised; for not only are they unreasonably stringent and inconsistent with the specific enumeration of Acts forbidden, but they must tend to burden the statute book with unnecessary and sometimes mischievous laws of a general nature and application. "We should suppose that so stringent a provision would, in some of these cases, lead to the passage of general laws of doubtful utility, in order to remedy the hardships of particular cases." Cooley on Con. Lim. 128, in note.

In State v. Hitchcock, 1 Kansas, 178, it was held that the constitutional provision that "in all cases where a general law can be made applicable, no special law can be enacted," *left a discretion with the Legislature to determine the cases in which special laws should be passed*; and similar decisions have been made in other States whose Constitutions contain a like provision. Gentile v. the State, 29 Ind. 409; Marks v. Trustees Pardue University, 37 Id. 163; State v. County Court of Boone, 50 Mo. 317.

These decisions probably produced the provision in the Constitution of Missouri (1875), Art. IV. § 53, cl. 32. That clause at the end of an enumeration of special Acts forbidden, continues: "In all other cases where a general law can be made applicable no local or special law shall be enacted, and whether a general law could have been made applicable, in any case, is hereby declared a judicial question, and as such shall be judicially determined, without regard to any legislative assertion on that subject."

[Notice of local and special bills.]

Section 8. No local or special bill shall be passed unless notice of the intention to apply therefor shall have been

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published in the locality where the matter or the thing to be affected may be situated, which notice shall be at least thirty days prior to the introduction into the General Assembly of such bill, and in the manner to be provided by law; the evidence of such notice having been published shall be exhibited in the General Assembly before such Act shall be passed. See § 7, clause (21) above, and Art.

XVI. § 11.

Reported, Conv. Jour. 345. Considered and amended, 2 Conv. Deb. 622-3, 625-9; 5 Id. 267-8.

COMPARE: Con. Ala. (1875), IV. 24; Ark. (1874), V. 26; Mo. (1875), IV. 54; N. J. (1875), Amdt. IV. 7, div. 9; N. Y. (proposed, 1868); III. 24; N. Car. II. 14; Tex. (1876), III. 57.

STATUTE: The Act of 12th February, 1874, P. Laws, 43, entitled "An Act regulating the publication of applications for local or special legislation," provides fully for the enforcement of this section.

[Signing of bills by presiding officers.]

Section 9. The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the General Assembly, after their titles have been publicly read immediately before signing, and the fact of signing shall be entered on the journal.

Reported, Conv. Jour. 345. Considered and amended, 2 Conv. Deb. 629-31.

COMPARE: Con. Ala. IV. 15; (1875), IV. 27; Col. (1876), V. 26; Fl. IV. 15; Ga. 111. 4, div. 6; Ill. IV. 13; Ind. IV. 25; Iowa, 111. 15; Minn. IV. 21; Miss. IV. 23; Mo. IV. 23; (1875), IV. 37; Neb. II. 20; (1875), III. 11; Nev. IV. 18; N. Car. II. 25; O. II. 17; S. Car. II. 21; Tenn. II. 18; Tex. III. 24; (1876), III. 38.

Prior to 1874 the signing of bills and joint resolutions by the Speakers of the two Houses was the uniform practice, though such signing was not necessary to make them valid as laws. Speer v. Plank Road Co., 22 Pa. State R. 376; 2 Conv. Deb. 631. The practice appears to have been established by a resolution of the House of Representatives in 1790, adopted on motion of Mr. Gallatin, and to have been continued

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afterwards without any formal requirement in the rules of either House. Sutherland's Manual, 5th ed. p. 89.

The rule established by this section conforms to the practice of Congress under the eighth joint rule of the two Houses.

[Legislative officers and employés.]

Section 10. The General Assembly shall prescribe by law the number, duties, and compensation of the officers and employés of each House, and no payment shall be made from the State treasury, or be in any way authorized, to any person except to an acting officer or employé elected or appointed in pursuance of law.

Reported, Conv. Jour. 345. Considered and amended, 2 Conv. Deb. 631-2.

COMPARE: Con. Ala. (1875), IV. 28; Col. (1876), V. 27; Tex. (1876), III. 44.

STATUTE: The Act of 11th May, 1874, P. Laws, 129, is in execution of this section.

[No extra or *ex post facto* compensation to officers, employés, or contractors.]

Section 11. No bill shall be passed giving any extra compensation to any public officer, servant, employé, agent, or contractor after services shall have been rendered or contract made, nor providing for the payment of any claim against the Commonwealth without previous authority of law. See § 13 below.

COMPARE: Con. Ala. (1875), IV. 29; Ark. (1874), V. 27; Col. (1876), V. 28; Ill. IV. 19; Mo. (1875), IV. 48; Neb. (1875), III. 16; N. Y. (Amdts. 1874), III. 24; VIII. 3, at end; (proposed, 1868, III. 17); Tex. (1876), III. 44, 53; W. Va. VI. 38. No appropriation to claim more than six years old: Wis. Amdt. of 1877.

EXECUTIVE OPINION: In signing the general appropriation Act of 9th June, 1881, P. Laws, 134, Governor Hoyt appended an objection, upon constitutional ground, to the second proviso of the second section, which gave additional compensation to officers and employés of the Legislature; holding that proviso to be in "palpable violation" of the above constitutional section. He might also have added, that it was

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opposed to the plain intent and purpose of the 13th and 15th sections of this Article, for it increased the salary or emoluments of those officers and employés, and was not simply an appropriation of money suited to inclusion in the bill, but a provision fixing official pay and falling within the scope and purview of the 3d section of this Article. Although the Governor's objection to the proviso was well taken, he does not appear to have formally enforced it under his authority, conferred by the 16th section of the fourth Article, to veto "any item or items of any bill making appropriations of money, embracing distinct items," because of a doubt as to the separable character of the provision in question. P. Laws, 145-6. But surely this doubt need not have been entertained, and would have disappeared upon a careful consideration of the bill and of the veto provision above referred to, contained in the fourth Article. The bill in its second section, after making an appropriation in gross (or so much thereof as might be necessary), for the expenses of the Legislature, including "the pay and mileage of the clerks and other employés of both Houses," which pay and mileage were already fixed by the legislative compensation Act of 1874, undertook to declare in the second proviso, "that each officer and employé of the Senate and House of Representatives shall be paid pro rata, according to their respective salaries, for every day exceeding 100 days." As the compensation Act of 1874, P. Laws, 130, in the main fixed annual or session salaries-round sums-for pay of legislative officers and employés, the intended effect of the proviso was to increase their pay by computing their salaries as earned by 100 days of service and allowing them daily pay afterwards. This was evidently as separable, independent, and distinct a provision as any one contained in the bill; it was substantially a distinct item embraced therein, and its removal would have left all other parts of the bill operative and unimpaired.

The proviso was, virtually, both an appropriation and an amendment of the pay Act of 1874, and in both aspects unconstitutional; in the former, because it gave *extra compensation* to, and *increased the salary* or *emoluments* of, public officers and employés, after their appointment and after service rendered; and in the latter, for the same reasons and for the additional one that it was out of place and unauthorized in a general appropriation bill.

[Public printing, furnishing supplies, etc., to be by contract.]

Section 12. All stationery, printing, paper, and fuel used in the legislative and other departments of government shall be furnished, and the printing, binding, and distri-

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buting of the laws, journals, department reports, and all other printing and binding, and the repairing and furnishing the halls and rooms used for the meetings of the General Assembly and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as shall be prescribed by law. No member or officer of any department of the government shall be in any way interested in such contracts, and all such contracts shall be subject to the approval of the Governor, Auditor General, and State Treasurer.

COMPARE: Con. Ala. (1875), IV. 30; Ark. (1874), XIX. 15; Col. (1876), V. 29; Ill. IV. 25; Mich. IV. 22; Neb. II. 22; O. XV. 2; Or. IX. 8; S. Car. XIV. 7; Tex. (1876), XVI. 21; W. Va. VI. 34; Wis. IV. 25.

STATUTES: The Act of 16th March, 1874, P. Laws, 45, and its supplement of 4th May, 1876, P. Laws, 99, are in part execution of this section; also, the elaborate Act of 1st May, 1876, P. Laws, 68, relating to public printing and binding and supply of paper therefor, and its supplement of 23d March, 1877, P. Laws, 27; and the Act of 12th June, 1879, P. Laws, 151, relating to contracts for supplies to the Legislature and the various departments of the State government.

[No extension of official terms, or change of official compensation.]

Section 13. (a) No law shall extend the term of any public officer, (b) or increase or diminish his salary or emoluments after his election or appointment. See § 11 above.

COMPARE: (a) Con. Ill. IV. 28; Mo. (1875), XIV. 8; W. Va. VI. 37; (b) Con. Col. (1876), V. 30; Ill. IV. 22, cl. 20; Ind. IV. 29; Mo. (1875), XIV. 8; V. 24; VI. 33; Neb. (1875), III. 16; N. J. (Amdt. 1875), IV. 7, div. 11, cl. 5; N. Y. (Amdt. 1874), III. 24; X. 9; (proposed, 1868, III. 17); W. Va. VI. 38.

JUDICIAL OPINION: Commonwealth v. Mann, 5 W. & S. 403; Brooke v. Com., 5 Norris, 163; 5 W. N. C. 416; Erb v. Com., 8 W. N. C. 9; Donohugh v. Roberts, 11 W. N. C. 186; Baldwin v. Philadelphia, 38 Leg. Intel. 157, 469; Crawford County v. Nash, 39 Leg. Intel. 296.

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[Revenue bills.]

Section 14. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.

DERIVED : Constitution of 1790, Article I. § 20; Constitution of the United States, Article I. § 7.

COMPARE: Con. Ala. IV. 15; (1875), IV. 31; Ark. V. 19; Col. (1876), V. 31; Del. III. 14; Ga. III. 3, div. 6; Ind. IV. 17; Ky. II. 30; La. 43; Me. IV. P. III. 9; Mass. P. II. c. 1, §§ 3, 7; Minn. IV. 10; Neb. (1875), III. 9; N. H. P. II. 18; N. J. IV. 6, div. 1; Or. IV. 18; S. Car. II. 18; Vt. Amdt. 3. But the common original source of all these provisions in American Constitutions is the law of Parliament. See Cooley, Con. Lim. 131; Story on Con. §§ 874-80.

The provision does not seem to be necessary, and is excluded from the following Constitutions: Cal. IV. 16; Fl. IV. 12; Ill. IV. 12; Iowa, III. 15; Kan. II. 12; Mich. IV. 13; Miss. IV. 23; Mo. IV. 23; (1875), IV. 26; Neb. II. 18; Nev. IV. 16; N. Y. III. 13; O. II. 15; Tenn. II. 17; Tex. III. 23; (1876), III. 31; Va. V. 9; W. Va. IV. 28; Wis. IV. 19.

[Appropriation bills.]

Section 15. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judiciary departments of the Commonwealth, interest on the public debt, and for public schools; all other appropriations shall be made by separate bills, each embracing but one subject. See § 3, ante.

COMPARE: Con. Ala. (1875), IV. 32; Ark. (1874), V. 30; Cal. (1879), IV. 29, 34; Col. (1876), V. 32; Fl. IV. 30; Ill. IV. 16; Mo. (1875), IV. 28; Neb. (1875), III. 19, cl. 3; Or. IX. 7; Tex. (1876), III. 35; W. Va. VI. 45.

[Payments from the treasury.]

Section 16. (a) No money shall be paid out of the treasury except upon appropriations made by law, (b) and on warrant drawn by the proper officer in pursuance thereof.

DERIVED: (a) Constitution of 1790, Art. I. § 22; Con. U. S. Art. I. § 9, cl. 6.

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COMPARE: Con. Ala. IV. 31; (1875), IV. 33; Ark. X. 8; (1874), V. 29, XVI. 12; Cal. IV. 23; (1879), IV. 22; Col. (1876), V. 33; Del. II. 15; Fl. IV. 16, XII. 4; Ga. III. 6; Ill. IV. 17; Ind. X. 3; Iowa, III. 24; Ky. VIII. 5; La. 104; Md. III. 32; Mich. XIV. 5; Minn. IX. 9; Miss. IV. 26; Mo. XI. 6; Neb. II. 30; (1875), III. 22; Nev. IV. 19; N. J. IV. 6; N. Y. VII. 8; N. Car. XIV. 3; O. II. 22; Or. IX. 4; S. Car. II. 22, IX. 4; Tenn. II. 24; Vt. P. II. 17; Va. X. 10; Wis. VIII. 2, Amdt. of 1877. See Story on Con. §§ 1346-9.

(b) Con. Ala. (1875), IV. 33; Ill. IV. 17; Me. V. P. IV. 4; Mass. P. II. c. I. § 1. Art 2; Neb. (1875), III. 22; N. H. P. II. 56.

[Appropriations to charitable and educational institutions.]

Section 17. No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of twothirds of all the members elected to each House.

Reported, Conv. Jour. 346. Considered and amended, 2 Conv. Deb. 636-48.

COMPARE: Con. Ala. (1875), IV. 34; Col. (1876), V. 34; La. 140.

See the next two sections, which, with this section, and Article X., on Education, cover the whole subject of State appropriations to educational and charitable uses, and form a general and, upon the whole, judicious scheme of constitutional regulation.

[Appropriations for charitable purposes, etc., limited.]

Section 18. No appropriations (except for pensions or gratuities for military services) shall be made for charitable, educational, or benevolent purposes to any person or community, nor to any denominational or sectarian institution, corporation, or association. See §§ 17 and 19, and Art. X. post.

Propositions of Mr. Beebe and Mr. Simpson, Conv. Jour. 73, 75. Section reported, Id. 346. Considered, 2 Conv. Deb. 648-63, 665-83, 685-96; 5 Id. 269-91; 7 Id. 373-8, 381-8, 393-4. The Convention amended the section by inserting the exception of "pensions and gratuities for military services." 2 Deb. 696.

COMPARE: Con. Cal. (1879), IV. 22, 30, 31; Col. (1876), V. 34; Mo. IX. 10; (1875), IV. 46, 47; IX. 6; Tex. (1876), I. 7; III. 51, 52; XVI. 6. And see references under § 2, Art. X., for other prohibitions of appropriations of public money to sectarian schools.

CONSTRUCTION: The word "community" in the above section was used by the Convention in a social or political sense to indicate a body of inhabitants in a city, town, district, or other place or division of the State; and it was specially intended that for such communities "calamity Acts"—Acts of relief for losses by fire, flood, and like causes, involving appropriations from the State treasury—should not be passed. Such appropriations cannot be made to a body of inhabitants, or to individuals among them, at any time or place. The provision is not confined to calamity Acts, but its application to them was beyond question a leading object of the Convention.

But it need not be conceded that either this section or the second section of the ninth Article will wholly prevent the Legislature from extending relief to a community or to individuals smitten by calamity. A town swept by flood or fire might justly be exonerated from the payment of taxes for a limited time without offending against the spirit and true construction of the Constitution. Following such destruction of property, without fault of the owners, and beyond adequate relief from insurance, a just government may properly, within reasonable limits, refrain from collecting the taxes it is forbidden to restore.

The larger object of this section, however, is to prevent all appropriations from the State treasury to denominational or sectarian purposes or uses. The words are comprehensive and must be taken in their full force. No appropriation to any individual, community, denominational or sectarian institution, corporation, or association, for charitable, educational, or benevolent purposes, shall be made. All trusts and other devices having in view the accomplishment indirectly of the forbidden purpose are as much and as plainly forbidden as direct and open appropriations.

EXECUTIVE OPINION: A bill passed at the legislative session of 1881, which appropriated \$10,000 from the State treasury to the Milton school district to assist in the re-erection of public school buildings destroyed by the calamitous fire of May 14, 1880, was vetoed by Gov. Hoyt, on 30th June, 1881, upon the ground that it was in violation of the above section of the Constitution.

[Appropriations for widows and orphans of soldiers.]

Section 19. The General Assembly may make appropriations of money to institutions wherein the widows of

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soldiers are supported or assisted, or the orphans of soldiers are maintained or educated; but such appropriations shall be applied exclusively to the support of such widows and orphans.

Adopted on motion of Gov. Curtin, 5 Conv. Deb. 327-9. Considered and amended, 7 Id. 352-6. See Constitution of California (1879), IV. 22.

[Power over municipal administration not to be delegated to any commission, or private corporation or association.]

Section 20. The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise, or interfere with any municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever. See Art. XV. § 2.

Reported, Conv. Jour. 346. Considered and amended, 2 Conv. Deb. 696-708; 5 Id. 291-2. At page 708 of second volume of Debates, the section as amended is incorrectly given as retaining the word "public," instead of the inserted word, "municipal." See Id. p. 700.

COMPARE: Con. Col. (1876), V. 35.

JUDICIAL OPINION: Baird v. Rice, 13 Sm. 489; Perkins v. Slack, 5 Norris, 270; 4 W. N. C. 167.

[No limitation of damages for certain injuries, nor of time for bringing suits therefor.]

Section 21. (a) No Act of the General Assembly shall limit the amount to be recovered for injuries resulting in death, or for injuries to person or property, and in case of death from such injuries the right of action shall survive and the General Assembly shall prescribe for whose benefit such actions shall be prosecuted. (b) No Act shall prescribe any limitation of time within which suits shall be brought against corporations for injuries to persons or property, or for other causes, different from those fixed by general laws regulating actions against natural persons, and such Acts, now existing, are avoided.

(a) Reported, Conv. Jour. 346. Considered and amended, 2 Conv. Deb. 727-44; 5 Id. 292-3. Copied, Con. of Arkansas (1874), V. 32.

(b) Amendment of Mr. Biddle, of Philadelphia; 2 Conv. Deb. 727-40; and see 5 Id. 292-3. See, also, Constitution of Texas (1876), III. 56, cl. 27.

JUDICIAL OPINION: Kay v. Penna. Railroad Co., 15 Sm. 277; Cleveland and Pittsburgh Railroad Co. v. Rowan, 16 Sm. 393; Books v. Borough of Danville, 14 Norris, 158; 9 W. N. C. 339; Philada. and Reading Railroad Co. v. Boyer, 1 Outerbridge, 91; 9 W. N. C. 497.

[Investment of trust funds.]

Section 22. No Act of the General Assembly shall authorize the investment of trust funds by executors, administrators, guardians, or other trustees, in the bonds or stock of any private corporation, and such Acts now existing are avoided, saving investments heretofore made.

Amendment of Mr. Biddle, of Philadelphia, 2 Conv. Deb. 744-9. Considered, 5 Id. 293-8, 299-308.

COMPARE: Con. Ala. (1875), IV. 35; Col. (1876), V. 26.

[Changes of venue.]

Section 23. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law. See § 7, clause (4), ante.

Considered, 2 Conv. Deb. 749-52. See Brack. Law, Mis. 191-2.

COMPARE: Con. Ala. (1875), IV. 36; Ark. V. 30; Col. (1876), V. 37; Del. I. 9; Ga. V. 12; div. 2; La. 112; Ky. II. 38; Miss. XIII. 4; Mo. XI. 12; N. H. part I. 17; S. Car. V. 2; Tex. XII. 10; (1876), III. 45; W. Va. III. 14.

STATUTES: The Act of 18th March 1875, P. Laws 30, "to authorize changes of venue in criminal cases," and the Act of 30th March, 1875, P. Laws, 35, "relating to and authorizing changes of venue in civil cases," are in execution of this section. The Act of 22d May, 1878, P. Laws, 98, provides for changes of venue in certain cases of actions to recover purchase-money of real estate; and the Act of 25th May, 1878, P. Laws, 154, relates to cases where a near relative of the local judge shall be interested in the event of a suit. JUDICIAL OPINION: Lewis and Nelson's Appeal, 17 Sm. 153; Watson v. Chester and Delaware River Railroad Co., 2 Norris, 254; Passenger Railway Co. v. Bodrou, 11 Norris, 475; Central Railroad of N. J. v. Cook, 1 W. N. C. 319.

[No obligation of any corporation to the State to be released, etc., without payment into the treasury.]

Section 24. No obligation or other liability of any railroad or other corporation, held or owned by the Commonwealth, shall ever be exchanged, transferred, remitted, postponed, or in any way diminished by the General Assembly; nor shall such liability or obligation be released, except by payment thereof into the State treasury.

Reported, Conv. Jour. 346. Considered and amended, 2 Conv. Deb. 753.

COMPARE: Con. Ark. (1874), V. 33; Col. (1876), V. 38; Ill. IV. 23, and section entitled "Illinois Central Railroad" (separately submitted to a popular vote along with Constitution of 1870, and adopted by a majority of 125, 722); Mo. (1875), IV. 50, 51; Tex. (1876), III. 55.

[Limitation of Legislative power at special sessions.]

Section 25. When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session.

Amendment of Mr. Hay, of Allegheny, 2 Conv. Deb. 754. Considered, 5 Id. 308.

COMPARE: Con. Ala. (1875), IV. 37; Cal. (1879), V. 9; Fl. V. 8; Ill. V. 8; Mich. IV. 15; Mo. V. 7; (1875), IV. 55; Neb. II. 12; (1875), V. 8; Nev. V. 9; N. Car. III. 9; Tenn. III. 9; Tex. (1876), III. 40.

CONSTRUCTION: The California Constitution has the cautionary clause that the Legislature may, at a called session, provide for the expenses of the session; but this incidental power would surely exist without being declared. It is true that under the Pennsylvania Constitution the Legislature cannot, at a called session, pass an Act to fix the compensation of members or officers for that session or future sessions, unless that subject shall have been submitted to them by the Governor's proclamation convening them, nor even with such submission except prospectively. (Compare with above section the eighth section of the

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second Article, and the tenth and three next following sections of this Article.) But an appropriation, *pursuant to existing law*, to pay the expenses of a called session, cannot be rightly regarded as "legislation" within the meaning of the above prohibition.

But can the Governor, at a called or special session, submit to the Legislature for consideration other subjects than those named in his proclamation convening the two Houses? Considering that the above section places a check upon the Legislature in his hands, to be discretionally exercised, and reading it in connection with the eleventh section of the fourth Article, it may be contended that he has such power, and that legislation consequent upon its exercise would be rightful and valid. To this argument, however, stands opposed the clear, emphatic language of the section itself, and several considerations of expediency or policy which may be supposed to have been had in view in its preparation and adoption. Were the power admitted to exist, the Governor might be subjected to solicitation and pressure throughout the session from parties and interests desiring legislation, combinations and intrigue in the Legislature to force the introduction of excluded subjects by action or nonaction upon pending ones would be invited, and the public would lose the advantage of prior knowledge by open proclamation of the subjects or measures to be introduced and considered. Independent, therefore, of the increased duration and expense of sessions which would probably result from an exercise of the power, the reasons against admitting the existence of the power appear to be satisfactory if not conclusive.

[Concurrent orders, resolutions, and votes to be presented to the Governor.]

Section 26. Every order, resolution, or vote, to which the concurrence of both Houses may be necessary, except on the question of adjournment, shall be presented to the Governor, and before it shall take effect be approved by him, or being disapproved shall be repassed by two-thirds of both Houses according to the rules and limitations prescribed in case of a bill. See Art. IV. § 15.

DERIVED: Constitution of 1790, Art. I. § 23; Con. United States, Art. I. § 7, clause 3.

COMPARE: Con. Ala. IV. 17; Ark. V. 35; (1874), VI. 16; Cal. (1879), IV. 16; Col. (1876), V. 39; Ga. IV. 2, div. 7; Ky. III. 23; La. 67; Mich. IV. 14; Minn. IV. 12; Miss. IV. 25; Mo. V. 10; (1875), V. 14; Tenn III. 18; Tex. IV. 26.

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CONSTRUCTION: The Constitution of Missouri is peculiar in excepting resolutions of the two Houses for going into joint session, and for amendment of the Constitution, from the general requirement that resolutions shall be presented to the Governor for his approval; but the inference therefrom that this exception was necessary, is not to be admitted. It has been several times determined by Congress that resolutions proposing amendments to the Constitution of the United States need not be sent to the President for his approval; and the better opinion is, that in the absence of an expressed constitutional requirement of executive approval, a resolution proposing the amendment of a State Constitution requires only the sanction of a legislative passage. See Art. XVIII. *post.*

In the practice of the Pennsylvania Legislature, bills and joint resolutions intended to have the effect of laws have been transmitted to the Governor for his approval, but concurrent resolutions, unless in exceptional cases, have not. The meetings of the two Houses in joint convention to perform any duty charged upon them by the Constitution or laws, the appointment of joint committees of investigation, and other concurrent action of the two Houses, have been authorized and regulated by resolutions which had no executive sanction. Of course, no mere concurrent resolution could appropriate money from the treasury, or have any effect as a statute law.

The above section, borrowed from the old Constitution, in view of the adoption of the first section of this Article, appears to be unnecessary: For as hereafter laws can be passed only in the form of bills, executive participation in their enactment is fully secured by the 15th section of the fourth Article. And it is observable, that in most of the State Constitutions no similar regulation appears.

[No State inspection of merchandise or manufactures.]

Section 27. No State office shall be continued or created for the inspection or measuring of any merchandise, manufacture, or commodity; but any county or municipality may appoint such officers when authorized by law.

Reported, Conv. Jour. 346. Considered, 2 Conv. Deb. 709-18; 720-27, rejected; new section agreed to, 3 Id. 73-5; but struck out, 7 Id. 399-401; Admt. of Mr. Wetherill, of Philadelphia, 7 Id. 413, 414-17.

COMPARE: Con. Ala. (1875), IV. 38; Cal. (1879), XI. 14; N. Y. V. 8.

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[Changing location of State Capital.]

Section 28. No law changing the location of the Capital of the State shall be valid until the same shall have been submitted to the qualified electors of the Commonwealth, at a general election, and ratified and approved by them.

Proposition of Mr. Bailey, of Huntingdon, Conv. Jour. 171; Resolution of Mr. Kaine, of Fayette, Id. 695. Reported, Id. 817, 1040. Considered, 7 Conv. Deb. 230-36.

COMPARE: Con. Ala. (1875), IV. 39; Cal. (1879), XX. 1; Mo. (1875), IV. 56; Neb. (1875), separate Amdt. adopted by a vote of 20,042 to 12,517.

[Soliciting or receiving bribes by members of the Legislature.]

Section 29. A member of the General Assembly who shall solicit, demand, or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation, or person, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment or of personal advantage, or promise thereof, for his vote or official influence, or for withholding the same, or with an understanding expressed or implied that his vote or official action shall be in any way influenced thereby; or who shall solicit or demand any such money or other advantage, matter, or thing aforesaid, for another, as the consideration of his vote or official influence, or for withholding the same; or shall give or withhold his vote or influence in consideration of the payment or promise of such money, advantage, matter, or thing to another, shall be held guilty of bribery within the meaning of this Constitution, and shall incur the disabilities provided thereby for said offence, and such additional punishment as is or shall be provided by law. See §§ 30, 31, and 32 below.

Reported, Conv. Jour. 347. Considered, 2 Conv. Deb. 797-9; 3 Id. 5-21, amended; 7 Id. 362-73, 389-93, 398-9, 408-13.

COMPARE: Con. Ala. (1875), IV. 40; Ark. (1874), V. 35; Cal. (1879), IV. 35; Md. III. 50; Tex. III. 32; (1876), XVI. 41; Vt. part II. 19.

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[Bribing of public officers or members of the Legislature.]

Section 30. Any person who shall directly or indirectly offer, give, or promise any money or thing of value, testimonial, privilege, or personal advantage, to any executive or judicial officer, or member of the General Assembly, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law. *Compare* §§ 29, 31, and 32.

Reported, Conv. Jour. 347. Considered, 3 Conv. Deb. 21-2, and see references to 7th volume of Debates under § 29, above.

COMPARE: Con. Ala. (1875), IV. 41; Ark. (1874), V. 35; Cal. (1879), IV. 35; Col. (1876), V. 41; Tex. III. 32; (1876), XVI. 41.

Laws agreed upon in England, § 17: "All briberies and extortions, whatsoever, shall be severely punished." See Bribery Act of 3d March, 1847, P. Laws, 217.

JUDICIAL OPINION: Charge of Judge Pearson to grand jury, 7 W. N. C. 306; Commth. v. Petroff, 2 Pearson's Decisions, 534; 8 W. N. C. 212.

[Solicitation of members of the Legislature or public officers.]

Section 31. The offence of corrupt solicitation of members of the General Assembly, or of public officers of the State, \approx cf any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment. See §§ 29 and 30 above, and § 32 below.

Section indicated in debate, 7 Conv. Deb. 368; motion of Mr. Funck, of Lebanon, rejected, Id. 401; Amdt. of Mr. Buckalew, 7 Id. 421-4, amended 434.

COMPARE: Con. Ala. (1875), IV. 42; Cal. (1879), IV. 35; Col. (1876), V. 42.

STATUTE: The Act of 29th April, 1874, P. Laws, 115, entitled "An Act defining the offence of corrupt solicitation of members of

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"§ 1. That any person or persons who shall, directly or indirectly, by offer or promise of money, office, appointment, employment, testimonial, or other thing of value, or who shall by threats or intimidation, endeavor to influence any member of the General Assembly, State, county, election, municipal, or other public officer, in the discharge, performance, or non-performance of any act, duty, or obligation pertaining to such office, shall be guilty of the offence of corrupt solicitation, and liable to an indictment for a misdemeanor, and on conviction thereof shall be sentenced to pay a fine not exceeding \$1000, and to undergo imprisonment not exceeding two years, at the discretion of the court.

"§ 2. That any occupation or practice of solicitation of members of either House of the General Assembly, or of public officers of the State, or of any municipal division thereof, to influence their official action, shall be deemed a misdemeanor, and any person convicted thereof shall be punished as provided by the preceding section : *Provided*, That any open address upon or explanation of any measure or question before either House of the General Assembly, or any committee or member thereof, or before any municipal council, or board, or committee thereof, or before any public officer, shall not be held to be solicitation within the meaning of this section."

CONSTRUCTION: The Act of 1874 correctly distinguishes corrupt solicitation from an occupation or practice of solicitation, which latter is made a substantive and independent offence. The lobbyist or borer may be punished for his occupation or practice without proving against him that his action or his intentions have been mercenary or corrupt. It is his employment, his intermeddling with the public service, that is forbidden and is to be punished. Where the laws are made, and wherever public business is transacted by public officers, the illegitimate solicitant of official favor and pervertor of official action is to be unknown or to be struck at when he appears. It will be sufficient for the conviction of one charged with this offence that he shall have practised solicitation under circumstances not expressly allowed for by the statute, or excluded from condemnation by a fair construction of the Constitu-A single act of solicitation (though it may on other grounds be tion. punishable, if corrupt) will not constitute a "practice," nor will any open address or argument to a House, committee, board, or officer, constitute "solicitation;" but the acts condemned by the Constitution and by the statute need not be continuous or frequently repeated and thus constitute an occupation or business; nor need they be wholly clandestine and secret. An individual may practise solicitation without establishing an occupation for himself—without making it his sole, continuous, or principal employment—and yet contribute to that debauchment of public life against which it was the intention of the Constitution to guard, and obviously solicitation which is neither "an address upon or explanation of a measure or question," may be open and undisguised.

[Witnesses in cases of bribery and solicitation-Punishment for those offences.]

Section 32. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offence of bribery, or corrupt solicitation, or practice of solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony; and any person convicted of either of the offences aforesaid, shall, as part of the punishment therefor, be disqualified from holding any office or position of honor, trust, or profit in this Commonwealth. See next three preceding sections, and Art. VIII. 10.

Reported, Conv. Jour. 347. Considered and amended, 3 Conv. Deb. 22-8; 5 Id. 312-13; 7 Id. 434-5.

COMPARE: Con. California (1879), IV. 35.

CONSTRUCTION: This section is plainly legislative, requiring no Act of Assembly for its exposition or enforcement beyond the general laws which relate to recusant or refractory witnesses, and those which confer authority upon courts of criminal jurisdiction to impose sentences in cases of conviction. The disqualification for office, declared in the last clause, will be the legal consequence of any conviction for either of the offices covered by the 29th, 30th, and 31st sections, and should be judicially pronounced as a part of the sentence.

[Interested members shall not vote.]

Section 33. A member who has a personal or private interest in any measure or bill, proposed or pending before

mischief to be guarded against, was much more likely to be provided for by the Convention than the protection of the estates of persons of sound mind and of mature age.

But an important if not a decisive fact remains to be mentioned. The Convention, after full consideration, refused to prohibit the passage of retroactive, remedial laws. 3 Conv. Deb. 28; Id. 313. An amendment, proposed and supported in debate, was as follows:—

"The Legislature shall have no power to pass retrospective laws, but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties and officers, by curing omissions, defects, and errors in instruments and proceedings arising out of their want of conformity with the laws of the State." In committee of the whole this amendment was agreed to without a formal division, upon the suggestion that it should be further considered and be deliberately acted upon on second reading; but when reached on second reading, it was strongly condemned in debate, and voted down without any dissent to such disposition of it apparent upon the record. And this rejection was put by Judge Woodward upon the ground that the legislative power of curing defects in titles was indispensable in a great community at times to cure mere formal defects By adopting the section, they that can be cured in no other way. would deny to the Legislature the power by a retrospective Act of taking out of the title of an estate, a difficulty which could be taken out in no other way-a power which had never been abused in Pennsylvania, so far as he knew. It had been used in multitudinous instances, greatly to the advantage of widows and children, and it doubtless would be so used in the future, unless they denied the power to the Legislature. The power was very indispensable. 5 Conv. Deb. 313. Upon a previous occasion (2 Conv. Deb. 610), he had pointed out the impossibility of devising general laws to cover all cases demanding relief. "In point of fact, cases of sporadic, individual hardship would occur which could not be anticipated. We did not know when they would arise, and that was the reason why power to relieve them must reside somewhere in the State, if they meant that the people should be a free people. That was the reason why Parliament possess it in Great Britain, and our Legislature ought to possess it here."

But granting the necessity that this remedial power shall reside in the Legislature, where it was most deliberately left by the Convention, the question arises, Is it not greatly liable to abuse? Certainly, within the bounds defined for it by Judge Paxson, in Lane v. Nelson, and subject to the stringent limitations of the new Constitution, it is not a dangerous power, and can work no mischief. By the concluding division of this 7th section of the 3d Article, no remedial bill can be passed where the courts have jurisdiction to give the relief asked for, and, by the next section, public notice must be given of such bill at least one month before its introduction, so that all parties concerned may be fully heard before its passage. The enlarged jurisdiction of the courts, in law and equity, in connection with sundry limitations of the Constitution, and the inconvenience and expense of appeals to the Legislature, will surely prevent the undue multiplications of bills of relief.

But upon the whole language of this clause in the 7th section, independent of its history and of the general argument above, it is plain that it can have no application to retroactive, curative laws. The effect of judicial sales is the subject-matter of the clause, whereas a proceeding of sale is the subject-matter of a curative, confirming Act. An Act may confirm or validate a sale-may cure a defect in the proceeding of sale, and cause the sale to take effect-while it does not determine what the effects or consequences of a sale shall be. In such case, the operation and results of the confirmed sale will be left to the general law of the State, and remain untouched. The fallacy of an objection to such an Act, founded upon this clause, consists in confounding a question of sale or no sale, as affected by the Act, with a perfectly distinct and subsequent question, with which the Act will have nothing to do. The Legislature may confirm a sale in a proper case, but cannot prescribe an effect for the confirmed sale different from that prescribed by the general law of the State.

When Mr. Corbett stated in debate (2 Conv. Deb. 604) that the Legislature could not change the effect of a judicial sale after it was made, he stated a just proposition, but one having no application to Acts confirming imperfect or irregular sales. His remarks referred to complete valid sales, whether made in regular course, or confirmed by special enactments. And from his point of view, therefore, the explanation of Judge Ewing, that his amendment related to special or local laws prescribing the effect of judicial sales which should be passed before such sales were made, was completely satisfactory. Such an amendment confined to the announced object would add to the Constitution a proper and salutary limitation of legislative power. What was spoken of then, and intended by both gentlemen in debate, was perfect or complete sales and the regulation of their effect as to liens or otherwise, while the question of curative legislation for imperfect sales was wholly unnoticed, because it was not involved in the amendment.

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ARTICLE IV.

THE EXECUTIVE.

SECTION	SECTION
1. Executive department.	13 When Lieutenant-Governor to act
2. The Governor.	as Governor.
3. Governor's term of office-Not re-	14. President pro tempore of the Senate.
electable.	15. The veto power.
4. The Lieutenant-Governor-Shall be	16. A partial veto allowed on appro-
President of the Senate.	priation bills.
5. Qualifications of Governor and	17. Chief Justice to preside on trial of
Lieutenant-Governor.	contested election of Governor or
6. Congressmen, etc., disqualified.	Lientenant-Governor.
7. Governor to be Commander-in-chief.	18. Secretary of the Commonwealth.
8. The Governor's appointing power.	19. Secretary of Internal Affairs.
9. The pardoning power.	20. Superintendent of Public Instruc-
10. The Governor may require informa-	tion.
mation of executive officers.	21. Terms of elected heads of depart-
11. Governor to give information, etc.,	ments.
to Legislature.	22. Seal of the State—All commissions
12. Governor may convene Legislature	to be signed and sealed.
or Senate.	

[Executive department.]

Section 1. The Executive department of this Commonwealth shall consist of a Governor, Lieutenant-Governor, Secretary of the Commonwealth, Attorney-General, Auditor-General, State Treasurer, Secretary of Internal Affairs, and a Superintendent of Public Instruction.

This section is new in the Constitution, defining for the first time the heads of the executive department of the Government. The Adjutant-General is not mentioned among the heads of departments, probably, because by virtue of § 7, *post*, the Governor is, himself, head of the military department as Commander-in-Chief. Before 1874, the heads of the sub-executive departments were, a Secretary of the Commonwealth, an Attorney-General, an Auditor-General, a State Treasurer, a Surveyor-General, and a Superintendent of Common Schools. For Constitutional changes as to the two last named officials, see §§ 19, 20, *post*, and Schedule, §§ 7, 8.

By the Constitution of 1776, c. ii. § 3, the supreme executive power was vested in a President and Council, whose election was provided for and their powers and duties defined in the two next following sections. But by that Constitution there was no executive veto.

Under the Colonial charters the executive power was exercised by the Governor and an executive Council, and the unqualified approval of the Executive was necessary for the enactment of laws. In the absence of the Governor his duties devolved upon a Lieutenant-Governor, appointed by him as his substitute or deputy.

[The Governor]

Section 2. (a) The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed. (b) He shall be chosen on the day of the general election by the qualified electors of the Commonwealth at the places where they shall vote for Representatives. The returns of every election for Governor shall be sealed up and transmitted to the seat of government directed to the President of the Senate, who shall open and publish them in the presence of the members of both Houses of the General Assembly. The person having the highest number of votes shall be Governor, but if two or more be equal and highest in votes, one of them shall be chosen Governor by the joint vote of the members of both Houses. (c) Contested elections shall be determined by a committee to be selected from both Houses of the General Assembly, and formed and regulated in such manner as See § 17. shall be directed by law.

Considered, 2 Conv. Deb. 333-40, 418; 5 Id. 203. Revised by Committee, Journal, 957-8, 976.

DERIVED: (a) Constitution of 1790, Art. II. §§ 1, 13; Con. U. S. Art. II. §§ 1, 3. See also, Con. 1776, e. ii. § 20; Charter of 1682, §§ 8, 9.

(b and c) Constitution of 1790, Art. II. § 2: "The Governor shall be chosen on the second Tuesday of October, by the citizens of the Commonwealth, at the places where they shall respectively vote for Representatives. The returns of every election for Governor shall be sealed up and transmitted

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rected by law,"

to the seat of government, directed to the Speaker of the Senate, who shall open and publish them in the presence of the members of both Houses of the Legislature. The person having the highest number of votes shall be Governor; but if two or more shall be equal and highest in votes, one of them shall be chosen Governor by the joint vote of members of both Houses. Contested elections shall be determined by a committee to be selected from both Houses of the Legislature, and formed and regulated in such a manner as shall be di-

CONSULT: (a) Story on Con. §§ 1410-29, 1564, 1569-71. See Hartrauft's Appeal, 4 Norris, 433; 5 W. N. C. 105.

STATUTE: By the Act of the 14th May, 1874, P. Laws, 150, the annual salary of the Governor is fixed at \$10,000. By the Constitution of 1790, Art. II. § 6, it was provided: "That the Governor shall at stated times receive for his services a compensation which shall be neither increased nor diminished during the period for which he shall have been elected." The retaining of this provision was rendered unnecessary by the adoption of the more comprehensive thirteenth section of the third Article, *ante*.

[Governor's term of office—Not re-electable.]

Section 3. The Governor shall hold his office during four years, from the third Tuesday of January next ensuing his election, and shall not be eligible to the office for the next succeeding term. See § 17, last clause.

Proposition of Mr. Broomall, of Delaware, Conv. Jour. 71. Reported, Id. 323. Considered, 2 Conv. Deb. 340-44; 5 Id. 203-5. Revised by Committee, Jour. 958, 976.

DERIVED: Constitution of 1790, Art. II. § 3: "The Governor shall hold his office during three years from the third Tuesday of December next, ensuing his election, and shall not be capable of holding it longer than nine in any term of twelve years."

Amendment of 1838 (Art. II. § 3): "The Governor shall hold his office during three years from the third Tuesday of January next ensuing his election, and shall not be capable of holding it longer than six in any term of nine years."

COMPARE: One year terms: Con. Conn. IV. 1; Me. V. 2; Mass. part 2, I. 2; N. H. part II. 41; R. I. VII. 1.

Two year terms: Con. Ala. V. 2; Col. (1876); IV. 1; Iowa, IV. 2; Kan. I. 2; Mich. V. 1; Minn. V. 3; Neb. (1875), V. 1; N. Y. IV. 1; O. III. 2; S. Car. III. 2; Tenn III 4; Tex. (1876), IV. 4; Vt. Amdt. XXIV. 2; Wis. V. 1 Three year term : Con. N. J. (Amdt. 1874), IV. 1.

Four year terms: Con. U. S. Art. II. § 1; Ark. VI. 1; Cal. (1879), V. 2; Del. III. 3; Fl. V. 2; Ga. IV. 1; Ill. VI. 1; Ind. V. 1; Ky. III. 2; La. 48; Md. II. 1; Miss. V. 1; Mo. (1875), V. 2; Nev. V. 2; N. Car. III. 1; Or. V. 1; Va. IV. 1; W. Va. VIII. 1.

Re-eligibility.—Governor cannot be re-elected for a next succeeding term : Con. Ind. V. 1; Mo. (1875), V. 2; N. J. V. 3; N. Car. III. 2; Va. IV. 1; W. Va. VII. 4. Cannot be elected a second time : Del. III. 3; ^oor for more than 8 years in 12: Or. V. 1; or for more than 6 years in 8: Tenn. III. 4.

CONSULT: Story on Con. §§ 1430-41; on re-eligibility, Id. §§ 1442-9; The Federalist, No. 71, by Hamilton; Madison's Writings, i. 190, 345-6; Jefferson's Works, vi. 213; Life of same by Randall, iii. 252.

[The Lieutenant-Governor-To be President of the Senate.]

Section 4. A Lieutenant-Governor shall be chosen at the same time, in the same manner, for the same term, and subject to the same provisions as the Governor. He shall be President of the Senate, but shall have no vote unless they be equally divided. See §§ 9, 13, 14, 17, and Schedule, § 6.

Proposition of Mr. Stanton, of Philadelphia, Conv. Jour. 77. Reported, Id. 323. See 7 Conv. Deb. 449.

By Constitution of 1776, chap. ii. § 19, a Vice-President of the Supreme Executive Council was to be chosen from among the members of the Council annually, "by the joint ballot of the General Assembly and Council," and by the following section he was to exercise the powers of the President of the Council when the latter should be absent. See Article II. § 14, of Constitution of 1790, amended in 1838.

COMPARE: Con. U. S. Art. I. § 3, div. 4.

CONSULT: Story on Con. §§ 733-40; 1450-52; Cushing, Law and Prac. Leg. Assemblies, §§ 300-319.

STATUTES: The Act of 24th March, 1874, P. Laws, 48, entitled "An Act providing for the election of Lieutenant-Governor, and fixing his salary," contains proper provisions indicated by the title. Salary, \$3000. By the general salary Act of 14th of May, 1874, P. Laws, 150, the same salary is again fixed. By a subsequent Act the Lieutenant-Governor may receive postage stamps from the Clerk of the Senate to the same extent as a Senator. Contested elections of Lieutenant-Governor are to be tried and determined, as in the case of a contested election of Governor, by a committee selected from both Houses of the General Assembly, in the manner directed by the general contested elections Act of 19th May, 1874, P. Laws, 208, sections 20 to 37 inclusive.

[Qualifications of Governor and Lieutenant-Governor.]

Section 5. No person shall be eligible to the office of Governor, or Lieutenant-Governor, except a citizen of the United States, who shall have attained the age of thirty years, and have been seven years next preceding his election an inhabitant of the State, unless he shall have been absent on the public business of the United States or of this State.

DERIVED: Constitution of 1790, Art. II. § 4: "He" [the Governor] "shall be at least thirty years of age, and have been a citizen and inhabitant of this State seven years next before his election, unless he shall have been absent on the public business of the United States or of this State."

[Congressmen, etc., disqualified.]

Section 6. No member of Congress, or person holding any office under the United States or this State, shall exercise the office of Governor or Lieutenant-Governor.

Considered, 2 Conv. Deb. 344-7; 7 Id. 444.

DERIVED: Constitution of 1790, Art. II. § 5: "No member of Congress, or person holding any office under the United States or this State, shall exercise the office of Governor."

[Governor to be Commander-in-chief.]

Section 7. The Governor shall be Commander-in-chief of the army and navy of the Commonwealth, and of the militia, except when they shall be called into the actual service of the United States.

DERIVED: Constitution of 1790, Art. II. § 7; Con. of 1776, c. ii. § 20: ". The President" [of the Executive Council] "shall be Commander-inchief of the forces of the State, but shall not command in person except advised thereto by the Council, and then only so long as they shall approve thereof." Con. U. S. Art. II. § 2, div. 1.

CONSULT: Story on Con. §§ 1490-92; Cooley on Con. Lim. 116.

[The Governor's appointing power.]

Section 8. He shall nominate, and by and with the advice and consent of two-thirds of all the members of the Senate appoint a Secretary of the Commonwealth and an Attorney-General, during pleasure, a Superintendent of Public Instruction for four years, and such other officers of the Commonwealth as he is or may be authorized by the Constitution or by law to appoint. He shall have power to fill all vacancies that may happen in offices to which he may appoint, during the recess of the Senate, by granting commissions which shall expire at the end of their next session. He shall have power to fill any vacancy that may happen during the recess of the Senate in the office of Auditor-General, State Treasurer, Secretary of Internal Affairs, or Superintendent of Public Instruction, in a judicial office, or in any other elective office which he is or may be authorized to fill; if the vacancy shall happen during the session of the Senate, the Governor shall nominate to the Scnate before their final adjournment a proper person to fill said vacancy, but in any such case of vacancy in an elective office a person shall be chosen to said office at the next general election unless the vacancy shall happen within three calendar months immediately preceding such election, in which case the election for said office shall be held at the second succeeding general election. In acting on executive nominations the Senate shall sit with open doors, and in confirming or rejecting the nominations of the Governor, the vote shall be taken by yeas and nays, and shall be entered on the journal. See Art. VI. § 4.

Reported, Conv. Journ. 324. Considered and amended, 2 Conv. Deb. 347-51; 5 Id. 206-13; 7 Id. 443-4. See, also, 2 Conv. Deb. 385 to 391 for debate upon the question whether the office of Superintendent of Public Instruction should be filled by election or appointment.

DERIVED: Constitution of 1790, Art. II. §8: "He" [the Governor] "shall appoint all officers whose offices are established by this Constitution, or shall

be established by law, and whose appointments are not herein otherwise provided for."

Amendment of 1838 (Art. II. § 8): "He" [the Governor] "shall appoint a Secretary of the Commonwealth during pleasure, and he shall nominate, and by and with the advice and consent of the Senate, appoint all judicial officers of the courts of record, unless otherwise provided for in this Constitution. He shall have power to fill all vacancies that may happen in such judicial offices, during the recess of the Senate, by granting commissions which shall expire at the end of their next session: *Provided*, That in acting on executive nominations the Senate shall sit with open doors, and in confirming or rejecting the nominations of the Governor the vote shall be taken by yeas and nays." See, also, Art. VI. §§ 3, 8, for other amendments.

By the Judiciary Amendment of 1850 (Art. V. § 2), which made judgeships in courts of record elective offices, it was provided: That "any vacancies happening by death, resignation, or otherwise, in any of the said courts, shall be filled by appointment by the Governor, to continue till the first Monday of December succeeding the next general election."

Constitution of 1776, chap. ii. § 20: "The President" [of the Executive Council], "and in his absence the Vice-President, with the Council, five of whom shall be a quorum, shall have power to appoint and commissionate judges, naval officers, Judge of the Admiralty, Attorney-General, and all other officers, civil and military, except such as are chosen by the General Assembly or the people agreeable to this frame of government and the laws that may be made hereafter; and shall supply every vacancy, in any office, occasioned by death, resignation, removal, or disqualification, until the office can be filled in the time and manner directed by law or this Constitution."

Royal Charter to Penn, § 5: "And we do likewise give and grant unto the said William Penn and his heirs, and to his and their deputies and lieutenants, such power and authority to appoint and establish any judges and justices, magistrates and [other] officers whatsoever, for what causes soever, for the probates of wills and for the granting of administrations within the precincts aforesaid, and with what power soever, and in such form as to the said William Penn or his heirs shall seem most convenient."

See, also, Charter 1682, §§ 5, 17, 18; Charter 1701, § 3; Con. U. S. Art. II. § 2, div. 2, 3.

CONSULT: The Federalist, Nos. 75 and 76, by Hamilton; Story on Con. §§ 1524-59; Cooley on Con. Lim. 115-16 and note. Governor alone should appoint to small offices, Writings of Madison, i. 191; and Senate should not participate in making removal from office, Id. i. 474, 476-7, 479, 483-4, 487, 488; iv. 78, 368-9, 385. And see Com. v. King, 4 Norris, 103; Walsh v. Com., 8 Norris, 419; 7 W. N. C. 21; Com. v. Hanley, 9 Barr, 513; Taggart v. Commonwealth, decided in the Supreme Court, Feb. 19, 1883.

STATUTE: The Act of 15th May, 1874, P. Laws, 205, for filling official vacancies, not otherwise provided for, is as follows:---

"That in case of a vacancy happening by death, resignation, or

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otherwise, in any office created by the Constitution or laws of this Commonwealth, and where provision is not already made by said Constitution and laws to fill said vacancy, it shall be the duty of the Governor to appoint a suitable person to fill such office, who shall be confirmed by the Senate, if in session, and who shall continue therein and discharge the duties thereof till the first Monday of January next succeeding the first general election, which shall occur three or more months after the happening of such vacancy."

CONSTRUCTION: Rightly understood, this section confers no part of the appointing power upon the Senate, nor does it constitute any ground for implication in favor of senatorial participation in making removals from office. The appointing power is, in its nature, executive, and is properly vested in the Governor, whose duty it is to see that the laws are faithfully executed. To the proper performance of this duty, charged upon the Governor by the Constitution, it is necessary that he shall hold an appointing power as to non-elective offices, except local or subordinate ones, and that he shall fill vacancies in all such, and in important elective offices, until they can be regularly filled by election or appointment.

The check upon the appointing power placed in the hands of Senators does not render the Senate primarily responsible for appointments; that responsibility rests upon the Governor, for the power to select an appointee is exclusively his, and the ultimate appointment, made and evinced by the issuing of a commission, is, also, his act alone. The Senate cannot propose any one for selection to an office by the Governor, nor even constrain the Governor to appoint a person he may have named to them for their advice and consent, and to whose proposed appointment they have consented; in short, they have power to prevent appointments which they may consider objectionable, but have not power to cause any appointment whatever to be made.

That the Senate has no right or power to participate in the making of removals from office, otherwise than by address and by judgment pronounced in cases of impeachment, is perfectly clear. For whether the power to remove is to be implied from the power to appoint, or is to be considered a distinct, substantive power, it is beyond question an executive power, and the Senate as a legislative body can be concerned in its exercise no farther than it can show clear constitutional warrant. It is true that the executive power of removal may be regulated by statute; rules for its exercise may be prescribed and guards against its abuse established by law; but such regulations must not destroy or impair the power or remove it from the department of government to which it belongs.

Particular provisions of the Constitution for removal from office upon senatorial address, upon conviction on impeachment, or conviction in a court of justice of certain offences, are not exclusive of other remedies for maladministration, incompetency, or criminal conduct of public officers. If the remedy of removal could be resorted to or used by the Executive only in conjunction with one or both Houses of the Legislature, or at the end of protracted litigation in a court of justice, official delinquency and incompetency might run riot in the government service, unless frequent and expensive sessions of the Legislature, or of the Senate alone, were called by Executive proclamation. The tenure of some offices, and the manner of removing the incumbents pending terms of service are, for special reasons, specifically and unalterably fixed by the Constitution; but the regulations which apply to those offices and officers are exceptional, and are too plain to require debate.

The Governor's power of appointment is fixed and unalterable by statute as to the offices of Secretary of the Commonwealth, Attorney-General, and Superintendent of Public Instruction, and as to the filling of vacancies in various offices as described in the section, but otherwise his power of appointment must rest upon statutory law. It may be bestowed or taken away by law, but it cannot be vested in him by law, upon conditions or with limitations inconsistent with the nature of the power or with any of the provisions of the Constitution relating to public offices.

[The pardoning power.]

Section 9. He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence, and pardons, except in cases of impeachment; but no pardon shall be granted nor sentence commuted, except upon the recommendation in writing of the Lieutenant-Governor, Secretary of the Commonwcalth, Attorney-General, and Secretary of Internal Affairs, or any three of them, after full hearing upon due public notice and in open session; and such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the Secretary of the Commonwealth.

Propositions of Mr. Wetherill, of Philadelphia, and Mr. Stewart, of Frank-

lin, Conv. Jour. 73, 74. Reported, Id. 324. Considered and amended, 2 Conv. Deb. 351-64, 366-84; 5 Id. 213-17, 222-33; 7 Id. 446-7, 449-50.

DERIVED, in part: Constitution of 1790, Art. II. § 9: "He shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment."

