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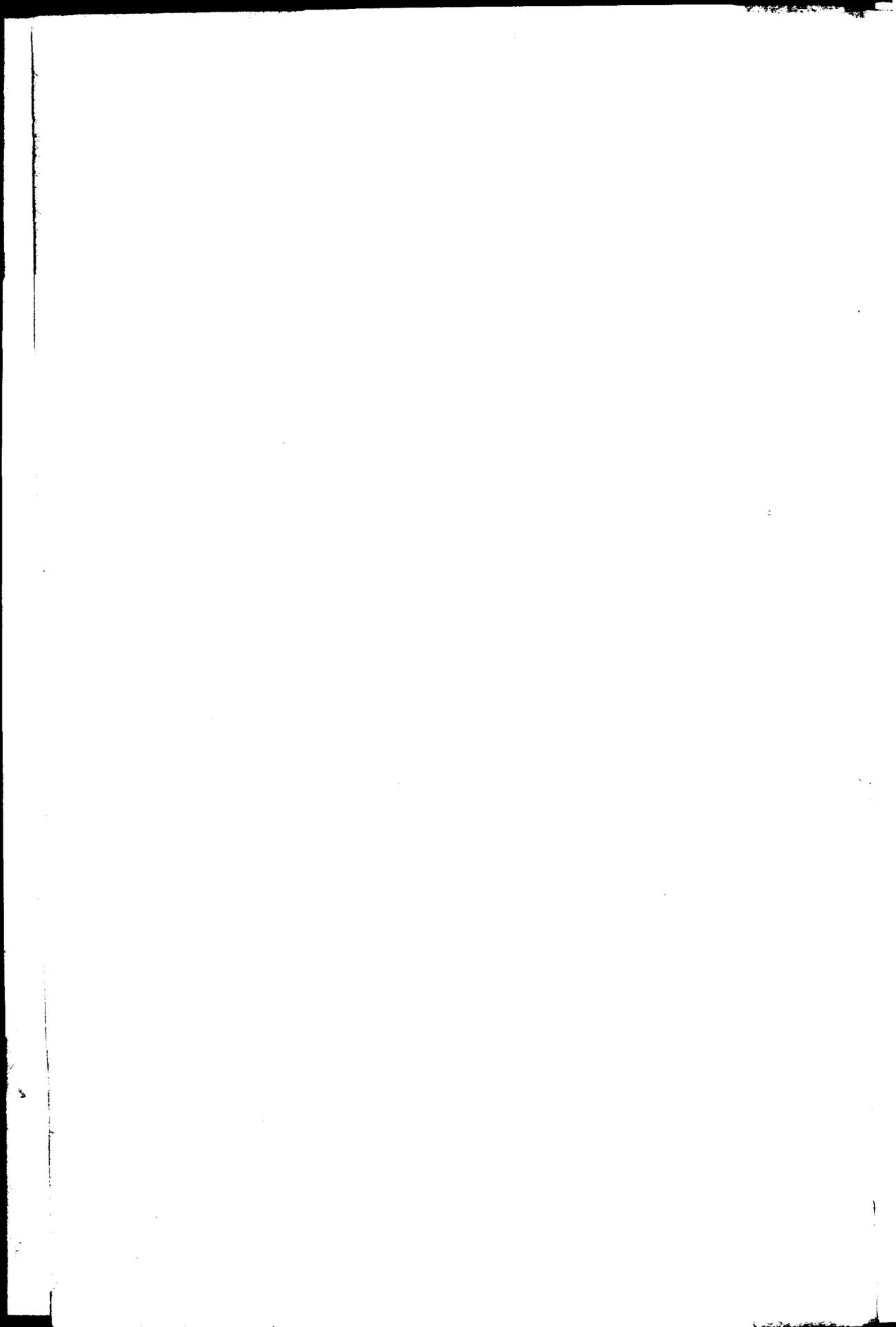
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