9-1875

The constitution of the State of Missouri, 1875.

THE

CONSTITUTION

OF THE

STATE OF MISSOURI.

1875.

[Annotated by Wm. G. Myer of the St. Louis Bar.]

The notes show:

1st The difference between this and the old constitution.

2nd Which sections are new. If they are taken bodily or substantially from other state, such fact is stated.

3rd Reference to all decisions in the Missouri Reports which turn on points in any of our former constitutions that are retained in the new.

4th Decisions in other states where their constitutions contain similar provisions to ours.

5th Numerous decisions on constitutional points carried up to the United State Supreme Court from this and other states.

ST. LOUIS, MO.
W. J. GILBERT, LAW BOOK PUBLISHER
1875.

PREFACE.

In preparing this Constitution for publication, it was thought that it might be made more useful to the bar and the general public, by adding certain notes and references. With this object in view, I have made the following additions to the text of the Constitution: 1st. Notes in brackets showing the result of the comparison of this Constitution with the Constitutions of 1820 and 1865, and also with the new Constitutions of Illinois and Pennsylvania. 2nd. Notes from cases under our former Constitutions with references to cases rendered obsolete by this Constitution, the latter cases being those on the double liability of stockholders, subscriptions by municipalities to the capital stock of corporations and the provision of the Constitution of 1865, in relation to opinions by the Supreme Court in response to questions by the Governor and legislature. 3rd. Notes from the Reports of other States, where the decision is made under a constitutional provision corresponding with the Constitution of this State. The notes from the Illinois Reports were prepared by Hon. E. M. Haines, and published with the Constitution of Illinois, while those from the Tennessee Reports, with accompanying references, were prepared by Seymour D. Thompson, Esq., and published with the Constitution of Tennessee. The Wisconsin Reports are cited on the authority of David Taylor, Esq., the compiler of the statutes of Wisconsin. 4th. Appropriate cross-references. It will be found, I believe, that all the notes appended are appropriate and useful in connection with this Constitution, notwithstanding certain changes and modifications, as I have examined with care the section of the Constitution under which each case was decided, noting wherein it differs, if at all, from this Constitution.

I wish to call the attention of the bar to the fact that I have in preparation notes to the statute laws of the State, which I hope to have ready for publication at an early date. The main features of the plan adopted are as follows: 1st. The notes will be copious. 2nd. They will be published with appropriate side-heads together with cross-references and references to the several revisions of the statutes. 3rd. They will be published in a small volume, with titles, chapters and sections corresponding with Wagner's Statutes, so that they can be re-published with any subsequent revision of those statutes, should such a course be deemed advisable.

These notes will be published by W. J. Gilbert, as soon as they can be collected and arranged. In the meantime I should like to correspond with those members of the bar, who are in the habit of making notes and references to the statutes, or with any who have on hand notes systematically arranged, with a view to using such notes if satisfactory arrangements can be made.

Wm. G. Myer.

St. Louis, September, 1875.

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PREAMBLE

We, the people of Missouri, with profound reverence for the Supreme Ruler of the Universe, and grateful for His goodness, do, for the better government of the State, establish this Constitution.

(*a.*) **Interpretation.**—The same canons of construction apply to constitutions, as to statutes in the matter of repeals. State v. Macon County Court, 41 Mo., 453. If there be in the constitution any language of doubtful import, we must look to the circumstances and conditions of the people, and to the history of the instrument itself, to find the meaning of the clause in question; but where the language is plain and intelligible, and consistent with all other parts of the instrument, we cannot allow ourselves to find, in any reference to facts, out of the instrument, any authority for interpolating either a grant of power or a restriction upon power granted. Hamilton v. St. Louis County Court, 15 Mo., 3.

When a constitution gives a general power, or enjoins a duty, it also gives, by implication, every particular power necessary for the exercise of the one, or the performance of the other. But where the means for the exercise of a granted power are given, no other or different means can be implied. Field v. The People, 2 Scam., 79. A constitution must be expounded in its plain and obvious meaning. The People v. McRoberts, Judge, etc., 4 Legal News, 227. But if a literal meaning involve a manifest absurdity, it should never be adopted. *Ibid.* See also, The People v. Marshall, 1 Gil., 672. Where there is a conflict between a general and a special provision in the constitution, the special provision must prevail in respect to the subject matter of it. Warren v. Shuman, 5 Tex., 441.

(*b.*) **A constitution can do what a legislative act cannot,** as it is the supreme, fixed and permanent will of the people, in their original, sovereign and unlimited capacity; and in it are determined the condition, rights and duties of every individual of the community. From its decrees there can be no appeal, for it emanates from the highest source of power, the sovereign people. Phœbe v. Jay, Breese, 268. Legislation is usually necessary to make operative the powers defined by the constitution. St. Jo. & Denver City R. R. Co. v. Buchanan County Court, 39 Mo., 485.

(*c.*) **An act is not unconstitutional** because it provides that land taken for public use shall vest in the "people of the county." St. Louis County Court v. Griswold, 58 Mo., 175.

ARTICLE I.—Boundaries.

§ **1. Boundaries and jurisdiction.**] The boundaries of the State as heretofore established by law, are hereby ratified and confirmed. The State shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the State, so far as the said rivers shall form a common boundary to this State and any other State or States; and the river Mississippi and the navigable rivers and waters leading to the same, shall be common highways and forever free to the citizens of this State and of the United States, without any tax, duty, impost or toll therefor, imposed by this State.

[Same as in Art. XI, Constitution of 1865, with the exception of the first sentence.]

(*a.*) Concurrent jurisdiction. Swearingen v. St. Bt. Lynx, 13 Mo., 519.

ARTICLE II.—Bill of Rights.

In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded, we declare:

§ **1. Origin of political power.**] That all political power is vested in, and derived from, the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

[Same as Constitution of 1865, Art. I, § 4.]

§ **2. Regulation of internal affairs.**] That the people of this State have the inherent, sole and exclusive right to regulate the internal government and police thereof, and to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness: *Provided*, such change be not repugnant to the Constitution of the United States.

[Same as Constitution of 1865, Art. I, § 5. The *proviso* is wanting in the Constitution of 1820.]

§ **3. Local self-government.**] That Missouri is a free and independent State, subject only to the Constitution of the United States; and as the preservation of the States and the maintenance of their governments, are necessary to an indestructible Union, and were intended to co-exist with it, the Legislature is not authorized to adopt, nor will the people of this State ever assent to any amendment or change of the Constitution of the United States which may in anywise impair the right of local self-government belonging to the people of this State.

[This section is new.]

§ **4. Rights of persons—Object of government.**] That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty and the enjoyment of the gains of their own industry; that to give security to these things is the principle office of government, and that when government does not confer this security it fails of its chief design.

[Change, in phraseology only, from Const. 1865, Art. I., § 1.]

(*a.*) **The prime object of a bill of rights** is to place the life, liberty, and property of the citizen beyond the control of legislation, and to prevent either legislatures or courts from any interference with, or deprivation of, the rights therein declared and guaranteed, except upon certain conditions. The People v. McRoberts, Judge, etc., 4 Legal News, 227. The acts of 1863 and 1867, in reference to the reform school of the City of Chicago, which authorize the commitment of children growing up in ignorance and vice—"but who have not been convicted of any crime," are in violation of this section, and therefore unconstitutional. The People v. Robert Turner, 55 Ill., 280.

An individual may associate with thieves, etc., without being guilty of any offense, for it is not the business of the legislature to keep guard over individual morality; but if such person so associates with a design to aid, abet or promote, or in any way assist, the parties charged with, or suspected of being thieves, prohibitory legislation may be applied, not to correct the evil consequences which such association may bring on the individual, but to protect society from actual or anticipated breaches of law. St. Louis v. Fitz, 53 Mo., 582. An ordinance which prohibits the "knowingly associating with persons having the reputation of being thieves and prostitutes," is void as invading the right of personal liberty. (Separate opinion by Sherwood, J.) *Ibid.*

(*b.*) **Restraint of trade, etc.**—A law, which unnecessarily and oppressively restrains a citizen from engaging in any traffic, or disposing of his property, is void, even though passed under the specious pretext of a police regulation; but if it is passed in good faith, for the purpose of preserving the public health, and abating nuisances, and contains only the necessary limitations, it is valid. State v. Fisher, 52 Mo., 174. The legislature may, unless restrained by the Constitution, prohibit or restrain the exercise of any business or trade within the State. Austin v. State, 10 Mo., 591

§ **5. Religious liberty—Rights of conscience.**] That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no person can, on account of his religious opinions, be rendered ineligible to any office of trust or profit under this State, nor be disqualified from testifying, or from serving as a juror; that no human authority can control or interfere with the rights of conscience; that no person ought, by any law, to be molested in his person or estate, on account of his religious persuasion or profession; but the liberty of conscience hereby secured, shall not be so construed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of this State, or with the rights of others.

[Same as Constitution of 1865, Art. I, § 9.]

§ **6. Religion, individual support of.**] That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.

[Change, in phraseology only, from Const., 1865, Art. I, § 10.]

§ **7. Religion, State must not aid.**] That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to, nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.

[This section is new.]

§ **8. That no religious corporation** can be established in this State, except such as may be created under a general law for the purpose only of holding the title to such real estate as may be prescribed by law for church edifices, parsonages and cemeteries.

[The Constitution of 1865 limited the quantity of land, by an express provision, to five acres in the country, or one acre in a town or city. Art. I. § 12.]

§ **9. That all elections shall be free and open;** and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

["That all elections shall be free and equal." Const., 1820, Art. XIII, § 6. "That all elections ought to be free and open." Const., 1865, Art. I, § 14.]

(*a.*) **The right to vote** is not a natural, absolute or vested one. It may be enlarged or restricted, granted or withheld by the State, and that, too, with or without the fault of the citizen. Blair v. Ridgley, 41 Mo., 63.

§ **10. Redress of injuries.**] That courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character; and that right and justice should be administered without sale, denial or delay.

[Same as Constitutions of 1820 and 1865, Art. XIII, § 7, and Art. I, § 15.]

(*a.*) **Denial or delay.**—Laws directing stay of execution, unconstitutional. Baily v. Gentry, 1 Mo, 164; Brown v. Ward, 1 Mo., 209; Bumgardner v. Circuit Court, 4 Mo., 50; Stevens v. Andrews, 31 Mo., 205. An act forbidding the commencement of suits against all persons in military service, and requiring suits already commenced to be dismissed, is not void as being a denial or delay of justice. Burns v. Crawford, 34 Mo., 330. See, also, Donnell v. Stephens, 35 Mo., 441; Edmonson v. Ferguson, 11 Mo, 344; Lindsey v. Burbridge, 11 Mo., 545.

The statute, requiring a plaintiff to give security for costs, is not in violation of the provisions of this section. Gesford v. Critzer, 2 Gil., 698. When a man is pursuing his remedy by a suit pending in one of the courts, an act of the legislature requiring his suit to be stricken from the docket, is in violation of this provision and void. Fisher v. Dobbs, 6 Yerg., 119, 132. So is an act requiring that a certain class of cases be dismissed. Wally v. Kennedy, 2 Yerg., 554.

(*b.*) **Without sale.**—A provision requiring the payment of all the taxes due, and assessed upon land before a tax title to it can be questioned, is unconstitutional; its effect being to compel a party to buy justice. Wilson v. McKenna, 52 Ill., 44. The same is true of a provision which requires the payment of the redemption money and interest, as a condition precedent to questioning the validity of a tax deed. Reed v. Tyler, 56 Ill., 288.

(*c.*) **Courts to be open.**—To deny a new trial because the motion for the same was not made on a particular day of the term, on which the rules of the court required such motions to be made, was held repugnant to the provisions that all courts shall be open. Pawley v. McGimpsey, 7 Yerg., 502, 504

§ **11. Searches and seizures, requisites of warrant.**] That the people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the person or thing to be seized, as nearly as may be; nor without probable cause, supported by oath or affirmation, reduced to writing.

[Same as Constitutions of 1820 and 1865, Art. XIII, § 13, and Art. I, § 23, except the words "reduced to writing."]

§ **12. Prosecutions to be by indictment, etc.**] That no person shall, for a felony, be proceeded against criminally otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; in all other cases, offenses shall be prosecuted criminally by indictment or information as concurrent remedies.

["That no person can, for an indictable offense, be proceeded against criminally by information, except," etc. Consts. of 1820 and 1865, Art. XIII, § 14, and Art. I, § 23.]

(*a.*) **A felony is an offense** for which a party, on conviction, *may* be imprisoned in the penitentiary, and not one for which he *must* be so imprisoned. (W. S., 516, § 33); Johnston v. State, 7 Mo., 183; Ingram v. State, *Id.*, 293; State v. Deffenbacher, 51 Mo., 26. All other offenses are misdemeanors. W. S., 516, § 35.

(*b.*) **Indictable offenses.**—Misdemeanors were not intended to be embraced by the words "indictable offenses," but only felonies. State v. Ebert, 40 Mo., 186; State v. Berlin, 42 Mo., 572.

(*c.*) **Informations.**—The General Assembly has power to enact that, for offenses of the grade of misdemeanors, persons may be proceeded against either by indictment or by information. State v. Cowan, 29 Mo., 330; State v. Ledford, 3 Mo., 102; State v. Berlin, 42 Mo., 572; State v. Ebert, 40 Mo., 186; *contra*, State v. Stein, 2 Mo., 56. The statute providing that if a party be indicted by the wrong name, and he does not declare his true name before pleading, he shall be proceeded against by the name in the indictment, etc., is not in conflict with this section. (W. S., 1090, § 25.) State v. Schricker, 29 Mo., 265.

(*d.*) **Quo-warranto,** informations in the nature of. See Art. VI, § 3, note (*c*).

(*e.*) **In general,** see 14 Wis., 393; 4 Wis., 400.

(*f.*) **Preliminary Examination,** see § 12 of SCHEDULE.

§ **13. Treason; estates of suicides.**] That treason against the State can consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; that no person can be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on his confession in open court; that no person can be attainted of treason or felony by the General Assembly; that no conviction can work corruption of blood or forfeiture of estate; that the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death; and when any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

[Same as Constitution of 1820, Art. XIII, § 15. Forfeiture for treason under Constitution of 1865, Art. I, §§ 25, 26, and the last clause of this section is wanting in that instrument.]

§ **14. Freedom of speech—Libel, truth in justification.**] That no law shall be passed impairing the freedom of speech; that every person shall be free to say, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact.

[Same, substantially, as Constitutions of 1820 and 1865, Art. XIII, § 16, and Art. I, § 27.]

(*a.*) **In general.**—A newspaper proprietor is responsible for whatever appears in his paper. Buckley v. Knapp, 48 Mo., 152. And all those who aid in the publication are responsible. *Ibid.*

(*b.*) **Truth as a defense.**—When the defendant pleads the truth of the matter as a defense, he cannot show that the libelous article was published without his permission. Buckley v. Knapp, 48 Mo., 152. In an action for libel, the defendants, being publishers of a newspaper, cannot show that a similar publication to that complained of, had, shortly previous, appeared in another newspaper; such evidence does not establish the truth of the publication. Sheahan v. Collins, 20 Ill., 325.

(*c.*) **Libel defined.**—Any malicious printed publication, which tends to expose a man to ridicule, contempt, hatred or degradation of character, is a libel. Nelson v. Musgrave, 10 Mo., 648; Keemle v. Sass, 12 Mo., 499.

§ **15. Ex post facto laws; special privileges.**] That no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly.

[The clause "or making any irrevocable grant," etc., is new. Const. of 1820, Art. XIII, § 17; Const. of 1865, Art. I, § 28.]

(*a.*) **An ex post facto law is,** where, after an action, indifferent in itself, is committed, the Legislature, then for the first time, declares it to have been a cirme, and inflicts a punishment on the person who committed it. Coles v. The County of Madison, 1 Brees, 154. Where the legislature of Connecticut had, by a resolution or law, set aside a decree of the Court of Probate, rejecting a will, and directing a new hearing before the Court of Probate and the question raised being "whether the resolution was an *ex post facto* law, prohibited by the constitution of the United States, it was held, that the words *ex post facto* laws were technical expressions, and meant every law that made an act done before the passing of the law, and which was innocent when done, criminal; or which aggravated a crime and made it greater than it was when committed; or which changed the punishment and inflicted a greater punishment than the law annexed to the crime when committed; or which altered the legal rule of evidence, and received less or different testimony, than the law required at the time of the commission of the offense, in order to convict the offender, and that the law or resolution of Connecticut was not within the letter and intention of the prohibition and was, therefore, lawful. Colder v. Bull, 3 Dallas, 386. An *ex post facto* law is limited to offenses, and declares an action, indifferent in itself at the time of its commitment, to be an offense, and punishes the person who commits it. DeCordova v. City of Galveston, 4 Tex., 470; Bouv. Dict., Vol. I.

(*b.*) **Instances.**—A law, taking away the elective franchise from all who cannot take the oath of loyalty is not an *ex post facto* law. Blair v. Ridgley, 41 Mo., 63; State v. Neal, 42 Mo., 119.

(*c.*) Retrospective Laws.

1. In general.—A statute which takes away any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in respect to transactions already past, is retrospective. Barton Co. v. Walser, 47 Mo., 189; Hope Mut. Ins. Co. v. Flynn, 38 Mo., 483. See State v. Hawthorn, 9 Mo., 389. Laws are deemed retrospective and within the constitutional prohibition, which, by retrospective operation, destroy or impair vested rights, or rights to "do certain actions or possess certain things, according to the laws of the land." DeCordova v. City of Galveston, 4 Tex., 470. Statutes are not to be construed as having a retrospective effect, unless the intention of the legislature is clearly expressed that they shall so operate, and unless the language employed admits of no other construction. State, *ex rel.*, v. Hays, 52 Mo., 578. Every act must be held to be prospective in its operation unless a different effect is to be gathered from its terms. State v. Auditor, 41 Mo., 25.

2. Certain distinctions.—*Ex post facto* laws and such as impair the obligation of contracts, are retrospective; but there may be retrospective laws which are not necessarily *ex post facto*, or which do not impair the obligations of contracts; and by the use of the term "retrospective," cases were, doubtless, intended to be included, not within the purview of the two former classes of laws. DeCordova v. City of Galveston, 4 Tex., 470. See Bouv. Dict., Title Ex Post Facto Laws. This provision prohibits the legislature only from passing retrospective laws. It does not prevent the people in their sovereign capacity from doing so. Drehman v. Stifel, 41 Mo., 184. The legislature cannot create any new ground for the support of an existing action, nor any legal bar which goes to deprive a party of his defense. Hope Mut. Ins. Co. v. Flynn, 38 Mo., 403.

3. Laws impairing the remedy are generally not within the scope of retrospective laws. Paschal v. Perez, 7 Tex., 348. Unless the remedy be entirely taken away, or be encumbered with conditions that would render it useless or impracticable; there cannot be a vested right to any particular remedy, until suit be commenced at least. DeCordova v. City of Galveston, 4 Tex., 470. The remedy may be modified by the Legislature, but not entirely abolished; and in substituting one word for another, a reasonable remedy must be provided. An act, therefore, that extinguishes all existing remedy so as to leave no redress, and no means of enforcing a contract, would, by operating in presenti, impair its obligation. It is a well settled principle, that the repeal of a law in which a contract exists is an infringement of the Constitution. A legislative grant is a contract of this description. Bruce v. Schuyler, 4 Gil., 221. So when the Legislature of Georgia, by an act, authorized the sale of a large tract of land and a grant was made by letters patent in pursuance of the act, to a number of individuals, under the name of the Georgia Company. Fletcher held a deed from Peck for a part of this land under a title derived from the patent, and in the deed Peck covenanted that the State of Georgia was lawfully seized, &c. The action was for a breach of covenant and the breach assigned was, that the letters patent were void, because that the Legislature of Georgia by act of 13th February, 1796, declared the preceding act null and void: *Held*, that the act declaring the former act void was unconstitutional and void; that when a law was in its nature a contract, and absolute rights have vested under that contract, a repeal of that law could not divest those rights, nor annihilate or impair the title so acquired. Fletcher v. Peck, 6 Cranch, 87.

Distinction between the obligation of a contract and the remedy. Farnsworth v. Vance, 2 Cold., 108, 112. The obligation of the contract being established, it cannot be abrogated or relaxed by State legislation. *Ib.* 111, 117. The measure or degree in which the change is effected, can in no respect influence the conclusion. For whether the law affect the validity, the construction, the duration, the discharge, or the evidence of the contract, it impairs its obligation, though it may not do so to the same extent in all the supposed cases. Any deviation from its terms, by postponing or accelerating the period of performance which it prescribes, or imposing conditions not expressed in the contract, or dispensing with the performance of those which are a part of the contract, however minute, or apparently immaterial in their effect upon it, impair its obligation. Still more, a law which makes the contract wholly invalid, or extinguishes or releases it, is a law impairing it. *Ib.* 111, 112. But the State is in the exercise of its acknowledged powers when it is regulating the remedy, and mode of proceeding in the courts upon a broken contract. *Ib.* 112. And the legislature may vary the nature and extent of remedies, so always some substantive remedy be in fact left. Woodfin v. Hooper, 4 Humph., 12, 21; Farnsworth v. Vance, 2 Cold., 108, 117; DeCordova v. City of Galveston, 4 Tex., 470. Thus a retroactive law which furnishes or regulates the remedy, and does not impair the right, is valid. Brandon v. Green, 7 Humph., 130; Wynne v. Wynne, 2 Swan, 405. A State may, at pleasure, regulate the modes of proceeding in its courts, in relation to past contracts as well as future. It may, for instance, shorten the period of time within which claims shall be barred by the statute of limitations; or exempt the necessary implements of agriculture, or the tools of a mechanic, from execution. DeCordova v. City of Galveston, 4 Tex., 470

And the legislature may, by a general law, create a new remedy for a previously existing right. Hope v. Johnson, 2 Yerg., 123; Vanzrant v. Waddell, 2 Yerg., 260; Fisher v. Dobbs, 6 Yerg., 119. As, to declare by law that adultery committed before the passage of the act shall be a cause of divorce. Jones v. Jones, 2 Tenn., 2. Or to pass an act authorizing slaves who had received a devise of liberty to prosecute suit for the same by a next friend. Fisher v. Dobbs, *ut supra*. Or to sue for the same in any Circuit Court they should see proper. Hope v. Johnson, *ut supra*. Or an act giving new and additional remedies to the creditors of certain specified banks. Vanzant v. Waddell, *ut supra*.

But when the right and the remedy have become cemented together by the actual pendency of a suit, the latter cannot be taken away by a retroactive law. Fisher v. Dobbs, *ut supra*. And in Tucker v. Burns, 2 Swan, 35, it was held that the Legislature could not pass an act authorizing the revival of actions of forcible entry and detainer in the name of the personal or real representative of the deceased party, and providing for the application of the act to suits then pending. Such an act was held retrospective and unconstitutional. A subsequent legislative enactment explanatory of the meaning of a former act cannot retroact so as to affect the rights of parties. McManning v. Farrar, 46 Mo., 376.

4. Void enactments.—An act declaring a deed previously executed by a person of unsound mind, to be legal and binding, is retrospective in its operation, and void. Routsong v. Wolf, 35 Mo., 174. See Butler v. Chariton County Court, 13 Mo., 112. So, also, is a joint resolution forbidding payment to the register, for services rendered by him under a former act. State, *ex rel.*, etc., v. Auditor, 33 Mo., 287. And where the city of St. Louis built certain sewers under invalid ordinances, creating no liability on the part of the property owners, a subsequent act of the legislature, authorizing the city to re-assess the sum remaining unpaid on the real estate benefited by the improvement, was retrospective, and void. St. Louis v. Clemens, 52 Mo., 133.

5. Laws not retrospective.—An act imposing a tax on lawyers. Simmons v. State, 12 Mo., 268; State v. Lackland, 12 Mo., 278. An act to validate the title to certain swamp lands sold by the County Court of Barton county. Barton Co. v. Walser, 47 Mo, 189. See Steines v. Franklin Co., 48 Mo., 167. An act authorizing the issue of a *venditioni exponas* upon a levy theretofore duly made, with a clause for further levy after exhausting the property levied on. Porter v. Mariner, 50 Mo., 364. And such law divests no ivested right. *Ibid.* The third and fifteenth sections of the act of 1825, in relation to married women acting in an administrative capacity. Frye v. Kimball, 16 Mo., 9; see W. S., 75, § 34. An act directing a county to appropriate part of its revenue, already collected, in a particular way. State, *ex rel.*, etc., v. St. Louis County Court, 34 Mo., 546. An act forbidding the commencement of suits against persons in military service, etc., is not retrospective as to, nor in violation of, contracts entered into after the enactment of such law. Burns v. Crawford, 34 Mo., 330; see Donnell v. Stephens, 35 Mo., 441; Edmonson v. Ferguson, 11 Mo., 344; Lindsey v. Burbridge, 11 Mo., 545.

6. Rules of evidence may be changed, and the legislature may prescribe what shall be the effect of documentary evidence in all future suits. St. Louis v. Oeters, 36 Mo., 456; St. Louis v. Coons, 37 Mo., 44; Hope Mut. Ins. Co. v. Flynn, 38 Mo., 483. Tax deeds in evidence. Abbott v. Lindenbower, 42 Mo., 162.

7. The Constitution of the United States does not prohibit a State from enacting retrospective laws of a civil nature, which take away a right of action, or divest rights invested in an individual, if these laws do not impair the obligation of a contract, nor divest settled rights of property. State, to use, etc., v. Gatzweiler, 49 Mo., 17. See Colder v. Bull, 3 Dallas, 386; Satterlee v. Matthewson, 2 Peters (U. S.), 413; Watson v. Mercer, 8 *Id.*, 88. A right to recover damages in an action of forcible entry and detainer, is not such a vested right as is protected by the constitution of the United States. Drehman v. Stifel, 41 Mo., 184.

(*d.*) Impairing the Obligation of Contracts.

1. In general.—Where a contract, when made, is valid by the laws of the State as then expounded by the departments of the government and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent constitutional ordinance or act of the legislature, or decision of its courts, altering the construction of the law. State v. Miller, 50 Mo., 129.

The clause has, at various times, been brought before the courts for interpretation, and the meaning thereof, as expounded by the courts in their opinions, can now be considered as definitely settled. Thus, an act which changes the expressed intention of the parties to a contract, or such as results from their stipulations, impairs its validity. It is immaterial, as to the extent or manner of the change, whether it be ever so minute, or relates to its construction, its evidence, or the time or manner of its performance. Every conceivable change of a contract impairs its validity, and renders it null and void. This constitutional provision extends to, and embraces both contracts executed and executory, and as well those entered into by a State as those made by individuals. Bruce v. Schuyler, 4 Gil., 221.

