A STUDENT'S MANUAL

OF THE

Constitution of Illinois

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PREFACE

While there are numerous good treatises adapted for law students' use on the Federal Constitution and Government, yet there is no similar work for such students on the Constitution and Government of Illinois. Therefore this book has been prepared to meet the needs especially of students of the law in Illinois. The author's experience as a lecturer upon this subject has impressed upon him the scarcity of accessible literature for students upon the topics necessary to be treated.

Obviously no law course should be regarded as complete without a fair knowledge on the part of the student of the history and fundamental law of his own State. Yet few schools in the State give any formal instructions on this important subject. Illinois today is larger in population, richer in wealth, and more varied in its occupations and industries than the United States at the time of the adoption of the Federal Constitution, and its organic law deserves and should demand the study and consideration of all who are intending to practice law within its boundaries.

The book is divided into two parts, Part I covering the early history of Illinois, and a summary of its history under the Constitutions of 1818 and 1848. Part II consists of an exposition with annotations of the present Constitution of the State. It is believed that a more thorough understanding of the Constitutional and Legal history of the State and a wider knowledge of its fundamental law will do much to safeguard the State and its people from the political and social vagaries and legislative experiments of sciolists now so active in the community.

THE AUTHOR.

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A STUDENT'S MANUAL

OF THE

CONSTITUTION OF ILLINOIS.

PART I.

CHAPTER I.

ILLINOIS UNDER FRENCH AND ENGLISH RULE.

The territory comprising the present State of Illinois forms a part of the vast and indefinitely bounded domain which was claimed by England as a result of Cabot's voyage of discovery in 1498. The southern part of it was included in the original grant of land from the British crown to the founders of the colony of Virginia while other portions of it were covered by somewhat vague and indefinite claims advanced by New York, Massachusetts and Connecticut to the unoccupied lands west of the Allegheny mountains. Notwithstanding these claims the territory came into the actual possession of the French by right of discovery and exploration. The earliest settlements in the State were made by French pioneers and missionaries under the leadership of La Salle, Marquette, Joliet and others, who explored almost the entire territory from Lake Michigan to the Ohio and Mississippi rivers. Colonies were established at Kaskaskia, Cahokia, Peoria, Prairie du Rocher and other places, and in 1717 the territory was annexed to the province of Louisiana. Prior to that time it had been considered as under the jurisdiction of Quebec.

Under the French Regime.—The seat of government during the period of French control was at Fort Chartres, whose construction was completed about 1720.[1] While this process of French colonization was proceeding slowly in the Mississippi valley, the British

[1]Carter's Great Britain and the Illinois Country. Mason's Chapters from Illinois History 215.

colonies upon the Atlantic coast had so increased in population that the more adventurous and enterprising of their inhabitants were crossing the mountains in increasing numbers and encroaching upon the French possessions. This movement caused the French to commence the erection of a chain of forts which was designed to connect Canada with the Mississippi territories and prevent the further encroachment of the pioneers, traders and settlers from the English colonies. The military control of the French continued until the Treaty of Paris in 1763, which terminated the struggle known in our colonial history as the French and Indian war. At this time the population of the entire territory was between two and three thousand persons.

But little can be said of the civil government during the period of French control, as the few records now remaining extant do not afford much information as to details. It appears that the province of Louisiana was originally divided into nine districts, of which Illinois was the ninth. This district included not only a large part of the present State of Illinois, but also the extensive territory west of the Mississippi river which now forms the States of Missouri, Kansas, Iowa, Nebraska, and parts of Arkansas and Colorado. The civil list included a commandant, who was the head of the provincial government, a commissary, a judge, a scrivener, a clerk, deputies, notaries and syndics or local magistrates. The public affairs of the district were administered by a council composed of the commandant and his two secretaries who regulated matters in conformity with the rules of the civil law. Their government was mild and conservative and was not concerned to any great extent with the every day affairs of the people. It maintained absolute control over commerce, and its principal function seems to have been to attend to matters relating to supplies and stores for the royal forces and the maintenance of the provincial establishment.

For the regulation of local affairs the principal

agency was the village meeting, whose edicts related to all matters of general interest. The theory of the village organization was communalistic. The general business of the community was transacted at the village assembly which met in the church yard after the close of religious services. The priest was the presiding officer whenever the business to be transacted related to the affairs of the church, but when secular matters were the subject of consideration, the syndic presided. These two officers were important factors in the scheme of local government, and performed executive functions in carrying into execution the decrees of the assembly.

The same communistic feature characterized the system of land tenure, which the peasants brought with them from France. Each householder had his own separate dwelling and piece of ground adjacent thereto for his own use, but he also had an interest in a tract of arable land which was enclosed and tilled by the villagers in common and also in the common pasture land which was beyond and outside the enclosure.[1] The village assembly decided everything relating to the proper cultivation of this land, determined the time for ploughing, seeding and harvesting and even regulated the form and arrangement of the dwellings. While the commandant was the chief officer of the district yet the form of government was not military and did not have the paternal features usually incidental to the government of royal provinces. On the other hand, the communalism, which characterized its local form, distinguished it from a pure democracy such as was exemplified by the New England town meeting; and the total absence of class distinctions as well as other features rendered it entirely different from the Virginia county and parish system. All these different theories of local government were finally merged in the present system without violating the rights of the individual.

This peculiar land tenure and the titles deduced

[1] Howard's Local Constitutional Hist. of U. S. 429.

from the old French grants have given rise to unusual legal questions which have been submitted to the courts of this State for adjudication on several occasions, and their proper determination has required an exhaustive investigation of such evidence as can be found relating to the contents of the original documents and the law applicable to their construction. As a result, the opinions of the Supreme Court in these cases furnish much valuable material for the student or lawyer who desires to pursue the subject further than the limits of this treatise will permit.

In connection with the decision of an early case, a learned and accurate account of the history of the lands held in common by the inhabitants of Cahokia is furnished by Judge Breese [1] and in a later case the full text of some of the historical documents relating to this subject is shown.[2] In another case the opinion of the court narrates the history and contents of the original French grant to the inhabitants of Kaskaskia and shows that the rights of the grantees and their successors must be determined by a reference to the Code of Napoleon and the *Custom* of *Paris* as the result of the royal edict of France in 1712.[3] And in a recent case a full historical review is given of the settlement at Kaskaskia and the origin of the title to the common lands belonging to the people of that community. From this decision it appears that prior to the French occupancy the title to the lands was possessory only and was vested in the Indian tribes and their members who inhabited the locality. The connection of the French with the Illinois territory commenced with the explorations of Marquette and Joliet in 1673, which were followed by the occupation by La Salle and his comrades in 1682 and continued until the Treaty of Paris in 1763. The mission of the Immaculate Conception was established by Marquette in 1675 near the present location of Utica

[1] Hebert et al. v. Lavalle, 27 Ill. 450.
[2] Lavalle v. Strobel, 89 Ill. 371.
[3] Trustees of Commons v. McClure, 167 Ill. 23.

This mission was afterwards transferred to Kaskaskia, and sometime in the early part of the last century the common lands of Kaskaskia were granted to the parish by the French government. The record of this grant has been lost, but its existence is well established by a patent issued by the Governor of Louisiana on August 14, 1743, confirming the right of possession of these lands in the inhabitants of the parish of the Immaculate Conception at Kaskaskia.[1] This brief historical sketch serves to substantiate what has been said regarding the system of land tenures in the early French settlements of Illinois.

Under English Rule.—The French and Indian war was terminated by the Treaty of Paris in 1763 and with the signing of that treaty the dominion of France over the Illinois territory ceased. While this territory was ceded to England by the terms of the treaty, yet it should be remembered that the English had claimed it previously upon various grounds and in asserting these claims had been continually encroaching upon the French settlements for many years. At the time peace was declared many of the French outposts particularly in the Ohio valley were in the actual possession of the British, but this was not the case with Fort Chartres or the French settlements in Illinois.

At this time it was the policy of the English law in dealing with countries acquired by conquest or cession to allow the existing laws and institutions of the country to remain in force until superseded by English enactments.[2] This probably explains the reason for the fact that for over ten years or from 1763 to 1774 the territory remained in the actual possession of the French although under the military control of the English. After the Treaty of Paris was signed in February 1763, the British ministry considered the policy to be pursued with reference to the extensive domain which had been acquired and as a result of these deliberations a royal proclamation was issued in

[1] Stead v. Commons of Kaskaskia, 243 Ill. 242.
[2] Campbell v. Hall, Can. Const. Docs. 1759-1791, 366-372.

October of that year providing a civil government for Quebec and the Floridas, but which did not mention the settlements in the Illinois territory.[1] In fact, the deliberations of the ministry and the correspondence incidental thereto indicate that there was never any intention whatever of furnishing a civil government for the Illinois villages and that a plan for the military control of the territory was the only scheme of government considered.

In 1764 Gen. Thomas Gage who was then the commander of the British army in America and stationed in New York, issued a proclamation addressed to the inhabitants of the territory, relating to certain rights which had been guaranteed to the people by the treaty of Paris, such as freedom of religion and the liberty of remaining within English territory or removing therefrom, but which does not indicate in any way whether a civil or military government is to be established. It seems apparent from all the information that can be obtained regarding this period that the British military commanders in Illinois had no commission whatever to govern the territory and that the only authority which they possessed was of the general character which is imposed upon a military officer in cases where there are no legally constituted civil officers.

In 1771 a general assembly of the people of Illinois was held at Kaskaskia, which formulated a demand upon the English authorities for civil institutions similar to those embodied in the Connecticut charter. This action indicates some familiarity with American colonial history, as the Connecticut charter was the most liberal of any granted to the New England colonies. This demand did not receive the approval of Gen. Gage, the British commander-in-chief or of Lord Hillsborough, who was then the head of the British Colonial Office. His successor, Lord Dartmouth, also rejected the demands of the people of Illinois for a

[1] Can. Const. Docs. 1759-1791, 119-123.

popular form of government. He did however condescend to prepare a statement of his own views as to the proper form of government for the territory, which provided that all powers should be vested in royal appointees and none exercised by the people. This document which he called "A Sketch of Government for Illinois," was considered by the people in another assembly at Kaskaskia and indignantly rejected. A protest against its adoption was forwarded to Lord Dartmouth in which his plan was characterized as "oppressive and absurd, much worse than that of any of the French or even of the Spanish colonies." They also did not hesitate to assert that if such a form of government should be established, "it could be of no long duration. There would exist the necessity of its being abolished."

In view of the situation disclosed by these records, the general statement seems warranted with reference to the period between 1763-1774, that notwithstanding the change of sovereignty resulting from the treaty of Paris, the private law remained as it had been under the French regime. It was a government *de facto,* but without legal foundations.[1] In 1774 a plan for the government of the entire territory north of the Ohio River was embodied in the Quebec Act which was passed by Parliament in that year. This act never became operative in the Illinois territory owing to the intervention of the American Revolution, which required the representatives of the English government in America to devote their entire attention to other sections of the country. During the entire period of its control, no form of civil government was furnished by England for the people of Illinois.

Upon the outbreak of the Revolutionary War, the people of Illinois early showed their sympathy with the rebellious colonists of the Atlantic coast by organizing frequent expeditions against the British posts in the Western territory. These hostile acts were com-

[1]See Carter's Great Britain and the Illinois County, Chap. II.

mitted with impunity because the British forces were fully occupied elsewhere.

The principal revolutionary event in the history of Illinois was the capture of Kaskaskia on July 4, 1778, by Gen. George Rogers Clark, acting under a commission from Patrick Henry, Governor of Virginia. His achievements have been a favorite topic with historians and novelists so that the main features of his campaign are well known to all readers. The story of his expedition and its results has been told briefly by an Illinois author who loved to write of the history of his State:

"This young Virginian, with a handful of men, over great obstacles and through great privations, captured the British garrisons at Kaskaskia in what is now Illinois, and at Vincennes, in what is now Indiana. In his wonderful march across the flooded prairies and the swollen streams of southern Illinois, he was accompanied by battalions composed of the young Frenchmen of Illinois, who quitted themselves like men. The whole region now comprised in the States of Ohio, Indiana, Michigan, Illinois and Wisconsin was made a single county of Virginia, under the name of Illinois, and governed by officials, appointed by the Old Dominion. Clark's campaign and Virginia's subsequent occupancy of the country turned the scale in our favor at the negotiation of the Treaty of 1783, when Spain strove hard to acquire all this region by virtue of her expedition to St. Joseph, and France, our ally, but already jealous of the new nation, was quite willing that she should have it. George Rogers Clark, by deeds mainly occurring on the soil of Illinois, added to our country, a territory of more than two-thirds of the area of the original thirteen colonies."[1]

The period of foreign control over Illinois which had continued for nearly a hundred years ceased when the territory became part of a Virginia county as the result of Clark's expedition.

[1] Mason's Chapters from Illinois History, 288.

CHAPTER II.

ILLINOIS FROM 1774 TO 1818.

A Virginia County.—As already indicated, that part of the Mississippi valley lying north of the Ohio River was claimed by Virginia under some of the early grants from the British crown, and accordingly when the news of the results of Clark's expedition was received, the general assembly believed that the time was opportune for asserting these claims. In October 1778, an act was passed by the Virginia legislature, entitled "An Act for establishing the County of Illinois and for the more effectual protection and defense thereof." This act authorized the governor with the advice of his council to appoint a county lieutenant or commander-in-chief who was given the power of appointing subordinate officers and provided that the religion and customs of the people should be respected and that all civil officers "to which the inhabitants have been accustomed, necessary for the preservation of the peace and administration of justice shall be chosen by a majority of the citizens in their respective districts to be convened for that purpose by the county lieutenant or commandant or his deputy." In this way a democratic form of government was inaugurated in Illinois.

Pursuant to the provisions of this Act, Governor Patrick Henry appointed Colonel John Todd of Kentucky as the first commandant of the County of Illinois. Fortunately for posterity, Col. Todd's record book has been saved from the destruction which has come to nearly all the early records of Illinois, and from its pages we are able to learn something of the progress of popular government under his administration. The first pages of this book exhibit the letter of appointment, dated Dec. 12, 1778 from the Governor to Col.

Todd which in addition to its formal parts contains many wise and statesmanlike suggestions as to the policy which should be pursued by the new government. This letter of instruction was probably regarded by its recipient as a warrant of authority of quite as much importance as the act of the Virginia Legislature on which it was based. For that reason, a brief review of the contents becomes necessary in order to fully explain the governmental measures adopted by the Virginia commandant. He is instructed to "take care to cultivate and conciliate the affections of the French and Indians," for the reason that, "The present crisis rendered favorable by their disposition may be improved to great purposes, but if, unhappily, it should be lost, a return of the same attachments to us may never happen." The letter then continues as follows: "Although great reliance is placed on your prudence in managing the people you are to reside among, yet considering you as unacquainted in some degree with their genius, usages, and manners, as well as the geography of the country, I recommend it to you to consult and advise with the most intelligent and upright persons who may fall in your way."

The new commandant is then warned that the military is subordinate to the civil branch of the government; that the property rights and titles of the natives must be respected; that friendly relations should be cultivated with the Spanish commander near Kaskaskia; and he is instructed "on all occasions to inculcate on the people the value of liberty, and the difference between the state of free citizens of this Commonwealth, and that of slavery, to which the Illinois was destined and that they are to have a free and equal representation, and an improved jurisprudence."

These few extracts from this remarkable letter, as well as its remaining contents show that the attention of the Virginia commandant was to be directed to the conciliation of the French and Indian inhabitants, the selection of competent subordinate officers, the estab-

lishment of a civil government, the promotion and development of republican institutions, the administration of justice, and the exertion of constant diligence for the welfare of the people.

The new governor did not reach his post of duty until May, 1779. His first effort was to establish a local militia organization which was accomplished by the issuance of commissions to subordinate officers in the three districts of Kaskaskia, Cahokia and Prairie du Rocher.

As the statute creating the County provided that all civil officers should be chosen by the people in each district, Governor Todd speedily called an election for that purpose which was the first popular election ever held in Illinois. His record book shows that judges and sheriffs were chosen in each of the three districts above named. These officers followed the statutes of Virginia in the discharge of their duties.

Commerce and local trade also received attention from the governor as appears by the issuance of licenses to merchants, in which provision was made for the observance and protection of the rights and property of individuals. Owing to the depreciation in value of the continental currency, the new government was greatly hampered in its financial measures. On June 11, 1779, the governor sent a message to the court at Kaskaskia in which he discussed the question and recommended a retirement of a portion of the money in circulation and a plan for the gradual redemption thereof. These recommendations were in marked contrast to the plan generally favored by financiers of that period of curing such evils by issuing more money. A scheme was also presented by him for obtaining a public loan by popular subscription to be secured by a valuable tract of land set apart for that purpose.

A proclamation was also issued for the purpose of quieting real estate titles and prescribing a method for establishing and registering such titles. This was deemed necessary not only for the protection of pri-

vate interests, but also to guard the public domain against adventurers and speculators who would doubtless flock to the territory and seek the acquisition of large tracts of land by questionable methods.

These measures indicate sound theories of government; and it is evident that during the period of Virginian control the people of Illinois had their first experience with republican institutions. The original record book kept by Governor Todd and his deputies is now in the possession of the Chicago Historical Society and its pages afford almost the only information obtainable as to the government of Illinois from 1778 to 1784.

The Virginia Cession.—The treaty of peace between the United States and Great Britain was concluded at Paris on September 3, 1783 and was ratified by Congress on January 14, 1784. For several years prior to that time there had been much discussion as to the acquisition by the Federal Government of the lands in the Ohio and Mississippi valleys claimed by Virginia and other States under ancient charters and under various treaties with the Indians. On January 2, 1781 an act was passed by the Virginia legislature proposing to cede to the United States all lands northwest of the Ohio River upon certain conditions. This proposition was under consideration by various congressional committees until September 13, 1783, on which date a committee report was adopted by Congress, accepting the original proposition with some slight modifications.

On December 20, 1783 a further act was passed by the Virginia legislature authorizing its delegates in Congress to convey to the United States all rights of that commonwealth to the territory northwest of the Ohio River. This act recites the previous steps taken in the matter substantially as above stated and sets forth the conditions upon which the conveyance is to be made, all of which are of only historical interest at the present time.[1] In conformity with these proceed-

[1] For full text of act, see Hurd's Statutes, page 16.

ings the deed of cession, dated March 1, 1784, and signed by Thomas Jefferson, Samuel Hardy, Arthur Lee and James Monroe, the Virginia delegates in Congress, was executed and accepted.[1]

The claims of New York to this territory were ceded on March 1, 1781, and other deeds of cession were made by Massachusetts on April 19, 1785, by Connecticut on September 13, 1786, by South Carolina on August 9, 1787, by North Carolina on February 25, 1790, and by Georgia on April 24, 1802. Of all these claims that of Virginia seems to have been the most substantial, not so much by virtue of her ancient charter as by right of conquest and occupation.

By these several cessions from seven different States the title of the United States to the territory of Illinois, as well as that of other States east of the Mississippi River, was perfected.

From 1784 to 1787.—Upon the acquisition by the United States of these public lands, it became necessary to provide a suitable form of government for the territory. This problem occupied the attention of Congress for three years and during that period the civil government of Illinois was neglected by both Virginia and the United States to such an extent that its affairs were subject to local regulation only. The courts which had been established by Virginia ceased to perform their functions and public officers did not discharge their duties. The urgent necessity of providing some form of government for the inhabitants of the territory was apparent and on March 1, 1784, a committee was appointed of which Thomas Jefferson was chairman, to prepare and submit a plan.

This committee made two reports, the second of which was adopted, but nothing was done toward carrying its recommendations into effect. In August,

[1] See Hurd's Statutes, p. 18.

1786, the inhabitants of Kaskaskia petitioned Congress for relief and requested that body to provide some means by which a better government could be formed. Congress continued to give this important matter desultory consideration until 1787 when new interest was aroused by the activity of certain creditors of the government, who conceived the idea of converting their indebtedness into land, of which the government then had an ample supply. These gentlemen formed an organization and insisted that a stable form of government must be provided for the Western territory, otherwise the grants of land which they proposed to accept in payment of their debts would be worthless. In this way an opportunity was afforded for the nation to discharge a large amount of indebtedness and at the same time to build up its Western frontier.

Congress now became active and displayed energetic interest in the matter. Apathy and delay ceased. A new committee was appointed on July 9, 1787, and on July 11, 1787, a new ordinance was reported to Congress, which was adopted on July 13, 1787. This was the famous ordinance of 1787, which marks the beginning of civil government in Illinois, and of which the effects have been probably more "distinct, marked and lasting" than those of any other single enactment.

Under the Ordinance of 1787.—This law provided a temporary form of government for a vast and partially unexplored territory sparsely inhabited by Indians, half-breeds, Frenchmen, pioneers and adventurers from the Eastern States and other parts of the world. It was the fundamental law which influenced and shaped the subsequent legislation of the Northwestern States. It embodied in its terms many of the principles which had been announced in the Declaration of Independence and in the constitutions of the older states and thus secured to the inhabitants and their posterity the social and political benefits which had been derived from the enlightened theories of the signers of the Declaration. Among

these benefits may be mentioned the right to freedom of opinion and worship, trial by jury, the writ of habeas corpus and proportionate representation. Other important provisions of the ordinance were those forbidding slavery in the territory and establishing the law of inheritance by which the property of an intestate descended equally to his children. These measures prevented the formation of a landed aristocracy and tended to secure a body of citizens upon a reasonable basis of equality in the ownership of land.

The form of government provided by this ordinance was not particularly liberal in the matter of allowing the people to exercise the right of local self government. The governor of the territory was appointed by Congress, and was vested with authority to fill all of the minor offices. He was required to reside in the district and to have a freehold estate therein, in one thousand acres of land, while in the exercise of his office. Three judges were also appointed, who with the governor were given power to prescribe the laws, subject to the approval of Congress until such time as the territory should have a population of 5,000 inhabitants. This population having been attained, the inhabitants were authorized to elect a general assembly, but the elective franchise could be exercised only by citizens who had a freehold in at least fifty acres of land; and a representative was required to be a citizen of the United States, a resident in the district from which he was elected and the owner in fee simple of at least two hundred acres of land in the district.[1]

These somewhat narrow provisions were modified by amendments in 1809, authorizing the people to elect the council which formerly had been appointed by the president and a member of Congress, previously chosen by the legislature and in 1811 the property qualification of voters was removed, and the right of suffrage was conferred upon those male citizens

[1]For full text of the ordinance see Hurd's Statutes pages 18-22.

who paid a tax and had resided in the territory for one year. The ordinance of 1787 with its amendments and certain acts supplemental thereto which will be mentioned presently was the organic law of Illinois until its admission as a state.

As a Part of Indiana.—On May 7, 1800, an act was passed by Congress dividing the Northwest Territory, and for the purpose of temporary government creating a new territory to be called Indiana and consisting of all that part of the Northwest Territory lying west of a "line beginning on the Ohio, opposite the mouth of the Kentucky River, and running thence to Fort Recovery, and thence north until it shall intersect the territorial line between the United States and Canada." This act provided substantially that all the provisions of the original ordinance of 1787 should be applicable to the new territory.[1]

The Territory of Illinois.—On February 3, 1809, an act was passed dividing Indiana Territory into two separate governments and containing provisions as to the government of the new territory similar to those of the act of May 7, 1800. By this act was restored the name of Illinois which had been abandoned in official matters since the organization of the Northwest Territory. The boundaries of the territory were substantially the same as those of the present State and the seat of government was established at Kaskaskia.

The government of the new territory was organized by the appointment of Ninian Edwards as governor and Nathaniel Pope as secretary. Three territorial judges were also appointed. For the first three years the attention of the executive officers of the territory was directed mainly toward the suppression of Indian outbreaks and the civil powers of the government were exercised solely by these appointive officers.

[1] For text of the act, see Hurd's Statutes, p. 23.

In 1812 an election was held at which the question of establishing a legislative branch of the government was submitted, and it was decided affirmatively by an almost unanimous vote. At this time there were only about three hundred voters in the territory having the required qualifications of freeholders specified by the ordinance of 1787. The results of this election were reported to Congress and on May 2, 1812, an act was passed by which Illinois was made a territory of the second grade, and the right of suffrage was extended to all male inhabitants who were twenty-one years of age and who paid taxes and who had resided in the territory for one year. An election was then held in each of the five counties of the territory, viz: St. Clair, Randolph, Madison, Gallatin and Johnson, to choose five members of the council and seven representatives in the general assembly. This election was held in October, 1812, and the list of the successful candidates shows that the first legislative body ever chosen in Illinois contained no lawyers.

The general assembly met at Kaskaskia on November 25, 1812, and after organizing both branches by the election of the necessary officers proceeded to pass an omnibus bill re-enacting all the laws passed by the Indiana legislature and by the territorial governor and judges of Illinois, which were then in force. Revenue laws were also passed providing for taxes upon real and personal property and for licenses to merchants requiring them to pay a stated fee for the privilege of being allowed to transact business. At subsequent sessions of the legislature, laws were passed establishing courts, dividing the territory into judicial circuits, incorporating the Bank of Illinois and other banks, establishing the counties of Franklin, Union, Washington and other counties, providing bounties for killing Indians and upon other subjects.

Admission as a State.—Neither the constitution of the United States nor the ordinance of 1787 prescribes the method of procedure to be followed in

organizing and admitting new states to the union. Consequently there has been little uniformity in the rules and limitations imposed, each application having been considered on its own merits. In fact several of the States have been admitted without the passage of any enabling act. The territorial legislature at its session held in January, 1818, directed its delegate in Congress to present a petition requesting Congress to enact a law enabling the people of Illinois to form a State government. A bill for that purpose was introduced on April 7, 1818, which after various amendments became a law on April 18, 1818.[1]

One of the important amendments was that which fixed the northern boundary line as at present. The bill as originally drawn had fixed the northern boundary line of the new State at the parallel of latitude of 41° 39″ north, being at a point considerably south of the present boundary. Mr. Nathaniel Pope the Illinois delegate in Congress moved to amend the paragraph in question in such a way as to fix the boundary at north latitude 42° 30″ thus giving the State of Illinois jurisdiction over the southwestern shore of Lake Michigan. In support of this amendment Mr. Pope explained that if the northern boundary was established as proposed by the bill, it would have the tendency of confining the commerce of the future State to the Mississippi and Ohio Rivers, thus bringing the State into such close relations with the south that it might become a sympathizer with any attempted secession of the southern States; while, on the other hand, if the boundary was fixed as proposed by his amendment the effect would be to unite Illinois with the States of Indiana, Ohio, New York and Pennsylvania by a strong bond of common interest by the opening of a canal connecting Lake Michigan with the Mississippi River. These arguments prevailed, and Illinois thereby gained a strip of

[1] For full text of the Enabling Act, see Hurd's Statutes p. 25.

territory which has been of vast importance in her growth and development.

Another amendment of vital importance related to the question of population. Under the ordinance of 1787, a population of 60,000 free inhabitants was requisite for the admission of a State, but it was also provided in that document that "so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants than sixty thousand." It was well known that Illinois did not have 60,000 inhabitants at that time, and therefore an amendment was offered and adopted reducing the requisite population to 40,000. Even with this substantial reduction, it is improbable that an honest census would have shown a sufficient population. Fearing such a result, it is said that the officer in charge instructed his deputies to count every body passing along the highway, regardless of whether they were actual residents or mere travelers or explorers. In this way many persons were counted several times, as they met different census takers while journeying through the territory. As a result of these methods it was found that Illinois had the requisite population of 40,000, but according to the subsequent revision of the census, the number of actual inhabitants was found to be 34,620, the smallest population of any of the States at the time of admission.[1]

Upon the completion of this census an election was held on July 6, 7 and 8, 1818 for the selection of delegates to a constitutional convention, which assembled at Kaskaskia on August 3, 1818. This convention was in session until August 26, 1818, but no official record of their daily proceedings has been preserved. The first constitution of the State was adopted by this convention, and on the day of its adjournment an ordinance was passed accepting the conditions imposed by the Enabling Act.[2]

[1] See Senate Doc. 49 Congressional Report 15.
[2] See Hurd's Statutes, page 27.

This constitution was transmitted to Congress for its approval and after some debate principally upon the wording of the anti-slavery provision, was approved by a vote of 117 yeas to 34 nays. The passage of this resolution marks the beginning of the constitutional history of Illinois as a State.

CHAPTER III.

THE CONSTITUTION OF 1818.

General Outline.—All students of this document have recognized its similarity to the constitutions of Kentucky, Indiana and Ohio which were closely followed by the Illinois constitutional convention. With the exception of some provisions relating to slavery, the bill of rights is almost identical in all these instruments, and many paragraphs in the Illinois constitution although differently arranged and numbered are exact copies from the other constitutions. It contained no provision for its submission to popular vote for ratification, and required a popular election in the case of only a limited number of executive officers, viz: governor, lieutenant-governor, sheriff, coroner and county commissioners. Other executive officers such as the secretary of state, treasurer, and auditor of public accounts were to be appointed by the governor or the general assembly. The executive power of the state was vested in the *governor* solely.

The legislative power was vested in a general assembly consisting of a senate and house of representatives, the members of both to be chosen by the people. No veto power was granted to the executive, but the governor and the judges of the supreme court were constituted a council to revise all bills passed by the general assembly. In case the council disapproved of a bill, it was returned to the house where it originated with a statement of the objections to it. A reconsideration of the bill was then required and the approval of a majority of all the members of both houses was necessary for its passage.

The judicial power was vested in a supreme court and such inferior courts as should be established. The

supreme court was composed of a chief justice and three associates all of whom were to be chosen by joint ballot of both branches of the general assembly. The term of office of those first chosen was to expire at the end of the first session of the general assembly to be held after January 1, 1824. After that time they were to hold office during good behavior. The jurisdiction of the court was left to the determination of the legislature.[1]

Local Government under the Constitution of 1818.—This constitution made no mention whatever of cities or other municipalities; but recognizing the county as the unit for local government, it provided that in each county there should be elected three county commissioners to transact all county business, whose powers and duties should be regulated and defined by law. Another paragraph specified that a competent number of justices of the peace should be appointed in each county in such manner as the general assembly might direct.

These are the only provisions of the constitution of 1818 affecting the question of local government, but it is important to note them, because they formed the basis for reproducing in Illinois the Virginia system, by which the county was the principal agency in the regulation of local affairs. The Board of County Commissioners which was given the entire management of county affairs, corresponded with the Virginia County Court, except in two particulars—they were elected by the people and exercised no judicial functions.

Without going into the details of local government under the constitution of 1818, it may be stated broadly that the Southern system of local government was in the ascendency and there were but few indications that the local institutions of New England and the

[1]For full text of the Constitution of 1818, see Hurd's Statutes pages 28-37.

Middle States would ever be the choice of the greater portion of the inhabitants.

"But even at this time there had been planted in Illinois and throughout the entire West a germ, capable under right conditions, of developing a highly organized township system." The above quotation refers to one of the propositions of the enabling act accepted by the people of the State whereby one section in each township was set apart for school purposes. This was followed by the enactment of laws needed for the proper administration of school affairs by which the township was made a body corporate for school purposes and provision was made for the election of school officers by the people. In this way local government under the township system, commenced in Illinois and in a short time the township lines formed the boundaries of districts created for other governmental purposes, such as elections, constructing roads and caring for the poor, and "as New England township life grew up around the church, so western localism finds its nucleus in the school system."

Still another agency affecting the character of local government in Illinois was the slavery question. Illinois, having been admitted to the Union as a free State, was no longer attractive territory to immigrants from the South, and with the admission of Missouri as a slave State under the Compromise Bill of 1820, this class of settlers ceased locating in Illinois, and passed on to Missouri where there were no restrictions upon the owning of slaves. In the meantime the northern counties began to be filled with people from New England and the Middle States, who had been accustomed to the township system as the basis of local institutions. In this way a rivalry arose between the northern and southern ideas which caused considerable strife and bitterness of feeling with reference to legislative acts and local matters, but all of the time the northern idea was becoming more and more dominant.

Defects in the Constitution of 1818.—As already

indicated, but few elective offices were created by the constitution, thus evidencing an unwillingness to bestow extensive powers upon the people. Possibly this policy was justifiable at the time, but a serious error was committed when the appointing power was vested in the legislature by the provision that "an auditor of public accounts, an attorney general and such other officers of the State as may be necessary may be appointed by the general assembly." So long as governor and general assembly were in harmony, the former appointed all officers, except those specifically named, including state's attorneys, recorders and such other officers as the laws required, but when a difference of opinion arose between the executive and legislative branches of the government, the latter would deprive the former of his appointing power, thus producing uncertainty as to tenure in administrative offices and giving rise to political intrigues and combinations.

Another very objectionable feature in the constitution was the absences of limitations upon the action of the legislature and the almost unrestricted grant of power to that branch of the government. This resulted in much ill considered legislation which proved very expensive to the citizens, such as the measures relating to the charter of the state bank, staying executions, the selling of school and seminary lands, premature schemes for internal improvements and many other acts very damaging to the finances and reputation of the State.

Judicial Decisions.—During the period while the Constitution of 1818 was in force the volume of litigation was not large. The first term of the Supreme Court was held in December, 1819, at Kaskaskia, and one volume of the reports is sufficient to hold all of the decisions from that time up to and including the December Term, 1832, held at Vandalia, and nine volumes only are required for all the cases adjudi-

cated up to the date when the constitution of 1848 went into effect.

Most of the litigation of that period was of a petty character and few of the civil cases involved amounts exceeding the present jurisdiction of a justice of the peace. In some cases, however, grave constitutional questions were adjudicated and important precedents were established which have influenced and controlled judicial decisions down to the present time. For this reason attention will be given to some of the more important of the early decisions of the court upon constitutional and public questions.