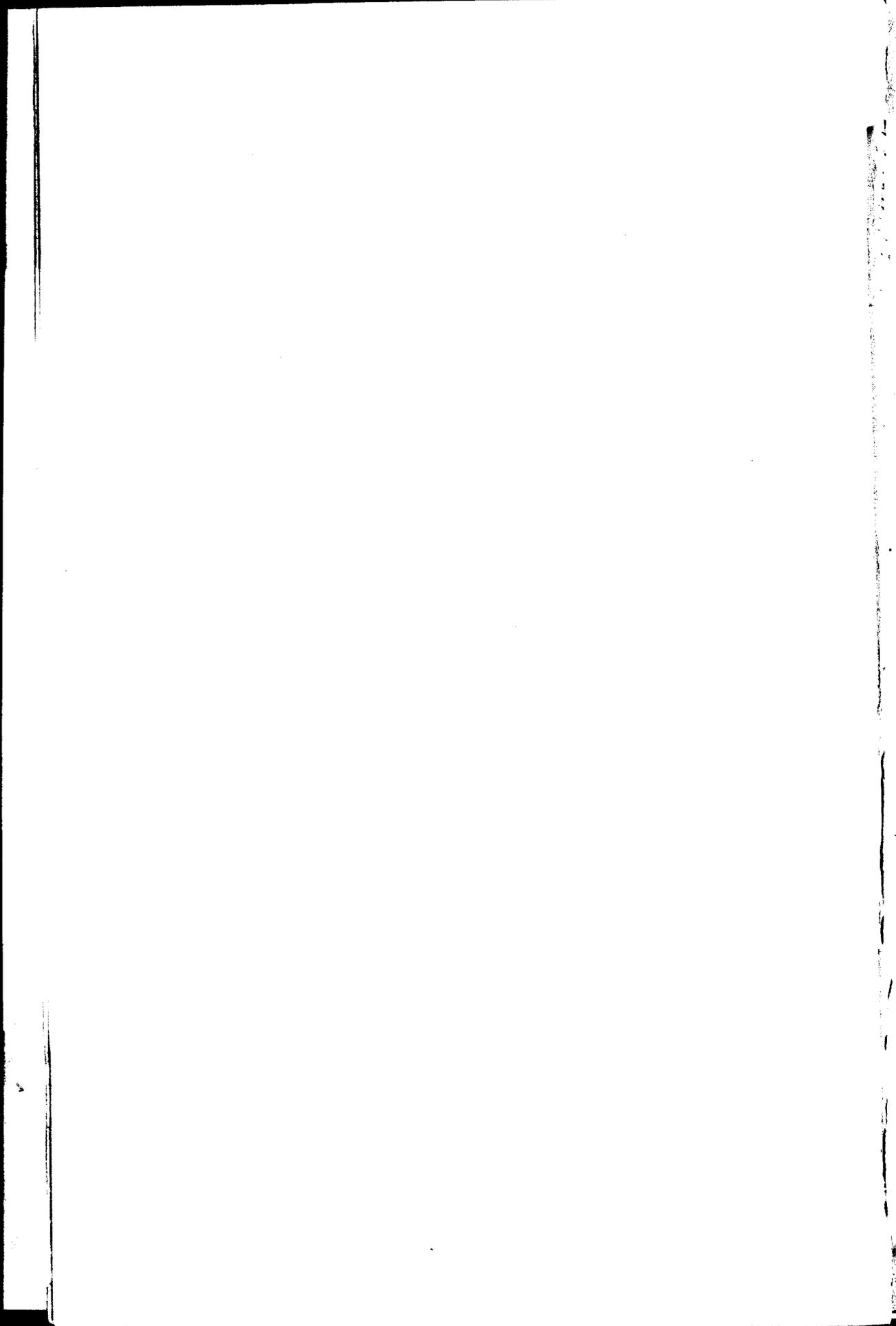
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OUR