Constitution of 1776, c. ii. § 20: The President and Executive Council "shall have power to grant pardons and remit fines, in all cases whatsoever, except in cases of impeachment; and in cases of treason and murder shall have power to grant reprieves, but not to pardon, until the end of the next session of the Assembly; but there shall be no remission or mitigation of punishment on impeachments, except by act of the Legislature."

Royal Charter to Penn, § 5: "And we do likewise give and grant unto the said William Penn and his heirs, and to his and their deputies and lieutenants, power and authority . . . to remit, release, pardon, and abolish, whether before judgment or after, all crimes and offences whatsoever committed within the said country against the said laws (treason and wilful and malicious murder only excepted, and in those cases to grant reprieves until our pleasure may be known therein), and to do all and every other thing and things which unto the complete establishment of justice, unto courts and tribunals, forms of judicature and manner of proceedings, do belong, although in these presents express mention be not made thereof; . . . saving and reserving to us, our heirs and successors, the receiving, hearing, and determining of the appeal and appeals of all or any person or persons, of, in, or belonging to the territories aforesaid, or touching any judgment to be there made or given."

COMPARE: Con. U. S. II. § 2, div. 1; Provisions in State Constitutions, collated, 2 Hough's Am. Con. 661-3; and the following Constitutions of recent adoption: Cal. (1879), VII.; Col (1876), IV. 7; Mo. (1875), V. 8; Neb. (1875), V. 13; Tex. (1876), IV. 11; W. Va. (1872), VII. 11.

CONSULT: Story on Con. §§ 1494-1504; Cooley, Con. Lim. 115-16 and notes; The Federalist, No. 73, by Hamilton.

JUDICIAL OPINION: Spalding v. Saxton, 6 Watts, 338; Hatzfield v. Gulden, 7 Watts, 155; Com. v. Denniston, 9 Watts, 142; Ex parte McDonald, 2 Whar. 440; Powell's Case, 8 W. & S. 97; Com. v. Shissler, 2 Philadelphia, 256; Shoop v. Com., 3 Barr, 126; Cope v. Com., 4 Casey, 297; Com. v. Ohio and Penna. R. R. Co., 1 Grant, 329; Aldrich v. Jessup, 3 Grant, 158; Com. v. Ahl, 7 Wright, 53; Com. v. Halloway, 8 Wright, 210; York County v. Dalhousen, 9 Wright, 372; Com. v. Hitchman, 10 Wright, 357; Schuylkill Co. v. Reifsnyder, Id. 446. ART. IV.]

[Governor may require information of executive officers.]

Section 10. He may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.

DERIVED: Constitution of 1790, Art. II. § 10; Con. U. S. Art. II. § 2, div. 1.

CONSULT: Story on Con. § 1493.

[Governor to give information, etc., to Legislature.]

Section 11. He shall, from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he may judge expedient.

DERIVED: Constitution of 1790, Art. II. § 11; Con. U. S. II. § 3. By the Constitution of 1776, c. ii. § 20, the President and Executive Council were "to prepare such business as might appear to them necessary, to lay before the General Assembly." See, also, Charter 1682, §§ 7, 14, 15, 19; Charter 1683, §§ 5, 13, 14, 17; Markham Charter, §§ 16, 17; Charter of 1701, § 2. Penn's original scheme for legislation was, that all bills should be prepared by the Governor and Council, and be proposed or submitted to the Assembly for consideration—for approval or rejection. A right in the Assembly to originate bills, appears for the first time in the provisional Markham Charter of 1696, but it received a full sanction in the Charter of 1701.

CONSULT: Story on Con. §§ 1560-61.

[Governor may convene Legislature or Senate.]

Section 12. (a) He may on extraordinary occasions convene the General Assembly, and in case of disagreement between the two Houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months. (b) He shall have power to convene the Senate in extraordinary session, by proclamation, for the transaction of executive business.

Reported, Conv. Jour. 324. Considered and amended, 7 Conv. Deb. 452-3; 8 Id. 427-8, 443-4.

DERIVED: (a) Constitution of 1790, Art. II. § 12; Con. U. S. Art. II. § 3. (b) Amendment of Governor Curtin, 8 Conv. Deb. 427.

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CONSULT: Story on Con. §§ 1562-3; Cooley on Con. Lim. 132, 155.

EXTRA SESSIONS: Extra sessions of the Legislature, convened by

1791, August 23 to September 30, 38 days, immediately following the adoption of a new Constitution, which introduced radical changes into the frame of government.

1793, August 27 to September 5, 9 days.

1794, September 1 to September 23, 24 days.

1797, August 28 to August 29, 2 days.

1800, November 5 to first Tuesday of December.

1829, November 3 to December 1, 28 days.

The two last-mentioned sessions only anticipated the ordinary time of meeting in annual session, which (until the amendments of 1838) was fixed by the Constitution on the first Tuesday of December. And it is to be noted that the regular session following the extra one of November, 1800, was greatly shortened thereby, ending on the 27th of February, 1801.

1857, October 6 to October 13, 8 days. That session was called by the Governor in consequence of the suspension of specie payments by the banks, and resulted in the passage of an Act "providing for the resumption of specie payments by the banks, and for the relief of debtors," and of six other Acts and two joint resolutions. P. Laws, 1858, pp. 617-18.

1861, April 30 to May 16, 17 days. Sessions in time of war.

1864, August 9 to August 25, 17 days.

It will be seen that the four extra sessions above mentioned, which have been held since the year 1800, had an aggregate duration of but 70 days, and an average duration of but $17\frac{1}{2}$.

[When Lieutenant-Governor to act as Governor.]

Section 13. In case of the death, conviction on impeachment, failure to qualify, resignation, or other disability of the Governor, the powers, duties, and emoluments of the office for the remainder of the term, or until the disability be removed, shall devolve upon the Lieutenant-Governor. See next section.

DERIVED: Constitution of Illinois, Art. V. § 17; but "absence from the State," which appears in the Illinois provision as one form of gubernatorial disability is omitted. See Con. U. S. Art. II. § 1, div. 6, as to the devolution

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upon the Vice-President, in certain cases, of the powers and duties of the presidential office.

Constitution of 1790, Art. II. § 14 : "In case of the death, or resignation of the Governor, or of his removal from office, the Speaker of the Senate shall exercise the office of Governor, until another Governor shall be duly qualified. And if the trial of a contested election shall continue longer than until the third Tuesday in December next ensuing the election of a Governor, the Governor of the last year, or the Speaker of the Senate, who may be in the exercise of the executive authority, shall continue therein until the determination of such contested election, and until a Governor shall be qualified as aforesaid."

Amendment of 1838 (Art. II. § 14): "In case of the death or resignation of the Governor, or his removal from office, the Speaker of the Senate shall exercise the office of Governor until another Governor shall be duly qualified; but in such case another Governor shall be chosen at the next annual election of Representatives, unless such death, resignation, or removal shall occur within three calendar months immediately preceding such next annual election, in which case a Governor shall be chosen at the second succeeding annual election of Representatives. And if the trial of a contested election shall continue longer than until the third Monday of January next ensuing the election of Governor, the Governor of the last year, or the Speaker of the Senate who may be in the exercise of the executive authority, shall continue therein until the determination of such contested election, and until a Governor shall be duly qualified as aforesaid."

[President pro tempore of the Senate.]

Section 14. In case of a vacancy in the office of Lieutenant-Governor, or when the Lieutenant-Governor shall be impeached by the House of Representatives, or shall be unable to exercise the duties of his office, the powers, duties, and emoluments thereof, for the remainder of the term, or until the disability be removed, shall devolve upon the President *pro tempore* of the Senate; and the President *pro tempore* of the Senate shall in like manner become Governor if a vacancy or disability shall occur in the office of Governor; his seat as Senator shall become vacant whenever he shall become Governor, and shall be filled by election as any other vacancy in the Senate. See § 13 above, and Art. II. § 9.

Reported, Conv. Jour. 324. Considered and amended, 7 Conv. Deb. 445. Revised, Jour. 958.

[The veto power.]

Section 15. Every bill which shall have passed both Houses, shall be presented to the Governor; if he approve he shall sign it, but if he shall not approve he shall return it with his objections to the House in which it shall have originated, which House shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration two-thirds of all the members elected to that House shall agree to pass the bill, it shall be sent with the objections to the other House, by which likewise it shall be reconsidered, and if approved by two-thirds of all the members elected to that House, it shall be a law: but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each House, respectively. If any bill shall not be returned by the Governor within ten days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly by their adjournment prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of the Commonwealth, and give notice thereof by public proclamation within thirty days after such adjournment. See next section, and Art. III. § 26.

Reported, Conv. Jour. 324-5. Considered and amended, 5 Conv. Deb. 233-8.

DERIVED: Constitution of 1790, Art. I. § 22, which was in substance the same, except that the vote in each House required to overrule a veto, was a vote of two-thirds of the House, and not of two-thirds of all the members elected thereto, and that the last division read as follows: "If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the General Assembly by their adjournment prevent its return, in which case it shall be a law unless sent back within three days after their next meeting."

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COMPARE: Con. U. S. Art. I. § 7, div. 2, 3. See also, Con. 1776, c. ii. §§ 2, 9; Charter 1682, §§ 1, 5, 7, 14; Charter 1701, § 4.

CONSULT: Story on Con. §§ 881-93; Cooley on Con. Lim. 153-4 and notes; The Federalist, No. 72, by Hamilton; Works of John Adams, vi. 438, for opinion of Roger Sherman; Writings of Madison, iv. 369; Speech of Senator Calhoun, 28th Feb. 1842, Works, iv. 74.

See Sank v. Philadelphia, 28 Leg. Intel. 316, 326.

REMARKS: The present section has made the executive veto much more operative and effectual than it was formerly, by requiring an increased proportionate vote in each House to overrule a veto, and by making an after-session veto unqualified and absolute; and by the next section the power is extended and made applicable to the separate divisions or items of appropriation bills.

The necessity and utility of this power, formerly questioned by some persons, can no longer be considered open to dispute. The power has been tried and not found wanting; it has won popular confidence in a high degree, and is now justly regarded as an indispensable feature of American Constitutions. In the Convention of 1873, no voice was raised in opposition to it, or for imposing any new and material limitations upon its exercise in future.

[A partial veto allowed on appropriation bills.]

Section 16. The Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

Reported, Conv. Jour. 325.

COMPARE: Con. Cal. (1879), IV. 16; Col. (1876), IV. 12; Ga. (1868), IV. 2, div. 6; Mo. (1875), V. 13; Neb. (1875), V. 15; N. J. (Amdt. 1875), V. 7; N. Y. (Amdt. 1874), IV. 9; Tex. (1869), IV. 25; (1876), IV. 14; W. Va. (1872), VII. 15.

The power conferred by this section was exercised by Governor Hoyt, in 1881, in the case of a bill making appropriations to the Western State Penitentiary. P. Laws, 119. The provision objected to was for discount on State warrants, drawn in favor of the institution. The veto, being an after-session one, was an absolute and final rejection of the item.

[Chief Justice to preside on trial of contested election of Governor or Lieutenant-Governor.]

Section 17. (a) The Chief Justice of the Supreme Court shall preside upon the trial of any contested election of Governor or Lieutenant-Governor, and shall decide questions regarding the admissibility of evidence, and shall, upon request of the committee, pronounce his opinion upon other questions of law involved in the trial. (b) The Governor and Lieutenant-Governor shall exercise the duties of their respective offices until their successors shall be duly qualified.

DERIVED: (a) Amendment of Mr. Buckalew, Conv. Jour. 592; 5 Conv. Deb. 238-9. (b) Section recast by Revision Committee, Jour. 958, and last clause added, derived Con. of 1790, Art. II. § 13 (numbered § 14 by arrangement of Amendments of 1838).

CONSTRUCTION: There is some appearance of inconsistency between this section and the thirteenth and fourteenth sections of this Article. Perhaps the second division of this section was borrowed from the old Constitution without due consideration of the changes to be produced in the executive department by the creation of the office of Lieutenant-Governor. In case of a contested election of Governor, when the trial shall continue beyond the regular time of inauguration, there appears to be no good reason for excluding a new Lieutenant-Governor, whose election shall be uncontested, from the discharging of executive duty. In such case there would be a "failure to qualify" by the Governor elect, and a qualified officer, freshly chosen by the people, to supply his place pending the contest. Why then should the out-going Governor (who cannot be re-elected) continue to serve? In such case ought not the new Lieutenant-Governor to be considered his constitutional "successor" within the meaning of this provision? The old Lieutenant-Governor would be displaced, why then should the old Governor continue in office?

So, also, in the case of a contested election of Lieutenant-Governor, the trial of whose contest shall continue beyond the time for the commencement of his term, the President *pro tem.* of the Senate can fill his place and perform his duties, as provided in the 14th section. The ART. IV.

new Lieutenant-Governor will then be "unable to exercise the duties of his office," and a "vacancy" in the office will exist, which can be fitly filled by the President *pro tem*. of the Senate.

When the election of both Governor and Lieutenant-Governor shall be contested at the same time, and the contests shall continue beyond the commencement day of their terms of office, there is more reason for providing that the old officers shall hold over, though even then its necessity may be questioned in view of the provisions of the 14th section.

Again, in case of the death, declination, or refusal to qualify of a Governor or Lieutenant-Governor elect, will the old Governor or Lieutenant-Governor continue in office until a new election can take place? Their continuance in office after the expiration of their official terms, rests upon the principle of necessity alone, and cannot be claimed where there are constitutional officers competent to succeed them. One term, of four years' duration, is fixed as the tenure for incumbents of the two chief executive offices, and continuance beyond that limit of time cannot be intended, except when necessary to avoid an interregnum—a suspension of executive administration.

To preserve the one term principle for, and popular control over, the principal executive office, and still more to give necessary and proper effect to the other provisions of the Constitution which relate to the office of Lieutenant-Governor, we must give to this second division of the 17th section a force and meaning somewhat more restricted than its words, at first view, appear to express. In brief, remembering that this provision was adapted to the old plan of executive organization, and is not well adapted to the new, and that, taken in an unqualified sense, it is in apparent conflict with prior sections, we are to assign to it a meaning and operation as limited as fair construction will permit.

[Secretary of the Commonwealth.]

Section 18. The Secretary of the Commonwealth shall keep a record of all official acts and proceedings of the Governor, and when required lay the same with all papers, minutes, and vouchers relating thereto, before either branch of the General Assembly, and perform such other duties as may be enjoined upon him by law. See § 8.

DERIVED: Constitution of 1790, Art. II. § 15: "A Secretary shall be appointed and commissioned during the Governor's continuance in office, if he shall so long behave himself well. He shall keep a fair register of all the

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official acts and proceedings of the Governor, and shall when required lay the same, and all papers, minutes, and vouchers relative thereto, before either branch of the Legislature, and shall perform such other duties as shall be enjoined him by law." Amendment of 1838 (Art. 11. § 15) omitted the clause relating to the appointment of the Secretary, but retained the rest, commencing: "The Secretary of the Commonwealth shall keep a fair register," etc.

Salary of Secretary, \$4000, by Act of 14th May, 1874, P. Laws, 150.

[Secretary of Internal Affairs.]

Section 19. The Secretary of Internal Affairs shall exercise all the powers and perform all the duties of the Surveyor-General, subject to such changes as shall be made by law. His department shall embrace a Bureau of Industrial Statistics, and he shall discharge such duties relating to corporations, to the charitable institutions, the agricultural, manufacturing, mining, mineral, timber and other material or business interests of the State, as may be prescribed by law. He shall annually, and at such other times as may be required by law, make report to the General Assembly. See § 21; Art. XVII. § 11, and Schedule, § 7.

Reported, Conv. Jour. 325. Considered, 2 Conv. Deb. 391-4.

STATUTE: The Act of 11th May, 1874, P. Laws, 135, entitled "An Act regulating the election of Secretary of Internal Affairs, defining his duties and fixing his salary," is in execution of this section, taken in connection with the twenty-first. Annual salary fixed at \$3000 by the 6th section of that Act, and also by the first section of Act of 14th May, 1874, P. Laws, 150. The supplementary Act of 8th May, 1876, P. Laws, 143, adds important provisions authorizing the Secretary to administer oaths, providing for the transfer of papers from the office of the Secretary of the Commonwealth, for filing of papers relating to county lines, etc.

[Superintendent of Public Instruction.]

Section 20. The Superintendent of Public Instruction shall exercise all the powers and perform all the duties of the Superintendent of Common Schools, subject to such

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changes as shall be made by law. See §§ 8, 20; Art. VI. § 4, and Schedule, § 8.

Reported, Conv. Jour. 325. Considered, 2 Conv. Deb. 392-4. See, also, same volume, 385-91, for debate upon the question whether this officer should be appointed by the Governor or elected by the people.

The annual salary of the Superintendent is fixed at \$2500, by Act of 14th May, 1874, P. Laws, 150.

[Terms of elected heads of departments.]

Section 21. The term of the Secretary of Internal Affairs shall be four years, of the Auditor-General three years, and of the State Treasurer two years. These officers shall be chosen by the qualified electors of the State at general elections. No person elected to the office of Auditor-General, or State Treasurer, shall be capable of holding the same office for two consecutive terms.

Reported, Conv. Jour. 325. Considered and amended, 2 Conv. Deb. 385-91; Amdt. allowing re-election of an Auditor-General, considered and rejected, 7 Id. 450-52.

[Seal of the State-All commissions to be signed and sealed.]

Section 22. The present Great Seal of Pennsylvania shall be the seal of the State. All Commissions shall be in the name and by authority of the Commonwealth of Pennsylvania, and be sealed with the State seal, and signed by the Governor.

Reported (Jour. 907), by Committee on Commissions, Offices, etc., 7 Conv. Deb. 81. Considered, Id. 118–19. Final passage on report of Revision Committee, 8 Id. 72–3.

DERIVED: Constitution of 1790, Art. VI. § 4: "All commissions shall be in the name and by the authority of the Commonwealth of Pennsylvania, and be sealed with the State seal and signed by the Governor." Art. VI. § 5, Amendments of 1838, the same.

Constitution of 1776, c. ii. § 21: "All commissions shall be in the name and by the authority of the freemen of the Commonwealth of Pennsylvania, sealed with the State seal, signed by the President or Vice-President, and attested by the Secretary, which seal shall be kept by the Council." See, also, §§ 16, 20.

COMPARE: Con. U. S. Art. II. § 2, div. 3, and § 3 at end.

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CONSULT: As to State seal, 1 Smith's Laws, 49, in note; 3 Id. 1; 5 Id. 13; joint resolution of 30th April, 1874, relating to the coat-of-arms of the State, P. Laws, 312. As to issuing commissions, Story on Con. §§ 1545-53, to be read with a prudent distrust of views which conflict with the opinions and official action of Mr. President Jefferson, and Mr. Madison, his Secretary of State.

ARTICLE V.

THE JUDICIARY.

SECTION

- 1. The courts.
- 2. The Supreme Court Tenure of judges—Chief-justice.
- 3. Jurisdiction of the Supreme Court.
- Courts of Common Pleas—Number of counties in judicial districts limited.
- 5. Judicial districts-Associate judges.
- 6. Common Pleas courts in Philadel-
- phia and Allegheny.
- 7. Prothonotary in Philadelphia.
- 8. Criminal courts in Philadelphia and Allegheny.
- 9. Jurisdiction of Common Pleas judges.
- 10. Writs of certiorari.
- 11. Justices of the peace and aldermen.
- 12. Magistrates in Philadelphia.
- 13. Fees, fines, and penalties in Magistrates' courts.
- 14. Appeals from summary convictions, etc.

SECTION

- 15. Election, tenure, and removability of law judges.
- 16. Limited vote for judges of Supreme Court.
- 17. Priority of commissions.
- 18. Judges' compensation-To hold no other office.
- 19. Residence of judges.
- 20. Common Pleas chancery powers.
- 21. No extra judicial duties to be imposed upon, or *Nisi Prius* Court established for, Supreme Court judges.
- 22. Separate Orphans' courts-Registers' courts abolished.
- 23. Style of process and prosecutions.
- 24. Review in the Supreme Court in
- criminal cases.
- 25. Judicial vacancies, how filled.
- 26. Uniform laws for courts—Certain special courts prohibited.
- 27. Jury trial may be waived in civil cases.

[The courts.]

Section 1. The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of Common Pleas, courts of Oyer and Terminer and General Jail Delivery, courts of Quarter Sessions of the Peace, Orphans' courts, Magistrates' courts, and in such other courts as the General Assembly may from time to time establish.

Reported to include "Circuit courts," Journal, 413. Debate on question of Circuit courts, 3 Conv. Deb. 637 to 728, and words, "in Circuit courts," struck out; see, also, 7 Id. 610-11. The section further considered, 3 Conv. Deb. 728-9; 6 Id. 238-41; 7 Id. 612. Amended by Committee on Revision, by striking out "justices of the peace" and inserting "Magistrates' courts," Jour. 962.

DERIVED: Constitution of 1790, Art. V. § 1: "The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of Oyer and Terminer and General Jail Delivery, in a Court of Common Pleas, Orphans' Court, Register's Court, and a Court of Quarter Sessions of the Peace, for each county; in justices of the peace, and in such other courts as the Legislature may from time to time establish."

Constitution of 1776, chap. ii. § 4: "Courts of justice shall be established in the city of Philadelphia and in every county of this State." And sec, §§ 23, 24, 26, and 30. See, also, Royal Charter, § 5; Charter of 1682, §§ 13, 17, 18; Charter of 1683, § 16; Markham Charter, § 10; Charter of 1701, § 6.

JUDICIAL OPINION: Commonwealth v. Flanagen, 7 W. & S. 68; Com. v. Zephon, 8 W. & S. 382; Com. v. Martin, 2 Barr, 242; Com. v. Green, 8 Sm. 226; In re Application of the Judges, 14 Sm. 33; Com. v. Hipple, 19 Sm. 9; Brown v. Commonth., 23 Sm. 321; and as to interference of the Legislature with the judicial power; Du, Chastellux v. Fairchild, 3 Harris, 18; Ervine's Appeal, 16 Harris, 267; Baggs's Appeal, 7 Wright, 512; Hendrickson's Estate, 19 Leg. Intel. 372; Greenough v. Greenough, 1 Jones, 494.

[The Supreme Court—Tenure of judges—Chief-justice.]

Section 2. The Supreme Court shall consist of seven judges, who shall be elected by the qualified electors of the State at large. They shall hold their offices for the term of twenty-one years; if they so long behave themselves well, but shall not be again eligible. The judge whose commission shall first expire shall be chief-justice, and thereafter each judge whose commission shall first expire shall, in turn, be chief-justice. See §§ 16, 17, 19, – 25, and Schedule, § 10.

Reported, Journal, 412. Considered and amended, 3 Conv. Deb. 729-30, 732-8, 745-79; 4 Id. 4-51, 53-86; 6 Id. 241-7; 7 Id. 460-62, 541-4.

DERIVATION AND HISTORY: Con. of 1776, chap. ii. § 23: "The judges of the Supreme Court of judicature shall have fixed salaries, be commissioned for seven years only, though capable of reappointment at the end of that term, but removable for misbehavior at any time by the General Assembly. They shall not be allowed to sit as members of the Continental Congress, Executive Council, or General Assembly, nor to hold any other office, civil or military, nor take or receive fees or perquisites of any kind." By § 20, "the President, and in his absence the Vice-President, with the Council, five of whom shall be a quorum, shall have power to appoint and commissionate judges, naval officers, Judge of the Admiralty, Attorney-General, and all other officers, civil and military, except such as are chosen by the General Assembly or the people, agreeably to this frame of government and the laws that may be made hereafter, and shall supply every vacancy in any office occasioned by death, resignation, removal, or disqualification, until the office can be filled in the time and manner directed by law or this Constitution."

By the Constitution of 1790, Art. V. § 2, the judges of the Supreme Court were to hold their offices during good behavior, but for any reasonable cause, which should not be sufficient ground of impeachment, the Governor might remove any of them on the address of two-thirds of each branch of the Legislature. They were appointable by the Governor alone, under Art. II. § 8.

By one of the Amendments of 1838, Art. V. § 2, the judges of the Supreme Court were to be nominated by the Governor, and by and with the advice and consent of the Senate, appointed and commissioned by him. They were to hold their offices for the term of fifteen years, if they should so long behave themselves well, but for any reasonable cause which should not be sufficient ground of impeachment, might be removed by the Governor on the address of two-thirds of each branch of the Legislature.

By the judiciary Amendment of 1850, the judges of the Supreme Court were to be chosen by the qualified electors of the State at large, and to hold their offices for the term of fifteen years, if they should so long behave themselves well. They were to be commissioned by the Governor, but for any reasonable cause which should not be sufficient ground of impeachment, he was to remove any of them on the address of two-thirds of each branch of the Legislature. The first election of judges was to take place at the general election next after the adoption of the Amendment, and the commissions of all the judges who might be then in office should expire on the first Monday of December following, when the terms of the new judges would commence. The judges first chosen under the Amendment were to hold their offices as follows : One for three years, one for six years, one for nine years, one for twelve years, and one for fifteen years; the term of each to be decided by lot by the said judges as soon after the election as convenient, and the result certified by them to the Governor that the commissions might be issued in accordance thereto. The judge whose commission should first expire should be chief-justice during his term, and thereafter each judge whose commission should first expire should in turn be chief-justice, and if two or more commissions should expire on the same day, the judges holding them should decide by lot which should be chief-justice. Any vacancy happening by death, resignation, or otherwise, in the said court, should be filled by appointment by the Governor, to continue till the first Monday of December succeeding the next general election.

This Amendment did not fix or limit the number of judges, except at the first election, but the number continued to be five until it was increased to seven by the new Constitution. By the Act of 11th March, 1809, the number of judges of the court was reduced to three, but the number was increased to five by the Act of 8th of April, 1826.

It will be observed that the provision in the Constitution of 1790, and Amendment of 1838, which conferred power upon the Governor to remove a judge of the Supreme Court upon an address by two-thirds of each branch of the Legislature, was not imperative in form. It authorized a removal upon address, but did not command it; and, therefore, upon a notable occasion of a legislative address, Gov. McKean declared, with rough emphasis, "I will let the Legislature know, that may means I won't!" By the Amendment of 1850 the provision was made imperative, by substituting the word "shall" for the word "may." Now, however, this power of removing judges of the Supreme Court upon address is extinct. See § 15 of this Article. They can be removed from office only upon impeachment.

By Act of 30th April, 1874, P. Laws, 118, the terms of judges of the Supreme Court will commence on the first Monday of January next succeeding their election.

[Jurisdiction of the Supreme Court.]

Section 3. The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of Oyer and Terminer and General Jail Delivery in the several counties; they shall have original jurisdiction in cases of injunction where a corporation is a party defendant, of *habeas corpus*, of mandamus to courts of inferior jurisdiction, and of quo warranto as to all officers of the Commonwealth whose jurisdiction extends over the State, but shall not exercise any other original jurisdiction; they shall have ART. V.]

appellate jurisdiction by appeal, certiorari, or writ of error in all cases as is now or may hereafter be provided by law. See \S 21, 24.

Reported, Journal, 413. Considered and amended, 4 Conv. Deb. 110-12; 6 Id. 247-50; 7 Id. 624.

Constitution of 1790, Article V. § 3, the same as the first clause above. The 6th section of the same Article conferred certain chancery powers upon the Supreme Court, and authorized additional equity powers to be granted to it by the Legislature. But it had not been for some time a Court of Errors and Appeals—a court of final resort—until made such by the Act of Assembly of 24th February, 1806, which transferred to it the jurisdiction of the Court of Errors and Appeals, which latter court had been established by Act of 28th February, 1780, and reorganized by Act of 13th April, 1791.

Con. of 1776, chap. ii. § 24, conferred chancery powers on the Supreme Court.

JUDICIAL OPINION: Com. v. Hazen, 11 Harris, 355; Com. v. Ickhoff, 9 Casey, 80; Com. v. Allegheny Co., Wright, 237; Com. v. Dumbauld & Roberts, 1 Outerbridge, 293; 9 W. N. C. 369, 417, 529; 38 Leg. Intel. 54; Com. v. Wickersham, 7 W. N. C. 265.

[Courts of Common Pleas-Number of counties in judicial districts limited.]

Section 4. Until otherwise directed by law, the courts of Common Pleas shall continue as at present established, except as herein changed: Not more than four counties shall at any time be included in one judicial district organized for said courts.

Reported, Journal, 415. Considered and amended, 4 Conv. Deb. 112-33, 136-66; 6 Id. 250-56.

DERIVED: Amendment of 1838, Art. V. § 3: "Until otherwise directed by law the courts of Common Pleas shall remain as at present established: Not more than five counties shall at any time be included in one judicial district organized for said courts."

Constitution of 1790, Art. V. § 4 (superseded by the above Amendment of 1838): "Until it shall be otherwise directed by law, the several courts of Common Pleas shall be established in the following manner: The Governor shall appoint, in each county, not fewer than three, nor more than four judges, who, during their continuance in office, shall

reside in such county. The State shall be, by law, divided into circuits, none of which shall include more than six, nor fewer than three counties. A president shall be appointed of the courts in each circuit, who, during his continuance in office, shall reside therein. The president and judges, any two of whom shall be a quorum, shall compose the respective courts of Common Pleas."

Constitution of 1776, chap. ii. § 4: "Courts of Justice shall be established in the city of Philadelphia and in every county of this State."

"§ 26. Courts of Sessions, Common Pleas, and Orphans' courts shall be held quarterly in each city and county, and the Legislature shall have power to establish all such other courts as they may judge for the good of the inhabitants of the State. All courts shall be open, and justice shall be impartially administered, without corruption or unnecessary delay. All their officers shall be paid an adequate, but moderate compensation, for their services, and if any officer shall take greater or other fees than the laws allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this State."

See Commth. v. Martin, 2 Barr, 244.

[Judicial districts.]

Section 5. (a) Whenever a county shall contain forty thousand inhabitants it shall constitute a separate judicial district, and shall elect one judge learned in the law, and the General Assembly shall provide for additional judges as the business of the said districts may require. (b) Counties containing a population less than is sufficient to constitute separate districts, shall be formed into convenient single districts, or, if necessary, may be attached to contiguous districts, as the General Assembly may provide. (c)The office of Associate Judge, not learned in the law, is abolished in counties forming separate districts, but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms. See Schedule, §§ 13, 14, 16, and note at end of this Article.

Reported, Journal, 415–16. Considered, 4 Conv. Deb. 255–7; Amdt. of Mr. S. A. Purviance, 4 Conv. Deb. 408–34; 6 Id. 461–506, 524, 540; 7 Id. 491–3, 525–6, 527–31; subject of associate judges considered, 6 Conv. Deb. 504–6, 523, 525, 527, 543–4; 7 Id. 463–72. ART. V.]

See references to former Constitutions, under next preceding section; also, references to Convention Debates under same section.

And see, Com. v. Gamble, 12 P. F. Sm. 343.

CONSTRUCTION: (a) The word "whenever," at the beginning of this section, is plainly controlled by the 14th section of the Schedule, which provides that the General Assembly shall, at the next succeeding session after each decennial census, and not oftener, designate the several judicial districts as required by the Constitution. Supplying then the necessary words, implied at this place, we must read : "Whenever, at the time of making a decennial judicial apportionment, a county shall contain 40,000 inhabitants, it shall constitute, or be made to constitute, a separate judicial district," etc. The basis of a judicial apportionment is the same with that of a legislative apportionment, Art. II. § 18, that is to say, a decennial census of the United States, and during the running of any decennial period such apportionment must remain unchanged. Judges may be added in separate districts as the business of those districts may require, for that power is expressly conferred, but new districts cannot be made, nor old ones altered, except at the times fixed by the Schedule. Accordant with this view was the decision of the Supreme Court in Commonwealth v. Harding et al., 6 Weekly Notes of Cases, 305; 6 Norris, 343.

The supplementary Act of 12th May, 1874, P. Laws, 206, by which a single judicial district was created, composed of the counties of Wyoming and Sullivan, although it changed the prior apportionment Act of 9th of April of the same year (P. Laws, 54), need not be challenged upon constitutional grounds. Its passage was probably a valid exercise of legislative power under the 13th section of the Schedule; it was passed before the principal Act had gone into practical operation, and it removed from the latter an unconstitutional provision for a doubleheaded district, composed wholly of small counties.

The word "separate," in this first division of the section, is a term of apportionment of common use, appearing in numerous apportionment provisions of State Constitutions. Always a relative term, in the present case its associate word "county" is clearly implied—a separatecounty judicial district is meant, and not merely a judicial district separate from other districts. In the latter sense of the word all districts are separate, and its use in that sense would have had no significance. A county with 40,000 inhabitants will become a separate district in the sense of standing free from all connection with other counties, except in a contingency provided for in the next division of the section.

Although the commencing words of this division seem to include all

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counties above 40,000 in population, practically they can have no effect as to Philadelphia and Allegheny, which are specially provided for by the next following section of this Article. Besides, others of such counties will be withdrawn from the single-judge limitation which these words contain whenever the Legislature shall exercise, as to them, the power expressed in the concluding words of the division. And as by the 15th section of the Schedule judicial commissions unexpired on the 16th day of December, 1873, when the Constitution was adopted, were continued in force, and by the 14th section of the Schedule the duty was charged upon the Legislature of enacting a judicial apportionment at the session of 1874, it follows that it was not intended by the Convention that the single-judge limitation for separate districts should ever take complete effect-should operate without exception-even outside of Philadelphia and Allegheny. For it was well known that the business of such plural districts as Berks, Schuylkill, and Luzerne, would not admit of the immediate application of the limitation to them, and it was foreseen that it would become necessary in subsequent apportionments to add judges in some of the other separate districts. The power left to the Legislature to continue plural separate districts, in the few cases where they existed, and to add judges in other separate ones, was, therefore, a most necessary power, and it was properly expressed in general and dissinct terms.

A county with more than 40,000 inhabitants will always have the constitutional right to be a separate judicial district, and to have one Common Pleas judge, learned in the law. Its right to more judges than one, whenever it shall possess such right, must be derived from the Legislature, and may be withdrawn, for proper cause, at any decennial apportionment, if not at other times. Of course, under the next section, Philadelphia will have a constitutional right to twelve and Allegheny to six Common Pleas judges, and so far their cases are exceptional; but the question of increasing or diminishing the number of additional judges by the Legislature, stands upon the same footing with them as with other large counties.

The Legislature is to increase the number of judges in a separate district only when the business of the district shall require it. The power is not unlimited, nor to be capriciously or improvidently exerted. A casual or temporary increase of judicial business in a district, which can be disposed of by special courts, or by reference, or which will probably disappear in regular course, is not to be made a pretext for creating a new judgeship at the expense of the State.

That judgeships in separate districts after being added by the Legislature may be dropped or abolished by the Legislature, saving existing commissions, results from the fact that they will not be offices established by the Constitution but by statute, and from the further fact that there is no prohibition in the Constitution upon the legislative power to unmake or discontinue them. It may also be argued on behalf of legislative power, that although the designation of judicial districts can be undertaken only decennially, the adding or withdrawing of judgeships in separate districts is not so limited, and may, therefore, be enacted at any time for proper cause.

(b) In the second division of the section, the words, "counties containing a population less than is sufficient to constitute separate districts," undoubtedly mean counties with less than 40,000 inhabitants each. For, as the prior division of the section fixes counties containing 40,000 inhabitants, or more, as those which shall constitute separate districts, counties containing a population less than sufficient to constitute them separate districts, mentioned immediately afterwards, must be counties under 40,000 of population. The section plainly divides counties into two classes, namely, those above and those below 40,000of population each; the former to be, respectively, separate-county judicial districts, the latter to be formed into single-judge judicial districts, by uniting counties together for that purpose. The limitations upon this general plan, or exceptions to it, will be presently mentioned.

But why were not the words "forty thousand inhabitants" used, instead of the words of circumlocution and prolixity which we find in this division? They would have been simpler, more explicit, more condensed. The answer to this question is found in the history of the section. When originally drawn the number to be inserted in the first division was an open question, and even when introduced the number, 25,000 proposed, was provisional or contingent, dependent upon debate and subject to change. The number was in fact changed no less than three times before the section assumed its final form, and at one time its place was left blank. The friends of the section were greatly divided in opinion upon the question of the number to be inserted, and it was at all times, up to the final decision, extremely doubtful what the number would be. The form of the second division of the section was controlled by this uncertainty of number in the first, and was drawn to conform to any change which the latter might undergo. But the words as they stand fulfil the office of declaring that counties under 40,000 are insufficient in population for separate-county districts.

The next words in this division of the section are those which declare, that the small counties—those containing less than 40,000 inhabitants each—" shall be formed into convenient single districts, or, if necessary,

may be attached to contiguous districts as the General Assembly may provide." We have here several points presented for distinct examination.

1. A necessary construction of these words leads to the conclusion, that the Legislature may, in case of necessity, attach a small county to a contiguous large one, but otherwise *all* small counties must be formed into convenient single districts.

2. A case of necessity for attaching a small county to a contiguous large one, and thus affecting, to some extent, the separate, district character of the latter, will arise where the small county cannot be joined to one or more counties of its own class, to form a convenient single district.

3. The term "attached" is here fitly chosen to indicate that the separate-district character of the large county, with which a small one is connected, shall not be lost by reason of the connection. Such large county will not have associate judges, unlearned in the law, while the attached county will retain them, and as a "separate district" within the intendment of the first division of the section, it may have one or more additional law judges provided for it by the Legislature, "as its business may require." It may also be fairly contended that its judge (or at least its principal or president judge, in case it shall have more than one judge) must reside within such large county and not within the attached one, during his term of service (see § 19); for otherwise the large county might be left without law or associate judge within its limits, in manifest contempt of the general intent and purpose of the section. See Com. v. Dumbauld & Roberts, 1 Outerbridge, 293; 9 W. N. C. 529.

4. The unattached, small counties "shall be formed into . . . districts." Does this mean, simply, that such counties shall be united to form districts? Can the Legislature make a district of one small county, under this constitutional direction and authority? The judicial apportionment Act of 9th of April, 1874, P. L. 54, created several separate county districts of counties below 40,000 in population, according to the United States census of 1870, to wit: (32d district), Delaware, population 39,541; (34th), Susquehanna, 37,525; (36th) Beaver, 36,132; (40th) Indiana, 36,161, and (42d) Adams, 30,315. But it may be fairly claimed, that by the 13th section of the Schedule the Legislature were not bound, in that first judicial apportionment to accept the numbers for counties contained in the census of 1870, as true and controlling numbers for them in the performance of their work; that for that occasion and time they were not required, as subsequent Legislatures will be under the 14th section of the Schedule, to follow census numbers implicitly and without question. Upon this view of their power it was

proper for the Legislature of 1874 to make separate districts of Delaware, Susquehanna, and perhaps one or more of the other counties above named, even upon the theory that counties under 40,000 of population cannot be erected into separate county districts. For, it was very certain that after the lapse of four years from the taking of the census of 1870, the counties in question had all increased in population, and of the extent of such increase in the case of each the Legislature could judge. If they were not bound or controlled by the four-year old census numbers, and nothing in the 13th section of the Schedule indicates that they were, they could seek for the actual truth as to existing numbers in each county, and act upon the information obtained. But this explanation will hardly cover the case of Adams County, which must have had less than 40,000 inhabitants in 1874, unless its rate of increase in population was greatly above the average rate of increase in other agricultural counties. And, as it turns out, the census of 1880 repels any such presumption or claim.

5. The districts to be formed of small counties must be convenient districts. There is no positive requirement that counties composing them shall be adjoining or contiguous, though the rule of convenience which *is* prescribed will generally make them so; nor is there any maximum or minimum of population expressly fixed for such districts. (6 Conv. Deb. 477.) The exercise of a reasonable discretion and ot sound judgment by the Legislature will avoid extremely large or extremely small districts. But the rule of convenience prescribed by the Constitution must be, in all cases, fairly observed.

6. The convenient districts to be formed of small counties are to be *single* districts—that is, single-judge districts. Separate-county and single-judge districts are leading ideas of the whole section, and they control its form and substance throughout, giving place only to overmastering necessity which limits their application in several particulars specially provided for. Without the acceptance of this view of the section, it must appear obscure,—unsuited to consistent or reasonable interpretation,—but accepting it, the section becomes intelligible, sensible, and consistent, and all supposed difficulties upon the main points of its construction will wholly disappear.

The principle of separate-county districts, strongly announced in the first division of the section, cannot be reasonably applied to counties below 40,000 in population because of deficient numbers, and they are therefore excluded from that division and left for subsequent treatment; and by a clause of the second division a small county may be attached to a contiguous large one, though, as we have seen, without destroying the separate district character or privileges of the latter county. The other principle, that of single-judge districts, is announced in *both* the first and second divisions of the section, but is, like the former principle, subjected to necessary limitations. The first division makes all counties above 40,000 in population single-judge districts, but confers power upon the Legislature, *when necessary*, to make any of them double or plural districts, and the second division, while it commands the forming of all small counties "into convenient single districts," admits the exception that when necessary a small county may be attached to a contiguous large one. Of course, by reason of the limitation contained in § 4, no more than four counties can be formed into a district, and the special provisions for Philadelphia and Allegheny, contained in § 6, are to be respected.

After making full allowance for the practical effect of all these limitations, it remains evident that the section has a large operation to its intended ends. By the judicial apportionment Act of 1874, P. Laws, 54, the separate-county districts were made 31 in number, of which 26 were determined by the census of 1870, and five, already named above, were added by the statute. Twenty-three of these were made single districts, and four double, while Schuylkill and Luzerne obtained three judges each, and Philadelphia and Allegheny were left with the larger numbers assigned to them by the Constitution. Three of them only, to wit, Dauphin, Fayette, and Franklin, had each a small county "attached." Such was the disposition made by the Legislature of one class of counties,-those entitled, or supposed to be entitled, to separate organization,-and we find in the result that three-fourths of them were made single, and but one-fourth of them plural districts. By the same Act, and its supplement passed at the same session, P. Laws, 54, 206, the second class of counties, except the three attached ones above referred to, were disposed of as follows: Twenty-three of them were formed into ten convenient single districts by uniting two or three together for each district, which was undoubtedly a regular and valid exercise of legislative power, and nine of them were formed into three double districts, apparently in disregard of the Constitution. A fourth small-county double district was created by the Act, but it was broken into two single ones by the supplement.

Thus the Act of 1874, though it did not carry the principles of apportionment above mentioned to their utmost or proper extent, gave to them substantial effect and exhibited their practical operation.

That these words, *single districts*, mean districts with one law judge to each, can be most certainly established by proofs drawn from sources independent of the section itself. Judged solely by what appears upon its face, the section does not authorize the forming of plural districts ART. V.]

above construction.

from small counties any more than it authorizes separate districts to be formed from them, which, if the word separate is to retain the meaning it bears in the first division of the section, would be preposterous. It may here be remarked, that as the subject matter of the section is the formation of judicial districts, the word *judicial* is necessarily implied after the word *single* in the clause under examination, and we are to read: *single judicial districts*. In fact the word is thus expressly used in the analogous provision of the first division of the section. Thus used, the word judicial qualifies the word districts, and the word single qualifies both. But, turning from the section itself to other sources of

information, we encounter the most decisive proofs in support of the

First. The words are derived from the old Constitution, and from an apportionment provision of that Constitution, so that they are not new nor of doubtful import in the very connection in which they are used; in other words, they have a fixed and known constitutional use and meaning in this State. The third Amendment of 1857, Art. I. § 7, contained this provision: "The city of Philadelphia shall be divided into single senatorial districts, of contiguous territory, as nearly equal in taxable population as possible, but no ward shall be divided in the formation thereof." Here words exactly parallel with the words in question, fixed one-member senatorial districts for Philadelphia in the legislative apportionments of 1858, 1864, and 1871, that of 1858 being specially made under the amendment. One-member representative districts were also prescribed by the same amendment for any city entitled by taxable population to at least two representatives, and after the adoption of the amendment, legislative districts in Philadelphia were conveniently and commonly spoken of as single districts. So Mr. Fulton, in the Constitutional Convention of 1873, referred to Philadelphia legislative districts, in connection with the plan of judicial apportionment we are now considering, in the following language :----

"I ask that we all go back about a month in the history of this Convention and recall the discussion of the apportionment of the Legislature in this city, when it was agreed here by common consent that the representation of the city of Philadelphia from the adoption of the Amendment to the Constitution in 1857, *cutting the city up into single districts*, has gone back every day; and this is the very thing that is now proposed to be done with the judiciary all over Pennsylvania, to cut up our State into small judicial districts, and I ask you to answer the question by this vote whether it is not the universal rule that the smaller you make the districts for which men are elected to fill any position, the smaller you make the men that obtain the positions."

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Nor has this constitutional use of the term "single districts" been confined to this State. The Constitution of Wisconsin (1848), Art. IV. \$ 4, 5, and Schedule, \$ 12, shows similar provisions in the same sense : "The members of the Assembly shall be chosen by single districts," etc. "The Senators shall be chosen by single districts, of contiguous territory," etc., and the apportionment in the schedule for the whole State followed these provisions, establishing one-member districts throughout for both Houses.

Second. The Convention debates furnish equally conclusive proof of the meaning to be assigned to these words, "single districts." That expression is thick-sown throughout the printed debates upon both the legislative and judicial apportionment provisions of the Constitution, recurring many dozens of times in the mouths of most of the leading members, and constantly appears with the meaning claimed for it in this examination. Upon this point the following references to the debates upon the legislative Article may be consulted :—

Mr. Ainey, V. 707 thrice; Mr. Armstrong, V. 508 twice, 537, 539 twice; Mr. Bartholomew, V. 675, 705 twice; Mr. Biddle, V. 526, 548, 709; Gov. Bigler, V. 752, 753; Mr. Broomall, V. 430; VIII. 96 twice, 97; Mr. Buckalew, II. 197, 198; V. 435, 456, 466, 514 twice, 537, 545, 547 twice, 549, 652, 673, 674, 695, 701 twice, 708 twice; VII. 180; VIII. 113 thrice; Mr. Cochran, V. 425 four times, 426 twice; Gov. Curtin, V. 440, 535; Mr. Darlington, V. 417, 418, 419 twice, 420 four times, 421, 422 five times; VII. 194 twice; Mr. Ellis, V. 704; Judge Ewing, V. 442, 443 four times, 444 thrice; VIII. 110; Mr. Lawrence, V. 448, 449; Mr. Lear, V. 504; Gen. Lilly, V. 431 twice, 522 twice; Mr. McConnell, V. 707; Mr. McVeagh, V. 515, 676; VII. 181 thrice, 182; Mr. Niles, V. 703; Mr. H. W. Palmer, V. 676; Mr. Simpson, V. 412; Mr. Struthers, VII. 205; Mr. Turrell, V. 704 twice; Mr. J. Price Wetherill, V. 715; Mr. Wherry, V. 421; Mr. D. N. White, V. 653, 654, 680; Gen. Harry White, V. 429; VII. 182 twice, 183 twice; VIII. 100 twice, and the word "double" twice; Judge J. W. F. White, V. 453 In amendments submitted by Mr. D. N. White and by twice, 454. Mr. Darlington were provisions for the choice of representatives by "single districts," 5 Conv. Deb. 435, 501, 554; 7 Id. 179; and in another amendment proposed by the latter, a provision in which the same words were used, applied to the choice of members for both Houses; 5 Id. 416. Mr. White's amendment was carried, and stood for some time accepted by the Convention, but it was eventually superseded by a provision which authorized plural districts in apportionments for the House of Representatives.

In the Convention debates upon the subject of judicial districts, perhaps the most impressive and able speeches in favor of the Purviance amendment (now the section under consideration) were made by Mr. Clark, of Indiana. In his first speech, referring to an amendment for plural districts, offered by Mr. Fulton, of Westmoreland, he said: "The question is very distinctly raised here, by the amendment of the gentleman from Westmoreland, between single districts and districts containing more than one judge. I am very clear in my own conviction that the single-district system is the best;" and in his second speech, on a later occasion, he said of the Purviance amendment or section : "The third proposition contained in the section provides for the apportionment of the smaller counties and the establishment of single districts, or, if necessity requires, for the annexing of such smaller counties to contiguous districts. Thus the system will be one consistent throughout-a single-district system as distinguished from districts having two or more judges. I need not again refer to the disadvantages, delays, and annovances necessarily connected with such double or triple districts. I spoke somewhat upon that subject on a There will be no shifting of responsibility, no previous occasion. shirking of duty, no dividing up of the management of causes. One judge will do the entire business of his district, and, feeling his responsibility, will enter more earnestly and energetically upon his work." 4 Conv. Deb. 417; 6 Id. 479. See, also, remarks of Mr. Fulton, 6 Conv. Deb. 411; Mr. Baer, Id. 475; Mr. Kaine, Id. 482.

From the references to and citations from the debates already given, as well as from the further extracts from the debates and the history of the section contained in the note at the end of this article, the conclusion is inevitable that the term single in connection with the word districts, as used and understood in Convention, was not one which related merely to the territorial composition or separation of districts, but rather to their classification and character, and by single senatorial, single representative, and single judicial districts, was meant, respectively, districts with one Senator, one Representative, or one Judge. Sanctioned and recommended by convenience and by its prior use in the Constitution, its appearance in debate was to be expected, and its insertion in the new Constitution was both natural and proper.

It may be added, that in the "Statement and Exposition" of the changes contained in the new Constitution, prepared by the Revision Committee and officially signed by the president and chief clerk,—a document published and extensively circulated under a resolution of the Convention, pending the election upon the adoption of the Constitution, the one-member senatorial districts provided for by the 16th section of the second Article, were referred to in the following language: "The Senate is to consist of 50 members instead of 33, to be chosen from single districts, one-half thereof every second year." Convention Journal, 1291. This document affords persuasive proof, not only of the sense in which the term single districts was used by the Convention, but also of the sense in which it was understood by the people when they adopted the Constitution.

Third. The third proof to be noticed is, the use of the term single districts in the political literature of the United States, and particularly its application to divisions of States created or established for electing members of Congress. Here citations might be multiplied indefinitely, but it will be sufficient for the present purpose to refer to two or three works of established authority and common use. A generation ago-25th June, 1842-an Act of Congress was passed requiring the State Legislatures to divide their respective States in one-member congressional districts, and such districts, since formed, have been known, spoken of, and written about, as single districts, whenever it was intended to distinguish them from former or plural ones. Before that Act of Congress was passed, Judge Story, in his Commentaries upon the Constitution, § 826, had described the then existing system, or want of system, in the arrangement of districts, in the following language (1st ed. 1833): "The States now regulate the time, the place, and the manner of elections in a practical sense, exclusively. The manner is very various, and, perhaps, the power has been exerted in some instances under the influence of local or party feelings, to an extent which is indefensible in principle and policy. There is no uniformity in the choice or in the mode of election. In some States the representatives are chosen by a general ticket for the whole State; in others they are chosen singly in districts; in others they are chosen in districts composed of a population sufficient to elect two or three representatives; and in others the districts are sometimes single, and sometimes united in the choice."

Judge Cushing, in his work on the Law and Practice of Legislative Assemblies, § 19, in treating of the same subject—the former system of Congressional districts—describes a district as double in distinction from single when it is entitled to elect two members, using the word double in the same distinctive sense in which it was used in our Constitutional Convention. (Gov. Bigler, 5 Conv. Deb. 752-3; Mr. Clark, 4 Id. 479; Mr. Baer, 4 Id. 475; Mr. Kaine, 4 Id. 482, and Gen. White, 8 Id. 100.) He says: "The number of the members of which the House of Representatives is to consist, according to the Constitution, being first determined by Congress and apportioned among the several States, two methods have been practised in their election, namely, they have been

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chosen by general ticket, as it is called, or by the district system. . . According to the latter method, the States are divided by their Legislatures into suitable territorial districts, each of which is entitled to elect one member. Where a State is only entitled to one member, these two systems are in effect the same. Sometimes, where a territorial division cannot conveniently be made, a district is double; or, in other words, is large enough to be allowed to elect two members instead of one."

And Judge Cooley, in his recent work upon the General Principles of Constitutional Law, p. 47, speaks of the existing plan for choosing members of Congress in the following language: "It is provided by law that representatives in Congress shall be chosen *in single districts*, and that the elections shall take place on the Tuesday next after the first Monday of November." Rev. Stat. U. S. (1878), § 25.

Turning to the debates in the United States Senate upon the congressional apportionment Act of 1842, we find that Silas Wright, of New York, moved an amendment to the second section, to the effect that the division of States into districts, under the bill, should be, "as far as that can be done, in conformity with the established election systems of the States; but no State shall, by virtue of the provisions of this section, consider itself called upon to divide counties or other election districts, for the purpose of furnishing single districts." Benton's Ab. of Deb. xiv. 404, 412. It is noted also, in the same work, that Mr. Buchanan spoke to enforce several points against the bill, the first one of which was, "that this provision requiring the State Legislatures to divide the several States into single congressional districts, ought not to have been embraced in the bill." Id. 410. There was therefore authority in usage (as well as a reason of convenience) for the repeated application of this word "single" to congressional districts, by the select committee upon representative reform of the United States Senate at the session of 1868-9. One instance of such use of the word, selected from among a dozen contained in the report of the committee, will suffice for present reference. The committee say: "The vote by single districts. By the single-district plan the general constituency is divided into parts, by territorial lines, and each part constituted a subconstituency to vote separately and choose one person. The voter casts a single vote for his candidate, and has no participation in the action of the general constituency beyond the giving of his district vote. Upon this plan, prescribed by statute, representatives in Congress are now chosen." Cong. Globe, 3d Sess., 40th Cong. Appendix, p. 269.

JUDICIAL OPINION: In the case of Turner v. The Commonwealth, 5 Norris, 54, it was held by the Supreme Court of this State, that the

provision in the judicial apportionment Act of 1874, which assigned a second law judge to the twenty-fifth district, was constitutional. That district was constituted of the counties of Centre, Clearfield, and Clinton, which had, respectively, according to the census of 1870, populations of 34,402, 25,740, and 23,210. In effect it was decided, that although they were counties of the second class, each containing less than 40,000 inhabitants, they might be formed into a *double* judicial district by the Legislature.