A State can no more impair the obligation of its own contracts than it can impair the obligation of contracts between individuals. Furman v. Nichol, 3 Cold., 432, 452; McCallie v. Mayor and Alderman of Chattanooga, 3 Head, 317, 321. Nor can the State Legislature pass a law violating a compact with the United States, or with another State. Lowry v. Francis, 2 Yerg., 534; Green v. Biddle, 8 Wheat., 1; Allen v. McKean, 1 Sumn., 276. See 2 Pars. Con., 509. But the legislature has the power to change the direction of a donation made by the State to a county, before it has been appropriated. Cage v. Hogg, 1 Humph., 48, 51. A convention of a State has no more power to violate contracts than the legislature. Union Bank v. The State, 9 Yerg., 490, 495.

See note (*c*), sub-division **3.** *supra*.

2. Where an indorsee's rights are fixed, they cannot be changed or impaired by a subsequent act of the legislature. Schlatter v. Rector, 1 Mo., 286.

3. Lotteries.—Where the legislature authorizes a private individual, or a corporation, to raise money by a lottery, the statute, creating such lottery, may be repealed, at any time, without violating the constitution. Freleigh v. State, 8 Mo., 606; Bass v. Mayor of Nashville, Meigs, 421. But where an act authorized the sale of a lottery privilege, the legislature cannot, after such sale, pass a law impairing the obligation of the contract. State v. Hawthorn, 9 Mo., 389. See State v. Morrow 26 Mo. 131.

4. Public office.—The incumbent of a mere legislative office has no vested right. Such an office is held neither by grant nor contract, and is always subject to be controlled, modified or repealed by the body creating it. State, *ex rel.*, v. Davis, 44 Mo., 129; Waldraveau v. Mayor and Aldermen of Memphis, 4 Cold., 431; Butler v. Pennsylvania, 10 How., 402; Commonwealth v. Mann, 5 Watts & S. Penn., 418; Barker v. Pittsburg, 4 Barr. Penn., 49. A city may repeal an ordinance, and thus abolish an office held under such ordinance. Primm v. Carondelet, 23 Mo., 22; The People v. The Auditor, 1 Scam., 537. Nor does any vested right exist in the fees of a public officer, except as to those fees which are due for services rendered. The legislature may, therefore, reduce the fees of public officers during their terms of office. Haynes v. State, 3 Humph., 480. Where a person was elected to a professorship in the State University for a certain period, "subject to law," an act declaring the offices of professors, teachers, etc., vacant, did not impair the obligation of a contract. Head v. Curators, etc., 47 Mo., 220. So, also, of the act abolishing the office of public printer. Wilcox v. Rodman, 46 Mo., 322. See State, *ex rel.*, etc., v. Pinger, 50 Mo., 486.

5. The stay law of March 7, 1861, in its application to executions issued upon judgments rendered previous to its passage, was unconstitutional. Stephens v. Andrews, 31 Mo., 205. See Baily v. Gentry, 1 Mo., 164; Brown v. Ward, 1 Mo., 209; Bumgardner v. Circuit Court, 4 Mo., 50.

6. Licenses.—Certain acts changing the law under which a grocer's license was taken out, held not to affect the validity of an unexpired license. State v. Andrews, 28 Mo., 14; State v. Andrews, 26 Mo., 171. A town ordinance, curtailing or regulating for the purposes of police and public order, the hours within which licensed tipplers shall do their business, does not impair the obligation of the contract embodied in the license of those tipplers who were licensed before the passage of the same. Smith v. Mayor & Aldermen of Knoxville, 3 Head, 245.

7. Corporations.—Section 12 of the railroad law, relating to the claims of laborers is constitutional in its application to railroad companies previously created. (Acts of 1853, 128; W. S., 302, § 10.) Peters v. I. M. R. R., 23 Mo., 107; Grannahan v. Hann. & St. Jo. R. R. Co., 30 Mo., 546. Also the act requiring companies to fence their roads. Gorman v. Pacific R. R. Co., 26 Mo., 441; Trice v. Hann. & St. Jo. R. R. Co., 49 Mo., 438. An act which subjects private corporations, previously chartered, to regulations which the State may prescribe for the good government of the community, is constitutional. State v. Matthews, 44 Mo., 523. So, also, is an act removing from the management of corporations of a public nature, those who refuse to take an oath of loyalty to the government. State v. Adams, 44 Mo., 570. No contract or private rights are involved in the creation of a public corporation, such as a Board of Commissioners for Common Schools. The franchise of such corporations may be modified or abrogated at the pleasure of the legislature. Governor v. McEwen, 5 Humph., 241, 288–9. As to eleemosynary corporations. State, *ex rel.*, Pittman v. Adams, 44 Mo., 570.

8. Taxing corporations.—The Legislature has full power and control over the subject of taxation, and this power will never be considered surrendered unless it is done expressly or by necessary implication in the charter itself. St. Louis v. Manufacturer's Savings Bank, 49 Mo., 574; St. Louis v. Boatmen's Ins. & Trust Co., 47 Mo., 150. The charter of the Manufacturers' Savings Bank of St. Louis declared that one per cent. of the net profits of the bank should be paid to the State, but contained no negative or restrictive words indicating any intention of the State to surrender the power of increasing the rate if it saw proper to do so. *Held*, that the clause of the charter referred to was a contract between the company and the State, but that an ordinance of the city of St. Louis imposing a license in addition to the above one per cent. was not unconstitutional as impairing its obligation. St. Louis v. Manufacturers' Savings Bank, 49 Mo., 574.

The charter of the Union Bank of Tennessee, provided that in consideration of the privileges granted by this charter, the bank agrees to pay the State annually, the one-half of one per cent. on the amount of capital stock paid in by the stock-holders, other than the State. *Held*, that this was in lieu of the taxes the bank would otherwise be compelled to pay the State, and a law imposing an additional tax upon the capital stock of the bank was in violation of the charter of the bank, and unconstitutional. Union Bank v. The State, 9 Yerg., 490, 500.

9. Insolvent laws.—A discharge under the insolvent laws of one State will not discharge the insolvent from a contract made with a citizen of another State. Farcira v. Keevil, 18 Mo., 186.

10. For additional cases under this section, see 9 Wis., 559; 3 Wis., 287; 15 Wis., 20; 16 Wis., 296; 11 Wis., 353; 17 Wis., 556, 573, 577; 11 Wis., 432, 442; 13 Wis., 245; 19 Wis., 469; 12 Wis., 67; 21 Wis., 491, 501; 22 Wis., 660.

§ **16. That imprisonment for debt** shall not be allowed, except for the non-payment of fines and penalties imposed for violation of law.

[Same as Constitution of 1865, Art. I, § 29.]

(*a.*) **Contempt.**—A party cannot be imprisoned for contempt for disobeying an order for the payment of alimony. Coughlin v. Ehlert, 39 Mo., 285. See 14 Wis., 226; 12 Wis., 52; 10 Wis., 495; 4 Wis., 522.

§ **17. Right to bear arms.**] That the right of no citizen to keep and bear arms in defense of his home, person and property, or in aid of the civil power, when thereto legally summoned, shall be called in question; but nothing herein contained is intended to justify the practice of wearing concealed weapons.

[Modification of former provisions. Constitution of 1820, Art. XIII, § 3; 1865, Art. I, § 7.]

§ **18. Officers to attend to their duty.**] That no person elected or appointed to any office or employment of trust or profit under the laws of this State, or any ordinance of any municipality in this State, shall hold such office without personally devoting his time to the performance of the duties to the same belonging.

[This is a new section.]

§ **19. Collectors and receivers, ineligibility to office.**] That no person who is now, or may hereafter become a collector or receiver of public money, or assistant or deputy of such collector or receiver, shall be eligible to any office of trust or profit in the State of Missouri under the laws thereof, or of any municipality therein, until he shall have accounted for and paid over all the public money for which he may be accountable.

["Shall be eligible to either house of the General Assembly." Constitution of 1865, Art. IV, § 12.]

§ **20. Private property for private use; public use a judicial question.**] That no private property can be taken for private use with or without compensation, unless by the consent of the owner, except for private ways of necessity, and except for drains and ditches across the lands of others for agricultural and sanitary purposes in such manner as may be prescribed by law; and that whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public, shall be a judicial question, and as such judicially determined, without regard to any legislative assertion that the use is public.

[This is a new section.]

(*a*.) **Public use.**—Whether a use is public has been held to be a judicial question, in the absence of any constitutional provision. County Court of St. Louis County v. Griswold, 58 Mo., 175. When it is plainly perceived that there is an attempt to evade the law and procure the condemnation of property for a private use, or to accomplish an end which is not public in its character, then the courts will unhesitatingly declare the act void. If the question were doubtful, testimony would be heard to determine the fact. *Ibid.*

(*b*.) **Private use.**—A city ordinance imposing a license tax on wagons of outside residents engaged in hauling in and out of the city, is void, the use being private. St. Charles v. Nolle, 51 Mo., 122. And the legislature cannot authorize a municipal corporation to tax, for its own local purposes, lands lying outside of the corporate limits. Wells v. City of Weston, 22 Mo., 384. But a county may be required to apply a part of its funds to the payment of a portion of the police expenses of a city, situated within its limits, the police commissioners being an agency of the State. State, *ex rel.*, etc., v. St. Louis County Court, 34 Mo., 546.

See § 21, note (*b*), *infra*.

§ **21. Eminent domain—Compensation.**] That private property shall not be taken or damaged for public use without just compensation. Such compensation shall be ascertained by a jury or board of commissioners, of not less than three freeholders, in such manner as may be prescribed by law; and until the same shall be paid to the owner, or into court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein divested. The fee of land taken for railroad tracks without consent of the owner thereof, shall remain in such owner subject to the use for which it is taken.

[New, except the first sentence. The words "or damaged" are not in the Constitutions of 1820 and 1865. See Art. XIII, § 7, and Art. I, § 16, respectively.]

(*a*.) **In general.**—The State, by virtue of its eminent domain, has the right to take private property for public use. Newby v. Platte County, 25 Mo., 258; Johnson v. Joliet and Chicago R. R. Co., 23 Ill., 202. But not without compensation, Provolt v. Chicago, R. I. & Pac. R. R. Co., 57 Mo., 256; City of Chicago v. Larned, 34 Ill., 203. And there must be a proper remedy afforded for obtaining compensation. Walther v. Warner, 25 Mo., 277; 3 Wis., 361, 603, 714; 12 Wis., 213; 20 Wis., 135; 22 Wis., 288. The compensation cannot be arbitrarily fixed by the legislature. County Court of St. Louis County v. Griswold, 58 Mo., 175. And it must be paid before taking the property. 12 Mo., 328; 26 Ill., 437; 43 Ill., 86; 51 Ill., 68. The power to take private property for public use, without the owner's consent, is in derogation of the rights of the citizen, and can only be justified on the ground of absolute necessity. Leslie v. St. Louis, 47 Mo., 474. Where in consequence of the negligent manner of constructing a sewer a private lot is flooded with water, the city will be liable for the resulting damage. Such a work is not a matter of supreme necessity involving the safety of the people. Hence the maxim *salus populi suprema lex* can have no application. The right to the use of the street is a property interest, and the lot holder is as much entitled to protection in it as in the lot itself. (Overruling St. Louis v. Gurno, 12 Mo., 414); Thurston v. St. Joseph, 51 Mo., 510. See Rose v. St. Charles, 49 Mo., 509.

(*b*.) **Public use.**—A park for the inhabitants of a county is a public use. County Court of St. Louis County v. Griswold, 58 Mo., 175. And land may be taken for depots, engine-houses, etc. H. & St. J. R. R. Co. v. Muder, 49 Mo., 165; or for a railroad, Walther v. Warner, 25 Mo., 277; Dickey v. Tennison, 27 Mo., 373; or for a public school, Township Board, etc., v. Hackman, 48 Mo., 243. Private property may be taken for the erection of grist mills. Harding v. Goodlett, 3 Yerg., 41. But not for the erection of a "grist mill, saw mill and paper mill." These latter are not works of a public character. *Ib.* Nor for the establishment of a private way for the benefit of another person. Clack v. White, 2 Swan, 540. Nor for the benefit of a company chartered with the privilege of "loading or unloading freight, goods, cotton, etc., on or from steamboats or other water craft that may touch at the port of Memphis." Memphis Freight Co. v. Mayor and Aldermen of Memphis, 4 Cold., 419. "An act to establish a neighborhood road

in Washington county," held void. (Acts of 1855, p. 467.) Dickey v. Tennison, 27 Mo., 373. A right of way is only an easement, and not an interest in land, and a law providing for the opening of a private road across another's land, upon just compensation being made, is constitutional. Snyder v. Warford, 11 Mo., 513.

See § 20, note (*b.*) *supra.*

(*c.*) **Miscellaneous.**—The act of March 3, 1851, to increase the salaries of the judges in St. Louis County, is not unconstitutional. Hamilton v. St. Louis County Court, 15 Mo., 3. It seems that there is no constitutional obstacle in the way of compelling a property owner to pay the costs of a condemnation in which he gets nothing beyond the benefits derived from the improvement, in a case where he has undertaken and still intends, to dedicate, yet refuses to sign a relinquishment by which he could avoid the proceedings. Rogers v. City of St. Charles, 54 Mo., 229.

(*d.*) **Lands covered with water** may not be taken without making compensation. 4 Wis., 486.

(*e.*) **All grants made by the State** whether to the canal trustees or others, although irrevocable, are subject to the right of eminent domain, unless that right is expressly relinquished. Trustees v. C. & R. I. R. R. Co., 14 Ill., 314. A franchise granted by the Legislature, as the exclusive right to erect and maintain a toll-bridge within certain limits, is such an exclusive privilege as must yield to the public advantage, and may be taken for the public use upon reasonable compensation being paid therefor. Red River Bridge Co. v. Mayor and Aldermen of Clarksville, 1 Sneed, 176. See Art. XII, § 4.

(*f.*) **Public streets.**—Where a railroad track is laid on a public street, the adjacent lot owners are entitled to compensation. 14 Wis., 609. So also, where a plank road is constructed on a county road. Williams v. N. B. P. R. Co., 21 Mo., 580.

(*g.*) **Benefits** assessed against owner. St. L. & St. Jo. R. R. Co. v. Richardson, 45 Mo., 466; 25 Mo., 258, 535; 58 Mo., 491; 57 Mo., 599.

(*h.*) **The right to condemn is not exhausted** by an apparent completion of the road, if an increase of business requires other appendages. C., B. & Q. R. R. Co. v. Wilson, 17 Ill., 123.

(*i.*) **Jury.**—A statute authorizing the appointment of a jury of five disinterested land owners, is constitutional. L. & F. Plank Road Co. v. Picket, 25 Mo., 535. The finding of the commissions is not conclusive upon the Circuit Court. Hannibal Bridge v. Schaubacker, 49 Mo., 555. A report of a jury may be rejected, where one of them is secretly interested in the case. R. I. etc. R. R. Co. v. Lynch, 23 Ill., 645. The verdict of a jury, on a writ of *ad quod damnum*, may be objected to by any person who may consider himself injured by the building of the proposed dam. Grace v. Zumwalt, 4 Mo., 567. See Art. XII, § 4.

§ 22. Criminal prosecutions, rights of accused.] In 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; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy, public trial by an impartial jury of the county.

[Same, in effect, as former provisions. Constitution of 1820, Art. XIII, § 9; 1865, Art. I, § 18.]

(*a.*) **"To meet the witnesses face to face."**—It is not a violation of this provision to admit in evidence against the accused a deposition taken before the committing magistrate in the presence of the accused, the deponent being dead at the time of trial. State v. Harman, 27 Mo., 120; State v. McO'Blenis, 24 Mo., 402. But the deposition is not admissible upon proof that the witness is beyond the jurisdiction of the court, unless his absence is procured by the defendant. State v. Houser, 26 Mo., 431.

This provision does not prohibit the admission of dying declarations. Anthony v. The State, Meigs R., 265, 277. Nor proof of the testimony of a deceased witness, which was given before the committing magistrate. Johnston v. The State, 2 Yerg., 58; Kendrick v. The State, 10 Humph., 479; overruling The State v. Atkins, 1 Tenn., 229, and citing Commonwealth v. Richards, 18 Pick., 437. And see Bostick v. The State, 3 Humph, 344. And so upon an appeal from the judgment of the police justice of an incorporated town, the testimony of witnesses, reduced to writing by the police justice may be read as evidence against the defendant without violating this provision. Trigally v. Mayor and Aldermen of Memphis, 6 Cold., 382, 391.

(*b.*) **Right to appear and defend, etc.**—A defendant on a trial for felony must be present throughout the trial. State v. Schoenwald, 31 Mo., 147; State v. Ott, 49 Mo., 327. He must be present at the rendition of the verdict. State v. Buckner, 25 Mo., 167; State v. Ott, *supra*; State v. Braumschweig, 36 Mo., 397. And his presence must be affirmatively shown on the record State v. Cross, 27 Mo., 332.

According to the principles of the common law, in all capital cases the verdict must be received in open court, and in the presence of the prisoner. The rule does not apply in cases of inferior misdemeanors. Holliday v. People, 4 Gil., 111. The same rule applies in cases of treason and felony. Clark v. State, 4 Humph., 254. Where the prisoner was absent by his own procurement, being at large by consent of the Court, or by escaping while the jury were out considering their verdict, or being out of the court room when the jury returned to have a question of the charge of the Court re-stated to them, in each of these cases the judgment against the prisoner was held void. 4 Humph., 254; 2 Sneed, 550; 6 Cold, 11. If, however, on writ of error, the record shows the arraignment of the prisoner, his personal presence is also thereby shown, for his arraignment involves his personal appearance. Where the prisoner's presence in court can by fair intendment, be collected from the record, that is sufficient. Schirmer v. The People, 33 Ill., 276. See State v. Schoenwald, 31 Mo, 147.

(*c.*) **To have process, etc.**—The defendant has a right to have his witnesses personally present at the trial, even though the attorney general is willing to admit the facts he expects to prove by them. Goodman v. The State, Meigs R., 195.

(*d.*) **In general.**—See 17 Wis., 26; 16 Wis., 398; 12 Wis., 537; 9 Wis., 274; 2 Chandler's Rep., 172.

§ **23. Self-crimination—Twice in jeopardy.**] That no person shall be compelled to testify against himself in a criminal cause, nor shall any person after being once acquitted by a jury, be again, for the same offense put in jeopardy of life or liberty; but if the jury to which the question of his guilt or innocence is submitted, fail to render a verdict, the court before which the trial is had, may, in its discretion, discharge the jury and commit or bail the prisoner for trial at the next term of court, or if the state of business will permit, at the same term; and if judgment be arrested after a verdict of guilty on a defective indictment, or if judgment on a verdict of guilty be reversed for error in law, nothing herein contained shall prevent a new trial of the prisoner on a proper indictment, or according to correct principles of law.

[The clause "and if judgment be arrested," etc., is new. Also, the words "or if the state of business will permit, at the same term." Constitution of 1820, Art. XIII, §§ 9, 10; 1865, Art. I, §§ 18, 19.]

(*a.*) TWICE IN JEOPARDY.

1. In general.—In criminal prosecutions, where a conviction would subject the defendant to capital punishment, or would render him liable to be restrained from his personal liberty, an acquittal by a jury is a bar to any subsequent trial for the same offense. State v. Spear, 6 Mo., 644; State v. Carroll, 7 Mo., 286; State v. Heatherly, 4 Mo., 478; State v. Palmer, 30 Mo., 385; State v. Baker, 19 Mo., 683. This provision has reference only to the trial and verdict; and no person can claim its protection, unless he has once been tried by a lawful jury, upon a good indictment, and been acquitted or convicted. Moseley v. State, 33 Tex., 671; Taylor v. State, 35 Tex., 97. Where an indictment under section 4, of the act to prevent illegal banking, describes the offense in the words of the act, a general conviction or acquittal is a bar to a subsequent indictment for a similar offense, during the period covered by the terms and intendments of the former indictment. State v. Presbury, 13 Mo., 342.

2. As to the jurisdiction.—It is not a bar to an indictment for riot, that the defendant was convicted of the same offense before a justice of the peace, riots being expressly excepted by the statute from the jurisdiction of justices of the peace. (W. S., 852, § 2.) State v. Payne, 4 Mo., 376. A conviction under an ordinance of a municipal corporation is a bar to a subsequent prosecution for the same offense, in cases where the municipality has jurisdiction. State v. Cowan, 29 Mo., 330; State v. Simonds, 3 Mo., 414.

3. Offenses of different degrees.—Where a person is tried for murder in the first degree, and is convicted of murder in the second degree, if a new trial is granted at his instance, he cannot be again tried for murder in the first degree. State v. Ross, 29 Mo., 32. See State v. Ball, 27 Mo., 324. Where a person is indicted for robbery in the first degree, a conviction for robbery in the second degree is an acquittal of the higher offense; and the prisoner cannot be re-tried under the same indictment—the verdict being set aside without his consent—and convicted of grand larceny. State v. Pitts, 57 Mo., 85; State v. Brannon, 55 Mo., 63. An acquittal on an indictment for a felonious assault will not bar a prosecution before a justice for a simple assault and battery. State v. Wightman, 26 Mo., 515.

4. A dismissal at defendant's costs, etc., equivalent to a conviction. State v. Buchanan County Court, 41 Mo., 254.

5. A nolle prosequi cannot be pleaded in bar of a subsequent prosecution where it is entered before the prisoner is put upon his trial. *Ex parte* Donaldson, 44 Mo., 149. But where, in a case punishable by imprisonment, a trial was had on a valid indictment, the argument of counsel heard and the jury discharged, after which a *nolle prosequi* was entered: *Held*, that the prisoner could not be again tried for the same offense. State v. Conner, 5 Cold., 310, 318.

6. Identity.—To sustain a plea of former conviction, the burden of showing that the offense charged is the same of which he was formerly convicted, is upon the defendant. State v. Small, 31 Mo., 197. Parol evidence is admissible. State v. Thornton, 37 Mo., 360.

7. Conviction in another State.—While it is true that a person shall not be subject for the same offense to be twice put in jeopardy, yet a conviction and punishment in another State for a crime against our own laws, cannot, in any legal sense, constitute that jeopardy. Phillips v. The People, 55 Ill., 429.

8. Conviction procured by fraud.—Where a party procures himself to be arrested and fined in a small amount for an assault and battery, his conviction cannot be pleaded in bar to a subsequent prosecution for the same offense. State v. Cole, 48 Mo., 70.

9. Discharge of jury.—The court has the undoubted authority, in its discretion, to discharge a jury when satisfied that they would be unable to agree upon a verdict, and without procuring the consent of the prisoner. State v. Matrassey, 47 Mo., 295. And the accused may be again put on trial at the same term. State v. Scott, 45 Mo., 302. See *Ex parte* Ruthven, 17 Mo., 541.

§ **24. Bail.**] That all persons shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.

[Same as Constitutions of 1820 and 1865, Art. XIII, § 11, and Art. I, § 20.]

(*a.*) **Murder,** except in the first degree, is a bailable offense. Shore v. State, 6 Mo., 640.

(*b.*) **Presumptions.**—Where two successive juries have failed to agree in their verdict on an indictment that fact is a circumstance strongly going to show that, as to the prisoner's guilt, the proof was not "evident," nor the "presumtion great," and when coupled with other circumstances, such as that the accused had voluntarily surrendered himself, and had refused to avail himself of an opportunity to escape, will authorize his admittance to bail. Alexander, Petition for Habeas Corpus, 59 Mo., 598. And on petition for *habeas corpus*, presented to the Supreme Court, that tribunal has authority to issue such order. *Ibid.*

§ **25. Excessive bail—Punishments.**] That excessive bail shall not be required, nor excessive fines be imposed, nor cruel and unusual punishment inflicted.

[Same as Constitutions of 1820 and 1865, Art. XIII, § 12, and Art. I, § 21.]

§ **26. Habeas corpus.**] That the privilege of the writ of *habeas corpus* shall never be suspended.

[The Constitutions of 1820 and 1865 had the following additional clause: "Unless when, in cases of rebellion or invasion, the public safety may require it." Art. XIII, § 11, and Art. I, § 22.]

§ **27. Subordination and quartering of military.**] That the military shall always be in strict subordination to the civil power; that 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.

[Same as Constitutions of 1820 and 1865, Art. XIII, § 22, and Art. I, § 32.]

§ **28. Trial by jury—Grand jury.**] The right of trial by jury, as heretofore enjoyed, shall remain inviolate; but a jury for the trial of criminal or civil cases, in courts not of record, may consist of less than twelve men, as may be prescribed by law. Hereafter a grand jury shall consist of twelve men, any nine of whom concurring may find an indictment or a true bill.

[New, except the first clause. Constitution of 1820, Art. XIII, § 8; 1865, Art. I, § 17.]

(*a.*) **In courts of record,** juries must consist of twelve men. Foster v. Kirby, 31 Mo., 496; Vaughn v. Scade, 30 Mo., 496; Henning v. H. & St. J. R. R. Co., 35 Mo., 408; 2 Wis., 22; 3 Wis., 219; 1 Wis., 401; 9 Wis., 19.

(*b.*) **Assessing damages.**—The appointment of a jury of five persons to assess damages in proceedings to condemn land, is constitutional. L. & F. P. R. Co. v. Pickett, 25 Mo., 535. Trial by jury is only required on issues of fact in civil and criminal cases in courts of justice, and cannot be extended so as to embrace the case of an assessment of damages or the valuation of property made out of court though done by its order. Ross & Pryor v. Irving, 14 Ill., 171. The constitutional right of a party to have a trial by jury is not at all impaired in denying him the right to have a jury to assess the damages in case of a default, and conferring that power upon the court. Hopkins v. Ladd, 35 Ill., 178. The Constitution does not give the right of trial by jury to a security for costs who executes a bond therefor in conformity to the cost act. Whitehurst v. Coleen, 53 Ill., 247.

(*c.*) **References.**—The statute (W. S., 1041, § 18), authorizing a reference against the objections of one party is not unconstitutional as depriving the objecting party of the right to trial by jury. Edwardson v. Garnhart, 56 Mo., 81; Shepard v. Bank of Missouri, 15 Mo., 143. See 2 Wis., 210; 17 Wis., 189.

(*d.*) **Waiver.**—When both parties are present, and submit the case to the court on the evidence, neither party demanding a jury, it may be presumed that the right of trial by jury was waived. Williams v. Carpenter, 42 Mo., 327. The statutory provision authorizing the court to try issues of fact, where neither party requires a jury, applies only to cases in which both parties appear in court. Sutton v. Clark, 9 Mo., 559; Swearingen v. Knox, 10 Mo., 31; Benton v. Lindell, *Id.*, 557.

(*e.*) **Miscellaneous.**—In a proceeding under the statute to contest a will the court is bound, on motion of counsel, to frame an issue for the jury. Tingley v. Cowgill, 48 Mo, 291. Where the plaintiff seeks other relief than the recovery of money only, or of specific real or personal property, the case must be tried by the court. Bray v. Thatcher, 28 Mo., 129. As where it is sought to annul a deed on the ground of duress, *Ibid.* Or to reform a deed, the facts being undisputed. Gray v. Hornbeck, 31 Mo., 400. Or where the action is brought to establish a partnership and to ascertain the amount of funds held by defendant in trust for the firm of which he was a member. Hunter v. Whitehead, 42 Mo., 524. Also, in proceeding against a constable for not returning an execution. Hart v. Robinette, 5 Mo., 11; Hart v. Spence, *Id.*, 17.