The court considered the powers of the departments of the government under the Constitution and their relations to each other, holding that the Constitution is a limitation upon the powers of the legislative department of the government, but that it is also to be regarded as a grant of powers to the other departments, and that neither the executive nor the judiciary can exercise any authority or power except such as is clearly granted by the Constitution. The particular question under consideration related to the power of the governor to remove a Secretary of State appointed by one of his predecessors. The court held upon this question that under the Constitution of Illinois the appointing power did not have the power of removal from office and that the Secretary of State having been once regularly appointed could not be removed at the will and pleasure of the governor, the power of appointment being suspended until a vacancy occurred; that when the Constitution creates an office and leaves the tenure, undefined and unlimited, the officer holds during good behavior and until the legislature by law limits the tenure to a term of years or authorizes an officer of the government to remove the officer in question at will or for good cause.[1]

Similar questions relating to the power of the legislature under the Constitution were considered in other

[1] Field v. People, 2 Scam. 79.

cases, and a certain special act was declared unconstitutional upon the ground that the legislature was attempting to exercise judicial powers in ascertaining the indebtedness between two parties and directing the application of the property of one to the payment of the other.[1]

It was also held that the legislature of a State could pass any law not prohibited by its own constitution and that of the United States, and beyond the limitations and restrictions contained in those Constitutions it is as absoluely omnipotent and uncontrollable as Parliament, (*Mason* v. *Watt,* 4 Scam. 127); and that courts ought not to declare a law unconstitutional unless its repugnance to the Constitution is direct and clear, and that no statute should be allowed a retrospective operation unless the will of the legislature to that effect is declared in terms so plain and positive as to admit of no doubt.[2]

Another decision of far reaching importance in the subsequent litigation of the State is that of *Bradley* v. *Case,* 3 Scam. 585, in which was determined the power of the legislature to authorize a sale of the 16th section of lands in the State of Illinois which had been set apart by the Enabling Act and the Ordinance of the Constitutional Convention for the support of schools. In this case it was held that the Enabling Act and the Ordinance constitute a valid and binding contract between the general government and the State, and that neither of the high contracting parties can change, modify or alter the stipulations and conditions of the same without the consent of the other. By this compact the State of Illinois is vested with the legal title to the land contained in Section 16 in each township or the lands selected in lieu thereof; the State is a purchaser for a valuable consideration and does not hold the lands under a charitable trust; and it rests

[1] Lane v. Dorman, 3 Scam. 237. Edwards v. Pope, 3 Scam. 465.
[2] Bruce v. Schuyler, 4 Gil. 221.

with the State to determine in what manner the lands can be best applied to the objects and purposes for which they were purchased. The government of the United States is not and never was a donor for charitable purposes.

In *Sawyer* v. *City of Alton,* 3 Scam. 127, it was again held by the court that the Constitution of Illinois is not to be regarded as a grant of power, but rather as a restriction upon the powers of the legislature, and it is competent for the legislature to exercise all powers not forbidden by that instrument, nor restricted by the general government nor prohibited by the Constitution of the United States.[1]

The legislature was denied the power of repealing a law by joint resolution of the two houses without such resolution having undergone the three several readings prescribed by the Constitution, and without its having been submitted to and having received the approval of the Council of Revision.[2]

The elective franchise was bestowed by statute upon every white male inhabitant of the age of 21 years who had resided in the State six months immediately preceding any general election, and the court held that each State has the undoubted right to prescribe the qualifications of its voters; that the act of naturalization does not confer on the individual naturalized the right to exercise the elective franchise; that the qualification which the voter is required to possess in a congressional election depends entirely upon the power of the State in which the elective franchise is exercised, being purely dependent upon the municipal regulations of the State, and that unless the legislature shall make citizenship an undisputable qualification to the enjoyment of the elective franchise, the Supreme Court cannot add such a prerequisite by construction.[3]

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[1] See also People v. Reynolds, 5 Gil. 1.
[2] People v. Campbell, 3 Gil. 466.
[3] Spragins v. Houghton, 2 Scam. 377.

Under the Constitution of 1818 the legislature had power to grant irrevocable exemption from taxation to a corporation as was done by the provision in the charter of the State Bank of Illinois, exempting its property from taxation which was held to be a contract binding on the legislature. The doctrine has been sustained by the Supreme Court in the case of similar exemptions granted to other corporations.[1]

The Constitution of 1818 provided that the judicial power of the State should be vested in one Supreme Court and such inferior courts as the General Assembly should from time to time ordain and establish. In an early decision the Supreme Court defined the term "inferior court" as used in the Constitution and stated the distinction between superior and inferior courts. It held that the circuit courts were not inferior courts in the common law sense of that term, but were superior courts of general jurisdiction. They exercise within their respective counties all the powers and jurisdiction of the courts of King's Bench and Common Pleas in England; and although these courts are inferior to the supreme courts because appeals and writs of error lie from their decisions to the Supreme Court, yet this circumstance does not constitute them inferior courts in the common law sense of the term. Courts not of record are denominated inferior courts because if their proceedings are questioned in the superior courts, they must specially show that they kept within their jurisdiction.[2]

The act of the legislature establishing the state bank was in violation of the Constitution of the U. S. in so far as it authorized the bank to issue a paper currency to circulate as money in the respective states. This was held to be emitting "bills of credit," a power which is forbidden to the States by the Constitution of

[1] State Bank v. People, 4 Scam. 303.
[2] Beaubien v. Binckerhoff, 2 Scam. 274.

the United States, and a note given in consideration of such bills was held void and uncollectible.[1]

In an important case which was appealed to the Supreme Court of the United States it was decided that when a patent has been issued for a part of the public lands, a State has no power to declare any title less than a patent valid against a claim of the United States to the land or against a title held under a patent granted by the United States. Accordingly an act of the State legislature giving a right to the holder of possession of such lands in an action of ejectment does not apply to cases where the defendant holds a paramount title by patent.[2]

That a statute of limitations does not run against the State unless it is expressly named in the statute was decided in two early cases.[3]

The present doctrine relating to repeal by implication was announced by the court holding that this doctrine is not favored by the law, and is never resorted to except where the repugnance or opposition is too clear and plain to be reconciled, the rule of law being that all laws in *pari materia* are to be construed together so that no clause, sentence or word of any law should be superfluous or insignificant.[4]

In a case arising under the Constitution of 1818 but decided after the Constitution of 1848 went into effect, the legal status of the county was decided. The county was declared to be a public corporation subject completely to the control of the legislature and the acts of the executive pursuant to the provisions of the Constitution. For that reason it was held proper for the

[1] Linn v. State Bank of Illinois, 1 Scam. 87. Mitchell v. State Bank of Illinois, 1 Scam. 526.
[2] McConnell v. Wilcox, 1 Scam. 344.
[3] Madison County v. Bartlett, 1 Scam. 70. State Bank v. Brown, 1 Scam. 106.
[4] Bruce v. Schuyler, 4 Gil. 221.

legislature to release a penalty in a popular action brought for the benefit of a county.[1]

The jurisdiction of the Supreme Court was defined in a number of cases, in all of which the conclusions reached have been sustained by subsequent decisions except in cases where the Constitutional provision has been changed. The Supreme Court had no original jurisdiction to authorize the allowance of writs of habeas corpus. It had no authority except as an appellate court in the review of legal proceedings to allow writs of habeas corpus, but a party could apply for such writ to one of the judges of the Supreme Court or to one of the judges of the Circuit Court and obtain the writ. (*People* v. *Taylor,* 1 Scam. 202). A writ of error was declared to be a writ of right which could not be denied except in capital cases and this writ was sustained in a case where the judgment was for less than twenty dollars.[2]

The doctrine of error *coram vobis* was announced to the effect that where an error in fact is committed in legal proceedings, the court in which the error is committed may correct it by a writ of error *coram vobis* or on motion, and the jurisdiction of the Supreme Court in matters of error was confined to cases wherein the rules of law or principles of equity appear to have been erroneously adjudged and determined, although the court intimates that in a case where great injustice had been done and no other court could give relief that court would from necessity entertain jurisdiction of a question involving errors in fact.[3]

The Supreme Court declined to take jurisdiction of an agreed case submitted to its consideration upon a question of law, no record of the Circuit Court being filed, but the question being submitted solely by agreement of counsel.[4]

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[1] Holliday v. The People, 5 Gil. 214.
[2] Brown v. Green, 1 Scam. 42.
[3] Beaubien v. Hamilton, 3 Scam. 213.
[4] Plumleigh v. White, 4 Gil. 388.

The provision in the Constitution of 1818 forbidding slavery was somewhat in the nature of a compromise upon that troublesome question. While slavery and involuntary servitude were forbidden except as a punishment for crimes, yet a loop hole for controversy upon the subject was left by Section 1 of Article 6, which apparently permitted a person to be held under an indenture made under the conditions therein mentioned. As a result of this provision, as well as the first section of Article 8, which protected citizens in their property, reputation and pursuit of happiness, a number of controversies arose requiring adjudication by the Supreme Court. These cases are interesting now only from an historical standpoint and therefore only a brief allusion to them will be made. All persons in this State were deemed to be free, but under Section 149 of the Criminal Code, the institution of slavery in some of the United States was recognized, and it was provided that none should harbor or conceal within the State a slave who owes service out of it, and to that extent Illinois had expressly recognized and enforced the law of comity which every State or government may or may not do, as it chooses. By the law of nations the citizens of one government have the right of passage through the territory of another peaceably, for business or pleasure, without the latter acquiring any right over their persons or property. This international right the courts of Illinois could not deny to citizens of other States without a violation of duty. Much less could these courts disregard the constitutional rights of a citizen of one of the States to all the rights, immunities and privileges of the several States.

As a result it was held that a slave did not by the Constitution of Illinois become free by coming into the State for the mere purpose of passage through it, and such coming into the State is not an introduction of slavery therein.[1]

[1] Willard v. The People, 4 Scam. 460.

A colored man could maintain an action of assumpsit for services rendered and thereby try the question of his right to freedom. The descendants of slaves of the old French settlers born since the adoption of the Ordinance of 1787 and before or since the Constitution of Illinois was adopted could not be held in slavery in this State.[1]

In the case of *Phoebe* v. *Jay,* in the first volume of reports it was held that the act of the Indiana territorial legislature of September, 1807, continued by the territory of Illinois respecting the introduction of negroes and mulattoes into the territory was void as being repugnant to the 6th article of the ordinances of 1787, but that indentures executed under that law were made valid by the third section of the 6th article of the Constitution of 1818.

In this particular case a contract of service entered into in pursuance of the act of September, 1807, was not terminated by the death of the master, but passed to his legatees, executors or administrators. The administrator had no power to compel the servant to attend to the ordinary business of the administrator, but the latter had the custody of the servant for safe keeping until his time of service could be sold.[2]

The Constitution of 1818 guaranteed a speedy public trial by an impartial jury. The closing of the doors of a court room to prevent confusion arising from noise and disturbance when ingress and egress are not prevented, or for a temporary purpose where existing circumstances eminently require it to be done, but not for the purpose of excluding any one connected with the trial, does not render the trial private.[3]

The Constitution having declared that no person shall for the same offense be twice put in jeopardy of

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[1] Jarrott v. Jarrott, 2 Gil. 1. Kinney v. Cook, 3 Scam. 232.
[2] Phoebe v. Jay, 1 Ill. 268.
[3] Stone v. People, 2 Scam. 326.

life or limb, it was held that the State cannot prosecute a writ of error in a criminal case.[1]

The legislature had the power by its own act to release a penalty accruing to a county after verdict but before judgment. Such an act was not unconstitutional, it being neither an *ex post facto* law nor a law impairing the obligation of contracts. Counties are public corporations and can be changed, modified, enlarged, restrained or repealed to suit the ever varying exigencies of the State, being completely under legislative control.[2]

The legislature had an undoubted right to pass an act extending the time of payment to a collector of taxes, and the action thus taken was binding on the State.[3]

Under the provision of the Ordinance of July 13, 1787, ceding the Northwestern territory to the United States the inhabitants of that territory became entitled to the benefit of judicial proceedings according to the course of the common law as it was then understood and expounded by the courts of this country.[4]

The foregoing citations from some of the important decisions of the court rendered while the Constitution of 1818 was in force serve to show the trend of judicial action at that early date. They also indicate that the special legislation which was permissible under the Constitution of 1818 was the basis of much of the litigation of that period.

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[1] People v. Royal, 1 Scam. 557.
[2] Coles v. Madison County, 1 Ill. 154. Rankin v. Beaird, 1 Ill. 163.
[3] Davis v. People, 1 Gil. 409.
[4] Penny v. Little, 3 Scam. 301.

CHAPTER IV.

THE CONSTITUTION OF 1848.

The Constitution of 1818 from the outset was unsatisfactory to almost all classes of citizens. Accordingly an attempt was made to call a constitutional convention in 1824, but the proposition failed on account of the slavery issue, involving the possibility that Illinois might become a slave state.

A similar proposition was submitted to the people in 1842 and was defeated by only a small majority. The attempt was made again in 1846 and the proposition was then carried by a vote of more than two to one. The constitutional convention consisting of 162 members assembled at Springfield on June 7, 1847, and remained in session until August 31, 1847, at which time its work was completed.

Important Changes in the Organic Law.—The constitutional convention of 1847 made a radical and thorough revision of the organic law of the State. The prevailing issues between the two political parties at that period related to the definition and limitation of governmental powers and the regulation of the elective franchise; and these topics were the subject of heated discussions in the convention, in which offensive personal remarks were exchanged in many instances, and in one notable case the feelings of the debaters were so aroused that they proposed to settle their differences by a personal combat. This sanguinary conclusion was prevented by the intervention of the police.[1]

Under the Constitution of 1848 all state officers including judges of the supreme court were made elective. The power of the legislature was restricted in

[1] This refers to the debate between Messrs. Campbell and Pratt.

numerous particulars. Divorces could be granted for such causes only as might be specified by the general law. Lotteries were forbidden. The revival of the charter of the state bank was prohibited. The State was prohibited from contracting any indebtedness in excess of fifty thousand dollars. Extra compensation could not be granted to any public officer or agent for any public service, after the service had been rendered, or to any contractor after the execution of the contract. The State was forbidden to give its credit in aid of any "individual association or corporation." The council of revision was abolished and a qualified veto power was given to the governor. The exercise of the right of suffrage was limited to white male citizens, thereby disfranchising unnaturalized foreigners. For the purpose of preventing extravagances in state expenses, the Constitution of 1848 fixed the salaries of all state officers including supreme and circuit court judges and members of the general assembly at very low figures. The salary of the governor was fixed at $1,500, supreme court judges $1,200, circuit court judges $1,000, state auditor $1,000, treasurer and secretary of state $800 each. Members of the general assembly were allowed $2 per day for the first forty-two days attendance and $1 per day for each day's attendance thereafter, thus practically limiting the length of the session to forty-two days.

Particular attention should be given to Article XIV which prohibited free persons of color from immigrating to and settling in this State and prevented owners of slaves from bringing them into this State for the purpose of setting them free; and to Article XV which provided for a two mill tax to be applied in payment of state indebtedness, other than school and canal indebtedness. The latter was especially important as indicating an intention to pay the enormous debt which had been created in connection with internal improvements and not to repudiate the same as some advo-

cated. Both of these articles were adopted by substantial majorities.

Another important feature of the Constitution of 1848 was the provision which directed the general assembly to provide by a general law for township organization under which any county might organize whenever a majority of the voters of such county at any general election should so determine, and further, that whenever any county should adopt a township organization, the power of the County Court over the fiscal affairs of the county should cease. In this way the controversy between the two rival theories of local government was settled and the sectional feeling upon the subject was allayed. The foregoing were the more important changes in the organic law proposed by the constitution. The general framework of the government remained the same as under the Constitution of 1818, although many new provisions were added which had been rendered necessary on account of the changed conditions existing in the State due to its great increase in wealth and population.

The constitution was submitted to a vote of the people at an election held on March 6, 1848, and was adopted by a vote of 59,887 to 15,859. It went into effect on April 1, 1848.

The Constitutional Convention of 1862.—On January 31, 1861, an act was passed by the legislature providing for the calling of a convention to amend the Constitution. The election of delegates was held in November of that year, at a time when the people were absorbed with matters pertaining to the civil war so that but little interest was taken in the selection of the delegates.

The convention met at Springfield on January 17, 1862. Its proceedings indicate that the members of the convention must have had strange views as to the nature of their duties. They refused to take the oath prescribed by the law under which the convention had been called, dictated to the governor and other state

officers as to the performance of their official duties, assumed the general supervision of the Illinois troops in the field and asserted generally their supremacy over the Constitution. This convention even attempted to ratify a proposed amendment to the Federal constitution, which congress had submitted to the state legislature. These and other legislative antics finally led to a breach between the governor and the convention, the former asserting that "he did not acknowledge the right of the convention to instruct him in the performance of his duty."

A draft of a proposed new constitution was adopted by this convention on March 22, 1862, and was submitted to a vote of the people on June 17, 1862 and was then rejected by a large majority.

Defects of the Constitution of 1848.—The constitution of 1848 was adopted for the avowed purpose of correcting the mistakes which had been made under the constitution of 1818, the most prominent of which are generally ascribed to the absence of provisions restricting the power of the legislature. As a result of the system of internal improvements which had been adopted under the first constitution an enormous state debt had been imposed upon the people. This burden of a debt and the evils attendant upon it seriously hindered the growth and development of the State, checked the commercial progress of its citizens, and depreciated property values.

For these reasons, it was natural that the framers of the constitution of 1848 had in view the economical administration of the government, the liquidation of the state debt, the prevention of further abuses of the public credit and the curtailment of the legislative power, as the chief objects to be attained under the new constitution. Notwithstanding the apparent evil effects of an unrestrained exercise of the legislative power under the former Constitution, one of the most serious defects of the new organic law was due to the

failure to impose specific restrictions upon the law making branch of the government.

Something was accomplished in this direction by practically limiting the length of the legislative session to forty-two days, by prohibiting special legislation on the subject of divorces, by forbidding extra compensation to public officers, and by requiring a vote of the people to ratify the creation of a state bank.

The Constitution also provided that the credit of the State should not be given in aid of any individual, association or corporation and prohibited the creation of corporations by special act, *except* in those cases "where in the judgment of the general assembly, the objects of the corporation cannot be attained under general law." A similarly loose provision is found in the requirement that "every bill shall be read on three different days in each house, *unless,* in case of urgency, three-fourths of the house where such bill is so depending shall deem it expedient to dispense with this rule." Even a hasty review of the legislation of that period shows that exceptional cases under the first quoted section and cases of an urgent character under the latter were very numerous.

The public laws passed by the twenty-fifth general assembly are printed in a small volume containing about 200 pages while the private laws enacted by that body are contained in three volumes having an aggregate of 2,500 pages. Notwithstanding the constitutional prohibition of special legislation concerning corporations, a large percentage of these private laws relate to that subject.

The twenty-sixth general assembly which was the last under the constitution of 1848, convened on January 4, 1869. At that time a call for a convention to amend the Constitution had been issued and consequently the promoters of special legislation were particularly active. The record of the preceding assembly was eclipsed by the passage of 1700 private acts filling four large volumes. These special acts included

a great variety of subjects such as the incorporation of private manufacturing companies, water power companies, hotels, banking establishments, land companies and benevolent loan associations. Under such circumstances public necessity certainly demanded greater restrictions upon the legislative power than those contained in the Constitution of 1848.

Attention has already been called to the meagre salaries allowed to state officers by the constitution of 1848. As a measure of economy this policy was a conspicuous failure and led to evasions reflecting little credit upon the public officers of that time. The governor's salary of $1,500 was augmented by an annual appropriation of $4,500 "for fuel and lights for the executive mansion, to defray the expenses of caring for the same and keeping the grounds attached thereto in repair." The constitution provided that members of the general assembly should receive as compensation for their services "the sum of $2 per day for the first forty-two days' attendance and $1 per day for each day's attendance thereafter and ten cents for each necessary mail's travel" and "*no more,*" but this restriction did not prevent the members of the 26th general assembly from receiving a *per diem* of seven dollars for the whole seventy-four days of the session or from voting themselves an allowance of $300 for extra expenses. The scandalous extent to which the provisions of the constitution were evaded is shown by the fact that the legislative and executive expenses of the government increased from the sum of $225,121 for the years 1858-1860 to the sum of $840,360 for the years 1868-1870.

It thus seems apparent that the Constitution of 1848 was no longer an effective instrument: that the limitations which it imposed upon the different branches of the government had fallen into disuse; that legislation under it had become extravagant and improvident and that the necessity for a change was urgent.

Judicial Decisions.—The Constitution of 1848 was

the fundamental law of the State for practically twenty-two years. During that period the volume of litigation in the State steadily increased; and the decisions of the Supreme Court are contained in volumes 10 to 54, although troublesome questions arising under this constitution and the special legislation enacted under it continued to occupy the attention of the court for some years after it was superseded by the Constitution of 1870. It will be possible to refer to only a few of the more important of these decisions without exceeding the limits of a work of this kind.

An application being filed for an alternative writ of *mandamus* to be directed to the Governor, commanding him to issue certain interest bonds which the relator claimed under an act to fund the arrears of interest on the public debt, the distinct question was presented whether the court would assume to itself jurisdiction to control the executive department of the government. This delicate and fundamentally important question was carefully considered by the court and in discussing it the court said:

"Neither of the three great departments into which our government is by the constitution, divided, is subordinate to, or may exercise any control over, another, except as is provided in the constitution. This normal condition is that of equality each acting within its own sphere, independent of either of the others, so long as its action does not exceed the powers confided to it, unless particular exceptions are made to this general rule by the constitution itself. The harmonious working of these several departments, so as to accomplish one united and complete government, requires, as the constitution contemplates, that each department should, to a certain extent, control or restrain the others. For instance, the legislative department makes the law by which both the other departments are controlled and bound. The executive is authorized to exercise a control over both the others in certain cases, which is sometimes absolute and sometimes qualified. He has a qualified veto power upon legislative action, and has the absolute right to convene the legislature when he

chooses, and, in a certain event, may adjourn their sessions; and should the legislature pass a law, in violation of the constitution, to borrow money, and require him to issue bonds therefor, he might refuse to issue the bonds or to execute the law. He may practically annul the judgments of the judiciary, in certain cases, by the exercise of the pardoning power. To the judiciary is confided the power and the duty of interpreting the laws and the constitution whenever they are judicially presented for consideration. Hence it becomes our duty to determine what is the meaning of the laws passed by the legislature, and, also, whether those laws are such as the legislature was authorized by the constitution to pass. So, also, of the acts of the executive; we are bound to determine whether such acts are authorized by the laws and the constitution, whenever they are brought before us judicially, but not otherwise. And hence the judicial department of the government exercises a certain controlling, or rather restraining, power, over both the other departments of the government. Notwithstanding all this, when carefully considered, it will be seen that each department, within its proper constitutional sphere, acts independently of both the others, and restraint is only placed upon it when such sphere is actually transcended, or express authority is given by the constitution, for restraint or control, by another department. As from necessity and the very nature of all government, there must be an ultimatum somewhere, whose duty it is to determine whether such sphere has been passed or not; that duty, in most cases, falls on the judicial department, from the fact that in this department is reposed the responsibility of enforcing or giving effect to the acts of the other departments. But it is only when thus called upon, in some form known to the law, to give effect to such acts of the other departments, that the judiciary can determine whether such acts were done in the exercise of a constitutional power. In no other way, nor in any other case, can this department construe the constitution for, or exercise any control over, any other department. Where final action upon any subject is confided to either of the other departments, there the responsibility must rest,

of conforming such action to the law and the constitution.''[1]

The ancient office of coroner was neglected by the framers of the Constitution of 1848 who omitted to create that office in express terms and therefore it was contended that there had been no such officer since the adoption of the new constitution. The court held that the argument was specious, but unsound. The first section of the schedule of the constitution provided ''That all laws in force at the adoption of the constitution not inconsistent herewith shall continue and be as valid as if this constitution had not been adopted.'' It also expressly referred to the office of coroner in the 14th section of the schedule. By reason of these provisions the court held that it was the affirmative will and positive intent of the convention in framing the Constitution and of the people in adopting it that the office of coroner should continue and exist, and that all of the coroners then in office under the Constitution of 1818 should continue after the adoption of the new Constitution.[2]

Municipal corporations are created solely for the public good and to that end the corporate authorities will be held to a strict exercise of their franchises. They cannot confer pecuniary benefits or grant monopolies to any portion of their communities or to individual members thereof, but must exercise their powers for purely legitimate purposes.[3]

An instance of the special legislation prevalent under the Constitution of 1848 was before the court in construing an act authorizing a certain administrator to sell land to pay debts. The act was declared unconstitutional because it did not provide for any judicial ascertainment that debts existed. The legislature has no power to assume that debts are due and payable and on that assumption to authorize an administrator

[1] People v. Bissell, 19 Ill. 231.
[2] Wood v. Blanchard, 19 Ill. 37.
[3] City of Chicago v. Rumpff, 45 Ill. 91.

to sell land belonging to the heirs and apply the proceeds to the payment of debts of the estate, without any judicial inquiry as to the existence of such debts before paying them. The power to determine the existence of debts is judicial not legislative.[1]

A case arose under a bill to incorporate the Wabash Railway Company, alleged to have been passed at the January session 1863, involving numerous questions arising under Sections 12 and 13 of Article 2 of the Constitution, the most of which relate principally to legislative irregularities in connection with the passage of the bill. The case is too long to permit the insertion here of even an outline of the matters discussed by the court, but is valuable as a precedent upon the question as to whether or not constitutional requirements have been fulfilled in the passage of a bill, and has been cited extensively since the adoption of the Constitution of 1870.[2]

Some similar questions were involved in a case arising under the Constitution of 1848, but decided in 1873. This was a suit in equity to enjoin the collection of a tax levied for the payment of interest upon certain bonds issued by the Town of Ottawa in aid of a railway, the principal contention on the part of the complainant being that the act of the General Assembly under which the bonds were issued was not enacted in conformity with the requirements of the Constitution. A bill for the act was passed by the House of Representatives, but in the Senate was not read on three different days and was not passed by a vote of the ayes and noes as required by the Constitution of 1848. Under these circumstances it was held that the bill never became a law and was a nullity, although it was reported back to the House as having passed the Senate and was enrolled and approved by the Governor. The bonds of the municipal corporation having been issued without any power or authority in law, were

[1] Rozier v. Fagan, 46 Ill. 404.
[2] People v. Hatch, 33 Ill. 9.

absolutely void, regardless of the fact that they had passed into the hands of innocent holders.[1]

An instance of legislative carelessness is shown in a case affecting the validity of the regular appropriation bill for the ordinary and contingent expenses of the government which was pretended to have been passed on February 14, 1863. In this case it was held that bills signed by the speakers of both Houses and approved by the Governor will be regarded as *prima facie* binding until that presumption is abutted by the journals of the two Houses; but when it appears from the journals that the constitutional requirements are wanting the provisions of the bill will not be enforced.[2]

A proceeding by information in the nature of a *quo warranto* was instituted to test the constitutionality of an act of the legislature providing for the erection of a new state house upon the ground that the commissioners appointed under said act were officers within the meaning of the Constitution and that the mode of their appointment was in conflict with Section 12, Article 4 of the Constitution. This case afforded the court an opportunity to draw the distinction between an office and an employment and the court finds that the term "such officers" as used in said section applies to those persons who have some portion of the functions of government committed to their charge, and that the commissioners in the case at bar did not belong to that class. The court also directs attention to one of the defects of the Constitution of 1818 in the following language:

"Under the first Constitution of this State, nearly all the important offices of government were filled by an election on joint ballot of the two houses,—that is by the action of the general assembly alone. The evil produced was, that the legislature became the great appointing power, giving rise to injurious combina-

[1] People v. Starne, 35 Ill. 121.
[2] Ryan v. Lynch, 68 Ill. 160.

tions affecting the purity of legislation. The passage of a law, or its defeat, might be made to depend on the election of a particular individual to a particular office. When the convention was called by which the present Constitution was framed, one of the great objects to be effected by the call was to deprive the legislature of the power to elect or appoint such officers as had been appointed by that body under the old Constitution, such as judges of the Supreme, Circuit and inferior courts, the auditor and treasurer of State and many others, whose functions were directly connected with some one or more of the departments of government which the Constitution had established, and who were to aid in carrying on the government.''[1]

The provision of the Constitution to the effect that the corporate authorities of counties and other municipal corporations may be vested with power to assess and collect taxes for their corporate purposes not only limits local or corporate taxation to local or corporate purposes, but was also intended as a limitation upon the power of the legislature to grant the right of taxation to any persons other than the corporate or local authorities of the municipality to be taxed.

''The power of taxation is, of all the powers of government, the one most liable to abuse, even when exercised by the direct representatives of the people, and if committed to persons who may exercise it over others without reference to their consent, the certainty of its abuse would be simply a question of time. No person or class of persons can be safely entrusted with irresponsible power over the property of others, and such a power is essentially despotic in its nature, and violative of all just principles of government.''[2]

It was not competent for the General Assembly under the Constitution of 1848 to exempt from taxation property owned by educational, religious or charitable corporations which was not used directly in aid of the corporate purposes, but was held for profit merely. The claim was made that under the charter

[1] Bunne v. People, 45 Ill. 401.
[2] Harvard et al. v. St. Clair Drain. Co., 51 Ill. 135.

of Northwestern University all of its property was exempt from taxation, and it was contended by the taxing authorities that it was beyond the power of the legislature under Section 3 of Article 9 of the Constitution to grant so broad an exemption. The court sustained this contention, holding that the corporation being private, the general tax payer was relieved of no obligation in consequence of the exemption which he would otherwise have to discharge by the payment of taxes, and in proportion as the University became the owner of property which was thereby withdrawn from taxation, the burden of the general tax payer was increased.[1]

A review of the judicial decisions in which the Consitution of 1848 is involved shows that the greater part of the litigation of that period was due to the special legislation enacted under that Constitution relating very largely to the subject of corporations public and private. Many of the results of this special legislation have disappeared long ago so that the decisions of the courts with reference to the subject matter are no longer of general interest to the student or practitioner. While the foregoing review of these cases is by no means complete, yet it is believed to be sufficient for the purpose of showing the general trend of litigation during the period in question.

The Adoption of the Constitution of 1870.—At the session of the legislature in 1867, a resolution was adopted directing the submission to a vote of the people of the proposition to call a convention to frame a new constitution. This proposition was submitted and adopted at the next general election. The convention met at Springfield on December 13, 1869, and completed its work on May 13, 1870, by the adoption of the new constitution. The document was ratified by a vote of the people on July 2, 1870, and went into effect on August 8, 1870. As this constitution with its amendments is the present organic law of the State,

[1] Northwestern University v. People, 80 Ill. 333.

its provisions and the construction placed upon them by the courts will be considered somewhat in detail in the remaining chapters.

CHAPTER V.

GENERAL OUTLINE OF THE GOVERNMENT. UNDER THE CONSTITUTION OF 1870.

The Legislative Department.—The legislative power of the State is vested in a general assembly, consisting of a senate and house of representatives, both of which are elected by the people. A senator must be at least twenty-five years of age, but a person may be elected a representative at the age of twenty-one. A candidate for either of these positions must be a citizen of the United States and must have been for five years a resident of this State and for two years preceding his election a resident of the district from which he is chosen. No person holding any lucrative office under the United States or this State can be either senator or representative. No person convicted of bribery, perjury or other infamous crime, or any officer who has failed to account for public money entrusted to his care, can fill these positions or any other office in this State. Members of the general assembly before entering upon their official duties are required to take a solemn oath of office, and any member who violates this oath must forfeit his office and be thereafter disqualified from holding any office of trust or profit in this State.

Senators and Representatives.—To determine the number of senators and representatives, the constitution provides that the State shall be divided into fifty-one senatorial districts, each of which shall elect one senator, whose term of office shall be four years. The senators elected in the year 1872 in districts having odd numbers held their offices for two years only, while those elected from districts having even numbers held their offices for four years, and elections of senators

are held every two years, in either the odd or even numbered districts. By this device the senate is never composed entirely of new and inexperienced members.

Minority Representation.—The house of representatives consists of three times as many members as the senate. Three members are elected from each senatorial district for a term of two years. In elections of representatives each voter may cast as many votes for any one candidate as there are representatives to be elected, or he may distribute his vote, or equal parts thereof, among the candidates as he shall see fit.

Legislative Sessions.—The regular sessions of the general assembly must commence at 12 o'clock noon on the Wednesday next after the first Monday in January, in the year next ensuing the election of members thereof; that is to say, an election of senators and representatives takes place every second year in the month of November and the regular session of the general assembly commences in the following January. The constitution forbids the holding of sessions of the general assembly at any other time, except in cases where a special session is convened by the governor, who has the right to exercise that power on extraordinary occasions.

The presiding officer of the house of representatives, called the speaker, is elected by the members of the house, but the lieutenant-governor, who is elected by the people, presides over the sessions of the senate.

Special Legislation Forbidden.—It was natural that the framers of the constitution should seek to guard against the evil of special legislation which had predominated under the former instrument. All special legislation is prohibited in cases where a general law can be made applicable. Besides this general prohibition some twenty-three subjects are specifically mentioned upon which special legislation is forbidden.

Impeachment.—The house of representatives has the sole power of impeachment and all impeachments must be tried by the senate. When the governor of

the State is tried, the chief justice presides. Two-thirds of the senators must concur in order to secure a conviction. In case of conviction the punishment is removal from office and disqualification from holding any office of honor, profit or trust under the government of this State.

The Executive Department.—In comparing the provisions of the Constitution of Illinois relating to the executive department with those of the Federal Constitution an important difference should be noted. Under the Constitution of the United States, the executive power is vested in the President alone, and all other officers having executive duties to perform hold their respective positions by appointment, while the constitution of Illinois provides that the executive department shall consist of a number of officers—viz.: Governor, Lieutenant-Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Instruction and Attorney General, all of whom are elected for a term of four years, except the Treasurer, who serves for two years only and is not eligible for election during the succeeding two years.

It is, therefore, apparent that the governor is only a part of the executive department, and that there are other executive officers deriving their powers from the same source as the governor—that is, from the constitution. "Indeed, it may be doubted whether the governor and other principal officers of a state government can, even when taken together, be correctly described as "the executive," since the actual execution of the laws does not rest with them, but with the local officers chosen by the towns and counties, and bound to the central authorities of the State by no real bonds of responsibility whatever."[1]

Governor.—A person to be eligible for the office of governor or lieutenant-governor must be at least thirty years of age and must have been for five years

[1] Woodrow Wilson, The State.

next preceding his election a citizen of the United States and of the State of Illinois.

The powers and duties of the governor, as established by the Constitution of Illinois, may be generalized under the following heads:

1. *Certain Duties and Powers with Reference to the Legislature.*—It is his duty, at the beginning of each session and at the close of his term of office, to give to the general assembly, by message, information of the condition of the State and to recommend such measures as he deems expedient. He has the power of convening the general assembly in special sessions upon extraordinary occasions, and in case of disagreement between the two houses to fix the time to which the assembly shall adjourn.

2. *The Power of Appointment and Removal.*—The governor has the power of nominating and, by and with the advice and consent of the senate, appointing all officers whose appointment or election is not otherwise provided for. In case a vacancy occurs in any of the executive offices above mentioned, the governor has the right to fill the vacancy by appointment, until an election can be held. He also has the power of removing all appointive officers for malfeasance in office.

3. *Pardoning Power.*—He has the power of granting reprieves, commutations and pardons after conviction, for all offenses, subject to such regulations as may be provided by law.

4. *As Commander-in-Chief.*—He is commander-in-chief of the military and naval forces of the State, except when they shall be called into the service of the United States, and may call out these forces to aid in executing the laws, suppressing insurrection and repelling invasion.