The accomplished judge who delivered the opinion of the court combats the argument against small-county double districts, founded upon the second division of the constitutional section, in the following words : "It will be perceived that when by this section a county is to compose a *separate* district, provision is made for additional law judges; but for single districts, formed of several counties, no such provision is made. The learned counsel for the defence regards this omission as significant. Not, indeed, because without more the Legislature would not possess the power to create such judges, since it is conceded that such power must necessarily belong to that body if it be not in terms withheld, but because it is said that the phrase "single district" as used in the section, means a district having but a single law judge. To prove this reference is had to the debates in the Convention. But if these prove anything they prove too much for the argument which they are adduced to support, for they advocate districts with single judges, without regard to whether those districts were to be composed of one or several counties. As the idea was dropped as impracticable in single-county districts, we may well suppose it was also abandoned as to those formed of several counties; for it is not reasonable to suppose that, whilst provision was being made for the possible wants of districts having a population of 40,000, those having possibly double that number "should have been wholly neglected."

Thus far the opinion cannot be conveniently divided in quotation and hence is given entire. What follows will be reserved for separate notice. Upon this first part of the opinion we may remark :---

1. The statement of the argument against double districts, formed of small counties, is, if not obscure, at least inadequate. It is not claimed that the omission of a provision for adding judges in small county districts is significant, *because* the phrase "single districts" means one-judge districts, but it is claimed that the fact of that omission *supports* the construction given to the word "single."

2. It is not conceded that in order to prevent the Legislature from forming double districts from small counties the power to form them must be *in terms* withheld. The prohibition may be implied without

being expressed, and it will be implied if the direction to form single districts means one-judge districts, for then all others are surely prohibited.

3. That the phrase "single districts" was applied, in debate, by members of the Convention to separate-county districts, as well as to districts composed of small counties united, does not prove too much, either for the reason given in the opinion, or for any other reason. What we are concerned with is a question of definition-what is the meaning of the word "single" in the second division of the section? That that word was applied in debate to other districts than those covered by the second division of the section, as well as to them, may prove more than is necessary to the argument against small-county double districts, but is not at all inconsistent therewith. It has already been shown that three-fourths of the separate-county districts covered by the first division of the section are single-judge ones also, even under the Act of 1874, and that all of them are declared to be such unless judges for them shall be added by the Legislature, for Therefore, general remarks in debate in favor of single, or cause. one-judge districts, without distinguishing small counties from large ones for the application of the principle, cannot prove too much for the argument against small-county double districts.

4. The opinion assumes that an idea of single judges in single [separate] county districts was entertained for a time in Convention, but was dropped, and bases on that assumption a supposition that the same idea was dropped or abandoned as to districts formed of small counties. If by this it be meant that at any time the idea was held in Convention that all separate-county districts should be in fact single-judge ones also, it is a complete mistake. Such an idea was never entertained or acted upon in any form. If, however, it be meant that the idea was entertained in Convention that, as far as practicable, separate districts should be single-judge ones also, then it is a complete mistake to say that that idea was dropped; for, in truth, it was maintained throughout, and is plainly and strongly stamped upon the face of the section. The history of the section, contained in the note at the end of this Article, will exhibit the facts upon this point in full.

The last remark in this part of the opinion to the effect that a district composed of small counties, having possibly 80,000 of population, may require a second judge, begs the question in dispute. The short answer to it is, that no such district can be constitutionally made, because it would not be a "convenient single district." It is only when we get away from those words that such a district can be conceived of as possible.

The concluding part of the opinion, which reaches the real question involved, reads as follows :----

"We are inclined to think that that word 'single,' directly connected as it is with the word 'district,' is to be regarded as a synonym of 'separate,' and as having been used to avoid tautology. If not, its use, in the connection in which it now stands, was unfortunate, for grammatically it qualifies and characterizes the judicial districts, and does not limit the number of judges."

The inclination to substitute the word "separate" for the word "single," or to impute the meaning of the former word to the latter, is an inclination of mind which ought to be resisted by any one who feels it, and that for several good and sufficient reasons. In the first place, the taking of such a liberty with the text is not allowable where the word to be manipulated or expelled has a sensible and natural meaning of its own in the connection in which it is found, and its retention with such meaning involves no absurd, inconsistent, or injurious consequences. Next, if the word separate were made to usurp the place of the word single, it would have either no office at all, or a very injurious office, to perform. If it were understood to mean only that the districts in question were divided from other districts, or from each other, it would be worse than useless, for it would encumber the section with an unnecessary word. It would not distinguish one class of districts from another, for in this general sense all districts are separate. If, however, it were understood to mean the same thing that it means in the first division of the section, it would be, indeed, a very disastrous word. There, as we have seen, the phrase "separate districts" means districts composed of single counties-each county of the class mentioned to have an independent, distinct organization as a judicial district-in other words, separate districts, within the meaning of this section, are separatecounty districts, and nothing else. To say then, as the opinion inclines to say, that "single" in the second division is a synonym of "separate" in the first and was used simply to avoid the tautology of repeating that word, is to say that Cameron, Elk, Forest, Fulton, McKean, Montour, Pike, and Sullivan shall each be made a judicial district!

In contrast with the opinion in Turner v. The Commonwealth, which we have thus subjected to examination, appears the accurate description of the section by Chief Justice Agnew, in delivering the opinion of the court in Commonwealth *ex rel*. Chase v. Harding, 6 Norris, 351. He says: "Under this section the organization of separate districts consisting of a single county, and that of single districts composed of several counties, are different; the former having but one judge, who holds all the courts alone, and additional *law* judges when necessary for the dispatch of business; the latter having three judges, one of whom, the president, is learned, and the other two not learned in the law; the president being a judge of every county in his district, and the associate judges of only one county."

In justice to the court, whose opinion has now been freely examined, it must be added: 1st. That the facts pertaining to the history of this section of the Constitution, and to the constitutional, legislative, and literary use of the controverted word contained in it, were not fully presented to the court in argument, and that the formal specification passed upon in the opinion as quoted, was but one of twenty-four specifications of error in a voluminous record from the court below; and 2d. That the case, as it came up for consideration, strongly invited to judicial acquiescence in the Act of 1874. Nearly four years had elapsed from the passage of the Act before the question upon it was presented. Meantime, the judge, whose title was challenged, had been appointed by the Governor with senatorial advice and consent; had been subsequently elected by the people of his district, and again commissioned, and had served upon the bench for a large part of a regular constitutional term.

EXECUTIVE OPINION: The construction given to this section by Governor Hoyt, in his veto of the judicial apportionment bill of 1881, is entitled to respectful attention. After quoting the constitutional section, he says :---

"The analysis of this section by Chief-Justice Agnew, in Commonwealth ex rel. Chase v. Harding, 6 Norris's Reports, 351, to the extent to which it goes, may be accepted as strictly accurate. He says: 'Under this section the organization of separate districts consisting of a single county and that of single districts composed of several counties is different, the former having but one judge, who holds all the courts alone, and additional law judges when necessary for the dispatch of business; the latter having three judges, one of whom, the president, is learned and the other two not learned in the law, the president being a judge of every county of his district, and the associates of only one county.' According to this judicial exposition the first division of the section constitutes counties containing 40,000 or upwards of population (except Philadelphia and Allegheny, which are elsewhere treated of) a distinct class, and very clearly distinguishes them from those of less population. Each one of them is to be a 'separate district'---that is, a separate-county district-with one law judge to preside in its courts, and with one or more such judges in addition, if the same shall be added by the Legislature for the necessary transaction of its judicial business. And with equal certainty, according to this opinion, the second division of the section commands that counties below 40,000 in population shall be united together to form convenient 'single districts,' or districts with one law judge to each. The explanation is properly added that the law judge of a single district will sit with two unlearned associates in each county of his district, because such associates are allowed to all counties of the second class, or counties below 40,000, by the third division of the section. When to these particulars we add that where necessity shall require it, in order to complete an apportionment, a county of the second class may be 'attached' to a contiguous separate county district (4 Conv. Deb. 255–6; Id. 503), a general view of the section in all its principal divisions is made complete.

"The present bill designates each county of the State over 40,000 in population as a separate county district, and so far, beyond all question, conforms to the Constitution, and its addition of law judges in some of these districts is also an exercise of valid power. So also its attachment of Potter County to the Tioga district is authorized by the second division of the constitutional section. But its creation of separate county districts from counties of small population, raises a question of serious import and challenges the construction of the fifth section of the fifth Article of the Constitution above cited.

"Can a county of less population than 40,000 be made 'a separate district?' This question appears to be answered by the text of the Constitution itself: 'Counties containing a population less than is sufficient to constitute separate districts, shall be formed,' etc. As those words immediately follow the provision relating to counties above 40,000, the conclusion is a necessary one, that they relate to and embrace counties of less population than 40,000, and they plainly declare the counties to which they do refer to be 'insufficient' for constituting 'separate districts.' That these words embrace all counties under 40,000 appears from the fact that they are general, and that no other description of counties is afterwards indicated in this section. The section embraces all the counties of the Commonwealth, assigns each to a class, and, in its classification, exhausts all the territory of the State. No condition is stated in the section upon which a county of the 'single district' class can pass into the 'separate district' class, except by its increase of population to 40,000.

"An examination of the Convention Debates will show that it was intended by that body that counties falling below the minimum of population required for separate districts were 'to be united together' or 'attached to counties adjoining them.' (6 Convention Debates, 483, 493.) And the history of amendments proposed in Convention by Mr. Craig, of Lawrence, and Mr. Mann, of Potter, which led up to the Purviance amendment, ultimately adopted, is in the same line of evidence as to Convention intent and purpose. 4 Convention Debates, 151-7.

"It may be said that by the judicial apportionment Act of 1874 several counties which were under 40,000, according to the census of 1870, were made separate-county districts, namely, Adams, Beaver, Delaware, Indiana, and Susquehanna. But that apportionment was not made under the fourteenth section of the Schedule to the Constitution, as the present and all future ones will be. It was made under the thirteenth section of the Schedule and could be based upon the estimated population of counties in 1874. The Legislature was not to be controlled by a four-year-old census, but by existing numbers, of which the Legislature itself was to judge. The present apportionment, however, must be made upon the actual figures ascertained by the decennial census of 1880. The counties of Beaver, Greene, Jefferson, Lawrence, and Lebanon, according to that census, each contains a population of less than 40,000 inhabitants. By this bill each of these counties is made a separate judicial district. If the foregoing reasoning is correct these districts are illegally constituted, and if the bill shall take effect will be organized in violation of the Constitution.

"These considerations, if significant at all, are conclusive and fatal to the bill. There are, however, some other features of the bill not unworthy of attention and which would compel its disapproval. By the terms of the bill the additional law judge of the twelfth district is transferred to the county of Lebanon. Very grave legal difficulties surround that proposition. The rights by which a judge exercises his office should, of all rights, be free from doubt. The endeavor to make this transfer may result in an unseemly and serious conflict of authority and endanger the orderly administration of the law by the introduction of confusion and illegality at its very source.

"The bill creates an additional law judge in each of the counties of Eric and Crawford. This is a question of expediency, based solely upon considerations of what 'the business of said districts may require.' In these districts themselves there is substantial unanimity of sentiment that the increase is not needed. As independent propositions it is believed they would neither be demanded by the people in the districts nor receive legislative sanction.

"An objection has been urged upon my attention that the counties of Adams and Fulton, as united in the bill, do not 'form a convenient single district,' within a reasonable interpretation of the Constitution. Although the Constitution does not require that counties joined in a single district shall be contiguous, it does assume that they shall bear convenient relations to each other."

See Note at end of this Article.

(c) ASSOCIATE JUDGES.—The abolition of the office of associate judge in counties constituting separate districts, was made upon the ground that the office would not be necessary therein, because of the residence in each one of them of a president judge learned in the law. Questions arising between terms of court requiring the action of a judge, could, therefore, be disposed of conveniently and promptly in such counties; but in single-judge districts, composed of two, three, or four counties, the case would be quite different. As the president judge would reside in but one of the counties of his district, associate judges would be required in the other county or counties to act in his absence, and as it could never be certainly known in advance that associates could be dispensed with in any particular one of them, they were retained in all. See § 9 of this Article, and Schedule, § 16; Com. v. Dumbauld & Roberts, 1 Outerbridge, 293; Campbell v. Commth., 15 Norris, 344.

[Common Pleas courts in Philadelphia and Allegheny.]

Section 6. In the counties of Philadelphia and Allegheny, all the jurisdiction and powers now vested in the District courts and courts of Common Pleas, subject to such changes as may be made by this Constitution, or by law, shall be in Philadelphia vested in four, and in Allegheny in two, distinct and separate courts, of equal and co-ordinate jurisdiction, composed of three judges each; the said courts in Philadelphia shall be designated respectively as the Court of Common Pleas Number One, Number Two, Number Three, and Number Four, and in Alleghenv as the Court of Common Pleas Number One and Number Two, but the number of said courts may be by law increased from time to time, and shall be, in like manner, designated by successive numbers; the number of judges in any of said courts, or in any county where the establishment of an additional court may be authorized by law, may be increased from time to time, and whenever

such increase shall amount in the whole to three, such three judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid. In Philadelphia all suits shall be instituted in the said courts of Common Pleas without designating the number of said court, and the several courts shall distribute and apportion the business among them in such manner as shall be provided by rules of court, and each court to which any suit shall thus be assigned shall have exclusive jurisdiction thereof, subject to change of venue as shall be provided by In Alleghenv each court shall have exclusive jurislaw. diction of all proceedings at law and in equity, commenced therein, subject to change of venue as may be provided by law. See Schedule, §§ 18, 19, 20, 21, 22.

Reported, Conv. Jour. 415. Considered and amended, 4 Conv. Deb. 166-81; 6 Id. 256-79 (agreed to 44 to 34); 7 Id. 505-15, 524-5

[Prothonotary in Philadelphia.]

Section 7. For Philadelphia there shall be one prothonotary's office, and one prothonotary for all said courts, to be appointed by the judges of said courts, and to hold office for three years, subject to removal by a majority of the said judges; the said prothonotary shall appoint such assistants as may be necessary, and authorized by said courts, and he and his assistants shall receive fixed salaries to be determined by law, and paid by said county; all fees collected in said office, except such as may be by law due to the Commonwealth, shall be paid by the prothonotary into the county treasury. Each court shall have its separate dockets, except the judgment docket, which shall contain the judgments and liens of all the said courts, as is or may be directed by law. See Schedule, § 23.

Reported, Conv. Jour. 415. Considered and amended, 4 Conv. Deb. 182-7, 192-216; 6 Id. 279-80.

CONSTRUCTION: Perot's Appeal, 5 Norris, 335

STATUTE: Act 21st March, 1876, P. Laws, 13. The 12th section fixes the salary of the prothonotary for Philadelphia at \$10,000 per annum. Other sections of the Act regulate the payment of all fees of office into the county or State treasury, and also the manner of fixing the compensation of deputies and clerks.

[Criminal courts in Philadelphia and Allegheny.]

Section 8. The said courts in the counties of Philadelphia and Allegheny, respectively, shall, from time to time, in turn, detail one or more of their judges to hold the courts of Oyer and Terminer, and the courts of Quarter Sessions of the Peace of said counties, in such manner as may be directed by law. See § 9.

Reported, Conv. Jour. 415. Considered, 6 Conv. Deb. 280.

[Jurisdiction of Common Pleas judges.]

Section 9. Judges of the courts of Common Pleas, learned in the law, shall be judges of the courts of Oyer and Terminer, Quarter Sessions of the Peace and General Jail Delivery, and of the Orphans' Court, and within their respective districts shall be justices of the peace as to criminal matters.

Reported, Conv. Jour. 415. Considered and amended, 4 Conv. Deb. 228-9; 6 Id. 540: Mr. Baer's amendment to insert "learned in the law," 7 Id. 533-4; section modified, Id. 536.

DERIVED: Constitution of 1790, Art. V. §§ 5, 7, and 9, which were as follows :--

"§ 5. The judges of the court of Common Pleas in each county shall by virtue of their offices be justices of Oyer and Terminer and General Jail Delivery for the trial of capital and other offenders therein: Any two of said judges, the president being one, shall be a quorum, but they shall not hold a court of Oyer and Terminer or Jail Delivery in any county when the judges of the Supreme Court, or any of them, shall be sitting in the same county. ..."

"§ 9. The president of the court in each circuit, within such circuit, and the judges of the court of Common Pleas within their respective counties, shall be justices of the peace so far as relates to criminal matters."

CONSTRUCTION: 1. This section is partially controlled by the 22d section of this Article, which provides for separate Orphans' courts in counties of more than 150,000 of population, and authorizes their establishment in other counties by the Legislature. In any county possessed of a separate Orphans' Court, judges of the Common Pleas will have no regular Orphans' Court jurisdiction.

2. The insertion of the words, "learned in the law," in this section, has given rise to an important and difficult question regarding associate judges of the Common Pleas, unlearned in the law. The office of associate judge has a constitutional recognition in the 4th and 5th sections of this Article, and in the 16th section of the Schedule, limited, however, prospectively, to counties not forming separate judicial districts; but there is no express provision authorizing them to sit in the criminal courts, or in the Orphans' Court, of their respective counties. Such provision, it will be seen, was contained in the old Constitution, and itsexclusion from the new, considered in connection with the language of the present section, presents a case of extreme difficulty in interpretation, if we are to retain associates in the courts where they are most needed.

This question was referred to in the Constitutional Convention, in the closing hours of its last session at Harrisburg, 8 Conv. Deb. 765; but it was then too late to secure an amendment of the text of a Constitution which had been already adopted by the people. The difficulty has been, however, mastered by the courts. They have properly held that, in this case, the general intent of the Constitution and the known purpose of those who framed it, shall be preferred to an implication drawn from this 9th section of the judiciary Article, not only as to associate judges who held commissions when the Constitution was adopted, but also as to those subsequently chosen. Case of Associate Judges of Clearfield County, opinion by Judge Elwell (13 January 1874), 31 Leg. Intel. 118; 6 Leg. Gaz. 461; O'Mara v. The Commonwealth, 25 P. F. Smith, 430-33.

The decision by Judge Elwell, here referred to, rests very securely upon the commanding grounds on which he placed it; but that opinion which was confined to the official *status* of associates who held commissions in January, 1874, could invoke for its support several provisions of the Constitution and Schedule which were temporary in character or application. The Supreme Court had a more difficult task to perform when it came to consider the general question and to assign reasons for a necessary and indispensable judgment. The text of the Constitution was manifestly imperfect—was plainly insufficient, upon any obvious principle of construction, to carry the unlearned associates of the Common Pleas into the other county courts. But that they should go there, that the Convention and people intended to continue their service in those other courts, and that their service there was necessary in counties where their offices were retained, did not admit of reasonable question. The court had before it, therefore, a case which required it to accept the Constitution as a popular as well as legal instrument, and with due reference to the history of its formation, its general objects, and the existing organization of the county courts.

3. The same views and reasoning which retain unlearned associates as judges of the criminal courts and Orphans' Court of their respective counties, will retain to them the power to act " as justices of the peace so far as relates to criminal matters," although the words conferring that power upon them, contained in the 9th section, Art. V. of the old Constitution, have been dropped. Such power naturally and properly belongs to them as judges of the criminal courts.

4. How many and what judges shall constitute a quorum for the transaction of business in the Oyer and Terminer, Quarter Sessions, and Orphans' courts respectively, in counties where unlearned associates are retained? This question is not answered in this 9th section, nor in any other part of the new Constitution, although (as we have seen) it was completely answered by the old.

An Act of the Legislature fixing the quorum for each of these courts in associate-judge counties should be promptly passed, and should adopt for them the provision of the old Constitution which required the presence of the president judge as one of two judges to constitute the quorum in a court of Oyer and Terminer and General Jail Delivery. The power of the Legislature to pass such an Act need not be questioned, as the Act would apply to a subject wholly unregulated, or even mentioned by the Constitution. The Act of 14th March, 1877, hereafter referred to, is inadequate, as it is confined to Oyer and Terminer courts alone, and is of somewhat doubtful construction.

JUDICIAL OPINION: Com. v. Flanagan, 7 W. & S. 68; Com. v. Zephon, 8 W. & S. 382; Com. v. Martin, 2 Barr, 244; In re Penna. Hall, 5 Barr, 204; In re Northern Liberties Hose Co., 1 Harris, 193; Kilpatrick v. Com., 7 Casey, 198; Com. v. Ickhoff, 9 Casey, 80; Com. v. Jacoby, 1 Pittsburg, 481.

STATUTES: The Act of 7th of April, 1876, P. Laws, 19, confers authority upon any president or assistant law judge of any county forming a separate judicial district (see *ante*, § 5), to hold, sitting *alone*, the courts of Quarter Sessions, Oyer and Terminer, and Orphans' Court ART. V.]

of such county. Of course, the authority to hold Orphans' courts will not apply to the case of a county in which a separate Orphans' Court shall be established. The "associates" mentioned in the first section of the Act, evidently mean the associate judges unlearned in the law, in separate districts, who were in commission on 1st January, 1874, and were authorized by the 5th section of this Article to serve out these terms of office.

The Act of 14th March, 1877, P. Laws, 77, is entitled, "An Act to repeal so much of the fourth section of the Act of 3d February, 1843, entitled 'An Act to abolish the court of General Sessions of the city and county of Philadelphia and for other purposes,' and any other Act or law which requires two judges learned in the law to be a quorum of the court of Over and Terminer for the trial of homicide cases." It provides, that "one law judge shall be competent and sufficient to hold a court of Over and Terminer for the trial of homicide, as well as other cases, and all laws and parts of laws inconsistent herewith are hereby This Act is general upon its face and appears to extend to repealed." all the law judges of the Commonwealth, and to all courts of Oyer and Terminer, but in view of the title, some question may arise whether its operation is not confined to Philadelphia-whether a purpose to apply it generally is expressed with sufficient clearness. It is to be remarked. also, that in its application to Philadelphia the Act seems to be unnecessary: for the 8th section of this Article of the Constitution, authorizes the judges of Philadelphia and Allegheny, from time to time, in turn to detail one or more of their number to hold the courts of Oyer and Terminer and Quarter Sessions of said counties, in such manner as may be directed by law.

By the Act of 27th February, 1875, P. Laws, 62, the manner of detailing judges to hold the criminal courts in Allegheny County, etc., was fixed and regulated. Those courts may be held by one or more judges according to designation.

[Writs of certiorari.]

Section 10. The judges of the courts of Common Pleas, within their respective counties, shall have power to issue writs of *certiorari* to justices of the peace and other inferior courts, not of record, and to cause their proceedings to be brought before them, and right and justice to be done.

Reported, Conv. Jour. 415. Considered and amended, 4 Conv. Deb. 253-4; 6 Id. 213-14.

DERIVED: Constitution of 1790, Article V. § 8: "The judges of the courts of Common Pleas shall, within their respective counties, have like powers with the judges of the Supreme Court to issue writs of certiorari to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done."

See Wilt v. Philada. & Lancaster Turnpike Co., 1 Brewster, 411.

[Justices of the peace and aldermen.]

Section 11. Except as otherwise provided in this Constitution, justices of the peace or aldermen shall be elected in the several wards, districts, boroughs, and townships, at the time of the election of constables, by the qualified electors thereof, in such manner as shall be directed by law, and shall be commissioned by the Governor for a term of five years. No township, ward, district, or borough shall elect more than two justices of the peace or aldermen without the consent of a majority of the qualified electors within such township, ward, or borough. No person shall be elected to such office unless he shall have resided within the township, borough, ward, or district, for one year next preceding his election. In cities containing over fifty thousand inhabitants, not more than one alderman shall be elected in each ward or district. See Schedule, §§ 24, 25, 26.

Reported, Conv. Jour. 416. Considered and amended, 4 Conv. Deb. 257-73; 6 Id. 314-19; last clause, Mr. Hay's amendment, 6 Id. 453-61; 7 Id. 534-6, 612, 621-4.

DERIVED: Amendment of 1838, Article VI. § 7: "Justices of the peace or aldermen shall be elected in the several wards, boroughs, and townships, at the time of the election of constables, by the qualified voters thereof, in such manner as shall be directed by law, and shall be commissioned by the Governor for a term of five years: But no township, ward, or borough shall elect more than two justices of the peace or aldermen without the consent of a majority of the qualified electors within such township, ward, or borough."

Constitution of 1790, Article V. § 10: "The Governor shall appoint a competent number of justices of the peace in such convenient districts, in each county, as are or shall be directed by law. They shall be commissioned during good behavior, but may be removed on conviction of misbehavior in office, or of any infamous crime, on the address of both Houses of the Legislature."

Constitution of 1776, chap. ii. § 30: "Justices of the peace shall be elected

by the freeholders of each city and county, respectively, that is to say, two or more persons may be chosen for each ward, township, or district, as the law shall hereafter direct; and their names shall be returned to the president in council who shall commissionate one or more of them for each ward, township, or district so returning, for seven years, removable for misconduct by the General Assembly; but if any city or county, ward, township, or district, in this Commonwealth incline to change the manner of appointing their justices of the peace as settled in this Article, the General Assembly may make laws to regulate the same agreeable to the desire of a majority of the freeholders of the city or county, ward, township, or district so applying. No justice of the peace shall sit in the General Assembly unless he first resign his commission, nor shall he be allowed to take any fees, nor any salary or allowance, except such as the future Legislature may grant."

Royal Charter to Penn, § 5; Charter of 1682, §§ 17, 18; Laws agreed upon in England, § 34; Charter of 1683, § 16; Markham Charter, § 4.

STATUTES: Act 6th May, 1874, P. Laws, 118: "That in the event of a vacancy in the office of justice of the peace or alderman of any ward, district, borough, or township in this Commonwealth, resulting from any cause whatsoever, the Governor is hereby authorized to appoint a citizen of such ward, district, borough, or township, who, on being duly qualified, and giving bond with sufficient sureties, as now required by law from other aldermen and justices of the peace in this Commonwealth, shall exercise the functions and have the same jurisdiction in civil and criminal cases, and be entitled to receive the same fees as appertain to the office of justice of the peace or alderman of said ward, district, borough, or township: *Provided*, That the person so appointed shall hold said office for a term expiring thirty days after the next annual municipal or township election in said ward, district, borough, or township, at which election his successor shall be elected." But see Act of 22d March, 1877, referred to below.

Act 23d May, 1874, § 32, P. Laws, 248, regulates the election of aldermen in cities of the third class, to be organized under that Act, containing a population exceeding 10,000 and less than 100,000. It reads as follows: "Each of the wards of each of the said cities shall be entitled to elect one alderman, who shall have all the powers and jurisdiction of a justice of the peace, and said alderman shall be elected at the municipal election next preceding the expiration of the commission of the justice of the peace resident in the district out of which the said ward shall be created: If two justices of the peace reside therein, then the alderman shall be the successor of the justice of the peace whose commission shall first expire, and no successor shall be elected to the one still in office, but his commission shall be and remain in full force until its expiration."

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As to the applicability of this section to cities of the third class, which were in existence when the Act was passed, see §§ 1 and 57 of the Act.

Act 15th May, 1874, P. Laws, 186, entitled "An Act declaring what offices are incompatible" (passed under authority of Act XII. § 2, post), contains the following provisions relating to the office of justice of the peace or alderman: 1st. That any person holding any office or appointment of profit or trust under the government of the United States, or employed as a subordinate officer or agent under either the executive, legislative, or judicial branch of that government, and also every member of Congress, shall be incapable of holding at the same time the office or appointment of justice of the peace or alderman under this Commonwealth; 2d. The office of justice of the peace shall be incompatible with that of associate judge, prothonotary, or clerk of any court; 3d. District attorneys, while serving as such, shall not be eligible to any other office; 4th. No alderman shall be eligible to the office of inspector of a county prison; and 5th. No alderman or justice of the peace, while in office, shall be a member of either House of the Legislature. Compare Art. XII. § 2.

Act 22d March, 1877, P. Laws, 12, supplementary to the Act of 21st June, 1839 (which regulated the election of aldermen and justices of the peace), provides: That official terms of aldermen and justices of the peace, thereafter elected, should extend to the first Monday of May in the year of their expiration; that constables shall give twenty days' notice before the annual election in February of all vacancies in the office of alderman or justice, in their districts, to be filled at such election, and that vacancies in said offices arising from the erection of any new ward, district, borough, or township, or from the neglect or refusal of any elected person to accept a commission within sixty days after its date, or caused by death, resignation, or otherwise, shall be filled by the Governor by appointments to extend, in each case, to the first Monday of May after the next municipal or township election. The 4th section of the Act is as follows :---

"§ 4. That the aldermen or justices of the peace elected under the provisions of this Act, shall file an acceptance of said office with the prothonotary of the proper county, stating therein the name of the alderman or justice of the peace whom they succeed, with the cause of vacancy; and said prothonotary shall certify the same under his seal of office to the Secretary of the Commonwealth, whereupon the Governor shall issue commission to such persons as shall appear to be duly elected for the term of five years, to be computed from the first Monday of May succeeding the election, for which said commission each person so elected an alderman or justice of the peace shall pay three dollars to be received by the recorder of deeds of the proper county, to be by him transmitted to the Secretary of the Commonwealth as fees for other commissions are transmitted; and the said aldermen or justices of the peace shall be, by the said recorder, sworn or affirmed in the manner now provided by law."

It will be seen that this Act wholly supersedes the proviso to the Act of 6th May, 1874, above cited, which fixes the duration of commissions issued by the Governor to fill vacancies.

An Act passed at the session of 1879, P. Laws, 164, enlarged the jurisdiction of justices of the peace, of aldermen, and of magistrates (except magistrates of Philadelphia), in all actions arising from contracts, either express or implied, and in all actions of trespass and of trover and conversion, where the sum demanded does not exceed \$300, except in cases of real contract where the title to lands or tenements may come in question, or action upon promise of marriage. The Act also regulates the exercise of the jurisdiction conferred, and recognizes the right of appeal from judgments rendered under its provisions. This Act was not signed by the Governor, but not being vetoed by him, went into operation by lapse of time.

[Magistrates in Philadelphia.]

Section 12. In Philadelphia there shall be established for each thirty thousand inhabitants one court not of record, of police and civil causes, with jurisdiction not exceeding one hundred dollars; such courts shall be held by magistrates, whose term of office shall be five years, and they shall be elected on general ticket by the qualified voters at large, and, in the election of the said magistrates, no voter shall vote for more than two-thirds of the number of persons to be elected when more than one are to be chosen; they shall be compensated only by fixed salaries, to be paid by said county, and shall exercise such jurisdiction, civil and criminal, except as herein provided, as is now exercised by aldermen, subject to such changes, not involving an increase of civil jurisdiction or conferring political duties, as may be made by law. In Philadelphia the office of alderman is abolished. See Schedule, § 25; also next section of this Article.

Reported, Conv. Jour. 416. Considered and amended, 4 Conv. Deb. 273-316; 6 Id. 314, 319-31, 334-7; 7 Id. 525, 540-41, 610.

STATUTES: Act 25th May, 1874, P. Laws, 224, entitled "An Act relative to the establishment and jurisdiction of Magistrates' courts in the city of Philadelphia." But before this Act, which was extremely defective, came into practical operation, it was superseded and repealed by Act of 5th February, 1875, P. Laws, 56, which, bearing the same title, made proper and reasonable provision for the organization and operation of the new Magistrates' courts.

By Act of 11th June, 1879, P. Laws, 148, the taking of acknowledgments and administering oaths by magistrates, aldermen, etc., in soldier pension cases, *shall be free of all charge*. The Act, however, is confined to cities of the first, second, and third classes.

[Fees, fines, and penalties in Magistrates' courts.]

Section 13. All fees, fines, and penalties in said courts shall be paid into the county treasury.

Reported, Conv. Jour. 416. Considered and amended, 6 Conv. Deb. 331-3, 337-8.

STATUTES: The Act of 5th February, 1875, § 11, P. Laws, 59, provides for the enforcement of this section. Also, supplementary Act of 1st June, 1881, P. Laws, 33.

This section (read in connection with the next preceding one), and § 18 of this Article, indicate the opinion of the Convention, that, as far as conveniently practicable, the compensation of judicial officers should be by fixed salaries, and not by fees of office. As to county officers, see Art. XIV. § 5, and as to members of the Legislature, Art. II. § 8.

"Wheresoever, in the case of a public functionary, remuneration wears the shape of fees, there abuse in every shape is sure to have place. Not only in judicial offices, so called, but in all offices whatsoever, such cases excepted, if any, in which for special adequate cause special exception can be shown, salary should be substituted for fees."— Bentham's Works, v. 373.

[Appeals from summary convictions, etc.]

Section 14. In all cases of summary conviction in this Commonwealth, or of judgment in suit for a penalty, before a magistrate or court not of record, either party may apART. V.]

peal to such court of record as may be prescribed by law, upon allowance of the appellate court, or judge thereof, upon cause shown.

Amendment of Mr. Ewing, of Allegheny, 4 Conv. Deb. 316. Considered, Id. 316-17. Amendments of Mr. Buckalew, 7 Id. 515-17.

STATUTE: Act of 17th April, 1876, P. Laws, 29: "That in all cases of summary conviction in this Commonwealth, before a magistrate or court not of record, either party may; within five days after such conviction, appeal to the court of Quarter Sessions of the county in which such magistrate shall reside or court not of record shall be held, upon allowance of the said court of Quarter Sessions, or any judge thereof, upon cause shown; and either party may also appeal from the judgment of a magistrate or a court not of record, in a suit for a penalty, to the court of Common Pleas of the county in which such judgment shall be rendered, upon allowance of said court or any judge thereof, upon cause shown: *Provided*, that all appeals from summary convictions and judgments for penalties shall be upon such terms, as to payment of costs and entering bail, as the court or judge allowing the appeal shall direct."

[Election, tenure, and removability of law judges.]

Section 15. All judges required to be learned in the law, except the judges of the Supreme Court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each House of the General Assembly. See Art. VI. § 4.

Reported, Conv. Jour. 413. Considered and amended, 4 Conv. Deb. 317, 318-19; 6 Id. 338.

DERIVED: Amendment of 1850, Article V. § 2: "The judges of the Supreme Court, of the several courts of Common Pleas, and of such other courts of record as are or shall be established by law, shall be elected by the qualified electors of the Commonwealth in the manner following, to wit: The judges of the Supreme Court by the qualified electors of the Commonwealth at large; the president judges of the several courts of Common Pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, by the qualified electors of the respective districts over which they are to preside or act as judges. . . The president judges of the several courts of Common Pleas and such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years if they shall so long behave themselves well; . . . but for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any of them on the address of two-thirds of each branch of the Legislature."

Amendment of 1838, Article V. § 2: "The judges of the Supreme Court, of the several courts of Common Pleas, and of such other courts of record as are or shall be established by law, shall be nominated by the Governor and by and with the consent of the Senate, appointed and commissioned by him. . . The president judges of the several courts of Common Pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years if they shall so long behave themselves well; . . . but for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature."

Constitution of 1790, Article V. § 2: "The judges of the Supreme Court and of the several courts of Common Pleas shall hold their offices during good behavior; but for any reasonable cause which shall not be sufficient ground of impeachment, the Governor may remove any of them on the address of twothirds of each branch of the Legislature." By virtue of Article II. § 8, the power of appointing them was with the Governor.

By the Constitution of 1776, chap. ii. § 20, the power to appoint and commission judges was vested in the president of the Executive Council (and in his absence in the vice-president) with the Council, five of whom should be a quorum.

CONSTRUCTION: This section appears to be out of harmony with the fourth section of the sixth Article, in authorizing the Governor to remove, upon address, judges learned in the law not of the Supreme Court. By the sixth Article, taken alone, such judges appear to be excluded from the power of removal upon address. But the proper view to take, to harmonize the two provisions, is that the remedies for official incapacity or delinquency provided therein shall be regarded as *cumulative*, and that both shall stand.

STATUTES: The Act of 30th April, 1874, P. Laws, 118, provides: "That the term of office of judges of the Supreme Court, and other judges learned in the law, hereafter elected, shall commence on the first Monday of January next succeeding their election, and they shall

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be commissioned accordingly." The Act of 19th May, 1874, P. Laws, 208, §§ 5, 6, 7 to 10, regulates contested elections of judges of judicial districts.

JUDICIAL OPINION: Commth. v. Conyngham, 15 Sm. 76; Commonwealth v. Gamble, 12 Sm. 343.

[Limited vote for judges of Supreme Court.]

Section 16. Whenever two judges of the Supreme Court are to be chosen for the same term of service, each voter shall vote for one only, and when three are to be chosen he shall vote for no more than two, [and] candidates highest in vote shall be declared elected. See § 12, of this Article; Art. VIII. § 14; Art. XIV. § 7, and Schedule, § 18.

Section indicated in debate, 4 Conv. Deb. 65-8; amendment of Mr. Dallas, Id. 69. Considered, Id. 69-72, 86-91, 319; amendment of Mr. Corson, Id. 319-50 (agreed to 48 to 37 and section as amended, 49 to 39). Carried on second reading, 40 to 34, 6 Id. 339. Motion to strike out on third reading rejected, 33 to 50, 7 Id. 502-5.

COMPARE: Con. Ill. (1870), Schedule, § 7; N. York, Amendment, 1869, VI. 2 (Ohio, proposed 1874, IV. 3, Schedule, § 10).

The Convention Act of 11th April, 1872, P. Laws, —, Conv. Jour. 20, very thoroughly applied the limited vote to the choice of members of the Convention, and thus secured to the people of the State more complete and just representation in the Convention than they would otherwise have obtained. Substantially, all the voters of the State were brought into friendly relations with the Convention, because all of them were in fact represented therein by men of their choice, and this was, doubtless, one of the remote, but efficient causes of the very great majority given to the new Constitution upon its submission to a popular vote in December, 1873.

At the general election of 1874, Warren J. Woodward, of Berks County, and Edward M. Paxson, of Philadelphia, were elected judges of the Supreme Court under the above section, and the 10th section of the Schedule.

[Priority of commissions.]

Section 17. Should any two or more judges of the Supreme Court, or any two or more judges of the court of Common Pleas for the same district, be elected at the same time, they shall as soon after the election as convenient, cast lots for priority of commission and certify the result to the Governor, who shall issue their commissions in accordance therewith. See Schedule, \S 16.

Reported, Conv. Jour. 413. Derived from Judiciary Amendment, 1850 (Art. V. § 2), which provided, that the five judges of the Supreme Court to be first chosen, at one election, under the Amendment, and whose terms were to vary in duration, should, as soon after the election as convenient, decide the term of each by lot, and certify the result to the Governor, in order that their commissions might be issued in accordance thereto; and provided further, in regard to the same court, that "the judge whose commission will first expire shall be chief-justice during his term, and thereafter each judge whose commission shall first expire, shall, in turn, be the chief-justice; and if two or more commissions shall expire on the same day, the judges holding them shall decide by lot, which shall be the chief-justice."

The two judges of the Supreme Court, Woodward and Paxson, chosen at the general election of 1874, pursuant to the 10th section of the Schedule, drew lots for priority of commission under the above section of the Constitution. The result being in favor of Judge Paxson, he received the commission earliest in date.

[Judges' compensation—To hold no other office.]

Section 18. The judges of the Supreme Court and the judges of the several courts of Common Pleas, and all other judges required to be learned in the law, shall at stated times receive for their services an adequate compensation which shall be fixed by law, and paid by the State. They shall receive no other compensation, fees, or perquisites of office, for their services, from any source, nor hold any other office of profit under the United States, this State, or any other State. See Article III. § 13; Schedule, § 17.

Reported, Conv. Jour. 416. Considered and amended, 4 Conv. Deb. 350-66; 6 Id. 339-44; 7 Id. 472, 553-7, 608-9.

DERIVED: Constitution of 1790, Article V. § 2: ". . The judges of the Supreme Court and the presidents of the several courts of Common Pleas, shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth." See Shepherd v. Com., 1 S. & R. 1; Com. v. Mann, 5 W. & S. 403.

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Constitution of 1776, chap. ii. § 23: "The judges of the Supreme Court of judicature shall have fixed salaries. . They shall not be allowed to sit as members in the Continental Congress, Executive Council, or General Assembly, nor to hold any other office, civil or military, nor take or receive fees or perquisites of any kind." Scc, also, § 26.

STATUTE: By Act of 8th June, 1881, P. Laws, 56, the annual salary of the chief justice was fixed at \$8500, and of each associate justice at \$8000, commencing with 1st June, 1881.

[Residence of judges.]

Section 19. The judges of the Supreme Court, during their continuance in office, shall reside within this Commonwealth, and the other judges, during their continuance in office, shall reside within the districts for which they shall be, respectively, elected.

Reported, Conv. Jour. 416. Considered, 4 Conv. Deb. 367-9; 6 Id. 345-7.

DERIVED: Last clause Judiciary Amendment of 1850, which was exactly the same in language, except that instead of the word "districts," it contained the words "district or county."

CONSTRUCTION: Can the Legislature add to the constitutional requirement of the residence of a judge within his district, the further requirement that he shall reside in any particular part or county of his district? Upon principle such an additional requirement could not be sustained, because it would change the constitutional regulation of residence for judges, and be much more restrictive and stringent. Story on Con. § 625. It follows that the third section of the judicial apporment Act of 9th of April, 1874, P. Laws, 56, which provides that the additional law judge for the twelfth judicial district, "shall reside in the county of Lebanon," is without constitutional warrant. It is true that Lebanon ranks only as an "attached" county under the apportionment of 1874, but yet it was made, in a certain sense, a part of the district for which the additional law judge was to be elected, and residence anywhere "within the district" was all that was required, as to residence, by the Constitution. Besides, as Lebanon, like other attached counties, retained unlearned associate judges, there was the less reason for any violent wresting of the Constitution from its apparent sense, in order to locate the additional law judge within its limits. See Com. v. Dumbauld and Roberts, 1 Outerbridge, 293.

Questions regarding the residence of law judges who shall hold unex-11

pired commissions when new judicial apportionments take effect, may often arise and produce embarrassment. It will often happen that the district for which a judge shall have been elected, composed of two or more counties, will be divided in forming new districts-will be broken up and the fragments placed in new relations with neighboring counties. As the existing commissions of judges at each decennial apportionment will hold good until the expiration of the terms for which they shall have been issued, a case may often be presented of two judges left within a single district where there will be employment for but one, or of an unnecessary judge in an "attached" county, etc. And so, also, the relative rank or position of judges in new districts will be, sometimes, difficult of adjustment or determination. When two president judges, in commission, shall be left in a new district, which one of them shall be the president judge therein? Shall a judge be required or permitted to change his residence from one county to another of the district "for which he shall have been elected," and thus be made to conform to, or allowed to defeat, the arrangements or intention of the Legislature in the forming of new districts? These, and other questions allied to them, could not arise, if the Constitutional Convention had adopted the proposition made to it to fix the expiration of all commissions of Common Pleas judges, in districts of less than 100,000 of population, in the year 1883, and every tenth year thereafter. 6 Conv. Deb. 545-8.

[Common Pleas chancery powers.]

Section 20. The several courts of Common Pleas, besides the powers herein conferred, shall have and exercise within their respective districts, subject to such changes as may be made by law, such chancery powers as are now vested by law in the several courts of Common Pleas of this Commonwealth, or as may hereafter be conferred upon them by law.

Reported, Conv. Jour. 417. Considered and amended, 4 Conv. Deb. 369-70; 6 Id. 345, 347; amended by Revision Committee, Jour. 963.

DERIVED: Constitution of 1790, Article V. § 6. "The Supreme Court and the several courts of Common Pleas shall, beside the powers heretofore usually exercised by them, have the powers of a court of chancery so far as relates to the perpetuating of testimony, the obtaining of evidence from places not within the State, and the care of the persons and estates of those who are non compotes mentis. And the Legislature shall vest in the said courts such other powers to grant relief in equity as shall be found necessary, and may

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from time to time enlarge or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice."

Constitution of 1776, chap. ii. § 24: "The Supreme Court and the several courts of Common Pleas of this Commonwealth shall, besides the powers usually exercised by such courts, have the powers of a court of chancery, so far as relates to the perpetuating of testimony, obtaining evidence from places not within this State, and the care of the persons and estates of those who are non compotes mentis, and such other powers as may be found necessary, by future General Assemblies, not inconsistent with this Constitution."

JUDICIAL OPINION: Respublica v. Cobbett, 3 Yeates, 96; Com. v. Smith, 4 Binn. 117; Patterson v. Greenland, 1 Wright, 510; North Penna. Coal Co. v. Snowden, 6 Wright, 488.

[No extra judicial duties to be imposed upon, or Nisi Prius Court established for, Supreme Court judges.]

Section 21. No duties shall be imposed by law upon the Supreme Court, or any of the judges thereof, except such as are judicial; nor shall any of the judges thereof exercise any power of appointment except as herein provided. The court of *Nisi Prius* is hereby abolished, and no court of original jurisdiction, to be presided over by any one or more of the judges of the Supreme Court, shall be established. *See Schedule*, §§ 11, 20, 21.

Reported, Conv. Jour. 414. Agreed to, 4 Conv. Deb. 370; 6 Id. 404. See, also, 3 Id. 733-4, 745; 4 Id. 6-7, 34, 42-3.

STATUTE: Act 5th March, 1875, P. Laws, 5, authorizes the judges of the Supreme Court to appoint a crier and as many tipstaves as they may deem necessary, in each and every city and county, in which said court shall be held, and to fix the compensation of the persons so appointed at a rate per diem, for the whole year, not exceeding that paid at the time of passing the Act to similar officers of the courts of Common Pleas of said cities or counties; said compensation to be paid by the treasurer of the proper city or county on bills approved by the court, or its prothonotary, pursuant to a rule to be made for that purpose.

It is difficult to see a good reason for the provision that persons appointed under this Act shall receive a per diem allowance for the whole year, in districts where the court sits but two or three months annually, or for fixing their compensation with reference to that of like officers of the courts of Common Pleas in Philadelphia and Allegheny, of whom continuous service during most of the year is required. But, certainly, neither this Act, nor any other Act authorizing the court to make appointments, directly connected with, and necessary to, the transaction of its business, can be held to contravene the above section of the Constitution. The making of such an appointment, when authorized by law, may well be described as the performance of a judicial duty, and is not within the reason of the prohibition, nor even within its language, rightly taken and understood. The general purpose of the section evidently is to strengthen the court for its proper work by relieving the judges from *Nisi Prius* Court service, and from discharging any sort of non-judicial duty for the public, including the making of appointments to offices or positions of profit or trust outside the court and beyond its proper sphere.

[Separate Orphans' courts-Register's courts abolished.]

Section 22. In every county wherein the population shall exceed one hundred and fifty thousand the General Assembly shall, and in any other county may, establish a separate Orphans' Court to consist of one or more judges, who shall be learned in the law, which court shall exercise all the jurisdiction and powers now vested in, or which may hereafter be conferred upon, the Orphans' courts, and thereupon the jurisdiction of the judges of the court of Common Pleas within such county in Orphans' Court proceedings shall cease and determine. In any county in which a separate Orphans' Court shall be established, the register of wills shall be clerk of such court, and subject to its directions in all matters pertaining to his office; he may appoint assistant clerks, but only with the consent and approval of said court. All accounts filed with him as register or as clerk of said separate Orphans' Court shall be audited by the court without expense to parties, except where all parties in interest in a pending proceeding shall nominate an auditor, whom the court may in its discretion appoint. In every county Orphans' courts shall possess all the powers and jurisdiction of a Register's Court, and sepa-

rate Register's courts are hereby abolished. See Schedule, § 12.

Proposition of Mr. McConnell, Conv. Jour. 78; Report of Judieiary Committee, Id. 417; Minority report of Judge Woodward, Id. 447; Amendment of same, 4 Conv. Deb. 216-28; Report of Committee modified, Id. 370. Considered and amended, Id. 370-95; 6 Id. 404-7, 429-44, 527-32, 535-40; 7 Id. 517-23, 610, 624. Revised by Committee, Jour. 963.

DERIVED: It will be seen upon an examination of the Journal and Debates of the Convention of 1873, that this section is mostly new; parts of it being proposed in reports by committee, and other parts by individual members of the Convention, and particularly by Judge Woodward.

The Register's courts, abolished by it, were provided for by the Constitution of 1790, Art. V. §§ 1 and 7. The 1st section (quoted under § 1, *ante*) named them among the courts in which the judicial power of the Commonwealth should bevested, and the seventh section provided, that "the register of wills, together with the said judges [of the Court of Common Pleas], or any two of them, shall compose the Register's Court of each county."

STATUTES: Act 19th May, 1874, P. Laws, 206, made provision for the organization and regulation of separate Orphans' courts in the counties of Philadelphia, Allegheny, and Luzerne. In Philadelphia the court was to consist of three judges, either one of whom might hold the court, and in Allegheny and Luzerne, respectively, of one judge. The annual salary of the judge for Luzerne was fixed at \$4000, and for each of the other judges at \$5000. Among other additional provisions of the Act was one for the appointment of assistant clerks for these courts, not exceeding three in Philadelphia, two in Allegheny, and one in Luzerne; the compensation of a first assistant clerk to be \$1800 per annum, of a second \$1500, and of a third not exceeding \$1200.

The Act of 4th March, 1875, P. Laws, 5, provides: "That whenever, by reason of sickness, absence, interest, or other cause, an Orphans' Court judge in any judicial district of the Commonwealth may be unable to sit in any matter depending in such court, it shall be lawful for him to call upon any other Orphans' Court judge, or judge of any court of Common Pleas in this Commonwealth, to preside in and determine such matter, with the same force and effect as though he, the regular commissioned judge of such district, if presiding, might do."

By the Act of 18th March, 1875, P. Laws, 25, it is provided that in every judicial district with more judges than one, learned in the law, each of said judges may sit to hold Orphans' and other courts, separately, at the same time. JUDICIAL OPINION: In Livingston's Appeal, 7 Norris, 209, it was held that a judge of a separate Orphans' Court could not hold an Orphans' Court outside of his own county, upon invitation of a Common Pleas judge. Such separate Orphans' Court judge may, in any case covered by the Act of 1875, call in any Common Pleas judge to hold his court, but cannot himself be called upon to hold such court, outside of his own county, except by another separate Orphans' Court judge. No doubt this is a correct construction of the Act of 1875, but it invites to the enactment of a supplemental law.

OTHER STATUTES: The Act of 18th May, 1875, P Laws, 28, authorized the judges of the several courts throughout the Commonwealth, to fix the times for holding their courts and to modify or change orders made by them for that purpose, upon 30 days' notice of any such order or modification in two newspapers of the proper county.

Another Act of the same date, P. Laws, 29, gave additional authority to judges of separate Orphans' courts to make rules regulating the publication of notices of proceedings in their courts and the expense of such publications, and also directed : "That said courts shall establish a bill of costs to be chargeable to parties and to estates before them for settlement, for the services of the clerks of said courts, respectively, in the transaction of the business of said courts."

The purpose and scope of this last provision of the statute may admit of question, but apparently the intention of the Legislature was, to confer upon the separate Orphans' courts the power to fix a fee bill for their clerks, under which charges should be made by the clerks for their services and collected from estates and parties as costs. If so, the provision very plainly offends against the 26th section of the third Article and other provisions of the Constitution.

By Act of 7th April, 1876, P. Laws, 19, in any county forming a separate judicial district, either the president judge or additional law judge therein, may hold the Quarter Sessions, Oyer and Terminer, and Orphans' courts for such county. By the first section of the Act, which appears to have been intended for a temporary purpose, the president judge in any such separate county judicial district, might hold the said Criminal and Orphans' courts in the absence of his associates. It may be understood that the associates, here spoken of, were the associates unlearned in the law who were in office in separate county districts when the Constitution was adopted, and whose commissions were saved by the last clause of § 5 of this Article.

Act of 24th March, 1877, P. Laws, 37, provides: "That in counties wherein separate Orphans' courts are now or may be established, the ART. V.]

said courts shall establish a bill of costs to be chargeable to parties and to estates, for the probate of wills and testaments and granting of letters testamentary and of administrations, and for all the services of the register of wills of such county in the transaction of the business of his office: *Provided*, The tax to be paid to and received by the register for the use of the Commonwealth shall not be less than the sum now or hereafter fixed by law." The second section provides, that in any county of 300,000 inhabitants the official bond of the register of wills of the county, shall be approved by the judge or judges of the separate Orphans' Court therein, instead of being approved by any two judges of the Common Pleas as directed by a prior law. The Act concludes with a repeal of all Acts inconsistent with its provisions, and no doubt, to a greater or less extent, supersedes the Act of 18th May, 1875, relating to fees for services of separate Orphans' Court clerks, above cited.

The Act of 24th May, 1878, P. Laws, 131, regulates the issuing of commissions to judges of separate Orphans' courts, and the priority of commission and rank between the judges of said courts. All process and certificates issuing out of, or from a separate Orphans' Court, shall be attested in the name of the president judge. By the Act of 5th May, 1881, P. Laws, 12, an associate judge, learned in the law, was added to the separate Orphans' Court of Allegheny County.

The Act of 24th May, 1878, P. Laws, 131, regulates the issuing of commissions by the Governor to judges of separate Orphans' courts.

The auditors' compensation Act of 4th June, 1879, P. Laws, 84, has large application to proceedings in Orphans' courts. It is as follows :----

"An Act to regulate the compensation of Auditors and Commissioners. Be it enacted, etc., That from and after the passage of this Act the compensation of auditors appointed by court to audit the accounts of administrators, executors, and trustees, and of commissioners appointed to make distribution of the proceeds of sheriffs, assignees, and other judicial sales, shall not exceed ten dollars for each day necessarily engaged in a case, unless the court, for special cause shown, allow a higher rate of compensation not exceeding fifteen dollars per day: Provided, That where the estate or the proceeds of the sale or sales do not exceed \$1000, the rate of compensation shall not exceed five dollars per day."

This Act is somewhat defective in construction and less comprehensive than it should be, but it is an important and salutary Act, and in keeping with the constitutional provision for the free auditing of accounts in the separate Orphans' courts.

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CONSTRUCTION: The separate Orphans' courts provided for in this section of the Constitution are not courts of a different order, grade, or character from the ordinary Orphans' courts. By the express language of the section they are to exercise all the jurisdiction and powers now or hereafter vested in the Orphans' courts, and, in the counties in which they are established, are to have exclusive jurisdiction of Orphans' Court business. Their position in our judicial system is also shown by the Act of 4th March, 1875, P. Laws, 5, which authorizes the calling in of Common Pleas judges, in cases of emergency or necessity, to hold the separate Orphans' courts. It follows, by virtue and force of the 26th section of this Article, that all laws regulating the jurisdiction, powers, judgments, and process of Orphans' courts must be uniform, and apply to all of them alike. Before this most certain rule of constitutional construction must fall all Acts of legislation which confer special powers or impose special duties upon separate Orphans' Courts, or attempt to differentiate them in action or character from the other Orphans' courts of the Commonwealth.