Nor has it been deemed violative of this provision to hear and determine without a jury summary proceedings by motion against officers, sureties, etc., and such as pertain to the inherent powers of courts of justice. See Fields v. State, Mart. & Yerg., 168, 178; Sevier v. Justices of Washington, Peck, 339, 342-3; Tipton v. Harris, Peck, 414, 420. Nor cases of equitable or ecclesiastical cognizance. Kirkpatrick v. State, Meigs, 124, 126. Such as filiation cases. Goddard v. The State, 2 Yerg., 96; Meigs, 124; Stanley v. State, 1 Thompson's Cases, 57, 59. See Bank of Missouri v. Anderson, 1 Mo., 244; Craig v. Bancroft, *Id.*, 656.

An act creating a special court for the determination, upon principles of equity, of suits commenced by a certain bank against its officers, and other defaulters to the institution, violates the right of trial by jury, is not the "law of the land," is a partial law, and retrospective in its operation. Bank of the State v. Cooper, Special Court at Nashville, 2 Yerg, 599; Green and Peck, Supreme Court Judges, and Kennedy, Circuit Judge. *Contra*, Bank of Columbia v. O'Kely, 4 Wheat., 240.

(*f.*) **Criminal cases.**—In courts of common law jurisdiction, the defendant in criminal cases has a right to a jury of twelve men. State v. Van Matre 49 Mo., 268. There may be a less number in justices' courts. Vaughn v. Scade, 30 Mo., 600. In trial for felony the accused cannot waive his constitutional right to be tried by a jury of twelve men; and a verdict rendered by a less number, though with the consent of the accused, is a nullity. State v. Mansfield, 41 Mo., 470. He cannot consent to be tried by the court without a jury. Neales v. State, 10 Mo., 498. But it is otherwise in misdemeanors. State v. Hall, 15 Mo., 606; State v. Moody, 24 Mo., 560; 9 Humph., 43. And the statute does not require an express waiver to be entered on the minutes. State v. Larger, 45 Mo., 510. An act which requires that a jury fee shall be taxed as part of the costs of every judgment rendered against a defendant in a criminal prosecution, is constitutional. State v. Wright, 13 Mo., 243.

(*g.*) **In Supreme Court.**—The provision declaring the right of trial by jury inviolate, is manifestly applicable to criminal proceedings proper, and cannot be understood to require the Supreme Court on *habeas corpus* or *quo warranto*, or *certiorari*, to summon juries. State v. Vail, 53 Mo., 97.

§ **29. Right of petition.**] That the people have the right peaceably to assemble for their common good, and to apply to those invested with the powers of government for redress of grievances by petition or remonstrance.

[Same as Constitutions of 1820 and 1865, Art. XIII, § 3, and Art. I, § 8.]

§ **30. Due process of law.**] That no person shall be deprived of life, liberty or property without due process of law.

[" But by the judgment of his peers or the law of the land," instead of " without due process of law." Constitution of 1820, Art. XIII, § 9; 1865, Art. I, § 18.]

(*a.*) **Due process.**—The statute authorizing a judge of the Supreme or Circuit Court to issue his warrant to the sheriff, commanding him to seize the books, etc., belonging to an office, detained by a former incumbent, and deliver them to the proper officer, is not unconstitutional. (W. S., 1136, § 5.) Flentge v. Priest, 53 Mo., 540. Ordinances authorizing summary proceedings for the assessment of damages without judicial ascertainment, are unconstitutional. Poppen v. Holmes, 44 Ill., 360; Bullock v. Geomble, 45 Ill., 218. See Art. III, note (*a*).

(*b.*) **The term "law of the land"** means a general public law, equally binding upon every member of the community. Vanzant v. Waddell, 2 Yerg., 260, 270; Wally v. Kennedy, 2 Yerg., 554, 555; State Bank v. Cooper, *Ib.* 599; Jones v. Perry, 10 Yerg., 59, 71. It is another expression for " due process of law." Reynolds v. Baker, 6 Cold., 221, 228; State v. Staten, 6 Cold., 234, 244. See 2 Inst., 50. Whether a statute is the "law of the land" within the meaning of this provision always depends upon two propositions. 1st, That the Legislature had the constitutional power to pass it; 2d, That it is a general and public law equally binding upon every member of the community. Sheppard v. Johnson, 2 Humph, 285, 296. An act directing that the real estate of certain minors therein named be sold, and the proceeds thereof be applied to the payment of their ancestor's debts, is not a "law of the land." Jones v. Perry, 10 Yerg., 59, 71.

A provision in a bank charter making it a felony in the officers, agents or servants of the corporation to embezzle or appropriate without authority the funds of the corporation, or to make false entries with a view to defraud the corporation, is a partial law and not the " law of the land." Budd v. The State, 3 Humph., 483, 490. Otherwise if the law had been made applicable to all banks. *Ib.* 492.

An act authorizing a special court for the trial of suits commenced by a particular bank against its officers and servants and other defaulters to the said bank, is partial, and not " the law of the land." State Bank v. Cooper, Special Court at Nashville, 2 Yerg., 599. A provision in a town charter fixing upon the sheriff of the county a special penalty for failure to hold the regular municipal elections of such town, is not the "law of the land." Mayor and Aldermen of Alexandria v. Dearmon, 2 Sneed, 104, 120. But a charter of incorporation conferring upon a particular individual or company, privileges which are denied to citizens in general, is not repugnant to this provision. Hazen v. Union Bank, 1 Sneed, 115.

Nor are the ordinances of incorporated towns prescribing pecuniary penalties, and the courts wherein, and the mode of procedure whereby the same are enforced, although such ordinances are not applicable to the rural districts of the State. Trigally v. Mayor and Aldermen of Memphis, 6 Cold., 382, 387, 389. The Legislature may by a general law exclude corporations from the purchase of public lands. State v. Nashville University, 4 Humph., 157, 165.

§ **31. Slavery prohibited.**] That there cannot be in this State either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

[Same as Constitution of 1865, Art. I, § 2.]

§ **32. Rights reserved.**] The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or discharge others retained by the people.

[This is a new section.]

ARTICLE III.—The Distribution of Powers.

Three Departments.] The powers of government shall be divided into three distinct departments—the legislative, executive and judicial, each of which shall be confided to a separate magistracy; and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this Constitution expressly directed or permitted.

[Same substantially as Constitutions of 1820 and 1865, Art. II, and Art. III.]

(*a*) **Legislative judgment.**—An act of the legislature which amounts to a legislative judgment is unconstitutional. State v. Adams, 44 Mo., 570; 51 Ill., 286; 48 Ill., 331; 44 Ill., 142; 5 Gil., 405. An act ousting the board of curators of St. Charles College, assumed, without judicial findings, that the curators had forfeited their positions, etc. Said act was in the nature of a bill of attainder. *Ibid.* An act declaring a forfeiture, if outside of legislative authority, cannot be strengthened by reciting facts that might judicially work a forfeiture, unless those facts have been passed upon judicially. *Ibid.* An act appointing a trustee, the trust being already created, is not a judicial act, nor does it divest property without due process of law. (Acts 1863-4, p. 585.) Hindman v. Piper, 50 Mo., 292.

An act of the legislature, authorizing a judgment rendered in favor of a person since deceased, to be revived in the name of a third party, is an invasion of the judicial power, and unconstitutional. Fate v. Bell, 4 Yerg., 202. So is an act reviving a suit in which the plaintiff had died, in the name of a third person, without his taking out letters of administration upon the deceased person's estate. Officer v. Young, 5 Yerg., 320. So also is an act directing what construction shall be placed on certain existing statutes. Governor v. Porter, 5 Humph., 165. And so is an act directing a *nolle prosequi* to be entered in certain State cases. State v. Fleming, 7 Humph., 152. And so is an act directing the courts to strike a certain class of suits from their dockets. Fisher v. Dabbs, 6 Yerg., 119, 132, 138. Unless in case of a suit brought to recover some fund belonging to the State, as a portion of the school fund. Governor v. McEwen, 5 Humph., 241, 289.

Authority given by the legislature to certain commissioners to ascertain and determine the amount of a particular indebtedness, is not an exercise of judicial power by that body. Shaw v. Dennis, 5 Gil., 405. The ascertainment of indebtedness between two parties, and the direction of the application of the property of one to the payment of the other, is a judicial act, and cannot be constitutionally performed by the legislature. Lane v. Dorman, 3 Scam., 238. The legislature has no power to inquire into, ascertain, or determine whether a widow is entitled to dower in a tract of land, Edwards v. Pope, 3 Scam., 465; or to authorize an administrator to sell lands for the payment of debts, without any judicial inquiry as to the existence of debts. Rozier v. Fagan, 46 Ill., 404.

A man's property cannot be seized except for a violation of law; and whether he has been guilty of such violation, can only be determined by a court of competent jurisdiction. Darst v. The People, 51 Ill., 286. When Congress, in 1863 and 1866, undertook to determine that no injury to person or property, committed prior to that time, gave to the injured party a vested right of action, if committed under a military order, it assumed a judicial function which it is not authorized to perform. Johnson v. Jones, 44 Ill., 142. The constitutionality of each special act of the legislature must depend upon its particular phraseology and provisions. If it be manifest that the legislature has exercised but a remedial power in enabling parties to do with their own property what they had not the power before to do, and has not adjudicated that they should do what they are unwilling to do, the act would be within legislative competency. Edwards v. Pope, 3 Scam., 465.

(*b*) **Delegation of authority.**—The legislature cannot propose a law and submit it to the people to pass or reject it by a general vote. The school law (G. S. ch. 47) is not liable to this objection. State, *ex rel.* Dome v. Wilcox, 45 Mo., 458. In a general law affecting private rights, which takes effect by its terms, a clause authorizing the County Courts to suspend it at pleasure in their several counties, is unconstitutional: (Act concerning roads, March 3, 1851.) State v. Field, 17 Mo., 529. The fact that the representatives of a county sanctioned a local act, cannot affect its constitutionality. Hamilton v. St. Louis County Court, 15 Mo., 3. The act concerning towns (R. S., 1845) was not a delegation of legislative power. Kayser v. Bremen, 16 Mo., 88. The township organization law is not a delegation of authority. Opinion of Supreme Court, 55 Mo., 295. Although the legislature may not divest itself of its proper functions, or delegate its general legislative authority, it may still authorize others to do those things which it might properly, yet cannot understandingly or advantageously, do itself. The People v. Reynolds, 5 Gil., 1; 51 Ill., 38.

(*c*) **Executive authority.**—An act to relieve certain persons from the penalties of a certain act is an attempt to exercise the pardoning power, and is, therefore, unconstitutional. State v. Sloss, 25 Mo., 291. A statute which confers upon the Governor power to set aside the registration of voters of any county, upon satisfactory proof being made to him that frauds and irregularities have intervened in such registration, is an attempt to clothe the governor with judicial power, and is unconstitutional and void. State v. Stoten, 6 Cold., 233, 254.

(*d*) **Legislative divorces** are unconstitutional. Bryson v. Bryson, 44 Mo., 232. See. Bryson v. Bryson, 17 Mo., 590; Bryson v. Campbell, 12 Mo., 498; State v. Fry, 4 Mo., 120. This has been the ruling, irrespective of the constitutional provision. See Art. IV, § 53

ARTICLE IV.—Legislative Department.

§ 1. The legislative power, subject to the limitations herein contained, shall be vested in a Senate and House of Representatives, to be styled "The General Assembly of the State of Missouri."

[Same substantially as Constitutions of 1820 and 1865, Art. III, § 1, and Art. IV, § 1.]

(*a*) **The Legislature has power** to pass all laws not prohibited by the constitution of the State or that of the United States. Cass County v. Jack, 49 Mo., 196; 10 Wis., 195. It has power to prohibit or restrict the exercise of any trade or business within the State, unless restrained by some provision of the Constitution. Austin v. State, 10 Mo., 591. Or to authorize the mayor of a municipal corporation to take recognizances in criminal cases. Cunningham v. State, 14 Mo., 402. Or to pass a law extending the unexpired lien of a judgment. Ellis v. Jones, 51 Mo., 180. The State may say in what manner its debt shall be paid, or that it shall not be paid. And its action may amount to a breach of faith, but there is no power to coerce it. State, *ex rel.* Seeligman v. Hays, 50 Mo., 34. Whether the legislature can make a voucher conclusive upon the auditor, discussed. Morgan v. Buffington, 21 Mo. 549. Money accruing to a county is not so vested as to prevent the control of the legislature. Conner v. Bent, 1 Mo., 235. The legislature has power to exempt persons from jury duty. McGunnegle v. State, 6 Mo., 367. It has power to repeal any mere statutory enactment. Opinion of Supreme Court, 43 Mo., 351. Unless such a proceeding would impair the obligation of a contract. Washington University v. Rowse, 42 Mo., 308. Power to change terms of courts. Carson v. Walker, 16 Mo., 68.

(*b*) **Interpretation.**—The legislature has no power to interpret such existing laws as do not apply to its own duties. Tilford v. Ramsey, 43 Mo., 410. But while a legislative exposition is not of controlling authority, it is entitled to weight. Pike v. Megoun, 44 Mo., 491; Field v. The People, 2 Scam., 79. An act

explanatory of a prior act, cannot retroact so as to affect the rights of parties. McManning v. Farrar, 46 Mo., 376. The executive and legislative departments of government are, in the first instance, the proper judges of the extent of their own constitutional powers and duties. Answers to questions, 37 Mo., 135.

(*c.*) **When the constitution is violated by the general assembly** and that violation is complete within itself, and requires no aid from the other departments of the government in order to make it effectual, it must stand until the people see proper to remedy it. But where the act cannot be effectuated without the aid of others, and of those, too, who are sworn to support the constitution, a regard for the maintenance of our system of government, resting on written charters, requires that obedience should not be yielded to an enactment which has no sanction in the fundamental law. Morgan v. Buffington, 21 Mo., 549.

It does not follow, because there may be no restriction in the constitution prohibiting a particular act of the legislature, that such act is therefore constitutional. Some acts, although not expressly forbidden, may be against the plain and obvious dictates of reason. The common law, says Lord Coke (8 Co., 118a), so far adjudgeth a statute void. Green, J., in State Bank v. Cooper, 2 Yerg, 603. If portions of an act are constitutional, and a portion is not, such portions as are free from the objection may be executed and enforced, whilst the obnoxious provisions will be disregarded. Nelson v. The People, 33 Ill., 390. If an act of the legislature differs from and contravenes the constitution, no repetition of it can render it valid. Phœbe v. Jay, Breese, 268.

(*d.*) **Municipal corporations.**—An act enlarging the limits of a municipality, and thereby bringing within its area and subjecting to municipal taxes against the owner's consent, farm property lying outside of the city limits, is not, by reason of such facts, unconstitutional. Such act is a proper exercise of legislative power and discretion. Gibony v. Cape Girardeau, 58 Mo., 141; St. Louis v. Russell, 9 Mo., 507; St. Louis v. Allen, 13 Mo., 400; Walden v. Dudley, 49 Mo., 419. But vested rights must not be infringed, in making such alteration. St. Louis v. Russell, 9 Mo., 507. (St. Louis Charter of 1841.)

(*e.*) **One legislature cannot bind another** as to the mode in which it shall exercise its constitutional power. 22 Wis., 54; Washington University v. Rowse, 42 Mo., 308.

(*f.*) **Establishing courts.**—The legislature has power to establish a board of park commissioners, one-half to be appointed by the County Court, and one-half by the Circuit Court of the county, for the purpose of constructing and maintaining a park for the benefit of the inhabitants of the county. St. Louis County Court v. Griswold, 58 Mo., 175.

REPRESENTATION AND APPORTIONMENT.

§ **2. Election of Representatives, apportionment.**] The House of Representatives shall consist of members to be chosen, every second year, by the qualified voters of the several counties, and apportioned in the following manner: The ratio of representation shall be ascertained at each apportioning session of the General Assembly, by dividing the whole number of inhabitants of the State, as ascertained by the last decennial census of the United States, by the number two hundred. Each county having one ratio, or less, shall be entitled to one Representative; each county having two and a half times said ratio, shall be entitled to two Representatives; each county having four times said ratio, shall be entitled to three Representatives; each county having six times said ratio, shall be entitled to four Representatives, and so on above that number, giving one additional member for every two and a half additional ratios.

[The Constitution of 1865, gave one additional member for every three additional ratios. Art. IV, § 2.]

§ **3. Districts, division of counties.**] When any county shall be entitled to more than one Representative, the County Court shall cause such county to be sub-divided into districts of compact and contiguous territory, corresponding in number to the Representatives to which such county is entitled, and, in population as nearly equal as may be, in each of which the qualified voters shall elect one Representative, who shall be a resident of such district: *Provided*, That when any county shall be entitled to more than ten Representatives, the Circuit Court shall cause such county to be sub-divided into districts, so as to give each district not less than two, nor more than four Representatives, who shall be residents of such district: the population of the districts to be proportioned to the number of Representatives to be elected therefrom.

[The *proviso* only is new.]

§ **4. Representatives, eligibility.**] No person shall be a member of the House of Representatives who shall not have attained the age of twenty-four years, who shall not be a male citizen of the United States, who shall not have been a qualified voter of this State two years, and an inhabitant of the county or district which he may be chosen to represent, one year next before the day of his election, if such county or district shall have been so long established; but if not, then of the county or district from which the same shall have been taken and

who shall not have paid a State and county tax within one year next preceding the election.

[The qualification "within one year next preceding the election," is new. In the Constitution of 1865, the second clause read, "who shall not be a *white* male citizen," etc. Art. IV, § 3; 1820, Art. III, § 3.]

§ 5. Number of Senators—Senatorial Districts.] The Senate shall consist of thirty-four members, to be chosen by the qualified voters of their respective districts for four years. For the election of Senators, the State shall be divided into convenient districts, as nearly equal in population as may be, the same to be ascertained by the last decennial census taken by the United States.

[Same, in effect, as Constitution of 1865, Art. IV, § 4.]

§ 6. Senators, eligibility—Division of counties.] No person shall be a Senator who shall not have attained the age of thirty years, who shall not be a male citizen of the United States, who shall not have been a qualified voter of this State three years, and an inhabitant of the district which he may be chosen to represent, one year next before the day of his election, if such district shall have been so long established; but if not, then of the district or districts from which the same shall have been taken, and who shall not have paid a State and county tax within one year next preceding the election. When any county shall be entitled to more than one Senator, the Circuit Court shall cause such county to be sub-divided into districts of compact and contiguous territory, and of population as nearly equal as may be, corresponding in number with the Senators to which such county may be entitled; and in each of these, one Senator, who shall be a resident of such district, shall be elected by the qualified voters thereof.

[Under the former Constitutions Senators were required to be *white* male citizens. The condition as to the payment of a tax was not qualified. Constitutions of 1820 and 1865, Art. III, § 5; 1865, Art. IV, § 5.]

§ 7. Rule of apportionment.] Senators and Representatives shall be chosen according to the rule of apportionment established in this Constitution, until the next decennial census by the United States shall have been taken, and the result thereof as to this State ascertained, when the apportionment shall be revised and adjusted on the basis of that census, and every ten years thereafter upon the basis of the United States census; or if such census be not taken, or is delayed, then on the basis of a State census; such apportionment to be made at the first session of the General Assembly after each such census: *Provided*, That if at any time, or from any cause, the General Assembly shall fail or refuse to district the State for Senators, as required in this section, it shall be the duty of the Governor, Secretary of State and Attorney General, within thirty days after the adjournment of the General Assembly on which such duty devolved, to perform said duty, and to file in the office of the Secretary of State a full statement of the districts formed by them, including the names of the counties embraced in each district, and the numbers thereof; said statement to be signed by them, and attested by the great seal of the State, and upon the proclamation of the Governor, the same shall be as binding and effectual as if done by the General Assembly.

[The *proviso* and the two preceding clauses are new. Constitution of 1865, Art. IV, § 7.]

§ 8. Number of Representatives, apportionment.] Until an apportionment of Representatives can be made, in accordance with the provisions of this Article, the House of Representatives shall consist of one hundred and forty-three members, which shall be divided among the several counties of the State, as follows: The county of St. Louis shall have seventeen; the county of Jackson four; the county of Buchanan three; the counties of Franklin, Green, Johnson, Lafayette, Macon, Marion, Pike and Saline each two, and each of the other counties in the State one.

[This section is new.]

§ 9. Districts, alteration, contiguity.] Senatorial and Representative Districts may be altered, from time to time, as public convenience may require. When any Senatorial District shall be composed of two or more counties, they shall be contiguous; such districts to be as compact as may be, and in the formation of the same, no county shall be divided.

["Such districts to be compact," etc., is new. Constitution of 1865, Art. IV, § 8.]

§ **10. Election of Senators and Representatives.**] The first election of Senators and Representatives, under this constitution, shall be held at the general election in the year one thousand eight hundred and seventy-six, when the whole number of Representatives, and the Senators from the districts having odd numbers, who shall compose the first class, shall be chosen; and in one thousand eight hundred and seventy-eight, the Senators from the districts having even numbers, who shall compose the second class, and so on at each succeeding general election, half the Senators provided for by this Constitution shall be chosen.

[Same in effect as Constitution of 1865, Art. IV, §§ 9, 10.]

§ **11. Senatorial districts.**] Until the State shall be divided into Senatorial Districts, in accordance with the provisions of this Article, said districts shall be constituted and numbered as follows:

District.	Counties Constituting Each.
1st.	Andrew, Holt, Nodaway, and Atchison.
2nd.	Buchanan, DeKalb, Gentry and Worth.
3rd.	Clay, Clinton and Platte.
4th.	Caldwell, Ray, Daviess and Harrison.
5th.	Livingston, Grundy, Mercer and Carroll.
6th.	Linn, Sullivan, Putnam and Chariton.
7th.	Randolph, Howard and Monroe.
8th.	Adair, Macon and Schuyler.
9th.	Audrian, Boone and Callaway.
10th.	St. Charles and Warren.
11th.	Pike, Lincoln and Montgomery.
12th.	Lewis, Clark, Scotland and Knox.
13th.	Marion, Shelby and Ralls.
14th.	Bates, Cass and Henry.
15th.	Jackson.
16th.	Vernon, Barton, Jasper, Newton and McDonald.
17th.	Lafayette and Johnson.
18th.	Green, Lawrence, Barry, Stone and Christian.
19th.	Saline, Pettis and Benton.
20th.	Polk, Hickory, Dallas, Dade, Cedar and St. Clair.
21st.	Laclede, Webster, Wright, Texas, Douglas, Taney, Ozark and Howell.
22nd.	Phelps, Miller, Maries, Camden, Pulaski, Crawford and Dent.
23rd.	Cape Girardeau, Mississippi, New Madrid, Pemiscot, Dunklin, Stoddard and Scott.
24th.	Iron, Madison, Bollinger, Wayne, Butler, Reynolds, Carter, Ripley, Oregon and Shannon.
25th.	Franklin, Gasconade and Osage
26th.	Washington, Jefferson, St. Francois, Ste. Genevieve and Perry.
28th.	Cooper, Moniteau, Morgan and Cole.

St. Louis county shall be divided into seven districts, numbered respectively, as follows: 27th, 29th, 30th, 31st, 32nd, 33rd, and 34th.

[This section is new.]

§ **12. Cannot hold another office.**] No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office under this State or any municipality thereof; and no member of Congress or person holding any lucrative office under the United States, or this State, or any municipality thereof, (militia officers, justices of the peace and notaries public excepted,) shall be eligible to either house of the General Assembly, or remain a member thereof, after having accepted any such office or seat in either house of Congress.

[The first clause is new; also the use of the word "municipality." Constitution of 1865, Art. IV, § 11.]

(*a.*) **Drawing salary.**—Where one holding the office of judge of a Circuit Court qualified and took his seat in the Legislature, he elected to vacate the office of judge, and would not be entitled to his salary as judge afterwards. He should receive his pay, however, up to the time of his qualifying as a member. State, *ex rel.* Owens v. Draper, 45 Mo., 355.

§ **13. Removal of residence.**] If any Senator or Representative remove his residence from the district or county for which he was elected, his office shall thereby be vacated.

[Same as Constitution of 1865, Art. IV, § 13.]

§ **14. Writs of election to fill such vacancies** as may occur in either house of the General Assembly, shall be issued by the Governor.

[Same as Constitutions of 1820 and 1865, Art. III, § 9, and Art. IV, § 14.]

§ **15. Oath of office, violation of.**] Every Senator and Representative elect, before entering upon the duties of his office, 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 of the State of Missouri, and faithfully perform the duties of my office; and that I will not knowingly receive, directly or indirectly, any money or other valuable thing, for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law." The oath shall be administered in the halls of their respective houses, to the members thereof, by some judge of the Supreme Court, or the Circuit Court, or the County Court of Cole county, or after the organization, by the presiding officer of either house, and shall be filed in the office of the Secretary of State. Any member of either house refusing to take said oath or affirmation, shall be deemed to have thereby vacated his office, and any member convicted of having violated his oath or affirmation, shall be deemed guilty of perjury, and be forever thereafter disqualified from holding any office of trust or profit in this State.

[This section is new.]

§ **16. Compensation of members.**] The members of the General Assembly shall severally receive from the public treasury such compensation for their services as may, from time to time, be provided by law, not to exceed five dollars per day for the first seventy days of each session, and after that not to exceed one dollar per day for the remainder of the session, except the first session held under this Constitution, and during the revising sessions, when they may receive five dollars per day for one hundred and twenty days, and one dollar per day for the remainder of such sessions. In addition to per diem, the members shall be entitled to receive traveling expenses or mileage, for any regular and extra session not greater than now provided by law; but no member shall be entitled to traveling expenses or mileage for any extra session that may be called within one day after an adjournment of a regular session. Committees of either house, or joint committees of both houses, appointed to examine the institutions of the State, other than those at the seat of government, may receive their actual expenses, necessarily incurred while in the performance of such duty; the items of such expenses to be returned to the chairman of such committee, and by him certified to the State Auditor, before the same or any part thereof can be paid. Each member may receive at each regular session an additional sum of thirty dollars, which shall be in full for all stationery used in his official capacity, and all postage, and all other incidental expenses and perquisites; and no allowance or emoluments, for any purpose whatever, shall be made to or received by the members, or any member of either house, or for their use, out of the contingent fund or otherwise, except as herein expressly provided; and no allowance or emolument, for any purpose whatever, shall ever be paid to any officer, agent, servant or employee of either House of the General Assembly, or of any committee thereof, except such per diem as may be provided for by law, not to exceed five dollars.

[New section except the provision preceding the words "not to exceed five dollars per day," etc. Constitution of 1865, Art. IV, § 17.]