“REMEDY IN THE LAWS.”

BY C. L. BONNEY,
OF THE CHICAGO BAR,
Author of “Railway Law for Railway Men.”

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OUR "REMEDY IN THE LAWS."

[NOTE.—That the gentlemen with whom I am associated in the practice of the law should not, in any way, be criticised by reason of this publication, and that none of the judges need be prejudiced against them on this account, it is but just to them for me to state that none of them had any knowledge whatever of the preparation of this article.—C. L. B.]

In 1870 the people of Illinois adopted a new constitution, "in order to form a more perfect government, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity." And, to accomplish these results, the powers of the government were divided into "three distinct departments," with provisions under which men should be hired to administer the powers of each. It was also provided that the hired men of one department should not exercise any power properly belonging to either of the others, except as expressly directed or permitted.

The convention which formed this new constitution was in session fourteen weeks. The provisions calculated to attain the "more perfect government" were proposed, referred to a committee, debated, referred back to the main body, again debated, again re-committed and finally enrolled. Any one who examines the lengthy proceedings and debates of this convention must be convinced that it consisted of able and conscientious citizens, who had the welfare of the whole common people at heart. If the hired men of the three departments of the State, who now possess the powers conferred on them by the common people, were better acquainted with this constitution and the proceedings of convention which formed it, they would better understand the obligations of their oaths of office, and the general welfare might be promoted without a resort to anarchism, strikes and bomb throwing, as a means of securing redress, and a toleration of coal conspiracies, railway pools and extortions on the other, concentrating the wealth of the nation in the hands of a few at the expense of the many.

Early in the proceedings of the convention Mr. Goodell said:

Under the administration of the laws of this State, I say here, before this convention, the people of Illinois, in my judgment, do not get their rights freely. A poor man can not get his rights; he is not able to purchase them.

Another proposition is that the people ought to have their rights promptly, without delay in the operation of our judicial system. I have had some experience as a business man under the laws of the State, and I say here, that if I had a good straight claim against a neighbor of mine, who had the disposition and the means to resist, and fight with legal weapons against payment, I would rather give up a claim for \$500 than go into the courts in my district to collect that claim.

I could make more than that amount of money in attending to my own legitimate business before I could collect the claim. We can neither get our rights freely nor promptly.

Now, sir, what are the great interests of this State? I claim, sir, that the great interests of the people of this State are, first, the agricultural, then mechanics, and then, if you please, mining; for if it is not the third interest in the State now, it soon will be. Now, sir, when I look about me and observe the composition of the mem-

bers of this convention what do I see? I see that fifty or sixty members of this convention are lawyers. I am not saying anything against lawyers; they are just as good as laboring men if they behave as well—if they are honest.

The question that I want to get at is this: whether the great interests of the people—the whole people of the State—are in unison with the profession of a majority of the members of this convention? Will members of this convention permit the judiciary of this State to be so reformed, remodeled and improved as to meet the demands of the people of this State?

It is with reference to this question that I have offered this resolution, to which I call the attention of this house. I tell you, Mr. President, that the laborer, the honest, hard fisted laborer, the farmer, the mechanic and the miner, the poor men of the State, require protection. The wealthy, the strong, do not require the protection of the law. I stand here as a representative of the laboring classes of the State and I wish to see their interests protected.

The resolution introduced by this member, passed through the usual routine, was finally adopted and now appears in the constitution in the following form:

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

It is now sixteen years since that provision was adopted, and I ask the common people of this State if, during these sixteen years, rights have been secured more freely, or with less expense than previous to 1870? Or, if to-day any one has a "good, straight claim against a neighbor who has the disposition and means to resist and fight with legal weapons against payment," he can afford to enter into a legal contest? Is it not safe to say that at the present time the "remedy in the laws" is less certain than formerly; that right and justice are not free; that they can be secured, if at all, only at great expense and after long and tedious delays? Questions of form, pleading, practice or construction, have, in very many cases, crowded out the merits of the case and technical points have multiplied. Under the guise of construction courts have made and unmade laws, until a judicial oligarchy has been created, and hired men, who take oath to support the constitution, assume to construe away or ignore their creator. So uncertain has become the construction which may be placed upon a legislative act by the judicial department that the passage of a law does not, of itself, command respect, until its supposed legality—often in a made up and bogus case—has received the judicial sanction.

This constitutional guaranty of a certain remedy existed in substantially the same form in the constitutions of 1818 and 1848. As it appeared in the constitution of 1848, it served as an authority in two cases, as follows:

In *Wilson v. McKenna*, 52 Ill. 48, the court said:

That provision of the general revenue law has long remained a dead letter upon the statute book, and is not considered of any validity, the effect of it being to compel a man to buy justice. This no man can be compelled to do under our organic law. By that it is declared, that every person in this State ought to obtain right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws. Should justice be denied to him who has not wherewithal to pay for it? The conditions imposed by this act deprive a poor man of justice, and have no sanction in the constitution.