5. *The Power of Veto.*—Every bill passed by the legislature must be submitted to the governor before it becomes a law. If he approves the enactment, he signs it, and thereupon it becomes a law; if he does not approve, he returns the bill to the house from

which it originated, together with his objections. This act of the governor is termed vetoing the bill. If the bill again passes both houses of the general assembly by a two-thirds vote in each house, it becomes a law, notwithstanding the governor's veto. Any bill not returned by the governor within ten days after it has been submitted to him becomes a law in like manner as if he had signed it. In case he is prevented from returning the bill by the adjournment of the legislature, within ten days after the bill has been presented to him, he may exercise his right of veto by filing the bill, with his objections to it, in the office of the secretary of state.

In case of death, conviction on impeachment, failure to qualify, resignation, absence from the State, or other disability of the governor, the powers, duties and emoluments of the office for the residue of the term, or until the disability is removed, devolve upon the lieutenant-governor.

Other State Officers.—*Lieutenant-Governor.*—The lieutenant-governor is president of the senate, but he has the right to vote only when the senate is equally divided upon a question. The senate is required to choose a president *pro tempore* to preside in case of the absence or impeachment of the lieutenant-governor, or when he holds the office of governor.

If there be no lieutenant-governor, or if the lieutenant-governor becomes incapable of performing the duties of the office, the president of the senate acts as governor until the vacancy is filled or the disability removed; and if the president of the senate becomes incapable of performing the duties of the governor, the same devolve upon the speaker of the house of representatives.

Secretary of State.—The secretary of state is the official custodian of the books, papers, records and great seal of the State of Illinois. The title of his office more accurately describes his duties than is the case with the Secretary of State of the United States,

who is a minister of foreign affairs. The secretary of state of the State of Illinois performs the duties which are usually imposed upon the secretary of any great establishment, and acts in the same capacity for the sovereign State of Illinois as he would if secretary of a large private corporation.

All public acts, laws and resolutions passed by the general assembly must be deposited in his office, and he is charged with the safekeeping of all documents deposited with him. It is his duty to keep a record of the official acts of the governor; to countersign and to affix the seal of the State to all commissions issued by the governor; to furnish, upon request and payment of the lawful fees therefor, a copy of any of the records in his office; to take charge of and care for the grounds and buildings situated in the city of Springfield belonging to or occupied by the State, as well as all of its personal property; to furnish to the public printer the necessary information for printing public records; and to supervise the distribution of the laws and journals of the general assembly.

Auditor.—The auditor of Public Accounts is the official bookkeeper of the State of Illinois. It is his duty to keep the accounts of the State with any other State or Territory and with the United States, with all public officers, corporations and individuals having dealings with the State, and to audit all accounts of public officers who are paid out of the State treasury, of the members of the legislature and all persons authorized to receive moneys from the State treasury. He also has many other duties to perform under various statutes of the State, such as the examination of the books and accounts of building and loan associations and of banks incorporated under the laws of the State.

Treasurer.—The Treasurer, as is indicated by the title of his office, must receive and keep moneys belonging to the State of Illinois. This is an office of great pecuniary responsibility, and, therefore, to secure the

faithful discharge of his duties, the Treasurer is obliged to give a bond to the people of the State in the sum of $500,000, and is also required to furnish additional bonds whenever the governor shall deem it necessary.

The treasurer must receive all public moneys of the State and safely keep the same. Any person paying money into the State treasury must first obtain from the auditor an order directing the treasurer to receive the money, and if the treasurer should receive and receipt for any money without such an order being presented to him, he would be liable to removal from office. He can pay money out of the treasury only upon the warrant of the auditor, and he is required to keep accurate accounts of all moneys received and paid out by him and to report the same each month to the auditor.

Attorney-General.—The Attorney-General is the chief law officer of the State government. It is his duty, as prosecuting officer, to represent the people of the State in all cases in which they are interested, and also to protect State officers in suits brought against them in their official capacity. He is the legal adviser of the governor and other State officers, and is required, when requested by them, to give written opinions upon all legal and constitutional questions relating to their duties, and to prepare all documents incidental to the business of the State. He is the legal adviser of both branches of the general assembly, and it is his duty to enforce the proper application of the funds appropriated for the support of the public institutions, such as schools and asylums, and to prosecute all persons who may be guilty of any breach of trust in the management of such funds.

The Judicial Department.—The constitution of 1870 made greater changes in the structure of the judicial department as it existed under the constitution of 1848 than in any of the other departments of the State government. Under the constitution of 1870 the judicial

powers of the State are vested in one Supreme Court, circuit courts, county courts, justices of the peace, police magistrates, and such other courts as may be created by law in and for cities and incorporated towns.

Supreme Court.—The Supreme Court consists of seven judges, who have original jurisdiction in cases relating to the revenue, *mandamus* and *habeas corpus,* and appellate jurisdiction in all other cases. One of the judges is the Chief Justice and presides at the sessions of the court. The others are called Justices, and serve in turn as Chief Justice. A person, to be elected to the office of judge of the Supreme Court, must be at least thirty years of age and a citizen of the United States, and must have resided in this State five years next preceding his election, and be a resident of the district from which he is elected. For the election of judges of the Supreme Court the State is divided into seven districts, each of which is composed of a number of counties. The terms of the Supreme Court are held in the city of Springfield, on the first Tuesday in October, December, February, April and June in each year.

Appellate Courts.—The constitution provides that after the year 1874 inferior appellate courts may be created in districts formed for that purpose, to which appeals may be taken from the inferior courts, and from which appeals lie to the Supreme Court in certain cases. Under this authority the legislature, on June 2, 1877, enacted a law establishing four appellate courts in this State and divided the State into four districts, in each of which an appellate court is held. The judges of this court are selected by the Supreme Court from the judges of the circuit courts of the several districts, and in the first district, which is composed of Cook County alone, the appellate court judges are selected from both the circuit and superior courts of that county.

The appellate courts exercise appellate jurisdiction only, and appeals to this court are taken from the lower

courts in all cases except criminal cases, and cases involving a franchise or a free-hold or the validity of a statute. The decision of the Appellate Court is final in all cases where less than the sum of $1,000 is involved, but an appeal may be taken from the decision of the Appellate Court to the Supreme Court in all cases where a greater amount is involved, and in cases involving a less sum wherein there are legal questions of such importance that the judges of the Appellate Court certify the same to the Supreme Court in order to obtain its opinion thereon.

Circuit Courts.—Circuit courts have original jurisdiction of all civil cases, and also have appellate jurisdiction of cases arising before justices of the peace and before the Probate Court. The State, exclusive of Cook County and other counties having a population of 100,000 inhabitants, is divided into judicial circuits formed, as nearly as possible, of contiguous counties, but the population of any one circuit must not exceed 100,000 inhabitants. No person can be elected to the office of judge of the Circuit Court unless he is at least twenty-five years of age, a citizen of the United States and a resident of this State for five years next preceding his election, and is a resident of the circuit in which he is elected.

The County of Cook constitutes one judicial circuit, and at the time of the adoption of the constitution of 1870 the Circuit Court of that county was composed of five judges, but their number has been increased from time to time, as the population has grown, so that at the present time there are fourteen judges of the Circuit Court in that county.

Superior Court of Cook County.—This court has the same jurisdiction as the Circuit Court. Its existence is due to the fact that prior to the adoption of the constitution of 1870, there existed in the City of Chicago a court known as the Superior Court of Chicago, and the Constitution provided that this court should be continued and called the Superior Court of Cook County.

The number of judges in both the circuit and superior courts may be increased by the general assembly whenever there is an addition of 50,000 inhabitants to the population of the county, by adding one judge to each of the courts. There are now twenty Superior Court judges.

Criminal Court of Cook County.—The County of Cook also has a criminal court, in which are tried all cases of a criminal nature arising in that county. In all other counties, criminal cases are tried before the Circuit Court, but in the County of Cook, owing to the large volume of business, it has been deemed wise to create a separate court for the trial of criminal cases only. This court is called the Criminal Court of Cook County, and its terms are held by one or more of the judges of the Circuit or Superior Courts of Cook County as nearly as may be in alternation. A judge of the Circuit or Superior Court, when sitting in the Criminal Court, is styled a Judge of the Criminal Court of Cook County.

County and Probate Courts.—In each county of the State there is a County Court, having one judge only, whose term of office is four years. County courts have jurisdiction in all proceedings for the collection of taxes and assessments, and in all insolvency matters, and such other jurisdiction as may be provided for by laws of the State. County courts also have jurisdiction in probate matters and the settlement of estates of deceased persons, appointment of guardians for minors and conservators for insane persons, except in those counties having probate courts. Probate courts are created by the legislature pursuant to the power given by the constitution which provides for the establishment of such a court in any county having a population of over 50,000 inhabitants.

County Government.—Each State of the Union except Louisiana [1] is divided into counties, varying in size and population; therefore county government is general throughout the United States.

[1] Louisiana is divided into parishes for purposes of local government.

The county is a subdivision and agency of the State, created for convenience in administering the affairs of the State government. It is an institution of ancient origin, having a history full of interest to students of civil affairs. The county in England is older than the Kingdom itself. It originated with the union of two or more clans into a tribe and their settlement in a fixed dwelling place, after which, in a comparatively short time, they assumed the form of a monarchy and the chief became known as a king.

When the Anglo-Saxon tribes invaded England and settled in different parts of the island, they created a number of small kingdoms, independent of each other. Afterward, when the government became centralized and subject to one responsible head, these individual kingdoms continued their existence, and were known as counties. Thus the growth of the county in England has been essentially different from its development in the United States. In England the kingdom was created by a union of the counties, but in the United States the counties have been formed by a subdivision of the State.

The legislature controls the division of the State into counties, all of which are created solely by legislative act. A county is endowed with certain functions, giving it the character of a corporation. It can sue in the courts and be sued; it can act only through its duly qualified officers; it can purchase such real estate as is needed for the uses of the county; it can sell or lease the same when no longer needed, and it can make all contracts necessary for the proper transaction of the county business.

The government of the county, is to some extent, divided into legislative, executive and judicial branches, although the greater portion of the powers exercised by its officers come within the executive and judicial branches.

Other Provisions Relating to Counties.—For purposes of local government Illinois was divided into

counties before it became a State, and the county system of government was continued under the constitutions of 1818 and 1848. The Constitution of 1870 recognized these subdivisions of the State as they existed at the time of its adoption.

The last named instrument made no change in the number of boundaries of the counties, but restricted the power of the legislature in respect thereto, by providing that no new county shall be formed having a smaller area than four hundred square miles, and that the territory of no county shall be reduced in area below that limit, and prohibiting substantially any change in the boundaries of a county without the consent of a majority of the legal voters of such county. The Constitution of 1870 also recognized the rivalry which had formerly existed between the respective adherents of the county and township systems of local government, by substantially re-enacting the provision of the Constitution of 1848, whereby the voters of each county are given the right to determine which system shall be used. It also provided for the general government of counties *not under township organization,* by committing the management of their affairs to "The Board of County Commissioners," consisting of three persons in each county elected by the people.

Special arrangement is made for the county affairs of Cook County by the provision that they shall be managed by a board of fifteen commissioners, ten of whom shall be elected from the City of Chicago and five from the towns outside of the city. The government of other counties *under township organization* is managed by a board of supervisors composed of the supervisors of the various towns in the county.

The Constitution also requires the election of the following judicial and executive officers—viz.: County Judge, County Clerk, Sheriff, Treasurer, Coroner, Clerk of the Circuit Court and Recorder of Deeds, and provides for the compensation of these officers. All counties in the State have the above-named officers,

except that, in counties having a population of less than 60,000 inhabitants, the clerk of the Circuit Court may also act as recorder.

Education.—By the constitution of 1870, the State of Illinois for the first time made the establishment of a common school system by the general assembly, a constitutional requirement. The constitution requires that the general assembly shall provide a system of free schools, in which all children of this State may receive a good common-school education; and that all grants and gifts for educational purposes and the proceeds thereof shall be applied faithfully to the objects for which they were made.

That religious differences may not influence the management of the public schools or interfere with their efficient operation, the constitution prohibits the legislature, and every municipality in the State, from expending, or attempting to expend, any public money for the support of any church, and from helping to sustain or support any school or literary institution of any kind under the control of any church or sectarian denomination.

These provisions of the constitution meet with the approval of the citizens of the State, regardless of their religious affiliations, and by general consent all religious instruction in the sectarian sense has been excluded from the public schools of Illinois.

To ensure honesty in the management of school affairs, the constitution forbids any teacher, state, county, township or district school officer from being interested in the sales, proceeds or profits of any book, apparatus or furniture used, or to be used, in any school in this State, with which he is connected.

The constitution also provides for the election of a Superintendent of Public Instruction, who is one of the executive officers of the State, and for the election of the County Superintendent in each county of the State.

Miscellaneous Topics.—In addition to the restrictions upon the legislative power which have already

been noted, the general assembly was also prohibited from releasing any county, city or other municipality from its proportionate share of the taxes levied for state purposes and from releasing or extinguishing in whole or in part the indebtedness of any corporation or individual to the state or to any municipality and from imposing any tax upon municipal corporations for corporate purposes. The seizure or sale of private property for the payment of the corporate debts of a municipality was also forbidden.

These restrictive provisions which were embodied in the Constitution of 1870 were more complete than those contained in the organic law of any other State prior to that time, but the document was also characterized by other distinctive features in its mandatory provisions whereby the legislature was directed to enact suitable laws upon sundry specified subjects. Among the more important of these specifically enumerated topics are the protection of miners, homestead and exemption laws, drainage, corporate management, unjust discrimination in railroad freight and passenger tariffs, inspection of grain for the protection of producers, shippers and receivers, and public education.

Other original and important articles are those relating to elevators and warehouses, the charter obligations of the Illinois Central Railroad, the sale or lease of the Illinois and Michigan Canal, subscription by municipalities to corporate stocks, and minority representation which has been already explained.

In the next chapter the full text of the constitution will be presented, together with the construction given to the various clauses by reviewing courts in some leading cases. It is not the intention, however, to furnish a complete annotation of the constitution, but rather to direct the attention of the student to those cases which are useful aids to a clear understanding of its provisions and to that end rather full citations will be made of cases arising under each section that has received the attention of the courts.

PART II.

CHAPTER VI.

CONSTITUTION OF 1870.

(WITH ANNOTATIONS.)

PREAMBLE. We, the people of the State of Illinois—grateful to Almighty God for the civil, political and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations—in order to form a more perfect government, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the State of Illinois.

The language of this preamble is identical with that of the Constitution of 1848.

"It must be presumed that when the present constitution was adopted, it was with full knowledge of the interpretation that had been placed by this court upon the language incorporated therein, which was taken from the prior constitution."

Sterling Gas Co. v. *Higby,* 134 Ill. 566.

ARTICLE I.

BOUNDARIES.

The boundaries and jurisdiction of the state shall be as follows, to-wit: Beginning at the mouth of the Wabash river; thence up the same, and with the line of Indiana, to the northwest corner of said state; thence east, with the line of the same state, to the middle of Lake Michigan; thence north, along the middle of said lake, to north latitude 42° and 30′; thence west to the middle of the Mississippi river, and thence down along the middle of that river to its confluence with the Ohio river, and thence up the latter river, along its north-

western shore, to the place of beginning: *Provided,* that this state shall exercise such jurisdiction upon the Ohio river as she is now entitled to, or such as may hereafter be agreed upon by this State and the State of Kentucky.

"It seems clear from all legislation and ordinances on this subject, it was intended the Mississippi river should constitute 'a common boundary' between the State of Illinois and any State or States that might be formed to the west and next to that river. That intention is more definitely declared than it was in regard to the Ohio river, for in fixing the boundary of Illinois, when the line down along the middle of the Mississippi river should reach the confluence of that river with the Ohio, the boundary should be from thence up the latter river 'along its north-western shore,' and yet it has been held the river is the boundary between States divided by the Ohio river, although the original proprietor, in granting the territory, retained the river within its own domain. The law, as stated by law writers, and in the adjudged cases, seems to be, that where a river is declared to be the boundary between States, although it may change imperceptibly, from natural causes, the river, 'as it runs, continues to be the boundary.' But if the river should suddenly change its course, or desert the original channel, the rule of law is, the boundary remains in the middle of the deserted river bed. Where a river is a boundary between States, as is the Mississippi between Illinois and Missouri, it is the main—the permanent—river which constitutes the boundary, and not that part which flows in seasons of high water, and is dry at other times. *Handley's Lessee* v. *Anthony,* 5 Wheat. 174). In no other way would a river be a permanent fixed boundary, at all times readily ascertainable. There are many cogent reasons why the boundary lines between States should be permanent, otherwise territory in one State at one time, sooner or later might be in another State. It must be in one State all the time, or else the State would lose jurisdiction over it.

Treating, then, as must be done, the Mississippi river as a common boundary between the States of Illinois

and Missouri, what meaning is to be given to the term, 'middle of the Mississippi river,' used in the enabling act of Congress and in the constitution, defining the boundaries of the State of Illinois? Whether, when mere private rights are involved, the phrases the 'middle of the river,' and the 'middle of the main channel,' or, what is the same thing, the 'thread of the stream,' mean the same thing, and may be interchangeably used, there are many considerations affecting the public welfare why it should be held the 'middle of the channel' of a river between independent States or countries should be regarded as the boundary line between them, in the absence of express agreement to the contrary. When applied to rivers as boundaries between States, the phrases, 'middle of the river,' and 'middle of the main channel,' are equivalent expressions, and both mean the center line of the main channel,—or, as it is most frequently expressed, the 'thread of the stream.' Should the expression, 'middle of the river,' be construed to mean a line midway of the water surface, that would give no permanent boundary that could be ascertained. It would be at one point at one time, and distant away at another.''

Buttenuth et al. v. *St. Louis Bridge Co.,* 123 Ill. 545.

See also:

St. Louis Bridge Co. v. *The People,* 125 Ill. 226.
Keokuk and Hamilton Bridge Co. v. *The People,* 145 Ill. 596.

ARTICLE II.

BILL OF RIGHTS.

SEC. 1. All men are by nature free and independent, and have certain inherent and inalienable rights—among these are life, liberty, and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

SEC. 2. No person shall be deprived of life, liberty or property, without due process of law.

The confinement of non-criminal children in State schools under the act of May 28, 1879, entitled "An act to aid industrial schools for girls" is not prohibited by this section. There is no force in the objection that the act in question is an infringement upon the personal liberty of the citizen, as guaranteed by the constitution. The restraints which the act imposes are only such as are essential to the comfort and well-being of the unfortunate class of persons who are brought within its provisions. All governmental and parental care necessarily imposes more or less wholesome restraint, and we see nothing in the act which looks beyond this.

County of McLean v. *Humphreys,* 104 Ill. 383.

"Property in its broader sense, is not the physical thing which may be the subject of ownership, but is the right of dominion, possession and power of disposition which may be acquired over it; and the right of property, preserved by the constitution, is the right not only to possess and enjoy it, but also to acquire it in any lawful mode, or by following any lawful industrial pursuit which the citizen, in the exercise of the liberty guaranteed, may choose to adopt. Labor is the primary foundation of all wealth. The property which each one has in his own labor is the common heritage, and, as an incident to the right to acquire other property, the liberty to enter into contracts by which labor may be employed in such way as the laborer shall deem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guaranty."

Braceville Coal Co. v. *The People,* 147 Ill. 71.
Frorer v. *The People,* 114 Ill. 171.
Ritchie v. *The People,* 155 Ill. 105.

"The words 'life, liberty and property' are constitutional terms, and are to be taken in their broadest sense. They indicate the three great subdivisions of all civil right. The term 'property,' in this clause, embraces all valuable interests which a man may

possess outside of himself,—that is to say, outside of his life and liberty. It is not confined to mere tangible property, but extends to every species of vested right. In my judgment it would be a very narrow and technical construction to hold otherwise. In an advanced civilization like ours a very large proportion of the property of individuals is not visible and tangible, but consists of rights and claims against others or against the government itself. Now, an exemption from a demand or an immunity from prosecution in a suit is as valuable to the one party as the right to the demand or to prosecute the suit is to the other. The two things are correlative, and to say that the one is protected by constitutional guaranties and that the other is not, seems to me almost an absurdity. One right is as valuable as the other."

Board of Education v. *Blodgett,* 155 Ill. 448.

Citing with approval the dissenting opinion in *Campbell* v. *Holt,* 115 U. S. 620.

The act of 1871 regulating warehouses and giving effect to article 13 of the constitution does not violate this section.

"One of the first and most imperative duties of the law making power is, to enact all necessary laws to remedy existing evils, taking care, in so doing, not to transgress any constitutional limitation. The means by which to do it most effectually, is in the discretion of the legislature, keeping in view the provisions of the organic law. This law in no respects affects the title, possession or use of this warehouse by the plaintiffs in error. It deprives them of nothing they owned and possessed at the time of its enactment. Anticipated profits are not, and can not, be held and regarded as property in the ownership or possession of him who owns the article out of which profits are expected to flow. The property is one thing, and remains untouched—the profits are not *in esse,* and can not be claimed as property. When it is said one is deprived of his property, the understanding is, it has been taken away from him—he is divested of title and possession. This provision in the Bill of Rights has never been so construed by the courts of any State whose constitu-

tion has such a provision, as to deny to the legislature the power to make all needful rules and regulations respecting the use and enjoyment of property."

Munn et al. v. *The People,* 69 Ill. 90.

A statute giving the county board power to remove a county treasurer without trial does not violate this section.

"It is impossible to conceive how, under our form of government, a person can own or have a title to a governmental office. Offices are created for the administration of public affairs. When a person is inducted into an office, he thereby becomes empowered to exercise its powers and perform its duties, not for his, but for the public benefit. It would be a misnomer and a perversion of terms to say that an incumbent owned an office, or had any title to it."

Donahue v. *County of Will,* 100 Ill. 103.

"The phrase, 'due process of law,' is the equivalent of the words, 'law of the land,' as used in Magna Charta, and means, 'in the due course of legal proceedings according to those rules and forms which have been established for the protection of private rights."

Burdick v. *People,* 149 Ill. 605.

See also *Board of Education* v. *Bakewell,* 122 Ill. 348.

Board of Education v. *Blodgett,* 155 Ill. 441.

Sec. 3. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the state. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

"Our constitution provides, that 'the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed.' In ecclesiastical law, profession means the act of entering into a religious order. Religious worship consists in the performance of all the external acts, and the observance of all ordinances and ceremonies, which are engaged in with the sole and avowed object of honoring God. The constitution intended to guarantee, from all interference by the State, not only each man's religious faith, but his membership in the church, and the rites and discipline which might be adopted. The only exception to uncontrolled liberty is, that acts of licentiousness shall not be excused, and practices inconsistent with the peace and safety of the State, shall not be justified. Freedom of religious profession and worship can not be maintained, if the civil courts trench upon the domain of the church, construe its canons and rules, dictate its discipline, and regulate its trials. The larger portion of the christian world has always recognized the truth of the declaration, 'A church without discipline must become, if not already, a church without religion.' It is as much a delusion to confer religious liberty without the right to make and enforce rules and canons, as to create government with no power to punish offenders. The constitution guarantees the 'free exercise and enjoyment.' This implies, not alone the practice, but the 'possession with satisfaction'—not alone the exercise, but the exercise coupled with enjoyment. This 'free exercise and enjoyment' must be, as each man, and each voluntary association of men, may determine. The civil power may contribute to the protection, but can not interfere to destroy or fritter away.'

Chase v. *Cheney,* 58 Ill. 537.

"Since the adoption of the Constitution of 1870, the rule of law disqualifying witnesses on account of religious opinions has been entirely changed. The penalties denounced by law against the crime of perjury, and the innate moral principles of man, and the inborn sense of right and wrong, are now regarded such a sufficient guarantee against false swearing as to admit

witnesses to testify, leaving it to courts and juries to determine the weight proper to be given to their evidence. Under the common law as held formerly by our Supreme Court, no man could be called in a court of justice to testify unless he believed in a God, who would punish for such crimes, either here or hereafter. Fear of Divine punishment seemed to be thought the only effective restraint against the crime of perjury, and yet the same law prescribed that no witness should be qualified to testify in a case where he was a party, or had the slightest pecuniary interest in the result of the suit. The policy of such rules has long been doubted by many wise jurists and legislators. The last mentioned rule has been changed for our Legislature for some years, with happy results, and almost universal approval, following the change of the former rule, as we understand it, by the Constitution of 1870. It was aimed, as we think, by the constitutional convention, to firmly establish all men in this State, without regard to their religious beliefs, in the full enjoyment of their civil rights, privileges and capacities, including the right to testify, beyond the power even of the Legislature to change."

Ewing v. *Bailey,* 36 Ill. App. 194.

Sec. 4. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty; and in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

The constitutional provision contained in the above section applies to words spoken or published in regard to judicial conduct and character. The publication of a libel on a grand jury or on any member thereof in relation to any act already done by them in their official capacity, but which has no tendency directly to impede, hinder or obstruct the grand jury in the discharge of any of its duties remaining to be performed after the publication is made, cannot be punished summarily as a contempt of court. It is not intended by our constitution that a publication however libelous, but not directly intended to hinder, obstruct or delay, courts

in the exercise of their proper functions, shall be treated and punished as contempt.

Storey v. *The People,* 79 Ill. 45.

SEC. 5. The right of trial by jury as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace by a jury of less than twelve men may be authorized by law.

The constitutional provision, giving a right to trial by jury, was designed to secure the right of trial by jury, in all tribunals exercising common law jurisdiction, as it had formerly been applied. It was not intended to confer the right in any class of cases where it had not previously existed, nor was it intended to introduce it into special summary jurisdictions unknown to the common law, and which do not provide for that mode of trial.

The right of trial by jury does not extend to suits in chancery, without regard to the fact whether the cause of action was one of equitable cognizance prior to the adoption of the existing constitution or since. But it is not competent for the legislature to defeat the right of a jury trial in common law cases, by simply declaring they may be tried in courts of chancery, and that the proceedings therein shall conform to the proceedings in chancery. This would be an attempt to evade the provisions of the constitution.

Ward v. *Farwell,* 97 Ill. 594.

The act providing that a court of chancery may determine bills to quiet title to real estate, where the lands are unimproved and unoccupied, does not violate the above section, as courts of chancery may submit issues of fact to trial by jury. If such right should be refused by the court, the denial thereof would come from the court, and not from the law.

Where jurisdiction is given to a court of chancery in a case where there existed before the adoption of a constitution a remedy at law, under which was given the right of trial by jury, it is presumed such a trial would be allowed, and obedience paid to the constitutional provision giving such right.

Gage v. *Ewing,* 107 Ill. 11.

"The present constitution of the State preserves the right of trial by jury in all cases where that right had existed before its adoption. The right to such trial does not extend to cases in equity, but is confined to cases at law. The act known as the Burnt Records act is not, unconstitutional, in depriving a party of a trial by jury."

Heacock v. *Hosmer,* 109 Ill. 245.

The constitutional guaranty of the right of trial by jury refers to such right in that respect as was enjoyed at the time of the adoption of the constitution. It was not violated by the statute which provides for the entry of final judgment by the Appellate Court in certain cases.

Commercial Insurance Co. v. *Scammon,* 123 Ill. 601.

"All agree that the statute contemplates a trial by jury, and that the court could not dispense with the jury without the consent of all parties interested; but we do not understand any of the cases cited as holding that a jury may not be waived as in any other civil case, and we think the result of our decisions is that it can. The verdict of a jury in the contest of a will has the same effect, and the power of a court to set it aside and grant a new trial is the same, as in actions at law. The court having the ultimate right to determine whether the issue has been decided in accordance with the evidence, no good reason can be shown why the parties may not, with the consent of the court, submit such issue to it in the first place, if they see proper so to do. Of course, the verdict of the jury is only to be set aside when it is manifestly against the weight of the evidence, but the court alone has the power to say when it is so. There was no error in the hearing of the case without a jury."

Whipple v. *Eddy,* 161 Ill. 118.

The right of trial by jury under the constitution exists in those tribunals which exercise common law jurisdiction in regard to matters wherein such right existed at common law. It does not limit the authority of courts to exercise discretionary powers as in the hearing of exceptions to an administrator's report or

in proceedings by way of citation to compel him to make a proper report and settlement of the estate.

Boyd v. *Swallows,* 59 Ill. App. 635.

SEC. 6. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched, and the persons or things to be seized.

The above section is a limitation upon the power of the State government and has no reference to the unauthorized acts of individuals. This section does not prohibit all searches and seizures, but only such as are unreasonable. Where a party without any search warrant or other legal authority entered the rooms of another, searched the same and seized therein evidences of the commission of crime, the act was held to be in violation of the civil rights of the latter, and a trespass for which the former might be held liable in a civil action, but it did not render incompetent the evidences of the commission of the crime which were found in the unauthorized search.

Gindrat v. *The People,* 138 Ill. 103.

The constitutional right secured by this section is violated by an order of court by which the books and papers of an individual are taken from his custody and committed to that of a third person for an indefinite period of time for an inspection generally into all the affairs of the individual to be made by the opposite party and his counsel, with leave to take copies of the entries therein. Such an order is a violation of the constitutional right to be secure against unreasonable seizure of the papers and effects of an individual.

Lester v. *The People,* 150 Ill. 421.

SEC. 7. All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great; and the privilege or writ of *habeas corpus* shall not be sus-

pended, unless when in cases of rebellion or invasion the public safety may require it.

No court has power to require bail. The right to be bailed being secured by the above section is independent of courts and officers, but the accused can not be required to exercise it.

Lewis v. *The People,* 18 Ill. App. 77.

SEC. 8. No person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia, when in actual service in time of war or public danger: *Provided,* that the grand jury may be abolished by law in all cases.

SEC. 9. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation and to have a copy thereof, to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

"The phraseology of that section of our present constitution which relates to the place of trial in criminal prosecution differs materially in one respect from that of the corresponding provisions of the constitutions of 1818 and 1848. The constitution of 1818 provided that, in all criminal prosecutions, the accused should have a right to 'a speedy public trial by an impartial jury of the vicinage;' and the constitution of 1848 provided that he should have a right to 'a speedy public trial by an impartial jury of the county or district wherein the offense shall have been committed.' It must be admitted, probably, that both these constitutional provisions were susceptible of but one construction, viz., that of limiting jurisdiction in all criminal prosecutions absolutely to the county where the crime

alleged was actually committed. The framers of our present constitution, recognizing as we may assume, the infirmity of this rule particularly in its application to cases like the present where it is impossible to determine in which of two or more counties a particular crime was committed, revised the section so as to make it read as follows: 'In all criminal prosecutions the accused shall have a right to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.' This modified phraseology may fairly be regarded as evidencing an intention to relax in some degree the rigid rule formerly prevailing. The prosecution may now be had in the county where the offense is alleged to have been committed. The allegation here referred to is doubtless that made by the indictment, that being the only document in which the proper allegations as to the vicinage of the crime are ordinarily made. The constitution then may be regarded as empowering the General Assembly to provide, in its discretion for the presentment of indictments in which the allegation as to the vicinage of the offense may not be in accordance with the actual fact. If this is not so, the words inserted in the present constitution are meaningless, and the instrument must be interpreted precisely as though they had not been used."

Watt v. *The People,* 126 Ill. 17.

Dying declarations relating to the injury causing death are admissible, although constituting an exception to the right of the accused to meet witnesses face to face.

"It is vain to attempt to disguise the infirmities and imperfections of the human mind, and its susceptibility to false impressions, under circumstances touching the heart and exciting the sympathies; and the law has wisely, in case of dying declarations, required all the guaranties of truth the nature of the case admits of. The principle upon which such declarations are admitted is: that they are made in a condition so solemn and awful as to exclude the supposition that the party making them could have been influenced by malice, revenge, or any conceivable motive to misrepresent, and when every inducement, emotion and motive is to speak the

truth—in other words in view of impending death and under the sanctions of a moral sense of certain and just retribution.

Dying declarations are, therefore, such as are made by the party, relating to the facts of the injury of which he afterwards dies, under the fixed belief and moral conviction that his death is impending and certain to follow almost immediately, without opportunity for repentance, and in the absence of all hope of avoidance; when he has despaired of life and looks to death as inevitable and at hand."

Starkey v. *The People,* 17 Ill. 20.

The right to a speedy trial which is guaranteed by the above section to one accused of crime, relates only to arbitrary and oppressive delays and is not violated by such delays as are due to the lapse of time between terms of court or to such as are unavoidable on account of the amount of other criminal business having priority on the trial docket, or to such as shall be due to proper efforts in procuring an impartial jury and the attendance of witnesses.

Weyrich v. *The People,* 89 Ill. 90.

The foregoing clause of the constitution guarantees to the accused party in every criminal prosecution "a speedy trial by an impartial jury." This section is not violated by the statute which provides "that in the trial of any criminal acts the fact that a person called as a juror has formed an opinion or impression based upon newspaper evidence (about the truth of which he has expressed no opinion) shall not disqualify him to serve as a juror in such case if he shall upon oath state that he believes he can fairly and impartially render a verdict therein in accordance with the law and the evidence, and the court shall be satisfied of the truth of such statement."

Spies v. *The People,* 122 Ill. 1.

Sec. 10. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

It is not admissible to prove that the murder was committed by striking the deceased on the head with a gun, under an indictment charging the commission of the murder by shooting.

"To persons not accustomed to legal distinctions, it may seem a solecism to speak of two indictments as charging different offenses when they relate to the murder of the same person, but it is nevertheless undoubtedly true, that for the purpose of judicial proceedings, an indictment charging a murder to have been done by shooting with powder and shot from a gun, does describe a murder legally different from that described in an indictment charging the same defendant with a murder of the same person, by beating him upon the head; and this for the reason, that if all the facts charged in the second indictment were proved or admitted, the murder described in the first indictment would not be legally established so as to authorize a conviction."

Guedel v. *The People,* 43 Ill. 231.

"The constitutional boundaries of this State carry her territorial limits to the middle of the Mississippi river. The offense for which plaintiff in error was indicted and tried in Rock Island county, was both alleged and proved to have been committed within that county, and was, therefore, an offense against the dignity and sovereignty of the State of Illinois. The statutes of Iowa were not set out in the plea, or offered in evidence, so far as the record shows. The bar of the conviction in the State of Iowa was not attempted to be placed upon the theory of concurrent jurisdiction in the courts of each State. It is a general principle, that the laws of a country do not extend beyond its territorial limits, and this is especially so as to criminal laws, and it is also a general principle, that the conviction and punishment of an accused in one sovereignty is no bar to his conviction and punishment in another, in which the offense was originally committed."

Phillips v. *The People,* 55 Ill. 433.

"Where an ordinance of a city, which prohibits the

keeping of a gaming house, prescribes as the penalty for the offense a fine of $25, a conviction under the ordinance will not operate as a bar to a subsequent prosecution by indictment for the same offense, for the reason that the penalty imposed by the ordinance is very much less than that prescribed in the statute. While effect has been allowed to ordinances which imposed greater penalties than those prescribed by the general law of the State for the same offense, that will not be done where an ordinance imposes a lesser penalty than the statute."