§ **17. Organization and general rules.**] Each house shall appoint its own officers; shall be sole judge of the qualifications, election and returns of its own members; may determine the rules of its own proceedings, except as herein provided; may arrest and punish by fine, not exceeding three hundred dollars, or imprisonment in a county jail not exceeding ten days, or both, any person, not a member, who shall be guilty of disrespect to the House by any disorderly

or contemptuous behavior in its presence during its sessions; may punish its members for disorderly conduct; and with the concurrence of two-thirds of all members elect, may expel a member; but no member shall be expelled a second time for the same cause.

[Same as Constitution of 1865, Art. IV, § 19.]

§ **18. Quorum—Absent members.**] A majority of the whole number of members of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each House may provide.

[Same as Constitutions of 1820 and 1865, Art. III, § 17, and Art. IV, § 18.]

(*a.*) **Compelling attendance.**—According to legislative usage any number less than a quorum have no power to perform any legislative function. But a smaller number may adjourn from day to day and compel the attendance of absent members. The People v. Hatch, 33 Ill., 9. And the power to compel the attendance of absent members is plenary, and embraces not only the power of the officers attending upon the respective houses, but through them the *posse civitatis*. It implies the power to arrest and imprison members, and to keep them in *arcta custodia*, so that they may have their bodies in the respective houses to which the fugitives may belong, to make up a quorum. These efforts under this grant of power may be continued *de die in diem* up to the time when the General Assembly shall expire by lapse of time. *Ibid.* (Per Justice Breese.)

§ **19. Doors to be open.**] The sessions of each House shall be held with open doors, except in cases which may require secrecy.

[Same as Constitutions of 1820 and 1865, Art. III, § 19, and Art. IV, § 21. The Constitution of 1820 included "committees of the whole."]

§ **20. Time of meeting.**] The General Assembly elected in the year one thousand eight hundred and seventy-six shall meet on the first Wednesday after the first day of January, one thousand eight hundred and seventy-seven; and thereafter the General Assembly shall meet in regular session once only in every two years; and such meeting shall be on the first Wednesday after the first day of January next after the election of the members thereof.

[The word "only" preceding the words "in every two years," is not in the Constitution of 1865, Art. IV, § 35.]

§ **21. Adjournment for more than three days.**] Every adjournment or recess taken by the General Assembly for more than three days, shall have the effect of and be an adjournment *sine die*.

[This section is new.]

§ **22. Adjournment for three days or less.**] Every adjournment or recess taken by the General Assembly for three days or less, shall be construed as not interrupting the session at which they are had or taken, but as continuing the session for all the purposes mentioned in section sixteen of this article.

[This section is new.]

§ **23. Adjournment by consent, etc.**] Neither House shall, without the consent of the other, adjourn for more than two days at any one time, nor to any other place than that in which the two Houses may be sitting.

[Same as Constitutions of 1820 and 1865, Art. III, § 20, and Art. IV, § 22.]

(*a.*) **In general.**—Each House has the right to adjourn from day to day without the consent of the other, but neither House can adjourn for a longer period without such consent. When the two Houses are found out of session for more than two days, it will be presumed it is by consent rather than in violation of the Constitution. The People v. Hatch, 33 Ill., 9. (Per Walker, J.)

LEGISLATIVE PROCEEDINGS.

§ **24. The style of the laws** of this State shall be, "*Be it enacted by the General Assembly of the State of Missouri as follows:*"

[Same as Constitution of 1865, Art. IV, § 26.]

(*a.*) **Enacting clause.**—An act is valid without the enacting clause. The Constitution is directory. Cape Girardeau v. Riley, 52 Mo., 424, citing McPherson v. Leonard, 29 Md., 377; Swain v. Buck, 40 Miss., 268.

§ **25. Bills—Amendments.**] No law shall be passed, except by bill, and no bill shall be so amended, in its passage through either House, as to change its original purpose.

[This section is new. Constitution of Penn., Art. III, § 1.]

§ **26. Bills, their origin, to be read, etc.**] Bills may originate in either House, and may be amended or rejected by the other; and every bill shall be read on three different days in each House.

[In the Constitutions of 1820 and 1865, the last provision in this section is qualified by the words "unless two-thirds of the house where the same is pending shall dispense with this rule," Art. III, § 21, and Art. IV, § 23.]

§ **27. To be reported upon and printed.**] No bill shall be considered for final passage unless the same has been reported upon by a committee, and printed for the use of the members.

[This section is new. Constitution of Penn., Art. III, § 2.]

§ **28. To contain but one subject—Title of act.**] No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated, and except bills passed under the third subdivision of section forty-four of this article) shall contain more than one subject, which shall be clearly expressed in its title.

[The parenthetical clause is new. In the Constitution of 1865, the general provision herein was qualified by the words "but if any subject embraced in an act be not expressed in the title, such act shall be void only as to so much thereof as is not so expressed." Art. IV, § 32.]

(*a*.) **In general.**—The object of this provision was to prevent the conjoining in the same act of incongruous matters and of subjects having no legitimate connection or relation to each other. It was not designed to be unnecessarily restrictive in its operation, nor to embarrass legislation by compelling a needless multiplication of bills. St. Louis v. Tiefel, 42 Mo., 578, citing numerous cases. The generality of a title is no objection to it, so long as it is not made a cover to legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection. It is very plain, however, that the use of the words "other purposes," which have been extensively used in the title to acts to cover any and every thing, whether connected with the main purpose indicated by the title or not, can no longer be of any avail. *Ibid.* See State v. Matthews, 44 Mo., 523; State v. Miller, 45 Mo., 495.

(*b*.) **Mandatory.**—This provision is equally obligatory and mandatory with any other provision in the Constitution; and where a law is clearly and palpably in opposition to it, there is no other alternative but to pronounce it invalid. State v. Miller, 45 Mo., 495. It would be irrational to suppose that this provision of the Constitution is merely a directory one, which may be obeyed or disregarded at the will and caprice of the Legislature. Cannon v. Hemphill, 7 Tex., 184.

(*c*.) **Instances.**—The act of February 1, 1867, entitled "An act to provide for appeals in contested election cases," is unconstitutional, in so far as it assumes to give the right of appeal in all other civil cases. State v. Lafayette County Court, 41 Mo., 39. [*Quære*, whether such an act would be wholly void under the present Constitution?—Ed.] The re-organization of the State Bank as a National Bank, the selling of stock therein belonging to the State, and the investment of the funds derived from such sale, were matters intimately connected and blended, and might be embraced in one bill. State v. Bank of Missouri, 45 Mo., 528. So of "An act to prevent the issue of false receipts or bills of lading, and to punish fraudulent transfers of property by warehousemen, wharfingers and others." And the use of the word "others," in the title, does not vitiate the act. State v. Miller, 45 Mo., 495. See State v. Saline County Court, 51 Mo., 350.

§ **29. Amendments to be engrossed and printed.**] All amendments adopted by either House to a bill pending and originating in the same, shall be incorporated with the bill by engrossment, and the bill as thus engrossed, shall be printed for the use of the members before its final passage. The engrossing and printing shall be under the supervision of a committee, whose report to the House shall set forth, in writing, that they find the bill truly engrossed, and that the printed copy furnished to the members is correct.

[This section is new.]

§ **30. Bills returned amended.**] If a bill passed by either House be returned thereto, amended by the other, the House to which the same is returned shall cause the amendment or amendments so received to be printed under the same supervision, as provided in the next preceding section, for the use of the members before final action on such amendments.

[This section is new.]

§ **31. Final vote on a bill.**] No bill shall become a law, unless on its final passage the vote be taken by yeas and nays, and the names of the members voting for and against the same be entered on the journal, and a majority of the members elected to each House be recorded thereon as voting in its favor.

[Same, substantially, as Constitution of 1865, Art. IV, § 24.]

(*a*.) **Although judicial notice will be taken** of all acts of the Legislature, signed by the Governor, and found in the office of the Secretary of State, and although for some purposes notice will be taken of the legislative journals, yet it is not the province of the court, at the suggestion or request of counsel, to undertake to explore the journal for the purpose of ascertaining the manner in which a law duly certified, went through the Legislature and into the hands of the Governor. Ill. C. R. R. Co. v. Wren, 43 Ill., 77; see also Bedard v. Hall, 44 Ill., 91; and Grob v. Cushman, 45 Ill., 119.

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

[This section is new. Constitution of Penn., Art. III, § 5.]

§ **33. No act shall be revived or re-enacted** by mere reference to the title thereof, but the same shall be set forth at length, as if it were an original act.

[Same as Constitution of 1865, Art. IV, § 25.]

(*a*.) An act declaring that a previous act "is hereby amended so as to authorize the city marshal to act as deputy constable," etc., re-enacts a law by mere reference, and is unconstitutional. French v. Woodward, 58 Mo., 66.

§ **34. Amendments by substitution.**] No act shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full, as amended.

[Constitution of 1865, Art. IV, § 25, modified.]

(*a*.) **In general.**—Where a part of an act is amended, the amendatory part only need be set out and published [under the former provision]. Mayor v. Trigg, 46 Mo., 288. Art. IV, § 25, of the Constitution of 1865, did not prohibit repeals by implication. State *ex rel.*, v. Draper, 47 Mo., 29; see State *ex rel.*, v. Maguire, 47 Mo., 35.

§ **35. Motion to reconsider.**] When a bill is put upon its final passage in either House, and failing to pass, a motion is made to reconsider the vote by which it was defeated, the vote upon such motion to reconsider shall be immediately taken, and the subject finally disposed of before the House proceeds to any other business.

[This section is new.]

§ **36. Laws, time of taking effect.**] No law passed by the General Assembly, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency (which emergency must be expressed in the preamble or in the body of the act), the General Assembly shall, by a vote of two-thirds of all the members elected to each House, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journal.

[This section is new. Art. IV, § 13, Constitution of Illinois, modified by excepting appropriation bills and substituting the words "until ninety days," etc., for the words "until the first day of July," etc.]

§ **37. Bills to be signed by presiding officers.**] No bill shall become a law until the same shall have been signed by the presiding officer of each of the two Houses in open session; and before such officer shall affix his signature to any bill, he shall suspend all other business, declare that such bill will now be read, and that, if no objections be made, he will sign the same to the end that it may become a law. The bill shall then be read at length, and if no objections be made, he shall, in presence of the House in open session, and before any other business is entertained, affix his signature, which fact shall be noted on the journal, and the bill immediately sent to the other House. When it reaches the other House, the presiding officer thereof shall immediately suspend all other business, announce the reception of the bill, and the same proceedings shall thereupon be observed, in every respect, as in the House in which it was first signed. If in either House any member shall object that any substitution, omission or insertion has occurred, so that the bill proposed to be signed is not the same in substance and form as when considered and passed by the House, or that any particular clause of this Article of the Constitution has been violated in its passage, such objection shall be passed upon by the House, and if sustained, the presiding officer shall withhold his signature; but if such objection shall not be sustained, then any five members may embody the same, over their signatures, in a written

protest, under oath, against the signing of the bill. Said protest, when offered in the House, shall be noted upon the journal, and the original shall be annexed to the bill to be considered by the Governor in connexion therewith.

(This section is new. See Art. V, § 12.)

§ **38. Approval of the Governor.**] When the bill has been signed, as provided for in the preceding section, it shall be the duty of the Secretary of the Senate, if the bill originated in the Senate, and of the Chief Clerk of the House of Representatives, if the bill originated in the House, to present the same in person, on the same day on which it was signed as aforesaid, to the Governor, and enter the fact upon the journal. Every bill presented to the Governor, and returned within ten days to the House in which the same originated, with the approval of the Governor, shall become a law, unless it be in violation of some provision of this Constitution.

(This section is new. See Art. V, § 12.)

§ **39. Returned without approval.**] Every bill, presented as aforesaid, but returned without the approval of the Governor, and with his objections thereto, shall stand as reconsidered in the House to which it is returned. The House shall cause the objections of the Governor to be entered at large upon the journal, and proceed, at its convenience, to consider the question pending, which shall be in this form: "Shall the bill pass, the objections of the Governor thereto notwithstanding?" The vote upon this question shall be taken by yeas and nays, and the names entered upon the journal, and if two-thirds of all the members elected to the House vote in the affirmative, the presiding officer of that House shall certify that fact on the roll, attesting the same by his signature, and send the bill, with the objections of the Governor, to the other House, in which like proceedings shall be had in relation thereto; and if the bill receive a like majority of the votes of all the members elected to that House, the vote being taken by yeas and nays, the presiding officer thereof shall, in like manner, certify the fact upon the bill. The bill, thus certified, shall be deposited in the office of the Secretary of State, as an authentic act, and shall become a law in the same manner and with like effect as if it had received the approval of the Governor.

(This section is new.)

§ **40. Whenever the Governor shall fail to perform his duty,** as prescribed in section twelve, Article V, of this Constitution, in relation to any bill presented to him for his approval, the General Assembly may, by joint resolution, reciting the fact of such failure and the bill at length, direct the Secretary of State to enroll the same as an authentic act, in the archives of the State, and such enrollment shall have the same effect as an approval by the Governor: *Provided*, That such joint resolution shall not be submitted to the Governor for his approval.

(This section is new.)

§ **41. Revision of the laws.**] Within five years after the adoption of this Constitution, all the statute laws of a general nature, both civil and criminal, shall be revised, digested and promulgated in such manner as the General Assembly shall direct; and a like revision, digest and promulgation, shall be made at the expiration of every subsequent period of ten years.

(This section is new.)

§ **42. Journal to be published—Yeas and nays demanded.**] Each House shall, from time to time, publish a journal of its proceedings, and the yeas and nays on any question shall be taken and entered on the journal at the motion of any two members. Whenever the yeas and nays are demanded, the whole list of members shall be called, and the names of the absentees shall be noted and published in the journal.

(The Constitution of 1865 excepted such portions of the journal as, in the opinion of the House, required secrecy. Art. IV, § 20.)

(*a.*) **Mandatory.**—The requirement in the Constitution that "each house shall keep a journal of its proceedings" is peremptory, and it must be presumed that the two houses will, when in session, observe and perform the duty. Even if they did no business, it would be expected that convening and adjourning orders, at least, would be found if they were in session. The People v. Hatch, 33 Ill., 9.

LIMITATION ON LEGISLATIVE POWER.

§ **43. Appropriations, in what order.**] All revenue collected and moneys received by the State from any source whatsoever, shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law. All appropriations of money by the successive General Assemblies shall be made in the following order:

First—For the payment of all interest upon the bonded debt of the State that may become due during the term for which each General Assembly is elected.

Second—For the benefit of the sinking fund, which shall not be less annually than two hundred and fifty thousand dollars.

Third—For free public school purposes.

Fourth—For the payment of the cost of assessing and collecting the revenue.

Fifth—For the payment of the civil list.

Sixth—For the support of the eleemosynary institutions of the State.

Seventh—For the pay of the General Assembly, and such other purposes, not herein prohibited, as it may deem necessary; but no General Assembly shall have power to make any appropriation of money for any purpose whatsoever, until the respective sums necessary for the purposes in this section specified have been set apart and appropriated, or to give priority in its action to a succeeding over a preceding item as above enumerated.

(This section is new.)

[The order in which, and the purposes for which, appropriations are to be made are the new features of this section. The provision that no money shall be drawn from the treasury, except in pursuance of regular appropriations made by law, is repeated in Section 19, Art. X, and corresponds with the provisions of the Constitution of 1865, Art. XI, § 6.

It is important to observe that the provisions of this section are a limitation on legislative power, and have nothing to do with the order in which claims may be paid by the Treasurer. The Treasurer is not concerned with the question whether the appropriation is sufficient in amount to pay any one class out of the seven, but any claim may be paid at any time out of the fund appropriated for that purpose. If the Legislature has made an appropriation for school purposes, for example, the Treasurer may exhaust the fund, regardless of the question whether the Legislature has provided for the payment of the preceding classes of claims. See Art. X, §§ 14, 15, 19.]

§ **44. Debts contracted by the State.**] The General Assembly shall have no power to contract or to authorize the contracting of any debt or liability on behalf of the State, or to issue bonds or other evidences of indebtedness thereof, except in the following cases:

First—In renewal of existing bonds when they cannot be paid at maturity out of the sinking fund or other resources.

Second—On the occurring of an unforeseen emergency, or casual deficiency of the revenue when the temporary liability incurred, upon the recommendation of the Governor first had, shall not exceed the sum of two hundred and fifty thousand dollars for any one year, to be paid in not more than two years from and after its creation.

Third—On the occurring of any unforeseen emergency or casual deficiency of the revenue, when the temporary liability incurred or to be incurred shall exceed the sum of two hundred and fifty thousand dollars for any one year, the General Assembly may submit an act, providing for the loan, or for the contracting of the liability, and containing a provision for levying a tax sufficient to pay the interest and principal when they become due, (the latter in not more than thirteen years from the date of its creation) to the qualified voters of the State, and when the act so submitted shall have been ratified by a two-thirds majority, at an election held for that purpose, due publication having been made of the provisions of the act for at least three months before such election, the act, thus ratified, shall be irrepealable until the debt, thereby incurred, shall be paid, principal and interest.

(This section is new.)

§ **45. Loaning the State's credit.**] The General Assembly shall have no power to give or to lend, or to authorize the giving or lending of the credit of the State in aid of or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

[Constitution of 1865, Art. XI, § 13, modified. Constitution of Illinois, Art. IV, § 20.]

(*a.*) **Semble,** That an act of the Legislature granting an extension of time upon a loan formerly made to a railroad company, is not in conflict with the provison which prohibits the giving or loaning of the State's credit, etc., Opinions in response, etc., 55 Mo., 497. This section is not violated by the levying and collecting of a tax for local or municipal purposes, and it is immaterial that such tax was levied by the Auditor of Public Accounts and extended in the column of the State taxes by the County Clerk in the Collector's books; this was mere form, and could in no wise change the nature of the tax. Dunnovan v. Green, 57 Ill., 63.

§ **46. Grant of public money prohibited.**] The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: *Provided*, That this shall not be so construed as to prevent the grant of aid in a case of public calamity.

(This section is new.)

§ **47. Municipalities, loaning credit of.**] The General Assembly shall have no power to authorize any county, city, town or township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.

(Under the Constitution of 1865, counties, cities and towns could become stockholders, on the assent of two-thirds of the qualified voters. Art. XI, § 14.)

§ **48. Public officers, etc., extra pay prohibited.**] The General Assembly shall have no power to grant, or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part, nor pay nor authorize the payment of any claim hereafter created against the State, or any county or municipality of 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.

(This section is new. Constitution of Pennsylvania, Art. III, § 11, modified.)

§ **49. Subscriptions by the State prohibited.**] The General Assembly shall have no power hereafter to subscribe or authorize the subscription of stock on behalf of the State, in any corporation or association, except for the purpose of securing loans heretofore extended to certain railroad corporations by the State.

(Same as Constitution of 1865, Art. XI, § 13.)

§ **50. Lien upon railroads.**] The General Assembly shall have no power to release or alienate the lien held by the State upon any railroad, or in anywise change the tenor or meaning, or pass any act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

["The General Assembly shall have no power, for any purpose whatever, to release the lien held by the State upon any railroad." Constitution of 1865, Art. XI, § 15.]

§ **51. Release of corporation debts prohibited.**] The General Assembly shall have no power to release or extinguish, or authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State, or to any county or other municipal corporation therein.

[Same as Constitution of Illinois, Art. IV, § 23.]

§ **52. War debt, payment of.**] The General Assembly shall have no power to make any appropriation of money, or to issue any bonds or other evidences of indebtedness for the payment, or on account, or in recognition of any claims audited, or that may hereafter be audited by virtue of an act entitled "An act to audit and adjust the war debt of the State," approved March 19th, 1874, or any act of a similar nature, until after the claims so audited shall have been presented to, and paid by the Government of the United States to the State of Missouri.

[This section is new.]

§ **53. Special legislation prohibited.**] The General Assembly shall not pass any local or special law:

Authorizing the creation, extension or impairing of liens

Regulating the affairs of counties, cities, townships, wards or school districts:

Changing the names of persons or places:

Changing the venue in civil or criminal cases:

Authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys:

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

Vacating roads, town plats, streets or alleys:

Relating to cemeteries, grave yards or public grounds not of the State:

Authorizing the adoption or legitimation of children

Locating or changing county seats:

Incorporating cities, towns or villages, or changing their charters:

For the opening and conducting of elections, or fixing or changing the places of voting:

Granting divorces:

Erecting new townships, or changing township lines, or the lines of school districts:

Creating offices, or prescribing the powers and duties of officers in counties, cities, townships, election or school districts:

Changing the law of descent or succession:

Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate:

Regulating the fees or extending the powers and duties of aldermen, justices of the peace, magistrates or constables:

Regulating the management of public schools, the building or repairing of school-houses, and the raising of money for such purposes:

Fixing the rate of interest:

Affecting the estates of minors or persons under disability:

Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury:

Exempting property from taxation:

Regulating labor, trade, mining or manufacturing:

Creating corporations, or amending, renewing, extending or explaining the charter thereof:

Granting to any corporation, association or individual any special or exclusive right, privilege or immunity, or to any corporation, association or individual, the right to lay down a railroad track:

Declaring any named person of age:

Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of their official duties, or their securities from liability:

Giving effect to informal or invalid wills or deeds:

Summoning or empanneling grand or petit juries:

For limitation of civil actions:

Legalizing the unauthorized or invalid acts of any officer or agent of the State, or of any county or municipality thereof. In all other cases, where a general law can be made applicable, no local or special law shall be enacted; and whether a general law could have been made applicable in any case, is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject:

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

[This section is greatly enlarged by new specifications, corresponding with the Constitution of Pennsylvania, Art. III, § 7. The provision "and whether a general law could have been made applicable in any case, is hereby declared to be a judicial question," etc., is new. Constitution of 1865, Art. IV, § 27.]

(*a.*) **Judicial question.**—The question whether a general law could be made to apply, was, under the Constitution of 1865, a question for the Legislature. State *ex rel.* Henderson v. Boone County Court, 50 Mo., 317; State *ex rel.* Robbins v. County Court of New Madrid, 51 Mo., 82.

(*b.*) **Prospective.**—This provision is prospective in its operation. State *ex rel.*, etc., v. C. G. & State Line R. R., 48 Mo., 468.

(*c.*) **The establishment of courts** of inferior jurisdiction by special legislation, is a matter resting in the discretion of the legislature. State *ex rel.*, etc., v. Pinger, 50 Mo., 486; State *ex rel.*, etc., v. County Court of Boone County, *Id.*, 317. Aside from the fact that the Legislature was to determine whether a general law could be made to apply, it had power under § 1, Art. 6, of the Constitution to establish inferior tribunals from time to time, as they might be needed. State *ex rel.*, etc., v. County Court of Boone Co., 50 Mo., 317.

(*d.*) **Miscellaneous.**—The act of 1866, relative to the time of holding county and city elections, is a general law. State *ex rel.*, etc., v. Fiala, 47 Mo., 310. Chapter 47 of the General Statutes, authorizing any city, town or village to organize for school purposes, with special privileges, is not in conflict with this section. State v. Wilcox, 45 Mo., 458. Special acts creating corporations. State v. Saline County Court, 51 Mo., 350.

(*e.*) **Declaring minors of age.**—This might be done before the Constitution of 1865. Shipp v. Klinger, 54 Mo., 238.

(*f.*) **Estates of infants.**—The Legislature may authorize a guardian, or administrator, or any one else named in the act, to pass the title of an infant or to compromise an unsettled claim upon such terms as the parties may agree upon. Thomas v. Pullis, 56 Mo., 211. See Gannett v. Leonard, 47 Mo., 205; Stewart v. Griffith, 33 Mo., 13; Mason v. Wart, 4 Scam., 127.

§ **54. Local laws, notice of.**] No local or special law shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the General Assembly of such bill, and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the General Assembly before such act shall be passed, and the notice shall be recited in the act according to its tenor.

(This section is new. Constitution of Penn., Art. III, § 8.)

§ **55. Extra sessions.**] The General Assembly shall have no power, when convened in extra session by the Governor, to act upon subjects other than those specially designated in the proclamation by which the session is called, or recommended by special message to its consideration by the Governor after it shall have been convened.

(Same, in effect, as Constitution of 1865, Art. V, § 7. See Art. V, § 9.)

(*a.*) **In general.**—The legislation of an extra session may embrace any subject that properly springs out of the business for which they were called together. Mitchell v. Franklin Turnpike Co., 3 Humph., 456.

§ **56. Seat of government, not to be removed.**] The General Assembly shall have no power to remove the Seat of Government of this State from the City of Jefferson.

(Change in phraseology only. Constitution of 1865, Art. XI, § 10.)

ARTICLE V.—Executive Department.

§ **1. Executive officers, residence of.**] The Executive department shall consist of a Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General and Superintendent of Public Schools, all of whom, except the Lieutenant Governor, shall 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.

(New, except the provision as to place of residence of officials. Constitution of 1865, Art. V, § 16.)

Mandamus will lie to compel the Secretary of State to perform a duty merely ministerial. State v. Secretary of State, 33 Mo., 293. But not to compel the Governor to perform the duties of his office. State v. Governor, 39 Mo., 388; see also 23 Mo., 353.

§ **2. Term of office; re-election; time of holding elections.**] The term of office of the Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General and Superintendent of Public Schools, shall be four years from the second Monday of January next after their election, and until their successors are elected and qualified; and the Governor and State Treasurer shall be ineligible to re-election as their own successors. At the general election to be held in the year one thousand eight hundred and seventy-six, and every four years thereafter, all of such officers, except the Superintendent of Public Schools, shall be elected; and the Superintendent of Public Schools shall be elected at the general election, in the year one thousand eight hundred and seventy-eight, and every four years thereafter.

(The term of office was two years under Constitution of 1865, [Art. V, §§ 3, 16,] except that of Superintendent of Public Schools, which was four years [Art. IX, § 3]. The provision as to ineligibility is new.)

§ **3. Returns—Tie, how determined.**] 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 Representatives, 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 votes, for either of said offices, shall be declared duly elected; but if two or more shall have an equal and the highest number of votes, the General Assembly shall, by joint vote, choose one of such persons for said office.

(This section is new. Constitution of Illinois, Art. V, § 4; Constitution of 1865, Art. V, §§ 3, 18.)

§ **4. The supreme executive power** shall be vested in a Chief Magistrate, who shall be styled "The Governor of the State of Missouri."

(Same as Constitution of 1865, Art. V, § 1; Constitution of 1820, Art. IV, § 1.)

§ **5. Qualifications of governor.**] The Governor shall be at least thirty-five years old, a male, and shall have been a citizen of the United States ten years and a resident of this State seven years next before his election.

(Same as Constitution of 1865, Art. V, § 2, except that the word "male" was qualified, in that instrument, by the word "white.")

§ **6. Governor's duties.**] The Governor shall take care that the laws are distributed and faithfully executed; and he shall be a conservator of the peace throughout the State.