In *Reed v. Taylor*, 56 Ill. 292, for the same reason the court decided that a requirement, in an act, that redemption money and interest should be paid as a condition precedent to questioning the validity of a tax deed must be held to be nugatory.

The first of these cases was decided in 1869, and the second in 1870; but I have not been able to find that these excellent precedents have been followed in any case since the latter date.

Not long ago a case was decided by the Supreme Court which contains, in my judgment, a shocking commentary on our so-called administration of justice, and well illustrates how the abilities of the officers of the greatest department of our government are perverted to the useless solution of such technical objections or exceptions as may be discovered by sharp lawyers.

If two persons have litigated a matter in the trial court and its judgment is appealed from, the natural supposition of common people would be that the functions of this governmental department, in reviewing the appeal, were to consider the right and justice of the subject-matter of the controversy and decide accordingly; but the decision now referred to indicates that the hired men of the judicial department care little for right, justice or merit.

A judgment of ejection had been entered against a man named Martin, and an appeal from this judgment was taken to this debating society of legal technology. Among other things, Martin claimed that the judgment was wrong because the proof did not show title in the plaintiffs and that it did not warrant such a judgment in favor of the plaintiff—two questions affecting the vitals of the case.

Clearly this Martin had the constitutional right, in his appeal, to have determined whether he had been legally deprived of his property or not, but our custodians of the remedy in the laws with its so called free, complete and prompt right and justice, took another view of the matter, having discovered a microscopic technical point.

The record in the case did not show that the lawyer for Martin had excepted to the finding of the trial court in technical manner and form, although there was a recital inserted by the clerk of the court that such an exception was, in fact, taken.

The court said (*Martin v. Foulke*, 114 Ill. 208):

In the view we take of this case it is unnecessary to inquire whether any of the above errors are well assigned or not.

The position of appellants, as we understand it is this: that if the court, upon the trial of a cause, makes an improper ruling against a party, to which no exception is taken, he may, nevertheless, on appeal, assign for error the improper ruling; and if the opposite party joins in error, the only inquiry then will be, whether, as a matter of fact, the error occurred, and, if it did, the complaining party may avail himself of it precisely in the same way and to the same extent as if the proper exception had been taken. Whatever may be the rule in this respect elsewhere, it certainly can not be the law here. *The reports of this State abound with instances of erroneous rulings by trial courts which this court has uniformly refused to consider*, on the ground no exceptions were taken to them; in all of which, except in a case now and then omitted through inadvertence, there was a joinder in error.

Whether the failure in stating of the exception at the proper time and place was the mistake of the lawyer, or clerk of the court, does not appear; but it is apparent that such mistake was sufficient to deprive the unfortunate Martin of all opportunity to be heard, and amounted to a plain and unwarranted denial of right and justice. The effect of affirming the judgment of the trial court on such a technical ground as that expressed in the opinion, was that Martin should be deprived of his property, whether the proof warranted the judgment or not, and solely because of a formal mistake of the lawyer or clerk.

That practice in the administration of the judicial department has abounded with uncertainties, technicalities, delays and great expense, has long been known to the legal profession, and it has been experienced by many who have sought for redress through the laws only to meet with disappointment. But that the Supreme Court has "uniformly refused to consider" the erroneous rulings of trial courts, merely because of some stupid mistake of form, and which could not affect the justice, substance or mer-

its of the case, is an official declaration of impotency, the boldness of which is exceeded only by its unjustness.

In *Smith v. Stevens*, 82 Ill. 556, a law which had been passed by the legislature, giving a new remedy, was under consideration, and the Supreme Court, in considering it, said:

It is emphatically a remedial act, and, in accordance with a well established canon, it must receive a liberal construction and be made to apply to all cases which, by a fair construction of its terms, it can be made to reach.

Now, that rule of construction is fair and will commend itself to all people as being sound common sense and supporting the constitutional idea of right and justice. But let us see how easily a different whim may be applied.