[Style of process and prosecutions.]

Section 23. The style of all process shall be, "The Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same."

Reported, Conv. Jour. 417. Considered, 6 Conv. Deb. 448-52.

DERIVED: Constitution of 1790, Art. V. § 12, numbered § 11, under arrangement of Amendments of 1838. The text is unchanged.

Constitution of 1776, chap. ii. § 27: "All prosecutions shall commence in the name and by the authority of the freemen of the Commonwealth of Pennsylvania, and all indictments shall conclude with these words—against the peace and dignity of the same. The style of all process hereafter in this State shall be, The Commonwealth of Pennsylvania."

JUDICIAL OPINION: White v. Com., 6 Binn. 184; Com. v. Rogers, 5 S. & R. 463; Com. v. Jackson, 1 Grant, 262.

[Review in the Supreme Court in criminal cases.]

Section 24. In all cases of felonious homicide, and in such other criminal cases as may be provided for by law, the accused, after conviction and sentence, may remove

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the indictment, record, and all proceedings to the Supreme Court for review.

Reported, Conv. Jour. 415. Considered, 4 Conv. Deb. 229-39; 6 Id. 281-9, 291-313, rejected : Amendment of Mr. Broomall, 6 Id. 452; 7 Id. 523-4, 551-3. Committee on Revision substitute the words "felonious" for "unlaw-ful," and strike out the words, "in the same manner as in civil cases," at the end. Jour. 963.

DERIVED: Constitution of 1790, Art. V. § 5: ". . The party accused as well as the Commonwealth may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the Supreme Court."

STATUTES: Act of 19th May, 1874, P. Laws, 219, entitled "An Act to provide for review in the Supreme Court in criminal cases. Be it enacted, etc., That on the trial of all cases of felonious homicide, and in all such other criminal cases as are exclusively triable and punishable in the courts of Over and Terminer and General Jail Delivery, exception to any decision of the court may be made by the defendant, and a bill thereof shall be sealed in the same manner as is provided and practised in civil cases, and the accused, after conviction and sentence, may remove the indictment, record, and all proceedings to the Supreme Court. In capital cases a writ of error, or certiorari, shall stay execution of sentence; in all other cases such writs shall not stay or delay execution of sentence or judgment, without the special order of the Supreme Court or a justice thereof for that purpose, and in case of such order the said Supreme Court, or justice, may make such order as the case requires for the custody of the defendant, or for admission to bail; in all other criminal cases exceptions as aforesaid may be taken, and in cases charging the offence of nuisance, or forcible entry and detainer, or forcible detainer, exceptions to any decision or ruling of the court may also be taken by the Commonwealth, and writs of error and certiorari, as hereinbefore provided, may be issued from the Supreme Court to all criminal courts when specially allowed by the Supreme Court or any judge thereof."

Act of 24th March, 1877, P. Laws, 40, entitled "An Act to prevent delay in the review of capital offences in the Supreme Court. Be it enacted, etc., That no writ of error or certiorari, in capital offences, shall be issued from the Supreme Court to any court of Oyer and Terminer and General Jail Delivery to remove the indictment, record, and proceedings to the Supreme Court for review, after twenty days from sentence, unless specially allowed by the Supreme Court or a judge thereof." JUDICIAL OPINION: In Sayres v. Commonwealth, 7 Norris, 291, it was decided that the twenty days' limitation of the Act of 1877 was not in violation of the constitutional right of review in the Supreme Court, in capital cases, but was a reasonable regulation of that right. And the Supreme Court has adopted rules, in the spirit of this legislation, to facilitate the early hearing and decision of capital cases removed to that court.

[Judicial vacancies, how filled.]

Section 25. Any vacancy happening by death, resignation, or otherwise, in any court of record, shall be filled by appointment by the Governor, to continue till the first Monday of January next succeeding the first general election, which shall occur three or more months after the happening of such a vacancy. See Art. IV. § 8.

Reported, Conv. Jour. 417. Considered and amended, 4 Conv. Deb. 406-7; 6 Id. 452; motion to reconsider, rejected, Id. 525; Amendment of Mr. Stewart, rejected, Id. 541-2.

DERIVED : Judiciary Amendment of 1850, Art. V. § 2: " . . . Any vacancies happening by death, resignation, or otherwise, in any of the said courts [of record], shall be filled by appointment by the Governor, to continue till the first Monday of December succeeding the next general election."

Amendment of 1838, Art. II. § 8: "He [the Governor] shall nominate, and by and with the advice and consent of the Senate appoint, all judicial officers of the courts of record, unless otherwise provided for in this Constitution. He shall have power to fill all vacancies that may happen in such judicial offices, during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

See, also, Constitution of 1790, Art. II. § 8; Constitution of 1776, chap. ii. § 20; and Com. v. Maxwell, 3 Casey, 444.

[Uniform laws for courts—Certain special courts prohibited.]

Section 26. All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction, and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process and judgments of such courts, shall be uniform; and the General Assembly is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in ART. V.]

the judges of the courts of Common Pleas and Orphans' courts.

Reported, Conv. Jour. 417. Considered, 4 Conv. Deb. 434-5; 6 Id. 507-14, 542-3, 544-5; 7 Id. 515.

DERIVED: Constitution of Illinois (1870), VI. 29: "All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process, judgments, and decrees of such courts, severally, shall be uniform." The *italicized* words in this section were not borrowed, because the Pennsylvania section was not intended to impose uniformity of rules and practice upon the courts. That question of uniformity was separately considered by the Convention. 6 Conv. Deb. 509, 514 et seq.

COMPARE: Con. Neb. (1875), VI. 19; Col. (1876), VI. 28.

[Jury trial may be waived in civil cases.]

Section 27. The parties by agreement filed may, in any civil case, dispense with trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same; and the judgment thereon shall be subject to writ of error, as in other cases,

Reported, Conv. Jour. 418. Considered, 4 Conv. Deb. 444-5, 451-70, lost; motion to reconsider, 485-6, lost; amendment of Mr. Hall, 6 Id. 525-7, agreed to, 45 to 41; further considered, 7 Id. 544-9.

COMPARE: Provisions of State Constitutions collated, 2 Hough's Am. Constitutions, 588, and Constitution of Texas (1876), V. 10, 17, and California (1879), I. 7.

STATUTE: Act of 22d April, 1874, P. Laws, 109. "That in any civil case now pending in any of the courts of this Commonwealth, or hereafter to be commenced, after issue joined the parties thereto, except those acting in a fiduciary capacity, may by agreement filed in the proper office where such suit is pending, dispense with trial by jury and submit the decision of such cases to the court having jurisdiction thereof; and such court shall hear and determine the same, and the judgment shall be subject to writ of error or of appeal, as in other cases at law or in equity, at the option of either party.

" § 2. The decision of the court shall be in writing, stating separately and distinctly the facts found, the answers to any points submitted in

writing by counsel and the conclusions of law, and shall be filed in the office of the prothonotary or clerk of the proper court where the case is pending, as early as practicable, not exceeding sixty days after such decision shall have been made from the termination of the trial, and notice thereof shall be forthwith given by the prothonotary or clerk to the parties or their attorneys, and if no exceptions are filed thereto in the proper office within thirty days after the service of such notice, judgment shall be entered thereon by the prothonotary or clerk; if exceptions to the findings of facts or conclusions of law be filed within said thirty days, the court, or the judge thereof who tried the case in vacation, may, upon argument, order judgment to be entered according to the decision previously filed, or make such modification thereof as in justice and right shall seem proper, subject always, nevertheless, to review by writ of error or appeal in the Supreme Court; such writ of error or appeal to be taken in the time and manner, and with the effect prescribed by law."

The third section applies the ordinary regulations of appeals and writs of error to appeals and writs of error under the Act, and provides that in case a new trial shall be ordered, it shall be had before the same court as before, and again subject to the provisions of the Act.

By the fourth and fifth sections, an agreement filed shall be a waiver of the right of trial by jury, and cases under the Act shall be subject to existing laws as to costs, except that no jury fee shall be required on entering judgment.

OBSERVATIONS UPON THE STATUTE: 1. Inasmuch as the constitutional provision extends to parties generally, and to all civil cases, the exclusion of parties "acting in a fiduciary capacity" from the benefits of the law, seems to be unauthorized or improper. And as the constitutional section is itself legislative in character—not a mere injunction or command to the Legislature, but an enactment of a right with regulations for its exercise—it may be claimed that it can be practically applied and enforced without resorting to the provisions of the statute. Perhaps, upon the sound principle that part of an Act may be condemned as unconstitutional while the rest will stand, this obnoxious clause may be wholly disregarded in practice. The objection that it is plainly inconsistent with the Constitution, will fully warrant its virtual expulsion from the Act.

2. The provision which regulates the time within which the trial court shall decide a case, after hearing, and file the decision with the prothonotary or clerk of the court, is extremely obscure. We may conjecture that it was the intention of those who made the law to fix a limitation of sixty days from the termination of a trial, as the time within which a decision should be made and filed; but the words used by them do not express that or any other certain purpose and meaning.

3. The manner in which notice is to be given to parties or their counsel of the filing of a decision by the court is left mostly unregulated, nor is provision made for the expense of serving such notices, or for proof of service made. The prothonotary or clerk of the court is to give such notice forthwith upon the filing of a decision, and we may collect from the words "service of such notice" below, that the notice must be in writing. How shall notices be served upon non-resident counsel or parties, or even those in the county remote from the county seat? Is service of notice upon such to be personal, or as in case of a summons, or by post? When parties and counsel are numerous and scattered abroad, is judgment to be deferred for thirty days beyond the time of service of notice upon the last one to be served? These and many other questions arise upon this provision of the statute. Perhaps some of them may be solved by court rules, but court rules cannot dispense with or alter any requirement of the statute.

4. It is an additional objection to this Act that it interposes considerable delay between the filing of a decision and the entry of judgment thereon.

NOTE TO THE FIFTH ARTICLE.

NOTE ON THE FIFTH SECTION.

JUDICIAL DISTRICTS-HISTORY OF THE SECTION AND THE DEBATE THEREON IN CONVENTION: The Committee on the Judiciary System, in the Convention of 1873, reported, that until otherwise directed by law the Common Pleas districts of the State should remain as they were, but that additional judges should be chosen at the first general election after the new Constitution should take effect, to wit, two in Philadelphia, two in the district composed of the counties of Westmoreland, Indiana, and Armstrong, and one in each of eight other districts. Journal, 415-16. (The 25th district, one of the eight, shown by 4 Conv. Deb. 255.)

Mr. Kaine, of Fayette, made a minority report from the same committee, in which was contained a scheme of apportionment and organization for Common Pleas courts, involving the creation of eighteen judicial districts outside of Philadelphia and Allegheny, with three law judges to each, electable every tenth year upon the plan of the free vote. Philadelphia and Allegheny were to be, respectively, judicial districts, the former with thirteen and the latter with seven judges, electable (except the president judge for each) upon the same plan. The Legislature was to have power, every tenth year, to alter or increase the districts, but not to change the mode of electing judges. Journal, 419-20.

Mr. Kaine's plan of triple judicial districts was offered by him in committee of the whole, in modified form, as a substitute for § 4; but after debate and amendment it was rejected, on a division, by a vote of 44 in its favor to 51 against it. 4 Conv. Deb. 113, 150.

Mr. Craig, of Lawrence, then offered the following substitute for the same section : "The city of Philadelphia and every county containing a population of ______, except as hereinafter provided, shall be a separate judicial district. Every county containing less than ______ population shall be connected with one or more counties, so as to form convenient districts. Every such district shall be entitled to at least one judge, learned in the law, and as many more as shall be provided by law." 4 Id. 150. The mover of this amendment afterwards modified it; by filling the blanks with the number 30,000. Id. 152. After the rejection of amendments to the amendment, offered by Mr. Campbell, Mr. Lilly, and Mr. Church, proposing different numbers, a motion by Mr. Walker to strike out 30,000 and insert 45,000 was carried; but Mr. Craig's amendment itself, as so amended, was afterwards rejected. Id. 158.

Mr. Mann, of Potter, next moved to amend § 4, by adding, at the end: "No additional law judge shall hereafter be elected in any district composed of more than one county." This amendment was rejected, as were also amendments offered by Mr. Alricks and Mr. Struthers, the one that districts should contain at least 40,000 of population, and the Legislature might make such further districts as should be necessary; and the other, that the Legislature should divide plural districts, composed of two or more counties, when existing commissions of assistant law judges therein should expire. 4 Id. 158-64.

Thus, all the amendments failed, and the fourth section was agreed to with the single provision in relation to judicial districts, that no more than four counties should be joined together to form a district. But the debate upon the several proposed amendments clearly shows the sense in which certain words of apportionment were used and understood by members of the Convention, and the objects which the supporters of those amendments had in view.

The Craig amendment looked to a large increase of single or onejudge districts by the separation of counties, but did not require that all small counties should be formed into such districts by the Legislature, while the Mann amendment was directed entirely to the latter object. Single districts was the paramount object of both, but the one was concerned mainly with the larger, and the other with the smaller counties.

Mr. Walker, of Erie, afterwards president of the Convention, supported the principle of the Craig amendment very earnestly. He said : "We have now in the counties of Erie, Warren, and Elk two judges. They are learned in the law, honest and competent men; but my experience is, that the system of two judges in one district works an evil instead of a good. . . . Gentlemen talk as though we had a circulating court when one judge is in the county at this term and not again for years, that he understands the run of the business, and can do it with more satisfaction than the single-judge system. It is not so in practice with us. We have, as I have said, two competent and honest men, but yet we say there are preferences. I may prefer one, and you may prefer one to another, and a case is put off and prevented from getting tried because it is before the other judge; that is wrong. I want to cut up at the root such a system. Give us one judge; a single district. Give him ample time to attend to all the judicial business that comes before him, and the business will be better done, more expeditiously done, than we have had it done before. . . . I believe the single district the right system. It will work well; it cannot help but work well. . . . For that reason I am decidedly in favor of single districts, of one judge for every county, where the population will allow of it." 4 Conv. Deb. 154.

Mr. Mann, of Potter, in supporting his amendment, said : "I have offered this amendment because it seems to be in harmony with the votes which have been given on this question. The proposition of the gentleman from Fayette (Mr. Kaine) was voted down because of the argument made by various gentlemen in opposition to double or triple districts. The arguments made against that amendment were all, or nearly all of them, based upon the idea that the districts ought to be single, that there ought to be no divided responsibility in those courts; and according to my experience and my judgment there should be but one judge in a district to whom all parties interested can look for the justice that is to be awarded to them. I believe that no delegate will rise in his place and from his experience of the effect of double districts. speak in favor of them." Again he said : "I believe that in no district where there is more than one judge has the decision of the judge who tried the cause, or made a decision on a motion in court, been reversed by his associate. So far from doing that, they will not even listen to an argument on the subject. I have the fortune, or misfortune-whichever it may be-to live in a district of that kind; and in my district the judge who entertains a motion or tries a cause, has the entire control

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of it, and no matter what the circumstances may be, the other judge will not listen to a motion in regard to it. . . . Causes and motions are continually delayed because the associate will not listen to a proposition to decide a motion entertained by his brother upon the bench, and we are continually delayed by this double-headed system of judicial districts. . . I state it here as a proposition, that no district having an additional law judge will ever be relieved from it unless some provision is made in this Constitution requiring it. We all know the reasons which bring that about. It is so much pleasanter to make provision for our friends than it is to dismiss them, that it will not be done unless there is an absolute requirement making it necessary, and that is the chief reason why I have offered this amendment; not out of any disrespect for any judge we have ever had in our district, or out of any feeling toward any other additional law judge, but simply because I believe it would give far greater satisfaction to divide a district. I am sure it would be more satisfactory to our district to divide it and give us either of the existing judges; the two together are constantly in the way of each other, and by that means justice is delayed." 4 Conv. Deb. 158-9.

Mr. Andrew Reed, of Mifflin, in the same debate, declared: "I am in favor of the principle of single districts, not having two judges in a district where it can properly be avoided." Id. 161. And the amendment and remarks of Mr. Struthers, of Warren, page 163, indicate for him the same position.

Thus far the section reported by the majority of the Judiciary Committee, upon the subject of judicial districts, was unacted upon; but it was reached in committee of the whole, 9th May, 1873, when Mr. Broomall, of Delaware, moved a substitute, which, among other things, provided: "Every county containing more than 40,000 inhabitants shall constitute a separate judicial district; but any county containing a smaller number of inhabitants may, when the necessity requires it, be attached to any contiguous county." 4 Conv. Deb. 255.

In a few remarks made by the mover of this amendment, he said: "I have offered the amendment with a view of harmonizing some discordant views in the Convention, if possible. There is a strong disposition to make single districts, as far as possible, and to make districts composed of single counties. The first paragraph of the amendment has reference to that, and it makes every county containing 40,000 inhabitants a separate district, but provides that a county that has less population than that may be attached to an adjoining county that may have more." The distinction between single and separate districts appears to be here quite clearly conceived, the latter being composed of single counties and the former constituted with single judges. The certain effect of this amendment, if it had been adopted, would have been to increase the number of separate-county and single-judge districts in the Commonwealth, but it would have left the Legislature free to make districts of small counties, or attach them when necessary to contiguous large ones, and free also to increase the number of judges in large counties. Mr. Broomall's amendment, after slight consideration, was withdrawn, and the section itself, on the suggestion that the first clause was unnecessary and the remainder proper for the Schedule, was voted down. Id. 257.

But five days afterwards—14th May—a decisive step was taken. Mr. Samuel A. Purviance, of Allegheny, pending the consideration in committee of the whole of a section of the judiciary Article relating to associate judges, offered a substitute section, covering completely the whole question of judicial districts, and carefully drawn to command Convention support. It combined and harmonized the Craig and Mann amendments, already noticed, and was strong because it enlisted the active support of the friends of both those amendments. With a single change in the number of inhabitants required by it to constitute a county a separate district, this champion proposition marched triumphantly through three readings in Convention and took its place in the Constitution. As proposed it reads as follows :—

"Each county containing 25,000 inhabitants shall constitute a separate judicial district, and shall elect one judge, learned in the law, and the Legislature shall provide for additional judges, as the business of said districts shall require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or if necessary may be attached to contiguous districts as the Legislature may provide. The office of associate judge, not learned in the law, is abolished, except in counties not forming separate districts, but the several associate judges in office when this Constitutution shall be adopted shall serve for their unexpired time." 4 Conv. Deb. 408–9.

It will be seen that this is substantially the 5th section of the judiciary Article, with the number 25,000 instead of 40,000. In the debates upon its adoption Mr. Purviance said : "I came into this Convention impressed with the belief that there were two great matters to accomplish, which would meet with the general approbation of the people. One was to give the people of each county every facility possible for the due administration of justice, and the other was to give the people of each county full representation in the lower house of the Legislature." And in explanation of the second division of the amendment he said : "Now the working of that is this: Two or three counties in the northern part of the State, having a population less than 30,000, may be attached together. The Legislature may take into view the question of territory; they may take into view the inconvenience referred to by the gentleman from Tioga (Mr. Elliott), and if travelling is to be taken into the account, although two or three counties may fall below 30,000, they will have the power of forming them into a judicial district." 4 Conv. Deb. 409; 6 Id. 477.

Mr. Kaine, of Fayette, said: "The gentleman from Franklin (Mr. Sharpe) lives near one end of a judicial district that is nearly one hundred miles long, while Somerset County is at the other end of the district and fifty miles from the president judge. He lives in what is known as a double district, one of these districts having a president judge and an associate law judge, a thing that I desire to see blotted out from the Commonwealth of Pennsylvania." 6 Id. 482.

Mr. Baer, of Somerset: "If you reject this proposition, then you entail upon the people of the interior that infamous practice that is now prevalent in some districts, where you place two judges in one district of four counties, making it a double district, and one coming at one term to try cases, and at the next term another, and, as a consequence, a case is hung up for a whole year, because at one term the case is not determined, and the judge takes the papers to his chambers in a distant county to determine and render a decision when he comes again, and something may occur that he will be away for a whole year; his colleague holds the court, and the case remains undecided. The people are tired of that sort of administration of justice." 6 Id. 475.

The views of Mr. Clark, of Indiana, and of Mr. Mann, of Potter, upon the subject of double districts, and their preference for single ones, have been already shown; but, as they were the most earnest and efficient supporters of the Purviance amendment, and contributed much of the intellectual force and influence which were required for its success, some further extracts from their speeches will fitly conclude this examination of the debates.

Mr. Clark, after saying, "I am very clear in my own conviction that the single-district system is the better plan," added : "The amendment offered by the gentleman from Allegheny (Mr. Purviance) embodies that system, I think, in very clear and comprehensive language; and now that the number of inhabitants necessary to constitute a single [separate] district is stricken out and left blank, we have the one principle arrayed against the other [just before spoken of by him as the principle of single districts," and of 'districts containing more than one judge'] unembarrassed by any figures whatever. It will be observed that the system proposed by the gentleman from Allegheny is a flexible system. It provides for the election of a single judge in every county having a given population, and as many additional judges as the Legislature shall find the business of the district requires.

"This is a flexible system which will yield to suit the wants and necessities of the people, and which can be regulated without any difficulty whatever. It provides further, that counties containing a population less than is sufficient to constitute a single [separate] district, shall, if it be practicable, be formed into convenient single districts, carrying out the same principle which is embodied in the first part of the amendment; and, if necessity requires it, if a county containing less population than the amount fixed cannot be conveniently connected in a single district, it may be attached to a district having a judge." 4 Conv. Deb. 418.

Mr. Mann said: "I am in favor of the principle of this section [the amendment of Mr. Purviance], because I believe it is the only way that a growing evil, in connection with the judiciary, can be remedied. I do not say that I am in favor of this number, 30,000; that is a matter that can be easily arranged in this Convention; if that is too small a number, make it larger. But I maintain that the principle on which this section is framed is the only one that will remedy the growing evil of forming double judicial districts throughout the Commonwealth, and of forming them very unequally." 6 Id. 485.

Again, he said: "The chief merit which I suggest in favor of the section is, that it will prevent the making of *double-headed judicial districts* where they are not needed, and where they do positive harm. In districts with two judges, there is always a divided responsibility, and justice is not meted out as speedily as it ought to be, or would be in such districts as the section contemplates. *Double districts* may work well in cities, and very likely they do work well, but this Convention has decided over and over again that it will provide remedies according to the necessities of the location, and it is a necessity of the country districts that they shall have one judge for each district, and that there shall be a law judge in each county [of competent population].

"This section will forever prevent that evil, and it is a growing evil. There are, in the State, nine of these *double-headed districts*, and I feel very confident that there is no delegate here from any one of them who will not pronounce them an evil; an evil to the profession, an obstacle to the dispensation of justice, and an evil to the judges themselves. You can say what you please about the harmony and good feeling that is maintained between the judges in *double districts*, but I know that the legitimate result of such districts is to create unpleasant feelings, little jealousies, and injurious intercourse between the judges and the bar." And again: "If it be left at 30,000, that will make Tioga County a separate judicial district, but my colleague, who comes from that county, is willing to accept any number that this Convention may see fit to adopt, so that the principle of the section shall be preserved and single judicial districts shall be established." 6 Conv. Deb. 487.

THE JUDICIAL APPORTIONMENT OF 1874 IN THE LEGISLATURE: The Legislative Journal of Debates for the Session of 1874 contains a very considerable amount of discourse upon the subject of judicial districts in which various opinions were expressed by members of the two Houses upon the construction and character of this 5th section of the judiciary Article, and upon the duties and powers of the Legislature in the making of judicial appointments pursuant to its provisions. Among the speeches made in the House of Representatives, those of Mr. Thompson, of Fayette, and Mr. Stranahan, of Mercer, are conspicuous as logical and apparently impartial expositions of the constitutional section, imputing to it consistency and completeness, and defending it against the imputation that its language is doubtful or obscure. Leg. Jour. 1874, pp. 624, 698. To the judicious reader, far removed from the influence of the interests or passions which entered into the debate, those speeches will appear to have been carefully considered and to contain, with reference to judicial appointments, most reasonable and satisfactory views of the Constitution and of legislative duty.

A question raised by Mr. Senator Wallace upon the last clause of the second division of the section, was one well worthy of attention by the Legislature. In his view, the small counties that could be "attached" to contiguous districts, were those only which were wholly surrounded by separate-district counties, namely, Adams, population 30,315, Greene, 25,889, and Lebanon, 34,180. Leg. Jour. 288, 333. Stated in different form, the proposition was that whenever a small county adjoined another small county it could not be attached to a contiguous separate county district, because the necessity for such attachment, contemplated by the Constitution, would not exist. And it was urged, that it was with particular reference to small counties, each wholly surrounded by large ones, that the provision for attaching counties was proposed and supported in Convention. That this view was rejected by the Senate, after some consideration, is by no means conclusive evidence against it; for infallibility of judgment upon apportionment bills cannot be claimed to be one of the merits of legislative bodies. The ques-, tion may therefore be considered upon original grounds.

The clause to be construed, and the words which immediately precede it are: "Counties containing" less than 40,000 inhabitants, "shall be formed into convenient single districts, or, if necessary, may be attached to contiguous districts, as the General Assembly may provide." Clearly, the necessity here spoken of will arise in the case of any small county when it cannot be formed with one or more other small counties into a convenient single district. But may not this occur, and is it not likely to occur sometimes, when a small county shall adjoin one or more other small counties? And, inasmuch as contiguity of counties, constituting single districts, is not required, but only their convenient connection, it is not impossible that a small county, entirely surrounded by large ones, may conveniently be formed into a district with another small county which it shall not adjoin. We may conceive that when Columbia County shall have attained to 40,000 of population, a proper connection of Montour with Union to form a single district, might be made, although the latter counties do not adjoin each other. In fact a connection between them was proposed when the judicial apportionment of 1874 was under consideration, but was properly rejected at that time for reasons which may not exist in future.

Ultimately, in framing the apportionment of 1874, only three small counties were "attached" to contiguous districts, but it does not follow that a like result can be fairly obtained in future apportionments. Counties by reason of an increase of their population will pass from the second class to the first, and in the readjustment of districts the number of attached counties may be largely increased. In the existing apportionment the attachment of Fulton to Franklin can only be justified upon the reasoning above stated, and that reasoning may have, in future apportionments, much more extended application.

Fulton, with 9330 of population, according to the census of 1870, although it adjoined Huntingdon, with but 31,300, was attached to Franklin, with 45,382. But its connection with Franklin can be justified if, in fact, it could not be joined with Huntingdon to form a convenient single district. If the question expended itself upon the two counties of Huntingdon and Fulton, there would be no difficulty, for they could be conveniently and properly united to form a district; but we must go further, and ascertain whether the junction of Huntingdon with some other county or counties was not necessary, after which the addition of Fulton would have created an inconvenient single district, or required the making of a double district of small counties in violation of the Constitution.

There is no real difficulty in the construction of the second division of the constitutional section, and no insuperable difficulty opposed to its complete application in any apportionment. The general direction for forming districts is simple, direct, unambiguous, and imperative, with an accompanying clause to render the division convenient and workable under all circumstances. Counties under 40,000 of population shall be formed into districts—into single districts—into convenient single districts—and whenever one of such counties cannot be used in the forming of such districts, it may be attached to an adjoining large county, and thus the apportionment be made complete. For the reasons heretofore given in the construction of the section, this word "attached" is most fitly chosen to indicate that the separate district character of the large county will not be lost by such attachment, and that the attached county will retain its character as a county of the second class, and have associate judges.

But as the necessity for attaching a small county to a large one may arise under various circumstances which cannot be defined in the Constitution, or in fact foreseen, there is no attempt made in this division of the section to limit the exercise of legislative power to the few cases of small counties wholly surrounded by large ones, or to limit it otherwise than by the rule of necessity, which is positively prescribed. When *necessary*, a small county may be attached; otherwise, the command to form single districts will have absolute control.

Nothing can be more unsound in reasoning or wilder in statement than to say that the Constitution does not fix the rules of apportionment throughout, or that those rules are not peremptory and imperative. And yet, a leading member of the Senate, in 1874, declared in debate, that the conclusion to which he had finally come regarding the whole fifth section of the judiciary Article was, that there was nothing peremptory in it, except that two counties containing over 40,000 of population each, should not be joined in a judicial district. He believed that, from the necessity of the case, everything else rested in the sound discretion of the Legislature. Leg. Jour. 1874, p. 394. And a conspicuous member of the House of Representatives, at the same session, after describing the section as one of "much obscurity," and the second division of it as "abstruse and peculiar," proceeded to argue that the Legislature was the final and only judge of the construction of the second division; that there could be no other; that inasmuch as the State Constitution "confers all authority and power upon the Legislature which is not expressly prohibited" or conferred upon Congress by the Constitution of the United States, it followed that the Legislature could judge conclusively the whole question of forming judicial districts under the second division, and might, indeed, form the whole State into a judicial district, if it deemed it proper and convenient to do so, and there was no other limitation upon it than that of the second division. Leg. Jour. 697-8 In fact, this idea that any limitation upon legislative

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power, in order to be effectual or respected, must rest in *express prohibition*, pervaded the debates, and apparently inspired that sense of independence and of freedom from any large measure of constitutional restraint, which was a conspicuous characteristic of the Legislature of 1874. It was plainly asserted by Mr. Senator Strang, who held that "the Legislature is supreme, except in so far as it is expressly limited by the terms of the Constitution," Leg. Jour. 334, and by Mr. Senator Cutler, Id. 377, who argued that "whenever there is doubt or ambiguity with regard to whether the power of the Legislature is restricted or limited, that doubt must be construed in favor of the power of the Legislature, and that power remains, and is not affected by the Constitution."

It is true that Mr. Senator Ermentrout in one House declared that "a prohibition may be by implication as well as by express terms," Leg. Jour. 374, and that Mr. Representative Stranahan in the other House, said: "I know that as members of the Legislature, we are clothed with very large power, and yet our power is limited by the Constitution of the State; that limitation may not be expressed in so many words, but where it is clearly implied, where it is clearly inferred from the provisions of the instrument itself, we are controlled by it." Id. 698. And it is equally true, that these views are in strict accordance with opinions pronounced by the Supreme Court in Lewis's Appeal, 67 Pa. St. Reports, 153, and in many other cases. But they do not seem to have obtained general acceptance in either House, or to have been followed in framing several of the important bills which were enacted into laws at that session of 1874.

If the Constitution had not in express terms required the Legislature to designate the judicial districts of the State, still the Legislature would have possessed the power to form such districts by virtue of the general grant of legislative power contained in the first section of the second Article, and the exercise of the power, in the absence of constitutional regulation, would have been, as to both time and manner, according to its discretion. But when the Constitution directs when and how judicial districts shall be made, when it directs the power to be exerted and regulates the manner of its exercise, it must have acceptance and command obedience according to what is expressed, and according to what is implied. Its provisions are to receive a reasonable construction. The things expressly written therein and the natural and necessary inferences therefrom, are of equal obligation, and both are to be obeyed.

ARTICLE VI.

IMPEACHMENT AND REMOVAL FROM OFFICE.

SECTION

RECTION

ment.

1. Impeachment power.

2. Trial of impeachments.

3. What officers impeachable - Judg-

4. Condition of official tenure-Removals from office.

[Impeachment power.]

Section 1. The House of Representatives shall have the sole power of impeachment.

DERIVED: Con. of 1790, Art. IV. § 1. Con. U. S. Art. I. § 2, div. 5. See Con. 1776, chap. ii. § 9; Charter of 1682, § 19.

CONSULT: Story on Con. §§ 688-9.

[Trial of impeachments.]

Section 2. All impeachments shall be tried by the Senate; when sitting for that purpose the Senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members present.

DERIVED: Con. of 1790, Art. IV. § 2. Con. U. S. Art. I. § 3, div. 6. See Con. 1776, chap. ii. § 22.

CONSULT: Story on Con. §§ 742-813.

[What officers impeachable-Judgment.]

Section 3. The Governor and all other civil officers shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth. The person accused, whether convicted or acquitted, shall never-

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theless be liable to indictment, trial, judgment, and punishment according to law.

DERIVED: Con. of 1790, Art. IV. § 3, but the word "honor" before the words "trust or profit," which was contained in the old text, is dropped. Con. U. S. Art. II. § 4; Art. I. § 3, div. 7. See also Con. 1776, chap. ii. § 22. See reference to Story on the Constitution, under next preceding section.

[Condition of official tenure-Removals.]

Section 4. All officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime. Appointed officers, other than judges of the courts of record and the Superintendent of Public Instruction, may be removed at the pleasure of the power by which they shall have been appointed. All officers elected by the people, except Governor, Lieutenant-Governor, members of the General Assembly, and judges of the courts of record learned in the law, shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate. See Art. IV. § 8.

Considered, 3 Conv. Deb. 224-7, 230-5; 5 Id. 373-6; 7 Id. 559-62, 782; 8 Id. 122-6.

DERIVED in part: Con. of 1790, Art. VI. § 9: "All officers, for a term of years, shall hold their offices for the terms respectively specified, only on the condition that they so long behave themselves well, and shall be removed on conviction of misbehavior in office or of any infamous crime." Judiciary Amendment of 1850, Art. V. § 2: "But for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any of them [the judges required to be learned in the law and associate judges of the courts of Common Pleas], on the address of two-thirds of each branch of the Legislature."

JUDICIAL OPINION: In re Henry B. Tanner, 39 Leg. Intel. 4; Houseman v. Commonwealth, Id. 403.

REMARKS: There can be no question that the second division of this section has introduced into the Constitution a most important change

relating to removals from office. Except as to a few offices mentioned therein, a power to remove from office will hereafter be inseparable from the power to appoint. The power will extend to the removal of officers appointed for fixed, statutory terms, as well as to others, and may be exercised by any inferior appointing power as well as by the Governor of the Commonwealth, in all cases within their proper sphere. In the case of this section an examination of the Convention Debates will be instructive, as they contain a full exposition of the intent and purpose of those who proposed and supported this provision, as well as of the views of those who opposed its adoption.

It appears to have been understood in Convention that the "due notice and full hearing" to be given to an elected officer before his removal from office, was to be by and before the Governor, and not by and before the Senate. But, if this be the true construction it follows that the words, "shall be removed," are not to be taken in an absolute or unqualified sense. For a full hearing of an officer, implies that a decision may be made in his favor upon an investigation of the charges against him—in other words, that his removal from office, asked for by the Senate, may be refused by the Governor. It must be admitted that the meaning of the provision is not entirely clear.

The remark at page 126, ante, that judges of the Supreme Court can be removed from office only upon impeachment, is correct with reference to removal by address, or at the pleasure of the appointing power, but is incomplete, because it does not notice the power to remove any officer on "conviction of misbehavior in office, or of any infamous crime." Upon a conviction of a judge, in due course of law, of misbehavior in office, or of the commission of an infamous crime, his removal is decreed by the first division of the present section, but inasmuch as such conviction may occur otherwise than upon impeachment, the argument will lie that the power to remove a judge of the Supreme Court is not lodged exclusively with the Senate, acting in a judicial capacity. But, accepting this view, the question arises : By whom, in such a case of conviction, shall the removal be made? Shall it be by the court in which the conviction is had (Commonwealth v. Harris, 1 Leg. Gaz. Rep. 455), or by the Governor, upon the production before him of the record of conviction?

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ARTICLE VII.

OATH OF OFFICE.

SECTION 1. General oath of office.

[General oath of office.]

Section 1. Senators and Representatives and all judicial State and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm), that I will support, obey, and defend the Constitution of the United States and the Constitution of this Commonwealth; that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this Commonwealth, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law."

The foregoing oath shall be administered by some person authorized to administer oaths, and in the case of State officers and judges of the Supreme Court shall be filed in the office of the Secretary of the Commonwealth, and in the case of other judicial and county officers in the office of the prothonotary of the county in which the same is taken; any person refusing to take said oath or affirmation shall forfeit his office, and any person who shall be convicted of having sworn or affirmed falsely, or of having violated said oath or affirmation, shall be guilty of perjury, and be forever disqualified from holding any office of trust or profit within this Commonwealth. The oath to the members of the Senate and House of Representatives shall be administered by one of the judges of the Supreme Court, or of a court of Common Pleas, learned in the law, in the hall of the House to which the member shall be elected. See Art. I. § 4, and Schedule, § 30.

A section reported by Committee on Legislation, 2 Conv. Deb. 481. Considered, Id. 485-511, 518-47, 551-61. Report of Committee on Oaths of Office, 3 Id. 731. Considered and amended, 5 Conv. Deb. 16-34; 6 Id. 88-92, 171-93; 7 Id. 562-75.

DERIVED in part: Con. of 1790, Art. VIII.: "Members of the General Assembly, and all officers executive and judicial, shall be bound by oath or affirmation to support the Constitution of this Commonwealth, and to perform the duties of their respective offices with fidelity," Con. of 1776, chap. ii. §§ 10, 40. By the Markham Charter (1696), all persons who, for conscience' sake, could not take an oath, were permitted to make their solemn affirmation, attest, or declaration. See, also, Con. U. S. Art. VI. § 1, div. 3.

JUDICIAL OPINION: Williams v. The Commonwealth, 10 Norris, 139; 9 W. N. C. 113; Commonwealth v. McCarter, 2 Out. 607; 11 W. N. C. 178. See, also, Emerick v. Harris, 1 Binn. 416; Riddle v. Bedford County, 7 S. & R. 386; Eakin v. Raub, 12 S. & R. 353; Keyser v. Franklin County, 2 Rawle, 139; Neale v. Overseers, 5 Watts, 538; Pa. Railroad Co. v. Riblet, 16 Sm. 164.

STATUTES: Act of 18th April, 1874, P. Laws, 64, requires the constitutional oath of office to be taken and subscribed by *municipal* officers, as well as by the officers named in the above section of the Constitution, and imposes a penalty upon all officers who violate the Act.

The Act of 4th June, 1879, P. Laws, 83, requires the oath to be taken and subscribed by every person holding an official position under the State government, either as the head of a department or office, or in any subordinate position in any of the departments or offices.

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CONSTRUCTION: Obedience to the Constitution and the duty of defending it, are added to the former oath-obligation of members of the Legislature and of all judicial, State, and county officers. They are to obey the commands of the Constitution, whether expressed or implied, and they are also to defend that instrument against both open and secret foes. Passive support of it—mere acquiescence or submission—is not enough; they are, upon all fit occasions, to be its active, zealous, intrepid champions; standing up for it against all comers, and shirking no responsibility, trouble, or peril in its defence. Possibly, all this definition of duty could be inferred from the old oath of office, for he who properly supports the Constitution will be obedient to it, and apt and earnest in its defence; but the new oath gives expression and emphasis to what before vested only in deduction and inference.

Their oath of office confers authority, and imposes the duty upon law judges of the Commonwealth to declare Acts of Assembly which violate the Constitution to be null and void. When the validity of an Act of Assembly is controverted before a judge upon Constitutional ground, and it becomes necessary to his decision of a matter of public or private right in issue, to pass upon the question, he cannot refuse to perform his duty to the parties before him, and indirectly to the people, by deciding whether the Act, in view of the objection made to it, is, or is not a valid enactment. He is to exercise his best judgment in a case of such gravity and importance, to be careful that no political or other improper bias leads or misleads him, and that he has fairly considered all legitimate evidence bearing upon the point in dispute; but from the very necessity of the case he must render a decision, and if he shall be clearly of opinion that the statute is repugnant to the Constitution, his oath of office requires him to pronounce its condemnation.

ARTICLE VIII.

SUFFRAGE AND ELECTIONS.

SECTION SECTION 1. Qualifications of voters. tion of election laws to disgualify for 2. General elections. voting. 3. Municipal elections. 10. Witnesses not to withhold testi-4. Elections by ballot-Numbering mony in election cases. and endorsement of ballots. 11. Election districts. 5. Electors privileged from arrest. 12. Representatives to vote viva voce. 6. Soldier-voting. 13. Residence of electors not gained nor 7. Uniform laws for holding elections lost in certain cases. and registering electors -- Unregis-14. Election boards. tered electors may vote. 15. Election officers-Who may not be 8. Corruption to disgualify voters. -Not eligible to certain offices. 9. Candidates guilty of bribery, etc., 16. Overseers of election. disqualified for office-Wilful viola- 17. Trial of contested elections.

[Qualifications of voters.]

Section 1. Every male citizen, twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections:----

First. He shall have been a citizen of the United States at least one month.

Second. He shall have resided in the State one year (or if, having previously been a qualified elector or native-born citizen of the State he shall have removed therefrom and returned, then six months), immediately preceding the election.

Third. He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.

Fourth. If twenty-two years of age, or upwards, he shall have paid within two years a State or county tax, which

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shall have been assessed at least two months and paid at least one month before the election.

Reported, Conv. Jour. 268, Deb. I. 503. Considered and amended, 1 Conv. Deb. 525-42, 545-65, 566-87, 602-9, 614-34, 639-58, 668-83, 693-710, 714-18; 5 Id. 127-34, 187; 7 Id. 639. Revision Com. Rep. Jour. 993. An amendment to allow female suffrage, lost, 22 to 67, 5 Deb. 128, and an amendment to submit the question to a popular vote at a time to be fixed by the Legislature, also lost, 25 to 75. Id. 186.

HISTORY AND CONSTRUCTION: The Royal Charter of 1681, § 4, conferred power upon William Penn, his successors, etc., to enact laws "by and with the advice, assent, and approbation of the freemen of the province, or the greater part of them, or of their delegates or deputies." In accordance with this grant the Charter of 1682, §§ 1, 2, 14, 16, 23, authorized the election, from time to time, of members of the Executive Council, and of Representatives to the General Assembly by the freemen of the province; and the Charter of 1683, §§ 1, 2, 13, contained like provisions, extended to include the "three lower counties," or "territories" (now constituting the State of Delaware), which had been annexed to the province by the Act of Union of 7th December, 1682.

The definition of the word "freemen," as found in those charters, is shown by the second section of the laws agreed upon in England, on the 5th of May, 1682. That section was as follows: "That every inhabitant in the said province that is or shall be a purchaser of one hundred acres of land or upwards, his heirs and assigns, and every person who shall have paid his passage and taken up one hundred acres of land at one penny an acre, and have cultivated ten acres thereof, and every person that hath been a servant or bondsman and is free by his service, that shall have taken up his fifty acres of land and cultivated twenty acres thereof, and every inhabitant, artificer, or other resident in the said province that pays scot and lot to the government, shall be deemed and accounted a freeman of the said province; and every such person shall and may be capable of electing or being elected representatives of the people in Provincial Council or General Assembly in the said province."

Coming next to the Markham Charter of 1696 (provisionally adopted in the absence of the proprietary), we find provisions restrictive of the rights of the freemen—abridging to some extent their eligibility to representative offices and their right of suffrage. The second section of that charter was as follows: "And to the end that it may be known who those are in this province and territories who ought to have right of or to be deemed freemen, to choose or be chosen to serve in Council and Assembly as aforesaid, *Be it enacted*, *etc.*, That no inhabitant of this Province or Territories shall have right of electing or being elected as aforesaid, unless they be free denizens of this government, and are of the age of twenty-one years or upwards, and have fifty acres of land, ten acres whereof being seated and cleared, or be otherwise worth fifty pounds lawful money of this government, clear estate, and have been resident within this government for the space of two years next before such election."

It does not appear that this charter received the express assent or ratification of William Penn, but it was provisionally in force, or was acquiesced in, for several years.

In December, 1699, Penn returned to the province from England (having been absent there from the year 1684), and resumed the active duties of administration. In the month of May following, the charter of 1683 was delivered up or surrendered to him by six parts in seven of the Representatives in General Assembly met, conformably to the 24th section of that charter, upon his promise to amend and restore it, or in lieu thereof to grant them a new one better adapted to existing circumstances and the condition of the inhabitants. This promise was faithfully kept, its obligation fully discharged by the grant of the Charter of Privileges of 1701, which, after being "approved, agreed to, and thankfully received" by the General Assembly on the 28th of October of that year, continued to be the fundamental law of the province until the Declaration of Independence and substitution therefor of the Constitution of 1776.

The second section of that charter provided, "That the qualifications of electors and elected, and all other matters and things relating to elections of Representatives to serve in Assemblies, though not herein particularly expressed, shall be and remain as by a law of this government, made at New Castle, in the year 1700, entitled 'An Act to ascertain the number of members of Assembly and to regulate the elections."" The Act here referred to is not contained in the edition of general statutes known as "Smith's Laws," or in other published collections. It had, however, but short duration, being repealed by the Queen in council, 7th of February, 1705. Its provisions upon the subject of the qualifications of electors were probably like those of the Act of 1705 (IV. Anne), which bore precisely the same title. The second section of the latter Act provided that the electors should consist of the freemen and inhabitants, "but no inhabitants of the province shall have right of election or being elected unless he or they be native-born subjects of Great Britain, or be naturalized in England or in this province, and unless such person or persons be of the age of twenty-one years or upwards, and be a freeholder or freeholders in this province, and have fifty acres of land, or more, well settled, and twelve acres thereof cleared and improved, or be otherwise worth forty pounds lawful money of the province, clear estate, and have been resident therein for the space of two years before such election." A special provision for the city of Philadelphia followed, to wit: "Electors and elected for the city of Philadelphia shall have a freehold estate, or be worth fifty pounds clear personal estate within the said city, and be otherwise qualified as aforesaid." See, also, supplementary Acts of 18th August, 1727, and 3d February, 1743.

The Constitution of 1776, chap. ii. § 6, provided: "That every freeman of the full age of twenty-one years, having resided in this State for the space of one whole year next before the day of election for Representatives, and paid public taxes during that time, shall enjoy the rights of an elector: *Provided always*, That sons of freeholders of the age of twenty-one years shall be entitled to vote, although they have not paid taxes."

The Constitution of 1790, Article III. § 1, provided, that "In elections by the citizens every freeman of the age of twenty-one years, having resided in the State two years next before the election, and within that time paid a State or county tax, which shall have been assessed at least six months before the election, shall enjoy the rights of an elector: *Provided*, That the sons of persons qualified as aforesaid, between the age of twenty-one and twenty-two years, shall be entitled to vote although they shall not have paid taxes."

One of the amendments of 1838 was to substitute for this section the following: "In elections by the citizens, every white freeman of the age of twenty-one years, having resided in this State one year, and in the district where he offers to vote ten days, immediately preceding such election, and within two years paid a State or county tax which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector; but a citizen of the United States, who had previously been a qualified voter of this State, and removed therefrom and returned, and who shall have resided in the election district and paid taxes as aforesaid, shall be entitled to vote after residing in the State six months: *Provided*, That white freemen, citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in the State one year and in the election district ten days, as aforesaid, shall be entitled to vote although they shall not have paid taxes."

The word "freeman," in view of the modern meaning assigned to

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it in statutes and judicial decisions, differs little, if at all, from the word "citizen," which is substituted for it in the new Constitution. It is not even specifically masculine; it includes both sexes as well as minors. In short, its signification has expanded with changes of local usage, of legislation, and of public opinion, greatly beyond that borne by it in colonial times, when servitude was a feature of our political and social systems and gave color to the language of charters and laws. But see Hobbs v. Fogg, 6 Watts, 553.

It will be seen that the Constitution of 1874 changes the qualifications for voting at popular elections in several important particulars, and that its provisions on that subject are cast in a new and improved form.

1. The words "white freeman," contained in the suffrage Amendment of 1838, are dropped, and the words "male citizen" inserted in their place, so that no restriction of suffrage, resting upon a distinction of color, shall hereafter appear in the text of the Constitution. A motion made in Convention to restore the words "white freeman" to their former place, was rejected by a vote of yeas 7, nays 80. 5 Conv. Deb. 130.

2. United States citizenship for one month is required as a qualification for voting. This provision was reported by the Committee on Suffrage, and was fully vindicated in debate. 1 Conv. Deb. 503, 529–30, 658, 668–83, 693–706. A motion to strike it out was rejected by a vote of 27 to 66. 5 Id. 128–9.

3. A native-born citizen of the State, not an elector, removing from the State and returning, will, after remaining six months in the State, acquire a sufficient *State* residence for purposes of voting. It will not be necessary (as under the old Constitution) that he shall have been an elector of the State before his removal therefrom. This very proper provision was adopted by the Convention on motion of Mr. Russell, of Bedford. 5 Conv. Deb. 132.

4. A residence of two months in an election district, before an election, is made a requisite for voting thereat, instead of ten days as under the old Constitution. This provision was reported by the Committee on Suffrage, 1 Conv. Deb. 503, and all motions to make the time longer or shorter were rejected. Id. 629; 5 Id. 131 (where remarks made by Governor Bigler are, by an error of the reporter or printer, imputed to Mr. Buckalew).

5. Lastly: The State or county tax to be paid as a prerequisite of voting by persons over twenty-two years of age, must be assessed at least two months and paid at least one month before the election at which the right to vote shall be claimed. Under the old Constitution

no time for the payment of such tax within the two years preceding the election, was fixed, and its assessment might be at any time preceding the tenth day before the election. The Committee on Suffrage of the Convention did not report any tax qualification for voters, and a majority of the committee were opposed to such requirement, 1 Conv. Deb. 503, 528; but on motion of Mr. Niles, of Tioga, the provision of the old Constitution on that subject, in amended form as above, was agreed to and added. Id. 629, 631, 657.

An improved form was given to the whole section, upon motion of Mr. J. W. F. White, of Allegheny, and retained afterwards against objection. 1 Conv. Deb. 672, 676-7; 5 Id. 132-3.

COMPUTATION OF TIME: Wherever the word "month" occurs in this section, a calendar month is clearly intended, and the computation in any case will be from a given or numbered day in one month to a day of corresponding or like designation in another, without regard to the number of intervening days. 1 Conv. Deb. 628–9. This rule of computation is well stated in the recent English case of Freeman v. Read, 10 Jurist, N. s. 149; 8 Law Times, N. s. 458, in the following language: "In calculating a calendar month, if the computation commences during the course of a month, the right method is, to proceed from a given day in one month to the day with a corresponding number in the ensuing month." In the calculation of time upon a single bill, the same rule was applied. Shapley v. Garey, 6 S. & R. 539. See, also, Commonwealth v. Maxwell, 3 Casey, 444.

In the case of the contested election of F. P. Musser for justice of the peace of Millheim Borough, Centre County, who had been returned elected at the February election in 1881, Judge Elwell, holding a special term of the Quarter Sessions of Centre County, held that a voter at the election in controversy, who had moved into the borough on the 16th day of December, 1880, was not qualified to vote therein at the election held on the 15th of February, 1881, because he had not the two months' district residence, immediately preceding the election, required by the Constitution. 12 W. N. C. 155.

Shall the common-law rule, that a person shall be considered out of his minority on the day before the twenty-first anniversary of his birth, be applied to a claim by him to vote on age, on that day, under this section of the Constitution? There are several reasons against such application of the rule which ought to command attention and respect. In the first place, if the rule should be accepted with such application, it would seem to follow that a citizen otherwise qualified could not vote on the day before the twenty-second anniversary of his birth without a taxpayment qualification, which would be against the common understanding and usage at elections. In the next place, the rule would be opposed to the general rule and practice in this State in the computation of time, sanctioned by many judicial decisions, and familiar to the people in their business transactions; and lastly, it would be a rule plainly unfitted for uniform or certain enforcement by unlearned election boards at elections, and, therefore, a cause of inconvenience in the practical working of our electoral system.

JUDICIAL OPINION: Huber v. Reilly, 3 Sm. 112; McCafferty v. Guyer, 9 Sm. 109; Page v. Allen, 8 Sm. 338; Fry's Election Case, 21 Sm. 302; 4 Leg. Gaz. 225; 29 Leg. Intel. 237; Connolly's Case, 5 W. N. C. 8; Murray's Petition, 5 W. N. C. 9; Colvin v. Beaver, 13 Norris, 388; Reifsnyder v. Musser, 12 W. N. C. 155; Courtright v. Broderick, 11 W. N. C. 393. See, also, Catlin v. Smith, 2 S. & R. 267; Thompson v. Ewing, 1 Brew. 102; Bright. Elec. Ca. 468.

[General elections.]

Section 2. The general election shall be held annually on the Tuesday next following the first Monday of November, but the General Assembly may by law fix a different day, two-thirds of all the members of each House consenting thereto.

Reported, Conv. Jour. 156, Deb. i. 177. Amended, 7 Conv. Deb. 630-31.

HISTORY, ETC.: The day for the annual general election under the Constitutions of 1776 and 1790 was the second Tuesday of October. Con. of 1776, chap. ii. §§ 9, 17; Con. of 1790, Art. I. §§ 2, 5; Art. II. § 2; Art. VI. § 1. For the times fixed by Colonial charters, see remarks under Art. II. § 2, *ante*; and for report and consideration of the above section, 1 Conv. Deb. 177, 221-9, 253-7.

The reasons which induced this change of time are fully stated in the Debates referred to, and may be accepted as satisfactory. They are, in brief, increased convenience, the saving of expense, and the prevention of the importation of fraudulent voters from other States.

The power conferred upon the Legislature to change the day of the general election by a two-thirds vote of each House, is one which can properly be exerted in case the quadrennial and biennial times for presidential and congressional elections shall be changed by Act of Congress.

The principal statutes for regulation of general elections since 1790

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have been the Acts of 15th February, 1799, 3 Sm. Laws, 340; 4th April, 1803, 4 Id. 100; 29th March, 1813, 6 Id. 70; 2d April, 1821, 7 Id. 473; 2d July, 1839, P. Laws, 519; 17th April, 1869, P. Laws, 49; and Act of 30th January, 1874, P. Laws, 31.

[Municipal elections.]

Section 3. All elections for city, ward, borough, and township officers, for regular terms of service, shall be held on the third Tuesday of February.

Reported, Conv. Jonr. 156; Deb. i. 177. Considered and amended, 1 Conv. Deb. 228-9, 240-46, 257-62, 290-303, 309-20.

CONSTRUCTION: There may be municipal or local elections, for regular official terms, not covered or controlled as to time, by this section. Mr. McAllister, of Centre, who reported the section from the Committee on Suffrage, explained with reference to the express application of the section to city, ward, borough, and township officers, that there might be local elections for officials not included in the provision; but it was thought by the committee that their regulation could be safely left to the Legislature, which would possess all power over the subject that was not expressly taken away. 1 Conv. Deb. 240. And in the Committee on Suffrage it was understood that the section would not apply to the election of school directors who are not strictly ward, borough, or township officers.