(Same as Constitutions of 1820 and 1865, Art. IV, § 8, and Art. V, § 6.)

§ **7. May call out militia and command them.**] The Governor shall be commander-in-chief of the militia of this 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; but he need not command in person, unless directed so to do by a resolution of the General Assembly.

(The provision for calling out the militia is new. Constitution of Illinois, Art. V, § 14; Constitutions of 1820 and 1865, Art. IV, § 5, and Art. V, § 5.)

§ **8. Pardoning power.**] The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such condition and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. He shall, at each session of the General Assembly, communicate to that body each case of re-

prieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the commutation, pardon or reprieve, and the reason for granting the same.

(Same as Constitution of 1865, Art. V, § 6.)

(*a.*) **The pardoning power** belongs exclusively to the executive department. State v. Sloss, 25 Mo., 291; State v. Todd, 26 Mo., 175.

(*b.*) **Before conviction.**—Under the Constitution of 1820, the Governor could pardon as well before as after conviction. (Art. IV, § 6.) State v. Woolery, 29 Mo., 300.

(*c.*) **The president** has power to grant a conditional pardon, offering to commute the sentence of death to that of imprisonment for life. (McLean, J., dissenting.) *Ex parte* Wells, 18 How. U. S., 307.

§ **9. To give information to General Assembly—Extra sessions.**] The Governor shall, from time to time, give to the General Assembly information relative to the state of the government, and shall recommend to its consideration such measures as he shall deem necessary and expedient. On extraordinary occasions he may convene the General Assembly by proclamation, wherein he shall state specifically each matter concerning which the action of that body is deemed necessary.

(Same as Constitutions of 1820 and 1865, Art. IV, § 7, and Art. V, § 7. As to business of special session, see Art. IV, § 55.)

§ **10. Governor's message; to account for moneys; estimates.**] The Governor shall, at the commencement of each session of the General Assembly and at the close of his term of office, give 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, in such manner as may be prescribed by law, for 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.

(This section is new. Constitution of Illinois, Art. V, § 7.

§ **11. Vacancy in office, how filled.**] When any office shall become vacant the Governor, unless otherwise provided by law, shall appoint a person to fill such vacancy, who shall continue in office until a successor shall have been duly elected or appointed and qualified according to law.

(Same as Constitution of 1865, Art. V, § 8.)

(*a.*) **An office is vacant, when.**—An existing office without an incumbent, is vacant within the meaning of the Constitution. State *ex rel.* Henderson v. County Court of Boone Co., 50 Mo., 317. Where the law provided that an officer should hold his office for two years, and until his successor is elected and qualified, a failure to elect such officer did not create a vacancy which the Governor could fill by appointment. State v. Lusk, 18 Mo., 333. The fact that an officer has been unable to attend to his duties for a period of fifty days, and that he is not likely to be in a condition to resume his official duties for some time, does not authorize the County Court to declare the office vacant. State v. Baird, 47 Mo., 301. The indefinite absence of a county attorney from the county, does not create a vacancy in the office. Kouns v. Draper, 43 Mo., 225. Where one holding an office, accepts another, the duties of which are incompatible with the former, he thereby vacates the former. State v. Lusk, 48 Mo., 242.

To make a resignation operative, it should be addressed to the Governor, and a resignation of a County Clerk, placed on the records of the court, gave the court no authority in the matter. State *ex rel.* Van Buskirk v. Boecker, 56 Mo., 17. A proclamation by the Governor that the State Treasurer elect had absented himself from the limits of the State—not on public business and without leave of absence, leaving no bonded or responsible clerk, but leaving a man acting as such, who, when called on to give the bond required by law, was unable to do so, is not sufficient to authorize the courts to infer an abandonment of the office. Honey v. Graham, 39 Tex., 1.

(*b.*) **Term** of office of appointees—hold until successors are elected, or appointed and qualified, unless otherwise provided by law. State v. Thompson, 38 Mo., 192.

§ **12. Governor's duty as to bills presented to him.**] The Governor shall consider all bills and joint resolutions, which, having been passed by both Houses of the General Assembly, shall be presented to him. He shall, within ten days after the same shall have been presented to him, return to the House in which they respectively originated, all such bills and joint resolutions, with his approval endorsed thereon, or accompanied by his objections: *Provided*, That if the General Assembly shall finally adjourn within ten days after such presentation, the Governor may, within thirty days thereafter, return such bills and resolutions to the office of the Secretary of State with his approval or reasons for disapproval.

(This section is new. See Art. IV, §§ 37, 38; Constitution of Penn., Art. IV, § 15.)

§ **13. May object to part of a bill.**] If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the appropriations so objected to shall not take effect. If the General Assembly be in session, he shall transmit to the House in which the bill originated, a copy of such statement, and the items objected to shall be separately reconsidered. If it be not in session, then he shall transmit the same, within thirty days, to the office of the Secretary of State, with his approval or reasons for disapproval.

(This section is new.)

§ **14. Resolutions to be presented to the governor.**] Every resolution to which the concurrence of the Senate and House of Representatives may be necessary, except on questions of adjournment, of going into joint session, and of amending this Constitution, shall be presented to the Governor, and before the same shall take effect shall be proceeded upon in the same manner as in the case of a bill: *Provided*, That no resolution shall have the effect to repeal, extend, alter or amend any law.

(The *proviso* is new. Constitution of 1865, Art. V, § 10.)

§ **15. Lieutenant Governor, his qualifications and duties.**] The Lieutenant Governor shall possess the same qualifications as the Governor, and by virtue of his office shall be President of the Senate. In Committee of the Whole he may debate all questions; and when there is an equal division he shall give the casting vote in the Senate, and also in joint vote of both Houses.

(Constitutions of 1820 and 1865, Art. IV, §§ 14, 15, and Art. V, §§ 12, 13.)

§ **16. To perform the duties of governor.**] In case of death, conviction or 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.

(Constitution of Illinois, Art. V, § 17. See Constitution of 1865, Art. V, § 14.)

§ **17. President of the senate—Other persons to act as Governor.**] The Senate shall choose a President *pro tempore* to preside in cases of the absence or impeachment of the Lieutenant Governor, or when he shall hold the office of Governor. If there be no Lieutenant Governor, or the Lieutenant Governor shall for any of the causes specified in section sixteen 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, in the same manner, and with the same powers and compensation as are prescribed in the case of the office devolving upon the Lieutenant Governor.

(Constitution of Illinois, Art. V, §§ 18, 19. See Constitution of 1865, Art. V, § 14.)

18. Pay of presiding officer of the senate.] The Lieutenant Governor or the President *pro tempore* of the Senate, while presiding in the Senate, shall receive the same compensation as shall be allowed to the Speaker of the House of Representatives.

(Same as Constitutions of 1820 and 1865, Art. V, § 18, and Art. V, § 15.)

§ **19. Qualifications of executive officers.**] No person shall be eligible to the office of Secretary of State, State Auditor, State Treasurer, Attorney General, or Superintendent of Public Schools, unless he be a male citizen of the United States and at least twenty-five years old, and shall have resided in this State at least five years next before his election.

(Same as Constitution of 1865, Art. V, § 16, except as to the Superintendent of Public Schools, who was required to have the qualifications of a State Senator, Art. X, § 3.)

§ **20. Seal of the State.**] The Secretary of State shall be the custodian of the seal of the State, and authenticate therewith all official acts of the Governor,

his approval of laws excepted. The said seal shall be called the "Great Seal of the State of Missouri," and the emblems and devices thereof, heretofore prescribed by law, shall not be subject to change.

(Same as Constitution of 1865, Art. V, § 20.)

§ **21. Duties of Secretary of State.**] The Secretary of State shall keep a register of the official acts of the Governor, and when necessary, shall attest them, and lay copies of the same, together with copies of all papers relative thereto, before either House of the General Assembly whenever required to do so.

(Same as Constitution of 1865, Art. V, § 21.)

§ **22. Duties of executive officers, respectively.**] An account shall be kept by the officers of the Executive Department of all moneys and choses in action disbursed, or otherwise disposed of by them, severally, from all sources, and for every service performed; and a semi-annual report thereof shall be made to the Governor under oath. 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 and institutions; which information, when so required, shall be furnished by such officers and managers, and any officer or manager who at any time shall make a false report, shall be guilty of perjury and punished accordingly.

(This section is new.)

§ **23. Commissioning officers.**] The Governor shall commission all officers not otherwise provided for by law. All commissions shall run in the name and by the authority of the State of Missouri, be signed by the Governor, sealed with the Great Seal of the State of Missouri, and attested by the Secretary of State.

(Same as Constitution of 1865, Art. V, § 25.)

(*a.*) **In issuing a commission** the Governor acts in a political or executive capacity, and his action cannot be controlled by the courts. Response to questions, 58 Mo., 369. See State v. Governor, 39 Mo., 392. In issuing a commission to any officer or judge, the executive function was exhausted, so far as that office was concerned, and it was not competent for the succeeding Governor, upon any evidence whatever, to issue another commission to a rival claimant, but he should be left to his remedy by *quo warranto*. St. Louis County Court v. Sparks, 10 Mo., 117; State v. Draper, 48 Mo., 213. Though the commission may not state the term for which the officer was appointed, it is not void. State v. Fulkerson, 10 Mo., 681. In issuing a commission, the Governor may look beyond the certificate of election, and determine for himself who is the person who is duly and legally elected to the office. State v. Howard County Court, 41 Mo., 247. But see State v. Vail, 53 Mo., 97, where it is held that the returns and certificate of the Secretary of State are conclusive on the Governor.

(*b.*) **A person derives his title** to his office by his election, and not by his commission; and if he holds the office without having been legally elected, he may be ousted notwithstanding his commission. State v. Steers, 44 Mo., 223. And one claiming to be elected sheriff cannot legally enter upon the discharge of the duties of the office until commissioned by the Governor. State v. Pool, 41 Mo., 32; State v. Morrison, 41 Mo., 238. A commission from the Governor is not a conclusive defense in an information in the nature of *quo warranto*, for usurping a public office. State v. Vail, 53 Mo., 97.

§ **24. Salaries and fees of office.**] 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. All fees that may hereafter be payable by law for any service performed by any officer provided for in this article shall be paid in advance into the State treasury.

(This section is new. Constitution of Illinois, Art. V, § 23.)

§ **25. Contested elections of executive officers.**] Contested elections of Governor and Lieutenant Governor shall be decided by a joint vote of both Houses of the General Assembly, in such manner as may be provided by law; and contested elections of Secretary of State, State Auditor, State Treasurer, Attorney General and Superintendent of Public Schools shall be decided before such tribunal and in such manner as may be provided by law

(Same as Constitution of 1865, Art. V, §§ 18, 19.)

ARTICLE VI.—Judicial Department.

§ **1. The judicial power of the State,** as to matters of law and equity, except as in this Constitution otherwise provided, shall be vested in a Supreme Court, the St. Louis Court of Appeals, Circuit Courts, Criminal Courts, Probate Courts, County Courts and Municipal Corporation Courts.

(This section is new.)

(*a.*) **Constitutionality of laws.**—It is the duty of courts to inquire into the constitutionality of acts of the legislature. Baily v. Gentry, 1 Mo., 164; State v. McBride, 4 Mo., 303. There is no power in the judiciary to remedy injustice and oppression in a legislative act, except where, in the attempted injustice or oppression, some constitutional provision is violated. N. M. R. R. Co. v. Maguire, 49 Mo., 490; Hamilton v. St. Louis County Court, 15 Mo., 3. And laws are presumed to be constitutional, unless they manifestly infringe some provision of the Constitution. State v. C. G. & State Line R. R. Co., 48 Mo, 468; County Court of St. Louis County v. Griswold, 58 Mo., 175; Stephens v. Bank, 43 Mo., 385; McVeagh v. Chicago, 49 Ill., 318. The Supreme Court cannot infer that the omission of a clause from a statute was unintentional State, *ex rel.*, v. Clark, 57 Mo., 25. Courts must be able to point out the specific clause of the Constitution to which the act in question is repugnant, before they can declare it void. Hamilton v. St. Louis County Court, 15 Mo., 3.

When the legislative and executive branches of the government, by the adoption of an act, give a construction to a provision of the Constitution, if the construction thus given is only doubtful, the courts will not hold the act void. It is only in cases of its clear infringement that the courts will interpose and hold the act nugatory. The People v. Hatch, 33 Ill., 9; The People v. Marshall, 1 Gil., 672; Lane v. Dorman 3 Scam., 238; Bruce v. Schuyler, 4 Gil., 221.

(*b.*) **The judiciary cannot exercise any authority** or power, except such as is clearly granted by the Constitution. Field v. The People, 2 Scam., 79. The construction of State laws, when they do not interfere with the Constitution or laws of the United States, belongs to the State courts. Chicago and Alton R. R. Co. v. Shannon, 43 Ill., 338.

(*c.*) **The courts of one State** have power to decide on the validity of legislative acts of another State, with respect to the Constitution of the United States, when the question arises in a case within their jurisdiction. Stoddart v. Smith, 5 Binn., 355; 8 Pick., 194. But see Kean v. Rice, 12 S. & R. Rep., 203.

§ **2. Jurisdiction of Supreme Court.**] The Supreme Court, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, under the restrictions and limitations in this Constitution provided.

(Same as Constitutions of 1820 and 1865, Art. V, § 2, and Art. VI, § 2.

(*a.*) **Appellate jurisdiction.**—The jurisdiction of the Supreme Court is appellate. The only original jurisdiction conferred upon it is the power to issue certain high prerogative writs. It cannot exercise original jurisdiction in matters of general litigation, or in contests respecting mere private rights. Vail v. Dinning, 44 Mo., 210.

The General Assembly can confer original jurisdiction upon the Supreme Court, only in the cases specified in the Constitution. Foster v. State, 41 Mo., 61; State v. Bank of East Tennessee, 5 Sneed, 473; Ward v. Thomas, 2 Cold., 565.

(*b.*) **Instances.**—The statute subjecting clerks to trial in the Supreme Court for misdemeanor in office, is unconstitutional. (W. S., 259–60, §§ 18–23.) State v. Flentge, 49 Mo., 488. An act providing for contesting the election of Circuit Judge, by an original proceeding in the Supreme Court, is unconstitutional. (G. S., chap. 2, § 80.) Vail v. Dinning, 44 Mo., 210.

The Supreme Court cannot exercise original jurisdiction by compelling, by means of a writ of *mandamus*, a judge of an inferior court to issue an injunction. State v. Wilson, 49 Mo., 146. Nor award a *mandamus* to compel an inferior judge to hear a petition for *habeas corpus*. State v. Elmore, 6 Cold., 528, But it will issue any original process in aid of its appellate jurisdiction. King v. Hampton, 3 Hayw., 59. 60. As a mandamus to compel an inferior judge to sign a bill of exceptions. State v. Hall, 3 Cold., 255. It belongs to the Supreme Court to put a final construction upon the Constitution and statutes. Thomas v. Mead, 36 Tex., 232.

§ **3. Superintending control of Supreme Court.**] The Supreme Court shall have a general superintending control over all inferior courts. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and other original remedial writs, and to hear and determine the same.

(Same as Constitutions of 1820 and 1865, Art. V, § 3, and Art. VI, § 3.)

(*a.*) **Writs.**—The Supreme Court has jurisdiction of informations in the nature of *quo warranto*. State v. Merry, 3 Mo., 278; State v. Stewart, 32 Mo., 379; State v. Vail, 53 Mo., 97. And in *quo warranto*. State v. Perpetual Ins. Co., 8 Mo., 330; State v. Stone, 25 Mo., 555. It has no power to grant an injunction. Lane v. Charless, 5 Mo., 285. But it has power to issue a writ of prohibition. Thomas v. Mead, 36 Mo., 232. In *certiorari*. Owens v. Andrew County Court, 49 Mo., 372; H. & St. J. R. R. Co. v. Morton, 27 Mo., 317; Rector v. Price, 1 Mo., 198.

(*b.*) **Superintending control.**—The Supreme Court will keep all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined before it, or prohibit their progress by law. Thomas v. Mead, 36 Mo., 232. Where the court below has sentenced the accused to a term of imprisonment greater than that authorized by the statute, the Supreme Court may interfere by writ of *habeas corpus*, but has no power simply to reduce the term of imprisonment so as to bring it within the statutory limits. *Ex parte* Page, 49 Mo., 29.

(*c.*) **Criminal informations.**—The provision authorizing the Supreme Court to issue writs of *habeas corpus, quo warranto*, etc., and to hear and determine the same, necessarily assumes, that writs and informations are not criminal informations in the sense of the provision of the Bill of Rights, which prohibits criminal informations for indictable offenses. State v. Vail, 53 Mo., 97.

(*d.*) **Jury trial.**—The Supreme Court is not required to summon juries in proceedings by *habeas corpus, certiorari* or *quo warranto*. State v. Vail, 53 Mo., 97.

(*e.*) **Admitting to bail.**—When it appears, on the petition to the Supreme Court for a writ of *habeas corpus*, that the applicant is entitled to bail, that tribunal has authority to issue the order. Alexander, Petition for *Habeas Corpus*, 59 Mo., 598.

§ **4. Judges, their term of office. Chief justice.**] The judges of the Supreme Court shall hold office for the term of ten years. The judge oldest in commission shall be Chief Justice of the Court; and if there be more than one commission of the same date, the court may select the Chief Justice from the judges holding the same.

(This section is new.)

§ **5. Number of judges; quorum; duties; election.**] The Supreme Court shall consist of five judges, any three of whom shall constitute a quorum; and said judges shall be conservators of the peace throughout the State, and shall be elected by the qualified voters thereof.

(Constitution of 1865, Art. VI, § 4.)

§ **6. Qualification of judges of Supreme Court.**] The judges of the Supreme Court shall be citizens of the United States, not less than thirty years old, and shall have been citizens of this State for five years next preceding their election or appointment, and shall be learned in the law.

(The clause "and shall be learned in the law" is new. Constitution of 1865, Art. VI, § 18.)

(*a.*) **A judge under thirty years** of age is a *de facto* officer, and his acts are binding. Blackburn v. State, 3 Heard., 690.

§ **7. Commencement of full terms—Appointment.**] The full terms of the judges of the Supreme Court shall commence on the first day of January next ensuing their election, and those elected to fill any vacancy shall also enter upon the discharge of their duties on the first day of January next ensuing such election. Those appointed shall enter upon the discharge of their duties as soon as qualified.

(Commencement of term the same as under Constitution of 1865, Art. VI, § 7.)

§ **8. Terms of present judges.**] The present judges of the Supreme Court shall remain in office until the expiration of their respective terms of office. To fill their places as their terms expire, one judge shall be elected at the general election in eighteen hundred and seventy-six, and one every two years thereafter.

(The general provision for an election of one judge every two years remains unchanged. Constitution of 1865, Art. VI, § 7.)

§ **9. Time and place of holding Supreme Court.**] The Supreme Court shall be held at the seat of Government at such times as may be prescribed by law; and until otherwise directed by law, the terms of said court shall commence on the third Tuesday in October and April of each year.

(This section is new. See Constitution of 1865, Art. VI, § 5.)

§ **10. Accommodations for Supreme Court.**] The State shall provide a suitable court room at the Seat of Government, in which the Supreme Court shall hold its sessions; also a clerk's office, furnished offices for the judges, and the use of the State Library.

(This section is new.)

§ **11. Judges divided in opinion.**] If, in any cause pending in the Supreme Court, or the St. Louis Court of Appeals, the judges sitting shall be equally divided in opinion, no judgment shall be entered therein based on such division; but the parties to the cause may agree upon some person, learned in the law, to act as special judge in the cause, who shall therein sit with the court, and give decision in the same manner and with the same effect as one of the judges. If the parties cannot agree upon a special judge, the court shall appoint one.

(Same as Constitution of 1865, Art. VI, § 10.)

§ **12. St. Louis Court of Appeals, jurisdiction of; appeals to Supreme Court.**] There is hereby established in the city of St. Louis, an appellate court, to be known as the "St. Louis Court of Appeals," the jurisdiction of which shall be co-extensive with the city of St. Louis and the counties of St. Louis, St. Charles, Lincoln and Warren. Said court shall have power to issue writs of *habeas corpus*, *quo warranto*, *mandamus*, *certiorari*, and other original remedial writs, and to hear and determine the same; and shall have a superintending control over all inferior courts of record in said counties. Appeals shall lie from the decisions of the St. Louis Court of Appeals to the Supreme Court, and writs of error may issue from the Supreme Court to said court in the following cases only: In all cases where the amount in dispute, exclusive of costs, exceeds the sum of two thousand five hundred dollars; in cases involving the construction of the Constitution of the United States or of this State; in cases where the validity of a treaty or statute of, or authority exercised under the United States is drawn in question; in cases involving the construction of the revenue laws of this State, or the title to any office under this State; in cases involving title to real estate; in cases where a county or other political subdivision of the State, or any State officer is a party, and in all cases of felony.

(This section is new.)

§ **13. Number, election, qualification and pay of judges.**] The St. Louis Court of Appeals shall consist of three judges, to be elected by the qualified voters of the city of St. Louis, and the counties of St. Louis, St. Charles, Lincoln and Warren, who shall hold their offices for the period of twelve years. They shall be residents of the district composed of said counties, shall possess the same qualifications as judges of the Supreme Court, and each shall receive the same compensation as is now, or may be, provided by law for the judges of the Circuit Court of St. Louis county, and be paid from the same sources: *Provided*, That each of said counties shall pay its proportional part of the same according to its taxable property.

[This section is new.]

§ **14. Duty of judges; quorum; terms of court.**] The judges of said court shall be conservators of the peace throughout said counties. Any two of said judges shall constitute a quorum. There shall be two terms of said court to be held each year, on the first Monday of March and October, and the first term of said court shall be held on the first Monday of January, 1876.

(This section is new.)

§ **15. Opinions of the court—Rules of practice.**] The opinions of said court shall be in writing, and shall be filed in the cases in which they shall be respectively made, and become parts of their record; and all laws relating to the practice in the Supreme Court shall apply to this court, so far as the same may be applicable.

(This section is new,)

§ **16. Terms of the first judges—Presiding judge.**] At the first general election held in said city and counties after the adoption of this Constitution, three judges of said court shall be elected, who shall determine by lot the duration of their several terms of office, which shall be respectively four, eight and twelve years, and certify the result to the Secretary of State; and every four years thereafter one judge of said court shall be elected to hold office for the term of twelve years. The term of office of such judges shall begin on the first Monday in January next ensuing their election. The judge having the oldest license to practice law in this State, shall be the presiding judge of said court.

[This section is new.]

§ **17. Appointment of judges of Court of Appeals.**] Upon the adoption of this Constitution the Governor shall appoint three judges for said court who shall hold their offices until the first Monday of January, eighteen hundred and seventy-seven, and until their successors shall be duly qualified.

[This section is new.]

§ **18. Clerk of Court of Appeals.**] The clerk of the Supreme Court at St Louis shall be the clerk of the St. Louis Court of Appeals until the expiration of the term for which he was appointed clerk of the Supreme Court, and until his successor shall be duly qualified.

[This section is new.]

§ **19. All cases which may be pending in the Supreme Court at St. Louis** at the time of the adoption of this Constitution, which by its terms would come within the final appellate jurisdiction of the St. Louis Court of Appeals, shall be certified and transferred to the St. Louis Court of Appeals, to be heard and determined by said court.

[This section is new.]

§ **20. When cases are triable in Court of Appeals.**] All cases coming to said court by appeal, or writ of error, shall be triable at the expiration of fifteen days from the filing of the transcript in the office of the clerk of said court.

[This section is new.]

§ **21. Clerks and records of Supreme Court.**] Upon the adoption of this Constitution, and after the close of the next regular terms of the Supreme Court at St. Louis and St. Joseph, as now established by law, the office of the clerk of the Supreme Court at St. Louis and St. Joseeph shall be vacated, and said clerks shall transmit to the clerk of the Supreme Court at Jefferson City all the books, records, documents, transcripts and papers belonging to their respective offices, except those required by section nineteen of this Article, to be turned over to the St. Louis Court of Appeals; and said records, documents, transcripts and papers shall become part of the records, documents, transcripts and papers of said Supreme Court at Jefferson City, and said court shall hear and determine all the cases thus transferred as other cases.

[This section is new.]

§ **22. Jurisdiction and terms of Circuit Court.**] The Circuit Court shall have jurisdiction over all criminal cases not otherwise provided for by law; exclusive original jurisdiction in all civil cases not otherwise provided for; and such concurrent jurisdiction with, and appellate jurisdiction from, inferior tribunals and justices of the peace, as is, or may be provided by law. It shall hold its terms at such times and places in each county as may be by law directed; but at least two terms shall be held every year in each county.

[Same substantially as Constitutions of 1820 and 1865, Art. V, § 6, and Art. VI, § 13. The last clause is new.]

§ **23. The Circuit Court shall exercise a superintending control** over criminal courts, probate courts, county courts, municipal corporation courts, justices of the peace, and all inferior tribunals in each county in their respective circuits.

[Same as Constitutions of 1820 and, 1865, except the enumeration of the various courts, Art. V, § 8, and Art. VI. § 21.]

(*a.*) **Mandamus.**—The Circuit Court has power, by *mandamus*, to control the action of an inferior tribunal. St. Louis County Court v. Sparks, 10 Mo., 117.

§ **24. Circuits may be changed and abolished.**] The State, except as otherwise provided in this Constitution, shall be divided into convenient circuits of contiguous counties, in each of which circuits one circuit judge shall be elected; and such circuits may be changed, enlarged, diminished or abolished from time to time, as public convenience may require; and whenever a circuit shall be abolished, the office of the judge of such circuit shall cease.

[Constitution of 1865, Art. VI, § 14, modified.]

(*a.*) **Changing circuits** under former Constitution. Opinion in response to Senate, 55 Mo., 215.

§ **25. Election, terms of office and duties of circuit judges.**] The judges of the Circuit Courts shall be elected by the qualified voters of each circuit; shall hold their offices for the term of six years, and shall reside in and be conservators of the peace within their respective circuits.

[Same as Constitution of 1865, Art. VI, § 14.]

§ 26. Qualifications of circuit judges.] No person shall be eligible to the office of judge of the Circuit Court who shall not have attained the age of thirty years, been a citizen of the United States five years, a qualified voter of this State for three years, and who shall not be a resident of the circuit in which he may be elected or appointed.

[The last clause is new. Constitution of 1865, Art. VI, § 18.]

§ 27. Circuit Court of St. Louis County—Jurisdiction of Court of Appeals.] The Circuit Court of St. Louis county shall be composed of five judges, and such additional number as the General Assembly may, from time to time, provide. Each of said judges shall sit separately for the trial of causes and the transaction of business in special term. The judges of said Circuit Court may sit in general term, for the purpose of making rules of court, and for the transaction of such other business as may be provided by law, at such time as they may determine, but shall have no power to review any order, decision or proceeding of the court in special term.