Robbins v. *The People,* 95 Ill. 175.

"Where the commission of a particular act constitutes two offenses of different grades of criminality and punishable differently, a conviction or acquittal of a charge of committing one of them will be no bar to a conviction for the other. The second charge places the defendant in jeopardy for a new offense."

Nicholson v. *The People,* 29 Ill. App. 57.

"Where a man arrested by an officer without a warrant upon suspicion of having committed murder is compelled to answer under oath as a witness at a coroner's inquest, statements which he thus makes are not admissible against him on his trial for the murder. The thing prohibited by the rule is "the special interrogation of the accused—the converting him, whether willing or not into a witness against himself; assuming his guilt before proof, and subjecting him to an interrogation conducted on that hypothesis.' But it is otherwise where the statements made are voluntary, and where the oath taken is voluntary."

Lyons v. *The People,* 137 Ill. 616.

"A witness before the grand jury, after stating that he knew of persons playing with cards for money in the county within the last eighteen months, was asked, "Who did you see playing" which question he refused to answer, on the ground he could not do so without giving evidence tending to criminate himself, and he was fined for contempt of court in refusing to answer

the question: *Held,* that the court erred in fining the witness for refusing to answer the question."

Minters v. *The People,* 139 Ill. 363.

"The objection that evidence may tend to criminate the witness does not affect his competency to testify. It is his personal privilege to speak as to a matter tending to criminate himself, but he is not incompetent to testify if he sees fit to do so."

Thompson v. *Wilson,* 59 Ill. App. 162.

SEC. 11. All penalties shall be proportioned to the nature of the offense, and no conviction shall work corruption of blood or forfeiture of estate; nor shall any person be transported out of the state for any offense committed within the same.

"An act of the legislature making any discrimination on the part of railroad companies in their charges for freight a penal offense, and providing for a forfeiture of all their franchises for any wilful violation of the act, without any other penalty for the first offense, is in violation of the spirit of the constitutional provision which requires all penalties to be proportioned to the nature of the offense, and also of sec. 15 of art. 11, under which such a law is framed, which only authorizes the penalty to extend to forfeiture of franchises and property 'when necessary for that purpose.'

"A law admitting of but one penalty, and that of the harshest possible character, will be subjected by the courts to close criticism and to a strict construction."

C. & A. R. R. Co. v. *The People,* 67 Ill. 13.

"The first section of the act of 1883, respecting conviction upon second and third offenses, and providing for increased punishment on such convictions, is not in violation of section 11, article 2, of the constitution, requiring all penalties to be proportioned to the nature of the offense, nor of the constitutional provision that no one shall be put in jeopardy twice for the same offense."

Kelly v. *The People,* 115 Ill. 583.

Sec. 12. No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or in cases where there is strong presumption of fraud.

"The right to personal liberty is one of the most valuable and most cherished rights appertaining to man in society, and one of which he cannot be deprived, except by the judgment of his peers, or by the law of the land. In the barbaric age of the law in this country, the unfortunate debtor could be deprived of this inestimable right, if he failed to pay an honest debt. His creditor could keep him in *arcta custodia* for the misfortune of being poor. This was so in all the States of the Union, whose organic laws had been established prior to the year eighteen hundred and eighteen except Tennessee. In that year the constitution of this State was adopted, which contained as one of its fundamental principles alike beneficent and just, this provision: 'No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or cases where there is strong presumption of fraud.' In looking back to our earliest legislative records, it will be perceived that the first General Assembly which met under this constitution, failed to observe this then novel provision, for, at the second session they passed an act at variance with it which was approved on the 22nd March, 1819." Here follows an exhaustive review of prior legislation in this State on the subject of imprisonment for debt.

Tuttle v. *Wilson,* 24 Ill. 555.

We have held that this prohibition of the constitution applies to actions upon contracts, express or implied. Its design is to relieve debtors from imprisonment who are unable to perform their engagements. They are exempt from arrest, if they act in good faith towards their creditors. The prohibition does not extend to actions for torts, nor to fines or penalties, arising from a violation of the penal laws of the State. It has reference to debts arising *ex contractu.* The stat-

ute which authorizes a commitment to the county jail for the non payment of a fine and costs does not violate this section.

Kennedy v. *The People,* 122 Ill. 652.

"The policy of our law is opposed to imprisonment for debt, and no person within this State can be so imprisoned, except upon refusal to surrender his estate for the benefit of his creditors, as prescribed by law, or in cases where there is a strong presumption of fraud."

Kitson v. *Farwell,* 132 Ill. 327.

SEC. 13. Private property shall not be taken or damaged for public use without just compensation. Such compensation, when not made by the state, shall be ascertained by a jury, as shall be prescribed by law. The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners, subject to the use for which it is taken.

"Under the constitution of 1848 compensation in condemnation proceedings was only awarded for the land taken, and not for damages to the land not taken. It cannot be claimed that a simple deed or grant of land for right of way, to a railroad company will be presumed to have any greater effect than a condemnation judgment. It is said that, as condemnation proceedings are presumed to consider and include all damages suffered, so deeds of rights of way are presumed to include all damages arising from a proper construction of the improvement. But it is difficult to understand how, under the constitution of 1848, where the owner only received, as the result of the condemnation proceeding, compensation for the land taken and not damages to the land not taken, a deed of land to a railroad company, made when that constitution was in force, can be presumed to have been in consideration both of compensation for the land conveyed and of future damages to the land not conveyed, in the absence of anything on the face of the deed to show that the land was conveyed for any particular purpose, or that the parties had in mind any damages to accrue to other land."

"The doctrine announced in some of the text books, that, where land has been acquired for railroad purposes by deed or grant, as well as by condemnation, all damages to the portion of the owner's land not taken, for which an action would lie at common law, are presumed to have been considered in fixing the price, may well be applied to such a deed or grant made in this State since the constitution of 1870 went into force."

Wylie v. *Elwood,* 134 Ill. 289-90.

Sec. 14. No *ex post facto* law, or, law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed.

"The charters became a contract between the railroad companies and the State, that they might exercise their charter rights till the expiration of the term for which their charters were granted, unless, by some act violative of the obligations assumed by their organization, they should forfeit these privileges and their franchises; and under the constitution of the United States, the General Assembly has no power to impair the obligation of these contracts.

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, no doubt, 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 repeat-

edly 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.

Ruggles v. *The People,* 91 Ill. 260.

"There can be no question that railway corporations are subject to police regulations as well as private citizens. The general assembly, when the public exigencies require it, has power to regulate corporations in their franchises so as to provide for the public safety. The exercise of this right in no manner interferes with or impairs the powers conferred by their acts of incorporation.

Under this power, it has been held that the legislature may require railroad corporations, notwithstanding no such right has been reserved in the charters, to fence their tracks, to put in cattle guards, to place upon their engines a bell, and to do many other things for the protection of life and property. This power is inherent in the State, and it can not part irrevocably with its control over that which is for the health, safety and welfare of society."

T. W. & W. R. W. Co. v. *City of Jacksonville,* 67 Ill. 40

A mechanic lien does not attach upon public school property. This is due to the very nature and purposes of school corporations. They are brought into existence to subserve a great public policy—to give to every child of the State a common school education. And these bodies are created for the promotion of this great public interest, and they are clothed with such power only as will enable them to accomplish this public purpose. They are clothed with none of the usual powers that are granted to private corporations, nor were they authorized to enter into commercial pursuits, but simply to perform their duties to the public.

The education of the children in the State has been assumed as a duty devolving upon the government, and it has chosen the present school system as being the best adapted to that end; and these bodies are created to effectuate that policy, and are essentially as

public as are municipal corporations. They are as much the instruments of government, and are as essential in carrying on its functions, as are cities, towns and villages."

Board of Education v. *Neidenberger,* 78 Ill. 60.

"Where the property of a corporation is exempted from taxation by its charter, the exemption amounts to a legislative contract, which is binding on the State, and such property can not afterwards be subjected to taxation."

The People v. *Soldiers' Home,* 95 Ill. 561.

SEC. 15. The military shall be in strict subordination to the civil power.

SEC. 16. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

SEC. 17. The people have the right to assemble in a peaceable manner to consult for the common good, to make known their opinions to their representatives, and to apply for redress of grievances.

SEC. 18. All elections shall be free and equal.

SEC. 19. Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay.

"Under this broad shield of the constitution, every man has a right to call upon the courts to protect him in his property, person and reputation, without reference to whether other persons are also suffering from the same cause. Many of the most serious nuisances which affect property and persons do affect some considerable part of the public, such as neighborhoods frequently consisting of many people, and many houses. Tanyards, slaughter houses, rendering establishments and powder houses are familiar illustrations of what

may become, and frequently are, nuisances of the most serious character, detrimental alike to property, person, health and even hazardous to life itself. It is the common knowledge of all mankind and of which courts will take judicial knowledge, that where human habitations fall within the shadow and under injurious influences of such like establishments, whereby the air is rendered impure from foul and offensive stenches, or where the constant uproar and turmoil of heavy and clanking machinery takes away all quiet, or where the near presence of dangerous and combustible substances overshadows a neighborhood with constant fear, or where the air is constantly laden with clouds of dust and smoke, the property of the individual, at least for the purposes of occupation, is rendered less valuable, and when the proof shows that such injury is of a substantial and permanent character, then the law will afford a remedy to each individual so affected."

Wylie v. *Elwood*, 34 Ill. App. 248.

This section is not violated by a contract by an attorney to prosecute a suit for an amount equal to one-half of the sum recovered. "Whether the agreement is void for champerty is an important question upon which the discussion and citation of authorities might be made almost endless. The old law upon the subject of barratry, champerty and maintenance, seems to have been founded upon the conservative English feeling that whatever is, is right, and ought not to be disturbed. A hundred years ago Justice Buller expressed his contempt for it. It has been so pruned away and exceptions so grafted upon it, that there is nothing of substance left of it in this State, and it has been wholly abandoned in others."

Dunne v. *Herrick*, 37 Ill. App. 182.

Sec. 20. A frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

ARTICLE III.

DISTRIBUTION OF POWERS.

The powers of the government of this state are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

"All political powers which the State may rightfully exercise at all belong, ultimately, to the people in their sovereign corporate capacity, which they may distribute for purposes of government, in such manner as they think best, subject to the limitation, that when the State government is organized it shall be republican in form. These powers of government are, in their very nature, either legislative or executive. Every legitimate exercise of political power, of necessity, consists in the making or execution of some law. The executive powers are, in their nature, either judicial or ministerial; hence, for convenience of administration, the powers of government are, by the constitution of this State, and that of all the others, so far as we are advised, divided into three classes, namely: legislative, executive and judicial; and, by this division, are conferred respectively upon three distinct branches of the government, and this being a complete disposition of the whole, it follows, neither branch of government to whom these powers have been thus delegated, can exercise any of those conferred upon either of the others. While each department is, in theory, independent of the others, and must, therefore, in the first instance, judge of its own powers within the grant, yet, whenever any property right is drawn in question, in a legal proceeding depending upon an alleged usurpation of power by either of the other departments, and not with respect to a matter of which such department is made the exclusive judge, the ultimate power of determining the question belongs to the judiciary. It is the right of the legislature to pass general laws for the

government and regulation of all persons and property within the State, and it is made the exclusive judge of their fitness and propriety, so long as they do not encroach upon the powers entrusted to the other departments of the government, or interfere with vested rights."

"The legislature has the power, should it deem it expedient, to repeal all laws not embodied in the constitution, except such as are essential to the enforcement of vested rights, and, subject to the same limitation, it may change the forms of action and modes of procedure in courts of justice to whatever extent it may see fit."

"The judicial powers of the State are exercised by courts established under the constitution, in conformity with the usage and principles of the common law, or in the manner prescribed by the legislature."

Dodge v. *Cole,* 97 Ill. 355.

"It has been held, that a court of equity has no power to try a contested election, even where the statute has not provided a mode for contesting. Elections belong to the political branch of the government, and are beyond the control of the judicial power. It was not designed, when the fundamental law of the State was framed, that either department of government should interfere with or control the other, and it is for the political power of the State, within the limits of the constitution, to provide the manner in which elections shall be held, and the manner in which officers thus elected shall be qualified, and their elections contested. And the political power of the State may organize municipal bodies and put them into operation by the force of enactment, or by election by the people to be thus governed, and they can provide the mode of reviewing the returns of all elections, to ascertain whether they are in accordance with the expressed will of the people. And until the courts are empowered to act, by the constitution or legislative enactment, they must refrain from interference."

Dickey v. *Reed,* 78 Ill. 271.

"The really difficult question to the case is to determine the bounds fixed by the constitution to the discre-

tion of the General Assembly, when that body, acting within other and more definitely expressed limitations, is complying with the constitutional mandate to form senatorial districts of compact territory, containing, as nearly as practicable, an equal number of inhabitants. If the statute is within those bounds, though resulting in inequality and injustice, it is valid, for the courts have no power to revise or annul an act of the legislature which is the mere exercise of its discretionary power, or which rests in the legislative judgment."

"Article 3 of the constitution provides that 'the powers of the government of this State are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.' The legislative power is vested in the General Assembly, and whether or not the power to apportion the State into senatorial districts be deemed legislative, it is expressly vested in the legislative department by the constitution. Besides, 'no proposition is better settled than that a State constitution is a limitation upon the powers of the legislature,' and not a grant of power, and that the legislature possesses every power not delegated to some other department or to the Federal government, or not denied to it by the constitution of the State or of the United States."

"So it will be seen that the legislature has all the power of the people over the apportionment of the State into senatorial and representative districts not denied to it by the constitution."

The People v. *Thompson,* 155 Ill. 469.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SEC. 1. The legislative power shall be vested in a general assembly, which shall consist of a senate and house of representatives, both to be elected by the people.

"In ascertaining the powers of a state legislature,

we examine to see what are denied by the constitutions of the United States and of the state, whereas in interpreting the constitution of the United States, we are obliged to find a grant of power, before it can be exercised."

"The legislature of a state can pass any law not prohibited by its own constitution and that of the United States, and beyond the limitations and restrictions contained in those constitutions it is as absolute, omnipotent, and uncontrollable as parliament."

Mason v. *Wait,* 5 Ill. (4 Scam.) 127.

"The question of legislative power, and its extent, depends on the limitations contained in the constitution. When a State is created it is invested with complete sovereign power, unless restricted by constitutional limitation, and under our system of government such restrictions are written and embodied in organic law. Were it not for these limitations, the legislative power would be without restriction. When we have to determine whether an act is within the scope of legislative power, we do not look for an express delegation of the power in the fundamental law, but we look to see whether the general power has been limited. The first section of the fourth article of our constitution vests the legislative power of the State in the General Assembly. By it the full, unlimited and uncontrolled legislative power was conferred, and it may be so exercised unless limited by other provisions of that instrument, or its exercise is inhibited by the Federal constitution; and we may search in vain for any provision in either, prohibiting the General Assembly from selling or donating public property. There is no such inhibition."

Harris v. *Board of Supervisors,* 105 Ill. 450.

"A state constitution is a limitation upon the powers of the legislature, and the legislature possesses every power not delegated to some other department, or expressly denied to it by the constitution."

Winch v. *Tobin,* 107 Ill. 212.

"It is also urged, that under the organic law the legislature have no power to make the validity of a law

depend upon a vote of the people, and as this act declares that it shall not be binding until adopted by the vote of the several municipal divisions as therein specified, it does not possess the elements of a binding law. This question was maturely considered and fully discussed in *The People, ex rel.* v. *Reynolds,* 5 Gilm. 1, and *The People ex rel. The South Park Commissioners* v. *Salomon,* ante, p. 37, where the conclusion was announced that such a submission was fairly within the scope of the legislative power. We do not see any reason to review the grounds of the decisions there announced, or to depart from the conclusion there arrived at, and must hold that they govern this question."

Erlinger v. *Boneau,* 51 Ill. 100.

ELECTION.

SEC. 2. An election for members of the general assembly shall be held on the Tuesday next after the first Monday in November, in the year of our Lord one thousand eight hundred and seventy, and every two years thereafter, in each county, at such places therein as may be provided by law. When vacancies occur in either house, the governor, or persons exercising the powers of governor, shall issue writs of election to fill such vacancies.

ELIGIBILITY AND OATH.

SEC. 3. No person shall be a senator who shall not have attained the age of twenty-five years, or a representative who shall not have attained the age of twenty-one years. No person shall be a senator or a representative who shall not be a citizen of the United States, and who shall not have been for five years a resident of this state, and for two years next preceding his election a resident within the territory forming the district from which he is elected. No judge or clerk of any court, secretary of state, attorney general, state's attorney, recorder, sheriff, or collector of public revenue, member of either house of congress, or person holding any lucrative office under the United States or this state, or any foreign government, shall

have a seat in the general assembly: *Provided,* that appointments in the militia, and the offices of notary public and justice of the peace, shall not be considered lucrative. Nor shall any person, holding any office of honor or profit under any foreign government, or under the government of the United States, (except postmasters whose annual compensation does not exceed the sum of $300,) hold any office of honor or profit under the authority of this State.

"A director of the State institution for the education of the deaf and dumb, appointed by the Governor with the advice of the Senate, holds an 'office of honor,' within the meaning of the twenty-ninth section of the third article of the constitution, which will be vacated by an acceptance of an appointment as Marshal by authority of the United States."

Dickson v. *The People,* 17 Ill. 191.

Sec. 4. No person who has been, or hereafter shall be, convicted of bribery, perjury, or other infamous crime, nor any person who has been or may be a collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the general assembly, or to any office of profit or trust in this state.

"It is claimed that the 4th section of article 4 of the constitution provides that any person who has been a collector or holder of public moneys and shall not have accounted for and paid them over according to law, shall be ineligible to any office of profit or trust, and that as Whitaker was a defaulter, as a holder of public moneys, he was ineligible to the office, and never constitutionally in office, and his bond was void. This provision presupposes that the default shall be known and fixed. And the default could only be fixed by judicial or other legal authority. It may be that if such a defaulter were to be elected or appointed, and enter into office, he could be ousted by *quo warranto.* But so long as he holds the office his acts would be valid and binding. If this were not so, all receipts and

vouchers given by him as treasurer would be void, after he became defaulter, whether the fact was known or not at the time. The framers of that instrument never could have intended such results. Until the fact was properly ascertained, he, under his commission and oath of office, held the *indicia* of legal title to his office, and his acts were binding, and his sureties were liable for them until his title might be impeached by appropriate proceedings."

Cawley v. *The People,* 95 Ill. 254.

SEC. 5. Members of the general assembly, before they enter upon their official duties, shall take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of Illinois, and will faithfully discharge the duties of senator (or representative) according to the best of my ability; and that I have not, knowingly or intentionally, paid or contributed anything, or made any promise, in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill the said office and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company or person for any vote or influence I may give or withhold on any bill, resolution of appropriation, or for any other official act.

This oath shall be administered by a judge of the Supreme or Circuit Court, in the hall of the house to which the member is elected, and the secretary of state shall record and file the oath subscribed by each member. Any member who shall refuse to take the oath herein prescribed, shall forfeit his office, and every member who shall be convicted of having sworn falsely to or of violating his said oath, shall forfeit his office, and be disqualified thereafter from holding any office of profit or trust in this state.

APPORTIONMENT—SENATORIAL.

SEC. 6. The general assembly shall apportion the state every ten years, beginning with the year 1871, by dividing the population of the state, as ascertained by the federal census, by the number 51, and the quotient shall be the ratio of representation in the senate. The state shall be divided into 51 senatorial districts, each

of which shall elect one senator, whose term of office shall be four years. The senators elected in the year of our Lord 1872, in districts bearing odd numbers, shall vacate their offices at the end of two years, and those elected in districts bearing even numbers, at the end of four years; and vacancies occurring by the expiration of term, shall be filled by the election of senators for the full term. Senatorial districts shall be formed of contiguous and compact territory, bounded by county lines, and contain, as nearly as practicable, an equal number of inhabitants; but no district shall contain less than four-fifths of the senatorial ratio. Counties containing not less than the ratio and three-fourths, may be divided into separate districts, and shall be entitled to two senators, and to one additional senator for each number of inhabitants equal to the ratio contained by such counties in excess of twice the number of said ratio.

"It was not discretionary with the legislature whether it would, or not, comply with the four restrictions before mentioned, upon its power, respecting the observance of county lines, the division of counties, the minimum number of inhabitants necessary to form a district, and the contiguity of territory in forming districts. Nor was it discretionary as to whether or not that body would, subject to said limitations, apply the principles of compactness of territory and approximate equality in population in making the apportionment; but we do hold that it was a question for its final determination as to what approximation could or should be made toward perfect compactness of territory and equality in population—and this, too, though treating this requirement of the constitution as mandatory on the legislature. In other words, if it clearly appeared that in the formation of any district the requirement of compactness of territory and equality in population had been wholly ignored, had not been considered or applied at all, to any extent, then the statute would be clearly unconstitutional. But if it has been considered and applied, though to a limited extent only, subject to the other more definitely expressed limitations, then the General Assembly has not tran-

scended its power, although it may have very imperfectly performed its duty, and the act is valid. That no department of the State government has any discretion as to whether or not it will perform a constitutional duty, and that constitutional provisions are to be treated as mandatory, rather than as directory, do not militate against the position here assumed, for however peremptorily the performance of the duty may be enjoined by the constitution, it cannot be enforced, or the manner of its performance be revised, by the courts, in a matter committed by the constitution to the final decision of such department. (Cooley's Const. Lim. 78-83).. The same eminent authority above quoted from says: 'Where the power which is exercised is legislative in its character, the courts can enforce only those limitations which the constitution imposes, and not those implied restrictions which, resting in theory, only, the people have been satisfied to leave to the judgment, patriotism and sense of justice of their representatives.' Cooley's Const. Lim. 129.''

The People v. *Thompson,* 155 Ill. 476.

Note. By the adoption of minority representation, sections 7 and 8, of this article, cease to be a part of the constitution. Under section 12 of the schedule and the vote of adoption, the following section relating to minority representation is substituted for said sections:

MINORITY REPRESENTATION.

SECS. 7 and 8. The house of representatives shall consist of three times the number of the members of the senate, and the term of office shall be two years. Three representatives shall be elected in each senatorial district at the general election in the year of our Lord 1872, and every two years thereafter. In all elections of representatives aforesaid, each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates, as he shall see fit; and the candidates highest in votes shall be declared elected.

TIME OF MEETING AND GENERAL RULES.

SEC. 9. The sessions of the general assembly shall

commence at 12 o'clock noon, on the Wednesday next after the first Monday in January, in the year next ensuing the election of members thereof, and at no other time, unless as provided by this constitution. A majority of the members elected to each house shall constitute a quorum. Each house shall determine the rules of its proceedings, and be the judge of the election, returns and qualifications of its members; shall choose its own officers; and the senate shall choose a temporary president to preside when the lieutenant governor shall not attend as president or shall act as governor. The secretary of state shall call the house of representatives to order at the opening of each new assembly, and preside over it until a temporary presiding officer thereof shall have been chosen and shall have taken his seat. No member shall be expelled by either house except by a vote of two-thirds of all the members elected to that house, and no member shall be twice expelled for the same offense. Each house may punish, by imprisonment, any person not a member, who shall be guilty of disrespect to the house by disorderly or contemptuous behavior in its presence. But no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior.

Sec. 10. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as, in the opinion of the house, require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, or to any other place than that in which the two houses shall be sitting. Each house shall keep a journal of its proceedings, which shall be published. In the senate at the request of two members, and in the house at the request of five members, the yeas and nays shall be taken on any question, and entered upon the journal. Any two members of either house shall have liberty to dissent from and protest, in respectful language, against any act or resolution which they think injurious to the public or

to any individual, and have the reasons of their dissent entered upon the journals.

"Under Section 13 of Article 4 of the Constitution of 1848, the governor issued a proclamation adjourning the legislature. In doing so he claimed that the contingency therein provided for had arisen, and that he was authorized to act. And whether this be so or not, when we see, from the absence of all entries upon the journals, that the two houses ceased to hold further sessions, the members drew their pay, returned to their homes, and the halls were closed, this apparent acquiescence on the part of the members of the two bodies, to my mind, is satisfactory evidence that they designed to terminate the session. By this course of action it would unquestionably seem that they had determined to cease to meet, and whatever weight they may have attached to the governor's proclamation, they did in fact adjourn, or, at least, ceased to hold their daily sessions, according to the usual course of such bodies, and this cessation was so far as the journals show, without day. And it seems that it was designed to adopt the act of the governor. Suppose the governor, without any pretense of a disagreement, had come into the houses, and had declared them adjourned *sine die,* and the speakers had so announced, and it had been entered on the journals of each house that on that day the general assembly had so adjourned and the members had dispersed and business had ceased, would any person contend that the session had not been terminated notwithstanding the want of a joint resolution?"

The People v. *Hatch,* 33 Ill. 127.

"A majority of all the members elected to either branch of the general assembly, must concur in the final passage of a bill. This is indispensable to its becoming a law. Without it, the act has no more force than the paper upon which it is written. The vote must be taken by ayes and noes. The constitution prescribes this as the test, by which to determine whether the requisite number of members vote in the affirmative. The vote must also be entered on the journal.

The office of the journal is to record the proceedings of the house, and authenticate and preserve the same. It must appear on the face of the journal, that the bill passed by the constitutional majority. These directions are all clearly imperative. They are expressly enjoined by the fundamental law, and cannot be dispensed with by the legislature. There are some other requirements equally essential, and that can no more be disregarded. A bill must be signed by the speakers of both houses, and then presented to the governor for his action. If he consents, his approval is indorsed on the bill; if he returns it with objections, it must again be passed through each house by a majority of all its members. If he does not return the bill within ten days, and the legislature still remains in session, it becomes a law without his signature."

Spangler v. *Jacoby,* 14 Ill. 298.

A transcript from the journal record of either house of the legislature, of its proceedings, properly certified, is admissible in evidence to prove the facts therein recorded. It is not necessary to produce the original minutes made by the officers of the respective houses, or copies thereof.

The law does not require that the officers of the General Assembly shall sign the record of the proceedings of either house, or that the copying clerks shall certify to the accuracy of their work, in order to make the same admissible as evidence.

Miller v. *Goodwin,* 70 Ill. 659.

STYLE OF LAWS AND PASSAGE OF BILLS.

SEC. 11. The style of the laws of this state shall be: "*Be it enacted by the People of the State of Illinois, represented in the General Assembly.*"

SEC. 12. Bills may originate in either house, but may be altered, amended or rejected by the other; and on the final passage of all bills, the vote shall be by yeas and nays, upon each bill separately, and shall be entered upon the journal; and no bill shall become a law without the concurrence of the majority of the members elected to each house.

"The whole number of senators elected to and composing the senate being 50, at least 26 of its members must concur in the final passage of a bill.

"This is indispensable to its becoming a law. The vote must be taken by yeas and nays, and entered upon the journal. It must appear on the face of the journal that the bill passed by the constitutional majority; and it is competent to show from the journals of either branch of the legislature, that a particular act was not passed in the mode prescribed by the constitution, and thus defeat its operation altogether."

The People v. *DeWolf,* 62 Ill. 255.

SEC. 13. Every bill shall be read at large on three different days, in each house; and the bill and all amendments thereto shall be printed before the vote is taken on its final passage; and every bill, having passed both houses, shall be signed by the speakers thereof. No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed; and no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act. And no act of the general assembly shall take effect until the first day of July next after its passage, unless, in case of emergency, (which emergency shall be expressed in the preamble or body of the act), the general assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct.

"By giving effect to this provision, no portion of a bill not germane to its general objection, or not expressed in the title when passed through the houses, could acquire the force of a law. Only the portions of a bill expressed in the title when passed are constitutionally adopted. This being so, it does not matter what title might be adopted after its passage, to designate the law. The title adopted after the passage of the bill is no part of the law, nor does it enlarge, limit or

control the law. The title to a bill is an essential part of the bill, and, under the constitution, every bill must have a title, and such title must truly state the object of the bill."

Binz v. *Weber,* 81 Ill. 290.

The act entitled "An act to enable the corporate authorities of two or more towns, for park purposes, to issue bonds, etc.," does not violate this section of the constitution as embracing more than one subject or matter not expressed in the title. The body of the act is germane to the title of the bill.

People v. *Brislin,* 80 Ill. 433.

"We have often held that the provision of the constitution here claimed to be violated, does not require that the title to the act shall set forth a detailed statement, or an index or abstract of its contents, but that it will be sufficient if the title be comprehensive enough to reasonably indicate the several objects which the statute assumes to effect. When a general purpose is declared, the means by which to accomplish that purpose are presumed to be intended as necessary incidents."

The People v. *Hazelwood,* 116 Ill. 327.

"As we have seen, the constitution provides that where a subject is embraced in an act not expressed in its title, 'the act shall be void only as to so much thereof as shall not be so expressed.' Therefore, although a portion of the statute under consideration is unconstitutional, it does not follow that the court is authorized to declare its other provisions void, if they are separable from the void provisions, unless it shall appear that all of the provisions of the act are so dependent on each other, operating together for the same purpose, or are otherwise so connected together in meaning, that it can not be presumed that the legislature would have passed the one without the other provision. When the constitutional and unconstitutional provisions are distinct and separable, the valid provisions may stand as though the invalid provision had not been introduced."

Donnersberger v. *Prendergast,* 128 Ill. 234.

If the act embraces two subjects and both are expressed in the title, the entire act must be declared void, as in that case the proviso that if any subject is embraced in the act which is not expressed in the title the act shall be void only as to so much as is not so expressed, can have no application. If two subjects are both embraced in the act and expressed in the title, we can not only elect between them so as to preserve one and reject the other, but the entire act must fall by reason of being in contravention of the constitutional limitation. If the objection, however, is only that the act embraces several subjects of which but one is expressed in the title, the subjects not expressed may be rejected, and the act, so far as it relates to the subject expressed in the title may be held to be valid."

The People v. *Nelson,* 133 Ill. 577.

"The fact that an act or statute has received the signatures of the speakers of both houses and the approval of the governor, is *prima facie* evidence of its constitutional passage and validity. But such evidence may be overcome by showing from the journals that the act was not passed in the mode prescribed in the constitution."

I. C. R. R. Co. v. *People,* 143 Ill. 434.

PRIVILEGES AND DISABILITIES.

SEC. 14. Senators and representatives shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, 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.

SEC. 15. No person elected to the general assembly shall receive any civil appointment within this state from the governor, the governor and senate, or from the general assembly, during the term for which he shall be elected; and all such appointments and all votes given for any such members for any such office or appointment, shall be void; nor shall any member of the general assembly be interested, either directly

or indirectly, in any contract with the state, or any county thereof, authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration thereof.

PUBLIC MONEYS AND APPROPRIATIONS.

SEC. 16. The general assembly shall make no appropriation of money out of the treasury in any private law. Bills making appropriations for the pay of members and officers of the general assembly, and for the salaries of the officers of the government, shall contain no provision on any other subject.

The manifest intention of section 16 was to make the subject of appropriations for the pay of the members and officers of the legislature, and for the salaries of the officers of the government, a separate and distinct subject for legislative action. In a bill making appropriations for those objects, every provision is unconstitutional which proposes to do anything besides making such appropriations."

Ritchie v. *The People,* 155 Ill. 120.

SEC. 17. No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the auditor thereon; and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution. The auditor shall, within 60 days after the adjournment of each session of the general assembly, prepare and publish a full statement of all money expended at such session, specifying the amount of each item, and to whom and for what paid.

"Under this clause of the constitution it is plain that the plaintiff is entitled to no pay out of the treasury, unless an appropriation has been made by law for that purpose. And it is also true, that while the act creating the Commission of Claims provides for the appointment of a bailiff, and provides that he shall

receive $3 per day, the act contains no provision whatever appropriating any money for the payment of the bailiff.''

Pavey v. *Utter,* 132 Ill. 490.

Sec. 18. Each general assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations, general or special, requiring money to be paid out of the state treasury, from funds belonging to the state, shall end with such fiscal quarter: *Provided,* the state may, to meet casual deficits or failures in revenues, contract debts, never to exceed in the aggregate $250,000; and moneys thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt, except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war, (for payment of which the faith of the state shall be pledged,) shall be contracted, unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of the votes cast for members of the general assembly at such election. The general assembly shall provide for the publication of said law for three months at least before the vote of the people shall be taken upon the same; and provision shall be made, at the time, for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose or from other sources of revenue; which law, providing for the payment or such interest by such tax, shall be irrepealable until such debt be paid: *And, provided, further,* that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

"By a well settled construction of this provision of the constitution, all appropriations, whether general or special when otherwise unlimited, will continue in force and be available for the purpose for which they were made until the expiration of the first fiscal quarter after the adjournment of the next regular session of the legislature at which time all appropriations must lapse, and cease to be of any validity."

The People v. *Swigert,* 107 Ill. 500.

SEC. 19. The general assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the state under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void; *Provided,* the general assembly may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

"We must, then, inquire, were these alleged agreements or contracts made 'with express authority of law?' And it has just been shown, that in order that this shall be answered in the affirmative, it must appear that each substantial thing required by the law to be done in the making of such agreements or contracts, was done in the manner and order therein required."

Dement v. *Rokker,* 126 Ill. 194.

SEC. 20. The state shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to or in aid of any public or other corporation, association or individual.

PAY OF MEMBERS.

SEC. 21. The members of the general assembly shall receive for their services the sum of $5 per day, during the first session held under this constitution, and 10

cents for each mile necessarily traveled in going to and returning from the seat of government, to be computed by the auditor of public accounts; and thereafter such compensation as shall be prescribed by law, and no other allowance or emolument, directly or indirectly, for any purpose whatever, except the sum of $50 per session to each member, which shall be in full for postage, stationery, newspapers and all other incidental expenses and perquisites; but no change shall be made in the compensation of members of the general assembly during the term for which they may have been elected. The pay and mileage allowed to each member of the general assembly shall be certified by the speaker of their respective houses, and entered on the journals and published at the close of each session.

SPECIAL LEGISLATION PROHIBITED.

SEC. 22. The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: for

Granting divorces;

Changing the names of persons or places;

Laying out, opening, altering and working roads or highways;

Vacating roads, town plats, streets, alleys and public grounds;

Locating or changing county seats;

Regulating county and township affairs;

Regulating the practice in courts of justice;

Regulating the jurisdiction and duties of justices of the peace, police magistrates and constables;

Providing for changes of venue in civil and criminal cases;

Incorporating cities, towns or villages, or changing or amending the charter of any town, city or village;

Providing for the election of members of the board of supervisors in townships, incorporated towns or cities;

Summoning and impaneling grand or petit juries;

Providing for the management of common schools;

Regulating the rate of interest on money;

The opening and conducting of any election, or designating the place of voting;

The sale or mortgage of real estate belonging to minors or others under disability;

The protection of game or fish;

Chartering or licensing ferries or toll bridges;

Remitting fines, penalties or forfeitures;

Creating, increasing or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed;

Changing the law of descent;

Granting to any corporation, association or individual the right to lay down railroad tracks, or amending existing charters for such purpose;

Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever.