Elections to fill vacancies for unexpired terms in the offices covered by the section, may, of course, be authorized by law to be held at other times than the third Tuesday of February.

JUDICIAL OPINION: Com. v. McCarthy, 3 W. N. C. 477; Brooke v. Com., 5 Norris, 163; 5 W. N. C. 416; Erb v. Com., 8 W. N. C. 9.

[Elections by ballot-Numbering and endorsement of ballots.]

Section 4. All elections by the citizens shall be by ballot. Every ballot voted shall be numbered in the order in which it shall be received, and the number recorded by the election officers on the list of voters opposite the name of the elector who presents the ballot. Any elector may write his name upon his ticket, or cause the same to be written thereon, and attested by a citizen of the district. The election officers shall be sworn or affirmed not to disclose

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how any elector shall have voted, unless required to do so as witnesses in a judicial proceeding.

Reported, Conv. Jour. 268, Deb. i. 503-4. Considered and amended, 1 Conv. Deb. 718-33, 740-56, 759-80, 785-805; 2 Id. 4-29, 87-99, 102-24; 5 Id. 134-41, 146-63; 7 Id. 628-9, 646-7. See, also, 1 Id. 530, 531.

HISTORY, ETC.: The requirement that elections by the citizens shall be by ballot, appears in the Constitution of 1776, chap. ii. §§ 19, 32, and in the Constitution of 1790, Art. III. § 2. And see Charter of 1682, § 20; Charter of 1683, § 18; Charter of 1701, § 2, last clause.

The numbering of ballots and the *compulsory* endorsement of names thereon, were provisions reported by the Committee on Suffrage. Both were warmly contested in debate, with the result that the former was retained and the latter changed from a compulsory to a permissive provision. Connected in consideration with them was another provision, also reported by the Committee on Suffrage, that ballots voted might be open or secret, as each elector should prefer. That provision, however, which was similar to one to be found in the Constitution of West Virginia of 1872, Art. IV. § 2, was rejected by the Convention.

The numbering of ballots by election officers, is supported by the example of Illinois. By statute of that State of February 22d, 1861, § 5, it was provided : "At all elections, general or special, in this State, where the vote is by ballot, if the judges of elections are satisfied under the provisions of this Act and the other laws of this State relating to elections, that the person offering the vote is a legal voter, he [they] shall endorse on the back of the ticket offered, the number corresponding with the number of the voter on the poll-book, and put the said ticket immediately in the ballot-box, and the clerks of election shall enter the name of the voter and his number in the poll-book." And by a supplement to that Act, February 15, 1865, § 16, it was further provided, that the aforesaid fifth section of the Act of 1861 "shall be construed so as to require the number to be endorsed by the judges or inspectors of election on every ballot cast, and in all elections, general or special, in pursuance of any law of this State."

The clause requiring election officers to be sworn or affirmed not to disclose how any elector shall have voted at an election, etc., was added to the section upon third reading on motion of Mr. Calvin, of Blair. 7 Conv. Deb. 646-7. Intended as a guard to the secrecy of the ballot, the purpose of this clause should be enforced by appropriate legislation, which shall extend not only to the time and manner of taking the oath by election officers, and render its violation an indictable offence—

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matters covered by the general election Act of 1874—but provide, also, an effectual remedy by action to any elector aggrieved by its violation.

In several State Constitutions, adopted since 1873, the example of Pennsylvania in regard to the numbering of ballots has been followed. The Constitutions of Missouri (1875), Art. VIII. § 3, and Colorado (1876), Art. VII. § 8, contain the following section: "All elections by the people shall be by ballot; every ballot voted shall be numbered in the order in which it shall be received, and the number recorded by the election officers on the list of voters, opposite the name of the voter who presents the ballot. The election officers shall be sworn or affirmed not to disclose how any voter shall have voted, unless required to do so as witnesses in a judicial proceeding: Provided, that in all cases of contested elections, the ballots cast may be counted, compared with the list of voters, and examined under such safeguards and regulations as may be prescribed by law." Here, it will be seen, that the Pennsylvania provision which authorizes the endorsement of the voter's name upon his ballot, a provision which may be regarded as a valuable check upon fraud by election officers, is dropped, and a proviso attached to the section to affirm judicial and legislative powers of examination and regulation in election contests, although those powers would be implied -would most clearly exist-if the proviso were wholly wanting.

The Constitution of Texas (1876) contains the following section: Art. VI. § 4. "In all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets, and make such other regulations as may be necessary to detect and punish fraud, and preserve the purity of the ballot-box; but no law shall ever be enacted requiring a registration of the voters of the State."

JUDICIAL OPINION: Johnson's Case, 5 W. N. C. 249; Marburger's. Case, 5 W. N. C. 379; Reifsnyder v. Musser, 12 W. N. C. 155; Milligan's Appeal, 37 Leg. Intel. 158; Contested Election of Gilleland, 38 Leg. Intel. 22.

STATUTE: The supplementary general election Act of 30th January, 1874, § 9, P. Laws, 34–5, repeats the provisions of the Constitution relating to the numbering of tickets, the endorsement of voters' names thereon, and the taking of an oath of secrecy by the election officers, and provides specifically that all judges, inspectors, clerks, and overseers shall be duly sworn or affirmed, in the presence of each other, before entering upon their duties; and by the 19th section of the same Act, P. Laws, 41, "any clerk, overseer, or election officer, who shall disclose how any elector shall have voted, unless required to do so in a

judicial proceeding, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$1000, or by imprisonment not exceeding two years, or both, in the discretion of the court."

[Electors privileged from arrest.]

Section 5. Electors shall in all cases except treason, felony, and breach or surety of the peace, be privileged from arrest during their attendance on elections and in going to and returning therefrom. See § 14, post.

DERIVED: Constitution of 1790, Art. III. § 3.

This section is to be read in connection with the fifth section of the Declaration of Rights, inasmuch as it relates to the freedom of elections therein declared.

[Soldier-voting.]

Section 6. Whenever any of the qualified electors of this Commonwealth shall be in actual military service under a requisition from the President of the United States, or by the authority of this Commonwealth, such electors may exercise the right of suffrage in all elections by the citizens, under such regulations as are or shall be provided by law, as fully as if they were present at their usual places of election.

DERIVED: Amendment of 1864, which constituted section 4, Article III. of the old Constitution. Compare Con. Conn. Amdt. XIII.; Mich. VII. 1; Miss. VII. 6; Mo. II. 21; Neb. VII. 3; Nev. II. 3; N. J. II. 1; N. Y. II. 1; and R. I. Amdt. 4.

HISTORY AND CONSTRUCTION: The origin of this section is to be sought in the soldier-voting Act of 29th March, 1813, 6 Sm. Laws, 70, which was in substance re-enacted by the general election Act of 2d July, 1839, §§ 43-50. But the statutory regulation of 1839 having been decided by the Supreme Court in Chase v. Miller, 5 Wright, 403, to be inconsistent with that provision of the suffrage Amendment of 1838, which required of an elector a residence for ten days in the election district where he should offer to vote, the constitutional Amendment of 1864 was proposed by the Legislature and adopted by the people. Foling its adoption, and to provide for its execution, the Act of 25th August, 1864, P. L. 990, was passed. The section does not include electors employed in the regular army of the United States or otherwise in the military service of the United States than upon requisition made by the President for State militia or troops under Article I. § 8, cl. 15, 16, and Art. II. § 2, of the Federal Constitution and the Acts of Congress passed pursuant thereto; but it does include all electors in military service under the authority of this Commonwealth whether employed within or beyond the borders of the State. Of course it will not include electors of the State drawn directly by conscription into the army of the United States and placed under the control of United States officers.

An amendment of this section limiting the exercise of his voting right by a soldier, to the place of his residence, was considered by the Convention and rejected. 2 Conv. Deb. 29-32.

[Uniform laws for holding elections and registering electors—Unregistered electors may vote.]

Section 7. All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State; but no elector shall be deprived of the privilege of voting by reason of his name not being registered.

Reported, Conv. Jour. 268, Deb. i. 504. Considered and amended, 2 Conv. Deb. 32-4, 36-47; 5 Id. 164-72; Revision Com. Rep. Jour. 994; Amendments rejected, 7 Conv. Deb. 639-43. See, also, 1 Id. 530, 531.

REMARKS: Upon motion by Mr. Dallas, of Philadelphia, the requirement of uniformity in registration, reported by the Suffrage Committee, was extended to "all laws regulating elections." 2 Conv. Deb. 47. But his amendment was modified and probably limited by the Committee on Revision in their report upon this Article, by inserting the words, "the holding of," before the word "elections."

The stringent check provided here upon special legislation was most judicious, and the protection to voters against disfranchisement afforded by the second division of the section, is entitled to like praise. As to the former, though complete uniformity of application and operation in all parts of the State of all election laws hereafter enacted, is not required, because there may be, to some extent, a necessity for discrimination with consequent diversity in regulations concerning returns and contests and possibly other matters pertaining to elections, yet electoral registration and the whole proceeding of voting at and management of

polls, with their necessary incidents, must be subjected to general and uniform laws.

The right of unregistered electors to vote will, of course, be subject to reasonable statutory regulation, but any statute which shall deny or impair the right will be void. In accord with this provision is the Constitution of West Virginia (1872), Art. IV. § 12, which declares : "No citizen shall ever be denied or refused the right or privilege of voting at an election, because his name is not, or has not been, registered or listed as a qualified voter."

STATUTES: Act 30th January, 1874, P. Laws, 31, and Act amendatory of the same, 13th February, 1874, P. Laws, 44. The 10th section of the first named Act regulates the voting of unregistered electors.

JUDICIAL OPINION: Page v. Allen, 8 Sm. 338; Patterson v. Barlow, 10 Sm. 54; Wright v. Barber, 5 W. N. C. 444.

[Corruption to disqualify voters.]

Section 8. Any person who shall give, or promise or offer to give, to an elector any money, reward, or other valuable consideration for his vote at an election, or for withholding the same, or who shall give or promise to give such consideration to any other person or party for such elector's vote, or for the withholding thereof, and any elector who shall receive or agree to receive, for himself or for another, any money, reward, or other valuable consideration for his vote at an election, or for withholding the same, shall thereby forfeit the right to vote at such election; and any elector whose right to vote shall be challenged for such cause before the election officers shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received.

Reported, Conv. Jour. 268; Deb. i. 504. Considered and amended, 2 Conv. Deb. 47-50; 5 Id. 172-3. See also 1 Id. 531-2.

SIMILAR PROVISIONS: In the Markham Charter (1696), § 5, it was provided : "And that elections may not be corruptly managed on which the good of the government so much depends, *Be it further enacted, etc.*, That all elections of the said Representatives shall be free and voluntary, and that the elector who shall receive any reward or gift for giving

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his vote shall forfeit his right to elect for that year; and such person or persons as shall give or promise any such reward to be elected, or that shall offer to serve for nothing, or for less wages than the law prescribes, shall be thereby rendered incapable to serve in Council or Assembly for that year."

By the second section of the Act "to ascertain the number of members of the Assembly and to regulate the elections," passed in the year 1700, it was provided : "That the elector who shall receive any reward or gift for his vote shall forfeit his right of electing for that year, and shall pay the sum of five pounds, one-half thereof to the Governor and the other one-half to him or them that shall sue for the same in any court of record within this province." And the same penalty was imposed upon any one who should give, offer, or promise any reward to be elected; or should offer to serve for nothing or for less allowance than the law prescribed, to be recovered as aforesaid.

Provisions imposing more severe penalties for giving or receiving bribes at elections will be found in Act of 15th February, 1799, § 17, and Act of 2d July, 1839, §§ 122, 123.

[Candidates guilty of bribery, etc., disqualified for office-Wilful violation of election laws to disqualify for voting.]

Section 9. Any person who shall, while a candidate for office, be guilty of bribery, fraud, or wilful violation of any election law, shall be forever disqualified from holding an office of trust or profit in this Commonwealth. And any person convicted of wilful violation of the election laws shall, in addition to any penalties provided by law, be deprived of the right of suffrage absolutely for a term of four years.

Reported, Conv. Jour. 268; Deb. i. 504, in the form of a provision, that any person convicted of fraudulent violation of the election laws, should be deprived of the right of suffrage; but that such right might be restored by an Act of the Legislature, two-thirds of each House consenting thereto. Upon the consideration of the section, in committee of the whole, an earnest debate arose, and various amendments were proposed which were rejected. 2 Conv. Deb. 47-68, 71-87. On second reading, however, the section was very thoroughly reconstructed, and assumed its final form as above. 5 Id. 174-6. See remarks of Mr. McAllister, 1 Id. 532.

COMPARE: Con. Cal. (1879), XX. 10, 11; Mo. (1875), VIII. 10; N. J. Amdt II. 2; Tex. (1876), XVI. 2, 5. JUDICIAL OPINION: Com. v. Walter, 2 Norris, 105; 5 Id. 15; 3 W. N. C. 376; 4 Id. 465; Williams v. Com., 10 Norris, 493; 9 W. N. C. 113. See Act of 18th April, 1874, P. Laws, 64.

[Witnesses not to withhold testimony in election cases.]

Section 10. In trials of contested elections and in proceedings for the investigation of elections, no person shall be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony. See Art. III. § 32.

Reported, Conv. Jour. 268; Deb. i. 504. Considered and amended, 2 Conv. Deb. 124-8; 5 Id. 176-7. See, also, 1 Id. 532.

COMPARE: Con. Col. (1876), VII. 9; N. Y. (Amendt. 1874), XV. 2, 3.

By the corrupt practices Act of 1863 (26 Vict. c. 29), relating to parliamentary elections, no witness examined on the trial of a contested election was to be excused from answering a question on the ground that it might criminate him; but a witness making an answer tending to criminate him, might demand a certificate which should be a protection to him from prosecution for such answer.

[Election districts.]

Section 11. Townships, and wards of cities or boroughs, shall form or be divided into election districts of compact and contiguous territory, in such manner as the court of Quarter Sessions of the city or county in which the same are located may direct; but districts in cities of over one hundred thousand inhabitants shall be divided by the courts of Quarter Sessions having jurisdiction therein, whenever at the next preceding election more than two hundred and fifty votes shall have been polled therein; and other election districts, whenever the court of the proper county shall be of opinion that the convenience of the electors and the public interests will be promoted thereby. Reported, Conv. Jour. 268; Deb. i. 504. Considered and amended, 2 Conv. Deb. 132-47; 5 Id. 177-80, 181. Revision, Com. Rep. Jour. 994. See, also, 1 Conv. Deb. 533.

STATUTE: The Act of 18th May, 1876, P. Laws, 178, makes provision for the division of townships into election districts, by the several courts of Quarter Sessions of the Commonwealth; and also for the consolidation of election districts and townships. Provision is made for the payment of costs in such cases, by the county, by Act of 18th March, 1875, P. Laws, 29.

[Representatives to vote viva voce.]

Section 12. All elections by persons in a representative capacity shall be *viva voce*.

DERIVED: Constitution of 1790, Art. III. § 2.

[Residence of electors not gained or lost in certain cases.]

Section 13. For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military of this State, or of the United States, nor while engaged in the navigation of the waters of the State or of the United States, or on the high seas, nor while a student of any institution of learning, nor while kept in any poor-house, or other asylum at public expense, nor while confined in public prison.

Reported, Conv. Jour. 309; Deb. i. 739. Considered, 2 Conv. Deb. 152-63; 5 Id. 185-6; 7 Id. 645.

COMPARE: Con. Ala. VII. 2; Ark. VIII 2; Cal. II. 4; XI. 19; Col. (1876), VII. 4, 10; Del. IV. 1; Ga. II. 2; Ill. VII. 4, 5; Ind. II. 3, 4; Iowa, II. 4; Kan. V. 3; Ken. VIII. 12; La. (VI.), 134; Me. II. 1, and Amdt. Art. XII.; Mich. VII. 5, 7; Minn. VII. 3, 4; Mo. II. 20; (1875), VIII. 7, 8; Neb. (1875), VII. 4; Nev. II. 2; N. J. II. 1; N. Y. II. 3; O. V. 5; Or. II. 4, 5; R. I. II. 4; S. Car. VIII. 4, 5; Tex. XII. 7; (1876), XVI. 9; Va. III. 1; W. Va. IV. 1; Wis. III. 4, 5.

CONSTRUCTION: Civil and military employés of the United States, or of this State, cannot gain an electoral residence in the State, or in an election district by being stationed or employed therein. This does not mean that such persons cannot, under any circumstances, acquire such State or district residence while employed in public service, but that such residence shall not be acquired by virtue of their location in the State or district as such employés. To obtain either a State or district electoral residence, a claimant must establish an actual domicil or fixed place of abode in the State or district, must wholly abandon all claim of residence elsewhere, and must intend to make the place of residence chosen his permanent home. Neither one of these requisites (and particularly neither one of the two last mentioned) will be inferable from the personal presence or inhabitancy in the State or district of an employé of government, whose residence has been elsewhere.

But while on the one hand, residence under governmental employment will not establish electoral residence, within the meaning of the Constitution, so on the other hand, it will be insufficient to destroy a residence established before. If, in point of fact, an employé of government shall have had a district residence in the State, and shall intend to retain it and return to it, such prior residence will, in most cases, continue to be his, notwithstanding his absence, and if he shall possess the other necessary qualifications of an elector of the State, he may vote thereat. He may lose his electoral residence by actual abandonment of it, but he will not forfeit it by his mere absence in public service.

The Act of 17th April, 1869, § 19, P. Laws, 55 (which being entirely consistent with the new Constitution of 1874, may be taken to be still in force), provides: "That citizens of this State temporarily in the service of the State or of the United States governments, in clerical or other duty, and who do not vote where thus employed, shall not thereby be deprived of the right to vote in their several election districts, if otherwise qualified." Abandonment of an established residence is here predicated of the fact of voting elsewhere, while it will not be inferable from temporary absence alone.

In Fry's Election Case, 21 P. F. Smith, 302, it was held, that a student attending an institution of learning for the purpose of obtaining an education, cannot thereby acquire a new residence; that his prior residence will continue, notwithstanding his sojourn at another place as such student, and that too, even though he shall in fact have abandoned the home of his parents without any intention of returning thereto and making it a permanent abode. For a statement of the general principles of the law of domicil, see Encyc. Amer. iv. 613, App.

[Election boards.]

Section 14. District election boards shall consist of a judge and two inspectors, who shall be chosen annually by the citizens. Each elector shall have the right to vote for the judge and one inspector, and each inspector shall appoint one clerk. The first election board for any new district shall be selected, and vacancies in election boards filled, as shall be provided by law. Election officers shall be privileged from arrest upon days of election and while engaged in making up and transmitting returns, except upon warrant of a court of record, or judge thereof, for an election fraud, for felony, or for wanton breach of the peace. In cities they may claim exemption from jury duty during their terms of service.

Reported, Conv. Jour. 539-40; Deb. iv. 773. Considered and amended, 5 Conv. Deb. 34-6, 187-8; 7 Id. 630, 645.

DERIVED, in part: The manner of voting for inspectors of election prescribed by this section, is derived from the 4th section of the general election Act of 2d July, 1839, P. Laws, 519, and is an admirable provision against unfairness and fraud in elections. Section 4 of the Act of 1839 was proposed by Mr. Senator Charles Brown, of Philadelphia County, and was ultimately agreed to in the Senate, upon report of a committee of conference, by a vote of 15 to 11. Sen. Jour. 1399. But the origin of the proposition for the limited vote in the choice of election inspectors, is to be sought still further back, in the proceedings of the Constitutional Convention of 1838, and its paternity must be assigned to Mr. Thomas Earle, a delegate from the county of Philadelphia. 1 Conv. Deb. (1838), 241-2; 3 Id. 173; Buckw. on Prop. Rep. 157.

CONSTRUCTION: The term, "election officers," used in this and the next two sections, in sections 4 and 8 of this Article, and in section 26 of the Schedule, clearly includes clerks of election boards, though they will not be members of such boards. They will properly be sworn or affirmed, will be privileged from arrest and from jury duty to the same extent as other election officers, and must not be disqualified for service under section 15. It seems also that they will be liable to removal from office, at any time, at the pleasure of the inspectors who appoint them. Art. VI. § 4.

In case of the issuing of a warrant of arrest against an election officer, pending his performance of official duty, by a court of record or judge thereof, an appointment to fill the vacancy occasioned by the arrest will be necessary and must be provided for by statute. But the exercise of such power of appointment should be carefully guarded against abuse.

The provision authorizing election officers in cities to claim exemp-

tion from jury duty during their terms of service, was accepted by the Convention as one likely to aid in securing able and reliable management of elections in cities. It was urged that in cities men engaged in large business operations—men of capital and capacity—often complained of attendance upon courts of justice, as jurors, as most inconvenient and irksome, and that they would gladly serve as election officers to escape the obligation of such attendance. Hence the provision would tend to elevate the character of election officers, and inspire confidence in their work. 5 Conv. Deb. 35. The jury duty, here spoken of, is understood to be jury duty in, involving attendance upon the courts of the State, and not service upon juries of view or inquisition—a transient, casual kind of service, involving little of personal sacrifice or inconvenience. Very plainly the provision is one, not of disqualification, but of privilege; it cannot be asserted against an election officer, but may be claimed by him.

[Election officers-Who may not be-Not eligible to certain offices.]

Section 15. No person shall be qualified to serve as an election officer who shall hold, or shall within two months have held, any office, appointment, or employment in or under the government of the United States, or of this State, or of any city or county, or of any municipal board, commission, or trust in any city, save only justices of the peace and aldermen, notaries public, and persons in the militia service of the State; nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve, save only to such subordinate municipal or local offices, below the grade of city or county offices, as shall be designated by general law.

Reported, Conv. Jour. 540; Deb. iv. 773. Considered and amended, 5 Conv. Deb. 36-7, 188-90.

DERIVED, in part: General election Act of 2d July, 1839, § 13, P. Laws, 521; but the two months' provision, and some other features of the section, are new. Justices of the peace were excepted out of the general class of officials pronounced incompetent to serve as election officers by the Act of 1839, and to these were added militia officers by the Act of 16th April, 1840, § 4, P. Laws, 411. To these are now added aldermen and notaries public. Philadel-phia magistrates, however, chosen under Art. V. § 12, do not appear to be covered by any exception, and will be incompetent to serve as election officers.

[Overseers of election.]

Section 16. The courts of Common Pleas of the several counties of the Commonwealth shall have power within their respective jurisdictions to appoint overseers of election to supervise the proceedings of election officers and to make report to the court as may be required; such appointments to be made for any district in a city or county upon petition of five citizens, lawful voters of such election district, setting forth that such appointment is a reasonable precaution to secure the purity and fairness of elections; overseers shall be two in number for an election district, shall be residents therein, and shall be persons qualified to serve upon election boards, and in each case members of different political parties; whenever the members of an election board shall differ in opinion, the overseers, if they shall be agreed thereon, shall decide the question of difference; in appointing overseers of election all the law judges of the proper court, able to act at the time, shall concur in the appointments made.

Reported, Conv. Jour. 540; Deb. iv. 773. Considered and amended, 5 Conv. Deb. 37-49, 50-62, 190-5; 7 Id. 646, 647-50.

DERIVED, in part: Election Act of 17th April, 1869, § 14, P. Laws, 52. The Act of 1869 was defective and of little avail, because it required, in order to the appointment of overseers of election, an application, on oath, of at least five citizens, setting forth that they verily believed that frauds would be practised at an election, and because it did not authorize overseers to interpose effectually for the protection of the ballot-box and of official returns. Hereafter, a petition for the appointment of overseers need not be accompanied by an affidavit, and need only set forth that the appointment prayed for will be a reasonable precaution to secure the purity and fairness of an election, and the overseers appointed, instead of being mere watchers with limited duties of inspection and challenge, will be authorized to interpose in any case of difference of opinion in the election board, and decide the question upon which the difference of opinion shall arise. They must, in such case, be agreed in opinion themselves, but when they shall be so, their decision will be conclusive and will end the controversy.

CONSTRUCTION: Overseers will not be "election officers" within the strict and proper meaning of that term, as used in the present section

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and in section 14, but because they must possess all the qualifications required of election officers, they must stand free from any disqualification set forth in section 15; in other words, an Overseer must not be selected from any of the classes of government officers or employés disqualified for service as election officers by that section. It does not appear that there is any prohibition upon their candidacy for office at an election at which they shall serve.

The appointments, in any case, are to be made by all the law judges of the proper court *able to act at the time* when they are made. Sickness, absence from the State, and other causes of inability to act will excuse the non-participation of a judge in the making of appointments, but it must be a real inability and not mere inconvenience or disinclination that will excuse. And we are to infer from this provision that, whenever possible, all the judges of the court competent to act, are to have reasonable notice of the time when appointments are to be made, or the making of them considered, and an opportunity to attend at that time.

The extent and the manner of exercising the power of appointment, conferred by this section, were considered in Convention, 5 Deb. 190-93; 7 Id. 648-50, upon an amendment proposed by Mr. Cuyler, of Philadelphia, to insert the words relating to the making of appointments on the petition of five lawful voters of an election district. It was contended that the amendment would limit the general power of appointment contained in the first division of the section and confine it to the specific cases of application by petition provided for by the amendment, and this is believed to be the true construction of the section as it now stands in the text of the Constitution. But while the amendment narrowed the power of appointment, it probably made the exercise of that power an imperative duty in the cases provided for. Such was the declared purpose of those who supported the amendment in debate, and their view accords with the natural import of the language used. It follows that upon petition in due form of five electors of any election district in the Commonwealth, presented to the proper court, it will be the duty of the court to appoint proper persons, properly qualified, to be Overseers of election for such district. The court will pass no judgment upon the necessity of their appointment, but will only see to it that they are "judicious, sober, and intelligent citizens of the district" (as required by the 4th section of the election Act of 1874), and that they are "qualified to serve upon election boards, and are members of different political parties."

But inasmuch as this right of the electors of any district in the Commonwealth to demand the appointment of Overseers of election, is one liable to abuse, it invites to legislative regulation. It is not the intent of the section to increase unnecessarily the patronage of the courts or the expense of elections; hence a requirement of law that all petitions under this section shall be sworn to, and the fixing of small pay for Overseers of election (or disallowing pay), will be judicious.

STATUTE: General election law supplement of 30th January, 1874, § 4, P. Laws, 33-4. That enactment is rendered defective by the omission of the provision in the constitutional section, that "whenever the members of an election board shall differ in opinion, the overseers, if they shall be agreed thereon, shall decide the question of difference." It is true that this constitutional provision, being legislative in character, does not require the aid of a statute to give it operation and force ; but its omission from the statute withholds from it the sanction of the statutory penalty upon election officers who shall refuse to permit the Overseers of an election "to perform their duties as aforesaid." Besides, in view of the fact that the statute apparently recites the duties and powers of election Overseers in full, the omission of the above mentioned provision from recital is well calculated to bring one of the most important powers of overseers into question and dispute.

[Trial of contested elections.]

Section 17. The trial and determination of contested elections of electors of President and Vice-President, members of the General Assembly, and of all public officers, whether State, judicial, municipal, or local, shall be by the courts of law, or by one or more of the law judges thereof. The General Assembly shall by general law designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto; but no such-law assigning jurisdiction or regulating its exercise, shall apply to any contest arising out of an election held before its passage. See Art. II. § 9.

Reported, Conv. Jour. 540; Deb. iv. 773. Considered and amended, 5 Conv. Deb. 63-66, 196-201. See, also, report and consideration of a similar section, confined to members of the General Assembly. Jour. 344; 2 Conv. Deb. 561-78; 5 Id. 240-41.

COMPARE: Con. Col. (1876), VII. 12; Mo. (1875), VIII. 9.

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CONSTRUCTION: The general language of this section in relation to public officers of the State, is to be taken subject to the limitation produced by the second, fourth, and seventeenth sections of the fourth Article. It will not have application to contested elections of Governor and Lieutenant-Governor.

JUDICIAL OPINION: Com. v. Cluley, 6 Sm. 270; Contested Election of Barber, 5 Norris, 392; 5 W. N. C. 350; Bright. Elec. Ca. 150.

STATUTES: The Act of 19th May, 1874, P. Laws, 208, entitled "An Act designating the several classes of contested elections in this Commonwealth, and providing for the trial thereof," is an elaborate statute intended to carry out and enforce the above section of the Constitution. It divides contested elections formally into four, but virtually into five classes or divisions, and provides regulations for each class.

1. Contested elections of Governor and Lieutenant-Governor are to be tried and determined by legislative committee, pursuant to the provisions of the second and fourth sections of the executive Article, and the chief-justice of the Supreme Court is to preside thereat, as directed by the seventeenth section of the same Article. Sections 20 to 37, inclusive, regulate the manner of commencing a contest, the proceedings of the two Houses in selecting the trial committee, the proceedings of the trial, and the form and effect of the decision to be rendered. Those regulations are derived, in the main, from the general election Act of 2d July, 1839, sections 129 to 146, inclusive. P. Laws, 1839, p. 547.

2. Contested elections of presidential electors, and of all State officers chosen by a vote at large (except Governor and Lieutenant-Governor), are to be tried and determined by the Court of Common Pleas of Dauphin County, and for the purpose of hearing and determining any case the court shall call in, to sit with it, the two president judges who reside nearest to the court-house of said Dauphin district, and the called judges shall appear and participate in the trial and decision of the case. That decision, when made, is to be entered of record, and within five days a certified copy thereof is to be delivered to the Secretary of the Commonwealth, etc. §§ 3, 4.

3. Contested elections of law judges of judicial districts are to be tried and determined before the courts of Common Pleas of the counties where the persons returned elected shall reside. In any case upon petition of fifty electors of the proper judicial district, sworn to by at least ten of their number, presented to the Attorney-General, complaining of an undue election or false return, he (the Attorney-General) shall notify the Governor, who shall at once direct the three president judges who shall reside nearest to the court-house of the county composing the district, or of the court-house of the most populous county of the district, to convene without delay the court of Common Pleas of such county, and hear and determine the case, the decision to be entered of record in said court and a certified copy to be transmitted within five days to the Secretary of the Commonwealth, etc. And in counties with more than one Common Pleas Court, a contested election of a judge of one of said courts is to be tried by the court next highest in number to that one in which the contest arises, or if no court higher in number, then by the court next lower in number. §§ 5, 6, 7. General provisions for conducting proceedings follow. §§ 8, 9, 10.

But the provision of the above-mentioned 5th section, that a contest over the election of a law judge of any judicial district "shall be tried and determined before the court of Common Pleas of the county where the person returned as elected shall reside," must be wholly disregarded. It is not only unsuited for application to some cases which will occur, but is plainly inconsistent with the 6th section, to which it must give way. A person returned elected may not reside in the judicial district at the time of the election, or when the contest is begun; in fact he may reside in a remote part of the State, for the requirement of the Constition that he shall reside in the district refers to the subsequent time or term of his service. It is impossible to reconcile this section with the sixth, which gives jurisdiction of a contest to the court of Common Pleas of the county constituting the district, or where such district is composed of two or more counties, then to the court of the most populous county therein; in either case the three nearest president judges to convene and hold the court. As the two sections cannot be reconciled, the last one is to be preferred.

4. Contested elections of all other public officers are to be tried and determined by the courts of Quarter Sessions of the counties in which the elections contested shall have been held. § 16. General and miscellaneous provisions follow. §§ 17, 18, 19.

5. The 5th class of election contests comprises those of members of the General Assembly, for which regulations are provided in the 11th and four next following sections of the Act. Those sections have already been cited and examined under the 9th section of the second Article.

The Act of 12th June, 1878, P. Laws, 204, provides for an appeal to the Supreme Court in cases of contested election of judges of courts of record, wherein constitutional questions are involved, and, in any case

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upon the decision of the constitutional question or questions involved, the Supreme Court shall declare which of the candidates voted for is entitled to the office. The Supreme Court will not retry the case upon the merits, nor rehear the parties, except upon matter of law arising upon the record. No authority is conferred to order a new election where it shall be found that an election was wholly irregular and invalid, or where, for any other reason, no person has been duly elected.

ARTICLE IX.

TAXATION AND FINANCE.

SECTION

SECTION

- 1. Taxation to be uniform--Exemptions.
- 2. Limitation of power to exempt.
- 3. Power to tax corporations not to be surrendered.
- 4. Power to create debts limited.
- 5. Money borrowed to be used for purpose specified.
- 6. State credit not to be loaned, etc.
- 7. Municipalities not to be stockholders, etc.
- 8. Municipal debts limited.

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9. No assumption of municipal debts by the State.

- 10. Repayment of municipal debts to be provided for.
- 11. State sinking fund.
- 12. Surplus moneys to be applied to debt-Sinking fund securities.
- 13. Reserve in the treasury—Monthly statements.
- 14. Unauthorized use of public money to be punished.

[Taxation to be uniform-Exemptions.]

Section 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity. See Article III. § 7, division (23).

[Limitation of power to exempt.]

Section 2. All laws exempting property from taxation, other than property above enumerated, shall be void.

Reported, Conv. Jour. 430; Deb. iii. 218. Considered and amended, 3 Conv. Deb. 272; 6 Id. 93-8; 7 Id. 673-5; 8 Id. 222.

EXEMPTION STATUTES: Act 14th May, 1874, P. Laws, 158; Act 24th March, 1877, P. Laws, 44; Act 4th June, 1879, P. Laws, 75.

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RECENT CASES UPON THE TAXING POWER AND ITS APPLICATION : Pittsburg v. First National Bank, 5 Sm. 45; Grim v. Weissenberg School District, 7 Sm. 433; Johnson v. Philadelphia, 10 Sm. 445; Durach's Appeal, 12 Sm. 491; Pittsburg, Fort Wayne & Chicago R. R. Co. v. Commonwealth, 16 Sm. 73; Jones & Nimick Manufacturing Co. v. Comm'th, 19 Sm. 137; Susquehanna Canal Co. v. Comm'th, 22 Sm. 72; Weber v. Reinhard, 23 Sm. 370; Butler's Appeal, 23 Sm. 448; Northampton County v. Lehigh Coal & Nav. Co., 25 Sm. 461; Kittanning Coal Co. v. Comm'th, 29 Sm. 100; Lehigh Iron Co. v. Lower Macungie Township, 31 Sm. 482; Kitty Roup's Case, 32 Sm. 211; Kelly v. Pittsburg, 4 Norris, 170; 5 W. N. C. 324; Germania Life Ins. Co. v. Comm'th, 4 Norris, 513; Coatesville Gas Co. v. Chester County, 1 Out. 476; 38 Leg. Intel. 308; 10 W. N. C. 328; Com. v. Gloucester Ferry Co., 38 Leg. Intel. 34, 412; Chadwick v. Maginnes, 13 Norris, 117; 8 W. N. C. 451; Lackawanna County v. First National Bank of Scranton, 13 Norris, 221; 9 W. N. C. 549; Truby's Appeal, 15 Norris, 52; 9 W. N. C. 550; Union Passenger Railway Co. v. Philadelphia, 8 W. N. C. 377; Ruth's Appeal, 10 W. N. C. 498: Comm'th v. Standard Oil Co., 12 W. N. C. 293; Second National Bank of Titusville v. Caldwell, 39 Leg. Intel. 414.

BOUNTY TAXES: Speer v. Blairsville School District, 14 Wright, 150; Weister v. Hade, 2 Sm. 474; Ahl v. Gleim, Id. 432; Washington County v. Berwick, 6 Sm. 466; Hilbish v. Catherman, 14 Sm. 154; Kelly v. Marshall, 19 Sm. 319; Supervisors of Sadsbury Township v. Dennis, 15 Norris, 400.

CONTRIBUTORY ASSESSMENTS FOR LOCAL IMPROVEMENT: McMasters v. Comm'th, 3 Watts, 292; Fenelon's Petition, 7 Barr, 173; Commissioners v. Curran, 29 Leg. Intel. 28; Extension of Hancock Street, 6 Harris, 26; Comm'th v. Woods, 8 Wright, 113; McGee v. Pittsburg, 10 Wright, 358; Wray v. Pittsburg, Id. 365; Hammett v. Philadelphia, 15 Sm. 146; Fleming's Appeal, Id. 444; Easby v. Philada., 17 Sm. 337; Washington Avenue Case, 19 Sm. 352; Wistar v. Philada., 21 Sm. 44; Allentown v. Henry, 23 Sm. 404; Wistar v. Philada., 30 Sm. 505; 3 W. N. C. 124; Bidwell v. Pittsburg, 5 W. N. C. 41; Kaiser v. Weise, Id. 45; Ballentine's Appeal, Id. 321; *In re* Sawmill Run Bridge, 4 Norris, 163; Craig v. Philada., 8 Norris, 265; 7 W. N. C. 117; City v. Rule, 12 Norris, 15; 8 W. N. C. 244; Opening of Berks Street, 12 W. N. C. 10. See Act of 4th June, 1879, P. Laws, 81, relating to contributory assessments in cities of the third class, in cases of grading and improving streets in rural districts. FRONTAGE RULE OF ASSESSMENT: Schenly v. Allegheny, 1 Casey, 128; Philadelphia v. Tryon, 11 Casey, 401; Schenly v. Allegheny, 12 Casey, 57; McGonigle v. Allegheny, 8 Wright, 118; Stroud v. Philada., 11 Sm. 255; Seely v. City of Pittsburg, 1 Norris, 360; 3 W. N. C. 413; Ferson's Appeal, 15 Norris, 140.

EXEMPTION: Academy of Fine Arts v. Philada. Co., 10 Harris, 496; Howard Association's Appeal, 20 Sm. 344; Donohugh's Appeal, 5 Norris, 306; 5 W. N. C. 196; Delaware County Institute v. Delaware County, 13 Norris, 163; Young Men's Christian Association v. Donohugh, 7 W. N. C. 208; Summit Grove Camp Meeting Association v. Freedom School District, 12 W. N. C. 103; Miller's Appeals, 10 W. N. C. 168; Church of our Saviour v. Montgomery County, 10 W. N. C. 170; Burd Orphan Asylum v. School District, 9 Norris, 21, and cases cited therein by counsel.

The exemption Act of 14th May, 1874, P. Laws, 158, entitled, "An Act to exempt from taxation public property used for public purposes, and places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity," is as follows :---

"Section 1. Be it enacted, etc., That all churches, meeting-houses, or other regular places of stated worship, with the grounds thereto annexed, necessary for the occupation and enjoyment of the same; all burial grounds not used or held for private or corporate profit; all hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence, or charity, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, found, endowed, and maintained by public or private charity; and all school-houses belonging to any county, borough, or school district, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same; and all court-houses and jails with the grounds thereto annexed, be, and the same are hereby exempted from all and every county, city, borough, bounty, road, school, and poor tax: Provided, That all property, real or personal, other than that which is in actual use and occupation for the purposes aforesaid, and from which any income or revenue is derived, shall be subject to taxation, except where exempted by law for State purposes, and nothing herein contained shall exempt the same therefrom."

[Power to tax corporations not to be surrendered.]

Section 3. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party. Subject presented in debate, 3 Conv. Deb. 365-6. Amendment of Mr. Buckalew, Id. 376; recommended by a select committee to be transferred, 8 Id. 131.

COMPARE: Con. Cal. (1879), XIII. 6; Col. (1876), X. 9; Me. IX. 9, Amendment (1875).

JUDICIAL OPINION: Jones v. Manufacturing Co., 19 P. F. Sm. 137; Mott v. Penna. Railroad Co., 30 Pa. St. 9.

[Power to create debts limited.]

Section 4. No debt shall be created by or on behalf of the State except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed in the aggregate, at any one time, one million of dollars.

DERIVED: First Amendment of 1857, Art. XI. \S 1, 2, and 3, of the old Constitution. The only material change is the alteration of the limit upon new indebtedness (created to supply casual deficiencies of revenue) from \$750,000 to \$1,000,000.

[Money borrowed to be used for purpose specified.]

Section 5. All laws authorizing the borrowing of money, by and on behalf of the State, shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for the purpose specified and no other.

Reported, Conv. Jour. 430; Deb. iii. 218. Considered and amended, 3 Conv. Deb. 272-3.

DERIVED: First Amendment of 1857, Art. XI. §§ 1 and 2, of the old Constitution. The provision that all State loan laws shall specify the purpose to which the borrowed money is to be applied is added to the former requirement, that such money shall be applied only to the purpose for which it shall be obtained or raised.

[State credit not to be loaned, etc.]

Section 6. The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation, or association; nor shall the Commonwealth become a joint ART. IX.]

owner or stockholder in any company, association, or corporation.

Reported, Conv. Jour. 430; Deb. iii. 218. Considered and amended, 6 Conv. Deb. 140-41. Revision, Com. Rep. Jour. 1006. [Reported by Com. on Legislation, Jour. 346; considered, 5 Conv. Deb. 291.]

 $D_{\rm ERIVED}$: First Amendment of 1857, Art. XI. § 5, of the old Constitution. The text is unchanged, except by the omission of a few unimportant words.

[Municipalities not to be stockholders, etc.]

Section 7. The General Assembly shall not authorize any county, city, borough, township, or incorporated district to become a stockholder in any company, association, or corporation, or to obtain or appropriate money for, or to loan its credit to any corporation, association, institution, or individual.

Reported, Conv. Jour. 430; Deb. iii. 218. Considered and amended, 6 Conv. Deb. 140-41. Revision, Com. Rep. Jour. 1006. [Reported by Com. on Legislation, Jour. 346.]

DERIVED: First Amendment of 1857, Art. XI. § 7, of the old Constitution. Beside an omission of words which does not alter the sense, the words "or appropriate" are added. The last word is changed from *party* to *individual*. Of course, the section must be so construed and taken that it shall not embarrass or prevent the proper action or regulation of municipal government.

JUDICIAL OPINION: Speer v. School Directors of Blairsville, 14 Wright, 150, 162, 175; Penna. R. R. Co. v. Philada., 11 Wright, 189; Hilbish v. Catherman, 14 Sm. 154; Wheeler v. Philadelphia, 27 Sm. 338; Wilkesbarre Hospital v. Luzerne County, 3 Norris, 55; 4 W. N. C. 178; Indiana County v. Agricultural Society, 4 Norris, 357; Faas v. Warren, 9 W. N. C. 412.

[Municipal debts limited.]

Section 8. The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as herein provided, shall never exceed seven *per centum* upon the assessed value of the taxable property therein, nor shall any such municipality or district incur any new debt, or increase its indebtedness, to an amount exceeding two *per centum* upon such assessed valuation of property, without the assent of the electors thereof at a public election, in such manner as shall be provided by law; but any city the debt of which now exceeds seven *per centum* of such assessed valuation, may be authorized by law to increase the same three *per centum*, in the aggregate at any one time, upon such valuation.

Reported, Conv. Jour. 430; Deb. iii. 218. Considered and amended, 3 Conv. Deb. 273-8, 279-93; 6 Id. 141-6; 7 Id. 669-73.

DERIVED, in part: Constitution of Illinois, Art. IX. § 12: "No county, eity, township, school district, or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness."

JUDICIAL OPINION: Wheeler v. Philadelphia, 27 Sm. 338; Allegheny County v. Gibson, 9 Norris, 397; 7 W. N. C. 441; Appeal of the City of Erie, 10 Norris, 398; Pike County v. Rowland, 13 Norris, 238; 9 W. N. C. 241; Comm'th v. Pittsburg, 7 W. N. C. 409. In Pike County v. Rowland, Mr. Justice Trunkey instructively remarked: "Neither the debates [of the Constitutional Convention], nor the supposed views of the people, nor the dictum of this court, nor all these combined, can set aside the plain meaning of a constitutional provision; but if the sense of a clause is doubtful, the contemporaneous understanding [of it] is material."

[No assumption of municipal debts by the State.]

Section 9. The Commonwealth shall not assume the debt, or any part thereof, of any city, county, borough, or township, unless such debt shall have been contracted to enable the State to repel invasion, suppress domestic insurrection, defend itself in time of war, or to assist the State in the discharge of any portion of its present indebtedness.

See 6 Conv. Deb. 160-61.

DERIVED : First Amendment of 1857, Art. XI. § 6 : "The Commonwealth shall not assume the debt, or any part thereof, of any county, city, borough, or township, or of any corporation or association, unless," etc., as above.

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[Repayment of municipal debts to be provided for.]

Section 10. Any county, township, school district, or other municipality, incurring any indebtedness, shall, at, or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest, and also the principal thereof within thirty years.

Reported, Conv. Jour. 430; Deb. iii. 218. Considered and amended, 3 Conv. Deb. 294-5; 6 Id. 146-7.

DERIVED: Constitution of Illinois, Art. IX. § 12: ". . . Any county, city, school district, or other municipal corporation, incurring any indebtedness as aforesaid, shall, before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same."

[State sinking fund.]

Section 11. To provide for the payment of the present State debt, and any additional debt contracted as aforesaid, the General Assembly shall continue and maintain the sinking fund sufficient to pay the accruing interest on such debt, and annually to reduce the principal thereof, by a sum not less than two hundred and fifty thousand dol-The said sinking fund shall consist of the proceeds lars. of the sales of the public works, or any part thereof, and of the income or proceeds of the sale of any stocks owned by the Commonwealth, together with other funds and resources that may be designated by law, and shall be increased from time to time, by assigning to it any part of the taxes or other revenues of the State, not required for the ordinary and current expenses of government; and, unless in case of war, invasion, or insurrection, no part of the said sinking fund shall be used or applied otherwise than in the extinguishment of the public debt.

Reported, Conv. Jour. 430; Deb. iii. 218-19. Considered and amended, 6 Conv. Deb. 147-8.

DERIVED : First Amendment of 1857, Art. XI. § 4, of the old Constitution. The changes from the old section are the following : 1st. The provision directing the Legislature to create a sinking fund is changed to one directing the sinking fund to be continued and maintained. 2d. The provision that "the net annual income of the public works, from time to time owned by the State," shall constitute a part of the sinking fund, is dropped. 3d. In the clause which read, together with other funds or resources, etc.," the word "and" is substituted for or; and 4th. At the end of the section the following clause is omitted : "Until the amount of such debt is reduced below the sum of five millions of dollars."

See Gratz v. Penna. Railroad Co., 5 Wright, 447; 18 Legal Intel. 404.

STATUTES: Act of 9th May, 1874, P. Laws, 126, "supplementary to the several Acts relating to the State treasurer and to the commissioners of the sinking fund," and Act of 12th February, 1876, P. Laws, 3, a supplement thereto.

[Surplus moneys to be applied to debt-Sinking fund securities.]

Section 12. The moneys of the State, over and above the necessary reserve, shall be used in the payment of the debt of the State, either directly or through the sinking fund; and the moneys of the sinking fund shall never be invested in, or loaned upon, the security of anything except the bonds of the United States or of this State.

Reported, Conv. Jour. 430-31; Deb. iii. 219. Considered and amended, 6 Conv. Deb. 146-51.

[Reserve in the treasury-Monthly statements.]

Section 13. The moneys held as necessary reserve shall be limited by law to the amount required for current expenses, and shall be secured and kept as may be provided by law. Monthly statements shall be published, showing the amount of such moneys, where the same are deposited, and how secured.

Reported, Conv. Jour. 431; Deb. iii. 219. Considered and amended, 6 Conv. Deb. 152-7; 7 Id. 652-4, 667.

[Unauthorized use of public money to be punished.]

Section 14. The making of profit out of the public moneys, or using the same for any purpose not authorized by law, by any officer of the State or member or officer of the General Assembly, shall be a misdemeanor, and shall be punished as may be provided by law; but part of such punishment shall be disqualification to hold office for a period of not less than five years.

Considered, 7 Conv. Deb. 652-4, 667-9.

ARTICLE X.

EDUCATION.

 section

 1. Public schools to be maintained—

 Annual appropriation.

 2. No appropriation to sectarian schools.

 3. Women eligible to school offices.

[Public schools to be maintained—Annual appropriation.]

Section 1. The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth, above the age of six years, may be educated; and shall appropriate at least one million dollars each year for that purpose.

Reported, Conv. Jour. 338; Deb. ii. 250. Considered, 2 Conv. Deb. 419-39; 6 Id. 38-40, 80-81; 7 Id. 677-81, 694-5.

DERIVED: Constitution of 1790, Art. VII. § 1: "The Legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the State, in such manner that the poor may be taught gratis." § 2. "The arts and sciences shall be promoted in one or more seminaries of learning."

Constitution of 1776, chap. ii. § 44 : "A school or schools shall be established in each county, by the Legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct youth at low prices. And all useful learning shall be duly encouraged and promoted in one or more universities."

See Commonwealth v. Hartman, 5 Harris, 118.

[No appropriation to sectarian schools.]

Section 2. No money raised for the support of the public schools of the Commonwealth shall be appropriated to, or used for, the support of any sectarian school. See Art. I. § 3; Art. III. §§ 17, 18.

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Reported, Conv. Jour. 338; Deb. ii. 250. Considered and amended, 2 Conv. Deb. 439-40; 6 Id. 40, 83-5; 7 Id. 694, 696.

COMPARE: Con. Ala. (1875), XIII. 8; Ark. IX. 1; Cal. (1879), IX. 8; Col. (1876), IX. 3, 7, 8; Ill. VIII. 3; Ind. I. 6; Kan. VI. 8; La. 140; Mass. Amdt. 18; Mich. IV. 40; Minn. I. 16, at end; Mo. I. 11, 13; IX. 10, Amdt. 1870; (1875), XI. 11; Neb. Ed. 1; (1875), VIII. 9, 11; Nev. XI. 9; N. Y. (Amdts. 1874), VIII. 10, 11; O. VI. 2; Or. I. 5; S. Car. X. 5; Tex. (1876), VII. 5; Wis. I. 18; X. 3. The foregoing provisions, in various forms, expressly prohibit appropriations of public money to sectarian uses, or the diversion of school moneys to such uses, or sectarian instruction in schools supported by taxation or by public funds. A large number of other provisions in State Constitutions—mostly to be found under the head of "Education" therein—forbid the diversion of public school funds to any other use or purpose than the support of a system of common or public schools, which shall be wholly subject to government management and control.

[Women eligible to school offices.]

Section 3. Women, twenty-one years of age and upwards, shall be eligible to any office of control or management under the school laws of this State.

Reported by Suffrage Committee, Conv. Jour. 302, and Deb. i. 693 (incorrectly). Considered and amended, 2 Conv. Deb. 148-50; 5 Id. 181-4. Transferred by Revision Committee to Article on Education, Jour. 994, 1006. See, also, 7 Conv. Deb. 676-7, 694, 696.

A bill authorizing the election of women to be school directors, passed the Senate of Pennsylvania on the 8th of February, 1871, by a vote of 19 to 13. Senate Journal, 506; 5 Conv. Deb. 183. It was not, however, acted upon in the House of Representatives.

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ARTICLE XI.

MILITIA.

SECTION 1. Organization of militia-Appropriations by State.

[Organization of the militia.]

Section 1. The freemen of this Commonwealth shall be armed, organized, and disciplined for its defence, when and in such manner as may be directed by law. The General Assembly shall provide for maintaining the militia by appropriations from the treasury of the Commonwealth, and may exempt from military service persons having conscientious scruples against bearing arms.

Reported, Conv. Jour. 377; Deb. ii. 548. Considered and amended, 3 Conv. Deb. 159-78; 5 Id. 336-7; 7 Id. 575-6, 581-97.

DERIVATION AND HISTORY: Constitution of 1776, chap. ii. § 5: "The freemen of this Commonwealth, and their sons, shall be trained and armed for its defence under such regulations, restrictions, and exceptions as the General Assembly shall by law direct; preserving always to the people the right of choosing their colonels and all commissioned officers under that rank, in such manner and as often as by the said laws shall be directed." By the Declaration of Rights of the same Constitution, § 13, it was declared: "That the people have a right to bear arms for the defence of themselves and the State;" but it was carefully added: "as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up, and the military should be kept under strict subordination to, and governed by, the civil power." See similar provisions: Con. 1790, Art. IX. §§ 21, 22, 23, and see, also, *ante*, I. 21, 22, 23.

Constitution of 1790, Art. VI. § 2: "The freemen of this Commonwealth shall be armed and disciplined for its defence. Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service. The militia officers shall

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MILITIA.

be appointed in such manner, and for such time, as shall be directed by law." That section was modified by one of the Amendments of 1838, and made to read: "The freemen of this Commonwealth shall be armed, organized, and disciplined for its defence, when, and in such manner as shall be directed by law. Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service." It will be observed that the words in italic were added, and the last division of the section dropped; but the general purpose and meaning of the section stood unchanged. See Constitution United States, Art. I. § 8, cl. 15, 16; II. § 2, cl. 1; Amendment 2.

CONSTRUCTION: The Constitution of '1874 has, in some respects, enlarged legislative discretion upon this subject of the militia, but it has also imposed upon the Legislature the duty of making appropriations from the treasury in support of the plan or system of arming organizing, and training the militia, which it shall establish. It is not to be understood, however, that such system must be wholly maintained by State appropriations. The Legislature will have power but is not required to exempt persons, who have conscientious scruples about bearing arms, from military service, without paying a fair equivalent. The Constitution of 1776 (I. 8), like that of 1790, declared for payment by such persons of such an equivalent in clear and emphatic language: "Every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and, therefore, is bound to contribute his proportion toward the expense of that protection, and yield his personal service when necessary, or an equivalent thereto; . . . nor can any man who is conscientiously scrupulous of bearing arms be justly compelled thereto, if he will pay such equivalent."

STATUTES: Two supplementary Acts, approved 14th May, 1874, P. Laws, 143; Act of 4th of May, 1876, P. Laws, 102; Act 12th June, 1878, P. Laws, 173; Act 24th April, 1879, P. Laws, 29; Act 6th June, 1879, P. Laws, 85; and Act of 8th June, 1881, P. Laws, 57.

ART. XII.

ARTICLE XII.

PUBLIC OFFICERS.

Section
 Selection of public officers.
 Members of Congress and Federal
 Buelling disqualifies.

[Selection of public officers.]

Section 1. All officers whose selection is not provided for in this Constitution shall be elected or appointed as may be directed by law. See Art. IV. § 8.

Considered, 7 Conv. Deb. 122-5, 137-8. The section is simply declaratory of a power which, without it, would exist in the Legislature.

DERIVED : Amendment of 1838, Art. VI. § 8. Constitution of 1790, Art. VI. §§ 2, 5.: "The State Treasurer shall be appointed annually by the joint vote of the members of both Houses. All other officers in the treasury department, attorneys-at-law, election officers, officers relating to taxes, to the poor and highways, constables and other township officers, shall be appointed in such manner as is or shall be directed by law." See, also, same Constitution, Art. II. § 8.