Every one has heard of the Mechanic's Lien Law, and the general idea of the statute is that it was enacted to give a remedy to workmen and contractors for the recovery of the amount due them for labor or materials. Then, under the decision last cited, it should be liberally construed, should it not?

In *Belanger v. Hersey*, 90 Ill. 72, the court said:

The statute which gives a mechanic a lien is in derogation of the common law [of England] and must receive a strict construction; and no person can obtain a lien under it unless a clear compliance is shown with the requirements of the statute. See also 64 Ill. 336; 64 Ill. 452; 64 Ill. 502; 65 Ill. 67; 74 Ill. 375.)

Other illustrations of the manner of construing legislative acts may be obtained by comparing the following cases:

The case of *Frye v. C., B. & Q. R. R.*, 73 Ill. 399, was for the recovery of damages against the railroad company for bringing Texas cattle into the State, and the liability depended upon the construction given to a certain statute. The court applied the following rule of construction:

The fittest course, in all cases where the intention of the legislature is brought into question, is to adhere to the *words* of the statute, construing them according to their nature and import, in the order in which they stand in the act, rather than enter upon an inquiry as to the supposed "intention."

The effect of this construction was to let the company out of all liability. Nevertheless the rule is a fair one, but it is not always followed, as may be seen by the next case against the same railroad corporation.

In *Anderson v. C., B. & Q. R. R.*, 117 Ill. 28, the Supreme Court was called upon to construe an act of the legislature, "that all bridge structures across any navigable streams, forming the boundary line between the State of Illinois and any other State, shall be assessed by the township or other assessor, in the county or township where the same is located, as real estate." The bridge of the Burlington company across the Mississippi river was therefore taxed, but the company commenced suit to enjoin the collection of the tax. The Supreme Court said:

Stress is laid upon the word "all"—"all bridge structures," that this must include the bridge in question; that it is not allowable to interpret what has no need of interpretation. It must be admitted that this bridge comes within the letter of the statute, but it is not within its meaning. A thing which is within the letter of a statute is not within the statute unless it be within the intention of the makers. In determining the meaning of a statute, we are not confined to its *words*, but may regard its purpose—consider it, in connection with other statutes *in pari materia*, and in view of the condition existing.

The injunction was sustained and the bridge was not taxed, as provided for in the statute quoted.

In *People v. Loewenthal*, 93 Ill. 198, the whim of the court is expressed in the following language:

Words often have a popular sense, different from their strict technical import, and courts are not infrequently called upon, in the construction of language, to hold that words are used in a popular sense where they have a different technical meaning.

This resulted in the conclusion, that the phrase "corporations with banking powers," as used in the constitution of 1848, did not include a corporation "to loan money, to buy and sell, exchange bills, notes, bonds, or other securities, to have and hold money and issue letters of credit." The court went so far as to admit that the corporation, "unquestionably, has *some* banking powers, but it has not *full* banking powers, as it is not authorized to issue bank notes to circulate as currency," but the neck of the corporation depended on some kind of construction, and the court declared that the popular understanding of a corporation with banking powers "is that of a bank of issue, and that there is reason to believe that the words banking powers in this case were employed in accordance with such popular understanding." The court used over fifteen pages of explanation for arriving at such a conclusion, and then follows seven pages of dissent from the chief justice, which far outweighs the opinion of the majority. He says:

This language of the constitution seems to me to be plain, unambiguous and free from all doubt as to its meaning. * * Courts have no right to go outside of plain language to create a doubt that construction may be had. * * In such cases it is the duty of courts to enforce the provision as it is written, and if hardship is produced the fault is not theirs, but of those who framed, and the people who adopted it as the fundamental law. I can see that to enforce this section, as I understand it, much hardship and inconvenience may ensue, but * * such considerations should not induce courts to endeavor to avoid such results unless in cases of doubt; hence the argument of inconvenience, urged by counsel, should not control in this case.

In *Town of Bruce v. Dickey*, 116 Ill. 527, the Supreme Court was called upon to construe the following section of the constitution:

Sec. 16, Art. 6. * * From and after the adoption of this constitution no judge of the Supreme or Circuit Court shall receive any other compensation, perquisite or benefit in any form whatsoever, nor perform any other than judicial duties to which may belong any emoluments.