The St. Louis Court of Appeals shall have exclusive jurisdiction of all appeals from, and writs of error to, the Circuit Courts of St. Charles, Lincoln and Warren counties, and the Circuit Court of St. Louis county in special term, and all courts of record having criminal jurisdiction in said counties.

[New provision. Constitution of 1865, Article VI, § 15.]

§ 28. Provision for additional judges.] In any circuit composed of a single county, the General Assembly may, from time to time, provide for one or more additional judges, as the business shall require; each of whom shall separately try cases and perform all other duties imposed upon circuit judges.

(This section is new.)

§ 29. Vacancy in office, disability, etc.] If there be a vacancy in the office of judge of any circuit, or if the judge be sick, absent, or from any cause unable to hold any term, or part of term of court, in any county in his circuit, such term, or part of term of court, may be held by a judge of any other circuit; and at the request of the judge of any circuit, any term of court, or part of term in his circuit, may be held by the judge of any other circuit, and in all such cases, or in any case where the judge cannot preside, the General Assembly shall make such additional provision for holding court as may be found necessary.

[The clause "and in all such cases," etc., is new. Constitution of 1856, Art. VI. § 17.]

(*a*.) **Special judge.**—The judge is not authorized, in order to prevent a change of venue in any particular cause, or for any other reason, to call in a neighboring judge to try that cause. He may procure another judge to hold a particular term of court, giving up to him the whole business of the term. Gale v. Michie, 47 Mo., 326. An act providing for the appointment of a special judge in certain cases, constitutional. (Acts of 1870, p. 200.) Harper v. Jacobs, 51 Mo., 296; Smith v. Haworth, 53 Mo., 88.

§ 30. Elections of judges; ties and contests.] The election of judges of all courts of record shall be held as is or may be provided by law, and in case of a tie or contested election between the candidates, the same shall be determined as prescribed by law.

[Same as Constitution of 1865, Art. VI, § 14.]

§ 31. Criminal Courts.] The General Assembly shall have no power to establish criminal courts, except in counties having a population exceeding fifty thousand.

(This section is new.)

§ 32. Vacancy by death, resignation, etc.] In case the office of judge of any court of record becomes vacant by death, resignation, removal, failure to qualify, or otherwise, such vacancy shall be filled in the manner provided by law.

[Constitution of 1865, Art. VI, §§ 8, 14, modified.]

§ 33. Salaries of judges, not to be increased or diminished.] The judges of the Supreme, Appellate and Circuit Courts, and of all other courts of record receiving a salary, shall, at stated times, receive such compensation, for their services, as is or may be prescribed by law; but it shall not be increased or diminished during the period for which they were elected.

[The word "increased" is added. Constitution of 1865, Art. VI, § 20.]

§ **34. Probate Courts.**] The General Assembly shall establish in every county a probate court, which shall be a court of record, and consist of one judge, who shall be elected. Said court shall have jurisdiction over all matters pertaining to probate business, to granting letters testamentary, and of administration, the appointment of guardians and curators of minors, and persons of unsound mind, settling the accounts of executors, administrators, curators and guardians, and the sale or leasing of lands by administrators, curators and guardians; and also jurisdiction over all matters relating to apprentices: *Provided*, That until the General Assembly shall provide by law for a uniform system of probate courts, the jurisdiction of probate courts heretofore established shall remain as now provided by law.

(This section is new.)

§ **35. Jurisdiction, practice and clerks of probate courts.**] Probate courts shall be uniform in their organization, jurisdiction, duties and practice, except that a separate clerk may be provided for, or the judge may be required to act, *ex officio*, as his own clerk.

[This section is new.]

§ **36. County Courts.**] In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law.

[Constitution of 1865, Art. VI, § 23, modified.]

§ **37. Justices of the peace.**] In each county there shall be appointed, or elected, as many justices of the peace as the public good may require, whose powers, duties and duration in office, shall be regulated by law.

(Same as Constitutions of 1820 and 1865, Art. V, § 17, and Art. VI, § 25.)

§ **38. Writs and indictments.**] All writs and process shall run, and all prosecutions shall be conducted in the name of the "State of Missouri;" all writs shall be attested by the clerk of the court from which they shall be issued; and all indictments shall conclude "against the peace and dignity of the State."

(Same as Constitutions of 1820 and 1865, Art. V, § 19, and Art. VI, § 26.)

(*a.*) **To run in name of State.**—This provision is directory. Davis v. Wood, 7 Mo., 162. The omission is cured by the party answering the action. *Ibid.* If the writ does not run in the name of the State, it is voidable only. Doan v. Boley, 38 Mo., 449. If it runs in the name of the justice who issues it, the case is properly dismissed. Fowler v. Watson, 4 Mo., 27. And see Charless v. Marney, 1 Mo., 537. This requirement applies to all process, civil or criminal, issued by any court or tribunal established by law, having authority to issue process. A writ running in the name of the corporation of Nashville, is void. Mayor & Aldermen v. Beal, 11 Humph., 219.

(*b.*) The words "State of Missouri," or "The State of Missouri," may be used. Spencer v. Madder, 5 Mo., 458.

(*c.*) **An indictment** that does not conclude "against the peace and dignity of the State," is bad. State v. Lopez, 19 Mo., 254; State v. Pemberton, 30 Mo., 376.

§ **39. Clerks of courts.**] The St. Louis Court of Appeals and Supreme Court shall appoint their own clerks. The clerks of all other courts of record shall be elective, for such terms and in such manner as may be directed by law: *Provided*, That the term of office of no existing clerk of any court of record, not abolished by this Constitution, shall be affected by such law.

(Constitution of 1865, Art. VI, § 22, modified.)

§ **40. Election of clerks—ties and contests.**] In case there be a tie, or a contested election between candidates, for clerk of any court of record, the same shall be determined in such manner as may be directed by law.

(This section is new.)

§ **41. Removal of judges for inability to act.**] In case of the inability of any judge of a court of record to discharge the duties of his office with efficiency by reason of continued sickness, or physical or mental infirmity, it shall be in the power of the General Assembly, two-thirds of the members of each house concurring, with the approval of the Governor, to remove such judge from office; but each House shall state on its respective journal, the cause for which it shall wish his removal, and give him notice thereof, and he shall have the right to be heard in his defense, in such manner as the General Assembly shall by law direct.

(This section is new.)

§ **42. Existing courts to continue.**] All courts now existing in this State, not named or provided for in this Constitution, shall continue until the expiration of the terms of office of the several judges; and as such terms expire, the business of said courts shall vest in the court having jurisdiction thereof in the counties where said courts now exist, and all the records and papers shall be transferred to the proper courts.

(This section is new.)

§ **43. What opinions shall be published.**] The Supreme Court of the State shall designate what opinions, delivered by the court or the judges thereof, may be printed at the expense of the State; and the General Assembly shall make no provision for payment, by the State, for the publication of any case decided by said court, not so designated.

(This section is new.)

§ **44. All judicial decisions** in this State, shall be free for publication by any person.

(This section is new.)

ARTICLE VII.—Impeachments.

§ **1. Who liable to.**] The Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, Superintendent of Public Schools, and judges of the Supreme, Circuit and Criminal Courts and of the St. Louis Court of Appeals, shall be liable to impeachment for high crimes or misdemeanors, and for misconduct, habits of drunkenness, or oppression in office.

("Shall be liable to impeachment for misdemeanor in office." Constitution of 1865, Art. VII, § 1.)

§ **2. Proceedings generally—Punishment.**] The House of Representatives shall have the sole power of impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be sworn to do justice according to law and evidence. When the Governor of the State is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators present. But judgment in such cases shall not extend any further than removal from office, and disqualification to hold any office of honor, trust or profit under this State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

(Same as Constitution of 1865, Art. VII, §§ 1, 2. The last sentence is new.)

ARTICLE VIII.—Suffrage and Elections.

§ **1. Times of holding elections.**] The general election shall be held biennially on the Tuesday next following the first Monday in November. The first general election, under this Constitution, shall be held on that day, in the year one thousand eight hundred and seventy-six; but the General Assembly may, by law, fix a different day—two-thirds of all the members of each house consenting thereto.

(Same general provision as in Constitution of 1865, Art. II, § 2.)

(*a.*) **The omission** to hold an election at the proper time, cannot be supplied by a subsequent one not provided for by law; such election would be void. State v. Jenkins, 43 Mo., 261.

§ **2. Qualifications of electors.**] Every male citizen of the United States, and every male person of foreign birth, who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections by the people:

First—He shall have resided in the State one year immediately preceding the election at which he offers to vote.

Second—He shall have resided in the county, city or town where he shall offer to vote, at least sixty days immediately preceding the election.

(Same substantially as Constitution of 1865, Art. II, § 18.)

§ **3. Rules for conducting elections—Contested elections.**] All elections by the people shall be by ballot; every ballot voted shall be numbered in the order in which it shall be received, and the number recorded by the election officers on the list of voters, opposite the name of the voter who presents the ballot. The election officers shall be sworn or affirmed not to disclose how any voter shall have voted, unless required to do so as witnesses in a judicial proceeding: *Provided*, That in all cases of contested elections, the ballots cast may be counted, compared with the list of voters, and examined under such safeguards and regulations as may be prescribed by law.

(The first provision is the same as the Constitution of 1865, Art. II, § 1. The remainder, except the *proviso*, is the same as the Constitution of Penn., Art. VIII, § 4.)

§ **4. Voters privileged from arrest.**] Voters 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 therefrom.

(Same as Constitution of 1865, Art. II, § 22.)

(*a.*) **A breach of the peace** is a violation of public order, the offense of disturbing the public peace. An act of public indecorum is also a breach of the peace. Galvin v. The State, 6 Cold., 283, 294.

§ **5. Registration.**] The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than one hundred thousand inhabitants, and may provide for such registration in cities having a population exceeding twenty-five thousand inhabitants and not exceeding one hundred thousand, but not otherwise.

(This section is new.)

§ **6. Persons in representative capacity.**] All elections, by persons in a representative capacity, shall be *viva voce*.

(This section is new. Constitution of Penn., Art. VIII, § 12.)

§ **7. Gaining or losing residence.**] For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military, of this State, or of the United States; nor while engaged in the navigation of the waters of the State, or of the United States, or of the high seas, nor while a student of any institution of learning, nor while kept in a poor-house, or other asylum at public expense, nor while confined in public prison.

(The clause "either civil or military, of this State," is new. Constitution of 1865, Art. II, § 20. Same as Constitution of Penn., Art. VIII, § 13.)

§ **8. Paupers, etc., disqualified.**] No person, while kept at any poor house, or other asylum at public expense, nor while confined in any public prison, shall be entitled to vote at any election under the laws of this State.

(This section is new.)

§ **9. Contested elections generally.**] The trial and determination of contested elections of all public officers, whether State, judicial, municipal or local, except Governor and Lieutenant Governor, shall be by the courts of law, or by one or more of the judges thereof. The General Assembly shall, by general law, designate the court or judge by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto; but no such law, assigning jurisdiction or regulating its exercise, shall apply to any contest arising out of any election held before said law shall take effect.

(This section is new.)

§ **10. Criminals disqualified.**] The General Assembly may enact laws excluding from the right of voting, all persons convicted of felony or other infamous crime, or misdemeanors connected with the exercise of the right of suffrage.

(This section is new. See Constitution of 1865, Art. II, § 26.)

§ **11. Soldiers disqualified.**] No officer, soldier or marine, in the regular army or navy of the United States, shall be entitled to vote at any election in this State.

(Same as Constitution of 1865, Art. II, § 16.)

§ **12. Aliens, etc., cannot hold office.**] 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 his election or appointment.

(This section is new. Same as Constitution of Illinois, Art. VII, § 6.)

(*a.*) **Eligibility.**—The power of the State to declare in its Constitution, or by legislative enactment, what shall constitute eligibility to office, is clear and unquestionable. State v. Woodson, 41 Mo., 227.

ARTICLE IX.—Counties, Cities and Towns.

§ **1. Existing counties recognized.**] The several counties of this State, as they now exist, are hereby recognized as legal sub-divisions of the State.

(This section is new.)

§ **2. County seats, removal of.**] The General Assembly shall have no power to remove the county seat of any county, but the removal of county seats shall be provided for by general law; and no county seat shall be removed unless two-thirds of the qualified voters of the county, voting on the proposition at a general election, vote therefor; and no such proposition shall be submitted oftener than once in five years. All additions to a town, which is a county seat, shall be included, considered and regarded as part of the county seat.

(Constitution of 1865, Art. IV, § 30, modified.)

(*a.*) Two-thirds of the votes cast at an election on the question of removal, would be insufficient, unless they numbered two-thirds of all the qualified voters of the county. State v. Sutterfield, 54 Mo., 391.

§ **3. New counties—Division of counties—Representation.**] The General Assembly shall have no power to establish any new county with a territory of less than four hundred and ten square miles; nor to reduce any county now established to a less area or less population than required for a ratio of representation existing at the time; but when a new county is formed, having a population less than a ratio of representation, it shall be attached for representative purposes to the county from which the greatest amount of territory is taken until such ratio shall be obtained. No county shall be divided or have any portion stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the qualified voters of the county or counties thus affected, voting on the question, shall vote therefor; nor shall any new county be established, any line of which shall run within ten miles of the then existing county seat of any county. In all cases of the establishment of any new county, the new county shall be held for and obliged to pay its ratable proportion of all the liabilities then existing of the county or counties from which said new county shall be formed.

(Constitution of 1865, Art. IV, § 31, modified.)

(*a.*) **In general.**—An act reducing a county below 500 square miles, void, under Constitution of 1865. Woods *ex rel.* etc., v. Henry, 55 Mo., 560. Power of the legislature to create, alter, abolish and regulate counties. Opinion on township organization, 55 Mo., 295; Abernathy v. Dennis, 49 Mo., 468. Under the amendments to the Constitution of 1820, ratified in 1849, a law establishing a new county, by which an old one was reduced below the ratio of representation, was held unconstitutional, notwithstanding a *proviso* that, for the purposes of representation, the inhabitants of the new county should continue to vote as in the old one, until the population of the new county should entitle it to a representative. State v. Scott, 17 Mo., 521.

§ **4. Part of county stricken off.**] No part of the territory of any county shall be stricken off and added to an adjoining county, without submitting the question to the qualified voters of the counties immediately interested, nor unless a majority of all the qualified voters of the counties thus affected, voting on the question, shall vote therefor. When any part of a county is stricken off and attached to another county, the part stricken off shall be holden for and obliged to pay its proportion of all the liabilities then existing of the county from which it is taken.

(This section is new. Constitution of Illinois, Art. XI, §§ 2, 3.)

(*a.*) **The Legislature cannot abolish counties** and form the territory of which they were composed into one or more counties, without submitting the act to a vote of the inhabitants affected by the change. The People v. Marshall, 12 Ill., 391; The People v. Warfield, 20 Ill., 160.

§ **5. Liabilities of new county.**] When any new county, formed from contiguous territory taken from older counties, or when any county to which territory shall be added taken from an adjoining county, shall fail to pay the proportion of indebtedness of such territory, to the county or counties from which it is taken, then it may be lawful for any county from which such territory has been taken, to levy and collect, by taxation, the due proportion of indebtedness of such territory, in the same manner as if the territory had not been stricken off.

(This section is new.)

§ **6. Subscriptions, etc., by municipalities.**] No county, township, city or other municipality, shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make appropriation or donation, or loan its credit to, or in aid of any such corporation or association, or to, or in aid of any college or institution of learning, or other institution, whether created for or to be controlled by the State or others. All authority heretofore conferred for any of the purposes aforesaid by the General Assembly, or by the charter of any corporation, is hereby repealed: *Provided, however*, That nothing in this Constitution contained shall affect the right of any such municipality to make such subscription, where the same has been authorized under existing laws by a vote of the people of such municipality prior to its adoption, or to prevent the issue of renewal bonds or the use of such other means as are or may be prescribed by law, for the liquidation or payment of such subscription, or of any existing indebtedness.

[Under the Constitution of 1865, Art. XI, § 14, counties, etc., could become stockholders in corporations on the assent of two-thirds of the qualified voters.]

(*a.*) **Loaning credit.**—The provisions of the Constitution of 1865 held not to be applicable to a case where a town loaned its credit for school purposes. State *ex rel.* Dome v. Wilcox, 45 Mo., 458.

(*b.*) **Cases** under the old Constitution. State v. Macon County Court, 41 Mo., 453; State v. Wilcox, 45 Mo., 458; State v. County Court of Sullivan Co., 51 Mo., 522.

§ **7. Organization and classification of towns.**] The General Assembly shall provide, by general laws for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be defined by general laws, so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The General Assembly shall also make provisions, by general law, whereby any city, town or village, existing by virtue of any special or local law, may elect to become subject to, and be governed by, the general laws relating to such corporations.

[This section is new.]

§ **8. Township organization—County justices.**] The General Assembly may 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 county affairs, and the assessment and collection of the revenue by county officers, in conflict with such general law for township organization, may be dispensed with, and the business of said county, and the local concerns of the several townships therein, may be transacted in such manner as may be prescribed by law: *Provided*, That the justices of the County Court in such case shall not exceed three in number.

[This section is new. Constitution of Illinois, Art. X, § 5.]

(*a.*) **The township organization law** is not a delegation of authority. Opinion on Township Organization, 55 Mo., 295. See 63 Mo 188

§ **9. Abandoning township organization.**] In any county which shall have adopted "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 shall be provided by law; and if a majority of all the votes cast upon that question shall be against township organization, it 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.

[This section is new. Constitution of Illinois, Art. X, § 5.]

(*a.*) **Power of the Legislature.**—The Legislature may create, alter, abolish and regulate counties as expediency may demand, so that no vested rights are interfered with. Opinion on Township Organization, 55 Mo. 295; Abernathy v. Dennis, 49 Mo., 468; Coles v. County of Madison, Breese, 154; The People v. Wren, 4 Scam., 269; Holliday v. The People, 4 Gil., 214.

§ **10. Sheriffs and coroners.**] There shall be elected by the qualified voters in each county, at the time and places of electing representatives, a sheriff and coroner. They shall serve for two years, and until their successors be duly elected and qualified unless sooner removed for malfeasance in office, and shall be eligible only four years in any period of six. Before entering on the duties of their office, they shall give security in the amount and in such manner as shall be prescribed by law. Whenever a county shall be hereafter established, the Governor shall appoint a sheriff and a coroner therein, who shall continue in office until the next succeeding general election, and until their successors shall be duly elected and qualified.

(Ineligible four years in any period of eight years. Constitution of 1865, Art. V, § 22; 1820, Art. IV, 23.)

§ **11. Vacancy in office of sheriff or coroner.**] Whenever a vacancy shall happen in the office of sheriff or coroner, the same shall be filled by the county court. If such vacancy happen in the office of sheriff more than nine months prior to the time of holding a general election, such county court shall immediately order a special election to fill the same, and the person by it appointed shall hold office until the person chosen at such election shall be duly qualified; otherwise, the person appointed by such county court shall hold office until the person chosen at such general election shall be duly qualified. If any vacancy happen in the office of coroner, the same shall be filled for the remainder of the term by such county court. No person elected or appointed to fill a vacancy in either of said offices shall thereby be rendered ineligible for the next succeeding term.

(Same as Constitution of 1865, Art. V, § 23. Constitution of 1820, Art. IV, § 24.)

(*a.*) **A vacancy** in the office of sheriff, such as a county court is authorized to fill, implies a state of things where no one has any title to the office. Such vacancy does not exist where, on *quo warranto*, judgment of ouster against the incumbent was obtained on the ground that relator had a superior title. State *ex rel.* McCune v. Ralls County Court, 45 Mo., 58.

§ **12. Fees of county officers.**] The General Assembly shall, by a law uniform to its operation, provide for and regulate the fees of all county officers, and for this purpose may classify the counties by population.

(This section is new)

§ **13. Fees generally—Quarterly returns.**] The fees of no executive or ministerial officer of any county or municipality, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of ten thousand dollars for any one year. Every such officer shall make return, quarterly, to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail, and verifying the same by his affidavit; and for any statement or omission in such return, contrary to truth, such officer shall be liable to the penalties of wilful and corrupt perjury.

(This section is new,)

§ **14. Extra municipal officers—Terms of office.**] Except as otherwise directed by this constitution, the General Assembly shall provide for the election or appointment of such other county, township and municipal officers, as public convenience may require; and their terms of office and duties shall be prescribed by law; but no term of office shall exceed four years.

(This section is new.)

§ **15. Consolidation of city and county governments.**] In all counties having a city therein containing over one hundred thousand inhabitants, the city and county government thereof may be consolidated in such manner as may be provided by law.

[This section is new.]

§ **16. Charters of large cities.**] Any city having a population of more than one hundred thousand inhabitants, may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a board of thirteen freeholders, who shall have been for at least five years qualified voters thereof, to be elected by the qualified voters of such city at any general or special election; which board shall, within ninety days after such election, return to the chief magistrate of such city a draft of such charter, signed by the members of such board or a majority of them. Within thirty days thereafter such proposed charter shall be submitted to the qualified voters of such city at a general or special election, and if four sevenths of such qualified voters voting thereat, shall ratify the same, it shall, at the end of thirty days thereafter, become the charter of such city and supersede any existing charter and amendments thereof. A duplicate certificate shall be made setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the Secretary of State, and the other, after being recorded in the office of the recorder of deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof. Such charter so adopted may be amended by a proposal therefor, made by the law-making authorities of such city, published for at least thirty days in three newspapers of largest circulation in such city, one of which shall be a newspaper printed in the German language, and accepted by three-fifths of the qualified voters of such city, voting at a general or special election, and not otherwise; but such charter shall always be in harmony with and subject to the Constitution and laws of the State.

(This section is new.)

§ **17. Certain features of the charter.**] It shall be a feature of all such charters that they shall provide, among other things, for a mayor or chief magistrate, and two houses of legislation, one of which at least shall be elected by general ticket; and in submitting any such charter, or amendment thereto, to the qualified voters of such city, any alternative section or article may be presented for the choice of the voters, and may be voted on separately, and accepted or rejected separately, without prejudice to other articles or sections of the charter or any amendment thereto.

(This section is new.)

§ **18. State and municipal officers.**] In cities or counties having more than two hundred thousand inhabitants, no person shall, at the same time, be a State officer and an officer of any county, city or other municipality; and no person shall, at the same time, fill two municipal offices, either in the same or different municipalities; but this section shall not apply to notaries public, justices of the peace or officers of the militia.

(This section is new.)

§ **19. Payment of municipal indebtedness.**] The corporate authorities of any county, city, or other municipal sub-division of this State, having more than two hundred thousand inhabitants, which has already exceeded the limit of indebtedness prescribed in section twelve, of Article X, of this Constitution, may, in anticipation of the customary annual revenue thereof, appropriate during any fiscal year towards the general governmental expenses thereof, a sum not exceeding seven-eighths of the entire revenue applicable to general governmental purposes (exclusive of the payment of the bonded debt of such county, city or municipality) that was actually raised by taxation alone during the preceding fiscal year; but until such excess of indebtedness cease no further bonded debt shall be incurred, except for the renewal of other bonds.

(This section is new.)

§ **20. Extension of limits—Adoption of charter.**] The city of St. Louis may extend its limits so as to embrace the parks now without its boundaries, and other convenient and contiguous territory, and frame a charter for the

government of the city thus enlarged upon the following conditions, that is to say: The council of the city and county court of the county of St. Louis, shall, at the request of the mayor of the city of St. Louis, meet in joint session and order an election, to be held as provided for general elections, by the qualified voters of the city and county, of a board of thirteen freeholders of such city or county, whose duty shall be to propose a scheme for the enlargement and definition of the boundaries of the city, the re-organization of the government of the county, the adjustment of the relations between the city thus enlarged, and the residue of St. Louis county and the government of the city thus enlarged, by a charter in harmony with and subject to the Constitution and laws of Missouri, which shall, among other things, provide for a chief executive and two houses of legislation, one of which shall be elected by general ticket, which scheme and charter shall be signed in duplicate by said board or a majority of them, and one of them returned to the mayor of the city and the other to the presiding justice of the county court within ninety days after the election of such board. Within thirty days thereafter the city council and county court shall submit such scheme to the qualified voters of the whole county and such charter to the qualified voters of the city so enlarged, at an election to be held not less than twenty nor more than thirty days after the order therefor; and if a majority of such qualified voters, voting at such election, shall ratify such scheme and charter, then such scheme shall become the organic law of the county and city, and such charter the organic law of the city, and at the end of sixty days thereafter shall take the place of and supersede the charter of St. Louis and all amendments thereof, and all special laws relating to St. Louis county inconsistent with such scheme.

(This section is new.)

§ **21. Authentication of charter—Judicial notice.**] A copy of such scheme and charter, with a certificate thereto appended, signed by the mayor and authenticated by the seal of the city, and also signed by the presiding justice of the county court and authenticated by the seal of the county, setting forth the submission of such scheme and charter to the qualified voters of such county and city and its ratification, by them, shall be made in duplicate, one of which shall be deposited in the office of the Secretary of State, and the other, after being recorded in the office of the recorder of deeds of St. Louis county, shall be deposited among the archives of the city, and thereafter all courts shall take judicial notice thereof.

[This section is new.]

§ **22. Amendment of charter.**] The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by the law-making authorities of the city to the qualified voters thereof at a general or special election, held at least sixty days after the publication of such proposals, and accepted by at least three-fifths of the qualified voters voting thereat.

[This section is new.] + Am't 2d, Vol 12—573

§ **23. Miscellaneous provisions under said charter.**] Such charter and amendments shall always be in harmony with, and subject to the Constitution and laws of Missouri, except only, that provision may be made for the gradation of the rate of taxation for city purposes in the portions of the city which are added thereto by the proposed enlargement of its boundaries. In the adjustment of the relations between city and county, the city shall take upon itself the entire park tax; and in consideration of the city becoming the proprietor of all the county buildings and property within its enlarged limits, it shall assume the whole of the existing county debt, and thereafter the city and county of St. Louis shall be independent of each other. The city shall be exempted from all county taxation. The judges of the county court shall be elected by the qualified voters outside of the city. The city, as enlarged, shall be entitled to the same representation in the General Assembly, collect the State revenue and perform all other functions in relation to the State, in the same manner, as if it were a county as in this Constitution defined; and the residue of the county shall remain a legal

county of the State of Missouri, under the name of the county of St. Louis. Until the next apportionment for Senators and Representatives in the General Assembly, the city shall have six Senators and fifteen Representatives, and the county one Senator and two Representatives, the same being the number of Senators and Representatives to which the county of St. Louis, as now organized, is entitled under sections eight and eleven of Article IV, of this Constitution.

(This section is new.)

§ **24. Courts of St. Louis county.**] The county and city of St. Louis, as now existing, shall continue to constitute the Eighth Judicial Circuit, and the jurisdiction of all courts of record, except the county court, shall continue until otherwise provided by law.

(This section is new.)

§ **25. Subordination of St. Louis.**] Notwithstanding the provisions of this Article, the General Assembly shall have the same power over the city and county of St. Louis that it has over other cities and counties of this State.