JUDICIAL OPINION: Walsh v. The Commonwealth, 8 Norris, 419; 7 W. N. C. 21; Donohugh v. Roberts, 11 W. N. C. 186.

[Members of Congress and Federal officers disqualified for State offices.]

Section 2. No member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall, at the same time, hold or exercise any office in this State to which a salary, fees, or perquisites shall be attached. The General Assembly may, by law, declare what offices are incompatible. See Art. II. § 6; Art. IV. § 6.

Considered and amended, 7 Conv. Deb. 140, 707.

DERIVED: Amendment of 1838, Art. VI. § 8, which contains the same language, except that the clause corresponding to the concluding one above, reads: "The Legislature may, by law, declare what *State* offices are incompatible."

Constitution of 1790, Art. II. § 8: "No member of Congress from this State, nor any person holding or exercising any office of trust or profit under the United States, shall, at the same time, hold or exercise the office of judge, secretary, treasurer, prothonotary, register of wills and recorder of deeds, sheriff, or any office in this State to which a salary is by law annexed, or any other office which future Legislatures shall declare incompatible with offices or appointments under the United States." See, also, Con. 1776, chap. ii. §11.

Laws agreed upon in England, $\S 27$: "And to the end that all officers chosen within this province may with more care and diligence answer the trust reposed in them, it is agreed, that no such person shall enjoy more than one public office at one time."

STATUTES: Act of 15th May, 1874, P. Laws, 186, entitled "An Act declaring what offices are incompatible; "Act of 18th May, 1876, P. Laws, 179, and Act of 7th January, 1874, P. Laws, 497, relating to the city of Pittsburg. See, also, Act of 23d May, 1881, § 2, P. Laws, 31, confined to cities of the third class.

An Act passed 12th February, 1802, entitled "An Act declaring the holding of offices or appointments under this State incompatible with the holding or exercising offices or appointments under the United States," provided in its first section: "That every person who shall hold any office or appointment of profit or trust under the government of the United States, whether a commissioned officer or otherwise, a subordinate officer or agent, who is or shall be employed under the legislative, executive, or judiciary departments of the United States, and also every member of Congress, is hereby declared to be incapable of holding or exercising, at the same time, the office or appointment of justice of the peace, mayor, recorder, burgess, or alderman of any city, corporate town or borough, resident physician at the Lazaretto, constable, judge, inspector or clerk of election, under this Commonwealth." The second section declares that every commission, office, or appointment held under the State, in violation of the Act, shall be null and void, and the third section provides for a penalty of not less than \$50. nor more than \$500, to be imposed upon any person convicted in any court of record of exercising any office or appointment declared incompatible by the Act.

In 1812 a supplement to the Act of 1802 was passed, which provided, "That no member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the executive, legislative, or judiciary departments of the government of the United States shall, at the same time, hold, exercise, or enjoy the office of clerk of the court of Quarter Sessions, clerk of the Orphans' Court, or deputy surveyor, under this Commonwealth."

The Act of 1802 was substantially re-enacted by the Act of 15th May, 1874 (§§ 1, 2, 3), but that of 1812 did not receive similar attention. The Act of 1874 is by no means a model statute, and its borrowed sections, although they may possibly be held to embrace some employés of the general government not included in the constitutional section, are certainly much narrower than that section, by reason of enumerating only a few offices in the State as incompatible with Federal. offices and appointments. The section excludes all Federal officials and appointees, holding places of trust or profit, from holding or exercising at the same time any office in the State to which a salary, fees, or perquisites are attached, while the Act limits its prohibition to a few local or municipal offices. Nevertheless the Constitution must, in this respect, have full operation, notwithstanding the narrower sweep of the statute; as far as the former defines or enacts a prohibition upon the holding of office, it may be enforced by ordinary process of law, and the utility of any incompatibility statute must consist mainly in declaring what State offices shall be incompatible with each other, and in providing proper penalties.

JUDICIAL OPINION: Comm'th v. Dallas, 4 Dall. 229; Comm'th v. Binns, 17 S. & R. 228; Comm'th v. Ford, 5 Barr, 67; Hawkins v. Comm'th, 26 P. F. Sm. 15; Duffield's Case, Bright. Elec. Ca. 655.

In the case of The Commonwealth ex rel. Bache v. Binns, 17 S. & R. 219, the Supreme Court divided upon the question whether the selection of John Binns, an alderman of the city of Philadelphia, to print the laws of the United States, did not confer upon him an office, appointment or employment, incompatible with his office of alderman, by virtue of the 8th section of Article II. Constitution of 1790, and the Act of Assembly of 12th February, 1802, above cited. An Act of Congress of 20th April, 1818, authorized the Secretary of State to cause the Acts and Resolutions passed at each session to be published in one newspaper in the District of Columbia, and in three newspapers in each State and Territory, and the provisions of the Act covered the subjects of compensation, and of the punctual performance of duty by the printers selected. Alderman Binns was appointed by the Secretary of State to be one of the printers of the laws for Pennsylvania, under this law, and acted as such for several years. A majority of the court held (Rogers and Gibson, justices, dissenting) that this appointment and

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employment of Mr. Binns, under the United States, was not incompatible with his office of alderman for Philadelphia, and, therefore, refused to authorize an information, in the nature of a *quo warranto*, to be filed against him.

Tod, J., in delivering the opinion of the majority, said: "The question of incompatibility is no new question. The established rule is to give the strictest possible construction to every part of the Constitution and to every Act of Assembly declaring State offices incompatible with offices or appointments under the Federal government, or declaring different State offices incompatible with each other, and never to hold anything to be within the prohibition unless expressed and named, and to *take in* no possible case by construction." He proceeds to cite a number of precedents to sustain his statement of this rule or principle of construction, most of them drawn, however, from legislative practice and from popular usage in elections.

1. The first case referred to tells rather against the rule than in its favor, being that of the appointment by the Legislature of Dr. Franklin to be a delegate for Pennsylvania in the Continental Congress, although he was at the time a commissioner to France under authority of the Congress. The 11th section, chapter ii. of our Constitution of 1776, had provided: "That delegates to represent this State in Congress shall be chosen by the future General Assembly at their first meeting, and annually forever afterwards, as long as such representation shall be necessary. . . No man shall sit in Congress longer than two years successively, nor be capable of re-election for three years afterwards; and no person who holds any office in the gift of the Congress."

In the Council of Censors, August, 1784, the report of a committee was adopted which, citing the above clause of the Constitution, declared: "Benjamin Franklin, Esq., one of the commissioners of Congress to the Court of France, being on the 10th of December, 1777, elected to represent Pennsylvania in Congress, was a deviation from the above clause." Conv. and Con. Pa. p. 94.

Clearly that was a case of disregard by the Legislature of a plain provision of the Constitution, and not one relating at all to the construction of language, and its justification must be sought in the unexampled character of the times, or in particular circumstances which have escaped attention and comment. But the particularity with which the Council of Censors, seven years afterwards, pointed out that deviation from the Constitution, will admonish us that an error in constitutional practice is not a precedent to follow, but an example to shun.

2. The judge next cites a number of cases of the election by the

people of deputy surveyors and deputy attorneys-general to be members of the Legislature. But it might be fairly questioned whether those persons held offices within the meaning of the 18th section of the first Article of the Constitution of 1790 (ante, Art. II. § 6), which would disqualify them for membership in the Legislature. A deputy surveyor held a business employment rather than an office proper, and the deputies of the Attorney-General bore the character of his agents in the conduct of prosecutions, and probably fell within the exception of "attorney-at-law" contained in the constitutional section above mentioned.

3. The cases cited in the opinion of appointments made by the Governor of members of the Legislature to certain civil offices, were not in violation of the 18th section, Article I. of the Constitution of 1790, because the offices to which those persons were appointed were not created nor the emoluments thereof increased during their terms of membership in the Legislature. By accepting the offices conferred upon them by the Governor, they vacated or forfeited their seats in the Legislature, but their appointments violated no provision of the Constitution. Such appointments cannot now be made, because of the terms of the 6th section of the second Article, derived from one of the Amendments of 1838, but they were lawful under the Constitution of 1790 in its original form.

The case of A. J. Dallas (3 Yeates, 300), in view of which the Act of 12th February, 1802, was passed, and that of Senator Biddle, referred to several times in the Binns case (pp. 238, 244), are to be ranked as exceptional. But, upon the whole, it may be claimed that the rule or principle asserted by Judge Tod has no solid foundation in the precedents referred to by him any more than in sound reason, and that the conclusion in the Binns case, reached by its aid, is one of doubtful correctness and authority.

It will be difficult to show any good reason why the incompatability provisions of the Constitution should be subjected to a special rule of construction which will narrow their apparent meaning and confine them within strict limits. Why shall they not be interpreted reasonably, according to the fair import of their terms?

[Duelling disqualifies.]

Section 3. Any person who shall fight a duel or send a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this State, and may be otherwise punished as shall be prescribed by law. Considered and amended, 7 Conv. Deb. 142-8.

DERIVED : Amendment of 1838, Art. VI. § 10: "Any person who shall, after the adoption of the Amendments proposed by this Convention to the Constitution, fight a duel or send a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this State, and shall be punished otherwise in such manner as is or may be prescribed by law; but the Executive may remit the said offence and all its disqualifications."

Considered, Debates, Convention of 1838, iv. 242-71; xi. 54-7; xiii. 50.

CONSTRUCTION: 1. An extra-territorial commission of the offence of fighting or aiding or abetting the fighting of a duel, or of the offence of sending a challenge to fight a duel, is plainly within the condemnation of this section. While statutory enactments imposing punishment for such an offence could not extend to acts done beyond the boundaries of the State,—in other words, beyond the jurisdiction of the State,—constitutional disqualification for holding office may properly be predicated of criminal conduct, anywhere, which shall render the perpetrator an unfit depositary of political power. See remarks of Mr. Hiester, Debates, Convention of 1838, iv. 243, and of Mr. Stevens, Id. 246.

2. The disqualification for office pronounced by the section is not subject to removal by an executive pardon. Because this proposition becomes perfectly clear when duly considered, the Amendment of 1838 contained an express grant of power to the Governor to pardon. Without this he would not have possessed the power. Debates, Conv. of 1838: Mr. Porter, iv. 250-51, 262; Mr. Stevens, 246-7; Mr. Banks, 247; Mr. Sergeant, 262-3; Mr. Ingersoll, 266. The motion to add the pardon clause was carried, 103 to 14. Id. 268.

In the Convention of 1873 the pardon provision was rejected, advisedly, in order that the disqualification should be absolute and immutable. See remarks of Mr. Kaine, 7 Conv. Deb. 143; Mr. Turrell, 144; Mr. Howard, 145, 147; Mr. Darlington, 147; Mr. J. N. Purviance, 148. The pardon clause was voted down, yeas 25, nays 43. Id. 148. Of course, the *statutory punishment* may be relieved from by pardon.

3. The disqualification does not necessarily depend upon a conviction of the offence, in due course of law. See Debates, Convention of 1838, *passim*.

4. Membership in the Legislature, though not strictly an office, is within the intent of the section, and a duellist will be excluded therefrom.

ARTICLE XIII.

NEW COUNTIES.

SECTION 1. Limitation of power to create new counties.

[Limitation of power to create new counties.]

Section 1. No new county shall be established which shall reduce any county to less than four hundred square miles, or to less than twenty thousand inhabitants; nor shall any county be formed of less area, or containing a less population; nor shall any line thereof pass within ten miles of the county-seat of any county proposed to be divided. See Art. III. § 7, div. (10).

Proposition of Mr. Niles, of Tioga, Conv. Jour. 131-2; Deb. i. 155. Reported, Jour. 394; Deb. iii. 4. Considered and amended, 3 Conv. Deb. 202-18, 255-71; 5 Id. 376-9, 382-406; 7 Id. 708-13, 718-23; 8 Id. 49-54, 58-9. See, also, references under Art. III. § 7, division (10).

DERIVED: Second Amendment of 1857, which had position as Article XII. of the old Constitution. It read as follows: "No county shall be divided by a line cutting off over one-tenth of its population (either to form a new county or otherwise), without the express assent of such county by a vote of the electors thereof; nor shall any new county be established containing less than four hundred square miles."

Constitution of Illinois, Art. X. § 1: "No new county shall be formed or established by the General Assembly, which will reduce the county or counties, or either of them, from which it shall be taken, to less contents than four hundred square miles; nor shall any county be formed of less contents; nor shall any line thereof pass within less than ten miles of any county-seat of the county or counties proposed to be divided."

STATUTES: Act of 17th April, 1878, P. Laws, 17, entitled, "An Act to provide for the division of counties of this Commonwealth, and the erection of new counties therefrom." The supplementary Act of 22d April, 1879, P. Laws, 25, relates to the transfer to a new county of actions local thereto, pending at the time of its erection in an old county from which the new one shall have been erected, and for a transfer of certain records from the courts of such old county to the courts of the new. At the same session of 1879, Acts were passed for assignment of judges to a new county (P. Laws, 6), for the first election of a president judge therein (P. Laws, 123), and for the first election therefor of a superintendent of common schools (P. Laws, 30).

See Heath v. Gordner, 38 Leg. Intel. 374.

ARTICLE XIV.

COUNTY OFFICERS.

SECTION

SECTION

1. County officers-Sheriff and treasurer not re-electable.

2. Election and tenure-Vacancies.

3. Residence of county officers.

4. Offices to be kept at county-seat.

5. Compensation.

- 6. Accountability of municipal officers.
- 7. County commissioners and auditors to be chosen by limited vote.

[County officers-Sheriff and treasurer not re-electable.]

Section 1. County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of the courts, district attorneys, and such others as may, from time to time, be established by law; and no sheriff or treasurer shall be eligible for the term next succeeding the one for which he may be elected.

Considered and amended, 4 Conv. Deb. 774-7; 6 Id. 195-203; 7 Id. 724, 724-5.

DERIVED: The Constitution of 1790, Art. VI. § 1, provided for the selection of sheriffs and coroners as officers of counties every third year, with the added limitation, that "no person shall be twice chosen or appointed sheriff in any term of six years." The third section of the same Article recognized the offices of prothonotary, clerks of the peace and Orphans' Court, recorder of deeds, register of wills, and sheriff, by requiring the incumbents of those offices to keep their offices at the county town of the proper county.

Amendment of 1838, Art. 6, § 1, continued the old section, with some changes not affecting the position of sheriffs and coroners as county officers, or the limitation upon the re-eligibility of sheriffs. By an amendment of the 3d section of the same Article, the Convention of 1838 made prothonotaries, clerks of the several county courts, recorders of deeds, and registers of wills, elective every third year, and by a 4th section added, required those officers and the sheriff to keep their offices at the county-seat.

The Act of 15th April, 1834, § 15, P. Laws, 540, made provision for the election of three commissioners for each county, for three-year terms, one to

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be elected each year; the Act of 27th May, 1841, P. Laws, 400, provided for the election of county treasurers every second year; the Act of 9th April, 1850, § 5, P. Laws, 434, for the triennial election of county surveyors to succeed the deputies of the Surveyor-General, and the Act of 3d May, 1850, P. Laws, 654, for the triennial election of county district-attorneys, to succeed the deputies of the Attorney-General.

CONSTRUCTION: Some of the officers named in the section have, in Philadelphia, the designation of city officers, but they are very clearly county officers within the meaning of the Constitution, and are properly voted for and chosen at general elections. This classification was expressly declared as to Philadelphia commissioners by the 33d section of the Schedule, to avoid all cavil about the performance of the duties imposed upon them by the ordinance of submission, or about the application to future elections of those officers of the principle of minority representation. The word "controller" was advisedly inserted in the present section, because an officer of that name had been substituted for county auditors in each of the counties of Philadelphia and Allegheny.

JUDICIAL OPINION: In the case of Taggart v. The Commonwealth, decided by the Supreme Court, Feb. 19th, 1883, it was held that the controller of Philadelphia is a county officer within the meaning of this section of the Constitution; and that even if this construction of the Constitution were doubtful, still the controller, city treasurer, and city commissioners of Philadelphia were declared and made to be county officers by the 17th section of the Act of 31st March, 1876, P. Laws, 13, and were to be regarded as such for all legal purposes by the courts of justice and the executive authority of the State.

[Election and tenure—Vacancies.]

Section 2. County officers shall be elected at the general elections and shall hold their offices for the term of three years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified. All vacancies, not otherwise provided for, shall be filled in such manner as may be provided by law.

Considered and amended: 4 Conv. Deb. 777-8; 5 Id. 126; 6 Id. 202-3, 203-4, 212; 7 Id. 728.

DERIVED: Constitution of 1790, Art. VI. § 1. "Sheriffs and coroners shall, at the times and places of election of Representatives, be chosen by the citizens of each county; two persons shall be chosen for each office, one of whom for each, respectively, shall be appointed by the Governor. They shall hold their offices for three years if they shall so long behave themselves well, and until a successor be duly qualified; but no person shall be twice chosen or appointed sheriff in any term of six years. Vacancies in either of the said offices shall be filled by a new appointment to be made by the Governor, to continue until the next general election and until a successor shall be chosen and qualified as aforesaid." This section was altered by the Convention of 1838, so as to require the choice by the people of one person only for each office, who was to be commissioned by the Governor. Other county officers, besides sheriff and coroner, were to be appointed by the Governor without participation by the people, by virtue of the general appointing power conferred upon him by the 8th section of the second Article of that Constitution.

Amendment of 1838, Article VI. § 3: . . "Prothonotaries and clerks of the several courts [except the Supreme Court], recorders of deeds, and registers of wills shall, at the times and places of election of Representatives, be elected by the qualified electors of each county, or the districts over which the jurisdiction of said courts extends, and shall be commissioned by the Governor. They shall hold their offices for three years if they shall so long behave themselves well, and until their successors shall be duly qualified. The Legislature shall provide by law the number of persons in each county who shall hold said offices, and how many and which of said offices shall be held by one person. Vacancies in any of the said offices shall be filled by appointments to be made by the Governor, to continue until the next general election, and until successors shall be elected and qualified as aforesaid."

JUDICIAL OPINION: Walsh v. Commonwealth, 8 Norris, 419; 7 W. N. C. 21; Commonwealth v. McHale, 11 W. N. C. 57; Commonwealth v. Hanley, 9 Barr, 513; Commonwealth v. King, 4 Norris, 103; Luzerne County v. Trimmer, 9 W. N. C. 376.

[Residence of county officers.]

Section 3. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

Considered, 4 Conv. Deb. 780-81, 209; 7 Id. 725.

DERIVED: Constitution of 1790, Article II. § 8. Amendment of 1838, Article VI. § 8.

COUNTY OFFICERS.

[Offices to be kept at county-seat.]

Section 4. Prothonotaries, clerks of the courts, recorders of deeds, registers of wills, county surveyors, and sheriffs shall keep their offices in the county town of the county in which they respectively shall be officers.

Considered, 4 Conv. Deb. 778-80; 6 Id. 202.

DERIVED: Constitution of 1790, Art. VI. \gtrless 3; Amendment of 1838, Art. VI. \S 4. But neither of those provisions extended to county surveyors, and to both was appended the clause: "Unless when the Governor shall, for special reasons, dispense therewith for any term not exceeding five years, after the county shall have been erected."

See Scowden's Appeal, 15 Norris, 422; 11 W. N. C. 28.

[Compensation.]

Section 5. The compensation of county officers shall be regulated by law, and all county officers who are or may be salaried, shall pay all fees which they may be authorized to receive, into the treasury of the county or State, as may be directed by law. In counties containing over one hundred and fifty thousand inhabitants, all county officers shall be paid by salary, and the salary of any such officer and his clerks, heretofore paid by fees, shall not exceed the aggregate amount of fees earned during his term and collected by or for him. See Art. V. § 13.

Considered and amended : 6 Conv. Deb. 204-8; 8 Id. 304-7, 332-4.

STATUTES: Act of 31st March, 1876, P. Laws, 13; Supplementary Act of 23d March, 1877, P. Laws, 33; partial repealing Act of 21st May, 1879, P. Laws, 62, and Supplementary Act of 11th May, 1881, P. Laws, 21.

JUDICIAL OPINION: Catlin v. Hancock, 4 W. N. C. 55; Perot's Appeal, 5 Norris, 355; 5 W. N. C. 203; Crawford County v. Nash, 39 Leg. Intel. 296.

[Accountability of municipal officers.]

Section 6. The General Assembly shall provide by law for the strict accountability of all county, township, and

<u>....</u>

borough officers, as well for the fees which may be collected by them, as for all public or municipal moneys which may be paid to them.

See 4 Conv. Deb. 780, and statutes referred to under next preceding section. See, also, Burns v. Clarion County, 12 P. F. Sm. 422.

[County commissioners and auditors to be chosen by limited vote.]

Section 7. Three county commissioners and three county auditors shall be elected in each county, where such officers are chosen, in the year one thousand eight hundred and seventy-five and every third year thereafter, and in the election of said officers each qualified elector shall vote for no more than two persons, and the three persons having the highest number of votes shall be elected. Any casual vacancy in the office of county commissioner or county auditor shall be filled by the court of Common Pleas of the county in which such vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled.

Amendments of Mr. Buckalew and Mr. Hunsicker, 4 Conv. Deb. 781; 5 Id. 111. Considered and amended, 5 Conv. Deb. 6, 67–98, 101–26; 6 Id. 209–11; 7 Id. 725–7, 728–9.

JUDICIAL OPINION: Commonwealth v. Gaige, 13 Norris, 193.

ARTICLE XV.

CITIES AND CITY CHARTERS.

	SECTION
1. General laws to create cities.	3. A sinking fund to be created.
2. Powers of municipal commissions	
limited.	

[General laws to create cities.]

Section 1. Cities may be chartered whenever a majority of the electors of any town or borough having a population of at least ten thousand, shall vote at any general election in favor of the same. See Art. III. § 7, div. (11).

CLASSIFICATION AND ORGANIZATION OF CITIES: Act of 23d May, 1874, P. Laws, 230; Act 18th March, 1875, P. Laws, 7; Act of same date, P. Laws, 15; Act 11th April, 1876, P. Laws, 20; Act 23d March, 1877, P. Laws, 35; and Act of 8th June, 1881, P. Laws, 68. A large number of additional laws relating to cities of the several classes into which those municipalities have been divided, appear in the volumes of pamphlet laws for the years subsequent to 1873.

JUDICIAL OPINION: Wheeler v. Philadelphia, 27 P. F. Smith, 338; Scowden's Appeal, 15 Norris, 422; 11 W. N. C. 28.

[Powers of municipal commissions limited.]

Section 2. No debt shall be contracted, or liability incurred by any municipal commission, except in pursuance of an appropriation previously made therefor by the municipal government. See Art. III. \S 20.

JUDICIAL OPINION: Commonwealth v. Perkins, 4 W. N. C. 167; Perkins v. Slack, 5 Norris, 270; 5 W. N. C. 153; Commonwealth v. Pittsburg, 7 W. N. C. 409.

[A sinking fund to be created.]

Section 3. Every city shall create a sinking fund which shall be inviolably pledged for the payment of its funded debt.

Considered, 6 Conv. Deb. 234.

ARTICLE XVI.

PRIVATE CORPORATIONS.

SECTION

1. Unused charters to be void.

- 2. No existing charter to be validated or amended except upon condition that it be held subject to the Constitution.
- 3. Right of eminent domain not to be abridged or police power limited.
- 4. The free vote in stockholder elections.
- 5. Foreign corporations to have place of business in the State.
- 6. Corporations not to engage in business unauthorized by their charters.

SECTION

- 7. The fictitious increase of stock or bonds forbidden.
- 8. Taking or injury of private property—Appeals from assessments of damage.
- 9. Bank notes or bills to be secured.
- 10. Repeal or alteration of charters authorized.
- 11. Notice of bills to create banks.
- 12. Telegraph companies.
- 13. The word "corporations" defined.

[Unused charters to be void.]

Section 1. All existing charters, or grants of special or exclusive privileges, under which a *bona fide* organization shall not have taken place and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

Reported, Journal, 491. Considered and amended, 4 Conv. Deb. 579-88; and see 7 Id. 759.

COMPARE: Con. Cal. (1879), XII. 6; Col. (1876), XV. 1; Ill. Xf. 2; Mo. (1875), XII. 1; Neb. (1875), XI. Mis. Cor. 6. The section is derived, substantially, from the Constitution of Illinois.

JUDICIAL OPINION: Chincleclamouche Lumber and Boom Company v. The Commonwealth ex rel. Henry W. Palmer, Attorney-General, 12 W. N. C. 357; 39 Leg. Intel. 459. And see Plank Road Co. v. Davidson, 3 Wright, 435. [No existing charter to be validated or amended except upon condition that it be held subject to the Constitution.]

Section 2. The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution. See Art. XVII. § 10.

Reported by Committee on Private Corporations, Journal, 491; 4 Conv. Deb. 191. Considered and amended, 4 Conv. Deb. 588; 5 Id. 757; 7 Id. 756-8; amended, also, by Committee on Revision, Jour. 1024-5. Similar provision for railroad and other transportation companies, reported, Jour. 433, 467. Considered, 3 Conv. Deb. 613-33; 6 Id. 746; transferred to this Article by Committee on Revision, Jour. 1039.

COMPARE: Con. Cal. (1879), XII. 7; Col. (1876), XV. 7; Mo. (1875), XII. 3, 21; Tex. (1876), X. 8.

STATUTES: General corporation Act of 29th April, 1874, § 26, par. 2, P. Laws, 84; Act of 15th of May, 1874, P. Laws, 188, relating to railroad, turnpike, and plank-road companies; Act of 30th March, 1875, P. Laws, 37, relating to same; Act of 17th April, 1876, supplementary to the general corporation Act of 1874, § 26, P. Laws, 33; and Act of 22d of May, 1878, P. Laws, 84, requiring in general terms an acceptance of the provisions of the Constitution by any corporation desirous of obtaining a benefit from any general or special law to be passed by the Legislature. In form, this last-mentioned Act is an Act of limitation upon the Legislature, but substantially, and upon a just construction, it imposes a condition upon corporations seeking benefits from legislation which must be performed before the benefit can be obtained. Although the language of this Act, taken literally, includes all corporations, it may be fairly assumed that the intention of the Legislature was, to include only those private corporations which were established or organized prior to 1st of January, 1874. For the Act is to be read in connection with the section of the Constitution now under consideration, which has application to such corporations alone, and besides it is to be taken and construed so as to accomplish some useful or sensible purpose. To require corporations organized after 1st January, 1874, to formally accept the provisions of the Constitution, would be an idle and vain thing; for they are as completely subject to

the Constitution without acceptance as they possibly could be with it. Even those organized after 1st of January, 1874, under general laws passed before that date, can claim no exemption from the grasp of the Constitution; for only such laws, and parts of laws, of prior enactment, as were consistent with the new Constitution, were preserved or continued in force by the second section of the Schedule, and every corporation must take its charter privileges subject to the Constitution in force at the time of its creation.

Act of 25th May, 1878, P. Laws, 145 (Supplement to Act of 8th April, 1861, concerning the sale of railroads, canals, bridges, and plankroads), provides for the organization of a new corporation by the purchasers of the material, rolling stock, property, and franchises of any gas, water, coal, iron, steel, lumber, oil, or mining, or manufacturing, transportation, or telegraph company, or of any railroad, canal, turnpike, bridge, or plank-road, or of any corporation created by or under any law of this State, under or by virtue of any process or decree of any court of this State, or of the Circuit Court of the United States, etc.; but by the third section the provisions of the Act shall not inure to the benefit of any corporation unless before claiming or using them such corporation shall file, in the office of the Secretary of the Commonwealth, an acceptance of the provisions of Article sixteen of the Constitution, which acceptance shall be made by resolution adopted at a regular or called meeting of the directors, trustees, or other proper officers of the corporation, certified under the corporate seal, a copy of which resolution, certified under the seal of office of the Secretary of the Commonwealth, shall be evidence for all purposes.

The Act of 4th June, 1879, P. Laws, 75, authorizing courts of Common Pleas to alter, amend, and improve the charters of plankroad companies, provides in its second section: "This Act shall not apply to any such corporation until it shall have filed its acceptance of the provisions of the new Constitution with the said court, which said acceptance shall be recorded in the office for recording of deeds in said county."

See, also, Act of 24th May, 1881, P. Laws, 27, "An Act to extend the time for the completion of railroads in this Commonwealth," and the Act of 21st May, 1881, § 3, P. Laws, 29, supplementary to general railroad Act of 4th April, 1868.

JUDICIAL OPINION: Hays v. Commonwealth, 1 Norris, 518; Abl v. Rhoads, 3 Norris, 319; 4 W. N. C. 483; Pennsylvania Railroad Co. v. Langdon, 11 Norris, 21. See, also, 5 Norris, 340; 5 W. N. C. 369; 6 Norris, 114; 10 Norris, 35.

CONSTRUCTION: There is a true, reasonable, and necessary implication arising upon this section, the recognition of which will wholly put aside a most remarkable and injurious misconception of Convention intent and purpose. It was not an object, in framing this section, to exclude the operation of the Constitution upon existing corporations; to give to those bodies complete exemption from its provisions, or to recognize such exemption; but, on the contrary, as rapidly and as fully as possible to place them entirely within its grasp, and cause them to bow to its authority. But the members of the Convention well knew that in some respects some existing private corporations, and especially those organized before 1857, were beyond their reach, and could, in a certain sense, defy the Those corporations could not deny the power of power of the State. the State to regulate and control them in various forms and for various important purposes, but they held certain grants of privilege from the State which were under the protection of the Constitution of the United States, as well as of the 17th section of our own Declaration of Rights. Manifestly, it was with reference to those irrepealable privileges alone, that this section was necessary and proper, and was proposed by the corporation committee to the Convention. As soon as possible our system of corporate regulation was to be made consistent and uniform for each class of corporate bodies, and the improvident grants of former times were to pass away. But, as to most of the provisions of the new Constitution, applicable in their nature or form to private corporations, there was no difficulty in the way of their execution, and no reason for requiring or inviting such corporations to submit to them, or to accept them. And most certainly no Convention member, when the section was framed, nor any citizen pending its consideration by the people, gave voice to the singular idea that it provided for corporate immunity and exemption as its principal object instead of corporate subjection and control.

Plainly, the section was framed in order to get hold of the old corporations, and subject them to *all* the corporate regulations of the new Constitution—in short, to seize any opportunity which might offer to modernize and improve their charters in those particulars in which amendment was proper, but could not be at once imposed. The section has this extent, no more, and it is a gross perversion of its meaning to impute to it the odious office of shielding the old corporations, to any extent, from constitutional control. It follows that the concluding words of the section must be understood as if they read: "shall thereafter hold their charters subject to *all* the provisions of this Constitution"—that is, not only to those which the Constitution could and did impose upon them, but also to those which it could not.

The 10th section of the 17th Article requires of railroads and other

transportation companies complete acceptance of all the provisions of that Article in order to their enjoyment of the benefits of any future legislation, thus expressing more clearly the very idea of this section upon a point common to both. It was because the existing railroad and canal companies, or some of them, would be bound only in part by the provisions of that Article that their complete acceptance of it was required; that all its provisions were to be taken by them along with any benefit obtained from future laws. Now, although in legal contemplation, railroad and canal companies are private corporations, and, as such, within the scope of most of the provisions of the 16th Article, vet, because they received separate consideration and treatment in the 17th Article, and because some Convention members conceived that they bore a character rather public than private (Mr. Howard and Mr. Wherry, 8 Conv. Deb. 688), it was proper to repeat as to them the acceptance provision of the 16th Article, with modified application, as we find it in the 10th section of the 17th Article. The acceptance provisions of the two Articles are cognate, having a similar origin and purpose, and, except in one particular, there is complete correspondence between them. The one looks to a complete enforcement of all the Articles, the other to the complete enforcement of but one, but in other respects, they are fellows of the same parentage, with like characteristics, and employed in a common mission-the capture of defiant corporations, and subjecting them completely to the rule of the Constitution.

[Right of eminent domain not to be abridged or police power limited.]

Section 3. The exercise of the right of eminent domain shall never be abridged, or so construct as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State.

Reported, Journal 491. Considered, 4 Conv. Deb. 488-9; 6 Id. 32-7; 7 Id. 761. Revised, Jour. 1025.

DERIVED: Con. of Ill. XI. 14, in part.

1. 1. 1.

COMPARE: Con. Cal. (1879), XII. 8; Col. (1876), XV. 8; Mo. (1875), XII. 4, 5; Neb. (1875), XI. 6; W. Va. XI. 12.

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For an elaborate exposition of the doctrine of Eminent Domain, see Cooley on Constitutional Limitations, chap. xv. pp. 523-71, and for a like exposition of the Police Power of the State, the same work, chap. xvi. pp. 572-97.

THE POLICE POWER-RECENT CASES: Craig v. Kline, 15 Sm. 399; Com. v. Penna: Canal Co., 16 Sm. 41; Penna. R. Rd. Co. v. Riblet, Id. 164; Kincaid's Appeal, Id. 411; Northumberland County v. Zimmerman, 25 Sm. 26; Kirby v. Penna. R. Rd. Co., 26 Sm. 506; Pittsburg and Connellsville R. Rd. Co., v. Southwest Penna. R. Rd. Co., 27 Sm. 173; Philadelphia v. Scott, 31 Sm. 30; Com. v. Wilson, 9 W. N. C. 291.

EMINENT DOMAIN: Long v. Fuller, 18 Sm. 170; Wyoming Coal & Transportation Co. v. Price, 31 Sm. 156; Darlington v. United States, 3 W. N. C. 221; Waddell's Appeal, 3 Norris, 90; 4 W. N. C. 29; *In re* Towanda Bridge Co., 10 Norris, 216; *In re* Opening of 22d Street, 39 Leg. Intel. 128.

[The free vote in stockholder elections.]

Section 4. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

[Reported by Suffrage Committee, Journal, 268. Considered, 2 Conv. Deb. 132.] Reported by Committee on Private Corporations, Journal, 492. Considered and amended, 4 Conv. Deb. 592-3, 604-8; 5 Id. 758-68; 6 Id. 37-8; 7 Id. 760-61, 762. See, also, remarks of Mr. McAllister, 1 Id. 532.

DERIVED: Constitution of Illinois, Article XI. § 3, which is as follows: "The General Assembly shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected; or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner."

COMPARE: Con. Cal. (1879), XII. 12; Mo. (1875), XII. 6; Neb. (1875), XI. Mis. Cor. 5; W. Va. (1872), XI. 4.

STATUTES: General corporation Act of 29th April, 1874, § 10, P. Laws, 78-9, and supplementary Act of 25th April, 1876, P. Laws, 47. The latter Act is as follows : "In all elections for directors, managers, or trustees of any corporation created under the provisions of this statute [Act of 1874], or accepting its provisions, each member or stockholder, or other person having a right to vote, may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates as he may prefer, that is to say : If the said member or stockholder, or other person having a right to vote, own one share of stock or has one vote, or is entitled to one vote for each of six directors by virtue thereof, he may give one vote to each of said six directors, or six votes for any one thereof, or a less number of votes for any less number of directors, whatever may be the actual number to be elected, and in this manner may distribute or cumulate his votes as he may see fit; all elections for directors or trustees shall be by ballot, and every share of stock shall entitle the holder thereof to one vote, in person or by proxy, to be exercised as provided in this section." Act of 13th May, 1876, "for the incorporation and regulation of banks of discount and deposit," § 14, P. Laws, 165.

JUDICIAL OPINION: Hayes v. Commonwealth, 1 Norris, 518.

CONSTRUCTION: It will be seen that the Pennsylvania constitutional provision is much more condensed than those contained in the other Constitutions referred to—all of which have the Illinois form—and that it differs from them substantially in not fixing the number of votes, proportioned to stock, which a stockholder may cast. The omission was intentional. It was intended, as the Convention Debates will show, that the section should adapt itself to the case of a corporation where the voting power of a stockholder is limited upon his shares above a certain number, as well as to the ordinary case where a stockholder has one vote for each share of his stock without regard to the number of shares he holds.

To illustrate: By the turnpike and plank-road Act of 26th of January, 1849, § 3, P. Laws, 11, it was provided, that in elections of officers by the stockholders, "each stockholder shall be entitled to one vote for each share of stock not exceeding ten, and one vote for every five shares exceeding that number." A similar provision in the gas and water company Act of 11th March, 1857, was repealed by Act of 15th May, 1874, P. Laws, 188, which latter Act provided that thenceforth each stockholder, in companies subject to the Act of 1857, might cast one vote for each of his shares of stock. The "one vote" intended by these and other laws means, of course, a single vote upon any question admit-

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ting of a simple affirmative or negative response, or upon the selection of one person by the stockholders to a corporate office; but, by necessary construction and universal usage, in the election of a board of several directors or managers of a corporation, the stockholders' stock vote as fixed by law becomes plural, and means a vote for each of the whole number of directors or managers to be chosen-in other words, includes or means as many votes as there are directors or managers to be voted for. Under the turnpike and plank-road Act, above mentioned, a person holding 25 shares of stock would have 13 stock votes, and in voting for president or treasurer of his company would cast that number, but in voting for 5 managers, if he used his whole voting power, would give 65 votes, or 13 to each of 5 candidates. This would be the case under the old plan of voting. It is with these secondary or plural votes that the constitutional section deals, authorizing them to be cast freely-to be distributed or concentrated at the pleasure of the stockholder-voter-to be used by him so as to secure to himself just representation in the board of management of his company. (By Act of 11th June, 1879, P. Laws, 122, this plan of limiting votes to large stockholders in turnpike, plankroad, and bridge companies, was repealed.)

To what corporations does this section of the Constitution apply? Judged by its language and by the debates upon it in the Constitutional Convention, it applies to all private corporations, whether old or new.

In fact there can be no reasonable doubt that the people of the State in adopting the Constitution, intended this section to regulate the elections of corporations then in existence, as well as those of corporations to be thereafter established. And it was opposed, so far as opposition to it was made in convention, and before the people, distinctly upon the ground that it would have such application.

It follows that a construction of the section which would be opposed to its plain terms, to the purpose of those who framed it, and to the understanding and intention of the people in its adoption, must be an unsound one, however respectable may be the authority which shall pronounce it.

The groundless pretence that the old corporations of the State were by the second section of this Article wholly excepted from the operation of the new Constitution unless and until they should accept its provisions, is elsewhere examined and answered. See *ante*, p. 246.

The validity of the section, assuming for it the construction above set forth, is quite a distinct question. For it may be claimed in argument that the people of Pennsylvania had not power to impose this section upon corporations organized prior to 1874. But that they had such power and properly exercised it—that they attempted to commit no wrong upon the old corporations of the State, or to invade their charter rights by the adoption of this section—it will be the object of a note at the end of this Article to demonstrate and establish.

[Foreign corporations to have places of business in the State.]

Section 5. No foreign corporation shall do any business in this State, without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. See Art. XVII. § 2.

Reported, Journal, 492. Considered and amended, 4 Conv. Deb. 609-10; 5 Id. 768-74; 7 Id. 753-4.

COMPARE: Con. Cal. (1879), XII. 14, 15; Col. (1876), XV. 10; Mo. (1875), XII. 15.

STATUTE: Act of 22d of April, 1874, P. Laws, 108, is in execution of this section.

JUDICIAL OPINION: Hagerman v. Empire Slate Co., 1 Out. 534; 10 W. N. C. 491; Retterly v. Howe Machine Co., 4 W. N. C. 525.

[Corporations not to engage in business unauthorized by their charters.]

Section 6. No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take and hold any real estate, except such as may be necessary and proper for its legitimate business. See Art. XVII. § 5.

Reported, Journal, 492. Considered, 4 Conv. Deb. 610-11; 5 Id. 774-5; 8 Id. 712-14, 717. Revised, Jour. 1025.

COMPARE: Con. Cal. (1879), XII. 9; Mo. (1875), XII. 7.

. . . .

[The fictitious increase of stock or bonds forbidden.]

Section 7. No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, first obtained at a meeting to be held after sixty days' notice, given in pursuance of law.

Reported by Railroad Committee, Journal 432. Considered, 3 Conv. Deb. 572-7; 6 Id. 707-15. Brought from Railroad Article by report of Committee on Revision and Adjustment, Jour. 1025, 1039. Considered, 7 Conv. Deb. 759-60, 763, 779-80.

DERIVED, mostly: Con. Ill. XI. 13.

COMPARE: Con. Cal. (1879), XII. 11.; Col. (1876), XV. 9; Mo. (1875), XII. 8; Neb. (1875), XI. 5; Tex. (1876), XII. 6.

STATUTE: Act of 17th April, 1876, § 17, P. Laws, 32, supplementary to the General Corporation Act of 29th April, 1874.

JUDICIAL OPINION: Ahl v. Rhoads, 3 Norris, 319; 4 W. N. C. 483; Lewis v. Jeffries, 5 Norris, 340; 5 W. N. C. 369.

[Taking or injury of private property-Appeals from assessments of damages.]

Section 8. (1) Municipal and other corporations and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured, or destroyed by the construction or enlargement of their works, highways, or improvements, which compensation shall be paid or secured before such taking, injury, or destruction. (2) The General Assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals, made by viewers or otherwise, and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury according to the course of the common law. See § 3 of this Article, and § 10 of Declaration of Rights.

(1) Reported by Railroad Committee, Journal 433. Considered, 3 Conv. Deb. 581, 582-608; 6 Id. 716-18, 738-46. Section transferred to Article on Private Corporations by Committee on Revision and Adjustment, Jour. 1025, 1039. (1 & 2.) A section reported by Committee on Private Corporations, Jour. 491. Rejected, 4 Conv. Deb. 592. Amendment of Mr. Bartholomew, Id.

610-11. Considered and further amended, 6 Id. 31-2; 7 Id. 758-9, 762; 8 Id. 490-91. Amendment of Mr. Bullitt, 8 Conv. Deb. 679, 712-14, 717.

DERIVED: (1) Amendment of 1838, Art. VII. § 4: "The Legislature shall not invest any corporate body or individual with the privilege of taking private property for public use, without requiring such corporation or individual to make compensation to the owners of said property, or give adequate security therefor, before such property shall be taken."

(2) Con. of Ill. XI. 14.

References to provisions in the Constitutions of other States relating to the taking of private property for public use, will be found under third division of \S 10, of the Declaration of Rights, *ante*.

CONSULT: Cooley, Con. Lim. 523-70; Story on Con. § 1956 (4th ed.).

STATUTES: Act of 13th of June, 1874, P. Laws, 283, regulates appeals from assessments of damages, in cases not provided for by prior laws; Act of 1st May, 1876, P. Laws, 86, authorizes appeals to Quarter Sessions from certain assessments of damages in cities, and Act of 10th June, 1881, P. Laws, 91, relates to assessments of damages for altering or changing the channel of any water-course in cities of the 5th class. The Act of 14th May, 1874, P. Laws, 164, and the supplement thereto of 8th of May, 1876, P. Laws, 145, relate to assessment of damages by road and bridge viewers, and appear to authorize appeals from the assessments made by them. The Act of 24th May, 1878, P. Laws, 129, provides for assessments of damages to lot-owners where streets and alleys are changed in grade or location in boroughs.

JUDICIAL OPINION-RECENT CASES: Western Pa. R. Rd. Co. v. Johnston, 9 Sm. 290; Tinicum Fishing Co. v. Carter, 11 Sm. 21; Hannum v. Westchester, 13 Sm. 475; Spangler's Appeal, 14 Sm. 387; McClinton v. Pittsburg, Fort Wayne, and Chicago Railway Co., 16 Sm. 404; Haley v. Philadelphia, 18 Sm. 45; Dimmick v. Brodhead. 25 Sm. 464; Pusey's Appeal, 2 Norris, 67; Williams v. City of Pittsburg, Id. 71; Long's Appeal, 6 Norris, 114; Bachler's Appeal, 9 Norris, 207; Road in Springfield Township, 10 Norris, 260; City of Reading v. Althouse, 12 Norris, 400; 9 W. N. C. 22; Freeze v. Columbia County, 6 W. N. C. 145; Duncan v. Penna, R. Rd. Co., 7 W. N. C. 551; Penna. Coal Co. v. Sanderson, 8 W. N. C. 521; Pusev v. City of Allegheny, 10 W. N. C. 561; 39 Leg. Intel. 22 (see Pusey's Appeal, supra); East Union Township v. Conroy, 11 W. N. C. 533; Pittsburg & Lake Erie R. Rd. Co. v. Robinson, 38 Leg. Intel. 22; Ridge Avenue Road, change of grade, 39 Leg. Intel. 109; Borough of New Brighton v. United Presbyterian Church, 15 Norris, 331.

FORMER CASES: Harrisburg v. Crangle, 3 W. & S. 460; Monongahela Navigation Co. v. Coons, 6 W. & S. 113; Heston v. Canal Commissioners, Bright. Rep. 183; Crangle v. Harrisburg, 1 Barr, 132; Menges v. Wertman, Id. 218; Commonwealth v. Wood, 10 Barr, 97; Mifflin v. Railroad Co., 4 Harris, 192; Appeal of Borough of Easton, 11 Wright, 255.

[Bank notes or bills to be secured.]

Section 9. Every banking law shall provide for the registry and countersigning, by an officer of the State, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the Auditor-General, for the redemption of such notes or bills.

Reported, Journal, 492. Considered, 5 Conv. Deb. 775-6; 7 Id. 754-5, 761, 781. Revised, Jour. 1025.

Sce Act of 12th April, 1875, P. Laws, 53, amendatory of the free banking Act.

[Repeal or alteration of charters authorized.]

Section 10. (1) The General Assembly shall have the power to alter, revoke or annul any charter of incorporation, now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of this Commonwealth, in such manner, however, that no injustice shall be done to the corporators. (2) No law, hereafter enacted, shall create, renew, or extend the charter of more than one corporation. See Declaration of Rights, § 17.

Proposed, but withdrawn, 5 Conv. Deb. 776. Renewed and agreed to, 6 Id. 27-8. Revised, Jour. 1025.

DERIVED: (1) Amendment of 1838, Art. I. § 25; ". . . and every such charter [creating a corporate body with banking or discounting privileges] shall contain a clause reserving to the Legislature the power to alter, revoke, or annul the same, whenever, in their opinion, it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done to the corporators." Fourth Amendment of 1857, Art. I. § 26: "The Legislature shall have the power to alter, revoke, or annul any charter of incorporation hereafter conferred by or under any special or general law, whenever, in their opinion, it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done to the incorporators."

(2) Probably by inadvertence, the last clause of the section was copied from the end of § 25, Art. I. of the old Constitution in coppying § 26 of same Article for insertion in the new Constitution. By reference to the Convention Debates, it will be seen that when Gen. White first proposed our present § 10, as an amendment, it did not contain the clause in question. Apparently the clause slipped into the new text without consideration. It is an intruder (although a harmless one), because it has, in its new situation, no appropriate or proper office to perform. For an exposition of this clause, as found in the old Constitution, see Moers *. City of Reading, 9 Harris, 200. See, also, Cooper v. Oriental Savings and Loan Association, 12 W. N. C: 332.

COMPARE: Con. Ala. XIII. 1; Ark. V. 48; Cal. IV. 31 (1879), XII. 1; Col. (1876), XV. 3; Del. 11. 17; Iowa, VIII. 12; Kan. XII. 1; Md. III. 48, par. 2; Mich. XV. 1, 8; Mo. VIII. 14; N. J. Amendment, IV. 7, par. 11, cl. 11; N. Y. VIII. 1; N. Car. VIII. 1; Neb. (1875), XI. Mis. Cor. 1; Nev. VIII. 1; Ohio, XVIII. 2; Or. XI. 2; S. Car. XII. 1; Tenn. XI. 8; Tex. (1875), XII. 5, 7; Wis. XI. 1.

CONSULT: Cooley on Con. Lim. 125-7, 206, 279-80; Wharton on Contracts, § 1065.

RECENT CASES: (1) Com'th v. Fayette Co. R. Rd. Co., 5 Sm. 452; Huston v. College, 13 Sm. 428; Jones & Nimick Man. Co. v. Com., 19 Sm. 137; Zimmerman v. Perkiomen and Reading Turnpike Co., 32. Sm. 96. See, also, Moers v. Reading, 9 Harris, 200; Cleveland, etc., Railroad Co. v. Erie, 3 Casey, 380, 388; Iron City Bank v. Pittsburg, 1 Wright, 340; Chincleclamouche Lumber and Boom Co. v. Comm'th, 39 Leg. Intel. 459; 12 W. N. C. 357.

The opinion of Justice Field of the Supreme Court of the United States, in the case of the County of San Mateo v. The Southern Pacific Railroad Company, delivered by him in the United States Circuit Court at San Francisco, in 1882, contains remarks upon the legislative power of repealing and amending charters, where such power has been reserved by a State in its Constitution, which are appropriate for quota tion in this place. He says: "The reservation of power over the franchise, that is, over that which is granted, makes the grant a conditional or revocable contract, whose obligation is not impaired by its revocation or changes. The Supreme Court established in the Dartmouth College case, that the charter of a private corporation is a contract between the corporators and the State, and that it was, therefore, within the prohibition of the Federal Constitution against the impairment of contracts. To avoid this result, the States have generally inserted clauses in their Constitutions reserving the right to repeal, alter, or amend charters granted by their Legislatures, or to repeal, alter, or amend the general laws under which corporations are allowed to be formed. The reservation relates only to the contract of incorporation, which without such reservation would be irrepealable. It removes the impediment to legislation touching the contract. It places the corporation in the same position it would have occupied had the Supreme Court held that charters are *not* contracts, and that laws repealing or altering them, did not impair the obligation of contracts."

In Detroit v. Detroit and Howell Plank Road Company, 43 Mich. 140, the following views are expressed: "But for the provision of the Constitution of the United States, which forbids the impairing of contracts, the power to repeal and amend corporate charters would be ample, without being expressly reserved. The reservation of the right leaves the State where any sovereignty would be, if unrestrained by express constitutional limitations, and with the powers which it would then possess."

In the above cases, however, it was properly held that whenever a State exercises the reserved right to repeal or alter the charter of a private corporation, the rights of the corporators or stockholders in the corporate property, lawfully acquired, should be respected; a principle fully recognized by the Pennsylvania Constitution in the Fourth Amendment of 1857, and in the present section. The annulment or alteration of a charter, is to be in such manner that no injustice shall be done to the corporators.

A repealing statute should not disallow the distribution of the corporate property among the stockholders, or its conversion to their use, or, if taken for public use, should provide for adequate compensation to the owners. In fact, the rights of private property, in such case, are under the protection of constitutional principles wholly independent of the provisions in the State and Federal Constitutions against impairing the obligation of contracts, and those principles are plainly declared in the 9th, 10th, and 11th sections of our Pennsylvania Declaration of Rights. The artificial being called a corporation may be destroyed, or any of its power or functions may be withdrawn from it, under the reserved power contained in the section, but private property, lawfully acquired under cover of the corporate charter, can still claim the protection of the Constitution.

PRIVATE CORPORATIONS.

[Notice of bills to create banks.]

Section 11. No corporate body to possess banking and discounting privileges shall be created or organized in pursuance of any law, without three months' previous public notice at the place of the intended location, of the intention to apply for such privileges, in such manner as shall be prescribed by law, nor shall a charter for such privileges be granted for a longer period than twenty years. See Art. III. § 8.

Considered, 6 Conv. Deb. 28-30.

DERIVED: Amendment of 1838, Art. I. § 25: "No corporate body shall be hereafter created, renewed, or extended with banking or discounting privileges, without six months' previous public notice of the application for the same, in such manner as shall be prescribed by law; nor shall any charter for the purpose aforesaid be granted for a longer period than twenty years."

JUDICIAL OPINION: Kuppert v. Guttenberg Build. Association, 6 Casey, 465; Shober v. Accommodation Saving Fund and Loan Ass'n, 11 Casey, 223; Building Association v. Seemiller, Id. 225 n; Saving and Loan Co. v. Conover, 5 Philada. 18.

[Telegraph companies.]

Section 12. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and to connect the same with other lines; and the General Assembly shall, by general law, of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with, or hold a controlling interest in the stock or bonds of any other telegraph company, owning a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph. See Art. XVII. § 4.

Proposition of Mr. Brodhead, of Northampton, Journal, 1132; 8 Conv. Deb. 25-6, 54-5. Reported, Jour. 1175; 8 Conv. Deb. 277. Considered and amended, 8 Conv. Deb. 328-32.

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COMPARE: Con. Col. (1876), XV. 13; Mo. (1875), XII. 17; Neb. (1875), XI. 3, 7.

STATUTE: Act of 1st May, 1876, P. Laws, 90, authorizing private telegraph lines, by consent of municipal authorities.

[The word "corporations" defined.]

Section 13. The term "corporations," as used in this Article, shall be construed to include all joint stock companies or associations, having any of the powers or privileges of corporations not possessed by individuals or partnerships.

Reported, Journal, 491. Considered, 4 Conv. Deb. 577, 578-9; 6 Id. 30; 7 Id. 761-2.

COMPARE: Con. of Cal. (1879), XII. 4; Kan. XII. 6; Mich. XV. 11; Minn. X. 1; Mo. (1875), XII. 11; N. Y. VIII. 3; N. Car. VIII. 3.

NOTE TO THE SIXTEENTH ARTICLE.

NOTE ON THE FOURTH SECTION.

THE FREE VOTE IN STOCKHOLDER ELECTIONS: The section by its language apparently applies the plan of voting allowed by it to all private corporations without exception. In *all* corporate elections by members or shareholders, for the choice of directors or managers, the free vote is to be permitted, and by § 13 we are informed that the word corporations, here used, will embrace private corporations of every kind and description. There is nothing upon the face of the section, or directly connected with it, to limit the general sense or application of the words "all elections," and the word "corporations," as thus understood, and, therefore, they are to be taken in that enlarged sense and have application accordingly. People v. Purdy, 2 Hill, 35; Newell v. People, 7 N. Y. 97.

AN ARGUMENT FOR THE FREE VOTE: The views of the present writer expressed in the Constitutional Convention of 1873 (4 Conv. Deb. 605-6) may be properly and conveniently reproduced in this place, inasmuch as their restatement in a new form would probably add nothing to their relevancy, completeness, or force. The remarks referred to were as follows:—

"This regulation applied to corporate elections, does not raise those considerations which apply to political elections. The question is very different. It is one of interest in two points of view: First, as regards the protection of the interests of the stockholders themselves. This provision will enable every man or every combination of men, of respectable magnitude as to stock interest in a corporation, to protect the interest which they hold in it, by appointing one or more directors to look after the practical management and administration of its affairs; and this is a necessary guard and protection to property interests which are embarked in our numerous corporate enterprises in this State.