In all other cases where a general law can be made applicable, no special law shall be enacted.

The act in force July 1, 1872, commonly known as the "Mayors bill" was neither local nor special. It applies, in general terms, to all the cities in the State. Whether there may be many or few to whom its provisions will be of any practical force, is not the question. As was observed in *McAunich* v. *The M. and M. R. R. Co.* 20 Ia. 338: "These laws are general and uniform, not because they operate upon every person in the State, for they do not, but because every person who is brought within the relations and circumstances provided for, is affected by the laws. They are general and uniform in their operation upon all persons in the like situation, and the fact of their being general and uniform, is not affected by the number of those within the scope of their operation."

The fact that the act is limited as to the time of its duration, does not make it a local or special act, agreeably to any definition of such acts with which we are familiar. "Private or special statutes," says Sedgwick, in his work on Statutory and Constitutional Law, 30, "relate to certain individuals, or particular

classes of men." In Smith on Constitutional Construction, it is said: "The general description of public acts is, that they relate to or concern the interests of the public at large, or relate to a general *genus* in relation to things, and private acts relate to private individuals, or an individual only, or which concern a particular *species* of such general *genus* or thing," p. 913 sec. 795; and again, "It has been said, that the distinction between public and private statutes is this: a general or public act is a universal rule that regards the whole community, but special or private acts are rather exceptions, than rules, being those which operate upon private persons and private concerns. It is not necessary, however, in order to constitute a statute a public act, that it should be equally applicable to all parts of the State. It is sufficient, if it extends to all persons doing or omitting to do an act within the territorial limits described in the statute."

"The distinction, then, seems plain—a local or special statute is limited in the objects to which it applies; a temporary statute is limited merely in its duration, and, necessarily, a local or special law may be perpetual, or a general law may be temporary. This, therefore, is a temporary general law, and not within the prohibition of the section referred to."

The People v. *Wright,* 70 Ill. 398-399.

In construing these provisions of the constitution (those relating to education) this court has held "that there is no limitation in the constitution as to the agencies the State shall adopt in providing this system of free schools, and that the General Assembly has full power to select or prescribe the agencies by which school taxes shall be levied, collected, held and disbursed for school purposes, and that all laws, whether in city charters or elsewhere designed to affect free schools, may be regarded as *school laws*—as part of the law intended to provide a system of free schools; and that sec. 22, art. 4, as to the power of passing special laws, relates merely to the *management* of common schools, that is, to the conduct of common schools in imparting instruction, and does

not relate to the matter of providing the necessary funds for their support."

Fuller v. *Heath,* 89 Ill. 313.

"The act of 1881, to amend certain sections of the act relating to the election of justices of the peace, creating each county in the State, except Cook county, a district, and making two districts of Cook county, and limiting the jurisdiction of such officers within such districts, is in contravention of that part of the constitution which requires that the jurisdiction of justices of the peace shall be uniform, and also of that part which prohibits the passage of any local or special laws regulating the jurisdiction of justices of the peace, such amendment operating to change the preexisting law on the subject only in Cook county."

The People v. *Meech,* 101 Ill. 200.

"The question presented by this record is the constitutionality of an act of the legislature of this State, commonly known as the "Election law," approved June 19, 1885, in force July 1, 1885, and entitled "An act regulating the holding of elections, and declaring the result thereof, in cities, villages and incorporated towns in this State."

It is claimed that the act in question is such a local or special law, as is prohibited by section 22 of article 4 of the constitution. That section provides, that the General Assembly shall not pass local or special laws for certain specified objects, and among them for "the opening and conducting of any election, or designating the place of voting." The feature of the act, which is especially insisted upon as showing it to be local and special in its character, is the provision which is made for submitting the question of its adoption to the votes of the electors in any city, village or town. It is charged, that the act was passed for the benefit of the city of Chicago, and that, having been adopted by that city and by the town of Lake, in the county of Cook, but not elsewhere, it is in force only in one locality. It is said, that, inasmuch as it operates solely and exclusively upon the particular city, village or town, which adopts it, and not upon all

the cities, villages and towns in the State, it is special and local in its application, and therefore forbidden by the constitution."

"Laws, which depend for their operation upon the votes of the people, have sometimes been held to be unconstitutional, as involving a delegation of legislative authority. In this State, however, they have been held to be valid."

The People v. *Hoffman,* 116 Ill. 594.

"We have been referred to more than fifty special charters granted by the legislature of this State, in the years 1853, 1854, 1855, 1857, 1859, 1861, 1865, 1867 and 1869, to gas companies in various cities and towns in the State, each one of which confers the exclusive privilege of laying gas pipes in the streets for a number of years. But when the constitution of 1870 was adopted, it provided, in section 22 of article 4, that the general assembly should pass no local or special laws for 'granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever,' and, in section 1 of article XI, that 'no corporation shall be created by special laws, * * * but the general assembly shall provide, by general laws, for the organization of all corporations hereafter to be created.

Manifestly the constitution of 1870 reversed the old policy of granting exclusive privileges to gas companies. After 1870 the public policy of the State was against the granting of exclusive privileges to corporations of any kind. The general incorporation act of 1872 was passed in pursuance of section 1 of article XI. The prohibition of special charters granting exclusive privileges, and the authorization of incorporations under a general law, followed by the passage of such a law, put the people of this State on record as being opposed to the creation of monopolies of all kinds."

The People v. *Chicago Gas Trust Co.,* 130 Ill. 296.

"That the act is general in its terms, authorizing the division into installments, of special assessments

in any city, incorporated town or village within the State, is not questioned. And the question presented is, whether the limitation contained in the proviso, by which cities of fifty thousand or more inhabitants are excluded from the operation of the act, unless the assessment aggregates $15,000 or more, renders the act unconstitutional. The purpose of the constitutional provision was to correct the evils of special legislation generally, and to prevent, as far as practicable, dissimilarity in the organization and powers of cities, towns and villages, and to bring about uniformity in the charters of the municipalities of the State. It is evident, however, that the framers of the constitution, recognizing the dissimilarity in condition of the different municipalities, did not contemplate absolute uniformity. While it was provided that a general incorporation law was to be passed, it was within the contemplation of the constitution that cities, towns and villages might thereafter exist under dissimilar charters previously granted. And so we have held in numerous cases, that the general act for the incorporation of cities, towns and villages was not unconstitutional, although applicable to none of the cities, towns, or villages of the State, until adopted by the same, and leaving it optional to adopt the general law or not, as the municipality might determine."

Cummings v. *City of Chicago,* 144 Ill. 565.

"We have so repeatedly held that a law may be general and yet be operative in a single place or places where the conditions necessary to its operation exist, that, if it were not abandoned, discussion of the question would be unnecessary."

Trausch v. *County of Cook,* 147 Ill. 536.

Sec. 23. The general assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this state or to any municipal corporation therein.

IMPEACHMENT.

SEC. 24. The house of representatives shall have the sole power of impeachment; but a majority of all the members elected must concur therein. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath, or affirmation, to do justice according to law and evidence. When the governor of the state is tried, the chief justice shall preside. No person shall be convicted without the concurrence of two-thirds of the senators elected. But judgment, in such cases, shall not extend further than removal from office, and disqualification to hold any office of honor, profit or trust under the government of this state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

MISCELLANEOUS.

SEC. 25. The general assembly shall provide, by law, that the fuel, stationery and printing paper furnished for the use of the state; the copying, printing, binding and distributing the laws and journals, and all other printing ordered by the general assembly, shall be let by contract to the lowest responsible bidder; but the general assembly shall fix a maximum price; and no member thereof, or other officer of the state, shall be interested, directly or indirectly, in such contract. But all such contracts shall be subject to the approval of the governor, and if he disapproves the same there shall be a re-letting of the contract, in such manner as shall be prescribed by law.

SEC. 26. The State of Illinois shall never be made defendant in any court of law or equity.

It was contended that the Trustees of Schools of the township for whose use the land was held in trust by the State, for common school purposes, cannot sue; but that the State alone can sue, or that she should in some manner be a party to the bill. The

State could not be made a party defendant nor compelled to sue. Her sovereignty would protect her from being coerced to prosecute or defend.

Moore v. *School Trustees,* 19 Ill. 85.

"Property belonging to the State is not subject to special assessment or special taxation by cities and villages for making local improvements. Under section 26 of article 4 of the constitution the State can not be made a party defendant in any court of law or equity. A proceeding to confirm a special tax for a public improvement is a suit at law, although a proceeding *in rem.*"

"The State is a sovereign, and can not be sued by her citizens, in her own courts, without her permission." "It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission." "The obligations of a State rest for their performance upon its honor and good faith, and can not be made the subjects of judicial cognizance, unless the State consents to be sued, or comes itself into court." In *Moore* v. *School Trustees,* 19 Ill. 83, we said: "The State could not be made a party defendant, nor compelled to sue. Her sovereignty would protect her from being coerced to prosecute or defend."

In re City of Mt. Vernon, 147 Ill. 359-365.

SEC. 27. The general assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this State.

SEC. 28. No law shall be passed which shall operate to extend the term of any public officer after his election or appointment.

"The general Incorporation Act of 1872 for cities and villages, in continuing in office the mayor and aldermen who were elected prior to the adoption of that act until their successors shall be elected and qualified, is not repugnant to section 28, article 4, of

the constitution, which provides, "no law shall be passed which shall operate to extend the term of office of any public officer after his election or appointment." While it is true such officers may have been elected for a definite time, they were also elected to hold their offices until their successors should be elected and qualified."

Crook v. *The People,* 106 Ill. 238.

SEC. 29. It shall be the duty of the general assembly to pass such laws as may be necessary for the protection of operative miners, by providing for ventilation, when the same may be required, and the construction of escapement shafts, or such other appliances as may secure safety in all coal mines, and to provide for the enforcement of said laws by such penalties and punishments as may be deemed proper.

"The above section which enjoins legislation in the interest of miners, means legislation for the personal safety of miners, and relates only to the enactment of police regulations to promote that end."

It is not competent for the legislature, under the constitution, to single out owners and operators of coal mines, and provide that they shall bear burdens not imposed on other owners of property or employers of labor, and prohibit them from making contracts which it is competent for other owners of property or employers of labor to make. Such legislation can not be sustained as an exercise of the police power."

Millett v. *The People,* 117 Ill. 294.

SEC. 30. The general assembly may provide for establishing and opening roads and cartways, connected with a public road, for private and public use.

SEC. 31. The general assembly may pass laws permitting the owners of lands to construct drains, ditches and levees for agricultural, sanitary or mining purposes, across the lands of others, and provide for the organization of drainage districts and vest the corporate authorities thereof, with power to construct

and maintain levees, drains and ditches, and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this State, by special assessments upon the property benefited thereby.

[This section was submitted to the voters at the election in November, 1878 as an amendment, was adopted and became a part of the constitution.]

This section as originally adopted in 1870 was as follows:

"Section 31. The General Assembly may pass laws permitting the owners or occupants of lands to construct drains and ditches, for agricultural and sanitary purposes, across the lands of others."

"The words in the amendment to section 31, article 4, of the constitution, 'provide for the organization of drainage, districts,' etc., are to be referred to the General Assembly, and not to the owners of lands,—in other words, the General Assembly may 'provide for the organization of drainage districts, and vest the corporate authorities thereof with power, etc.; and there is not any limitation or restriction upon the legislature as to the agencies to be used in the creation of such corporations, and it may make the finding of certain facts by the county court authorize the formation of such a district and corporation."

Blake v. *The People,* 109 Ill. 504.

"Under the amendment of the constitution (section 31, article 4,) adopted in November, 1878, the legislature is expressly empowered to 'provide for the organization of drainage districts, and vest the corporate authorities thereof with power to construct and maintain levees, drains and ditches,' etc. This general grant of power being unrestricted in terms, carries with it, by necessary implication, all other powers necessary to make the general grant effective, and to accomplish the results intended. As to the mode in which this power is to be exercised, the legislature is left the sole judge."

Kilgour v. *Drainage Commissioners,* 111 Ill. 350.

"In view of the construction given the provisions of the constitution prior to the amendment of 1878, it became necessary to invest the legislature with power to authorize the formation of drainage districts with power to special assessment of property benefited, and the people, by the amendment adopted in 1878, (art. 4, sec. 31,) granted such power, without limitation as to the mode of its exercise. Such general grant carried with it, by necessary implication, all other powers necessary to make the grant effective. (*Kilgour* v. *Drainage Comrs.,* 111 Ill. 342). There is no limitation upon the legislature as to the mode of forming drainage districts, or as to the agencies to be employed in their creation. (*Huston* v. *Clark,* 112 Ill. 344; *Owners of Land* v. *People,* 113 id. 296; *Village of Hyde Park* v. *Spencer,* 118 id. 446.) Thus the legislature may give the County Court power to form the districts, or vest the power in the highway commissioners of the town, or in persons selected from two boards of highway commissioners, (as in the case of the formation of union districts,) or county commissioners of the county, or corporate authorities of towns, cities and villages, (*Blake* v. *People,* 109 Ill. 504, and cases *supra,*) or the legislature may create another corporation within either, and define its powers, and determine the agencies through and by which its powers may be exercised. (*Wilson* v. *Board of Trustees,* 133 Ill. 433.) The mode and agencies through and by which the special assessment is to be imposed is left wholly to legislative discretion, and when it has chosen and designated the agency its selection is conclusive.

The People v. *Drainage Comrs.,* 143 Ill. 421.

Sec. 32. The general assembly shall pass liberal homestead and exemption laws.

Sec. 33. The general assembly shall not appropriate out of the state treasury, or expend on account of the new capitol grounds, and construction, completion, and furnishing of the state house, a sum exceeding, in the aggregate, $3,500,000, inclusive of all appropriations heretofore made, without first submit-

ting the proposition for an additional expenditure to the legal voters of the state, at a general election; nor unless a majority of all the votes cast at such election shall be for the proposed additional expenditure.

Sec. 34. The general assembly shall have power, subject to the conditions and limitations hereinafter contained to pass any law (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago. The law or laws so passed may provide for consolidating (in whole or in part) in the municipal government of the city of Chicago, the powers now vested in the city, board of education, township, park and other local governments and authorities having jurisdiction confined to or within said territory, or any part thereof, and for the assumption by the city of Chicago of the debts and liabilities (in whole or in part) of the governments or corporate authorities whose functions within its territory shall be vested in said city of Chicago, and may authorize said city, in the event of its becoming liable for the indebtedness of two or more of the existing municipal corporations lying wholly within said city of Chicago, to become indebted to an amount (including its existing indebtedness and the indebtedness of all municipal corporations lying wholly within the limits of said city and said city's proportionate share of the indebtedness of said county and sanitary district which share shall be determined in such manner as the general assembly shall prescribe) in the aggregate not exceeding five per centum of the full value of the taxable property within its limits, as ascertained by the last assessment either for State or municipal purposes previous to the incurring of such indebtedness, (but no new bonded indebtedness, other than for refunding purposes, shall be incurred until the proposition therefor shall be consented to by a majority of the legal voters of said city voting on

the question at any election, general, municipal or special); and may provide for the assessment of property and the levy and collection of taxes within said city for corporate purposes in accordance with the principals of equality and uniformity prescribed by this Constitution; and may abolish all offices, the functions of which shall be otherwise provided for; and may provide for the annexation of territory to or disconnection of territory from said city of Chicago by the consent of a majority of the legal voters (voting on the question at any election general, municipal or special) of the said city and of a majority of the voters of such territory, voting on the question at any election, general, municipal or special; and in case the general assembly shall create municipal courts in the city of Chicago it may abolish the offices of justices of the peace, police magistrates and constables in and for the territory within said city, and may limit the jurisdiction of justices of the peace in the territory of said County of Cook outside of said city to that territory, and in such case the jurisdiction and practice of said municipal courts shall be such as the general assembly shall prescribe; and the general assembly may pass all laws which it may deem requisite to effectually provide a complete system of local municipal government in and for the city of Chicago.

No law based upon this amendment to the constitution, affecting the municipal government of the city of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special; and no local or special law based upon this amendment affecting specially any part of the city of Chicago shall take effect until consented to by a majority of the legal voters of such part of said city voting on the question at any election, general, municipal or special. Nothing in this section contained shall be construed to repeal, amend or affect

section four (4) of Article XI of the Constitution of this State.

[This added section was proposed by the general assembly in 1903, was submitted to the voters at the election November 8, 1904, was adopted and was proclaimed adopted by the Governor December 5, 1904.]

ARTICLE V.

EXECUTIVE DEPARTMENT.

SEC. 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction and attorney general, who shall, each with the exception of the treasurer, hold his office for the term of four years from the second Monday of January next after his election, and until his successor is elected and qualified. They shall, except the lieutenant governor, reside at the seat of government during their term of office, and keep the public records, books and papers there, and shall perform such duties as may be prescribed by law.

"Since the passage of the act of June 19, 1891, entitled 'An act to entitle women to vote at any election held for the purpose of choosing any officer under the general or special school laws of this State,' women above the age of twenty-one and having the qualifications required in that act, are entitled to vote at any election of school officers, except that of superintendent of public instruction and county superintendents of schools."

"At the election of the State and county superintendent of schools, the qualifications of the voters must be those prescribed in sec. 1 of art 7 of the constitution, but the constitution contains no direction as to what other school officers shall be created, or as to the mode in which the incumbents of those offices shall be designated and chosen."

Plummer v. *Yost,* 144 Ill. 68.

SEC. 2. The treasurer shall hold his office for the term of two years, and until his successor is elected and qualified, and shall be ineligible to said office for two years next after the end of the term for which he was elected. He may be required by the governor to give reasonable additional security, and in default of so doing his office shall be deemed vacant.

ELECTION.

SEC. 3. An election for governor, lieutenant governor, secretary of state, auditor of public accounts, and attorney general, shall be held on the Tuesday next after the first Monday of November, in the year of our Lord 1872, and every four years thereafter; for superintendent of public instruction, on the Tuesday next after the first Monday of November, in the year 1870, and every four years thereafter; and for treasurer on the day last above mentioned, and every two years thereafter, at such places and in such manner as may be prescribed by law.

"Where the constitution has fixed the qualifications of electors, such qualifications can not be changed or added to by the legislature, or otherwise than by an amendment of the constitution. The legislature has no power to confer the elective franchise upon other classes than those to whom it is given by the constitution.

The constitutional qualification of electors is applicable, at least, in all cases of an election held for an officer who is mentioned or provided for in the constitution, unless it is indicated by that instrument that such officer may be otherwise elected or appointed, or that the legislature or some other body may determine by whom such officer may be elected or appointed."

The People v. *English,* 139 Ill. 622.

SEC. 4. The returns of every election for the above named officers shall be sealed up and transmitted, by the returning officers, to the secretary of state, directed to "The speaker of the house of representa-

tives,'' who shall, immediately after the organization of the house, and before proceeding to other business, open and publish the same in the presence of a majority of each house of the general assembly, who shall, for that purpose, assemble in the hall of the house of representatives. The person having the highest number of voters for either of said offices shall be declared duly elected; but if two or more have an equal and the highest number of votes, the general assembly shall, by joint ballot, choose one of such persons for said office. Contested elections for all of said offices shall be determined by both houses of the general assembly, by joint ballot, in such manner as may be prescribed by law.

ELIGIBILITY.

SEC. 5. No person shall be eligible to the office of governor, or lieutenant governor, who shall not have attained the age of thirty years, and been for five years next preceding his election, a citizen of the United States and of this State. Neither the governor, lieutenant governor, auditor of public accounts, secretary of state, superintendent of public instruction nor attorney general shall be eligible to any other office during the period for which he shall have been elected.

GOVERNOR.

SEC. 6. The supreme executive power shall be vested in the governor, who shall take care that the laws be faithfully executed.

SEC. 7. The governor shall, at the commencement of each session, and at the close of his term of office, give to the general assembly information, by message, of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall account to the general assembly, and accompany his message with a statement of all moneys received and paid out by him from any funds subject to his order, with vouchers, and, at the commencement of each regular session, present estimates of the amount of

money required to be raised by taxation for all purposes.

SEC. 8. The governor may, on extraordinary occasions, convene the general assembly, by proclamation, stating therein the purpose for which they are convened; and the general assembly shall enter upon no business except that for which they were called together.

SEC. 9. In case of a disagreement between the two houses with respect to the time of adjournment, the governor may, on the same being certified to him, by the house first moving the adjournment, adjourn the general assembly to such time as he thinks proper, not beyond the first day of the next regular session.

SEC. 10. The governor shall nominate, and by and with the advice and consent of the senate, (a majority of all the senators selected concurring by yeas and nays,) appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for; and no such officer shall be appointed or elected by the general assembly.

"Sec. 10, art. 5 provides that the Governor shall, by and with the advice and consent of the Senate, appoint all officers whose offices are established by the constitution, or which may be created by law, and whose appointment or election is not otherwise provided for, and no officer shall be appointed or elected by the general assembly. This section manifestly refers to officers or persons performing duties for the State, as contradistinguished from county, city, township or other municipal officers. If not, then every petty municipal officer would have to be appointed by the Governor and confirmed by the Senate unless such officers were in all cases made elective. Counties, cities, townships, school trustees, directors of schools and other such corporations could not appoint persons to aid in carrying out the purpose of their organization. This provision, then, can have no reference to such or other municipalities.

This section, then, only being applicable to offices created by the constitution, and not otherwise provided for, and to new offices created by the general assembly, and not required to be filled in some other mode, empowers the Governor to appoint to fill the place, but having no application to mere municipal government. When the general assembly creates a body of that character, it has the power to provide the manner of filling the offices for its government. The constitution having prescribed no particular mode, that body is left to select any means for the administration of government it thinks best adapted to that end. It may provide for election by the people, or may authorize any officer or person to fill the offices by appointment.'' That power has not been placed beyond legislative domain.''

People v. *Morgan,* 90 Ill. 565.

''The constitution, in section 10 of article 5, provides for the appointment of certain officers by the Governor. But the reasoning in *The People* v. *Morgan* shows, that it was never intended to vest in the Governor the selection of such local and municipal officers as these commissioners. The power to appoint officers of this class is not specifically designated in the constitution, as either a legislative, judicial or executive power. It is not therein specifically conferred on either department. Nor is there anything therein expressed which, either directly or impliedly, prohibits the legislature from authorizing the county court to appoint the commissioners. Therefore, the authority conferred on that court to do so, does not make the act invalid. The law-making powers of the States can do any legislative acts, not prohibited by the State constitutions. 'Without and beyond these limitations and restrictions, they are as absolute, omnipotent and uncontrollable as Parliament.' ''

People v. *Hoffman,* 116 Ill. 604.

Sec. 11. In any case of vacancy, during the recess of the senate, in any office which is not elective, the governor shall make a temporary appointment until the next meeting of the senate, when he shall nomi-

nate some person to fill such office; and any person so nominated, who is confirmed by the senate, (a majority of all the senators elected concurring by yeas and nays,) shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the senate, shall be again nominated for the same office at the same session, unless at the request of the senate, or be appointed to the same office during the recess of the general assembly.

SEC. 12. The governor shall have power to remove any officer whom he may appoint, in case of incompetency, neglect of duty, or malfeasance in office; and he may declare his office vacant, and fill the same as is herein provided in other cases of vacancy.

"Under section 12, article 5, of the constitution, the power of the Governor to remove officers appointed by him, for incompetency, neglect of duty, or malfeasance in office, and fill the vacancy caused thereby, is not confined to officers appointed by and with the advice and consent of the Senate, but it extends to all officers appointed by the Governor, under the law, whether with or without the concurrence of the Senate.

The substantive, principal thing of section 12, article 5, of the constitution, is the power of removal from office contained in the first clause, and what follows in the last clause, as to filling vacancies, is incidental and subordinate. Under the rules of construction, therefore, the last clause should not be held to control and govern the first, but should yield to and be made to conform to the first.

The intention of the constitution of 1870 was to make the power of removal from office by the Governor, co-extensive with his power of appointment.

The power of removal from office given by the constitution of 1870 to the Governor, applies to officers appointed by him under special and particular laws passed prior to the adoption of the constitution, as well as to those appointed under subsequent laws.

Wilcox v. *The People,* 90 Ill. 186.

SEC. 13. The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, subject to such regulations as may be provided by law relative to the manner of applying therefor.

SEC. 14. The governor shall be commander-in-chief of the military and naval forces of the State (except when they shall be called into the service of the United States,) and may call out the same to execute the laws, suppress insurrection, and repel invasion.

SEC. 15. The governor, and all civil officers of this state, shall be liable to impeachment for any misdemeanor in office.

VETO.

SEC. 16. Every bill passed by the general assembly shall, before it becomes a law, be presented to the Governor.

If he approve, he shall sign it, and thereupon it shall become a law; but if he do 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 its journal and proceed to reconsider the bill. If then two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the Governor; but in all such cases the vote of each house shall be determined by yeas and nays, to be entered upon the journal.

Bills making appropriations of money out of the treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections, and if the Governor shall not approve any one or more of the items or sections contained in any bill, but shall approve the residue thereof, it shall

become a law as to the residue in like manner as if he had signed it.

The Governor shall then return the bill, with his objections to the items or sections of the same not approved by him, to the house in which the bill shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider so much of said bill as is not approved by the Governor.

The same proceedings shall be had in both houses in reconsidering the same as is hereinbefore provided in case of an entire bill returned by the Governor with his objections; and if any item or section of said bill not approved by the Governor shall be passed by two-thirds of the members elected to each of the two houses of the general assembly, it shall become part of said law, notwithstanding the objections of the Governor.

Any bill which shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it; unless the general assembly shall, by their adjournment, prevent its return, in which case it shall be filed with his objections in the office of the Secretary of State, within ten days after such adjournment, or become a law.*

*[This section, as amended, was proposed by the general assembly, 1883, ratified by a vote of the people November 4, 1884, proclaimed adopted by the Governor November 28, 1884.]

The day on which the bill is sent to the Governor is excluded in computing the ten days mentioned in the above section.

People v. *Hatch,* 33 Ill. 9.

LIEUTENANT GOVERNOR.

SEC. 17. In case of death, conviction on impeachment, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties and emoluments of the office, for the residue of

the term, or until the disability shall be removed, shall devolve upon the lieutenant governor.

SEC. 18. The lieutenant governor shall be president of the senate, and shall vote only when the senate is equally divided. The senate shall choose a president, *pro tempore,* to preside in case of the absence or impeachment of the lieutenant governor, or when he shall hold the office of governor.

SEC. 19. If there be no lieutenant governor, or if the lieutenant governor shall, for any of the causes specified in section 17 of this article become incapable of performing the duties of the office, the president of the senate shall act as governor until the vacancy is filled or the disability removed; and if the president of the senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house of representatives.

OTHER STATE OFFICERS.

SEC. 20. If the office of auditor of public accounts, treasurer, secretary of state, attorney general, or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law. An account shall be kept by the officers of the executive department, and of all the public institutions of the state, of all moneys received or disbursed by them, severally, from all sources, and for every service performed, and a semi-annual report thereof be made to the governor, under oath; and any officer who makes a false report shall be guilty of perjury, and punished accordingly.

SEC. 21. The officers of the executive department, and of all the public institutions of the state, shall, at least ten days preceding each regular session of the general assembly, severally report to the governor,

who shall transmit such reports to the general assembly, together with the reports of the judges of the Supreme Court of the defects in the constitution and laws; and the governor may at any time require information in writing, under oath, from the officers of the executive department, and all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices.

THE SEAL OF STATE.

SEC. 22. There shall be a seal of the state, which shall be called the "Great seal of the State of Illinois," which shall be kept by the secretary of state, and used by him, officially, as directed by law.

FEES AND SALARIES.

SEC. 23. The officers named in this article shall receive for their services a salary to be established by law, which shall not be increased or diminished during their official terms, and they shall not, after the expiration of the terms of those in office at the adoption of this constitution, receive to their own use any fees, costs, perquisites of office, or other compensation. And all fees that may hereafter be payable by law for any service performed by any officer provided for in this article of the constitution, shall be paid in advance into the state treasury.

DEFINITION AND OATH OF OFFICE.

SEC. 24. An office is a public position created by the constitution or law, continuing during the pleasure of the appointing power, or for a fixed time, with a successor elected or appointed. An employment is an agency, for a temporary purpose, which ceases when that purpose is accomplished.

Factory inspectors appointed under the act of June 17, 1893 are officers of the government.

Ritchie v. *The People,* 155 Ill. 98.

SEC. 25. All civil officers, except members of the general assembly and such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and the constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of ——— according to the best of my ability.

And no other oath, declaration or test shall be required as a qualification.

"It is urged that the constitution of 1870 requires such oath to be taken by township treasurers, they being nowhere, by law, exempted therefrom, and reference is made to section 25 of article 5, of the constitution. That section provides that all civil officers, except members of the general assembly, and such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the oath of office therein prescribed; and further provides, that no other oath, declaration or test shall be required as a qualification.

It certainly has not been understood by the legislative department that this constitutional provision is self-executing, as express provisions of law have been enacted, prescribing with particularity every essential step to be taken by each person elected or appointed to an office, the mode of election or appointment, the giving of bonds, the manner, time, etc., of taking the oath of office (where such oath is required), in order to become qualified to perform the duties of the office. If it were supposed that this constitutional provision was self-enforcing, all the numerous laws requiring the taking of official oaths would be supererogatory."

School Directors v. *The People,* 79 Ill. 513.

"A plain defect in both of said pleas, which seems to have escaped the attention of counsel, is that it is not averred that the defendant, before entering upon the duties of said office, took and subscribed an oath

to support the constitution of the United States, and the constitution of the State of Illinois, as well as an oath to faithfully perform the duties of his office, as required by section 25, article 5, of the constitution of the State. The constitutional mandate is that all civil officers, with certain exceptions which do not include trustees of schools shall take and subscribe such oath before entering upon the duties of their respective offices. Such official oath is an essential and necessary qualification for holding the office and without it the title to the office fails. Thus, in *Thomas* v. *Owens,* 4 Md. 189, where the constitution required that every person elected or appointed to any office of profit or trust under the constitution, or laws made pursuant thereto, should, before entering upon the duties of such office, take and subscribe a certain official oath, it was held that Thomas, though elected to the office of comptroller, and holding a commission therefor from the governor, could not be considered as in office until qualified by taking such oath, and that until he did so qualify, he was no more comptroller than any other citizen."

Simons v. *The People,* 18 Ill. App. 590.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SEC. 1. The judicial powers, except as in this article is otherwise provided, shall be vested in one supreme court, circuit courts, county courts, justices of the peace, police magistrates, and such courts as may be created by law in and for cities and incorporated towns.

"The first section of article four of our constitution provides that the judicial power of the State, except as otherwise therein provided, shall be vested in one Supreme Court, circuit courts, county courts, justices of the peace, police magistrates, and in such courts as may be created by law in cities and incorporated towns. This section has exhausted the judicial power of the people of the State. It is there

fully disposed of, leaving no residuum. There is nothing in that article that can be tortured into authority to confer any of the judicial power of the State on courts of other States, or the federal courts, hence it would be palpably unconstitutional to enact such a law."

Mo. Riv. Tel. Co. v. *National Bank,* 74 Ill. 220.

"At the time the constitution was adopted, as well as at the time when the general law was enacted, there were existing in the State city courts other than the one in question, and with jurisdiction and powers not uniform. Although they were to continue to exist until otherwise provided by law, it was the plain duty of the legislature, in order to carry into effect the declared intent of the constitution, to bring about uniformity as soon as practicable. Surely these previously existing city courts, with jurisdiction not uniform as between them, and variant from that of those established under the general laws, were not to be continued in existence any longer than until the legislature should establish city courts with uniform powers and duties. How was this to be done, except by the substitution of city courts, with like jurisdiction, for those then existing with unlike jurisdiction?

Frantz v. *Fleitz,* 85 Ill. 367.

SUPREME COURT.

SEC. 2. The Supreme Court shall consist of seven judges, and shall have original jurisdiction in cases relating to the revenue, in *mandamus* and *habeas corpus,* and appellate jurisdiction in all other cases. One of said judges shall be chief justice; four shall constitute a quorum, and the concurrence of four shall be necessary to every decision.

"It is also urged, that, by section 2 of article 6 of the constitution, the Supreme Court is vested with original jurisdiction in certain cases, 'and appellate jurisdiction in all other cases,' and that it is therefore, a matter of option with the appellant whether he will go to the Appellate Court in any case. But the

constitution nowhere provides that this appellate jurisdiction 'in all other cases' shall be direct from the circuit or other trial court; it may well be, under section 11 of the same article, through the intermediate appellate courts therein provided for. Moreover, these two sections, 2 and 11 of article 6, should be construed together, and when so construed, it is plain that appellants in all cases do not have a constitutional right, either direct or through the intermediate courts, of appeal to this court. To hold that they do would be to attach no meaning whatever to much that is contained in said section 11."

Fleischman v. *Walker,* 91 Ill. 322.

"Section 2 of Art VI of the Constitution declares that 'the Supreme Court shall have original jurisdiction in cases relating to the revenue, in *mandamus* and *habeas corpus,* and appellate jurisdiction in all other cases."

"By this it was not intended to confer upon the Supreme Court jurisdiction absolutely in all other cases, but only that in all other cases in which it should have jurisdiction, whether few or many or all, it should be appellate."

City of Chicago v. *Vulcan Iron Works,* 2 Ill. App. 191.

This section does not give the Supreme Court exclusive jurisdiction in cases relating to the revenue, in *mandamus* and *habeas corpus.*

Hundley v. *Commissioners,* 67 Ill. 559.

"There are only four classes of cases in which there is a constitutional right of appeal or writ of error in this court. These four classes are, criminal cases, and cases in which either a franchise, a freehold, or the validity of a statute is involved. Even in these cases such constitutional right of appeal or writ of error to this court is not the right of a direct appeal from a writ of error to the trial court, but such appeal or writ of error may be through the intermediary of the Appellate Court. It is for the legislature to de-

termine as to whether in all, or some, or any of these cases, the appeal shall be direct to this court, or otherwise."

Young v. *Stearns,* 91 Ill. 222.

SEC. 3. No person shall be eligible to the office of judge of the Supreme Court unless he shall be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in this state five years next preceding his election, and be a resident of the district in which he shall be elected.