The court construed this as not prohibiting one of its own number from "practicing law for a compensation." If the Supreme Court is right, then it is only a question of whim as to whether its seven members should not hire out as general solicitors for railroad corporations and each take turns in practicing before its own court, and as only four are necessary to every decision, three members of the court might continually practice laws. That they would is perhaps an extreme supposition, but it well illustrates the extent of the rule. What a ridiculous spectacle it would be to see two railroad corporations fighting each other in the Supreme Court, each being represented by a judge of that court acting as attorney under the pay of the respective corporations, and at the same time drawing a salary from the State as judge; or how equally ridiculous would it be for supreme judges to advocate or oppose the claims of railroad corporations before a Circuit Court, and then review the finding of the trial court on appeal, either openly or in the star chambers conferences of their own body.

At the time the subject of this constitutional provision was being discussed by the constitutional convention, the provision then read that "no judge of *any court* shall receive any other compensation," etc. Mr. Springer said:

I have an amendment to strike out the word "any" before "court" * * and insert in lieu thereof the words "the supreme or circuit." The way it reads now it includes the judge of the Probate Court and the judge of the County Court. It is not the intention, I believe, to make these officers' salaries sufficient for them to live on, and the amendment I offer will give them an opportunity to pursue some other

business. *It is sufficient, in my judgment, to exclude the Circuit and Supreme judges from receiving any additional compensation.* The section as it now stands will almost destroy the efficiency of the County Courts. It will be necessary, if we elect a lawyer judge of the County Court, to permit him to practice in the Circuit Courts. He could then serve as county judge for a comparatively small salary.

The amendment offered by Mr. Springer was thereupon agreed to.

The intention of the convention is, therefore, too plain to need comment, but as a further quotation, indicating the intent of this provision, it may be added that Mr. Skinner, the chairman of the committee which prepared the section, said:

* * The committee endeavored to make the language so broad as to cover everything beyond salary.

Not only does this language seem to prohibit the practice of law for additional compensation, but it also seems to exclude the "benefit" of railroad passes or other continuous gratuities or pensioning.

These cases illustrate the deplorable uncertainty which exists in one distinct department of our State government. From them it appears that if any legislative act is submitted to the hired men of the judiciary for review, it may be strictly construed to produce one result; it may be liberally construed to produce something else; the court may confine itself to the "words" of the statute; it may ramble among "supposed intentions," or the words may be considered in a popular or technical sense, as its own whim inclines; and in either or any case it will be able to fortify its opinion by precedents of its own manufacture.

This should be taken into consideration before legislators are abused for not accomplishing some end desired by the people. Thus it appears almost useless to elect representatives to pass new laws or to harmonize our conflicting statutes, and this perhaps explains why so many acts are a dead letter on the statute books. This winter a bill relating to the taxation of corporate property will come before the General Assembly for consideration, but of what use will it be to pass any measure to equalize the taxes for the relief of the people, if its plain language is to be frittered away by the Supreme Court, as was done regarding the taxing of all bridge structures before referred to?

In *Ferguson v. People*, 90 Ill. 510, 1878, the Supreme Court decided that the Circuit Court had no original jurisdiction in cases of assault, or assault and battery, and a criminal was accordingly set free; but in 1880, in *Wilson v. People*, 94 Ill. 427, the Supreme Court said that in deciding the *Ferguson* case their attention was not called to article 6 section 12 of the constitution, which declares that "the Circuit Courts shall have original jurisdiction in all cases of law and equity."

Thus it appears that these hired men, after having taken an oath of office to support the constitution, frankly admit that in deciding this case they entirely overlooked an important constitutional provision which relates exclusively to their own department of the government.

I do not at all intend to impute that members of the judiciary intentionally violate the obligations of their oath, but I do think that the records clearly show that the courts have carelessly neglected the requirements of that declaration of the bill of rights which proclaims that:

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

If rights were determined in reference to these principles a large body of the people would not find it necessary to demand compulsory arbitration as a means of settling grievances.