"Then, again, this provision is important to the public. These corporations have become very numerous; they are organized for carrying on a great variety of employments and business in our State; in fact, a large part of the disposable capital of the State is embarked in corporate companies of some sort, and their management and administration, therefore, becomes a question of immense magnitude and consequence in our State. It is to the interest of the public, it is to the interest of the people in common, that these corporations should be conducted upon sound principles, and with every guard which can be provided by the government against abuse. If there are combinations, or rings, as they are termed, formed within these corporations, which direct their conduct and management, the inevitable result is that the public in general are injured; that favoritism is exercised towards certain persons, while the great mass of the community indirectly are plundered or injured. It is to the interest of the public that principles of sound morality, as well as sound business principles, should prevail in the management of these incorporated companies, and there is no means by which you can provide against abuse in their management and administration, except by providing that all the stockholders who are interested in their management shall be enabled to participate practically in their government.

"Another consideration in this same connection is this: Abuses in corporate management are mainly secret, at least in the commencement, a fact alluded to by Mr. Haines in the Illinois Convention. An arrangement, an understanding, by which the affairs of the corporation are managed directly in the interest of an individual, or a combination of individuals, is almost always secret. The great mass of the stockholders at the time the arrangement is made, know nothing about it. If, some months or possibly years afterwards, the facts come to be known, it is too late to apply a remedy. Stockholders who may be plundered or injured cannot appeal to the courts for redress because it is then too late. The transaction has passed into the history of the company, and it cannot be undone. You cannot go back to the point of time when the abuse was proposed and apply your check, your protection to the stockholders who are liable to be injured. The only mode then by which the stockholders themselves, and by which the public can be protected against abuse in the management of these incorporated companies is, that all the stockholders shall be able to know all the time what is going on in the management of the company; that if anything wrong is proposed, their representatives in the board may call the attention of the stockholders generally to it, or appeal to a court for an injunction, and thus check the abuse before it takes an irremediable form.

"In this point of view this will be one of the most salutary checks which can be introduced into the Constitution of our State. All over the State, from one of the great railroad companies down to an humble gas and water company in a town, all the proceedings of these incorporated companies should be open to the inspection and knowledge of all the corporators interested in them, and then their management will receive a guarantee and a protection that can be obtained in no other way whatever."

THE PROVISION IN ILLINIOS AND WEST VIRGINIA: This proposi. tion in regard to stockholders' elections of directors and managers of incorporated companies, is found in the Constitution of Illinois, adopted in July, 1870, and also in the Constitution of West Virginia, which was adopted two years afterwards. The debate in the Illinois Convention (page 1666, etc.), was a very interesting and instructive one, covering every important consideration connected with the subject, and was so clearly in favor of the proposition that eventually the member who had moved to strike it out withdrew his motion, and it was adopted unanimously by the Convention. In the case of West Virginia it was again fully considered in Convention and was adopted without serious A point made in its favor, in the Illinois Convention, by opposition. Mr. Haines, of Lake County, deserves mention. He said: "Corporations of the kind referred to, as I understand it, are merely co-partnerships, merely contributions of individuals for the purpose of carrying on individual enterprises." . . . "I want to place them for all purposes, so far as I can, in the light of individuals, transacting business, and give them no powers beyond what individuals possess, unless absolutely necessary for their existence as corporations.

"If three or five persons engage in business as co-partners, each partner has a voice in conducting its business, and is entitled, in person, anywhere and everywhere, to give his voice in the direction of its affairs. This is a right existing by law everywhere. But when a company is created by an act of incorporation, the rule seems to have been changed. The rule sought ought to have been the same from the beginning. We ought not to countenance the principle that these incorporated companies are public corporations, but confine them to the condition intended. An incorporated company has a board of directors, which may sit in private, and pass a rule that nobody else shall be admitted because nobody is concerned. The business has been given to this board. No stockholder has a right to be present unless the rule allows. The very presence in the board of a man representing one-fifth of the interest of the corporation, might suggest something to the balance of the board for the benefit of those they represent. But the principle that the majority of the stock shall control and govern the financial interest of the corporation, is made to disfranchise the minority."

To Joseph Medill, of Chicago, is due the credit of introducing the provision for minority representation in corporate elections, into the Illinois Convention, and securing its insertion in the Constitution of that State.

THE SECTION IN CONVENTION: The section as reported by the Committee on Private Corporations and taken up by the committee of the whole for consideration, 4 Conv. Deb. 592, 604, provided "that in all elections for the managing officers of a corporation each member or shareholder shall have as many votes as he has shares multiplied by the number of officers to be elected, and he may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates as he may prefer." Objection was made to the section in this form because it would be in conflict with the charters of many private corporations in which were contained provisions limiting the number of votes to be cast at elections by large stockholders, upon their shares of stock above a given number. Recognizing the force of this objection the Convention, on motion of Mr. Lear, of Bucks, amended the section so as to make it harmonize with all existing charters, by adapting it to whatever number of stock votes, in any given case, were authorized thereby, or should be authorized by future laws, as already explained in remarks at the proper place under the constitutional section. The section in its final form therefore did not trespass upon any charter provision of any existing corporation, while it was made and intended to apply to all such as well as to future ones. Upon this last point the whole debate upon the section, contained in the 4th, 5th, 6th, and 7th volumes of Debates, can be referred to with confidence. Not one word uttered by any opponent or any supporter of the section indicated its restriction to future corporations. The arguments were mainly directed to its operations upon existing ones, and to the question of the policy of subjecting them to it by a fixed, permanent constitutional provision. See remarks of Judge Woodward, chairman of the Committee on Private Corporations; of Mr. Theodore Cuyler: Mr. Lear, of Bucks; Mr. Andrew Reed, of Mifflin; Mr. Darlington, of Chester; Mr. Hunsicker, of Montgomery; Mr. Corbett, of Clarion; Mr. Campbell, of Philadelphia; Gen. Lilly, of Carbon, and several others.

REMARKS OF MR. MAC VEAGH: This very able and distinguished member of the Convention found himself unable to vote for placing the section in the Constitution, because of difficulty in his mind on account of its application to great railroads in their struggles to obtain control of other enterprises. The owners of such property might be hampered in the management of it by the new provision. On the other hand he saw great advantage in allowing any considerable number of stockholders to be represented by a man of their choice in the board of directors. He could see great advantages in that, but could not then vote to put it in the Constitution, and he felt the less constraint because he believed that when the Constitution went into effect it would give a Legislature that would enact proper laws for the regulation of corporations as well as of other bodies. At this point in his speech, upon an interruption by Mr. Knight, of Philadelphia, the following remarks are recorded-5 Conv. Deb. 766.

"*Mr. Knight*: I ask the gentleman, if he thinks this will apply to corporations now in existence?

"Mr. Mac Veagh: The gentleman asks if it will apply to corporations now in existence. I have no doubt it will. I understand it is intended to so apply by the chairman of the committee.

"Mr. Knight: Then let me ask another question. Many of the corporations now in existence, are so under laws requiring that no one shall be a director not a resident of Pennsylvania. Will this interfere with such corporations?

"Mr. Mac Veagh: I understand this would not repeal any substantive part of the charter; but when the charter has provided that a man might vote for each share of stock that he holds, it does not violate the charter within the meaning of the Constitution of the United States to declare the manner in which the votes shall be counted. For my own part, I have no doubt this would be a valid section, binding upon existing corporations, unless there are corporations which have an express prohibition of it in the charter, and I do not understand that any such charter exists. I have no doubt it would be binding on them; and if it

ART. XVI.] NOTE TO THE SIXTEENTH ARTICLE.

is to be binding upon future corporations, I confess I am utterly at a loss to see why it should not be binding upon existing corporations. I only vote against it, because it seems to me, that the balance of advantages and dangers is against putting it into the Constitution."

CONSTRUCTION: It will be seen from the facts referred to in remarks under the constitutional section and in the present note, that it is not possible to accept the decision of the SupremeCourt in Hayes v. The Commonwealth, as an entirely sound and correct exposition and construction of this section of the Constitution. No doubt that part of the opinion, that the one vote of a stockholder for a single share of stock becomes plural, in voting for a board of managers-in other words, that the one primary vote for a share of the stock authorized by law, will mean half a dozen secondary or derivative votes, when a board of six directors, or managers, are to be voted for at an election-is perfectly accurate, and accords with the intent and purpose of the constitutional section, as well as with the general law. The cavil raised upon this point by Mr. Cuyler in the Convention, 6 Conv. Deb. 37, is now finally rejected by the court as it was rejected by the Convention. But the idea of the opinion that the section is opposed to the provision in corporate charters, which authorizes a vote for each share of stock, is clearly a misconception of the nature and purpose of such a charter provision, and is soundly and rightly answered by Mr. Mac Veagh's remarks above quoted, by the debate upon Mr. Lear's amendment to the section, and by the explanation heretofore given of statutory regulations regarding stockholder votes in corporation elections. Provisions in existing laws regarding the number of votes which a stockholder may cast, have reference to the distribution of voting power between or among the stockholders, whether that shall be equally or unequally proportioned to the number of shares held by each, and do not reach the subject of the manner of casting or counting votes at an election. The latter is an entirely distinct and independent question. Nor does the section invade the implied right of the holders of the majority of the stock in a corporation to control its policy, conduct and business. The section leaves to them that power, as complete as before, but gives to the minority just representation in the management, an opportunity to be heard, and the means of information and facilities for defending their interest in the corporation when imperilled or assailed. Nor is there apparent force in the suggestion that this section of the Constitution like a statute, is to have a prospective construction. Prospective! Of course it will apply only to elections held subsequent to its adoption, it will have no retroactive effect, it will be concerned only with the future. But, if by prospective, it be meant that the section

will apply only to corporations organized subsequent to its adoption, the answer is, that the term prospective, taken in that sense, is misapplied. Independent of particular provisions, or classes of provisions, which bear their character upon their face, or the application of which are determined by the context, the Constitution will take effect at precisely the same time upon all persons, whether natural or artificial. \mathbf{T} hat time is fixed by the Constitution itself, to wit, upon the first day of January, 1874. Provisions in the Constitution, legislative in character, will have effect from that date, and those of them applicable to artificial persons, or corporate bodies, will be no more postponed or limited, as a general proposition, than those which relate to natural persons. As to those provisions, as well might we say, that the Constitution does not apply to natural persons already born, as to say that it does not apply to artificial persons already created.

The question of convention and popular power over existing charters, whether repealable or irrepealable, is a subject not necessarily involved in the present inquiry, and its examination is not to be entered upon in this place.

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ARTICLE XVII.

RAILROADS AND CANALS.

SECTION

SECTION

1. Railroads and canals public high-	
ways, and railroad and canal com-	
panies common carriers-Railroads	
may be constructed and connected.	7.
2. Railroad and canal companies to	
keep offices in the State.	8.
3. Discriminations in charges for	9.
freight and passengers forbidden.	
4. Consolidation with competing com-	10
panies prohibited.	
5. Common-carrier companies not to	11

engage in other business.

6. Officers and employés of any rail-

supplies to, or be interested in transportation upon the works of, such company.

- No discrimination in charges to transporters.
- Free passes on railroads prohibited.
- No construction of street railways without consent of local authorities.
-). Acceptance of this Article by companies.
- . Duties and powers of Secretary of Internal Affairs as to railroad, canal, and other transportation companies. road or canal company not to furnish | 12. Legislation to enforce this Article.

[Railroads and canals public highways, and railroad and canal companies common carriers-Railroads may be constructed and connected.]

Section 1. (1) All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers. (2) Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. (3) Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination. See \S 3.

Reported, Journal, 431 (§§ 1 and 9), 447, 466-7. Considered and amended, 3 Conv. Deb. 303-21, 633; 6 Id. 549-55, 750; 7 Id. 815-16; 8 Id. 26, 203-7, 208-10.

COMPARE: Con. Cal. (1879), XII. 17; Col. (1876), XV. 4; Ill. XI. 12; Mich. XIX. 1, Amendment of 1870; Mo. (1875), XII. 13, 14; Neb. (1875), XI. 4; Tex. (1876), X. 1, 2.

STATUTES : Supplementary railroad Act of 8th June, 1874, P. Laws, 277, provides that articles of association, under general railroad Act of 4th April, 1868, may be filed in the office of the Secretary of the Commonwealth when \$5000 of stock for every mile of railroad proposed to be made shall be subscribed, and ten per centum paid thereon in good faith, and thereupon the Governor shall issue letters-patent to the association; and § 5 of the Act of 1868 is amended to allow one year to companies to complete each 25 miles of road more than the 50 miles required by that section to be finished within two years. Another supplementary Act passed 18th March, 1875, P. Laws, 28, authorizes a certificate to be filed with the Secretary of the Commonwealth, in the case of any narrow-gauge railroad, when \$3000 for every mile of road proposed to be constructed shall have been subscribed, and ten per The Act of 13th May, 1876, P. centum paid thereon in good faith. Laws, 157, also supplementary to the Act of 1868, authorizes the filing of articles of association with the Secretary of the Commonwealth when \$2000 of stock for every mile of proposed road shall have been subscribed, and ten per cent. thereon paid in cash; but the Act is limited in its application to roads not exceeding 15 miles in length. See, also, the extending Act of 22d April, 1879, P. Laws, 28.

[Railroad and canal companies to keep offices in the State.]

Section 2. Every railroad and canal corporation organized in this State shall maintain an office therein where transfers of its stock shall be made, and where its books shall be kept for inspection by any stockholder or creditor of such corporation, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock and the amounts owned by them respectively, the transfers of said stock, and the names and places of residence of its officers. See Art. XVI. § 5.

Reported, Journal, 431, 466. Considered and amended, 3 Conv. Deb. 322-34, 337; 6 Id. 555-7; 7 Id. 809-11, 816-17; 8 Id. 62, 210-11.

COMPARE: Con. Ill. XI. 9; Neb. (1875), XI. 1.

STATUTE: The Act of 15th June, 1874, P. Laws, 289, is as follows: "An Act requiring every railroad or canal corporation organized in this State to maintain an office therein for the transaction of its business. Section 1. Be it enacted, etc., That every railroad or canal corporation organized in this State shall maintain an office therein for the transaction of its business, where transfers of its stock shall be made, and books kept for the inspection by any stock or bondholder or any other person having any pecuniary interest in such corporation, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock and the amounts owned by them respectively, the transfers of said stock, and the names and places of residence of its officers."

The Act is imperfect, for it provides no penalty for its violation, nor other means for its enforcement; but it is more comprehensive than the text of the Constitution in two particulars: 1st, in requiring that the office provided for within the State shall be for the transaction of the corporate business, and not merely for the keeping and exhibition of stock books, etc.; and, 2d, in extending the privilege of inspecting the books at such office to any person having a pecuniary interest in the corporation, instead of confining it strictly to stockholders and creditors.

[Discriminations in charges for freight and passengers forbidden.]

Section 3. All individuals, associations, and corporations shall have equal right to have persons and property transported over railroads and canals, and no undue or unreasonable discrimination shall be made in charges for, or in facilities for, transportation of freight or passengers within the State, or coming from or going to any other State. Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station; but excursion and commutation tickets may be issued at special rates. See § 7, and note at end of this Article.

Reported, Journal, 432, 447, 467. Considered and amended, 3 Conv. Deb. 316-19 (Dallas Amendment), 479-531; 6 Id. 611-71, 684-8; 7 Id. 787, 805-9; 8 Id. 23-4, 26-7, 30-31, 63-4, 211-17, 245-66, 277-8.

COMPARE: Con. Cal. (1879), XII. 21; Col. (1876), XV. 6; Ill. XI. 12,

15; Mich. XIX. 1, Amendment, 1870; Mo. (1875), XII. 12, 14; Neb. (1875), XI. 4, 7; S. Car. XII. 5; Tex. (1876), X. 2; XII. 2, 3, 4, 5; W. Va. XI. 9.

Since the adoption of the new Constitution the Legislature has had bills before it, at several sessions, relating to freight charges, and discriminations by railroad companies, but no Act upon the subject has been passed. A joint resolution to encourage such legislation by Congress was, however, adopted at the session of 1878, to which the Gov. ernor appended his signature, by way of approval, on the 5th of March of that year. That resolution was as follows :--

"Resolved, that our Senators in Congress be instructed, and our Representatives be requested, to vote for the passage of an Act to provide for equity in the rates of freight upon certain property carried totally or partially by railroad in commerce with foreign nations, or among the several States and Territories, and to prevent violent and injurious fluctuation and unjust discrimination in such commerce, and for other purposes." P. Laws, 1878, p. 218.

See annual Message of Governor Hoyt to the Legislature, at the session of 1881. See, also, Act of 5th May, 1876, P. Laws, 116, which regulates charges for conveying passengers and transporting freight, upon steam railroads, not exceeding fifteen miles in length, and Act of 19th May, 1879, P. Laws, 61, repealing all local and special Acts regulating charges by passenger railways in cities of third class.

[Consolidation with competing companies prohibited.]

Section 4. No railroad, canal or other corporation, or the lessees, purchasers, or managers of any railroad or canal corporation, shall consolidate the stock, property, or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any other railroad or canal corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad or canal corporation act as an officer of any other railroad or canal corporation, owning or having the control of a parallel or competing line; and the question whether railroads or canals are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues. See Art. XVI. § 12. Reported, Journal, 431, 447, 467. Considered and amended, 3 Conv. Deb. 376-7; 6 Id. 558; 8 Id. 32-4, 218-21, 225-45, 712, 714-17, 720.

COMPARE: Con. Col. (1876), XV. 5; Ill. XI. 11; Mich. XIX. 2, Amendment, 1870; Mo. (1875), XII. 17, 18; Neb. (1875), XI. 3; Tex. (1876), X. 5, 6; W. Va. XI. 11.

[Common-carrier companies not to engage in other business.]

Section 5. No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over its works; nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal, not exceeding fifty miles in length. See Art. XVI. § 6.

Reported, Journal, 432, 467. Considered and amended, 3 Conv. Deb. 455-8, 460-79; 6 Id. 572-605; 7 Id. 785; 8 Id. 29.

[Officers and employés of any railroad or canal company not to furnish supplies to, or be interested in transportation upon the works of, such company.]

Section 6. No president, director, officer, agent, or employé of any railroad or canal company, shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers, over the works owned, leased, controlled, or worked by such company.

Considered in connection with subject-matter of § 7, below, 3 Conv. Deb. 531, 532-61; Amendment of Mr. Bullitt, 6 Conv. Deb. 594-7, 605-8, 688-92; 7 Id. 805-9, 811-13, 816, 817; 8 Id. 8-11, Amendment, 30, 39-40, 60, 280-81.

COMPARE: Con. Cal. (1879), XII. 18; Mo. (1875), XII. 22.

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CONSTRUCTION: This section plainly applies to all railroad and canal companies of the Commonwealth, whether old or new, and whether

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organized under general or special laws. It strikes at, and was intended to strike, a great abuse in railroad management, and it was placed in the Constitution because it was believed that the Legislature would not voluntarily apply the remedy required.

It cannot be claimed that a railroad or canal company, created to accommodate the public by the carriage or transportation of persons and property, and to furnish means therefor, can itself, in the absence of special grant, engage in the business of mining, manufacturing, or otherwise producing articles for transportation upon its works, or trade in the articles it transports; for the prohibitions contained in the 5th section of this Article are but declaratory of a well-settled principle of corporation law. Nor is it the intention of the laws which establish and regulate these carrying companies, that any of their corporate functions shall be exercised by either subordinate or independent organizations of a different nature, and of less responsibility, or that their patronage shall be given, or their power exerted to create an odious monopoly in commerce or trade.

The restrictions of this section of the Constitution do not, therefore, invade any charter right or privilege, and are not unreasonable or unjust. On the contrary, they are well calculated to conserve the rights of stockholders in the carrying companies, to secure integrity in the administration and management of those companies, and to promote largely the interests of the public.

STATUTE: The Act of 15th May, 1874, P. Laws, 178, was passed professedly to make provision for the enforcement of this section; but this object it does not accomplish. The promise of its title is falsified by the body of the Act. In fact, upon an examination of that Act in all its provisions, and of the history of its enactment by the Legislature, the conclusion must be, that it was not framed in good faith to the Constitution, or intended to enforce any substantial reform in corporate management. See second note at the end of this Article.

[No discrimination in charges to transporters.]

Section 7. No discrimination in charges or facilities for transportation shall be made between transportation companies and individuals, or in favor of either, by abatement, drawback, or otherwise; and no railroad or canal company, or any lessee, manager, or employé thereof, shall make any preference in furnishing cars or motive power. See § 3, and note at the end of this Article.

Reported, Journal 432, 467. Considered in connection with subject-matter of § 6, above, 3 Conv. Deb. 531, 532-61; 6 Id. 688-96; 7 Id. 805-9; 8 Id. 18-19, 60-61, 278-80.

COMPARE : Con. Mo. (1875), XII. 23.

[Free passes on railroads prohibited.]

Section 8. No railroad, railway, or other transportation company, shall grant free passes, or passes at a discount, to any person except officers or employés of the company.

Proposition of Mr. McAllister, of Centre, Journal 74; remarks of same, 3 Conv. Deb. 515–16. Reported, Jour. 431, 467. Considered, 3 Conv. Deb. 577–8. Amendment of Mr. Knight, 6 Conv. Deb. 695, 696–705; 8 Id. 11–18, 19–23, 27–9, 31–2, 34–8, 62, 281–300.

COMPARE: Con. Cal. (1879), XII. 19; Mo. (1875), XII. 24.

STATUTE: Act 15th June, 1874, P. Laws, 289, passed in contempt of this section. See third note at the end of this Article.

CONSTRUCTION: This pass section of the 17th Article was imposed by the people upon all railroad companies of the Commonwealth in the exercise of a clear, necessary, and unquestionable power, the nature and extent of which are sufficiently shown by the authorities already cited under the third section of the 16th Article. The police power of the State completely covers and sanctions it, and that power cannot be controlled, limited, suspended, or impaired by any charter contract or other grant of special privileges. The section prohibits transportation companies from "conducting their business in such manner as to infringe the equal rights of individuals, and the general well-being of the State" (Art. XVI. § 3), and is, besides, a regulation to protect the stockholders of those companies against a corrupt or profligate use by their officers of the corporate powers. It was moved and supported in Convention by a holder of railroad stocks, as a necessary guard against a form of corporate abuse, which was, in his judgment, detrimental to the interests of honest stockholders, as well as to the rights and interests of the public, and he gave startling estimates of the cost of the pass system, at the time he spoke, upon leading railroad lines.

In several new Constitutions, adopted in other States, there is contained a prohibition upon the issuing of free passes, by railroads, to members of the Legislature and to officers of the State government, including judges. For the belief has spread widely in this country that the furnishing of free transportation by corporations to those who make,

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expound, and execute the laws, is intended to influence their official conduct, and must, to a greater or less extent, operate to that end.

But the principal ground, or the most commanding one, upon which the prohibition of free passes may be placed, remains to be mentioned. Equality of right and privilege for all upon the highways of the Commonwealth, is a just and necessary principle, and one fit for enforcement by the Constitution.

The grants of corporate powers and rights to railroad companies, are large grants, to be justified only by the return by the companies of great, of indispensable service to the whole body of the people, without discrimination between persons and classes. Railroads are private corporations, inasmuch as they are organized for private gain, and their charters protected against unjust repeal or alteration, but they perform a public service which demands regulation by government to secure the equal, common rights of all. And it is perfectly certain that the cost to railroad companies of the free transportation of public officers and favorites, if not taken from the income of stockholders, must be made good by higher charges upon the general public—upon those who pay for their transportation upon railroad lines.

[No construction of street railways without consent of local authorities.]

Section 9. No street passenger railway shall be constructed within the limits of any city, borough, or township, without the consent of its local authorities.

Reported, Journal, 467. Considered and amended, 3 Conv. Deb. 613.

COMPARE: Con. Ill. XI. 4; Mo. (1875), XII. 20; Neb. (1875), XII. Mis. Cor. 1; N. Y. Amendment, 1874, III. 18, cl. 14; Tex. (1876), X. 7; W. Va. XI. 5. (Proposed in unadopted Con. of N. York, 1867, III. 25.)

STATUTES: The Act of 30th April, 1878, P. Laws, 38, relates to extension of street railways in cities of the 1st class. The 2d section provides, that the provisions of the Act shall not enure to the benefit of any corporation without prior acceptance by it of the provisions of the 16th Article of the Constitution.

The Act of 23d May, 1878, P. Laws, 111, relates to incorporation of street passenger railways in cities of 3d, 4th, and 5th classes, and in boroughs and townships.

The Act of 19th March, 1879, P. Laws, 8, provides for the incorporation and regulation of street railway companies in cities of the 2d and 3d classes. Supplement to this Act, 2d June, 1881, P. Laws, 39. [Acceptance of this Article by companies.]

Section 10. No railroad, canal, or other transportation company, in existence at the time of the adoption of this Article, shall have the benefit of any future legislation by general or special laws, except on condition of complete acceptance of all the provisions of this Article. See Art. XVI. § 2.

Reported, Journal, 433, 467. Considered and amended, 3 Conv. Deb. 613-31; 7 Id. 813-15.

COMPARE: Con. Col. (1876), XV. 7; Ill. XI. 9; Mo. (1875), XII. 21; Tex. (1876), X. 8; W. Va. XI. 7.

STATUTES: Act 15th May, 1874, P. Laws, 188, relating to railroads theretofore chartered by the Legislature subject to the general railroad Act of 19th February, 1849, and its supplement (and plankroad companies duly incorporated), in cases where a bona fide organization had been made and business commenced in good faith, but whose charters, etc., were forfeited, or might thereafter be subject to forfeiture, by limitation of time; and providing that such forfeiture should be remitted and the charters of such companies extended for five years, if said companies should, within one year from the passage of the Act, or within one year from the time limited for the completion of their improvements, elect to prosecute and complete such improvements, and at the time of such election consent according to law to hold their charters and privileges subject to the provisions of the Constitution. The election, provided for, was to be by resolution of the board of directors of any such corporation, recorded on the minutes of the board, a certified copy of which, together with the instrument accepting the provisions of the Constitution, should be filed and recorded in the office of the Secretary of the Commonwealth.

Act of 5th June, 1874, P. Laws, 275, regulates the acceptance by railroad, canal, and transportation companies, which were in existence 1st January, 1874, of the provisions of the 17th Article of the Constitution. Such acceptance in each case to be by resolution of the directors of the accepting company (based upon a vote by the stockholders), duly certified under the corporate seal, by the president and secretary, and filed in the office of the Secretary of the Commonwealth.

Act of 17th March, 1875, P. Laws, 7, extended the time for constructing railroads for five years, but companies using the privilege to. hold their charters subject to the Constitution. Act of 24th May, 1881, P. Laws, 27. "To extend the time for the completion of railroads in this Commonwealth."

In case of any railroad, the time for completing which had expired within one year before the date of the Act, or would expire within one year after, upon the construction of which shall have been expended \$100,000, the time for completion is extended for three years from 1st July, 1881. Provided, no corporation to have the benefit of the Act until the directors, trustees, or other proper officers thereof shall, by resolution, adopt the provisions of the Constitution of this State, and a copy of the resolution, duly certified, under the seal of the corporation, shall be filed in the office of the Auditor-General. Provided further, that the Act shall not apply to any corporation that did not begin the construction of their road within the limit required by law, etc. etc.

Act of 21st May, 1881, P. Laws, 27. Supplement to general railroad Act of 4th April, 1868.

§ 1. That railroads incorporated under the Act of 1868 and supplements, to construct railroads not exceeding fifteen miles in length, desirous to extend their roads, and shall so determine by a vote of stockholders, the president and directors may make and sign amended articles of association, etc., which shall be duly acknowledged by the president and a majority of the directors, and filed with the Secretary of the Commonwealth, etc., and the said articles shall become the charter of the company, etc.

§ 2. Governor to issue letters patent.

§ 3. Benefits of the Act shall not inure to corporation unless corporation shall, before claiming or using the same, file in the office of the Secretary of the Commonwealth an acceptance of the provisions of Article XVI. of the Constitution, such acceptance to be made by resolution of the directors, trustees, or other proper officers, certified under corporate seal, and filed with the Secretary of the Commonwealth, etc.

Act of 25th May, 1878, § 3, P. Laws, 146, regulates the acceptance of 16th article of the Constitution by railroad, canal, transportation, and other companies, organized after sales, by legal process or order, of corporate property and franchises. See citation of Act under Art. XVI. § 2.

[Duties and powers of Secretary of Internal Affairs as to railroad, canal, and other transportation companies.]

Section 11. The existing powers and duties of the Auditor-General in regard to railroads, canals, and other transportation companies, except as to their accounts, are

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hereby transferred to the Secretary of Internal Affairs, who shall have a general supervision over them, subject to such regulations and alterations as shall be provided by law; and in addition to the annual reports now required to be made, said Secretary may require special reports at any time upon any subject relating to the business of said companies from any officer or officers thereof. See Art. $IV. \S 19.$

Reported, Journal 433, 466. Considered and amended, 3 Conv. Deb. 322, 334-7, 633; 6 Id. 746-50; 8 Id. 25, 211, 300-302.

The Act of 15th May, 1874, P. Laws, 193, relates, in part, to the annual reports to be made by railroads and other corporations, to the Secretary of Internal Affairs.

[Legislation to enforce this Article.]

Section 12. The General Assembly shall enforce by appropriate legislation, the provisions of this Article.

Reported, Journal 467. Considered, 8 Conv. Deb. 62-3, 207-8.

This section is quite unnecessary in view of the more comprehensive injunction and command of the 31st section of the Schedule. But it was adopted because of the strong desire of the Convention to have its regulations for railroad companies very speedily and fully brought into operation. So far as statutes were required for their enforcement, such statutes were to be promptly passed.

In concluding the treatment of this Article, it only remains to remark that the sixteenth Article in its general provisions is as applicable to railroads and canals as to other private corporations. The provisions *exclusively* applicable to railroads and canals are here brought together simply for reasons of convenience.

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NOTE ON THIRD AND SEVENTH SECTIONS.

REGULATION OF CHARGES TO BE MADE BY RAILROADS AND OTHER TRANSPORTERS.—The provisions of sections 3 and 7 are directed to the accomplishment of the same general result, and bear very striking simi-

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larity to provisions adopted in many of the other States of the Union, induced by the same abuses in the railway systems of the country.

The power of the people of a sovereign State either by constitutional provision or legislative enactment to regulate, subject to certain qualifications hereafter noticed, the charges of individuals or corporations exercising a public employment, can no longer be questioned.

The power of the State to regulate charges by individuals was distinctly settled by the Supreme Court of the United States in Munn v. Illinois, 4 Otto, 113. In this case an information was filed in the name of the State to recover from Munn, the proprietor of a public grain elevator, the penalty imposed by statute for excessive charges in storing grain.

Chief Justice Waite states the law in the following words: "When one becomes a member of society he necessarily parts with some rights or privileges, which, as an individual not affected by his relations to others, he might retain. 'A body politic,' as aptly defined in the preamble of the Constitution of Massachusetts, 'is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.' This does not confer power upon the whole people to control rights which are purely and exclusively private, Thorpe v. R. and B. Railroad Co., 27 Vt. 143, but it does authorize the establishment of laws requiring each citizen to so conduct himself and so use his own property as not unnecessarily to injure another. This is the very essence of government, and has found expression in the maxim, sic utere tuo ut alienum non lædas. From this source came the police powers which, as was said by Mr. Chief Justice Taney in the license cases, 5 How. 583, 'are nothing more or less than the powers of government inherent in every sovereignty, that is to say, the power to govern men and things.' Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. To this day statutes are to be found in many of the States upon some or all of these subjects, and we think it has never yet been successfully contended that such legislation came within any of the constitutional prohibitions against interference with private property." . . . "This brings us to inquire as to the principles upon which this power of regu-

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lation rests, in order that we may determine what is within and what without its operative effect. Looking then to the common law, from whence came the right which the Constitution protects, we find that when private property is 'affected with a public interest it ceases to be juris privat only.' This was said by Lord Chief Justice Hale, more than two hundred years ago, in his treatise De Portibus Maris, 1 Harg. Law Tracts, 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw this grant by discontinuing the use, but so long as he maintains the use he must submit to the control.

"Thus, as to ferries, Lord Hale says, in his treatise De Jure Maris, 1 Harg. Law Tracts, 6, the king has 'a right of franchise or privilege, that no man may set up a common ferry for all passengers without a prescription time out of mind, or a charter from the king. He may make a ferry for his own use, or the use of his family, but not for the common use of all the king's subjects passing that way; because it doth in consequence tend to a common charge, and is become a thing of public interest and use, and every man for his passage pays a toll, which is a common charge, and every ferry ought to be under a public regulation, viz., that it give attendance at due times, keep a boat in due order, and take but reasonable toll; for if he fail in these he is finable.' So if one owns the soil and landing-places on both banks of a stream, he cannot use them for the purposes of a public ferry except upon such terms and conditions as the body politic may from to time impose, and this because the common good requires that all public ways shall be under the control of the public authorities. This privilege or prerogative of the king, who in this connection only represents and gives another name to the body politic, is not primarily for the profit, but for the protection of the people and the promotion of the general welfare." . . . "From the same source comes the power to regulate the charges of common carriers, which was done in England as long ago as the third year of the reign of William and Mary, and continued until within a comparatively recent period. And in the first statute we find the following suggestive preamble, to wit, 'and whereas divers wagoners and other carriers, by combination among themselves, have raised the prices of carriage of goods in many places to excessive rates, to the great

injury of the trade, Be it therefore enacted, etc.' 3 W. & M. c. 12, § 24, 3 Stat. at Large (Great Britain), 481.

"Common carriers exercise a sort of public office, and have duties to perform in which the public is interested. New Jersey Nav. Co. v. Merchants' Bank, 6 How. 382. Their business is, therefore, 'affected with a public interest,' within the meaning of the doctrine which Lord Hale has so forcibly stated.

"But we need go no further. Enough has already been said to show that when private property is devoted to a public use it is subject to public regulation. It remains only to ascertain whether the warehouse of these plaintiffs in error, and the business which is carried on there, come within the operation of this principle." . . . "We are also not permitted to overlook the fact, that, for some reason, the people of Illinois when they revised their Constitution in 1870, saw fit to make it the duty of the General Assembly to pass laws 'for the protection of producers, shippers, and receivers of grain and produce,' Art. 13, § 7; and by sect. 5 of the same Article, to require all railroad companies receiving and transporting grain in bulk or otherwise, to deliver the same at any elevator to which it might be assigned, that could be reached by any track that was or could be used by such company, and that all railroad companies should permit connections to be made with their tracks, so that any public warehouse, etc., might be reached by the cars on their railroads. This indicates very clearly that during the twenty years in which this peculiar business had been assuming its present immense proportions, something had occurred which led the whole body of the people to suppose that remedies, such as are usually employed to prevent abuses by virtual monopolies, might not be inappropriate here. For our purposes we must assume that if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed. For us the question is one of power, not of expediency; if no state of circumstances could exist to justify such a statute, then we may declare this one void. because in excess of the legislative power of the State. But if it could, we must presume it did. Of the propriety of legislative interference within the scope of legislative power, the Legislature is the exclusive judge."

The decision settles the power of the Legislature to regulate the charges of individuals engaged in a public employment. The principle was extended to corporations in the case of Chicago, Burlington, and Quincy R. R. Co. v. Iowa, 4 Otto, 155. In this case Chief Justice Waite said: "Railroad companies are carriers for hire. They are incorporated as such, and given extraordinary powers in order that they

may the better serve the public in that capacity. They are, therefore, engaged in a public employment affecting the public interest, and, under the decision in Munn v. Illinois, subject to legislative control as to their rates of fare and freight, unless protected by their charters." . . . "This company, in the transaction of its business, has the same rights, and is subject to the same control as private individuals under the same circumstances. It must carry when called upon to do so, and can charge only a reasonable sum for the carriage. In the absence of any legislative regulation upon the subject, the courts must decide for it, as they do for private persons when controversies arise, what is reasonable. But when the Legislature steps in and prescribes a maximum of charge, it operates upon this corporation the same as it does upon individuals engaged in a similar business. It was within the power of the company to call upon the Legislature to fix permanently this limit, and make it part of their charter; and, if it was refused, to abstain from building the road and establishing the contemplated business. If that had been done, the charter might have presented a contract against future legislative interference. But it was not, and the company invested its capital, relying upon the good faith of the people and the wisdom and impartiality of legislators for protection against wrong under the form of legislative regulation.

"It is a matter of no importance that the power of regulation now under consideration was not exercised for more than twenty years after this company was organized. A power of government which actually exists is not lost by non-user. A good government never puts forth its extraordinary powers except under circumstances which require it. That government is the best, which, while performing all its duties, interferes the least with the lawful pursuits of its people. In 1691, during the 3d year of the reign of William and Mary, Parliament provided for the regulation of the rates of charges by common carriers. This statute remained in force, with some amendment, until 1827, when it was repealed, and it has never been re-enacted. No one supposes that the power to restore its provisions has been lost. A change of circumstances seemed to render such a regulation no longer necessary, and it was abandoned for the time. The power was not surrendered. That remains for future exercise when required. So here, the power of regulation existed from the beginning, but it was not exercised until, in the judgment of the body politic, the condition of things was such as to render it necessary for the common good. Neither does it affect the case that, before the power was exercised, the company had pledged its income as security for the payment of debts incurred, and had leased its road to a tenant that relied upon the earnings for the means of pay-

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ing the agreed rent. The company could not grant or pledge more than it had to give. After the pledge and after the lease the property remained within the jurisdiction of the State and continued subject to the same governmental powers that existed before." . . . "It is very clear that a uniform rate of charges for all railroad companies in the State might operate unjustly upon some. It was proper, therefore, to provide in some way for an adaptation of the rates to the circumstances of the different roads, and the General Assembly, in the exercise of its legislative discretion, has seen fit to do this by a system of classification. Whether this was the best that could have been done is not for us to decide. Our province is only to determine whether it could be done at all, and under any circumstances. If it could the Legislature must decide for itself, subject to no control from us, whether the common good requires that it should be done."

The same doctrine is reaffirmed in Peck v. Chicago, etc., R. W. Co., 4 Otto, 164; Winona, etc., R. R. Co. v. Blake, Id. 180; Stone v. Wisconsin, Id. 181.

An Act establishing a reasonable maximum rate of charges for the transportation of passengers, being an Act exercising the reserved police power of the State, is not an Act impairing the obligation of a contract-Walker, J.: "Has the General Assembly the power to control natural persons and corporations, in their business, to protect the community from oppressive, unjust, and wrongful impositions in transacting their business or in performing their duties to the public?

"When the General Assembly brings into existence an artificial person or corporation, it may at pleasure endow it with such faculties or powers as it may deem proper and for the benefit of the corporators and the public. It may grant or withhold powers at pleasure, but it is believed that body is powerless to confer greater or more unlimited powers than are possessed by natural persons. The power, however, may be conferred to that extent, when necessary, to accomplish the end sought; but it would be contrary to the very object of the creation of government to create bodies or artificial persons beyond the power of control by the government. To create bodies in its limits beyond the governing power of the State, bodies that are only controlled by their own will independent of law and beyond its control, would be beyond the purpose of establishing government. It has been repeatedly held by this court that where a corporation is thus created it becomes amenable to the police power of the State, to the full extent that natural persons are subject to its control." . . . "The General Assembly may require of these bodies the performance of any and all acts which they are capable of performing, which they may require of individuals. If the General

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Assembly may fix maximum charges beyond which individuals may not go in performing services for the general public, and require them to conform to such requirements, then there can be no just reason why the General Assembly may not require the same of corporate bodies. That body may undoubtedly, for the same reason and to accomplish the same ends, limit the power of each.

"If, then, the General Assembly may fix a maximum rate of charges by individuals, as common carriers, warehousemen, or others exercising a calling or business, public in its character, or in which the public has an interest to be protected against extortion or oppression, that body may do the same thing, and fix the maximum charges of corporations exercising the same business. Of this there can, we apprehend, be no doubt." Ruggles v. Illinois, 91 Ill. 256.

The learned judge then refers to Munn v. Illinois, 94 U. S. 113; Chicago, Burlington & Quiney R. R. v. Iowa, Id. 155; Winona v. St. Paul R. R., Id. 180.

Upon a petition for a rehearing, the following opinion was filed :---

"On a petition for a rehearing, it is claimed that the case of C. B. & Q. R. R. v. Iowa, 94 U. S. 155, recognizes a distinction between a charter which is entirely silent as to the power to fix the rate of tolls, and one that authorizes the directors to fix such rate that in the Iowa charter there was nothing contained in reference to the rates of tolls that might be charged, but it was silent on the subject. The court holds, in such a case as we have seen, that the road could carry when called upon to do so, and could charge only a reasonable sum for the carriage. In the absence of any legislative regulation upon the subject, the courts must decide for the corporation, as they do for private individuals when controversies arise, what is reasonable. But when the Legislature steps in and prescribes a maximum of charges, it operates upon this corporation the same as it does upon individuals engaged in a similar business."

Here the court holds, if the charter is as contended, that the corporation had the implied power to fix charges for services rendered; but it was also held that in fixing such rates of charges, they must be reasonable, and their reasonableness might, like those made by individuals, be inquired into and determined by the courts. It was also held that in such cases these companies, as to such charges, were under the same legislative control as individuals engaged in a similar enterprise, and they, at the same time, held that the charges of natural persons engaged as warehousemen in handling and storing grain for the public, may be regulated by legislative action.

It is, however, claimed that in this case the General Assembly

expressly conferred the power on the directors of the company to fix the rates of toll to be charged, and to alter and change the same. In this, the two cases differ. But does this express grant change the power of control, or does it confer unlimited power, or is the grant made with an implied limitation that in fixing their rates of toll they shall be reasonable? The fact that the grant and acceptance of the charter constitute a contract, does not solve the question. Like any other contract, it is subject to construction. . . . The General Assembly surely could not have intended, in granting such charters, to clothe these bodies with unlimited and uncontrolled power. Had it been so expressed in the bills for these charters, it cannot be supposed they would have ever been enacted into laws. The department of government could not have intended to grant power to oppress and wrong the community without limit or control. It is but a reasonable construction to hold that there is an implied restriction that this corporation, in fixing the rates of toll, shall make them reasonable. And if so, the General Assembly must have the same power to say what are reasonable maximum charges, as to do the same thing with individuals engaged in similar business, or in a calling of a public nature.

ILLINOIS CENTRAL R. R. Co. v. ILLINOIS, 95 ILL. 313: The Act of May 2d, 1873, to prevent extortion and unjust discrimination in railroads, is a constitutional enactment, and is not in violation of the contract between the State and railroad companies, growing out of the granting and accepting their charters containing power to establish such rates of toll for the conveyance of persons and property as they shall, from time to time, direct and determine in the by-laws.

CINCINNATI, HAMILTON, AND DAYTON R. R. v. COLE, 29 OHIO ST. 126: Railroad companies incorporated prior to the adoption of the Constitution of 1851, and which avail themselves of the 24th section of the general corporation Act of 1852, either by taking leases of the roads of other companies, or by leasing their own roads to other companies, are to be regarded as thereby accepting a provision of said Act within the meaning of its 21st section, and relinquishing all rights under their charters inconsistent with the provisions of said Act.

The right to demand and take specified rates of fare, free from legislative control or alteration, is one of the rights thus relinquished by such companies, and they, therefore, become subject to legislative control, in that regard, equally as companies formed under said Act of 1852.

In order to work such relinquishment, or repeal of its chartered rights, inconsistent with said Act, it is not indispensable that a certifi-

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cate of the company's acceptance should be filed with the Secretary of State. It is the fact of acceptance that binds the company. The certificate is merely evidence of the fact, and the company cannot profit by its failure to file the certificate.

"We all unite in the opinion that both companies are bound by the provisions of the Act. We are of this opinion, not because we do not regard the charters of the companies as being in the nature of contracts between the companies and the State, but because by the execution of the lease both companies have virtually relinquished their right to charge the rates of fare specified in their charters, and submitted to be regulated in this respect as companies formed under the present Constitution." . . . "It cannot be denied that by the execution of the lease in question, these companies did avail themselves of, and thus, in fact, accept a material provision in the Act. True it does not appear that any certificate of this acceptance was filed with the Secretary of State, but we think it is not for the companies thus availing themselves of the benefit of the provision to profit by their own omission to file the certificate. If either party has a right to object on that account, it is the State, and not the companies. It is the fact of acceptance that binds the company, and the certificate is merely evidence of the fact."

IRON RAILROAD COMPANY v. LAWRENCE FURNACE COMPANY, 29 OHIO ST. 208: The railroad company was incorporated under a special Act making it subject to the general railroad law of February 11th, 1848, which, *inter alia*, provided, "No reduction in these rates shall be made by the Legislature" unless the net profits of the company, on an average for the previous ten years, shall amount to a sum equal to ten per centum per annum on its capital, and then not so as to reduce the probable profits below the said per centum.

By Act of March 30, 1875, rates were reduced. *Held*, not to apply to this company. It is said that the regulation of rates of fare and charges for freight are mere matters of police, and that legislative power over the subject is implied in all charters. Whether this may be the law in cases where the charter is silent as to rates of freight, or where it merely specifies them, we do not now decide. Here there is a special agreement that they shall not be reduced except in the happening of a named contingency, and then only to a specified extent. In such a contract there is no room for implication. The power claimed is expressly relinquished by the State.

It is contended that the power to regulate charges for freight and fare is in such a sense a police power that the Legislature cannot part with. We think the contrary is well established as the law. The right to take tolls, fare, or charges for freight, is of the essence of such a charter. Its value depends almost exclusively upon that right. The power to take away the right to receive tolls or to reduce them to a minimum, is substantially equivalent to an unlimited power of repeal.

PEOPLE v. B. AND A. RAILROAD COMPANY, 70 N. Y. 569: Proceeding to compel the construction of a bridge which would carry a turnpike over a railroad.

"Railroad corporations hold their property and exercise their functions for the public benefit, and they are, therefore, subject to legislative control. The Legislature which has created them may regulate the mode in which they shall transact their business, the price which they shall charge for the transportation of freight and passengers, the speed at which they may run their trains, and the way in which they may cross or run upon highways and turnpikes used for public travel. It may make all such regulations as are appropriate to protect the lives of persons carried upon railroads or passing upon highways crossed by railroads. All this is within the domain of legislative power, although the power to alter or amend the charters of such corporations has not been reserved."

REMARKS: The foregoing extracts from judicial opinions upon the subject of legislative regulation of charges by railroad companies and other common carriers, will indicate the extreme difficulty of the subject, whether considered from the theoretical or from the practical point of view; and also that its inherent difficulties have been very greatly increased by improvident legislation in the several States. It involves questions of power and of policy of the utmost importance to the public upon the one hand, and upon the other to a vast number of persons engaged in transportation business, or whose capital is invested in works and improvements devoted to a public use, and dependent upon public patronage for support. It must be admitted that in our carrying-trade monopoly and extortion will vex and harass producer, shipper, and purchaser, unless substantially held in check by adequate competition or by judicious laws; and that even the contests between competing lines of transportation may be demoralizing in character, and ultimately injurious to the public. So, also, it must be admitted that favoritism in the management of their business, by carrying companies, is an evil of very serious magnitude, demanding for its repression the strong hand of public authority. But the rash reformer, passionate and uninstructed, who strikes blindly or in uncalculating haste at the agencies of trade and commerce which have grown up in the country, and have become

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intimately connected with its business, progress, and prosperity, may do much more harm than good to the very interests he seeks to serve. Reform to be efficient, successful, and salutary must be championed by enlightened and independent, as well as by courageous and honest men. Then we may expect its march to its object will be triumphant and sure.

Confining ourselves, for the present, to the question of popular control over railroad companies, in its connection with the third and seventh sections, Article XVII., of the Pennsylvania Constitution, and with the judicial opinions above cited, we have an interesting field of inquiry opened before us. Exploring it, we will soon discover that the discussions of recent years have removed many difficulties from the path of reform, and given most weighty sanctions to those principles of popular right and power, upon the recognition of which its future progress must depend.

Discreetly and yet forcibly the third section of our railroad Article announces the equal rights of all to transportation of person and property upon railroad lines, and forbids all undue or unreasonable discriminations in charges or facilities therefor, expressly excluding greater charges for shorter than for longer distances in the same direction, and permitting excursion and commutation tickets to be issued, of course at uniform rates to all. And the seventh section extends the same principles of equal right to transportation companies upon railroad lines, forbidding discriminations between them, or between them and individuals, in charges or facilities for the transaction of business. The justice and validity of all these provisions are beyond dispute. They embody principles of common right and of common law; they appeal to all honorable minds for approval, endorsement, and support, and they merit the prompt acceptance which they have received in the new Constitutions of other States.

For ten years, in our State, they have invited the hand of legislation to mould into form remedial provisions and penalties for their complete and thorough enforcement; and that invitation, hitherto uncomplied with, will not long continue to be urged in vain.

Undue or unreasonable charges for transportation by railroad companies are as much to be condemned in principle as undue or unreasonable discriminations in charges by them, but are much more difficult of ascertainment and of control. In fact, so great is this difficulty that many persons suppose it cannot be overcome. For, to fix rates of charge, or even maximum rates, through whole schedules of products and merchandise, upon a single line, requires large information, sound judgment, and prolonged study, and measurably the same information,

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judgment, and study are required for the fixing of passenger fares upon such a line; and the changing conditions of trade and business will often require alteration and readjustment of rates. And when we come to extend our view beyond a single line to dozen of lines in the State, each different from all the rest in its financial condition and in its business, and propose to adjust rates for all of them, we may well become discouraged at the prospect before us. Uniform rates for all roads are impracticable, and the varying demands of each for special consideration cannot be complied with within any reasonable limit of time or effort.

It follows, that *impromptu* attempts by legislative bodies to fix even maximum rates of charge for railroads must always be unsatisfactory. The want of adequate information—the lack of time—the pressure of other engagements—the disturbing force of party and sectional interests upon members—these circumstances will often prevent due consideration and just decision upon any general adjustment of rates; and any adjustment must be general in order to be just. Legislation, based upon full, reliable information derived from a commission, might establish many useful regulations, and check some abuses in railroad management; but either the ordinary courts of justice or some special tribunal or authority, possessing a degree of permanence, and armed with proper authority, must be relied upon to determine questions of undue and unreasonable charge by railroad companies, and to enforce general regulations upon them.

Power to repeal or amend charters of subsequent date, was conferred upon the Legislature by the fourth Amendment of 1857, with the single limitation, that thereby no injustice should be done to the corporators. But no injustice will be done to a common-carrier company by confining their charges to due and reasonable limits, any more than by repressing unjust discriminations in their rates of charge. In one case, as in the other, a plain duty, which the companies owe to the public, will be enforced. But the determination in a given case of the question of fact, Is a charge undue, unreasonable, or unjust? ought to precede its condemnation, and we are admonished by the judges of our highest court that they do not feel themselves conclusively bound by a legislative judgment upon such a question. Commonwealth v. Pittsburg and Connellsville Railroad Company, 8 P. F. Sm. 26. Therefore, in any thorough and efficient scheme for the control or regulation of rates, an inquiry and determination more or less judicial in its nature of the reasonableness and justice of rates complained of, should be carefully provided for. Cannot this object be conveniently accomplished through the agency of a railroad commission, organized in whole or in part, after the recent example of the State of New York?

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The court decisions given in the present note are to be taken only as samples of late judicial opinion in Western States and at Washington. They are not understood to cover the whole field of inquiry as to legislative power over the charters of carrying companies, but they afford valuable information, and they come from sources entitled to respect. They are placed in the present volume, simply for convenient examination in connection with the more accessible decisions of our Pennsylvania courts.

NOTE ON THE SIXTH SECTION.

OFFICERS OF A RAILROAD OR CANAL COMPANY NOT TO BE INTE-RESTED IN CONTRACTS FOR COMPANY SUPPLIES, NOR IN THE BUSI-NESS OF TRANSPORTATION UPON ITS WORKS: The history of the Act of 15th May, 1874, P. Laws, 178, upon its passage, indicates the paternity of its third section, and explains how the final form of the whole Act, including the title, was conceived and adopted. The bill out of which it arose was introduced into the Senate by Mr. Senator Rutan, of Beaver County, and being referred to the Committee on Constitutional Reform was reported from that committee in amended form by Mr. Senator Fitch, of Susquehanna County, and took position upon the Senate files as bill number 106. Senate Jour. 432, 461. The bill, as reported, was as follows :—

An Act to impose penalties upon employés of railroad and canal companies for selling commodities to the companies employing them, and for engaging in the business of common carriers thereon.

Section 1. Be it enacted, etc., That no president, director, officer, agent, or employé of any railroad company or canal company of this Commonwealth shall be interested either directly or indirectly in the furnishing of coal, material for fuel, wood, iron, steel, iron rails, lumber or material or supplies of any kind or description whatsoever to any such railroad company or canal company, and any violation of the provisions of this section shall be a misdemeanor, and upon conviction thereof, the said president, director, officer, agent, or employé shall be imprisoned not exceeding three months, and be fined in a sum not exceeding ten thousand dollars, or either, one-half of which fine shall be paid to the prosecutor in such indictment.

Section 2. It shall be unlawful for any corporation or association or partnership in this Commonwealth, any part of the stock of which corporation or any interest in the property or profits of which is held or owned directly or indirectly by any official or employé of any railroad company or canal company of this Commonwealth, to sell, barter, trade, or furnish to such railroad company, or to any person for it, or to any such canal company, or to any person for it, any coal, iron, iron rails, fuel, wood, lumber, or any kind or description of material or supplies whatever. Any violation of the provision of this section being judicially ascertained shall work a forfeiture of the charter of any such corporation, and the stock therein owned by such official or employé shall be sold under the order of the Commonwealth, before which the same shall be judicially ascertained, and the proceeds applied first to the payment of the costs and expenses, and of the remainder, one-half shall be paid to the person prosecuting the inquiry, and the other half into the treasury of this Commonwealth. Any violation of the provisions of this section by any association or partnership or any of its members shall be a misdemeanor, and any person so offending, upon conviction thereof, shall be punished by imprisonment not exceeding three months, and by fine not exceeding ten thousand dollars, or either, at the discretion of the Court trying the same; one-half of the fine so imposed shall be paid to the prosecutor in such indictment.