(This section is new.)

ARTICLE X.—Revenue and Taxation.

§ **1. Taxing power.**] The taxing power may be exercised by the General Assembly for State purposes, and by counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes.

(This section is new.)

(*a.*) **The power to tax** rests upon necessity, and is inherent in every sovereignty; and in respect to taxation the Constitution is not so much a grant, as a restriction, of power. Glasgow v. Rowse, 43 Mo., 479; 10 Wis., 195.

§ **2. The power to tax corporations** and corporate property shall not be surrendered or suspended by act of the General Assembly.

(This section is new. Same, substantially, as Constitution of Penn., Art. IX, § 3. See Art. II, § 15, note *d*).

(*a.*) **Taxing corporations.**—40 Mo., 580; 47 Mo., 462.

§ **3. Taxation for public purposes; to be uniform.**] Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

(This section is new. Constitution of Penn., Art. IX, § 1.)

(*a.*) **Definition** of the word "tax," 9 Wis., 510.

§ **4. In proportion to value.**] All property subject to taxation shall be taxed in proportion to its value.

(Same as Constitution of 1865, Art. I, § 30; also Constitution of 1820, Art. XIII, § 19.)

(*a.*) **In general.**—This provision does not include every species of taxation. It was intended to make the burdens of government rest on all property alike—to forbid favoritism and prevent inequality. Outside of the constitutional restriction the Legislature must be the sole judge of the propriety of taxation, and define the sources of revenue as the exigency of the case may require. Glasgow v. Rowse, 43 Mo., 479. It does not require that all property in the State shall be taxed, but that when any species of property is selected for taxation, it shall be taxed in proportion to its value. State v. North, 27 Mo., 464; Hamilton v. St. Louis County Court, 15 Mo., 3. It is applicable only to taxation in the usual and ordinary sense, not to local assessments, where the money raised is expended on the property taxed. Egyptian Levee Co. v. Hardin, 27 Mo., 495; 10 Wis., 242; 17 Wis., 284. Equality of taxation is not the prominent idea conveyed by this clause. Hamilton v. St. Louis County Court, 15 Mo., 3; State v. St. Louis County Court, 34 Mo., 546. What proportion of the burden of taxation shall be borne by any individual or class of individuals must be determined by the Legislature, where there is no constitutional restriction. N. Mo. R. R. Co. v. Maguire, 49 Mo., 490. For a full discussion of this section, see Crow v. State, 14 Mo., 237.

(*b.*) **The word "ought"** in the Constitution of 1865 is mandatory. Life Association v. Board of Assessors, 49 Mo., 512. See Hamilton v. St. Louis County Court, 15 Mo., 3.

(*c*) **Professions.**—The State has power to tax all professions, and it may delegate the authority. St. Louis v. Laughlin, 49 Mo., 559. See Simmons v. State, 12 Mo., 268.

(*d*) **Certain acts.**—The act of March 10, 1871, providing a uniform system of assessing and collecting taxes on railroads is not in conflict with this provision. (Acts of 1871, p. 56.) State *ex rel.* v. Severance, 55 Mo., 378. The act of March 3, 1851, to increase the salaries of the judges in St. Louis County does not contravene this provision. Hamilton v. St. Louis County Court, 15 Mo., 3.

(*e.*) **Opening streets,** special assessments, benefits assessed against adjoining owners, such laws constitutional. Ulrig v. St. Louis, 44 Mo., 459. See St. Joseph v. O'Donoghue, 31 Mo., 345; St. Joseph v. Anthony, 30 Mo., 615; Newby v. Platte Co., 25 Mo., 258; Garrett v. St. Louis, *Id.*, 505; Louisiana & F. P. R. Co. v. Pickett, *Id.*, 535.

(*f.*) **Miscellaneous.**—Bank stock must be assessed at its cash value in the market, and not at its first cost. Union Bank v. State, 9 Yerg., 490, 501. A town ordinance requiring sidewalks to be laid down at the expense of the owners of adjacent lots, is not unequal taxation, and is valid. Mayor & Aldermen v. Mayberry, 6 Humph, 368; Washington v. M. & A. of Nashville, 2 Swan, 364, 369. An assessment of National Bank Stock at the residence of the owner, the Act of Congress of July 3rd, 1864, 13 Statutes at Large, 99, providing that such assessment shall only be made at the place where the bank is located, creates an unequal taxation, and hence is void. Mayor of Nashville v. Thomas, 5 Cold., 600, 615.

§ **5. All railroad corporations** in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal, and other purposes, on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises, and their capital stock.

(This section is new.)

§ **6. Exemptions.**] The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation when the same are used, exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for Agricultural or Horticultural Societies: *Provided*, That such exemptions shall be only by general law.

(The Constitution of 1865, Art. XI, § 16, exempted property belonging to the United States, the State, counties and municipal corporations, and public school property. See Art. XIV, § 1.)

(*a.*) **In general.**—The section against exempting property from taxation had reference only to ordinary or general taxation for the purposes of revenue, State *ex rel.*, etc., v. Linn Co. Court, 44 Mo. 504.

(*b.*) **Schools.**—Where a building is used in part for school purposes, and in part for other purposes, there can be no separate assessment of that portion which is used for other than school purposes. Wyman v. St. Louis, 17 Mo., 335.

(*c.*) **Charities.**—Under its charter the Good Samaritan Hospital was "exempted from taxation of every kind." *Held*, that the exemption did not cover special assessments against the property for improvements of the street fronting it. Sheehan v. Good Samaritan Hospital, 50 Mo., 155. See, also, 10 Wis., 242; 17 Wis., 284.

(*d.*) **Presumptions.**—The abandonment of the right to exercise the taxing power can never be presumed. Pacific R. R. Co. v. Cass County, 53 Mo., 17; see 47 Mo., 450; 42 Mo., 308; 48 Mo., 282.

(*e.*) **Church property** exempt from general taxation is liable to special assessments. Ottawa v. Trustees, etc., 22 Ill., 624. So is property owned by a city. Higgins v. Chicago, 18 Ill., 281; Scammon v. Chicago, 42 Ill., 193.

§ **7. Exemptions.**] All laws exempting property from taxation, other than the property above enumerated, shall be void.

(This section is new.)

§ **8. Rate for State purposes.**] The State tax on property, exclusive of the tax necessary to pay the bonded debt of the State, shall not exceed twenty cents on the hundred dollars valuation; and whenever the taxable property of the State shall amount to nine hundred million dollars, the rate shall not exceed fifteen cents.

(This section is new.)

§ **9. Liability of municipalities—Commutation.**] No county, city, town or other municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged 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.

(This section is new. Constitution of Illinois, Art. IX, § 6.)

(*a.*) **One county** cannot be required to pay any greater share of taxes than another, for an institution, in the benefits of which, all the counties in the State can only participate in common. Board of Supervisors v. Wilder, 5 Legal News, 265.

§ **10. Taxation for municipal purposes.**] The General Assembly shall not impose taxes upon counties, cities, towns, or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town or other municipal purposes; but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

(This section is new. Similar to Constitution of Illinois, Art. IX, § 10. See § 1.)

(*a.*) **In general.**—The Legislature has no power to levy a corporate tax, or create a corporate indebtedness. County of Madison v. The People, 4 Legal News, 34; nor to authorize the inhabitants of any particular strip or district of land, although composed of several townships so to do. *Ibid.* The People v. The Mayor of Chicago, 51 Ill., 18; Dannavan v. Green, 4 Legal News, 182. The Legislature ordinarily has no power to impose a debt or levy a tax upon a municipal corporation without its assent, or to authorize persons not corporate officers, to create a debt against the corporation, or to levy a tax therein, either directly or indirectly, without the consent of those to be affected thereby, or of the municipal authorities. Lovingston v. Wider, 53 Ill., 302; Wider v. City of East St. Louis, 55 Ill., 133; The People v. The Mayor of Chicago, 51 Ill., 18.

(*b.*) **Corporate purposes.**—In giving a construction to those sections of the Constitution which authorize the Legislature to empower towns and other municipal corporations to impose taxes for "corporate purposes," the phrase, "corporate purposes" should not be given so narrow and rigid a construction as to render a self-imposed tax null merely because it might be a debatable question whether it would promote the corporate welfare or not; where such a tax possesses the constitutional quality of uniformity in respect to persons and property, courts should not interfere to annul it, except it be an exceedingly clear case that it is not for a "corporate purpose." A tax for corporate purposes may be defined to mean a tax to be expended in a manner which shall promote the general prosperity and welfare of the municipality which levies it; and if it appear that a tax has been voted and levied with an honest purpose to promote the general well-being of the municipality, and was not designed merely for the benefit of individuals or of a class, its collection should not be stayed by the courts. Taylor v. Thompson, 42 Ill., 9. The act of February 5, 1865, authorizing the towns in certain counties therein named to levy a tax to pay bounties to persons who should thereafter enlist or be drafted into the army of the United States, a vote of the township being first taken, is constitutional, it being a tax for "corporate purposes" within the meaning of this section. Taylor v. Thompson, 42 Ill., 9; Missner v. Bullard, *Ibid*, 470; Johnson v. Campbell, 49 Ill., 316. The same is true also as regards counties. Henderson v. Lagow, 42 Ill., 360; Briscoe v. Allison, 43 Ill., 291; Stebbins v. Leaman, 47 Ill., 352.

(*c.*) **Miscellaneous.**—The Legislature cannot authorize a municipal corporation to tax, for its own local purposes, lands lying beyond the corporate limits. Wells v. Weston, 22 Mo., 384. Laws authorizing the levy of special taxes. Uhrig v. St. Louis, 44 Mo., 458.

§ **11. Rates of taxation for local purposes—Valuation.**] Taxes for county, city, town and school purposes, may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes. For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars valuation; in counties having six million dollars and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the hundred dollars valuation. For city and town purposes the annual rate on property in cities and towns having thirty thousand inhabitants or more, shall not, in the aggregate, exceed one hundred cents on the hundred dollars valuation; in cities and towns having less than thirty thousand and over ten thousand inhabitants, said rate shall not exceed sixty cents on the hundred dollars valuation; in cities and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars valuation; and in towns having one thousand inhabitants or less, said rate shall not exceed twenty-five cents on the hundred dollars valuation. For school purposes in districts, the annual rate on property shall not exceed forty cents on the hundred dollars valuation: *Provided*, The aforesaid annual rates for school purposes may be increased in districts formed of cities and towns, to an amount not to exceed one dollar on the hundred dollars valuation; and in other districts to an amount not to exceed sixty-five cents on the hundred dollars valuation, on the condition that a majority of the voters who are taxpayers, voting at an election held to decide the question, vote for said increase. For the purpose of erecting public buildings in counties, cities or school districts, the rates of taxation herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city, or school district, voting at such election shall vote therefor. The rate herein allowed to each county shall be ascertained by the amount of taxable property therein, according to the last assessment for State and county purposes, and the rate allowed to each city or town by the number of inhabitants, according to the last census.

taken under the authority of the State, or of the United States; said restrictions, as to rates, shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing or bonds which may be issued in renewal of such indebtedness.

(This section is new.)

§ **12. Municipal indebtedness limited.**] No county, city, town, township, school district or other political corporation or subdivision of the State, shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose; nor in cases requiring such assent shall any indebtedness be allowed to be incurred 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 assessment next before the last assessment for State and county purposes, previous to the incurring of such indebtedness: *Provided*, That with such assent any county may be allowed to become indebted to a larger amount for the erection of a court house or jail: *And provided further*, That any county, city, town, township, school district, or other political corporation, or subdivision of the State, incurring any indebtedness, requiring the assent of the voters as aforesaid, shall, before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for payment of the principal thereof, within twenty years from the time of contracting the same.

(This section is new. Similar to Constitution of Illinois, Art. IX, § 12.)

§ **13. Sale of private property prohibited.**] Private property shall not be taken or sold for the payment of the corporate debt of a municipal corporation.

(This section is new. Constitution of Illinois, Art. IX, § 10.)

§ **14. Ordinance of 1863—Payment of State debt.**] The tax authorized by the sixth section of the ordinance adopted June sixth, one thousand eight hundred and sixty-five, is hereby abolished, and hereafter there shall be levied and collected an annual tax sufficient to pay the accruing interest upon the bonded debt of the State, and to reduce the principal thereof each year by a sum not less than two hundred and fifty thousand dollars; the proceeds of which tax shall be paid into the State Treasury, and appropriated and paid out for the purposes expressed in the first and second subdivisions of section forty-three, of Article IV of this Constitution. The funds and resources now in the State Interest and State Sinking Funds shall be appropriated to the same purposes; and whenever said bonded debt is extinguished, or a sum sufficient therefor has been raised, the tax provided for in this section shall cease to be assessed.

(This section is new. See SCHEDULE, § 8.)

§ **15. Deposit of State funds—Disbursement.**] All moneys now, or at any time hereafter, in the State Treasury, belonging to the State, shall, immediately on receipt thereof, be deposited by the Treasurer to the credit of the State for the benefit of the funds to which they respectively belong in such bank or banks, as he may, from time to time, with the approval of the Governor and Attorney General select, the said bank or banks giving security, satisfactory to the Governor and Attorney General, for the safe keeping and payment of such deposits, when demanded by the State Treasurer on his checks—such bank to pay a bonus for the use of such deposits not less than the bonus paid by other banks for similar deposits; and the same, together with such interest and profits as may accrue thereon, shall be disbursed by said Treasurer for the purposes of the State, according to law, upon warrants drawn by the State Auditor, and not otherwise.

(This section is new.)

§ **16. Treasurer's account.**] The Treasurer shall keep a separate account of the funds, and the number and amount of warrants received, and from whom; and shall publish, in such manner as the Governor may designate, quar-

terly statements, showing the amount of State moneys, and where the same are kept or deposited.

(This section is new.)

§ **17. Speculation in public funds.**] The making of profit out of State, county, city, town or school district money, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law.

(This section is new. Similar to Constitution of Penn., Art. IX, § 14.)

§ **18. There shall be a State Board of Equalization** consisting of the Governor, State Auditor, State Treasurer, Secretary of State and Attorney General. The duty of said board shall be to adjust and equalize the valuation of real and personal property among the several counties in the State, and it shall perform such other duties as are or may be prescribed by law.

(This section is new.)

§ **19. Appropriations—Statement of receipts and expenditures.**] No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor within two years after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

(This section is new, except the first clause. Constitution of 1865, Art. XI, § 6.)

(*a.*) **The treasurer** cannot be required to pay out the funds intrusted to his keeping unless appropriated. He has no discretionary power, and must disburse as the law making power shall direct. State v. Hays, 49 Mo. 604.

§ **20. Application of loans, etc.**] The moneys arising from any loan, debt or liability, contracted by the State, or any county, city, town, or other municipal corporation, shall be applied to the purposes for which they were obtained, or to the repayment of such debt or liability, and not otherwise.

(This section is new.)

§ **21. Dues from corporations on capital stock.**] No corporation, company or association, other than those formed for benevolent, religious, scientific or educational purposes, shall be created or organized under the laws of this State, unless the persons named as corporators shall, at or before the filing of the articles of association or incorporation, pay into the State treasury fifty dollars, for the first fifty thousand dollars or less of capital stock, and a further sum of five dollars for every additional ten thousand dollars of its capital stock. And no such corporation, company or association shall increase its capital stock without first paying into the treasury five dollars for every ten thousand dollars of increase: *Provided*, That nothing contained in this section shall be construed to prohibit the General Assembly from levying a further tax on the franchises of such corporation.

(This section is new.)

ARTICLE XI.—Education.

§ **1. Public schools—Persons of school age.**] A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this State between the ages of six and twenty years.

(The limit was twenty-one years, under Constitution of 1865, Art. IX, § 1.)

(*a.*) **In general.**—Section 7, Article VII, of the school law of 1855 (R. C. 1855, p. 1440), giving a preference to the debt owing by a defaulting county treasurer o the school fund, is not in conflict with any provision of the State or Federal Constitutions. Cass County v. Jack, 49 Mo. 196.

§ **2. Disbursement of school funds, certain districts not entitled to.**] The income of all the funds provided by the State for the support

of free public schools shall be paid annually to the several county treasurers to be disbursed according to law; but no school district, in which a free public school has not been maintained at least three months during the year for which the distribution is made, shall be entitled to receive any portion of such funds.

(The first clause is new. Constitution of 1865, Art. IX, § 7.)

§ 3. Schools for colored children.] Separate free public schools shall be established for the education of children of African descent.

(Same as Constitution of 1865, Art. IX. § 2.)

§ 4. Board of Education.] The supervision of instruction in the public schools shall be vested in a "Board of Education," whose powers and duties shall be prescribed by law. The Superintendent of Public Schools shall be President of the Board. The Governor, Secretary of State and Attorney General shall be *ex officio* members, and with the Superintendent, compose said Board of Education.

(Constitution of 1865, Art. IX, § 3, modified.)

§ 5. State University.] The General Assembly shall, whenever the Public School Fund will permit, and the actual necessity of the same may require, aid and maintain the State University now established with its present departments. The government of the State University shall be vested in a Board of Curators, to consist of nine members, to be appointed by the Governor, by and with the advice and consent of the Senate.

(The last sentence is new. Constitution of 1865, Art. IX, § 4.)

§ 6. School fund.] The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also, all moneys, stocks, bonds, lands and other property now belonging to any State fund for purposes of education; also, the net proceeds of all sales of lands and other property and effects that may accrue to the State by escheat, from unclaimed dividends and distributive shares of the estates of deceased persons; also any proceeds of the sales of the public lands which may have been or hereafter may be paid over to this State (if Congress will consent to such appropriation); also, all other grants, gifts or devises that have been, or hereafter may be made to this State, and not otherwise appropriated by the State or the terms of the grant, gift or devise, shall be paid into the State Treasury, and securely invested and sacredly preserved as a Public School Fund; the annual income of which fund, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining the free public schools and the State University in this Article provided for, and for no other uses or purposes whatsoever.

(Same, substantially, as Constitution of 1865, Art. IX, § 5.)

§ 7. Deficiency in school funds—State revenue.] In case the Public School Fund now provided and set apart by law, for the support of free public schools, shall be insufficient to sustain a free school at least four months in every year in each school district in this State, the General Assembly may provide for such deficiency in accordance with section eleven of the Article on Revenue and Taxation; but in no case shall there be set apart less than twenty-five per cent. of the State revenue, exclusive of the Interest and Sinking Fund, to be applied annually to the support of the public schools.

(Constitution of 1865, Art. IX, § 8, modified.)

§ 8. County school fund.] All moneys, stocks, bonds, lands and other property belonging to a county school fund; also, the net proceeds from the sale of estrays; also, the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of the State, and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong to and be securely invested, and sacredly preserved in the several counties, as a county public school fund; the income of which fund shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State.

(Constitution of 1865, Art. IX, § 5, with additions and changes.)

§ **9. Investment of Public School Fund.**] No part of the Public School Fund of the State shall ever be invested in the stock or bonds, or other obligations of any other State, or of any county, city, town or corporation; and the proceeds of the sales of any lands or other property which now belong, or may hereafter belong to said school fund, shall be invested in the bonds of the State of Missouri, or of the United States.

(Under the Constitution of 1865, Art. IX, § 6, the School Fund could be invested only in the bonds of the United States.)

(*a.*) **Section 6 of the Act of 1865** provided that the purchase money arising from the sale of certain stock of the Bank of the State of Missouri, belonging to the State, might be paid in bonds and coupons of the State; *held*, that this was not necessarily an investment in either State bonds or obligations. (Acts of 1865, p. 16.) State v. The Bank of the State of Missouri, 45 Mo. 528.

§ **10. Investment of county school fund.**] All county school funds shall be loaned only upon unincumbered real estate security, of double the value of the loan, with personal security in addition thereto.

(Same, substantially, as Constitution of 1865, Art. IX, § 6.)

§ **11. Schools for religious or sectarian purposes.**] Neither the General Assembly, nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose; or to help to support or sustain any private or public school, academy, seminary, college, university or other institution of learning, controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any county, city, town or other municipal corporation, for any religious creed, church or sectarian purpose whatever.

(This section is new. Constitution of Illinois, Art. VIII, § 3.)

ARTICLE XII.—Corporations.

§ **1. Unorganized corporations.**] All existing charters, or grants of special or exclusive privileges, under which a *bona fide* organization shall not have taken place, and business been commenced in good faith, at the adoption of this Constitution, shall thereafter have no validity.

(This section is new. Constitution of Penn., Art. XVI, § 1.)

§ **2. Shall not be created by special laws.**] No corporation, after the adoption of this Constitution, shall be created by special laws; nor shall any existing charter be extended, changed or amended by special laws, except those for charitable, penal or reformatory purposes, which are under the patronage and control of the State.

(This section is new. Constitution of Illinois, Art. XI, § 1.)

(*a.*) **Amendment of Charters** by the Legislature. 3 Wis., 286, 603; 12 Wis., 340; 14 Wis., 295; 20 Wis., 254.

§ **3. Forfeited charters.**] The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend such forfeited charter, or pass any other general or special laws for the benefit of such corporations.

(This section is new. Constitution of Penn., Art. XVI, § 1.)

(*a.*) **Exclusive rights** are construed most favorably for the public as against corporations. Mills v. St. Clair Co., 2 Gil., 198; Charles River Bridge v. Warren Bridge, 11 Peters [U. S], 420; Salt Co. v. East Saginaw, 13 Wal. [U. S.], 373.

§ **4. Right of eminent domain—Jury trial.**] The exercise of the power and 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, or that may be hereafter organized, and subjecting them to the public use, the same as that of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation, when in the exercise of said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right.

(This section is new. Constitution of Illinois, Art. XI, § 14; Constitution of Penn., Art. XVI, § 3.)

See Art. II, § 21, note (*e.*)

§ **5. Subject to police power.**] The exercise of the police power of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State.

(This section is new. Constitution of Penn., Art. XVI, § 4.)

(*a.*) **Miscellaneous.**—Public or municipal corporations existing only for public purposes, possessing only such powers as are granted to them, are subject at all times to the control of the Legislature. County of Richland v. County of Lawrence, 12 Ill., 1; City of Springfield v. Power, 25 Ill., 190. Corporations, like individuals, are subject to legislative control, so far as it relates to the enforcing of obligations. Reapers Bank v. Willard, 24 Ill., 433. The Legislature has the power to regulate corporations in the exercise of their franchises, so as to provide for the public safety, Galena v. Chicago Union R. R. Co. v. Loomis, 13 Ill., 548; to amend, change or repeal powers granted to municipal corporations by their charters. Town of Mt. Carmel, v. Wabash Co., 50 Ill., 69; and to validate an irregularly organized corporate body. Mitchell v. Deeds, 49 Ill., 416. The police powers of a State cannot be made the subject of an irrevocable grant, either to a municipal or private corporation, or to a private individual. Dingman v. The People, 51 Ill., 277. See 21 Ill., 53; 24 Ill., 433.

§ **6. In all elections for directors** or managers of any incorporated company, each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares so held by him or her in said company, multiplied by the number of directors or managers to be elected at such election; and each share-holder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates; and such directors or managers shall not be elected in any other manner.

(This section is new. Same, in part, as Constitution of Penn., Art. XVI, § 4.)

§ **7. Not to engage in other business—Power to hold real estate.**] No corporation shall engage in business, other than that expressly authorized in its charter, or the law under which it may have been or hereafter may be organized, nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business.

(This section is new. Constitution of Penn., Art. XVI, § 6, modified.)

(*a.*) **Engaging in other business.**—A corporation created for insuring property has no power to engage in banking. Blair v. Perpetual Ins. Co., 10 Mo., 559. A corporation created for the purpose of mining and transporting coal, has power to purchase and use a steamboat for the purpose of its business in transporting and delivering coal. Callaway M. & M. Co. v. Clark, 32 Mo., 305. It does not follow that a provision in the charter of a corporation, prohibiting it from dealing in commercial paper, would prevent it from receiving and selling notes given for the sale of its lands. Buckley v. Briggs, 30 Mo., 452. A corporation authorized by its charter "to buy, exchange, sell, mortgage, transfer or otherwise use its property," although not thereby authorized to do a general banking business, may loan its surplus funds on time, and the right to accept security for the loan follows as a necessary incident. Western Boatmens' Benevolent Association v. Kribben, 48 Mo., 37.

§ **8. Increase of stock, etc.**] No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting called for the purpose, first giving sixty days' public notice, as may be provided by law.

(This section is new. Constitution of Penn., Art. XVI, § 7.)

§ **9. Individual liability of stockholders.**] Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him or her.

(Under the Constitution of 1865, Art. VII, § 6, a stockholder was liable in double the amount of his stock. Amended Nov. 8, 1870.)

(*a.*) **Double liability.**—Prov. Sav. Inst. v. The Jackson Place Skating and Bathing Rink, 52 Mo., 552; *Id.*, 557; Miller v. Manion, 50 Mo., 55; Ochiltree v. Iowa R. R. Co., 54 Mo., 113; Perry v. Turner, 55 Mo., 418.

§ **10. Preferred stock.**] No corporation shall issue preferred stock without the consent of all the stockholders.

(This section is new.)

§ **11. "Corporation" defined.**] The term "corporation," as used in this Article, shall be construed to include all joint-stock companies or associations having any powers or privileges not possessed by individuals or partnerships.

(This section is new. Constitution of Penn., Art. XVI, § 13.)

RAILROADS.

§ **12. Discrimination prohibited—Commutation tickets.**] It shall not be lawful in this State for any railway company to charge for freight or passengers a greater amount, for the transportation of the same, for a less distance than the amount charged for any greater distance; and suitable laws shall be passed by the General Assembly to enforce this provision; but excursion and commutation tickets may be issued at special rates.

(This section is new.)

§ **13. Construction and operation—Freight, etc., of other roads.**] Any railroad corporation or association, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right, with its road, to intersect, connect with or cross any other railroad, and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

(This section is new. Constitution of Penn., Art. XVII, § 1.)

§ **14. Are public highways—Laws to prevent discrimination.**] Railways heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and railroad companies common carriers. 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 shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties.

(This section is new. The provision against extortion, etc., is the same as the Constitution of Illinois, Art. XI, § 15.)

(*a.*) **Under Ills. Const.**—The Act of 1871, entitled "An act to prevent unjust discriminations and extortions in the rates to be charged by the different railroads in this State for the transportation of freight and said roads," is unconstitutional. It does not prohibit unjust discrimination merely, but discrimination of any character, and does not allow railroad companies to explain the reason for the discrimination, but forfeits their franchises upon an arbitrary and conclusive presumption of guilt, to be drawn from the proof of an act that might be shown to be perfectly innocent. In these particulars, the act violates the spirit of the Constitution. Chicago & Alton R. R. Co. v. The People, 5 Legal News, 266.

§ **15. Shall keep a public office—Meetings of directors.**] Every railroad or other 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 where shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meeting annually in this State, public notice of which shall be given thirty days previously, and shall report annually, under oath, to the State Auditor, or some officer designated by law, all of their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The General Assembly shall pass laws enforcing, by suitable penalties, the provisions of this section.