About a year ago Judge H. T. Gilbert, of Ottawa, Illinois, published a book entitled "Railroads and the Courts," in the preface of which he says:

Out of a total of sixty-three judgments rendered by the Circuit Courts against the four leading railroad companies of this State, in cases which involved the question of negligence, and were tried by jury, and which came before the Supreme Court for review, from June, 1873, to June, 1884, fifty-three were reversed and but ten affirmed, five of which were affirmed upon the first trials, and the other five upon the second and third trials. On the other hand, out of a total of fifty-three judgments of conviction in criminal cases, reviewed by the Supreme Court during the period covered by the last ten volumes (101-110) of the Illinois Reports, thirty-two were affirmed and but twenty-one reversed.

These facts, taken in connection with the further fact that nearly all the judgments rendered by the Circuit Courts against the four railroad companies referred to, are appealed from, and that a majority of the judgments of conviction in criminal cases are acquiesced in, and not attempted to be reversed upon error, seemed to the author, after due consideration, to be wholly inconsistent with a reasonably perfect system of administering justice.

That the administration of justice in this State is discreditable has long been a matter of common notoriety, but as to who must be held responsible for the injustice done in our courts, there is, of course, a wide difference of opinion.

The views entertained by the judges of inferior courts, and which, of course, are not to be found in written opinions, but are nevertheless frequently otherwise expressed in clear and unmistakable terms, are that the responsibility for our present lamentable condition of affairs belongs to a great extent to the Supreme Court, and it is believed the same views are entertained by a majority of the intelligent members of the legal profession.

Judge Gilbert then enters into elaborate comparisons of the opinions of the Supreme Court in accident cases, and demonstrates to a certainty that in such cases right and justice have been almost abandoned, and abstract legal problems, and hair splitting technicalities have been uniformly resorted to, with unjust and unequal benefits to railway corporations and wealthy monopolies and great detriment to the people. His work concludes with many valuable suggestions, and is well worth the careful study of all lovers of American liberty and equality. He demonstrates with statistical reliability that in about six out of seven cases against railroad companies, involving negligence by the company, which resulted in bodily injury or death, and in which the jury found a verdict against the company, the Supreme Court upsets such verdict by the use of strained constructions and technicalities.

That these railway corporations have such remarkable success in the Supreme Court, when lien laws are strictly construed, and erroneous rulings of trial courts are not corrected because of some formal mistake of lawyer or clerk, is a subject which may well deserve the consideration of thoughtful citizens.

The constitution of 1870 contains the following provisions:

Sec. 14. Bill of Rights. No * * law * * making any irrevocable grant of special privileges or immunities shall be passed.

Art. 11. Sec. 1. No corporations shall be created by special laws, nor its charter extended, changed or amended. [Except for charitable and other purposes to be under control of the State.]

Art. 11. Sec. 2. All existing charters, or grants of special or exclusive privileges, under which organization shall not have taken place, or which shall not have been in operation within ten days from the time this constitution takes effect, shall thereafter have no validity or effect whatever.

Art. 11. Sec. 12. Railways heretofore constructed or that may hereafter be constructed in this State are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon under such regulations as may be prescribed by law. And the General Assembly shall from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads of this State.

The proceedings of the convention which formed this new organic law indicate that

these provisions received as thorough discussion as any subject which was presented for consideration. The old Dartmouth College case, vested rights, corporate oppressions, and rights granted but not then in exercise or operation, were considered in every detail.

The intent of Art. 11, Sec. 2, is made more clear by reference to the debates of the convention. This section was being debated and was in substantially the same form as it now appears in the constitution, except that it was limited in its terms to grants to individuals. The late S. S. Hayes, of this city, said:

It occurs to me that we should provide not only for individuals, but for other grants. For example, suppose a corporation—railroad corporation—have a grant, a privilege of making another road. There is a grant to a corporation. This substitute provides only for grants to individuals.

I move to amend, by striking out the words "to individuals." No matter whether these exclusive privileges are offered to individuals or corporations, in either case they should be controlled.

The amendment of Mr. Hayes was accepted and was agreed to by the convention as it now appears in the constitution.

In discussing this provision Mr. Skinner said:

If there be vested rights, this provision will not divest them; if there are no vested rights, and the thing is merely ideal—in paper—unsubstantial—a potential, inchoate thing, then it is perfectly within the power of the legislature or this convention to wipe it out. * * If there is a vested right, that vested right remains; but where there are no vested rights it wipes out this vast volume of special legislation which has been stolen through our general assemblies, and which will be used according to the theory of my opponents, for all time, to dwarf us and crush us.