Section 3. No president, director, officer, agent, or employé of any railroad company or canal company of this Commonwealth shall be engaged either directly or indirectly in the business of transportation or a common carrier of freight or passengers, or be interested as a stockholder or otherwise in any sleeping cars, fast freight line, parlor car, or other organization for carrying freight or passengers over the works owned, leased, controlled, or worked by such railroad or canal company, and any violation of the provisions of this section shall be a misdemeanor, and the person so offending shall, upon conviction thereof, be punished by imprisonment not exceeding three months, and by fine not exceeding ten thousand dollars, or either, and one-half of such fine shall be paid to the prosecutor in each indictment.

Subsequently, and before action taken by the Senate upon the bill, Mr. Senator Elisha W. Davis, of Philadelphia, offered a resolution to refer the bill to the Committee on Railroads, which was adopted. His resolution being afterwards reconsidered on motion of Mr. Rutan and Mr. Fitch, and being again before the Senate, he supported it in some remarks which will be found on page 894, of the Legislative Journal of Debates, for 1874. He said: "With the permission of the Senate, I will state the reason why I made the motion to commit the bill to the Committee on Railroads. There is a bill of a similar character now before that committee. Several railroad men of the State have expressed a desire to appear before that committee for the purpose of considering the features of this bill, and to give their views in relation to it." The yeas and nays being called upon the resolution, it was carried by a vote of 12 to 7. Mr. Senator Davis subsequently reported the bill from the railroad committee, completely changed in substance and structure, and it passed both Houses as reported by him. When passed on second reading in the Senate, the title was changed so as to correspond with the bill. Sen. Jour. 526, 539, 540, 861, 932, 960, 972; Leg. Jour. 1690. The records do not show that any other bill on the same subject was before the railroad committee at that session. The bill "of a similar character," referred to in debate, was not therefore a bill regu-

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larly introduced, but some outside plan, draft, or project which had reached the committee privately or unofficially.

The bill reported and passed into a law as above mentioned, whether compared with the Fitch bill which it superseded, or with the section of the Constitution which it professed to enforce, is to be strongly condemned. It is not objectionable merely upon the ground that as an enforcing Act its provisions are insufficient or insincere, but upon the stronger grounds that it is obstructive of any proper application or operation of the constitutional provision, and gives to it, with apparently a high sanction, a wholly misleading and false construction.

The Act in full is as follows, words copied from the Constitution being in *italics*, and constitutional words improperly omitted being inserted in brackets :---

"An Act to enforce the 6th section of the 17th Article of the Constitution providing that no president, director, officer, agent, or employé of any railroad or canal company, shall be interested [directly or indirectly] in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company.

"Section 1. Be it enacted, etc., That no president, director, officer, agent, or employé of any railroad or canal company of this Commonwealth shall hereafter be interested [directly or indirectly] in any contract for the furnishing of material or supplies to any such railroad or canal company, and it shall not be lawful for such president, director, officer, agent, or employé to institute or maintain any action at law or suit in equity to recover under such contract for his or their interest therein: provided, however, that all rights under bona fide contracts made prior to the first day of January, A. D. 1874, shall not be in anywise thereby affected.

"Section 2. No president, director, officer, agent, or employé of any railroad company or canal company of this Commonwealth shall hereafter be [interested] engaged [directly or indirectly] in the business of transportation as a common carrier of freight by any express or other freight line, or in the [business of] transportation of passengers by any sleeping or parlor car or other line over the works owned, leased, or controlled or worked by such company; and any profit realized by such president, director, officer, agent, or employé, in violation of the provisions of this section, shall belong to and be recoverable by such railroad or canal company: provided, suit therefor shall be commenced within one year after the discovery of such violation.

"Section 3. Nothing, however, in this Act contained shall prevent 19

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any president, director, officer, agent, or employé from being a shareholder in any incorporated or joint stock company or association; provided, however, that no director interested as a shareholder as aforesaid shall vote upon any contract for furnishing any material or supplies to be entered into with any other incorporated or joint stock company, or association, in which he is likewise interested as a shareholder; and no contract shall be made by any officer, agent, or employé for furnishing any material or supplies with any incorporated or joint stock company or association in which such officer, agent, or employé is likewise interested, as a shareholder, unless in pursuance of an order of the board of directors, or of a proper disinterested superior officer of such railroad or canal company. Any violation of the provisions of this Act shall be punished by a fine not exceeding \$500.

"Section 4. This Act to take effect January 1st, 1875." P. Laws, 1874, p. 178.

This Act departs from the Constitution in omitting the words exhibited above in brackets in the first and second sections and in the title, and some new words which may have significance are woven into the quoted text. The object of these alterations, or of most of them, becomes apparent when we reach the third section of the Act and discover that they are in very friendly relations with that section. But that third section—which is the important one—is incurably bad in its main provisions, and cannot be helped by any manipulation of language in other parts of the Act. Even the penal clause with which it concludes, is insufficient and delusive.

In the most unqualified terms this third section declares, that nothing contained in the Act "shall prevent any president, director, officer, agent or employé from being a shareholder in *any* incorporated or joint stock company or association"—language which clearly includes within its protection membership in any transportation or supply company or association, or, in fact, any company or association whatsoever in which shares may be held. The "interest" of the officer or employé in such company or association may be to the extent of three-fourthsits shares, in other words, may be controlling, and yet his interest will be completely covered and protected by this friendly and sweeping exception. What, then, is left of valuable limitation or restriction in the Act? What of utility or salutary effect can be assigned to it?

The long proviso which follows includes two clauses which relate to contracts for furnishing materials or supplies, but do not touch the larger question of transportation. They are, therefore, comparatively unimportant. The first is, that no director of a railroad or canal company who shall be a shareholder in another company or association, shall vote upon any contract with such other company or association for the furnishing of materials or supplies to the company of which he is a director. The second is, that no such contract shall be made with another company by an officer, agent, or employé of a railroad or canal company who is a shareholder in such other company, *unless* by order of the board of directors, or of a proper and disinterested superior officer, of his railroad or canal company. The insufficiency of these limitations, even within the narrow field of their application, must be obvious to every intelligent man.

NOTE ON THE EIGHTH SECTION.

RAILROAD OR FREE PASSES: The Act of June 15, 1874, P. Laws, 289, was not signed by the Governor, but was suffered by him to become a law by lapse of time. It reads as follows:---

"An Act to carry into effect section eight of Article seventeen of the Constitution, in relation to granting free passes, or passes at a discount, by railroad or other transportation companies.

"Section 1. Be it enacted, etc., That no railroad, railway, or other transportation company, having accepted the provisions of the seventeenth Article of the Constitution, or hereafter organized, shall grant free passes, or passes at a discount, to any person except to an officer or employé of the company issuing the same; and any person signing or issuing any such free passes, or passes at a discount, except to officers or employés as aforesaid, shall be subject to pay a fine to the Commonwealth not exceeding one hundred dollars: Provided, That nothing herein contained shall be held to prevent the use of passes granted previous to the adoption of the present Constitution, the limited time whereof has not expired, nor to prevent the use of passes granted for a valuable consideration under contracts made between corporations and individuals, or between one corporation and another."

REMARKS UPON THE STATUTE: Upon this statute it may be remarked: 1st. That the proviso which saved to pass-holders the use of passes issued prior to the adoption of the Constitution, the limited time whereof had not expired at the passage of the Act, was quite unnecessary; the provision of the Constitution being directed against the granting or issuing of passes and not against the use of those already issued. 2d. The exception of passes granted for valuable consideration, under contracts, is in plain opposition to the constitutional provision which forbids the granting of passes "at a discount," as well as free ones, to any person except an officer or employé of the issuing company. Granting

passes at full ticket rates, or above them, required no prohibition in the Constitution or exception in the statute, and as to passes forbidden, no consideration or form of contract could give them a sanction or validity. The Constitution cannot be dispensed with by a bargain, whether made between corporations or between a corporation and individual citizens. The double proviso of the Act has therefore no proper utility or force ; being in part useless and in part void. 3d. The Act has no sufficient sanction. Its violation will produce no peril of imprisonment to the offender, and the fine imposed upon conviction may be as low as one dollar or one cent and can never exceed \$100. The disposition of the fine is exceptional, not being payable to the use of the county in which a conviction is had, and no incentive is held forth to an informer, or any one else, to prosecute the offence. Lastly, all existing corporations who do not accept the constitutional section, or the Article which includes it, are excepted from the operation of the Act. This substantial nullification of the constitutional section rests upon the bold assumption elsewhere examined, that the old corporations are bound by no provision of the new Constitution unless they accept it-unless, by free choice, they submit themselves to its operation. In the present case this doctrine of construction, as applied by the statute, not only defeats the main purpose of the constitutional provision but makes that provision positively offensive. Confined to new corporations, while it can have but little effect or utility, it will create an odious distinction between corporate bodies engaged in the transportation of passengers; allowing favoritism at pleasure upon main lines of transit, while forbidding it wholly upon small and new ones.

But when we revert to the reasons that induced the adoption of this provision of the Constitution, consider the manifest purpose of the Convention and people in the Constitution-acceptance sections of this and the next preceding Article, and regard with an impartial eye the field within which legislative power may be justly exerted over corporate bodies, we cannot doubt that *all* passenger transportation companies of the State are bound by this provision of the Constitution and should have been made expressly subject to the statute.

HISTORY OF THE ACT UPON ITS PASSAGE: Introduced as a bill into the House of Representatives on 5th February, 1874, it was referred to the Committee on Constitutional Reform. As introduced it declared the offence of issuing forbidden passes to be a misdemeanor, and fixed a fine therefor of not less than \$100 nor more than \$500. The committee reported the bill on 27th March, with amendments, one of which reduced the maximum of penalty to \$100. When considered in the House upon

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second reading (Leg. Journ. of Deb. 1183-6, 1187-92), it underwent prolonged debate, and was amended on motion of Mr. Webb, of Bradford, by inserting the important words: "having accepted the provisions of the seventeenth Article of the Constitution, or hereafter organized." Another amendment submitted by Mr. Josephs, of Philadelphia, a member of much experience in legislation, to the effect that the penalty should be fixed at \$5 for each pass unlawfully issued, was, after some consideration, not insisted upon, the mover remarking: "As the bill, as amended by the gentleman from Bradford (Mr. Webb), accomplishes what I desire, I withdraw my amendment." (Id. 1192.) In the Senate, the bill was amended in committee, but not materially changed, although the designation of the offence as a misdemeanor was struck out, and it passed that body without debate.

The text of the bill upon final passage in each House, as given in the Legislative Journal of Debates, pp. 1464, 1991, appears to have contained words which are not now to be found in the Act. They appear to have dropped out of the bill between its final passage and its transmission to the Governor. As originally reported and as finally passed, the proviso read as follows: "Provided, that nothing herein contained shall be held to prevent the use of passes granted previous to the adoption of the present Constitution, the limited time whereof has not expired, nor to prevent the use of passes which were granted for a valuable consideration, under contracts made between corporations and individuals or between one corporation and another." The evident intention of the House committee in reporting the proviso was to protect passes already issued and passes which had been already contracted for upon valuable consideration, whether actually issued or not. A liberal construction of the word granted taken in connection with the words in italic, will give this sense, which is entirely in keeping with the scope and purpose of the bill as reported. It is true that the Webb amendment took away all vitality or practical importance from the whole proviso; and that after its adoption the proviso remained a superfluous and useless appendage to the bill. But this fact was quite disregarded if not overlooked in all the subsequent stages of progress upon the bill.

The first division of the proviso, as we find it upon the face of the law, continues to bear the same appearance of inutility it bore when the bill was passed; but the second division has had a meaning, though apparently a sinister and fraudulent meaning, imparted to it by the omission of the italicized words "which were" preceding the word "granted." For it may be claimed that the provision is prospective, and covers and protects all future pass contracts.

ARTICLE XVIII.

FUTURE AMENDMENTS.

SECTION 1. Amendments may be proposed by Legislature.

[Amendments may be proposed by Legislature.]

Section 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election in at least two newspapers in every county in which such newspapers shall be published; and if in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State, in such manner and at such time, at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe, and if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution. But no amendment

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or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted, they shall be voted upon separately.

DERIVED: Amendment of 1838, constituting Article X. of the old Constitution. The only material change in the text is in regard to the publication of proposed amendments in two newspapers in each county instead of one.

SCHEDULE.

PREAMBLE.

BECTION

- 1. When Constitution shall take effect.
- 2. Continuance of former laws, rights, etc.
- 3. Senatorial elections, 1874 and 1875.
- 4. Senatorial elections, 1876.
- 5. Arrangement of gubernatorial terms.
- 6. First election of Lieutenant-Governor.
- 7. Secretary of Internal Affairs.
- 8. Superintendent of Public Instruction.
- 9. Re-eligibility of certain State officers.
- 10. Judges of the Supreme Court.
- 11. Discontinuance of certain courts.
- 12. When registers' courts to be abolished.
- 13. First judicial apportionment.
- 14. Judicial apportionments.
- 15. Judicial terms extended, etc.
- 16. President judges-Unlearned associate judges.
- 17. Legislature to fix pay of judges.

- SECTION
- 18. Courts in Philadelphia and Allegheny, etc.
- 19. Court organization in Allegheny.
- 20. Time of organizing courts in Philadelphia and Allegheny.
- 21. Transfer of suits and records in Philadelphia.
- 22. Transfer of court business in Allegheny.
- 23. Prothonotary, etc., in Philadelphia.
- 24. Aldermen in certain cities.
- 25. Philadelphia magistrates.
- 26. Existing official terms to continue.
- 27. Taking oath of office deferred.
- 28. Terms of county commissioners and auditors.
- 29. Compensation of officers.
- 30. Oath of office to be taken.
- 31. Laws to enforce Constitution.
- 32. Convention ordinance.
- 33. Philadelphia commissioners.

That no inconvenience may arise from the changes in the Constitution of the Commonwealth, and in order to carry the same into complete operation, it is hereby declared, That:—

[When Constitution shall take effect.]

Section 1. This Constitution shall take effect on the first day of January, in the year one thousand eight hundred SECT. 3.]

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and seventy-four, for all purposes not otherwise provided for therein.

Considered, 8 Conv. Deb. 335-9, 477-9.

DERIVED : Schedule to Amendments of 1838, Introduction and § 2.

[Continuance of former laws, rights, etc.]

Section 2. All laws in force in this Commonwealth at the time of the adoption of this Constitution, not inconsistent therewith, and all rights, actions, prosecutions, and contracts, shall continue as if this Constitution had not been adopted.

Considered, 8 Conv. Deb. 339, 340, 479-80.

DERIVED: Schedule of 1838, § 1.

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JUDICIAL OPINION: Lehigh Iron Co. v. Lower Macungie, 31 Sm. 482; 3 W. N. C. 29; Contested Election of Terry, 3 W. N. C. 31; Watson v. Chester and Del. River R. R. Co., 2 Norris, 254; Indiana County v. Agricultural Society, 4 Norris, 359; 4 W. N. C. 481; Perot's Appeal, 5 Norris, 335; 5 W. N. C. 203; Contested Election of Barber, 5 Norris, 392; 5 W. N. C. 350; Allegheny County v. Gibson, 9 Norris, 397; 7 W. N. C. 441.

[Senatorial elections, 1874 and 1875.]

Section 3. At the general election in the years one thousand eight hundred and seventy-four and one thousand eight hundred and seventy-five, Senators shall be elected in all districts where there shall be vacancies. Those elected in the year one thousand eight hundred and seventy-four shall serve for two years, and those elected in the year one thousand eight hundred and seventy-five shall serve for one year. Senators now elected, and those whose terms are unexpired, shall represent the districts in which they reside until the end of the terms for which they were elected.

Considered, 8 Conv. Deb. 341-50, 480-84, 671-2. See Art. II. § 18.

[Senatorial elections, 1876.]

Section 4. At the general election in the year one thousand eight hundred and seventy-six, Senators shall be elected from even-numbered districts to serve for two years, and from odd-numbered districts to serve for four years.

Considered, 8 Conv. Deb. 485, 671-2. See Art. II. § 18.

[Arrangement of gubernatorial terms.]

Section 5. The first election of Governor under this Constitution shall be at the general election in the year one thousand eight hundred and seventy-five, when a Governor shall be elected for three years. And the term of the Governor elected in the year one thousand eight hundred and seventy-eight, and of those thereafter elected, shall be four years, according to the provisions of this Constitution.

Considered, 8 Conv. Deb. 351-2, 353-4. See Art. IV. § 3.

[First election of Lieutenant-Governor.]

Section 6. At the general election in the year one thousand eight hundred and seventy-four, a Lieutenant-Governor shall be elected according to the provisions of this Constitution.

Considered, 8 Conv. Deb. 354-68, 485-90, 493, 672-5. See Art. IV. § 4.

[Secretary of Internal Affairs.]

Section 7. The Secretary of Internal Affairs shall be elected at the first general election after the adoption of this Constitution; and when the said officer shall be duly elected and qualified, the office of Surveyor-General shall be abolished. The Surveyor-General in office at the time of the adoption of this Constitution shall continue in office until the expiration of the term for which he was elected.

Considered, 8 Conv. Deb. 493-4, 677. See Art. IV. §§ 19, 21.

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[Superintendent of Public Instruction.]

Section 8. When the Superintendent of Public Instruction shall be duly qualified, the office of Superintendent of Common Schools shall cease.

Considered, 8 Conv. Deb. 494-5, 675. See Art. IV. § 20.

[Re-eligibility of certain State officers.]

Section 9. Nothing contained in this Constitution shall be construed to render any person now holding any State office, for a first official term, ineligible for re-election at the end of such term.

Considered, 8 Conv. Deb. 369, 495, 499.

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[Judges of the Supreme Court.]

Section 10. The judges of the Supreme Court in office when this Constitution shall take effect, shall continue until their commissions severally expire. Two judges, in addition to the number now composing the said court, shall be elected at the first general election after the adoption of this Constitution.

Considered, 8 Conv. Deb. 369-70. See Art. V. §§ 2, 16.

[Discontinuance of certain courts.]

Section 11. All courts of record and all existing courts which are not specified in this Constitution, shall continue in existence until the first day of December, in the year one thousand eight hundred and seventy-five, without abridgment of their present jurisdiction, but no longer. The court of first criminal jurisdiction for the counties of Schuylkill, Lebanon, and Dauphin is hereby abolished, and all causes and proceedings pending therein, in the county of Schuylkill, shall be tried and disposed of in the courts of Oyer and Terminer and Quarter Sessions of the Peace of said county.

Considered, 8 Conv. Deb. 370-72, 417-27, 428-32. See Com. v. Hipple, 19 P. F. Sm. 9.

[When registers' courts to be abolished.]

Section 12. The registers' courts, now in existence, shall be abolished on the first day of January next succeeding the adoption of this Constitution. See Article V. § 22.

[First judicial apportionment.]

Section 13. The General Assembly shall, at the next session, after the adoption of this Constitution, designate the several judicial districts as required by this Constitution. The judges in commission, when such designation shall be made, shall continue during their unexpired terms judges of the new districts in which they reside; but when there shall be two judges residing in the same district, the president judge shall elect to which district he shall be assigned, and the additional law judge shall be assigned to the other district. See § 15 below.

Considered, 8 Conv. Deb. 495-6, 676. See Art. V. § 5. In execution of the above section, was passed the judicial apportionment Act of 9th of April, 1874, P. Laws, 54, and its supplement of 19th May, 1874, P. Laws, 206.

[Judicial apportionments.]

Section 14. The General Assembly shall, at the next succeeding session after each decennial census, and not oftener, designate the several judicial districts as required by this Constitution.

Considered, 8 Conv. Deb. 373-4, 497-9. See Art. V. §5. A bill passed by the Legislature at the session of 1881, in execution of the duty imposed by this section, was vetoed by Governor Hoyt after the adjournment, mainly upon constitutional grounds. See Com. v. Harding, 6 Norris, 343; 6 W. N. C. 305.

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[Judicial terms extended, etc.]

Section 15. Judges learned in the law of any court of record holding commissions in force at the adoption of this Constitution, shall hold their respective offices until the expiration of the terms for which they were commissioned, and until their successors shall be duly qualified. The Governor shall commission the president judge of the court of first criminal jurisdiction for the counties of Schuylkill, Lebanon, and Dauphin as a judge of the court of Common Pleas of Schuylkill County for the unexpired term of his office. See §§ 11 and 13, ante, and § 26, post.

Considered, 8 Conv. Deb. 374-5, 490-91. See Com'th v. Collins, 8 Watts, 331.

[President judges-Unlearned associate judges.]

Section 16. (a) After the expiration of the term of any president judge of any court of Common Pleas, in commission at the adoption of this Constitution, the judge of such a court learned in the law and oldest in commission shall be the president judge thereof; and when two or more judges are elected at the same time, in any judicial district, they shall decide by lot which shall be president judge; but when the president judge of a court shall be re-elected, he shall continue to be president judge of that court. (b) Associate judges not learned in the law, elected after the adoption of this Constitution, shall be commissioned to hold their offices for the term of five years from the first day of January next after their election. (b) See Art. V. §§ 5, 9.

Considered, 8 Conv. Deb. 375-7, 499-501. (b) See O'Mara v. Com'th 25 Sm. 424.

[Legislature to fix pay of judges.]

Section 17. The General Assembly, at the first session after the adoption of this Constitution, shall fix and deter-

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mine the compensation of the judges of the Supreme Court and of the judges of the several judicial districts of the Commonwealth, and the provisions of the fifteenth [thirteenth] section of the Article on Legislation shall not be deemed inconsistent herewith. Nothing contained in this Constitution shall be held to reduce the compensation now paid to any law judge of this Commonwealth, now in commission.

Considered, 8 Conv. Deb. 377-9, 397-406, 501-7, 677. See Art. V. § 18; Art. III. § 13. The Act of 8th of June, 1881, P. Laws, 49, entitled "An Act to fix the salaries of the judges of the Supreme Court," was in part execution of this section. It fixed the salary of the chief justice at \$8500 per annum, and of each of the other judges of the court at \$8000, without other allowance.

[Courts in Philadelphia and Allegheny, etc.]

Section 18. The courts of Common Pleas in the counties of Philadelphia and Allegheny shall be composed of the president judges of the District Court and court of Common Pleas of said counties, until their offices shall severally end, and of such other judges as may from time to time be elected. For the purpose of first organization in Philadelphia, the judges of the court number one shall be Judges Allison, Pierce, and Paxson; of the court number two, Judges Hare, Mitchell, and one other judge to be elected ; of the court number three, Judges Ludlow, Finletter, and Lynd; and of the court number four, Judges Thayer, Briggs, and one other judge to be elected. The judge first named shall be the president judge of said courts respectively, and thereafter the president judge shall be the judge oldest in commission; but any president judge, re-elected in the same court or district, shall continue to be president judge The additional judges for courts numbers two thereof. and four shall be voted for and elected at the first general election after the adoption of this Constitution, in the same manner as the two additional judges of the Supreme Court,

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and they shall decide by lot to which court they shall belong. Their term of office shall commence on the first Monday of January, in the year one thousand eight hundred and seventy-five.

Considered, 8 Conv. Deb. 407-12, 508-10. See Art. V. § 6, and §§ 20, 21 below. For manner of electing the two new judges for courts numbered two and four, see Art. V. § 16.

[Court organization in Allegheny.]

Section 19. In the county of Allegheny, for the purpose of first organization under this Constitution, the judges of the court of Common Pleas, at the time of the adoption of this Constitution, shall be the judges of the court number one, and the judges of the District Court at the same date shall be the judges of the Common Pleas number two. The president judges of the Common Pleas and District Court shall be president judge of said courts numbers one and two, respectively, until their offices shall end, and thereafter the judge oldest in commission shall be president judge; but any president judge, re-elected in the same court or district, shall continue to be president judge thereof.

Considered, 8 Conv. Deb. 508-10.

[Time of organizing new courts in Philadelphia and Allegheny.]

Section 20. The organization of the courts of Common Pleas under this Constitution, for the counties of Philadelphia and Allegheny, shall take effect on the first Monday of January, one thousand eight hundred and seventy-five, and existing courts in said counties shall continue with their present powers and jurisdiction until that date; but no new suits shall be instituted in the court of *Nisi Prius* after the adoption of this Constitution.

Considered, 8 Conv. Deb. 433, 441-2.

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[Transfer of suits and records in Philadelphia.]

Section 21. The causes and proceedings pending in the court of *Nisi Prius*, court of Common Pleas, and District Court in Philadelphia, shall be tried and disposed of in the court of Common Pleas. The records and dockets of said courts shall be transferred to the prothonotary's office of said county.

See Kersey Oil Co. v. Oil Creek and Allegheny R. R. Co., 3 W. N. C. 288.

[Transfer of court business in Allegheny.]

Section 22. The causes and proceedings pending in the court of Common Pleas, in the county of Allegheny, shall be tried and disposed of in the court number one; and the causes and proceedings pending in the District Court shall be tried and disposed of in court number two.

[Prothonotary, etc., in Philadelphia.]

Section 23. The prothonotary of the court of Common Pleas of Philadelphia shall be first appointed by the judges of said court on the first Monday of December, in the year one thousand eight hundred and seventy-five, and the present prothonotary of the District Court in said county shall be the prothonotary of the said court of Common Pleas until the said date, when his commission shall expire, and the present clerk of the court of Oyer and Terminer and Quarter Sessions of the Peace in Philadelphia shall be the clerk of such court until the expiration of his present commission, on the first Monday of December, in the year one thousand eight hundred and seventy-five.

Considered, 8 Conv. Deb. 412-17. See Art. V. § 7.

[Aldermen in certain cities.]

Section 24. In cities containing over fifty thousand inhabitants, except Philadelphia, all aldermen in office at the time of the adoption of this Constitution shall continue

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in office until the expiration of their commissions; and at the election for city and ward officers, in the year one thousand eight hundred and seventy-five, one alderman shall be elected in each ward as provided in this Constitution.

Considered, 8 Conv. Deb. 433-6, 511-12. See Art. V. § 11 at end.

[Philadelphia magistrates.]

Section 25. In Philadelphia magistrates in lieu of aldermen shall be chosen, as required in this Constitution, at the election in said city for city and ward officers in the year one thousand eight hundred and seventy-five; their term of office shall commence on the first Monday of April succeeding their election. The terms of office of aldermen in said city, holding or entitled to commission at the time of the adoption of this Constitution, shall not be affected thereby.

Considered, 8 Conv. Deb. 436, 512. See Art. V. § 12.

[Existing official terms to continue.]

Section 26. All persons in office in this Commonwealth at the time of the adoption of this Constitution, and at the first election under it, shall hold their respective offices until the term for which they have been elected or appointed shall expire, and until their successors shall be duly qualified, unless otherwise provided in this Constitution.

Considered, 8 Conv. Deb. 533. See Com. v. Kilgore, 1 Norris, 396; 3 W. N. C. 174; Erb v. Com. 10 Norris, 212; 8 W. N. C. 9.

[Taking oath of office deferred.]

Section 27. The seventh Article of this Constitution prescribing an oath of office, shall take effect on and after the first day of January one thousand eight hundred and seventy-five.

Considered, 8 Conv. Deb. 437. See § 30 below.

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[Terms of county commissioners and auditors.]

Section 28. The terms of office of county commissioners and county auditors, chosen prior to the year one thousand eight hundred and seventy-five, which shall not have expired before the first Monday of January, one thousand eight hundred and seventy-six, shall expire on that day.

Considered, 8 Conv. Deb. 437, 513, 527-32. See § 33 below, and Art. XIV. § 7.

[Compensation of officers.]

Section 29. All State, county, city, ward, borough, and township officers, in office at the time of the adoption of this Constitution, whose compensation is not provided for by salaries alone, shall continue to receive the compensation allowed them by law until the expiration of their respective terms of office.

Considered, 8 Conv. Deb. 438.

[Oath of office to be taken.]

Section 30. All State and judicial officers heretofore elected, sworn, affirmed, or in office when this Constitution shall take effect, shall, severally, within one month after such adoption, take and subscribe an oath or affirmation to support this Constitution.

Considered, 8 Conv. Deb. 439. See § 27 above.

[Laws to enforce Constitution.]

Section 31. The General Assembly at its first session, or as soon as may be, after the adoption of this Constitution, shall pass such laws as may be necessary to carry the same into full force and effect.

Considered, 8 Conv. Deb. 441. See Lehigh Iron Co. v, Lower Macungie, 31 Sm. 482; 3 W. N. C. 29; Contested Election of Terry, 3 W. N. C. 31.

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[Convention ordinance.]

Section 32. The ordinance passed by this Convention, entitled "An ordinance for submitting the amended Constitution of Pennsylvania to a vote of the electors thereof," shall be held to be valid for all the purposes thereof.

Considered, 8 Conv. Deb. 670-71. See the ordinance referred to, post, and remarks of Mr. Armstrong and Gov. Curtin, 8 Conv. Deb. 611, 652 See, also, Id. 732, 742.

[Philadelphia commissioners.]

Section 33. The words "county commissioners," wherever used in this Constitution, and in any ordinance accompanying the same, shall be held to include the commissioners for the city of Philadelphia.

Considered, 8 Conv. Deb. 675. See § 28 above; Art. XIV. § 7, and Act of 31 March, 1876, § 17, P. Laws, 18.

Adopted at Philadelphia on the third day of November, in the year of our Lord one thousand eight hundred and seventy-three.

George A. Achenbach, John E. Addicks, Wm. H. Ainey, Hamilton Alricks, G. W. Andrews, Wm. H. Armstrong, Wm. J. Baer, Joseph Baily, Perry County, Jno. M. Bailey, William D. Baker, Thos. B. Bannon, Geo. G. Barclay, James P. Barr, Lin Bartholomew, M. C. Beebe, Wm. Bigler, C. A. Black, Chas. O. Bowman, Charles Brodhead,

. . . .

J. M. Broomall, R. Brown, C. R. Buckalew, John C. Bullitt. Samuel Calvin, John H. Campbell, Henry C. Carey, Lewis C. Cassidy, Pearson Church, Silas M. Clark, Thos. E. Cochran, Wm. L. Corbett, George N. Corson, Jno. P. Cronmiller, James W. Curry, A. G. Curtin, Theo. Cuyler, Geo. M. Dallas, Wm. Darlington,

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Wm. Davis. R. M. De France, S. C. T. Dodd, A. B. Dunning, Matthew Edwards, M. F. Elliott, Jas. Ellis, Thos. Ewing, A. C. Finney, A. M. Fulton, Josiah Funck, John Gibson, John Gilpin, Henry Green, J. B. Guthrie, Jno. G. Hall, William B. Hanna, Edward Harvey, Malcolm Hay, T. R. Hazzard, Jos. Hemphill, James H. Heverin, Geo. F. Horton, Thos. Howard, Chas. Hunsicker, D. Kaine, E. C. Knight, R. A. Lamberton, Aug. S. Landis, Geo. V. Lawrence, Wm. Lilly, W. E. Littleton, Thomas MacConnell, Joel B. McCamant, Wm. McClean, Jno. McCulloch, Morton McMichael, John McMurray, Frank Mantor, Jno. J. Metzger, D. L. IMBRIE,

Chief Clerk.

Samuel Minor. Lewis Z. Mitchell, James W. M. Newlin, Jerome B. Niles, G. W. Palmer, Henry W. Palmer, Henry C. Parsons, D. W. Patterson, T. H. Baird Patterson, Joseph G. Patton, Dan. S. Porter, Lewis Pughe, Andrew A. Purman, John N. Purviance. Samuel A. Purviance, John R. Read, And. Reed, Levi Rooke, Geo. Ross, C. M. Runk, Samuel L. Russell, J. McDowell Sharpe. J. Alexander Simpson, H. G. Smith, Henry W. Smith, Wm. H. Smith, M. Hall Stanton, Jno. Stewart, Thos. Struthers, Benjamin L. Temple, Wm. J. Turrell, Henry Van Reed, J. M. Wetherill, Jno. Price Wetherill, Samuel M. Wherry, David N. White, Harry White, Geo. W. Woodward, Edward R. Worrell, Caleb E. Wright. JNO. H. WALKER,

President.

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AN ORDINANCE

FOR SUBMITTING THE AMENDED CONSTITUTION OF PENNSYLVANIA TO A VOTE OF THE QUALIFIED ELECTORS THEREOF.

Be it ordained by the Constitutional Convention of the Commonwealth of Pennsylvania, as follows :---

1. That the amended Constitution, prepared by this Convention, be submitted to the qualified electors of the Commonwealth, for their adoption or rejection, at an election to be held on the third Tuesday of December next. Except as hereinafter ordered and directed, the said election shall be held and conducted by the regular election officers in the several election districts throughout the Commonwealth, under all the regulations and provisions of existing laws relating to general elections, and the sheriffs of the several counties shall give at least twenty days' notice of said election, by proclamation.

2. The Secretary of the Commonwealth shall, at least twenty days before said election, furnish to the commissioners of each county a sufficient number of properly prepared circulars of instruction. The commissioners of the several counties shall cause to be printed at least three times as many ballots of affirmative votes as there are voters in each county, and the same number of negative votes; and the said commissioners shall, at least five days before said election, cause to be fairly distributed to the several election districts in their respective countics, the said ballots, with tally lists, returns, circulars of instruction, and such other books and papers as may be necessary. The ballots shall be printed, or written, in the following form : On the outside, the words "New Constitution;" in the inside, for all persons giving affirmative votes, the words "For the New Constitution," and for all persons giving negative votes, the words "Against the New Constitution."

3. If it shall appear that a majority of the votes polled are for the new Constitution, then it shall be the Constitution of the Commonwealth of Pennsylvania, on and after the first day of January, in the year of our Lord one thousand eight hundred and seventy-four; but if it shall appear that a majority of the votes polled were against the new Constitution, then it shall be rejected and be null and void.

4. Five Commissioners of Election, viz., Edwin H. Fitler, Edward Browning, John P. Verree, Henry S. Hagert, and John O. James, are hereby appointed by this Convention, who shall have direction of the election upon the amended Constitution in the city of Philadelphia. The said commissioners shall be duly sworn or affirmed to perform their duties with impartiality and fidelity. They shall have power to fill vacancies in their own number. It shall be the duty of said commissioners, or a majority of them, and they shall have authority, to make a registration of voters for the several election divisions of said city, and to furnish the lists so made to the election officers of each precinct or division; to distribute the tickets for said city provided for by this ordinance, to be used at the election; to appoint a judge and two inspectors for each election division, by whom the election therein shall be held and conducted, and to give all necessary instruction to the election officers regarding their duties in holding the election and in making returns No person shall serve as an election officer who would be disthereof. qualified under section 15, Article VIII. of the new Constitution. The general return of the election in the said city shall be opened, computed, and certified before the said commissioners, and with their approval, which approval shall be endorsed upon the return. They shall make report, directed to the President of this Convention, of their official action under this ordinance, and concerning the conduct of the said election within the said city.

The judges and inspectors aforesaid, shall conduct the election in all respects conformably to the general election laws of this Commonwealth, and with like powers and duties to those of ordinary election officers. Each inspector shall appoint one clerk to assist the board in the performance of its duties, and all of the election officers shall be duly sworn or affirmed according to law, and shall possess all the qualifications required by law of the election officers in this Commonwealth. At said election, any duly qualified elector who shall be unregistered, shall be permitted to vote upon making proof of his right to the election officers, according to the general election laws of this Commonwealth. Return inspectors and their clerks, and an hourly count of the votes, shall be dispensed with; but overseers of election may be selected for any precinct by said election commissioners, whose duties and powers shall be the same as those of overseers of election in said city, under existing election laws applicable thereto. Returns of the election shall be made in said city as in the case of an election for Governor, but a triplicate general return for said city shall be made out and forwarded to the President of this Convention at Harrisburg, as is hereinafter provided for in case of county returns.

5. In each of the counties of the Commonwealth (except Philadelphia), the returns of the election shall be made as in the case of an election for Governor; but the return judges in each county shall make out a triplicate county return, and transmit the same, within five days after the election, directed to the President of this Convention, at Harrisburg.

Done in Convention, this third day of November, in the year of our Lord one thousand eight hundred and seventy-three.

Attest :---

D. L. IMBRIE,	JOHN H. WALKER,
Chief Clerk.	President.

Ordinance proposed, 8 Conv. Deb. 395. Reported, Id. 476. Schedule Committee reports, Id. 491, 536. Form of attestation ordered, Id. 715. The consideration by the Convention of the several sections or divisions of the Ordinance, will be found as follows:

§ 1. 8 Conv. Deb. 537-45, 615, 622-3, 704-5.
§ 2. Id. 573, 574-83, 589, 614, 640-43, 708-9.
§ 3. Id. 583-4, 644.
§ 4. Id. 584-9, 606-14, 644-51, 705-7, 709-12.

VALIDITY OF THE ORDINANCE: The first, second, third, and fifth divisions of the Ordinance passed unchallenged at the time of their adoption, and were not directly called in question afterwards, except in an abortive proceeding by bill in equity in the Common Pleas of Allegheny County. Woods's Appeal, 25 P. F. Smith, 59. They were carried into complete execution by the Secretary of the Commonwealth, and by sheriffs, county commissioners, and election officers. But the power of the Convention to ordain the fourth division, was questioned in Convention by some members, and was, after the adjournment, denied by the Supreme Court in a formal and elaborate opinion. Wells v. Bain, 25 P. F. Smith, 39.

Convention power to adopt that division was put by its supporters upon two grounds: 1st. That it was authorized by the fifth section of the Convention Act of 11th April, 1872, P. Laws, 53, which declared, that "the Convention shall submit the amendments agreed to by it to the qualified voters of the State, for their adoption or rejection, at such time or times, and in such manner as the Convention shall prescribe;" and 2d. That the popular vote under the Act of 2d of June, 1871, P. Laws, 282, which ordered a Convention to be called to amend the Constitution, without limitation of its powers, authorized the exercise by the Convention of the incidental power of regulating the time and manner of submitting its work to the people for their approval.

THE QUESTION UNDER THE CONVENTION ACT OF 1872: The clear conclusion in favor of Convention power to be drawn from the fifth section of the Convention Act of 1872, is denied in the opinion of the court (pp. 54, 55), in view of a construction of the fourth and sixth sections which are claimed to be opposed to it. But although the power to regulate the manner of submission by the Convention may be limited by that provision of the sixth section which enacts that the election upon the adoption of the new Constitution shall be conducted as general elections are conducted, it cannot be admitted that the grant of authority in the fifth section is otherwise controlled or limited by anything contained in the fourth or sixth. The conduct or management of the election, when held, is by the sixth section put under the protection of the general election laws, but this provision does not relate to the selection or designation of officers by whom the election shall be held. The distinction between these two things is shown by the first and second sections of the Act of 14th April, 1835, providing for a popular vote upon the question of calling a Convention, and still more by the second, eighth, and ninth sections of the Convention Act of 29th of March, 1836, from which the Act of 1872 was, in part, derived. So, also, a comparison of this sixth section with the second section of the same Act of 1872, discloses the fact that the designation of election officers to hold an election contained in the one section was wholly omitted in the other. Apparently this omission in the sixth section was purposely made in order to retain Convention control, to a desired extent, over the proceeding of submission, while the use of the general election laws was extended to the management of the polls and measurably also to the making of returns-in other words, to the conducting of the election, when held, and to the ascertainment of its results.

The fourth section of the Convention Act authorized the Convention to submit to the people, either a new Constitution, or amendments in mass, or amendments to be voted upon separately. It "shall have power," says the section, "to propose to the citizens of the Commonwealth, for their approval or rejection," its completed work, in either one of the three ways mentioned. The provision is comprehensive, and is a complete grant of discretionary power over the subject to which it relates, and the insertion in the Act of any additional provision relating thereto would have been superfluous if not impertinent. But the whole force of the court's opinion regarding this statute depends upon the ignoring of this fourth section, either as a grant of submitting power to the Convention, or as a requirement from it of submission in one of the discretionary forms stated therein. The office of this section is, strangely enough, assigned by the court to the fifth section which provides that the Convention shall submit its amendments to the people "at such time or times, and in such manner as the Convention shall prescribe." It is said that the manner of submission here mentioned relates to the uniting together or separating amendments for a popular vote-in other words, to action by the Convention itself, already fully provided for by the fourth section. Is it to be believed that the Legislature would enact over again in the fifth section what was already contained in the fourth-would thus re-enact the same regulation, though in less definite form? But an additional answer to this view of the section is, that what the Convention is to prescribe will be directed to others, and not to itself; for to prescribe a thing to be done will ordinarily be to impose upon another, or upon others, the will of a commanding authority, and not to determine one's own volition or choice. What was to be done by the Convention under this section related to the future-to the time or times of election, and to any other prospective regulations of submission which the Convention could properly adopt, including, as is contended, the regulations in question for the election in Philadelphia. This section, therefore, authorized all those provisions of the ordinance which prescribed certain duties to be performed by the Secretary of the Commonwealth, by sheriffs, and by county commissioners; provided for the publication of the new Constitution in newspapers and in pamphlet form for the information of the people; fixed the form of tickets to be voted at the election, and directed the election to be held throughout the Commonwealth, except in Philadelphia, by the ordinary election officers.

The court asserts a distinction between proposing amendments to the people for their approval or rejection, and submitting amendments to them for a like purpose; and this distinction is indispensable to its argument upon the statute. But evidently this is a distinction without a difference; for to propose and to submit, in this connection, are interchangeable terms and of exactly the same signification.

The saving clause of the fifth section, to the effect that the manner of submission shall be subject to the limitation of the Act in regard to the separate submission of amendments on demand of one-third of the Convention members, is cited by the court to sustain its construction of that section. But this argument overlooks the fact that that limitation is more fully expressed in the fourth section, and there applied to its main object—the division or separation of submitted amendments, in a proper case, by the Convention—while the reference to it in the fifth section can properly relate only to the form and separation of tickets to be voted at the election, and to returns, etc. In short, the Convention is to respect this provision of the Convention Act in prescribing prospective regulations of submission under the fifth section, as it is to respect it in submitting amendments, otherwise discretionary as to mode or form, under the fourth section.

Enough has been said to show that the opinion of the court upon the question of Convention power under the Act of 1872, is open to very serious dispute, and that an exactly opposite opinion, if it had been pronounced by the court, would not probably have offended either public or professional sentiment, or have done any violence to the law. That deferential spirit which is ordinarily, and in the main properly, manifested by the courts towards the Legislature of the Commonwealth when its acts are called in question before them upon constitutional ground, if it had been felt by our highest tribunal towards the Convention, and had inspired its examination of the Convention ordinance. would probably have produced a different result to the contention in Wells v. Bain. The decision of the case might very safely have been put upon the ground that the Convention, in judging of its own powers (as all such bodies must), had not clearly transcended the limits of its authority under the Act of 1872.

ACTION BY THE EXECUTIVE COMMITTEE OF THE CONVENTION: Upon the announcement of the decision by the Supreme Court that the fourth division of the submission ordinance was invalid, the Executive Committee of the Convention met at Harrisburg, and, after conferring together, issued an address to the people in which they said: "The recent decision of the Supreme Court enjoining the commissioners appointed by the Convention from directing the election for the city of Philadelphia, makes it proper that this Executive Committee should briefly state the effects of the decision. The Convention was assembled by direct authority of the people, and exercised only such powers as they believed to be delegated to them and necessary to the performance of their work. Having neither the right nor the disposition to surrender any position taken by the Convention, and without entering upon the discussion of any controverted question, the committee recommend prompt acquiescence in the decree of the court. To avoid a possible misapprehension, we deem it proper to state explicitly, that the decree affects only the question of officers by whom the election in Philadelphia will be conducted. The commissioners named by the Convention, with the desire to secure in that city a fair election, having been superseded, the election will, therefore, be held in Philadelphia,

as in all other parts of the State, by the ordinary election officers." 8 Conv. Deb. 751.

This action by the Executive Committee was necessary to prevent a conflict of jurisdiction at the election in Philadelphia, with consequent confusion, and a possible contest over the general result in the State. It was prudently taken, and was approved by all judicious friends of constitutional reform, however much they may have doubted or denied the correctness or authority of the court's decision. And the immediate result which followed at the election, was all that could be desired by the advocates of the new Constitution. Instead of being discouraged or intimidated by the hostile proceeding in court and by the decision rendered, they were inspirited thereby to increased effort and diligence in the canvass, and public opinion promptly responded to their call. There can be no reasonable doubt that a very considerable part of the large majority given to the new Constitution, was due to a judicial proceeding which was conceived, concocted, and intended for its defeat.

CONVENTION RESOLUTIONS: Inasmuch as the views of Convention and of popular power announced in the opinion of the court were to be placed in permanent records, and because the decision to which they led had been in fact executed and apparently acquiesced in by the people, it became important or proper for the Convention to leave behind it, upon its journal, an emphatic declaration of opposite views; that it should firmly assert once more the principles of popular right which underlie and sanction all constitutional changes.

This was done by the Convention when it reassembled at Harrisburg, on the 27th of December, 1873. On motion of Mr. Armstrong, of Lycoming, a committee was appointed "to submit resolutions declaring the sense of the Convention as to the extent of its powers," which committee, on the same day, made the following report :---

"That they have given their most earnest consideration to the subject committed to them, involving as it does the power of the people to exercise their indefeasible right to alter their form of government. A proceeding to which the Convention was not a party, has in its effect and result brought into controversy some of the fundamental principles of constitutional government. The opinion that has been pronounced in this proceeding contains doctrines which, in our judgment, ought not to be left unchallenged. We believe them to be in subversion of some of the absolute rights of the people. We, therefore, submit for the action of the Convention, the following resolutions:—

"1. Resolved, That this Convention was called by authority of the people, as determined by their vote under the Act of 1871, declaring

that a Convention should be called to amend the Constitution of this Commonwealth; and that this vote was a mandate to the Legislature, which that body was not at liberty to disobey or modify.

"Resolved, That the Constitution of the State is the only recognized form of its government, and the people having expressly reserved to themselves the right to alter, reform, or abolish their government in such manner as they think proper, and having in distinct terms excepted this right out of the general powers of government, and declared that such right shall forever remain inviolate; this Convention deems it to be its duty to declare, that it is not in the power of any department of an existing government to limit or control the powers of a Convention, called by the people to reform their Constitution, and that the Convention, subject to the Constitution of the United States, is answerable only to the people from whom it derived its power."

(Signed): "W. H. Armstrong, Chairman, George W. Biddle, Thomas Howard, Chas. R. Buckalew, Wm. Bigler, Andrew G. Curtin, Jas. W. M. Newlin, J. McDowell Sharpe, W. E. Littleton."

The first of the foregoing resolutions was adopted by the Convention by a vote of 77 to 7, and the second by a vote of 66 to 13. Conv. Jour. 1279-81; 8 Conv. Deb. 742-6.

THE GENERAL QUESTION OF CONVENTION POWER: The source and the extent of the powers of the Convention of 1873 were questions fully considered by the Convention itself, early in its session at Harrisburg, upon the proposition to appoint a committee upon the subject of the Declaration of Rights. The Legislature in the third section of the Convention Act of 1872, having attempted to withhold from the Convention all power "to alter the language or to alter in any manner the several provisions" of the old Declaration of Rights, the question arose whether that limitation was binding upon the Convention. The decision arrived at was, that it was not, because the Convention derived its authority directly from the people, and not from the Legislature, and could not be controlled by an order of the latter in the performance of its proper duties. The appointment of a committee upon the Declaration of Rights was, therefore, ordered by a vote of 106 to 18. 1 Conv. Deb. 52-62. The attempted legislative restriction was thus openly defied, after full debate, and that defiance was followed by practical, effectual action. The Declaration of Rights was amended and very greatly improved in several important particulars by the Convention, and the amendments thus made are now undisputed as well as valuable provisions of the existing Constitution.

In the ceaseless struggle in civilized society between power and liberty, a few words more or less upon either side, by whomsoever expressed, will not probably produce any profound or lasting impression upon public opinion. It was not, therefore, as the court appears to have supposed in the case of Wells v. Bain, a matter of high importance that the court's views upon the relations between popular and organized power, outside of the particular issue presented, should have been placed permanently upon record; nor was it important, in the subsequent case of Woods's Appeal, that the supposed erroneous views of Judge Stowe should have been subjected to elaborate extrajudicial reproof or refutation. Nor is it believed to be at all important that a formal reply should be made to the general views and reasoning of the court in those cases in order to prevent the true principles of republican government, which have obtained general recognition in the American States, from suffering a loss of popular confidence, attachment, and support.

In concluding, however, remarks upon the ordinance of submission, the two principal points of difference between the Convention and the court ought, perhaps, to be distinctly stated, in order that the judicious reader who may desire to prosecute further inquiry into the merits of the dispute between those authorities, may be enabled the more readily and conveniently to enter upon his work.

1. The court held that the popular vote under the Act of 1871, gave *permission* to the Legislature to call a Convention; that the people simply expressed an opinion upon *the question* of a Convention, but did no more.

The Convention held, that the popular vote under the Act of 1871, was a *decision* that a Convention should be held, and *an order* to the Legislature to call one; or, to use the language of the first Convention resolution, that vote "determined" that a Convention should be called, and was "*a mandate* to the Legislature which that body was not at liberty to disobey or modify."

Substantially the same view was taken by Governor Wolf of the popular vote for a Convention in 1835. In his annual message of Dec. 2d, 1835, he treated that vote as a decision, imposing a duty upon the Governor and Legislature "to take the necessary steps to carry the will of the people into effect." He spoke "of the *necessity* of making provision by law for complying with the expressed will of the majority at as early a period as possible, by fixing upon the time, place, and manner of holding the election for the choice of delegates, throughout the State, as well as the time and place of their meeting for carrying into

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effect the objects for which they shall have been elected." Sen. Jour. 1835-6, pp. 17, 18. And following that message, the preamble of the Convention Act of March 29th, 1836, declared: That whereas the freemen of the Commonwealth had *determined*, by a decided majority, that a Convention should be held, "it was incumbent upon the representatives of the people, promptly and without delay, to provide the means of carrying the public will into immediate execution."

The pressure of the argument for the mandatory character of the popular vote of 1871 was manifested in the court's second opinion, delivered Nov. 2, 1874 (nearly a year subsequent to the Convention resolutions). In that opinion there was a halting concession of the mandatory character of that vote, accompanied, however, by an argument to break the force of the concession. 25 Sm. 71.

2. The court held, that the Convention derived its powers from the Legislature, and was subject to whatever limitations the Legislature chose to impose. This, concisely stated, is believed to be the substance and purport of both the opinions pronounced by the court.

The Convention, on the contrary, held, that it derived its powers directly from the people, and was subject to no limitation of those powers by legislative enactment. By its second resolution, already quoted, it declared, "that it was not in the power of any department of an existing government to limit or control the powers of a Convention, called by the people to reform their Constitution, and that the Convention, subject to the Constitution of the United States, is answerable only to the people from whom it derived its power." To one fresh from reading the second and twenty-sixth sections of the Declaration of Rights, this ought to appear a reasonable and satisfactory exposition of Constitutional doctrine, and be accepted as sound and unanswerable. For it is sanctioned by the highest authority of which the case admits; it maintains the necessary independence of popular power and of its remedial agent, a Convention, and it remands legislature and court alike to their proper spheres of constitutional duty.

The Legislature of 1871 initiated the proceeding for amending the Constitution by submitting the question of Convention or no Convention to the people, who responded by an affirmative vote. The question submitted and decided was not a Convention with partial or limited powers, like that of 1837-8, nor a Convention subject in any manner to legislative control. It was to be a called Convention, composed of members not chosen by the Legislature, but by the people, and it was to be a Convention "to amend the Constitution" in any part or provision requiring amendment; for the proposition was general and without exception. Assuming, what has already been shown, that that vote for a Convention was an order or mandate to the Legislature to call one, what legislative authority did it confer or imply? Exactly what was necessary to execute the order given, and no more; it authorized an Act which would enable the people to elect delegates, and the elected delegates to meet, and would provide for any incidental matters connected with the accomplishment of those objects. Beyond this, a call under such a popular order or mandate could not go, without departing from and transcending it. The order in such a case is to call a Convention, not to control it, and interference by the Legislature with the proceeding for amendment beyond the purpose of the demand made upon it by the people, would be intrusive, unauthorized, and unconstitutional.

The amending power being reserved out of the powers of government, the Legislature cannot exercise the power at all, nor limit nor control its exercise by the people, nor can it act even in aid of the power, nor facilitate its exercise, except in one of three ways: 1st. By an Act enabling the people to order a Convention by vote; or 2d. By an Act enabling them to elect delegates to a called Convention; or 3d. By adopting amendments at two sessions, and then submitting them to a popular vote. We do not mention here incidental regulations connected with a proceeding of amendment, for they do not touch or affect the general question of power.

It results, from what has been said, that delegates chosen by the people are agents of their will, owe duty and allegiance to them, and perform their work. Their whole power is derived from the people, and is conferred upon them by their election. It is true their powers may be general, as were those of the Convention of 1790, or they may be limited, as were those of the Convention of 1837-8, but limitation of their powers, if they are to be subjected to limitation, must be decreed by the people—by those who appoint them, and whose delegates they are, and not by the Legislature.

Perceiving the necessity for the exertion of popular power to impose limitations upon a Convention, the court is impelled to claim that *all* the provisions of the Convention Act of 1872 were adopted by the people in the act of voting under it, or according to it, for the election of delegates. But this view is neither reasonable in theory nor true in fact. The Act was not submitted to a vote, nor, in fact, voted upon by the people. They used the provisions of the Act for electing delegates, which they had ordered to be passed by the vote of 1871, but did not thereby adopt or approve all the rest. In fact, at the earliest mo-

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ment possible their delegates in Convention repudiated those provisions of the Act which were intrusive and unauthorized; in other words, did what the court itself is accustomed to do upon fit occasion, obeyed and executed the sound parts of the law, while rejecting those which were unsound, because unconstitutional.

THE POPULAR VOTE ON ADOPTING THE CONSTITUTION: The proclamation of Gov. Hartranft, dated 7th January, 1874, announcing the adoption of the new Constitution by the people, stated the votes given for and against it in the State, as ascertained upon the returns opened and published in the presence of the two Houses of the Legislature, to have been: For the new Constitution, 253,744; against the new Constitution, 108,594; showing a majority in its favor of 145,150 votes.

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