(This section is new. Same in part as Constitution of Penn., Art. XVII, § 2.)

§ **16. Property subject to execution.**] 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 is new. Constitution of Illinois, Art. XI, § 10.)

§ **17. Parallel lines, consolidation with, etc.**] No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation, with, or lease, or purchase the works or franchise of, or in any way control any railroad corporation owning or having under its control a parallel or competing line;

nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line. The question whether railroads are parallel or competing lines shall, when demanded, be decided by a jury, as in other civil issues.

(This section is new. Constitution of Penn., Art. XVII, § 4.)

§ **18. Consolidation with foreign companies.**] If any railroad company organized under the laws of this State, shall consolidate by sale or otherwise, with any railroad company organized under the laws of any other State, or of the United States, the same shall not thereby become a foreign corporation; but the courts of this State shall retain jurisdiction in all matters which may arise as if said consolidation had not taken place. In no case shall any consolidation take place, except upon public notice of at least sixty days to all stockholders, in such manner as may be provided by law.

(This section is new.)

§ **19. Laws in aid of.**] The General Assembly shall pass no law for the benefit of a railroad or other corporations, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the State, a new liability in respect to transactions or considerations already past.

(This section is new.)

§ **20. Street railroads.**] No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchises so granted shall not be transferred without similar assent first obtained.

(This section is new. Constitution of Illinois, Art. XI, § 4.)

§ **21. Benefit of future legislation.**] No railroad corporation in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.

(This section is new. Constitution of Penn., Art. XVII, § 10.)

§ **22. Officers not to be interested in business of road.**] No president, director, officer, agent or employee of any railroad company, shall be interested directly or indirectly, in furnishing material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company.

(This section is new. Constitution of Penn., Art. XVII, § 6.)

§ **23. Discrimination between companies and individuals.**] No discrimination in charges or facilities in transportation shall be made between transportation companies and individuals, or in favor of either, by abatement, drawback or otherwise; and no railroad company, or any lessee, manager or employee thereof, shall make any preference in furnishing cars or motive power.

(This section is new. Constitution of Penn., Art. XVII, § 6.)

§ **24. Granting free passes to public officers.**] No railroad or other transportation company shall grant free passes or tickets, or passes or tickets at a discount, to members of the General Assembly, or members of the Board of Equalization, or any State, or county, or municipal officers; and the acceptance of any such pass or ticket, by a member of the General Assembly, or any such officer, shall be a forfeiture of his office.

(This section is new.)

BANKS.

§ **25. 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 hereafter to be created.

(This section is new. See Constitution of Illinois, Art. XI, § 5.)

§ **26. Act creating banks to be submitted to the people.**] No act of the General Assembly authorizing or creating corporations or associations with banking powers, (except banks of deposit or discount,) nor amendments thereto, shall go into effect, or in any manner be enforced, unless the same shall be submitted to a vote of the qualified voters of the State, at the general election next succeeding the passage of the same, and be approved by a majority of the votes cast at such election.

(This section is new. Constitution of Illinois, Art. XI, § 5, making no exception in favor of banks of deposit and discount.)

§ **27. Reception of deposits, etc., by insolvent banks.**] It shall be a crime, the nature and punishment of which shall be prescribed by law, for any president, director, manager, cashier or other officer of any banking institution, to assent to the reception of deposits, or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent, or in failing circumstances; and any such officer, agent or manager shall be individually responsible for such deposits so received, and all such debts so created with his assent.

(This section is new

ARTICLE XIII.—Militia.

§ **1. Persons liable to military duty.**] All able-bodied male inhabitants of this State between the ages of eighteen and forty-five years, who are citizens of the United States, or have declared their intention to become such citizens, shall be liable to military duty in the militia of this State: *Provided*, That no person who is religiously scrupulous of bearing arms, can be compelled to do so, but may be compelled to pay an equivalent for military service, in such manner as shall be prescribed by law.

(The *proviso* is new. Constitution of 1865, Art. X, § 1.)

§ **2. Organization of the militia.**] 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.

(This section is new. Constitution of Illinois, Art. XII, § 2.)

§ **3. Election of officers.**] Each company and regiment shall elect its own company and regimental officers; but if any company or regiment shall neglect to elect such officers within the time prescribed by law, or by the order of the Governor, they may be appointed by the Governor.

(Same as Constitution of 1865, Art. X, § 3.)

§ **4. Volunteer companies of infantry,** cavalry and artillery, may be formed in such manner and under such restrictions as may be provided by law.

(This section is new.)

§ **5. Privileged from arrest.**] The volunteer and militia forces shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at musters, parades and elections, and in going to and returning from the same.

(This section is new. Constitution of Illinois, Art. XII, § 4.)

§ **6. Appointment of officers.**] The Governor shall appoint the Adjutant General, Quartermaster General and his other staff officers. He shall also, with the advice and consent of the Senate, appoint all Major Generals and Brigadier Generals.

(This section is new.)

§ **7. Public arms and military records.**] The General Assembly shall provide for the safe keeping of the public arms, military records, banners and relics of the State.

(This section is new.)

ARTICLE XIV.—Miscellaneous Provisions.

§ **1. Public lands—Taxing U. S. property and non-residents.**] The General Assembly of this State shall never interfere with the primary disposal of the soil by the United States, nor with any regulation which Congress may find necessary for securing the title in such soil to *bona fide* purchasers. No tax shall be imposed on lands, the property of the United States; nor shall lands belonging to persons residing out of the limits of this State ever be taxed at a higher rate than the lands belonging to persons residing within the State.

(Same as Constitution of 1865, Art. XI, § 1.)

(*a.*) **U. S. property.**—Property occupied by the national government, will not be exempt from State taxation, unless the title and ownership thereof be vested in the United States. Taxes are assessed against the real owner without any regard to temporary occupancy, and the obligation of payment follows the assessment. Speed v. St. Louis County Court, 42 Mo., 382.

§ **2. Oblivion and pardon.**] No person shall be prosecuted in any civil action or criminal proceeding for or on account of any act by him done, performed or executed between the first day of January, one thousand eight hundred and sixty-one, and the twentieth day of August, one thousand eight hundred and sixty-six, by virtue of military authority vested in him, or in pursuance of orders from any person vested with such authority by the government of the United States, or of this State, or of the late Confederate States, or any of them to do such act. And if any action or proceedings shall have been, or shall hereafter be instituted against any person for the doing of any such act, the defendant may plead this section in bar thereof.

(The clause "or of the late Confederate States" is new. Constitution of 1865, Art. XI, § 4.)

(*a.*) **Seizures.**—Military officers are protected under this section, against prosecutions for unlawful seizures made during the rebellion. Williamson v. Russell, 49 Mo., 185. It is a complete bar to actions against any person for acts done under military authority from the United States or this State. Smith v. Owens, 42 Mo., 508. But it cannot be interposed to protect a tenant against the claims of his landlord, although the money due had been seized in the hands of the tenant by military authorities, to satisfy an assessment against the landlord for disloyalty. Clark v. Ticknor, 49 Mo., 144.

(*b.*) **Legal authority.**—A defendant pleading this provision need not show that the authority of the tribunal or officer under whose commands he acted was rightful or legal in the particular matter in question. State to use, etc., v. Gatzweiler, 49 Mo., 17.

(*c.*) **Constitutionality.**—This section, in so far as it releases a sheriff from his obligation to pay over money coming into his hands, even where the money is misapplied in pursuance of military orders, impairs the obligation of a contract, and is therefore in conflict with the Constitution of the United States. State to use, etc., v. Gatzweiler, 49 Mo., 17. See note (*d.*)

(*d.*) **An act of indemnity,** oblivion and pardon. Drehman v. Stifel, 41 Mo., 184. This section is not in conflict with the Constitution of the United States; although retrospective in its operation, it is not a bill of attainder, does not impair the obligation of a contract, nor divest settled rights of property. *Ibid.* State v. Gatzweiler, 49 Mo., 17.

§ **3. Dueling.**] No person who shall hereafter fight a duel, or assist in the same as a second, or send, accept or knowingly carry a challenge therefor, or agree to go out of this State to fight a duel, shall hold any office in this State.

(Same as Constitution of 1865, Art. XI, § 5.)

§ **4. U. S. officers.**] No person holding an office of profit under the United States, shall, during his continuance in such office, hold any office of profit under this State.

(Same as Constitution of 1865, Art. XI, § 7.)

§ **5. Tenure of office generally.**] In the absence of any contrary provision, all officers now or hereafter elected or appointed, subject to the right of resignation, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified.

(Same as Constitution of 1865, Art. XI, § 8.)

§ **6. Oath of office.**] All officers, both civil and military, under the authority of this State, shall, before entering upon the duties of their respective offices, take and subscribe an oath, or affirmation, to support the Constitution of the United States and of this State, and to demean themselves faithfully in office.

(This section is new. See Constitution of 1865, Art. II, § 13.

§ **7. Misdemeanor in office.**] The General Assembly shall, in addition to other penalties, provide for the removal from office of county, city, town and township officers, on conviction of wilful, corrupt or fraudulent violation or neglect of official duty.

(This section is new.)

§ **8. Fees of office—Term of office not to be extended.**] The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed.

(This section is new.)

§ **9. The appointment of all officers** not otherwise directed by this Constitution, shall be made in such manner as may be prescribed by law.

(This section is new.)

§ **10. Lotteries prohibited.**] 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, or tickets in any scheme in the nature of a lottery, in this State; and all acts or parts of acts heretofore passed by the Legislature of this State, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

(Same, substantially, as Constitution of 1865, Art. IV, § 28.)

§ **11. Duty of grand-jury.**] It shall be the duty of the grand-jury in each county, at least once a year, to investigate the official acts of all officers having charge of public funds, and report the result of their investigations in writing to the court.

(This section is new.)

§ **12. Legislators privileged from arrest—Freedom of debate.**] Senators and Representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the sessions of the General Assembly, and for fifteen days next before the commencement and after the termination of each session; and for any speech or debate in either House they shall not be questioned in any other place.

(Same as Constitutions of 1820 and 1865, Art. III, § 23, and Art. IV, § 16.)

ARTICLE XV.—Mode of Amending the Constitution.

§ **1. This Constitution may be amended** and revised only in pursuance of the provisions of this Article.

(This Article is substantially the same as Article XII, Constitution of 1865. See Constitution of 1820, Art. XII.)

§ **2. Proposed amendments submitted to a popular vote.**] The General Assembly may, at any time, propose such amendments to this Constitution as a majority of the members elected to each house shall deem expedient; and the vote thereon shall be taken by yeas and nays and entered in full on the journals. The proposed amendments shall be published with the laws of that session, and also shall be published weekly in some newspaper, if such there be, within each county in the State, for four consecutive weeks next preceding the general election then next ensuing. The proposed amendments shall be submitted to a vote of the people, each amendment separately, at the next general election thereafter, in such manner as the General Assembly may provide. If a majority of the qualified voters of the State, voting for and against any one of said amendments, shall vote for such amendment, the same shall be deemed and taken to have been ratified by the people, and shall be valid and binding, to all intents and purposes, as a part of this Constitution.

(*a*) **In general.**—The power to make such amendments to the Constitution as may be essential to the promotion of the public good, necessarily includes the power to amend it in any particular, as well as in its total scope. State v. Bernoudy, 40 Mo., 192. The Supreme Court may look into the proceedings of the Legislature, to see that all pre-requisites to the adoption of amendments have been complied with, and that they have been adopted by proper majorities. State v. McBride, 4 Mo., 303. An amendment which is ratified by two-thirds of a quorum of either house, is ratified by two-thirds of that house. *Ibid*

§ **3. Calling a convention.**] The General Assembly may at any time authorize, by law, a vote of the people to be taken upon the question whether a convention shall be held for the purpose of revising and amending the Constitution of this State; and if at such election a majority of the votes on the question be in favor of a convention, the Governor shall issue writs to the sheriffs of the different counties, ordering the election of delegates to such a convention, on a day not less than three and within six months after that on which the said question shall have been voted on. At such election each Senatorial District shall elect two delegates for each Senator to which it may then be entitled in the General Assembly, and every such delegate shall have the qualifications of a State Senator. The election shall be conducted in conformity with the laws regulating the election of Senators. The delegates so elected shall meet at such time and place as may be provided by law, and organize themselves into a convention, and proceed to revise and amend the Constitution; and the Constitution when so revised and amended, shall, on a day to be therein fixed, not less than sixty days or more than six months after that on which it shall have been adopted by the convention, be submitted to a vote of the people for and against it, at an election to be held for that purpose; and if a majority of all the votes given be in favor of such Constitution, it shall, at the end of thirty days after such election, become the Constitution of this State. The result of such election shall be made known by proclamation by the Governor. The General Assembly shall have no power, otherwise than in this section specified, to authorize a convention for revising and amending the Constitution

SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the Constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

§ **1. Existing laws, rights, actions, etc.**] That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force until altered or repealed by the General Assembly; and all rights, actions, prosecutions, claims and contracts of the State, counties, individuals or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution, shall cease upon its adoption, except that all laws which are inconsistent with such provisions of this Constitution, as require legislation to enforce them, shall remain in force until the first day of July, one thousand eight hundred and seventy-seven, unless sooner amended or repealed by the General Assembly.

§ **2. Existing obligations and criminal proceedings.**] That all recognizances, obligations and all other instruments, entered into or executed before the adoption of this Constitution, to this State or to any subdivision thereof, or any municipality therein; and all fines, taxes, penalties and forfeitures, due or owing to this State, or any such subdivision or municipality; and all writs, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

§ **3. All county and probate courts** as now constituted and organized, shall continue with their jurisdiction, until the General Assembly shall by law conform them in their organization to the requirements of this Constitution.

§ **4. All criminal courts** organized and existing under the laws of this State, and not specially provided for in this Constitution, shall continue to exist until otherwise provided by law.

§ **5. All courts of common pleas** existing and organized in cities and towns having a population exceeding three thousand five hundred inhabitants, and such as by the law of their creation are presided over by a judge of a Circuit Court, shall continue to exist and exercise their present jurisdiction, until otherwise provided by law. All other courts of common pleas shall cease to exist at the expiration of the present terms of office of the several judges thereof.

§ **6. All persons now filling any office** or appointment in this State, shall continue in the exercise of the duties thereof, according to their respective commissions or appointments, unless otherwise provided by law.

§ **7. Appeals and writs of error.**] Upon the adoption of this Constitution, all appeals to and writs of error from the Supreme Court, shall be returnable to the Supreme Court at the City of Jefferson.

§ **8. Payment of bonded debt.**] Until the General Assembly shall make provision for the payment of the State and railroad indebtedness of this State, in pursuance of section fourteen of Article X, of this Constitution, there shall be levied and collected an annual tax of one-fifth of one per centum on all real estate and other property and effects subject to taxation, the proceeds of which shall be applied to the payment of the interest on the bonded debt of this State as it matures, and the surplus, if any, shall be paid into the Sinking Fund, and thereafter applied to the payment of such indebtedness,and to no other purpose.

§ **9. Election for the adoption of this Constitution.**] This Constitution shall be submitted to the people of this State for adoption or rejection, at an election to be held for that purpose only, on Saturday, the thirtieth day of October, one thousand eight hundred and seventy-five. Every person entitled to vote under the Constitution and laws of this State shall be entitled to vote for the adoption or rejection of this Constitution. Said election shall be held, and said qualified electors shall vote at the usual places of voting in the several counties of this State; and said election shall be conducted, and returns thereof made, according to the laws now in force regulating general elections.

§ **10. Poll-books, ballots, etc.**] The clerks of the several County Courts in this State, shall, at least five days before said election, cause to be delivered to the judges of election in each election district or precinct, in their respective counties, suitable blank poll-books, forms of return and five times the number of properly prepared printed ballots for said election, that there are voters in said respective districts, the expense whereof shall be allowed and paid by the several County Courts, as other county expenditures are allowed and paid.

§ **11. Form of ballots.**] At said election the ballots shall be in the following form:

NEW CONSTITUTION TICKET.
(*Erase the clause you do not favor.*)
New Constitution—Yes.
New Constitution—No.

Each of said tickets shall be counted as a vote for or against this Constitution, as the one clause or the other may be canceled with ink or pencil by the voter, and returns thereof shall be made accordingly. If both clauses of the ticket be erased, or if neither be erased, the ticket shall not be counted.

§ **12. Returns, how made—Proclamation by the Governor.**] The returns of the whole vote cast for the adoption and against the adoption of this Constitution, shall be made by the several clerks, as now provided by law in case of the election of State officers, to the Secretary of State, within twenty days after the election; and the returns of said votes shall, within ten days thereafter, be examined and canvassed by the State Auditor, State Treasurer and Secretary of State, or any two of them, in the presence of the Governor, and proclamation shall be made by the Governor, forthwith, of the result of the canvass.

§ **13. Result of the election—Constitution to take effect, when.**] If, upon such canvass, it shall appear that a majority of the votes polled were in favor of the new Constitution, then this Constitution shall, on and after the thir-

tieth day of November, one thousand eight hundred and seventy-five, be the supreme law of the State of Missouri, and the present existing Constitution shall thereupon cease in all its provisions; but if it shall appear that a majority of the votes polled were against the new Constitution, then this Constitution shall be null and void, and the existing Constitution shall continue in force.

(*a.*) **Majorities.**—It is to be presumed, in the absence of evidence to the contrary, that the voters voting at an election "held in pursuance of law and upon proper notice," are all the legal voters. State v. Binder, 38 Mo., 450. Those who did not choose to vote are to be considered as acquiescing in the action of those who do vote, and are bound and concluded by the result of the election. *Ibid.* See State v. Mayor, 37 Mo., 270; State v. Winkelmeier, 35 Mo., 103. See, also, *Central Law Journal*, Vol. II, No. 35, p. 560, and authorities cited in support of this position.

§ **14. Schedule to take effect, when.**] The provisions of this Schedule required to be executed prior to the adoption or rejection of this Constitution, shall take effect and be in force immediately.

§ **15. Laws to enforce Constitution.**] The General Assembly shall pass all such laws as may be necessary to carry this Constitution into full effect.

§ **16. Provisions as to existing executive officers.**] The present Secretary of State, State Auditor, Attorney General and Superintendent of Public Schools, shall, during the remainder of their terms of office, unless otherwise directed by law, receive the same compensation and fees as is now provided by law, and the present State Treasurer shall, during the remainder of the term of his office, continue to be governed by existing law, in the custody and disposition of the State funds, unless otherwise directed by law.

§ **17. Preliminary examinations.**] Section twelve of the Bill of Rights shall not be so construed as to prevent arrests and preliminary examination in any criminal cases.

Done in Convention, at the Capitol, in the City of Jefferson, on the second day of August, in the year of our Lord, one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundreth.

WALDO P. JOHNSON, President, St. Clair county.
N. W. WATKINS, Vice President, Scott county.

Adams, Washington	Cooper.	Letcher, Wm. H.,	Saline.
Allen, DeWitt C.	Clay.	Lay, Alfred M.,	Cole.
Alexander, A. M.,	Monroe.	Mabrey, Pinckney,	Ripley
Black, Francis M.	Jackson.	Massey, B. F.,	Newton.
Boone, Henry,	DeKalb.	Maxey, James Harvey,	Howell.
Bradfield, George W.,	Laclede.	McAfee, Charles B.,	Greene.
Broadhead, James O.,	St. Louis.	McKee, Archibald V.,	Lincoln.
Brockmeyer, Henry C.,	St. Louis.	McCabe, Edward,	Marion.
Carleton, George W.,	Pemiscot.	McKillop, Malcolm,	Atchison.
Chrisman, William,	Jackson.	Mortell, Nicholas A.,	St. Louis.
Conway, Edmund V.,	St. Francois.	Mudd, Henry Thomas,	St. Louis.
Cottey, Louis F.,	Knox.	Nickerson, Edmond A.,	Johnson.
Crews, T. W. B.,	Franklin.	Norton, Elijah Hise,	Platte.
Crockett, Samuel R.,	Vernon.	Pipkin, Philip,	Jefferson.
Davis, Lowndes Henry,	Cape Girardeau.	Priest, William,	Platte.
Dryden, Leonidas J.,	Warren.	Pulitzer, Joseph,	St. Louis.
Dysart, Benjamin Robert,	Macon.	Ray, John,	Barry.
Edwards, John F. T.,	Iron.	Rider, J. H.,	Bollinger.
Edwards, James C.,	St. Louis.	Ripey, J. R.,	Schuyler.
Eitzen, Charles D.,	Gasconade.	Roberts, James C.,	Buchanan.
Farris, James L.,	Ray.	Ross, J. P.,	Morgan.
Fyan, Robert W.,	Webster.	Ross, John W.,	Polk.
Gantt, Thomas Tasker,	St. Louis.	Rucker, John Fleming,	Boone.
Gottschalk, Louis,	St. Louis.	Shackelford, Thos.,	Howard.
Hale, John B.,	Carroll.	Shanklin, John H.,	Grundy.
Halliburton, W.,	Sullivan.	Shields, George H.,	St. Louis.
Hammond, Charles,	Chariton.	Spaunhorst, Henry J.,	St. Louis.
Hardin, Neil Cameron.	Pike.	Switzler, William F.,	Boone.
Holliday, J. A.,	Caldwell.	Taylor, John H.,	Jasper.
Hyer, John,	Dent.	Taylor, Amos Riley,	St. Louis.
Johnson, Horace B.,	Cole.	Todd, Albert,	St. Louis.
Johnston, T. J.,	Nodaway.	Wagner, L. J.,	Scotland.
Lackland, Henry Clay,	St. Charles.	Wallace, Henry C.,	Lafayette.

ATTEST:
J. BOYLE ADAMS, Assistant Secretary.
G. N. NOLAN, Secretary.

VOTE ON FINAL ADOPTION OF THE CONSTITUTION.

On Monday, August 2, 1875, the vote was taken in the Convention by ayes and noes on the adoption of the Constitution, as a whole, with the following result:

AYES—60; NAYS—None.

ABSENT—Messrs. James A. Holliday of Caldwell, Thomas J. Johnston of Nodaway and Joseph Pulitzer of St. Louis—3.

ABSENT WITH LEAVE—Messrs. L. J. Dryden of Warren, John B. Hale of Carroll, Charles B. McAfee of Springfield, James P. Ross of Morgan and Thomas Shackleford of Howard—5.

AN ORDINANCE

TO PREVENT THE PAYMENT OF 1,918 BONDS AND THEIR COUPONS, WHICH HAVE BEEN ALREADY REDEEMED BY THE STATE OF MISSOURI.

Be it ordained by the People of Missouri, in Convention assembled: That the General Assembly of the State of Missouri shall have no power to make any appropriation of money, or in any manner, directly or indirectly, to provide for the payment of any one of nineteen hundred and eighteen (1918) bonds, or the coupons attached thereto, each for the sum of one thousand dollars, and seven per cent. interest, payable semi-annually, the principal payable twenty years after January 1, 1856, executed by the Pacific Railroad of the State of Missouri, under authority of an act of the General Assembly of Missouri, passed December 10, 1855, and guaranteed by the State of Missouri, the numbers of which bonds are as follows: Bonds numbered from 1 to 370, inclusive of both; 375 to 395, inclusive of both; 397 to 474, inclusive of both; 493, 535, 536, 542, 543, 547, 554, 557, 558, 559, 585 to 589, inclusive of both; 592 to 596, inclusive of both; 601 to 622, inclusive of both; 624 to 701, inclusive of both; 709, 717 to 722, inclusive of both; 724, 725, 726, 732, 733, 734, 835, 836, 837, 841, 842, 843, 844, 845, 849, 850, 851, 868, 869, 882 to 889, inclusive of both; 891 to 898, inclusive of both; 902, 904, 971 to 1,001, inclusive of both; 1,028, 1,041 to 1,050, inclusive of both; 1,080, 1,084, 1,085, 1,086, 1,109, 1,110, 1,146, 1,150, 1,153, 1,181, 1,183, 1,186, to 1,212, inclusive of both; 1,228, 1,281, to 1,293, inclusive of both; 1,300, 1,343, 1,412, 1,418 to 1,436, inclusive of both; 1,484, 1,501 to 1,512, inclusive of both; 1,583, 1,584, 1,597 to 1,601, inclusive of both; 1,659 to 1,662, inclusive of both; 1,664, 1,720, 1,829, 1,836, 1,851 to 1,861, inclusive of both; 1,864 to 1,869, inclusive of both; 1,876 to 1,886, inclusive of both; 1,892 to 1,897, inclusive of both; 1,926 to 1,943, inclusive of both; 1,946 to 1,951, inclusive of both; 1,954, 1,956, 1,957, 1,959, 1,960, 1,971, 1,972, 1,973, 1,976 to 1,990, inclusive of both; 1,992 to 1,998, inclusive of both; 2,000, 2,011, 2,012, 2,013, 2,018, 2,029, 2,030, 2,044 to 2,046, inclusive of both; 2,074 to 2,077, inclusive of both; 2,081 to 2,087, inclusive of both; 2,096, 2,097, 2,143, 2,144, 2,152 to 2,166, inclusive of both; 2,211 to 2,215, inclusive of both; 2,221 to 2,240, inclusive of both; 2,273 to 2,481, inclusive of both; 2,483 to 2,493, inclusive of both; 2,496 to 2,500, inclusive of both; 2,502, 2,506, 2,544 to 2,550, inclusive of both; 2,552, 2,555 to 2,577, inclusive of both; 2,601 to 2,607, inclusive of both; 2,609 to 2,621, inclusive of both; 2,633, 2,654 to 2,693, inclusive of both; 2,698, 2,699, 2,711 to 2,730, inclusive of both; 2,761, 2,763, 2,764, 2,765, 2,767, 2,768, 2,769, 2,771 to 2,775, inclusive of both; 2,787, 2,788, 2,790, 2,845, 2,852 to 2,870, inclusive of both; 2,882 to 2,900, inclusive of both; 2,902, 2,903, 2,915, 2,921 to 2,983, inclusive of both; 2,985, 3,006, 3,007, 3,022 to 3,043, inclusive of both; 3,047 to 3,071, inclusive of both; 3,073 to 3,082, inclusive of both; 3,085 to 3,107, inclusive of both; 3,132, 3,143 to 3,214, inclusive of both; 3,299 to 3,348, inclusive of both; 3,373 to 3,483, inclusive of both; 3,488 to 3,500, inclusive of both; 3,601 to 3,686, inclusive of both; 3,690 to 3,800, inclusive of both; which bonds have been redeemed by the State of Missouri, deposited as securities available to the State in dealing with the Pacific Railroad, in the vault of the treasury, and while the same were in said vault, withdrawn from circulation as negotiable instruments, were criminally taken therefrom.

This ordinance shall become part of the organic law, if the Constitution be adopted by the people on the 30th October, 1875.

INDEX

TO THE

CONSTITUTION OF MISSOURI.

Compiled by Wm. G. Myer, Esq.

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