SEC. 4. Terms of the Supreme Court shall continue to be held in the present grand divisions at the several places now provided for holding the same; and until otherwise provided by law, one or more terms of said court shall be held, for the northern division, in the city of Chicago, each year, at such times as said court may appoint, whenever said city or the County of Cook shall provide appropriate rooms therefor, and the use of a suitable library, without expense to the State. The judicial divisions may be altered, increased or diminished in number, and the times and places of holding said court may be changed by law.

SEC. 5. The present grand divisions shall be preserved, and be denominated Southern, Central and Northern, until otherwise provided by law. The state shall be divided into seven districts for the election of judges, and until otherwise provided by law, they shall be as follows:

First District.—The counties of St. Clair, Clinton, Washington, Jefferson, Wayne, Edwards, Wabash, White, Hamilton, Franklin, Perry, Randolph, Monroe, Jackson, Williamson, Saline, Gallatin, Hardin, Pope, Union, Johnson, Alexander, Pulaski and Massac.

Second District.—The counties of Madison, Bond, Marion, Clay, Richland, Lawrence, Crawford, Jasper, Effingham, Fayette, Montgomery, Macoupin, Shelby, Cumberland, Clark, Greene, Jersey, Calhoun and Christian.

Third District.—The counties of Sangamon, Macon, Logan, Dewitt, Piatt, Douglas, Champaign, Vermilion, McLean, Livingston, Ford, Iroquois, Coles, Edgar, Moultrie and Tazewell.

Fourth District.—The counties of Fulton, McDonough, Hancock, Schuyler, Brown, Adams, Pike, Mason, Menard, Morgan, Cass and Scott.

Fifth District.—The counties of Knox, Warren, Henderson, Mercer, Henry, Stark, Peoria, Marshall, Putnam, Bureau, LaSalle, Grundy and Woodford.

Sixth District.—The counties of Whiteside, Carroll, Jo Daviess, Stephenson, Winnebago, Boone, McHenry, Kane, Kendall, DeKalb, Lee, Ogle and Rock Island.

Seventh District.—The counties of Lake, Cook, Will, Kankakee and DuPage.

The boundaries of the districts may be changed at the session of the general assembly next preceding the election for judges therein, and at no other time; but whenever such alterations shall be made, the same shall be upon the rule of equality of population, as nearly as county bounds will allow, and the districts shall be composed of contiguous counties, in as nearly compact form as circumstances will permit. The alteration of the districts shall not affect the tenure of office of any judge.

Sec. 6. At the time of voting on the adoption of this constitution, one judge of the Supreme Court shall be elected by the electors thereof, in each of said districts numbered two, three, six and seven, who shall hold his office for the term of nine years, from the first Monday of June, in the year of our Lord 1870. The term of offices of judges of the Supreme Court, elected after the adoption of this constitution, shall be nine years; and on the first Monday of June of the year in which the term of any of the judges in office at the adoption of this constitution, or of the judges then elected, shall expire, and every nine years thereafter, there shall be an election for the successor or successors

of such judges, in the respective districts wherein the term of such judges shall expire. The chief justice shall continue to act as such until the expiration of the term for which he was elected, after which the judges shall choose one of their number chief justice.

SEC. 7. From and after the adoption of this constitution, the judges of the Supreme Court shall each receive a salary of $4,000 per annum, payable quarterly, until otherwise provided by law. And after said salaries shall be fixed by law, the salaries of the judges in office shall not be increased or diminished during the terms for which said judges shall have been elected.

SEC. 8. Appeals and writs of error may be taken to the Supreme Court, held in the grand division in which the case is decided, or, by consent of the parties, to any other grand division.

Section 2 of article 6 of the constitution gives to the Supreme Court appellate jurisdiction *in all cases*, except cases relating to the revenue, in *mandamus* and *habeas corpus*, in which cases it has original jurisdiction. By section 8 of the same article it is provided that appeals and writs of error may be taken to the Supreme Court held in the grand division in which the case is decided, or, by consent of parties to any other grand division.

The right to appeal or to sue out a writ of error is a constitutional right, and must be allowed when claimed."

Schlattweiler v. *St. Clair County*, 63 Ill. 45.

SEC. 9. The Supreme Court shall appoint one reporter of its decisions, who shall hold his office for six years, subject to removal by the court.

SEC. 10. At the time of the election for representatives in the general assembly, happening next preceding the expiration of the terms of office of the present clerks of said court, one clerk of said court for each division shall be elected, whose term of office shall be

six years from said election, but who shall not enter upon the duties of his office until the expiration of the term of his predecessor, and every six years thereafter one clerk of said court for each division shall be elected.

APPELLATE COURTS.

SEC. 11. After the year of our Lord 1874, inferior appellate courts, of uniform organization and jurisdiction, may be created in districts formed for that purpose, to which such appeals and writs of errors as the general assembly may provide may be prosecuted from circuit and other courts, and from which appeals and writs of errors shall lie to the Supreme Court, in all criminal cases, and cases in which a franchise or freehold or the validity of a statute is involved, and in such other cases as may be provided by law. Such appellate courts shall be held by such number of judges of the circuit courts, and at such times and places, and in such manner, as may be provided by law; but no judge shall sit in review upon cases decided by him, nor shall said judges receive any additional compensation for such services.

Under this section the writ of error from the Supreme Court to the Appellate Court in all criminal cases is a writ of right of which the party cannot be deprived by legislation.

Smith v. *The People,* 98 Ill. 408.

"This is the only provision of the constitution relating to the jurisdiction of the Appellate Courts, and it follows, that whatever powers they may lawfully exercise are referable to it as their source. It is a grant of appellate jurisdiction only, and it is not competent for the legislature to clothe these courts, as such, with any other kind of jurisdiction."

Hawes v. *The People,* 124 Ill. 561.

"It would seem that the right to condemn private property for corporate use is perhaps the most important franchise of which a railroad corporation can be

possessed—the highest exercise of power. Such a right is essentially a part of the sovereign prerogative. No private individual is clothed with such power. A private citizen having adequate means, and owning the lands upon which it is necessary to operate, might, without legislative grant, construct a railroad and use it for the purposes of transportation and for hire. He might lawfully demand and receive compensation or tolls for the use of the road. Such a power, in the hands of a private citizen, is not a franchise, while, in the hands of a corporation, it is undoubtedly, in one sense, a franchise. A private citizen, however, without a legislative grant, has no power to seize and take the property of another citizen merely because it might be needed for his railroad. Such power can be exercisd by a natural or artificial person, (other than the State,) only by legislative grant. According to the definition of a franchise, given by Chief Justice Taney, the right of eminent domain is surely a franchise, for it is 'a special privilege conferred by government upon individuals, which does not belong to citizens of the country in general, of common right.' ''

There is no quality attached to a franchise, by any definition that has been given by any court or law commentator, which is not found to be a quality of this franchise, unless it be the quality of being exclusive. But as we have seen, it is not essential to every franchise, even in its legal sense, that it should, in all cases, be exclusive. The right to issue bank notes to circulate as money is undoubtedly a franchise, and yet that right may be conferred upon one bank without, in any degree, invading the like right conferred upon another bank.

After a careful consideration of the question, we can have no doubt that the right to condemn private property for corporate purposes is a franchise, within the meaning of the term as used in our constitution and law.''

C. & W. I. R. R. Co. v. *Dunbar*, 95 Ill. 578.

''Since the legislature of the State had plenary power to vest or not to vest, as it deemed advisable,

this court with the ultimate jurisdiction to review cases of the class to which this case belongs, no good reason is perceived why it had not full authority to provide in section 87 of the Practice act that the judgments of the appellate courts in such cases shall be final and conclusive as to all matters of fact in controversy, and in section 89 that this court shall reexamine such cases as to questions of law, only. The legislature might, if it had seen fit so to do, have conferred upon this court, in cases of the class of this, jurisdiction to review the judgments of the appellate courts, both upon questions of law and questions of fact, or have made the decisions of the appellate courts in such cases final, both as to law and as to fact; and it seems from these considerations to logically follow that the legislature has authority to make the decisions of the appellate courts final merely as to questions of fact, and to confer upon the Supreme Court jurisdiction to review upon questions of law, only."

C. & A. R. A. Co. v. *Fisher,* 141 Ill. 621.

CIRCUIT COURTS.

SEC. 12. The circuit courts shall have original jurisdiction of all causes in law and equity, and such appellate jurisdiction as is or may be provided by law, and shall hold two or more terms each year in every county. The terms of office of judges of circuit courts shall be six years.

"The circuit courts are the only superior courts in the State, that possess original and unlimited jurisdiction. They exercise, within their respective counties, all the powers and jurisdiction of the courts of king's bench and common pleas in England; and although these courts are inferior to the Supreme Court, because appeals and writs of error lie from their decisions to the Supreme Court, yet this circumstance does not constitute them inferior courts in the common law sense of the term. Courts not of record, are denominated inferior courts, because, if their proceedings are questioned in the superior courts, they must specially show, that they acted within their jurisdic-

tion. The circuit courts are pre-eminently the superior courts of this State."

Beaubien v. *Brinckerhoff,* 3 Ill. 274.
Kenney v. *Greer,* 13 Ill. 438.

"Circuit courts, in this State, have general jurisdiction of all cases at law and in equity, and this without regard to the origin of the right or source of title. Titles derived from the general government, and contracts made in other States or in foreign governments, are the frequent subject of litigation, without question of the jurisdiction of the courts."

Isett v. *Stuart,* 80 Ill. 405.

"The judgment in this case is reversed, on the authority of *Hoagland* v. *Creed,* 81 Ill. 506, wherein it was held that parties could not stipulate to confer judicial functions upon an individual, and clothe him with judicial power. This was not an arbitration, Mr. Wood being the arbitrator mutually chosen, but it was an attempt to confer upon him the power of a judge, to decide the pending case, and he did decide it, the court carrying out his decision by entering the judgment he had reached, and not his own judgment. There is no authority for this proceeding, and the judgment must be reversed, and the cause remanded."

Bishop v. *Nelson,* 83 Ill. 601.

The same rule prevails in criminal cases.

Cobb v. *The People,* 84 Ill. 511.

"We are not unmindful of the fact that section 2 of division 10, of the Criminal Code, provides that the Criminal Court of Cook County shall have exclusive original jurisdiction of all criminal offenses in the county of Cook; but this statute can have no bearing on the case. The jurisdiction of the circuit courts, so far as conferred by the constitution, can not be taken away, nor can it be changed or abridged by an act of the legislature."

Berkowitz v. *Lester,* 121 Ill. 106.

"Section 12 of Article 6 of the present constitution of the State provides, that 'the circuit courts shall

have original jurisdiction of all cases in law and equity.' As *quo warranto* is a common law remedy, the circuit courts are vested by the organic law with the power to entertain it. In addition to this, the 'Act to revise the law in relation to *quo warranto*' provides, that a petition for leave to file an information in the nature of a *quo warranto* in the name of the People of the State, may be presented to 'any court of record of competent jurisdiction,' in case 'any person shall usurp, intrude into, or unlawfully hold or execute any office.' ''

Snowball v. *The People,* 147 Ill. 265.

Sec. 13. The state exclusive of the county of Cook and other counties having a population of 100,000, shall be divided into judicial circuits, prior to the expiration of the terms of office of the present judges of the circuit courts. Such circuits shall be formed of contiguous counties, in as nearly compact form and as nearly equal as circumstances will permit, having due regard to business, territory and population, and shall not exceed in number one circuit for every 100,000 of population in the state. One judge shall be elected for each of said circuits by the electors thereof. New circuits may be formed and the boundaries of circuits changed by the general assembly, at its session next preceding the election for circuit judges, but at no other time: *Provided,* that the circuits may be equalized or changed at the first session of the general assembly after the adoption of this constitution. The creation, alteration or change of any circuit shall not affect the tenure of office of any judge. Whenever the business of the Circuit Court of any one or of two or more contiguous counties, containing a population exceeding 50,000, shall occupy nine months of the year, the general assembly may make of such county or counties a separate circuit. Whenever additional circuits are created, the foregoing limitations shall be observed.

''Each judge does not hold a distinct and separate

circuit court in Cook County, but the Circuit Court of that county consists of five judges, and any arrangement made regarding the trial of causes, between the judges themselves, ought not to be reviewed in this court without very strong reason."

Ettinghausen v. *Marx,* 86 Ill. 475.

SEC. 14. The general assembly shall provide for the times of holding court in each county, which shall not be changed, except by the general assembly next preceding the general election for judges of said courts; but additional terms may be provided for in any county. The election for judges of the circuit courts shall be held on the first Monday in June, in the year of our Lord 1873, and every six years thereafter.

"The evident intention of the constitution was to prevent legislative action upon this subject except at the sessions next preceding the general elections. It was the design of that instrument that the laws fixing or changing the times of holding the courts should be passed at the particular sessions named and should bear date as of those sessions. If the legislature of 1885 thought best to change the times of holding the courts, it was to look for the terms of court to be changed to a law passed at the session next preceding the last general election for judges, and not to a law passed in some intermediate year."

Kepley v. *The People,* 123 Ill. 379.

SEC. 15. The general assembly may divide the state into judicial circuits of greater population and territory, in lieu of the circuits provided for in section 13 of this article, and provide for the election therein, severally, by the electors thereof, by general ticket, of not exceeding four judges, who shall hold the circuit courts in the circuit for which they shall be elected, in such manner as may be provided by law.

"On reference to the article of the constitution in relation to the judicial department, in that part which treats of circuit courts, it will be observed, two sys-

tems for judicial circuits are provided for—one as in section 13, to be composed of contiguous counties, in which one judge shall be elected, and another in lieu thereof, to be composed of greater population and territory, in which shall be elected by general ticket not exceeding four judges, who shall hold the circuit courts therein as provided by law. Obviously it was the intention the State should be divided first into circuits with one judge, under the provisions of section 13, for it is made the duty of the General Assembly to so divide the State, exclusive of Cook county, prior to the expiration of the term of office of the circuit judges then in office. That was accordingly done. But in lieu of the circuits first formed the general assembly was invested with a discretionary power to adopt another system of circuits, comprising a greater population and territory, and as to the time when the new system in lieu of the former might be established, the constitution is silent.

The People v. *Wall,* 88 Ill. 77.

Sec. 16. From and after the adoption of this constitution, judges of the circuit courts shall receive a salary of $3,000 per annum, payable quarterly, until otherwise provided by law. And after their salaries shall be fixed by law, they shall not be increased or diminished during the terms for which said judges shall be, respectively, elected; and from and after the adoption of this constitution, no judge of the Supreme or Circuit Court shall receive any other compensation, perquisite or benefit, in any form whatsoever, nor perform any other than judicial duties to which may belong any emoluments.

"This language is as full, clear and comprehensive as could be well conceived to prevent supreme and circuit judges from receiving any other compensation than their salaries, under any name or pretense whatever, for the discharge of any duty pertaining to their offices. And it is prohibitory on the judges from receiving the compensation for the performance of such duties except their salary."

Hall v. *Hamilton,* 74 Ill. 442.

SEC. 17. No person shall be eligible to the office of judge of the circuit or any inferior court, or to membership in the "board of county commissioners," unless he shall be at least 25 years of age, and a citizen of the United States, nor unless he shall have resided in this state five years next preceding his election, and be a resident of the circuit, county, city, cities or incorporated town in which he shall be elected.

"On the 3d day of May, 1873, the legislature passed an act, the first section of which reads as follows: 'Whenever any judge or judges of any circuit court or the Superior Court of Cook County, shall request any judge or judges of any other court of record to come to the assistance of such judge or judges making such request, in the trial of causes, and in other matters pending in the court, it shall be lawful for such judge or judges so requested to hold a branch or branches of the court to which he or they are so requested to come, with the same force and effect as if he was, or they were, the judge or judges of such court.'

We are aware of no provision of our constitution that this section violates. The constitution requires each circuit judge to reside in the circuit in which he is elected; but he is not, either in terms or by implication, prohibited from holding court in another circuit, in such manner as may be provided by law."

Jones v. *Albee,* 70 Ill. 40.

Waller v. *Tylly,* 75 Ill. 576.

COUNTY COURTS.

SEC. 18. There shall be elected in and for each county, one county judge and one clerk of the county court, whose terms of office shall be four years. But the general assembly may create districts of two or more contiguous counties, in each of which shall be elected one judge, who shall take the place of, and exercise the powers and jurisdiction of county judges in such districts. County courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons,

appointment of guardians and conservators, and settlements of their accounts, in all matters relating to apprentices, and in proceedings for the collection of taxes and assessments, and such other jurisdiction as may be provided for by general law.

"There is nothing in this clause requiring us to hold that, by this grant of original jurisdiction in the specified cases to county courts, it is, necessarily, exclusive. The same constitution, by section 12 of the same article, provides that circuit courts shall have original jurisdiction of all causes in law and equity and such appellate jurisdiction as is or may be provided by law, etc."

Hundley & Rees v. *Commissioners of Lincoln Park,* 67 Ill. 563.

"The question occasionally arises whether the grant of letters testamentary or of administration on the estate of a person in fact living, but supposed to be dead, is an act beyond the jurisdiction of the court, and therefore so utterly void that no person is protected in dealing with the executor or administrator while his letters remain unrevoked. The decease of the supposed decedent is a prerequisite to the jurisdiction of the court, and that he is wholly unaffected by the proceedings for the settlement of his estate,—the only adjudication, so far as we are aware, in conflict with the rule here stated, having been rendered by the Court of Appeals of the State of New York."

Thomas v. *The People,* 107 Ill. 523.

Sec. 19. Appeals and writs of error shall be allowed from final determinations of county courts, as may be provided by law.

"It is provided by this section that 'appeals and writs of error shall be allowed from final determinations of county courts, as may be provided by law. Plainly, this does not confer the right to a writ of error from this court in all cases decided by the County Court. Whether the case shall be taken, by appeal or

by writ of error, to this court or to some other court, must be provided by law. It is but a direction to the General Assembly to prescribe, by law, how appeals and writs of error shall be allowed from final determinations of county courts.'"

Kingsbury v. *Sperry,* 119 Ill. 282.

PROBATE COURTS.

SEC. 20. The general assembly may provide for the establishment of a probate court in each county having a population of over 50,000, and for the election of a judge thereof, whose term of office shall be the same as that of the county judge, and who shall be elected at the same time and in the same manner. Said courts, when established, shall have original jurisdiction of all probate matters, the settlement of estates of deceased persons, the appointment of guardians and conservators, and settlement of their accounts; in all matters relating to apprentices, and in cases of the sales of real estate of deceased persons for the payment of debts.

"The Probate Court to be thus created is a court with special jurisdiction, and this provision of the constitution prescribes the limits of its jurisdiction. This jurisdiction embraces four subjects: First, all probate matters, embracing the settlement of estates of deceased person, and, in that connection, cases of the sales of real estate of deceased persons for the payment of debts; second, the appointment of guardians, and settlement of their accounts; third, the appointment of conservators, and settlement of their accounts; and fourth, all matters relating to apprentices."

The People v. *Loomis,* 96 Ill. 379.

"It is but reasonable to assume that it was intended by the framers of the constitution that these courts should be created from time to time, as the wants of the people and business necessities might require, subject to the qualification they were not to be established

in any county not having a population in excess of 50,000. By this limitation upon the power of the legislature to establish such courts, the authors of that instrument determined in advance there never would be any necessity for this class of courts in counties not having a population in excess of 50,000. As to all other counties the whole subject was left under the control of the legislature, to the same extent as if no limitation had been imposed. The legislature was left entirely free to establish such courts, or not."

Knickerbocker v. *The People,* 102 Ill. 223.

"The establishment of a probate court, under the constitution, in a particular county, is *ipso facto* a revocation of the jurisdiction of the County Court of such county as to all matters over which probate courts are given jurisdiction, and with respect to which county courts in counties not having probate courts exercise a similar jurisdiction,—or, in other words, that upon the establishment of a probate court in a particular county, the County Court of such county is at once, by operation of law, deprived of its jurisdiction in matters of probate, and in all other matters over which probate courts are given jurisdiction, for there is no such a thing, in my judgment, as concurrent jurisdiction between the two courts in the same county. The jurisdiction of the latter courts is clearly exclusive."

Klokke v. *Dodge,* 103 Ill. 135.

JUSTICES OF THE PEACE AND CONSTABLES.

SEC. 21. Justices of the peace, police magistrates, and constables shall be elected in and for such districts as are, or may be, provided by law, and the jurisdiction of such justices of the peace and police magistrates shall be uniform.

"Sec. 21 of Article 6 of the Constitution of 1870, provides for the election of police magistrates and justices of the peace; here any other mode of election would be unconstitutional."

McPhail v. *The People,* 56 Ill. App. 293.

STATE'S ATTORNEYS.

SEC. 22. At the election for members of the general assembly in the year of our Lord 1872, and every four years thereafter, there shall be elected a state's attorney in and for each county, in lieu of the state's attorneys now provided by law, whose term of office shall be four years.

COURTS OF COOK COUNTY.

SEC. 23. The County of Cook shall be one judicial circuit. The Circuit Court of Cook County shall consist of five judges, until their number shall be increased, as herein provided. The present judge of the recorder's court of the city of Chicago, and the present judge of the Circuit Court of Cook County, shall be two of said judges, and shall remain in office for the terms for which they were respectively elected, and until their successors shall be elected and qualified. The Superior Court of Chicago shall be continued, and called the Superior Court of Cook county. The general assembly may increase the number of said judges, by adding one to either of said courts for every additional 50,000 inhabitants in said county, over and above a population of 400,000. The terms of office of the judges of said courts hereafter elected, shall be six years.

"Section 23 provides that the Superior Court of Chicago shall be continued, and called the Superior Court of Cook County; but this does not bring the Superior Court within the terms of the exception, as judges of the Superior Court and judges of the Circuit Court exercise the same powers, and, under the constitution, are placed upon the same footing. (*Jones* v. *Albee,* 70 Ill. 34; *Samuel* v. *Agnew,* 80 id. 553). Indeed, under the constitution, there is no distinction, except in name, between the Superior Court of Cook County and the Circuit Court of Cook County. Both courts have the same jurisdiction and exercise the same powers."

"It is not questioned that the circuit courts of Cook county are of the same class or grade as the circuit courts in the rest of the State. Nor is it denied that a circuit court outside of Cook county has jurisdiction of an action *quasi* criminal in character, like this action. If, then, as held in the case cited, the constitution, of itself, established uniformity in the powers and practice of all the circuit courts of the State, the question involved would seem to be free from difficulty. In order to hold that the Circuit Court of Cook County has no jurisdiction of this action, it must be held that the circuit courts of that county are of a different grade from the circuit courts in the other counties of the State, which can not be done; and in addition to this, section 29 of article 6, of the constitution, must be disregarded. This we are not prepared to do."

Berkowitz v. *Lester,* 121 Ill. 102-103.

Sec. 24. The judge having the shortest unexpired term shall be chief justice of the court of which he is a judge. In case there are two or more whose terms expire at the same time, it may be determined by lot which shall be chief justice. Any judge of either of said courts shall have all the powers of a circuit judge, and may hold the court of which he is a member. Each of them may hold a different branch thereof at the same time.

"When holding court each judge should hold a separate branch, and keep and in all things perform the duties of a circuit judge. The record should show that he alone was presiding, unconnected with either or any of the other judges of either court. The record of the business he may transact should state that he was present holding a branch court, and should not state that any other judge was present. It does not matter whether the journal of the proceedings of the several judges is entered in one or several books, so that it shows what is done by each.

One judge may settle a portion of the pleadings, or decide motions in a case, and another judge may settle

other portions of the pleadings and decide other motions, and another judge may try the case, or all may be done by one judge, so the record shows what was done by each judge in the case. There is no law now in force authorizing all the judges to sit together, and try and decide cases. The law contemplates the action of but one judge, sitting at the same time, in the trial of a case. And it is error for more than one to sit at the same time on the trial of the case, but it is only an error, that may be waived or released."

Hall v. *Hamilton,* 74 Ill. 440.

Sec. 25. The judges of the superior and circuit courts, and the state's attorney, in said county, shall receive the same salaries, payable out of the state treasury, as is or may be paid from said treasury to the circuit judges and state's attorneys of the state, and such further compensation, to be paid by the County of Cook, as is or may be provided by law; such compensation shall not be changed during their continuance in office.

Sec. 26. The recorder's court of the City of Chicago shall be continued, and shall be called the "Criminal Court of Cook County." It shall have the jurisdiction of a circuit court, in all cases of criminal and *quasi* criminal nature, arising in the county of Cook, or that may be brought before said court pursuant to law; and all recognizances and appeals taken in said county, in criminal and *quasi* criminal cases, shall be returnable and taken to said court. It shall have no jurisdiction in civil cases, except in those on behalf of the people, and incident to such criminal or *quasi* criminal matters, and to dispose of unfinished business. The terms of said Criminal Court of Cook County shall be held by one or more of the judges of the Circuit or Superior Court of Cook county, as nearly as may be in alternation, as may be determined by said judges, or provided by law. Said judges shall be *ex officio* judges of said court.

"The Criminal Court, however, is limited in its juris-

diction by our present constitution. It provides that it shall have the jurisdiction of a circuit court in all cases of a criminal and *quasi* criminal nature, arising in the county of Cook, etc. And all recognizances and appeals taken in that county in criminal and *quasi* criminal cases, shall be returnable and taken to that court. It is, then, necessary to determine whether this case is of a *quasi* criminal nature, as it is not claimed to be criminal. Wharton, in his Law Lexicon, defines *quasi* crime to be the act of doing damage or evil involuntarily. But this can not be the sense in which the framers of our constitution intended to use the term. When the entire section is considered, in the light of our jurisprudence, we must conclude that it was intended to embrace all offenses not crimes or misdemeanors, but that are in the nature of crimes—a class of offenses against the public which have not been declared crimes, but wrongs against the general or local public which it is proper should be repressed or punished by forfeitures and penalties. This would embrace all *qui tam* actions and forfeitures imposed for the neglect or violation of a public duty. A *quasi* crime would not embrace an indictable offense, whatever might be its grade, but simply forfeitures for the wrong done to the public, whether voluntary or involuntary where a penalty is given, whether recoverable by criminal or civil process; and it would embrace prosecutions for bastardy, and informations in the nature of a *quo warranto,* etc."

Wiggins v. *City of Chicago,* 68 Ill. 375.

"The term *quasi* criminal embraces all offenses not crimes or misdemeanors, but which are in the nature of crimes—a class of offenses against the public which have not been declared to be crimes, but wrongs against the local or general public which it is proper should be punished by forfeitures or penalties. A *quasi* crime does not embrace an indictable offense, whatever be its grade, but simply forfeitures for a wrong done to the public, whether voluntary or involuntary, where a penalty is given, whether recoverable by civil or criminal process. Actions to

recover a penalty are in their nature *quasi* criminal prosecutions."

Tully v. *Town of Northfield,* 6 Ill. App. 359.

SEC. 27. The present clerk of the Recorder's Court of the city of Chicago shall be the clerk of the Criminal Court of Cook County, during the term for which he was elected. The present clerks of the Superior Court of Chicago, and the present clerk of the Circuit Court of Cook County, shall continue in office during the terms for which they were respectively elected; and thereafter there shall be but one clerk of the Superior Court, to be elected by the qualified electors of said county, who shall hold his office for the term of four years, and until his successor is elected and qualified.

SEC. 28. All justices of the peace in the city of Chicago shall be appointed by the Governor, by and with the advice and consent of the senate, (but only upon the recommendation of a majority of the judges of the Circuit, Superior and County Courts,) and for such districts as are now or shall hereafter be provided by law. They shall hold their offices for four years, and until their successors have been commissioned and qualified, but they may be removed by summary proceeding in the Circuit or Superior Court, for extortion or other malfeasance. Existing justices of the peace and police magistrates may hold their offices until the expiration of their respective terms.

GENERAL PROVISIONS.

SEC. 29. All judicial officers shall be commissioned by the governor. 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.

"We can not regard this provision as only a guide and direction to future legislatures in the enactment of laws concerning the practice of the courts. The courts of Cook County are '*of the same class or grade*' as the courts throughout the State, and are embraced within the provision of the constitution.

What was the object of the constitution, and what the evil intended to be remedied? Prior to the adoption of the constitution, the legislature had repeatedly enacted special laws regulating the practice in different circuits; and in the different parts of the State the proceedings and practice of the courts were not only not uniform, but were as diverse as though the several circuits of the State were under different governments and controlled by enactments of different legislatures. It was intended to abrogate all this special legislation, and establish uniformity in the powers, proceedings and practice of all the courts of the state of the same class or grade.

This could only be effected by a repeal of this special legislation. So long as it existed, the uniformity intended could not be established. The framers of the constitution certainly never intended that the repeal should await the action of the legislature. If the legislature refuse or neglect to act, then the evil continues. A constitution designed to remove an existing mischief should never be construed as dependent for its efficacy and operation upon legislative will.

We are of opinion that this provision of the constitution executed itself, and operated *in praesenti.*"

The People v. *Rumsey,* 64 Ill. 45.
O'Connor v. *Leddy,* 64 Ill. 300.

"This section of the constitution abrogated all special or local laws regulating the powers, proceedings and practice of the courts of this State at the time of its adoption."

Mitchell v. *The People,* 70 Ill. 141.

"Constitutions, like all other laws, must have a reasonable and practical interpretation. To give this language a literal application, would require all courts in the State to meet on the same day, and the terms to

be of the same length. This could not have been intended, because it must have been apparent to the framers of that instrument that such a thing could never be carried into effect. The business in one circuit or one county would be manifold greater than in another; hence more time would be required in the one than in the other. The circumstances of the people, the difference in climate in different portions of our State, and a variety of circumstances, render it almost if not absolutely necessary that our courts should meet at different times.

It would seem that a literal application of this language would require all laws to apply to the supreme, circuit, county, city and justices' courts, and to be general and uniform. That all of these courts should be required to meet at the same time, and have terms of the same length, would be an absurdity that we can not attribute to the body of men who framed our fundamental law. Without stopping to inquire to what this language should be confined, we have no hesitation in saying that it can not apply to the time when these several courts shall meet, or the length of their terms. Nor do we see that the remaining language of that section makes such a requirement. This objection is therefore not well taken."

Karnes v. *The People,* 73 Ill. 276.

Sec. 30. The general assembly may, for cause entered on the journals, upon due notice and opportunity of defense, remove from office any judge, upon concurrence of three-fourths of all the members elected, of each house. All other officers in this article mentioned shall be removed from office on prosecution and final conviction for misdemeanor in office.

Sec. 31. All judges of courts of record, inferior to the Supreme Court, shall, on or before the first day of June, of each year, report in writing to the judges of the Supreme Court such defects and omissions in the laws as their experience may suggest; and the judges of the Supreme Court shall, on or before the first day of January of each year, report in writing to the governor such defects and omissions in the consti-

tution and laws as they may find to exist, together with appropriate forms of bills to cure such defects and omissions in the laws. And the judges of the several circuit courts shall report to the next general assembly the number of days they have held court in the several counties composing their respective circuits, the preceding two years.

SEC. 32. All officers provided for in this article shall hold their offices until their successors shall be qualified, and they shall, respectively, reside in the division, circuit, county or district for which they may be elected or appointed. The terms of office of all such officers, where not otherwise prescribed in this article, shall be four years. All officers, where not otherwise provided for in this article, shall perform such duties and receive such compensation as is or may be provided by law. Vacancies in such elective offices shall be filled by election; but where the unexpired term does not exceed one year, the vacancy shall be filled by appointment, as follows: Of judges, by the governor; of clerks of courts, by the court to which the office appertains, or by the judge or judges thereof; and of all such other offices, by the board of supervisors or board of county commissioners in the county where the vacancy occurs.

An election must be called in all cases where the unexpired term of office is more than a year, whether due to the original length of term or to an extension thereof.

People v. *Kingsbury,* 100 Ill. 509.

SEC. 33. All process shall run: *In the name of the People of the State of Illinois;* and all prosecutions shall be carried on: *In the name and by the authority of the People of the State of Illinois;* and conclude: *Against the peace and dignity of the same.* "Population," wherever used in this article, shall be determined by the next preceding census of this State, or of the United States.

"The constitution, article 8, section 33, provides, that 'all prosecutions shall be carried on in the name and by the authority of the People of the State of Illinois,' and conclude 'against the peace and dignity of the same.' There can not be the slightest pretense that there was any effort in this case at a compliance with this provision of the constitution. In fact, there is nothing that even resembles conformity. It seems that there has been an entire disregard both of legal and constitutional requirements in preparing the information in this case."

Parris v. *The People,* 76 Ill. 277.

"It is also maintained by appellant, that the sale under the foreclosure proceeding is absolutely void, for the reason the special execution under which it was made did not run in the name of the People of the State of Illinois, as required by the constitution. In answer to this objection, appellee insists that a special execution like the one in question is not, within the meaning of the constitution, process. We can not yield our assent to this position. The authorities cited by appellee in support of it are not in point, and do not, in our judgment, in the slighest degree tend to sustain it. We are clearly of opinion that the writ in question is process within the meaning of that provision of the constitution."

Sidwell v. *Schumacher,* 99 Ill. 432.

"The defect in the writ is very apparent. It does not run in the name of 'The People of the State of Illinois,' as the constitution declares all writs and process shall run. The writ is void on its face, and the objection can be raised by general demurrer, though it would be more proper to reach it by motion to quash."

McFadden v. *Fortier,* 20 Ill. 515.

ARTICLE VII.

SUFFRAGE.

SEC. 1. Every person having resided in this state one year, in the county 90 days, and in the election district 30 days next preceding any election therein, who was an elector in this State on the first day of April, in the year of our Lord 1848, or obtained a certificate of naturalization before any court of record in this State prior to the first day of January, in the year of our Lord 1870, or who shall be a male citizen of the United States, above the age of 21 years, shall be entitled to vote at such election.

"The testimony with regard to the others, Edington, Goodwin and Matthews, was to much the same effect as that in respect to Halbrook, as regards mental capacity. The evidence shows that for some years Matthews has, at times, labored under some kind of illusion or hallucination, but not to such an extent as to incapacitate him from the general management of his business. This hallucination does not seem to have at all extended to political matters, and the evidence shows that, on the day of election, he conducted himself with entire propriety. As respects the others, witnesses testify to peculiarities and eccentricities indicative of mental deficiency to some extent, but we can not think that persons possessing the degree of understanding which these are shown to have had, are, on the account of mental incapacity, to be denied the privilege of the exercise of the elective franchise. We can allow to the medical opinions no controlling force, but such weight only as we deem them entitled to in view of the facts in evidence. We find no error in counting these votes for appellee."

Clark v. *Robinson,* 88 Ill. 503.

"Under section 1, article 7, of our constitution, every male citizen of the United States above the age of twenty-one years, who has resided in the State one year, in the county ninety days and in the election district thirty days next preceding any election, is en-

titled to a vote at such election. To exercise this right there is one exception, and but one, so far as we have been able to find; and that is found in section 7 of the same article, which declares that the general assembly shall pass laws excluding from the right of suffrage persons convicted of infamous crimes.''

Sanner v. *Patton,* 155 Ill. 563.

Sec. 2. All votes shall be by ballot.

Sec. 3. Electors shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same. And no elector shall be obliged to do military duty on the days of election, except in time of war or public danger.

Sec. 4. No elector shall be deemed to have lost his residence in this State by reason of his absence on business of the United States, or of this State, or in the military or naval service of the United States.

Sec. 5. No soldier, seaman or marine in the army or navy of the United States, shall be deemed a resident of this State in consequence of being stationed therein.

Sec. 6. No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States, and who shall not have resided in this State one year next preceding the election or appointment.

Sec. 7. The general assembly shall pass laws excluding from the right of suffrage persons convicted of infamous crimes.

ARTICLE VIII.

EDUCATION.

Section 1. The general assembly shall provide a thorough and efficient system of free schools, whereby all children of this State may receive a good common school education.

The free schools of the State are public institutions, and in their management and control the law contemplates that they shall be so managed that all children between the ages of six and twenty-one years, regardless of race or color, shall have equal and the same right to participate in the benefits to be derived therefrom.

Chase v. *Stephenson,* 71 Ill. 385.

Under the laws of Illinois, aside from the fourteenth amendment of the Federal Constitution, school officers cannot deny a pupil admission to the public schools on account of nationality, religion, or color. They all stand equal under the law.

People v. *Board of Education of Quincy,* 101 Ill. 308.

By the statutes of this State, the duty of providing schools for the education of *all* children between the ages of six and twenty-one in their district is imposed upon the respondents, and is incumbent upon them by virtue of their office.

People v. *Board of Education of Upper Alton,* 127 Ill. 625.

People v. *Board of Education of Upper Alton,* 221 Ill. 275.

All the youths are equal before the law, and there is no discretion vested in the board of directors or elsewhere to interfere with or disturb that equality.

People v. *Mayor of Alton,* 193 Ill. 315.

People v. *Mayor of Alton,* 209 Ill. 461.

As the constitution is silent on this subject, it is evidently left to the wisdom of the General Assembly to declare what constitutes a good common school education. No doubt that body would be bound to conform to the popular understanding in that respect. Without being able to give any accurate definition of a "common school," it is safe to say that the common understanding is, it is a school that begins with the rudimental elements of an education, whatever else it may embrace, as contradistinguished from academies

or universities devoted exclusively to teaching advanced pupils in the classics, and in all the higher branches of study usually included in the curriculum of the college.

This section does not prohibit the teaching of German and other modern languages in the common schools.

Powell v. *Board of Education,* 97 Ill. 375.

Above section is intended as a limitation upon the power of the legislature to provide for the maintenance, by local taxation, of free schools of a character different from that named in the section.

Legislative provisions for the maintenance of high schools as a part of the common school system do not violate this section of the constitution.

Richards v. *Raymond,* 92 Ill. 613.

The legislature has sole discretion to determine the mode in which the common school system shall be organized, and the officers by whom it shall be controlled, and administered, except as to state and county superintendents, for whose election the constitution provides.

Plummer v. *Yost,* 144 Ill. 68.

This section cannot be nullified by refusal or failure of board of directors to build school house or furnish school rooms. Above section is mandatory.

Millard v. *Board of Education,* 121 Ill. 297.

Normal schools being a recognized method of advancing the interests of the common school system, the establishment of which is mandatorily required of the General Assembly, it follows that the legislature has power to establish and provide for the maintenance of the same.

Boehm v. *Hertz,* 182 Ill. 163.

Sec. 2. All lands, moneys, or other property, donated, granted or received for schools, college, seminary or university purposes, and the proceeds, thereof, shall be faithfully applied to the objects for which such gifts or grants were made.

School corporations, as the trustees of school property, are wholly within the control of the General Assembly, and may be changed at its pleasure. Neither the grant of the sixteenth section of land by the United States to this State, for the use of schools, nor the above section of the constitution, prevent the legislature from taking the control of school property from the educational board of one township and vesting it in a different board.

Cravener v. *Board of Education,* 133 Ill. 145.
McGurn v. *Board of Education,* 133 Ill. 122.

School directors may grant the temporary use of school houses, when not occupied by schools for religious meetings and Sunday schools, for evening schools, for literary societies and such other meetings as it may deem proper, without violating this section of the constitution. Religion and religious worship are not so placed under the ban of the constitution that they cannot become the recipient of an incidental benefit from the public authorities.

Nichols v. *School Directors,* 93 Ill. 61.

The above section was intended to protect the public school fund of the State, and not mere private donations to educational institutions or to private corporations created for educational purposes.

University of Chicago v. *The People,* 118 Ill. 567.

Sec. 3. Neither the general assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money or other personal property ever be made by the State or any such public corporation, to any church, or for any sectarian purpose.

The county boards in this State have no power to appropriate county funds in aid or support of sectarian schools, or of any school controlled by a church or religious denomination, as that is prohibited in express terms by section 3 of article 8 of the constitution.

Stevens v. *St. Mary's Training School,* 144 Ill. 337.

The fact that an institution of learning teaches the doctrines of a particular church or religious sect, and that all exercises of a religious character are those of such church, will render the institution sectarian within the meaning of section 3 of article 8 of the constitution, prohibiting the payment from any public fund of anything in aid of any church or sectarian purpose, although all of its pupils may not be instructed in such doctrines.

County of Cook v. *Chicago Industrial School for Girls,* 125 Ill. 540.

The Chicago Industrial School for Girls, a corporation having no building of its own, placed all girls committed to it by the county court in the House of the Good Shepherd and St. Joseph's Orphan Asylum (institutions under two orders of the Roman Catholic Church), which furnished them with clothing and tuition and received all pay allowed therefor by the county. The officers of the Industrial School were also officers of the two institutions above mentioned, and the doctrines of the Roman Catholic Church were taught therein to some of their pupils: *Held,* in a suit by the Industrial School against the county to recover for the price of tuition and clothing of dependent girls committed to its care, that the money sought to be recovered would be a payment in support of schools controlled by a church and in aid of a sectarian purpose, and that the action would not lie.

County of Cook v. *Industrial School for Girls,* 125 Ill. 541.

It is the right and duty of every enlightened government as *parens patriæ* to protect and provide for the comfort and support of citizens who, by reason of in-

fancy, defective mentality or other infirmity, are unable to provide for themselves, and all constitutional limitations must be so construed and understood as not to interfere with the proper and legitimate exercise of this function of government. The act of 1879, in aid of industrial schools for dependent infant females, does not violate the above section of the constitution.

County of McLean v. *Humphreys,* 104 Ill. 379.

SEC. 4. No teacher, State, county, township, or district school officer shall be interested in the sale, proceeds or profits of any book, apparatus or furniture used, or to be used, in any school in this State, with which such officer or teacher may be connected, under such penalties as may be provided by the general assembly.

See General School Law, R. S. ch. 122, art. XV, sec. 13.

It is a settled doctrine that all negative or prohibitory provisions found in a constitution execute themselves, making void all acts done in violation of such provisions, the same as if in violation of express statutory law. And a statute creating a penalty for doing a thing forbidden by the constitution can add nothing to the invalidity of the act.

Law v. *The People,* 87 Ill. 385.

SEC. 5. There may be a county superintendent of schools in each county, whose qualifications, powers, duties, compensation and time and manner of election, and term of office, shall be prescribed by law.

The act of June 19, 1891, entitling women to vote at school elections in this State, does not confer upon women the right to vote at an election for county superintendent of schools, and so far as it attempts to do so, is in violation of the above section of the constitution.

People v. *English,* 139 Ill. 622.

The office of county superintendent is created by the constitution, and the electors must be those prescribed in article 7, section 1, of the constitution.

Plummer v. *Yost,* 144 Ill. 68.
People v. *English,* 139 Ill. 622.

County superintendents of schools are not members of that class of county officers whose compensation is to be fixed by the county board, as provided in section 10 of article 10 of the constitution. The above section (section 5, article 8) confers upon the legislature the power of fixing their compensation.

Jamison v. *Adams County,* 38 Ill. App. 52.

The per diem of county superintendents, as fixed by the act of 1867, is regarded as compensation and not "fees" in the sense in which that term is used in the constitution.

Supervisors of Knox County v. *Christianer,* 68 Ill. 453.

ARTICLE IX.

Revenue.

The general assembly shall provide such revenue as may be needful by levying a tax, by valuation so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.

"Nor is there any power, expressed or implied, by which the courts can fix a valuation, or review the action of the assessors. They are invested with the sole power, and we are aware of no authority to review their action. The law has not, nor can it, in view of this constitutional provision, empower the courts to fix the valuation of property for taxation. We regard no proposition clearer. If the courts may hear evidence and change the valuation fixed by the officers elected under the law to perform that duty, then it is the courts, who are not elected or appointed for the purpose, who fix the value, and that would be to make the valuation otherwise than is peremptorily required by the constitution. For the courts to hear evidence and change the valuation fixed by the assessors would be in direct and palpable violation of the constitution. When those officers have acted it is final, and the tax payer must submit to the action of the officer who is clothed with the sole power to make the estimate of the value, unless he can show it was fraudulently made, or that the property assessed was not liable to taxation, or the legislature has, in authorizing the tax, disregarded or transcended the principles of equality, or where a tax has been levied when not authorized by law.

Fraud vitiates all acts, and this as well as others. But when the officer acts with a fraudulent purpose to the injury of the tax payer, the latter may be relieved from the effects of the fraud. And when the officer assesses and values property exempt from taxation he acts without authority, and all of his acts in excess of his power are void. It was the manifest intention of the people, in ratifying the constitution, to make the action of the assessing officers final; and there are cogent reasons for the provision."

"Governments are created to protect men in their natural rights, and with incidental protection to their civil or political rights. No means have been devised by which government can be maintained without the use of revenue, and that revenue must be directly or indirectly drawn from the governed. In different organizations different modes of acquiring such revenue are adopted. In our State the great central idea in

collecting taxes is that every person owning or having property in the State, and having the right to demand the aid of the government in its protection, as well as his own rights, whether of person, liberty, or property, must contribute to the support of the State government in proportion to the value of his property. The rule embraces corporations or intangible persons as well as natural persons. They hold property and require its protection and they transact business and enter into contracts, and require the power of the State to enforce them; and the great principle of natural justice demands that all who have the right to command and employ the sovereign power of the State to protect them in their rights, should contribute to the expense of the government, in arming itself with means and in sustaining the requisite official force to protect them in their rights."

Republic Life Ins. Co. v. *Pollak,* 75 Ill. 295, 296.

"It is not in the power of the legislature to exempt a portion of the inhabitants of the State in any locality from State taxes, and impose the entire burden upon the remaining portion of the citizens. If the general assembly could exempt the minority from taxation for State purposes, they could, upon the same principle, exempt the majority, and thus a minority of the citizens might be made to bear the entire burden of the expenses of the State government."

People v. *Barger,* 62 Ill. 455.

"The framers of our constitution have taken unexampled pains to affirm the principles of 'equality' and 'uniformity' as indispensable to all legal taxation, whether general or local."

The City of Chicago v. *Larned,* 34 Ill. 276.

"The constitution has not prohibited the general assembly from imposing or authorizing the imposition of the duty to procure a license to pursue any calling, nor has it limited the power or limited its exercise. In this respect the power of the legislature is the same as it has ever been since the organization of the State government, and no one, we presume, will question the

legislative power to require persons engaged in various avocations to procure a license for the purpose, and thus regulate the exercise of an avocation. It is a power exercised by all governments, and is one of the essential means of providing for raising revenue for both the State and local governments, and the regulation of business. If the constitutional convention had intended to make so radical a change as to deprive the legislature of this power, or to make a license fee uniform throughout the State on all persons exercising the same calling, without regard to the capital invested, business done or profits realized, that body would have employed very different language from that which we find in that instrument. They were aware that this court had held that a license fee was not a tax, in the constitutional sense, and we have a right to suppose they used the term 'tax,' in a sense to exclude a license."

Wiggins Ferry Co. v. *East St. Louis,* 102 Ill. 567.

"That a franchise has a value, and that it may be ascertained, is, we think, as clear as that a *chose in action* has a value that may be estimated. In estimating its value, more facts may have to be considered, as it has no market value. But the very fact that it grants rights, privileges and exemptions, not enjoyed by individuals generally, makes it desirable and gives it value. The length of time the corporation may exist, the business to which it relates, its location, and a variety of other circumstances, all, of course, enter into the value of the privilege, and should be considered in ascertaining its value. But that it has a taxable value, we entertain no doubt. And if it is property and has value, it, under the constitution, is not only liable to be taxed, but is required to be, in some appropriate mode."

Ottawa Glass Co. v. *McCaleb,* 81 Ill. 559.

"It surely can not be doubted that the requirement that the Board of Equalization shall ascertain and determine the fair cash value of the capital stock, including the franchise, of all companies and associations

now or hereafter created under the laws of this State, over and above the assessed value of the tangible property of such company or association, is a general law, or that it is uniform as to the class upon which it operates. It is not restricted to any particular part of the State, nor is it limited to a special tax; it extends to the entire State for the purpose of general taxation, and it applies the same rule to all within the class upon which it operates, namely: the corporations now or hereafter created under the laws of this State."

Porter v. *R. R. I. & St. L. R. Co.,* 76 Ill. 579.

"It is a plain proposition, that property in course of transportation from one State to another, over one of our navigable rivers, or over any of the public highways of the country, is not liable to taxation as it passes over such highway, by the State authorities along the line of such highway, and we think it is equally clear, that if property, while in the course of transportation over one of our navigable rivers, should be detained by low water or ice, or other cause, it would not be liable to be taxed by the authorities where the detention occurred Any other rule would have a direct tendency to obstruct commerce between States, which, of course, could not be done under our system of laws."

Burlington Lumber Co. v. *Willetts,* 118 Ill. 562.

Sec. 2. The specification of the objects and subjects of taxation shall not deprive the general assembly of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this constitution.

Sec. 3. The property of the state, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. In the assessment of real estate incumbered by public easement, any depreciation oc-

casioned by such easement may be deducted in the valuation of such property.

"It is not claimed the first objection has the direct sanction of the statute in its support, but the contention is, such property is expressly exempt from *taxation,* and *special assessments* are included within the meaning of the word *taxation.* We have been too long and too firmly committed to the doctrine that exemption from taxation does not exempt from special assessments, to now admit that it is even debatable."

County of McLean v. *City of Bloomington,* 106 Ill. 213.

"Under this provision of the constitution the legislature in section 2 of the Revenue law, proceeded to determine what property might be exempt from taxation; and as to church property, the section provides that all church property actually and exclusively used for public worship, when the land (to be of a reasonable size for the location of the church building) is owned by the congregation. Here the property was actually and exclusively used for public worship, and it was of a reasonable size for the church building. So far, the property falls clearly within the terms of the act. But the act contains the further requirement that the property, in order to be exempt, must be owned by the congregation. This property was not owned by the congregation, but the title rested in W. G. Anderson. The congregation that assembled at this church for worship was not organized under the statute so as to own real estate, and had no power to purchase or own real estate; but if it had been an organized body, so long as Anderson owned the property it was subject to taxation. The fact that the building on the lots had been dedicated as a church, has no bearing on the question. The title to the property was not changed by the dedication, but it remained in Anderson, as it did before. Anderson did no act which changed the ownership of the property, and at any time he saw proper the congregation might have been excluded from the use of the property."

The People v. *Anderson,* 117 Ill. 54.

"There is nothing in the record to show that the school house mentioned in the petition may not be a private school house, 'in which are taught, with a view to profit, the rudimentary branches of education such as are ordinarily taught in the public schools," and, if such is the fact, it is subject to taxation. (*Montgomery* v. *Wymann,* 130 Ill. 17.

The People v. *Ryan,* 138 Ill. 267.

Sec. 4. The general assembly shall provide, in all cases where it may be necessary to sell real estate for the non-payment of taxes or special assessments for state, county, municipal or other purposes, that a return of such unpaid taxes or assessments shall be made to some general officer of the county having authority to receive state and county taxes; and there shall be no sale of said property for any of said taxes or assessments but by said officer, upon the order or judgment of some court of record.

"The first branch of the section in question enjoins upon the legislature the duty of providing that a return of all unpaid taxes and assessments be made to some general officer of the county having authority to receive state and county taxes. The object of this requirement was undoubtedly the promotion of public convenience and economy.

If the clause had gone no further, then, although the duty would have been imposed upon the legislature, still it would have been incapable of enforcement by any other department of the government, and the only guaranty for its performance would have been the presumptive regard of the legislative body for the mandates of the constitution and the responsibility of that body to its constituents. Upon this guaranty alone, the people, it seems, did not see fit to rely. But as an inducement to prompt action, the prohibition of the last clause was added. Its effect began with the life of the constitution, and annulled all laws conferring power upon officers, other than the county officer described, to sell real estate for the non-payment of any taxes or special assessments."

Hills v. *City of Chicago,* 60 Ill. 91.

"Section 4, article 9, of the State constitution, contains no express grant of power to the legislature to provide for the sale of real estate for taxes, though it clearly recognizes such power, by imposing limitations and restrictions upon its exercise. Viewed merely as a limitation, as it is, there is nothing in it prohibiting the legislature from providing for the sale of real estate for the non-payment of taxes, interest and penalties, and costs, except that the sale shall be made by a general officer authorized to receive State and county taxes, and not by him except in pursuance of an order of some court of record."

Chambers v. *The People,* 113 Ill. 509.

SEC. 5. The right of redemption from all sales of real estate for the non-payment of taxes or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate, for a period of not less than two years from such sales thereof. And the general assembly shall provide by law for reasonable notice to be given to the owners or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire: *Provided,* that occupants shall in all cases be served with personal notice before the time of redemption expires.

"It will be observed the section of the constitution we have quoted guarantees the right of redemption for the period of two years, and that occupants shall in all cases be served with notice before the time of redemption expires, and this is fundamental, and compliance with it is an indispensable condition precedent to the right to make a deed. (*Holbrook* v. *Fellows,* 38 Ill. 440).

Gage v. *Bailey,* 100 Ill. 536.

"The affidavit is defective, in not, as the statute requires, 'stating particularly the facts relied on as such compliance' with the condition of giving notice. The constitution requires that occupants shall be served

with personal notice. It does not appear here that there was personal notice served. If there was service of a printed notice, the mode of service might have been by sending the notice by mail, or by leaving a copy at the residence of the occupant, or delivering it to some member of his family. All these are recognized modes of notice, and in the idea of the person making the affidavit, either of them might have been considered a proper manner of service of notice. The affidavit should have followed the requirement of the statute, and stated particularly the facts relied on as showing service of notice, so that the court might see that the mode of service was that which is required by the constitution and the statute."

Price v. *England,* 109 Ill. 396.

"The redemption of lands from a sale for taxes is an act authorized to be done by law,—an act that seems to fall directly within the terms of the statute. If we are correct in this, then as November 3, 1878, was Sunday, the time provided for redeeming the lands sold on November 3, 1876, did not expire until November 4, 1878. The provision of the statute requiring the purchaser at the tax sale, or his assignee, to notify the person in possession of the lands when the time of redemption will expire, is imperative, and a notice which specifies a wrong date can not be regarded as any notice whatever, within the meaning of the statute."

Gage v. *Davis,* 129 Ill. 240.

Sec. 6. The general assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

"No words that we can conceive can add force or precision to the language of the constitution before quoted, that 'the general assembly shall have no power to release or discharge any county, city, township,

town or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of taxes to be levied for State purposes.' Even the general assembly, which levied the present tax, derived its existence from the provisions of the same constitution; and if this provision was not binding upon it, it is impossible to conceive that it ever can have any obligatory force. It is impossible for us to escape the conclusion that, under the constitution and law now in force, so much of the act of 1869 as requires the State revenue to be collected on the valuations of the taxable property in the State remaining after deducting, in counties, townships, cities and towns which have outstanding indebtedness incurred in aid of the construction of railroads, the increased valuation of the taxable property over that of the year 1868, is abrogated, and can not be enforced."

Ramsey v. *Hoeger,* 76 Ill. 444.

"If the insolvent laws can be held to have the effect of releasing either persons or property from taxation, they are to that extent unconstitutional, for by section 6, article 9, of the constitution, the general assembly is denied the power to release any person or property from his or its proportionate share of taxes levied for State purposes. The State, then, still having the right to subject this property in the hands of the assignees to the payment of these taxes, after the tax books were placed in the hands of the collector, a lien in its favor attached, and thereafter there is no pretense that anything occurred to divest the right of the State."

Jack v. *Weiennett,* 115 Ill. 111.

Sec. 7. All taxes levied for state purposes shall be paid into the state treasury.

Sec. 8. County authorities shall never assess taxes, the aggregate of which shall exceed 75 cents per $100 valuation, except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county.

"The claim of the bill is, that when the county authorities have once exercised the power to assess a tax in addition to the 75 cents on the $100 valuation, to pay off county indebtedness existing at the time of the adoption of the constitution, and have assessed taxes to the full amount of such indebtedness, and the same have been paid by the tax-payers, then such power of assessment becomes exhausted, and can not be exercised afterward, even though such taxes may have been by the county authorities diverted from and not applied to the purpose for which they were assessed and collected.

We are unable to concur in this view. So long as there be county indebtedness which was existing at the time of the adoption of the constitution, there may be exercised this power to assess a tax in addition to 75 cents on the $100 valuation, for the purpose of the payment of such indebtedness."

County of Pope v. *Sloan,* 92 Ill. 180.

Sec. 9. The general assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property, or otherwise. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property, within the jurisdiction of the body imposing the same.

"The 9th section of article nine of the constitution, in authorizing taxes to be laid and collected by municipal corporations, provides that such taxes shall be uniform in respect to persons and property within the jurisdiction imposing the same. To secure that uniformity, two things are essential: First, the assessments shall be just and equal, in proportion to the value of the property liable to assessment; and, secondly, when thus assessed, the rate shall be uniform as to every person, and on every species of property returned by the assessor for taxation. And the constitution intends that the uniform value shall be ascertained by one officer,—the uniform rate imposed by a

different set of officers, or a different person. If the abatement of the assessment was from property liable to taxation, then there was a palpable violation of duty by the village council, as no such power is conferred upon them by the general assembly, nor could they supply the want of power by ordinance. That could only be done by the general assembly, the source of power, when not restricted by the constitution."

Sherlock v. *Village of Winnetka,* 68 Ill. 534.

"Special taxation of contiguous property for local improvements is a thing in its object and character very different from general taxation for the purpose of revenue, and a thing very different from local taxation by municipal corporations for revenue to be applied to other corporate purposes. All taxation for revenue, whether by the State or municipal corporation, must be uniform in respect to persons and property within the jurisdiction of the body imposing the same."

Special taxation, as spoken of in the constitution, is based upon the supposed benefit to the contiguous property, and differs from special assessments only in the mode of ascertaining the benefits. In special taxation, the imposition of the tax is of itself a determination that the benefits to contiguous property will be as great as the burden imposed, while in the case of special assessments, the property to be benefited must be ascertained by careful investigation, and the burden must be distributed according to a carefully ascertained proportion in which each part thereof will be beneficially affected."

Craw v. *Village of Tolono,* 96 Ill. 256.

"By virtue of this constitutional provision, corporate authorities of towns, cities and villages may be clothed with power to make local improvements in both ways,—either by special assessments of benefits or by special taxation of contiguous property,—thereby preserving the principle of equality in bearing the public burthen, in respect of all persons and property affected by the exercise of the power. And this was,

we think, the evident intent in adopting this provision.''

Kuehner v. *City of Freeport,* 143 Ill. 101.

''A local improvement, within the meaning of the statute, is a public improvement which by reason of its being confined to a locality, enhances the value of adjacent property, as distinguished from benefits diffused by it throughout the municipality. The only basis upon which either special assessment or special taxation can be sustained is, that from the proposed local improvement the property subjected to the tax or assessment will be enhanced in value to the extent of the burthen imposed. If, therefore, from an inspection of the ordinance authorizing the making of the improvement, it appears from the nature of the work proposed that the market value of abutting or adjacent property would not be increased thereby, as a matter of law it would not be a local improvement, within the meaning of the statute, and no declaration of the corporate authorities could make it so. On the other hand, if the property is or may be benefited by the improvement, the extent of such benefit, and hence the amount to be assessed upon the property in proceedings for special assessment, is a question of fact, to be determined in the mode prescribed by the statute.''

City of Chicago v. *Blair,* 149 Ill. 314.

Sec. 10. The general assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.

''The constitution, in providing for the organization

of counties and county government, also contemplates that there will be local governments for public purposes, designated as cities, towns, villages, school districts, and 'other municipal corporations.' But there is no specification of the powers that shall be conferred upon either, and no prohibition of the withdrawal of powers once conferred, and thereafter conferring them upon another. In these respects the present constitution does not differ from the constitutions of 1818 and 1848.

If the legislature may vest the power in cities, towns and villages to construct sewers, drains, etc., for sanitary purposes, and may also create a corporation within the county and invest it with like power, it follows that it may create a corporation including both city and county, and invest it with power to secure the public health by means of sewers and channels, or drains.''

Wilson v. *Board of Trustees,* 133 Ill. 443.

Sec. 11. No person who is in default, as collector or custodian of money or property belonging to a municipal corporation, shall be eligible to any office in or under such corporation. The fees, salary or compensation of no municipal officer who is elected or appointed for a definite term of office, shall be increased or diminished during such term.

The power of fixing the compensation of county superintendents is vested in the legislature by article VIII, section 5 of the constitution, and they do not belong to that class of officers whose compensation is to be fixed by the county board.

Jimison v. *Adams County,* 130 Ill. 558.

Sec. 12. No county, city, 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. 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. This section shall not be construed to prevent any county, city, township, school district, or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this constitution in pursuance of any law providing therefor.

"There is no difficulty in ascertaining the natural signification of the words employed in the clause of the constitution under consideration, and to give them that meaning involves no absurdity or contradiction with other clauses of the constitution. The prohibition is against becoming indebted—that is, voluntarily incurring a legal liability to pay, *'in any manner or for any purpose,'* when a given amount of indebtedness has previously been incurred. It could hardly be probable that any two individuals of average intelligence could understand this language differently. It is clear and precise, and there is no reason to believe the convention did not intend what the words convey.

A debt, payable in the future, is, obviously, no less a debt than if payable presently; and a debt payable upon a contingency, as, upon the happening of some event, such as the rendering of service or the delivery of property, etc., is some kind of a debt, and therefore within the prohibition. If a contract or undertaking contemplates, in any contingency, a liability to pay, when the contingency occurs the liability is absolute—the debt exists—and it differs from a present, unqualified promise to pay, only in the *manner* by which the indebtedness was incurred. And, since the *purpose* of the debt is expressly excluded from considera-

tion, it can make no difference whether the debt be for ncessary current expenses, or for something else."

City of Springfield v. *Edwards,* 84 Ill. 632.

"A city, whose corporate indebtedness has reached the constitutional and statutory limit of five per cent of the assessed value of property within its limits for taxation, is prohibited from borrowing money and giving evidences of indebtedness therefor, although taxes have been levied to meet their payment, and such evidences are void. The city can not incur corporate indebtedness in anticipation of the collection of taxes levied."

Fuller v. *City of Chicago,* 89 Ill. 282.

"When a city has reached its constitutional limit of indebtedness, so that the creation of additional evidences of indebtedness is prohibited, in respect to a warrant drawn on its treasurer in anticipation of a tax already levied but not yet collected, not payable generally, but out of a special fund, and that only when it is collected, the general rule of construction as to liability of individuals will not be applied, but such warrant will be construed with reference to the law applying to such a state of case as though the same were incorporated in it, and held not to create any corporate liability."

Fuller v. *Heath,* 89 Ill. 298.

"By section 12, article 9, of the constitution of 1870, a city or other municipal corporation is absolutely prohibited from becoming 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, etc. Under this provision, when such municipality shall have reached the limit prescribed by the constitution, it is prohibited from making any contract whereby an indebtedness is created, even for the necessary current expenses in the administration of the affairs and government of the corporation."

Prince v. *City of Quincy,* 105 Ill. 138.

"This provision is also in conflict with those portions of the charter of East St. Louis, which limit the rate of annual taxation to any other percentage than that which is sufficient to pay the interest as it falls due, etc. Consequently it repeals and abrogates such portions of the charter and must be substituted for them in the charter itself. Its effects began with the life of the constitution and annulled all previous charter limitations inconsistent with it in relation to indebtedness incurred after the adoption of the constitution."

City of East St. Louis v. *The People,* 124 Ill. 664.

"This language leaves nothing for construction, except to ascertain what it is 'to become indebted' in the sense here intended, for none that could be employed would be more apt to show that upon all such contract liabilities as are within its purview, this provision operates with only one effect, which is to disallow them. It is too plain for argument, that it does not classify them as non-payable and payable-out-of-special-funds, or otherwise, nor change any from being a charge against the city generally, into a charge against its current revenue only, but makes them all alike absolutely non-payable and void."

Prince v. City of Quincy, 128 Ill. 453.

Sec. 13. The corporate authorities of the city of Chicago, are hereby authorized to issue interest-bearing bonds of said city to an amount not exceeding five million dollars at a rate of interest not to exceed five per centum per annum, the principal payable within thirty years from the date of their issue, and the proceeds thereof shall be paid to the treasurer of the World's Columbian Exposition, and used and disbursed by him under the direction and control of the directors, in aid of the World's Columbian Exposition, to be held in the city of Chicago, in pursuance of an act of Congress of the United States.

Provided, That if at the election for the adoption of this amendment to the constitution, a majority of the

votes cast within the limits of the city of Chicago, shall be against its adoption, then no bonds shall be issued under this amendment.

And said corporate authorities shall be repaid as large a proportionate amount of the aid given by them as is repaid to the stockholders on the sums subscribed and paid by them, and the money so received shall be used in the redemption of the bonds issued as aforesaid, provided that said authorities may take in whole or in part of the sum coming to them any permanent improvements placed on land held or controlled by them.

And provided further, That no such indebtedness so created shall in any part thereof be paid by the State, or from any State revenue, tax or fund, but the same shall be paid by the said city of Chicago alone.*

*[This added section was proposed by the general assembly at the special session, 1890, ratified by a vote of the people November 4th, 1890, and at such election a majority of the votes cast within the limits of the city of Chicago, were cast in favor of its adoption, and it was proclaimed adopted by the Governor.]

ARTICLE X.

COUNTIES.

Sec. 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 400 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.

Sec. 2. No county shall be divided, or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county, voting on the question, shall vote for the same.

SEC. 3. There shall be no territory stricken from any county, unless a majority of the voters living in such territory shall petition for such division; and no territory shall be added to any county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, or formed in whole or in part into a new county shall be holden for, and obliged to pay its proportion of the indebtedness of the county from which it has been taken.

COUNTY SEATS.

SEC. 4. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed in pursuance of law, and three-fifths of the voters of the county, to be ascertained in such manner as shall be provided by general law, shall have voted in favor of its removal to such point; and no person shall vote on such question who has not resided in the county six months, and in the election precinct ninety days next preceding such election. The question of the removal of a county seat shall not be oftener submitted than once in ten years, to a vote of the people. But when an attempt is made to remove a county seat to a point nearer to the center of a county, then a majority vote only shall be necessary.

"It is, however, urged that the general assembly had no constitutional power to require the public business of the county to be performed at the town of Wheaton, as the contest as to the vote on that question was pending and undetermined.

It is enough to say that an election had been held, and the certificate has been given in favor of Wheaton. Under this certificate, without anything further, had no injunction to prevent been obtained, it was the plain and manifest duty of the county officers to have removed their books, papers and archives to Wheaton.

The certificate of the result of the election made Wheaton *prima facie* the county seat, and all public

business transacted there would be valid and binding until it should be declared by competent authority not the county seat, and this, too, although it might be done in violation of an injunction. This being so, the legislature declaring that all public business should be transacted there conferred no new power, decided nothing, but only recognized the law as it existed before the enactment. It changed the rights and duties of no one, unless it was to authorize the officers to transact business there, notwithstanding the injunction."

Du Page County v. *Jenks,* 65 Ill. 284.

COUNTY GOVERNMENT.

SEC. 5. The general assembly shall provide, by general law, for township organization, under which any county may organize whenever a majority of the legal voters of such county, voting at any general election, shall so determine, and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of the said county by the board of county commissioners, may be dispensed with, and the affairs of said county may be transacted in such manner as the general assembly may provide. And in any county that shall have adopted a township organization, the question of continuing the same may be submitted to a vote of the electors of such county, at a general election, in the manner that now is or may be provided by law; and if a majority of all the votes cast upon that question shall be against township organization, then such organization shall cease in said county; and all laws in force in relation to counties not having township organization, shall immediately take effect and be in force in such county. No two townships shall have the same name, and the day of holding the annual township meeting shall be uniform throughout the state.

"The act providing that the annual town meeting for the election of town officers shall be held on the

first Tuesday of April, included every town in the State under township organization. Prior to the adoption of the constitution of 1870 there was not uniformity in the elections in towns under township organization. Some towns elected in November, and some in April. The town officers in Cook county were elected in November. Much confusion existed in different localities, growing out of the want of uniformity in the election of town officers. This doubtless led to the constitutional provision that the day of holding the annual township meeting shall be uniform throughout the State. It is a salutary provision, and one, too, which was much needed, and it should be upheld and sustained."

Kelly v. *Gahn,* 112 Ill. 27.

SEC. 6. At the first election of county judges under this constitution, there shall be elected in each of the counties in this state, not under township organization, three officers, who shall be styled "The board of county commissioners," who shall hold sessions for the transaction of county business as shall be provided by law. One of said commissioners shall hold his office for one year, one for two years, and one for three years, to be determined by lot; and every year thereafter one such officer shall be elected in each of said counties for the term of three years.

"The 'board of county commissioners,' which, by section 6 of article 10 of the constitution of 1870, will succeed the present county court in the transaction of county business in counties not under township organization, has not yet been elected, and will not be until in November, 1873. The fourth section of the schedule of the constitution of 1870, continued in existence the county courts for the transaction of county business in counties which had not adopted township organization, until the election of the 'board of county commissioners,' and authorized such courts to 'exercise their present jurisdiction.' The words 'present jurisdiction' can not be construed with reference to laws in existence at the time the constitution went into

operation. They are not a prohibition upon the legislature in the enactment of any additional laws regulating such courts, but are to be regarded as a mere limitation upon the power to change the jurisdiction from 'county business' to civil or criminal causes.''

Shaw v. *Hill,* 67 Ill. 457.

SEC. 7. The county affairs of Cook county shall be managed by a board of commissioners of fifteen persons, ten of whom shall be elected from the city of Chicago, and five from towns outside of said city, in such manner as may be provided by law.

COUNTY OFFICERS AND THEIR COMPENSATION.

SEC. 8. In each county there shall be elected the following county officers, at the general election to be held on the Tuesday after the first Monday in November, A. D. 1882: A county judge, county clerk, sheriff, and treasurer; and at the election to be held on the Tuesday after the first Monday in November, A. D. 1884, a coroner and clerk of the Circuit Court, (who may be *ex-officio* recorder of deeds, except in counties having 60,000 and more inhabitants, in which counties a recorder of deeds shall be elected at the general election in 1884). Each of said officers shall enter upon the duties of his office, respectively, on the first Monday of December, after his election, and they shall hold their respective offices for the term of four years, and until their successors are elected and qualified: *Provided,* that no person having once been elected to the office of sheriff, or treasurer, shall be eligible to reelection to said office for four years after the expiration of the term for which he shall have been elected.*

*This section as amended was proposed by the general assembly, 1879, ratified by a vote of the people November 2, 1880, proclaimed adopted by the governor November 22, 1880.

The provision requiring an election of the above mentioned officers in November 1882 extended the terms of these officers one year and superseded all stat-

utes and constitutional provisions regulating their election.

People v. *Board of Supervisors,* 100 Ill. 495.

SEC. 9. The clerks of all the courts of record, the treasurer, sheriff, coroner and recorder of deeds of Cook county, shall receive, as their only compensation for their services, salaries to be fixed by law, which shall in no case be as much as the lawful compensation of a judge of the Circuit Court of said county, and shall be paid, respectively, only out of the fees of the office actually collected. All fees, perquisites and emoluments (above the amount of said salaries) shall be paid into the county treasury. The number of the deputies and assistants of such officers shall be determined by rule of the Circuit Court, to be entered of record, and their compensation shall be determined by the county board.

By this section all the fees, perquisites and emoluments of the clerks of courts of record in Cook county above the amount of their salaries are required to be paid into the county treasury and any increase in taxable costs will not in any manner increase the salaries of such clerks.

People v. *Gaulter,* 149 Ill. 39.

SEC. 10. The county board, except as provided in section 9 of this article, shall fix the compensation of all county officers, with the amount of their necessary clerk hire, stationery, fuel and other expenses, and in all cases where fees are provided for, said compensation shall be paid only out of, and shall in no instance exceed, the fees actually collected; they shall not allow either of them more per annum than $1,500, in counties not exceeding 20,000 inhabitants; $2,000 in counties containing 20,000 and not exceeding 30,000 inhabitants; $2,500 in counties containing 30,000 and not exceeding 50,000 inhabitants; $3,000 in counties containing 50,000 and not exceeding 70,000 inhabitants; $3,500 in counties containing 70,000 and not exceeding 100,000 inhabit-

ants; and $4,000 in counties containing over 100,000 and not exceeding 250,000 inhabitants; and not more than $1,000 additional compensation for each additional 100,000 inhabitants: *Provided,* that the compensation of no officer shall be increased or diminished during his term of office. All fees or allowances by them received, in excess of their said compensation, shall be paid into the county treasury.

"The power given to the county board to fix the compensation of county officers, belongs to the body to which is entrusted the transaction of the county business, and embraces as well county courts as boards of supervisors and courts of county commissioners."

Hughes v. *The People,* 82 Ill. 79.

"The purpose of section 10 of article 10, of the constitution of 1870 providing that county boards should fix the compensation of county officers, with their necessary clerk hire and other expenses, to be paid, in all cases where fees were provided for, out of the fees colledted, was to limit the amount of compensation an officer was to receive to a certain sum, if the fees amounted to that sum, and the residue to be paid into the county treasury."

Kreitz v. *Behrensmeyer,* 149 Ill. 503.

"Where the county board has not fixed the compensation of the county clerk before his election, the power to do so remains, and they may fix it after his election and it will not be a violation of the constitutional provision prohibiting the increasing or diminishing of his compensation during his term of office, because, until fixed by the board, he has no compensation to be either increased or diminished."

Purcell v. *Parks,* 82 Ill. 346.

The same rule applies to compensation of sheriff.

Wheelock v. *People,* 84 Ill. 551.

Sec. 11. The fees of township officers, and of each class of county officers, shall be uniform in the class of counties to which they respectively belong. The com-

pensation herein provided for shall apply only to officers hereafter elected, but all fees established by special laws shall cease at the adoption of this constitution, and such officers shall receive only such fees as are provided by general law.

"The last clause of section 11 article 10 of the constitution of 1870, abrogated all special laws relating to fees of township and county officers, in force at the time of the adoption of that instrument, and requires that such officers should receive only such fees as were provided by laws of general operation throughout the State, until the meeting of the first general assembly thereafter."

It seems that the effect of this clause was not only to repeal all such special laws in particular counties, but also to revive in such counties the general fee bill laws of the State until the legislature should revise these laws when they came to classify the counties according to population."

Chance v. *Marion County,* 64 Ill. 66.

Sec. 12. All laws fixing the fees of state, county and township officers, shall terminate with the terms, respectively, of those who may be in office at the meeting of the first general assembly after the adoption of this constitution; and the general assembly shall, by general law, uniform in its operation, provide for and regulate the fees of said officers and their successors, so as to reduce the same to a reasonable compensation for services actually rendered. But the general assembly may, by general law, classify the counties by population into not more than three classes, and regulate the fees according to class. This article shall not be construed as depriving the general assembly of the power to reduce the fees of existing officers.

This section had for its object the abolition of special acts fixing fees, and aimed to declare a rule of uniformity in fees in the several counties of the several classes, with uniform compensation, within the limited discre-

tion of the various county boards, for services actually rendered by the *de jure* officers in such counties. Its purpose was, not legislation, but limitation on and requirement for legislation. In providing for legislation looking to a reasonable compensation for services actually rendered, it was not the aim or object of that section to establish a rule that would allow a mere usurper of an office actually rendering service the right to claim and retain the compensation to be fixed, as provided by that section. The provisions of those sections creating no different rights, so far as *a de jure* officer is concerned, the rule announced by this court in *Mayfield* v. *Moore,* 53 Ill. 431, is as applicable under the present constitution as under the constitution of 1848, and in harmony with the rule of the common law of England as well as with the great weight of authority in this country, and has been followed by this court in more recent adjudications.''

Kreitz v. *Behrensmeyer,* 149 Ill. 504.

Sec. 13. Every person who is elected or appointed to any office in this state, who shall be paid in whole or in part by fees, shall be required by law to make a semi-annual report, under oath, to some officer to be designated by law, of all his fees and emoluments.

ARTICLE XI.

CORPORATIONS.

Sec. 1. No corporation shall be created by special laws, or its charter extended, changed or amended, except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the state, but the general assembly shall provide, by general laws, for the organization of all corporations hereafter to be created.

''Section 1, of article 11 of the constitution of 1870, was not designed to repeal the general law on the subject of private corporations in force prior to the adoption of the constitution, and all corporations framed

under such law after the adoption of the constitution, are valid and effectual."

Meeker v. *Chicago Cast Steel Co.*, 84 Ill. 277.

"When the constitution of 1870 was adopted, it provided, in section 22 of article 4, that the general assembly should pass no local or special law 'for granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever,' and, in section 1 of article XI, that 'no corporation shall be created by special laws, * * * but the general assembly shall provide, by general laws, for the organization of all corporations hereafter to be created."

Manifestly the constitution of 1870 reversed the old policy of granting exclusive privileges to gas companies. After 1870 the public policy of the State was against the granting of exclusive privileges to corporations of any kind. The general incorporation act of 1872 was passed in pursuance of section 1 of article XI. The prohibition of special charters granting exclusive privileges, and the authorization of incorporations under a general law, followed by the passage of such a law, put the people of this State on record as being opposed to the creation of monopolies of all kinds."

The People v. *Chicago Gas Trust Co.*, 130 Ill. 297.

Sec. 2. All existing charters or grants of special or exclusive privileges, under which organization shall not have taken place, or which shall not have been in operation within ten days from the time this constitution takes effect, shall thereafter have no validity or effect whatever.

Sec. 3. 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.

SEC. 4. No law shall be passed by the general assembly granting the right to construct and operate a street railroad within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

BANKS.

SEC. 5. No state bank shall hereafter be created, nor shall the state own or be liable for any stock in any corporation or joint stock company or association for banking purposes, now created, or to be hereafter created. No act of the general assembly authorizing or creating corporations or associations with banking powers, whether of issue, deposit or discount, nor amendments thereto, shall go into effect or in any manner be in force unless the same shall be submitted to a vote of the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for or against such law.

"There ought not, however, to be any serious difficulty in determining what was intended by the words, 'banking powers,' as used in the constitution of 1870. We think the language employed should be used in its common, ordinary sense, and when this is done, the banking powers referred to mean such as are ordinarily conferred upon and used by the various banks doing business in the country. The ordinary and usual powers exercised by banks are to discount notes and receive deposits. They may, and often do, possess other powers; but these are the ordinary and usual powers conferred upon and exercised by banks and bankers. Bouvier, in defining a bank, says: 'A place for the de-

posit of money; an institution (generally incorporated) authorized to receive deposits of money, to lend money and issue promissory notes, (usually known by the name of bank-notes,) or to perform some one or more of these functions.' 'Banks are said to be of three kinds,—deposit, discount and circulation.' (See, also *The People* v. *Doty,* 80 N. Y. 225; *Pratt* v. *Short,* 79 id. 437). Speaking in a commercial view, Bouvier is doubtless correct in his definition of a bank; but one of the chief characteristics and one of the most essential elements of a bank, as that term is ordinarily understood, is that it is a place for the deposit of money."

Reed v. *The People,* 125 Ill. 596.

"There can be no doubt that the 'vote of the people' contemplated by this provision of the constitution is the vote of the people of the whole state and not of particular localities in the State. In other words, any statute, which authorizes the formation of banking corporations, must be approved by the votes of the people of the State at large."

Dupee v. *Swigert,* 127 Ill. 499.

Sec. 6. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held, for all its liabilities accruing while he or she remains such stockholder.

"Under the section of the constitution thus quoted, every stockholder is liable for the debts of the bank to an amount equal to twice the amount of stock held by him, and may be sued for such amount by any creditor, whose claim is large enough to cover it; the question of contribution must be settled between the stockholders themselves."

Dupee v. *Swigert,* 127 Ill. 505.

Sec. 7. The suspension of specie payments by banking institutions, on their circulation, created by the laws of this State, shall never be permitted or sanc-

tioned. Every banking association now, or which may hereafter be organized under the laws of this State, shall make and publish a full and accurate quarterly statement of its affairs, (which shall be certified to, under oath, by one or more of its officers,'') as may be provided by law.

SEC. 8. If a general banking law shall be enacted it shall provide for the registry and countersigning, by an officer of state, of all bills or paper credit, designed to circulate as money, and require security, to the full amount thereof, to be deposited with the state treasurer, in United States or Illinois state stocks, to be rated at ten per cent. below their par value; and in case of a depreciation of said stocks to the amount of ten per cent. below par, the bank or banks owning said stocks shall be required to make up said deficiency by depositing additional stocks. And said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, at the time of any transfer thereof, and to whom such transfer is made.

RAILROADS.

SEC. 9. Every railroad corporation organized or doing business in this State, under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books, in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfer of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers. The directors of every railroad corporation shall, annually, make a report, under oath to the auditor of public accounts, or some officer to be designated by law, of all their acts and doings, which report shall in-

clude such matters relating to railroads as may be prescribed by law. And the general assembly shall pass laws enforcing by suitable penalties the provisions of this section.

SEC. 10. The rolling stock, and all other movable property belonging to any railroad company or corporation in this State, shall be considered personal property and shall be liable to execution and sale in the same manner as the personal property of individuals, and the general assembly shall pass no law exempting any such property from execution and sale.

This section reverses the rule established by the decisions of the courts of this State prior to the adoption of the present constitution under which rolling stock was regarded as realty.

Palmer v. *Forbes,* 23 Ill. 249.

SEC. 11. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place, except upon public notice given, of at least sixty days, to all stockholders, in such manner as may be provided by law. A majority of the directors of any railroad corporation, now incorporated or hereafter to be incorporated by the laws of this State, shall be citizens and residents of this State.

"Power in a railroad company to exercise the right of eminent domain in a city is a franchise, within the meaning of that word as used in the constitution, in defining what cases must be taken to the Supreme Court by appeal or writ of error. It is not essential to a franchise, in its legal sense, that it should, in all cases, be exclusive."

C. & W. I. R. R. Co. v. *Dunbar,* 95 Ill. 571.

"The constitutional provision that 'a majority of the directors of any railroad corporation now incorporated or hereafter to be incorporated by the laws of

this State, shall be citizens and residents of this State,' has no application to a railway corporation formed, prior to the adoption of the constitution, by the consolidation of a railway company in this State with one of another State, by the consent of each of such States. Such a corporation exists under the laws of the two States, and can not be said to be incorporated solely under the laws of either."

O. & M. Ry. Co. v. *The People,* 123 Ill. 468.

SEC. 12. Railways heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the general assembly shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this State.

"This manifestly refers to railroads constructed for public, as contradistinguished from private, use,—to railroads constructed and used as common carriers, and not to such structures built by individuals on their own lands, and used to subserve their individual and private interests. It would work monstrous wrong and injustice to compel an individual who had constructed a railroad across his farm, to assume the duties and liabilities of a common carrier against his will, and transport over his road all commodities that the adjoining land owner or his neighbors might require. Those who made that instrument did not intend to impose such duties and liabilities on private individuals against their will. It was only public railroads they intended to regulate, and this switch is not of that character."

Koelle v. *Knecht,* 99 Ill. 403.

"The power to regulate and control the charges of railroad companies, or other agencies engaged in public employment, is legislative and not judicial. Inde-

pendently of such constitutional provisions as are above quoted, it is now the settled doctrine in this country, that the legislatures of the States have the power to regulate and settle the freight and passenger charges of railroad companies, and the charges for services of other employments which are public in their character, subject only to such restraints as are imposed by charter contracts, and by the authority of Congress to regulate foreign and interstate commerce."

C. B. & Q. R. R. Co. v. *Jones,* 149 Ill. 377.

SEC. 13. No railroad corporation shall issue any stock or bonds, except for money, labor or property actually received, and applied to the purposes for which such corporation was created; and all stock dividends, and other fictitious increase of the capital stock or indebtedness of any such corporation, shall be void. The capital stock of no railroad corporation shall be increased for any purpose, except upon giving sixty days' public notice, in such manner as may be provided by law.

"The object was doubtless to prevent reckless and unscrupulous speculators, under the guise or pretense of building a railroad, or of accomplishing some other legitimate corporate purpose, from fraudulently issuing and putting upon the market bonds or stocks that do not and are not intended to represent money or property of any kind, either in possession or expectancy, the stock or bonds in such case being entirely fictitious.

We can not believe it was intended by the provision in question to interfere with the usual and customary methods of raising funds by railroad companies for the purpose of building their roads, or of accomplishing other legitimate corporate purposes. To hold that such a company can not, in good faith, issue its stocks or bonds for ready money to build its road, or to effectuate other lawful objects, is, in effect, to deprive it of the only means it possesses of carrying into effect the purposes of its creation. Under this provision of

the constitution, railroad companies have no right to lend, give away, or sell on credit, their bonds or stock, nor have they the right to dispose of either, except for a present consideration, and for a corporate purpose. But in such case, if the company should subsequently divert the proceeds to other than corporate purposes, the purchaser of such stock or bonds, who has acted in good faith in the matter, can not be affected by the subsequent misappropriation by the company.''

P. & S. R. R. Co. v. *Thompson,* 103 Ill. 201.

Sec. 14 The exercise of the power, and the right of eminent domain, shall never be so construed or abridged as to prevent the taking, by the general assembly, of the property and franchises of incorporated companies already organized, and subjecting them to the public necessity the same as of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation, when, in the exercise of the said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right.

Sec. 15. The general assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

''An act of the legislature which forbids any discriminations whatever, under any circumstances, whether just or unjust, in charges for transporting the same class of freight over equal distances, even though moving in opposite directions, and does not permit the companies to show that the discrimination is not unjust, but infers guilt as a conclusive presumption from the mere fact of a difference of rates, without any opportunity of rebutting such presumption, is in violation of the spirit, if not the letter, of the constitutional provisions for the protection of life, liberty

and property, and which guarantees the right of trial by jury, and which gives the right in all criminal prosecutions to appear and defend in person and by counsel.

The legislature can not raise a conclusive presumption of guilt against a natural person from an act that may be innocent in itself, and thereby take from him the privilege of showing the actual innocence or propriety of the act, and confiscate his property as a penalty for the supposed offense."

C. & A. R. R. Co. v. *The People,* 67 Ill. 12.

ARTICLE XII.

MILITIA.

SEC. 1. The militia of the State of Illinois shall consist of all able-bodied male persons, resident in the State, between the ages of eighteen and forty-five, except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this State.

SEC. 2. The general assembly, in providing for the organization, equipment and discipline of the militia, shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

"It might be well in this connection to call to mind that 'powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' The power of State governments to legislate concerning the militia, existed and was exercised before the adoption of the constitution of the United States, and as its exercise was not prohibited by that instrument, it is understood to remain with the States, subject only to the paramount authority of acts of Congress enacted in pursuance of the constitution of the United States. The section of the constitution cited does not confer on Congress unlimited power over the militia of the States. It is restricted to specific objects enumer-

ated, and for all other purposes the militia remain as before the formation of the constitution, subject to State authorities. Nor is there any warrant for the proposition that the authority a State may exercise over its own militia is derived from the constitution of the United States. The States always assumed to control their militia, and, except so far as they have conferred upon the national government exclusive or concurrent authority, the States retain the residue of authority over the militia they previously had and exercised. And no reason exists why a State may not control its own militia within constitutional limitations. Its exercise by the States is simply a means of self-protection."

Dunne v. *The People,* 94 Ill. 126.

SEC. 3. All militia officers shall be commissioned by the governor, and may hold their commissions for such time as the general assembly may provide.

SEC. 4. The militia shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at musters and elections, and in going to and returning from the same.

SEC. 5. The military records, banners and relics of the State, shall be preserved as an enduring memorial of the patriotism and valor of Illinois, and it shall be the duty of the general assembly to provide, by law, for the safe keeping of the same.

SEC. 6. No person having conscientious scruples against bearing arms shall be compelled to do militia duty in time of peace: *Provided*, such person shall pay an equivalent for such exemption.

ARTICLE XIII.

WAREHOUSES.

SEC. 1. All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

"Every subject within the domain of legislation and within the scope of civil government not withdrawn from it by the constitution of the State, or of the United States, can be dealt with by that body by general laws to affect the whole State and all the people within it. That body is, emphatically, the guardian of the public interests and welfare, and would be derelict in its duty did it fail to exercise all its powers to their promotion and protection. That body is the sole judge of such measures as may advance the interests of the people. Coming, as its members do, directly from the people, and of them, they know the course of trade, the manner in which the great internal commerce of the State is conducted, and by what instrumentalities, and how, by them, the producing and other interests of the State are affected. These, it must be conceded, are all fit subjects for legislative consideration, and independent of any constitutional provision, they would have an undoubted right, knowing that a large proportion of our cereals, to reach the markets of the world, were compelled to pass through certain warehouses, called elevators, and subjected to such charges as their owners might see fit to impose, to take up this whole subject as one legitimately within their domain; and if, in their examination of it, they find the owners and managers of these warehouses are an organized body of monopolists, possessing sufficient strength in their combination, and by their connection with the railroads of the State, to impose their own terms upon the producers and shippers of these cereals, to the great detriment of the latter, who are under a kind of moral duress in resorting to them, can it be said to be an usurpation of power on the part of the legislature to bring them in subjection to law, so to regulate their conduct and charges by law, as to prevent oppression and extortion? Can there be a more legitimate subject for the action of a legislative body? We think not. Shall it be said an interest so vast as this is does not deserve governmental care and is not a proper subject of some kind of governmental control? And if, in the means provided by the legislature to that end, some reduction in their monthly or annual receipts may be the

result, can it be said the owners are thereby deprived of their property?''

Munn v. *The People,* 69 Ill. 88.

''There is no provision of the constitution which, either expressly or by necessary implication, inhibits the general assembly from committing the inspection of grain to a board created for that purpose. The right to pass inspection laws belongs to the police powers of the government, and the legislature has authority to arrange the distribution of such powers as the public exigencies may require, apportioning them to local jurisdictions to such extent as the law-making power deems appropriate, and committing the exercise of the residue to officers appointed as it may see fit to ordain.

So it was competent for the general assembly to delegate to the Railroad and Warehouse Commission the power to control the subject of the inspection of grain.''

The People v. *Harper,* 91 Ill. 357.

Sec. 2. The owner, lessee or manager of each and every public warehouse situated in any town or city of not less than 100,000 inhabitants, shall make weekly statements under oath, before some officer to be designated by law, and keep the same posted in some conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such place as shall be designated by law, which statement shall correctly set forth the amount and grade of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued, and are, at the time of making such statement, outstanding therefor; and shall, on the copy posted in the warehouse, note daily such changes as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior or superior grades without the consent of the owner or consignee thereof.

SEC. 3. The owners of property stored in any warehouse, or holder of a receipt for the same, shall always be at liberty to examine such property stored, and all the books and records of the warehouse in regard to such property.

SEC. 4. All railroad companies and other common carriers on railroads shall weigh or measure grain at points where it is shipped, and receipt for the full amount, and shall be responsible for the delivery of such amount to the owner or consignee thereof, at the place of destination.

SEC. 5. All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or public warehouse can be reached by any track owned, leased or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee, and any public warehouse, coal bank or coal yard, may be reached by the cars on said railroad.

"The record in the present case not only shows that there is a physical connection between the tracks of the Madison and Northern company and those of the Alton company on the tracks known as 'interchange tracks,' between Mary street and Halsted street, in the city of Chicago, but it also shows the tripartite agreement of October 1, 1891, wherein the latter company covenanted and agreed with the Madison and Northern company and the Santa Fe company, severally, that it would receive all cars loaded with grain consigned to the National Elevator or to the Chicago and St. Louis Elevator, which shall be brought to Chicago by said two last named parties, respectively, over their respective lines of railroad, and which shall be delivered by them, or either of them, to the Alton Company upon its side-track to be constructed for that purpose between Mary street and Halsted street, and that it will cause all such cars to be transferred to and delivered at

either of said elevators to which the same may be consigned. This contract, for all the substantial purposes of the contract between the Madison and the Santa Fe companies and the two elevator companies, makes the Alton tracks to the elevators 'tracks which can be used by such railroad companies,' and virtually parts of their respective lines of road.''

C. M. & N. R. R. Co. v. *Nat. Elevator Co.,* 153 Ill. 86.

Sec. 6. It shall be the duty of the general assembly to pass all necessary laws to prevent the issue of false and fraudulent warehouse receipts, and to give full effect to this article of the constitution, which shall be liberally construed so as to protect producers and shippers. And the enumeration of the remedies herein named shall not be construed to deny to the general assembly the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common law remedies.

Sec. 7. The general assembly shall pass laws for the inspection of grain, for the protection of producers, shippers and receivers of grain and produce.

ARTICLE XIV.

AMENDMENTS TO THE CONSTITUTION.

Sec. 1. Whenever two-thirds of the members of each house of the general assembly shall, by a vote entered upon the journals thereof, concur that a convention is necessary to revise, alter or amend the constitution, the question shall be submitted to the electors at the next general election. If a majority voting at the election vote for a convention, the general assembly shall, at the next session, provide for a convention, to consist of double the number of members of the senate, to be elected in the same manner, at the same places, and in the same districts. The general assembly shall, in the act calling the convention, designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the

same, together with expenses necessarily incurred by the convention in the performance of its duties. Before proceeding, the members shall take an oath to support the constitution of the United States, and of the State of Illinois, and to faithfully discharge their duties as members of the convention. The qualification of members shall be the same as that of members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the general assembly. Said convention shall meet within three months after such election, and prepare such revision, alteration or amendments of the constitution as shall be deemed necessary, which shall be submitted to the electors for their ratification or rejection, at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alterations or amendments shall take effect.

"The amendment of section 8 of article 10 of the constitution of 1870, adopted by a vote of the people in November, 1880, prescribing the tenure of certain county offices, and fixing the times of the election therefor, became a potential and operative part of the constitution, at least as soon as the amendment was by the board of canvassers declared adopted, if not as soon as the polls were closed on the day of the voting for its adoption, and thereby at once accomplished a change in substance in the condition of the law in relation to general election for the class of county officers provided for, which change was immediate."

The People v. *The Board of Supervisors,* 100 Ill. 495.

Sec. 2. Amendments of this constitution may be proposed in either house of the general assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed amendments, together with the yeas and nays

of each house thereon, shall be entered in full on their respective journals; and said amendments shall be submitted to the electors of this State for adoption or rejection, at the next election of members of the general assembly, in such manner as may be prescribed by law. The proposed amendments shall be published in full at least three months preceding the election, and if a majority of the electors voting at said election shall vote for the proposed amendments, they shall become a part of this constitution. But the general assembly shall have no power to propose amendments to more than one article of this constitution at the same session, nor to the same article oftener than once in four years.

SEPARATE SECTIONS.

ILLINOIS CENTRAL RAILROAD.

No contract, obligation or liability whatever, of the Illinois Central Railroad Company, to pay any money into the state treasury, nor any lien of the state upon, or right to tax property of said company in accordance with the provisions of the charter of said company, approved February 10th, in the year of our Lord 1851, shall ever be released, suspended, modified, altered, remitted, or in any manner diminished or impaired by legislative or other authority; and all moneys derived from said company, after the payment of the state debt, shall be appropriated and set apart for the payment of the ordinary expenses of the state government, and for no other purposes whatever.

The charter of the Illinois Central Railroad Company forms a contract between the company and the State. "By a separate section of the constitution of 1870 it is provided that no contract, obligation or liability of this company to pay any money into the State treasury, nor any lien of the State upon or right to tax property of the company in accordance with the provisions of the charter of the company, shall ever be released, suspended, modified, altered, remitted, or in

any manner diminished or impaired by legislative authority, etc. This, in the most unequivocal and emphatic manner, confirms and prevents any alteration or change in the charter and amendments relating to the taxation of the property of the company."

I. C. R. R. Co. v. *Goodwin,* 94 Ill. 264.

MUNICIPAL SUBSCRIPTIONS TO RAILROADS OR PRIVATE CORPORATIONS.

No county, city, town, township or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation: *Provided, however,* that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption.

"The separate article of the constitution of 1870 of this State which forbids, absolutely, a municipal corporation to become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation, having been submitted, with other separate articles, to a vote of the people, separately from the main body of the constitution, and adopted by the people, became a part of the organic law of the State from and after the second day of July, 1870, and a constituent part of the same *eo instanti.*"

Wade v. *Town of LaMoille,* 112 Ill. 84.

"When municipal bonds have been issued in aid of a railway corporation, or as a donation thereto, since the constitution of 1870 went into effect, the burden of showing they were issued in compliance with a vote of the people of the municipality, in pursuance of some law authorizing the same, rests upon those affirming their validity. Such bonds are *prima facie* invalid."

Town of Prairie v. *Lloyd,* 97 Ill. 180.

"After the adoption of the constitution of 1870, a county had no power to become a stockholder in any railroad corporation, or make donation to, or loan its credit in aid of, such corporation, except when subscriptions had been authorized, under existing laws, by a vote of the people of such county prior to the adoption of the constitution. In the case under consideration, there was a vote of the people of the county before the adoption of the constitution, but the authority conferred upon the court by the vote was upon condition that the railroad company should locate its machine shops at Du Quoin. The county had no right to take stock and issue bonds except upon the terms and conditions specified in the vote of the people."

Onstott v. *The People,* 123 Ill. 492.

"The bonds in question were issued after the adoption of the constitution of 1870. The burden of proof rests upon the parties affirming their validity to show affirmatively, that they were authorized by a vote of the people of the municipality, under existing laws, prior to the adoption of the constitution."

Williams v. *The People,* 132 Ill. 581.

"Where a subscription by a county of $100,000 to the capital stock of a railway company is authorized by a vote of the people, if the company enters into a contract with the county board, by which the latter sells its stock to the company for $30,000 of its bonds, and issues only $70,000 of bonds, this will amount to a donation by the county of $70,000 of its bonds to the railway company, and such bonds as between the county and the railway company, will be void."

In such a case, a tax levied by the county to pay interest on such bonds, in the absence of proof of their passing into the hands of innocent *bona fide* purchasers, is illegal, and it will be error for the county court to enter judgment against an objector's lands for such tax."

Sampson v. *The People,* 140 Ill. 466.

A corporation composed of private individuals which is not by law restrained from conducting the

corporate business for private benefit, which does not report to and is not inspected by any State official, which elects its own managers without State approval, and which, by law, owes the State no duty, is a private, and not a public corporation.

The Washington Home of Chicago, which was created and its powers defined by the act of 1867, is a private corporation.

The provision of the constitution of 1870 (No. 2 of separate sections) prohibiting municipalities from making donations to private corporations is self-executing, and the same operated as a paramount law from the time the constitution was adopted.

Said constitutional provision repealed section 7 of said act of 1867, whereby the county of Cook and city of Chicago were required to pay ten per cent. of liquor license fees to the Washington Home, but did not operate retrospectively."

Washington Home of Chicago v. *City*, 157 Ill. 414.

CANAL.

The Illinois and Michigan Canal shall never be sold or leased until the specific proposition for the sale or lease thereof shall first have been submitted to a vote of the people of the state at a general election, and have been approved by a majority of all the votes polled at such election. The general assembly shall never loan the credit of the state, or make appropriations from the treasury thereof, in aid of railroads or canals: *Provided,* that any surplus earnings of any canal may be appropriated for its enlargement or extension.

CONVICT LABOR.

Hereafter it shall be unlawful for the commissioners of any penitentiary or other reformatory institution in the State of Illinois, to let by contract to any person or persons, or corporations, the labor of any convict confined within said institution.

[This section was submitted to the voters at the election in November, 1886, as an amendment, was adopted, and became a part of this Constitution.]

SCHEDULE.

That no inconvenience may arise from the alterations and amendments made in the constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

SEC. 1. That all laws in force at the adoption of this constitution, not inconsistent therewith, and all rights, actions, prosecutions, claims, and contracts of this State, individuals, or bodies corporate, shall continue to be as valid as if this constitution had not been adopted.

SEC. 2. That all fines, taxes, penalties and forfeitures, due and owing to the State of Illinois under the present constitution and laws, shall inure to the use of the people of the State of Illinois, under this constitution.

SEC. 3. Recognizances, bonds, obligations, and all other instruments entered into or executed before the adoption of this constitution, to the people of the State of Illinois, to any state or county officer or public body, shall remain binding and valid; and rights and liabilities upon the same shall continue, and all crimes and misdemeanors shall be tried and punished as though no change had been made in the constitution of this state.

SEC. 4. County courts for the transaction of county business in counties not having adopted township organization, shall continue in existence and exercise their present jurisdiction until the board of county commissioners provided in this constitution is organized in pursuance of an act of the general assembly; and the county courts in all other counties shall have the same power and jurisdiction they now possess until otherwise provided by general law.

"The fourth section of the schedule to the constitution, which provided that county courts in counties not under township organization should exercise 'their

present jurisdiction' until superseded by the board of county commissioners, was a limitation upon the power to change the jurisdiction from county to civil or criminal business, and was not designed as a prohibition of the enactment of additional laws regulating such court or enlarging its powers in matters of county business.''

Broadwell v. *The People,* 76 Ill. 555.

SEC. 5. All existing courts which are not in this constitution specifically enumerated, shall continue in existence and exercise their present jurisdiction until otherwise provided by law.

''There can be no question that the courts of common pleas for the cities of Elgin and Aurora were continued in force subsequent to the adoption of the present constitution, as they existed under the act of February 16, 1859, until the 'Act in relation to Courts of Record in Cities,' in force July 1, 1874, became a law, for this is expressly provided for by the fifth section of the schedule to the constitution.''

The People v. *City of Aurora,* 84 Ill. 159.

SEC. 6. All persons now filling any office or appointment shall continue in the exercise of the duties thereof according to their respective commissions or appointments, unless by this constitution it is otherwise directed.

* * * * * * * *

SEC. 18. All laws of the State of Illinois, and all official writings, and the executive, legislative and judicial proceedings, shall be conducted, preserved and published in no other than the English language.

''Upon a bill filed by a taxpayer of the city of Chicago to enjoin it from entering into any contract for, or the paying of any money for publishing in the German language matters and things required by law or ordinance to be published in a newspaper, this court holds that under the State constitution, such publications must be in the English language alone.''

McCoy v. *City of Chicago,* 33 Ill. App. 576.

SEC. 19. The general assembly shall pass all laws necessary to carry into effect the provisions of this constitution.

SEC. 20. The circuit clerks of the different counties having a population over sixty thousand, shall continue to be recorders (*ex-officio*) for their respective counties, under this constitution, until the expiration of their respective terms.

SEC. 21. The judges of all courts of record in Cook county shall, in lieu of any salary provided for in this constitution, receive the compensation now provided by law until the adjournment of the first session of the general assembly after the adoption of this constitution.

SEC. 22. The present judge of the Circuit Court of Cook county shall continue to hold the Circuit Court of Lake county until otherwise provided by law.

SEC. 23. When this constitution shall be adopted, and take effect as the supreme law of the State of Illinois, the two-mill tax provided to be annually assessed and collected upon each dollar's worth of taxable property, in addition to all other taxes, as set forth in article fifteen of the now existing constitution, shall cease to be assessed after the year of our Lord one thousand eight hundred and seventy.

SEC. 24. Nothing contained in this constitution shall be so construed as to deprive the general assembly of power to authorize the city of Quincy to create any indebtedness for railroad or municipal purposes, for which the people of said city shall have voted, and to which they shall have given, by such vote, their assent prior to the thirteenth day of December, in the year of our Lord one thousand eight hundred and sixty-nine: *Provided,* that no such indebtedness, so created, shall in any part thereof be paid by the State, or from any state revenue, tax or fund, but the same shall be paid, if at all, by the said city of Quincy alone, and by taxes to be levied upon the taxable property thereof: *And, provided, further,* that the general assembly shall have

no power in the premises that it could not exercise under the present constitution of this State.

SEC. 25. In case this constitution and the articles and sections submitted separately be adopted, the existing constitution shall cease in all its provisions; and in case this constitution be adopted, and any one or more of the articles or sections submitted separately be defeated, the provisions of the existing constitution (if any) on the same subject shall remain in force.

SEC. 26. The provisions of this constitution required to be executed prior to the adoption or rejection thereof shall take effect and be in force immediately.

Done in convention at the capitol, in the city of Springfield, on the thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States of America the ninety-fourth.