Considering these several provisions respecting corporations in the light of the proceedings of the convention, I am led to the conclusion that their object was to declare that all grants to individuals who had not organized their corporations, or, if organized, all privileges which were not in actual operation, within the ten days specified, were by the constitution repealed, annulled and obliterated. No more special charters! No more special privileges! No more rights to be vested! No irrevocable contracts! But that every future corporation and every privilege afterward put "in operation" should be "under such regulations as may be prescribed by law."

At the time the constitution was voted upon by the people these speeches were fresh in mind, and it must be assumed that in adopting such provisions they were intended to shape the future policy of the State. They are the declarations of the mass of the people in their sovereign capacity. At that time a great public sentiment existed against the thousands of wild-cat charters and unused privileges which had been granted by the legislature and used for blackmail and other illegitimate purposes. All special legislation was prohibited where a general law could be made applicable.

Now let me use a few illustrations of the manner in which the hired men of the judicial department have failed to apply these commandments, and they will also illustrate that our state of society depends, not as much on abstract principles as on the faithful application of such principles by servants trusted with such application.

At the time this constitution went into effect the Chicago & Evanston Railroad Company was existing, under a special charter passed in 1861 and amended in 1865, and was at that time entitled to operate its cars "with animal power only." In 1883 the common council passed an ordinance authorizing this horse-car corporation to conduct "all general business incident to railroads, by freight, passenger and other cars, or by steam or other power."

The constitutionality of this ordinance was presented to the Supreme Court (112 Ill. 611) but what was the result? The majority opinion mildly dismisses this important constitutional question without discussion and by this feeble remark:

We can not say that the charter of this company was not in operation at the time of the adoption of the constitution of 1870.

After a lengthy discussion of other questions, the supposed power of the council to create a railroad for general business out of the charter of a horse car company, is sustained, but fifteen pages of a dissenting opinion are added, in which is demonstrated beyond question that the majority of the court was wrong, and that the company could have no legal existence as a corporation for general railroad business.

The charter of this company is that notorious piece of legislative corruption called the "Ninety-Nine Year Act," which was passed over the governor's veto in 1865, and which also applies to the north, south and west side railways of Chicago. What would be said if the council should now propose to convert the North Clark street, South State street and West Madison street horse car roads into steam roads for general freight and passenger traffic? The numerous railroad ordinances which have been passed by the common council of Chicago in recent years have subjected the members of that body to very uncomplimentary criticism, but in the same connection it should be remembered that in almost every case in which aldermanic jobbery for railroads has been submitted to the Supreme Court for review, that jobbery has been consummated only by legal quibbles and unjust technicalities through the aid of the judicial department of the State. If our judicial department was conducted for the promotion of pure, simple "right and justice," instead of the solution of legal theories, and if these franchises were to rest on fundamental principles instead of technicalities, at least one invitation for legislative corruption would not exist and a somewhat extensive and increasing contempt for courts would disappear.

In *Chicago City Railway Co. v. People*, 73 Ill. 541, it appears that the common council, in 1871, amended an ordinance which was passed in 1864, and which attempted to extend the time within which the Indiana avenue line of railroad might be constructed. The constitutionality of the extension being in question the court sustained the validity of the amended ordinance, and said:

Courts proceed with great caution in proceedings which have for their object the forfeiture of corporate franchises. It is not every non-performance of the condition in the act of incorporation, or every misuser, that will forfeit the grant.

But that the ordinance was in conflict with the new constitution was apparent to one judge, who, in a dissenting opinion, said (p. 552):

At the time of the passage of the ordinance of Nov. 13, 1871, it is apparent that the City Railway Company did not have the rights which that ordinance purports to have conferred. Had the legislature itself, at that time, granted such rights to this company, the act would have been in plain violation of the constitution, as granting by a special law to a corporation the right to lay down a railway track, and as granting, by a special law, a special privilege to a corporation. How can it be then that the common council of the city of Chicago can, by a special ordinance, give to a corporation the right to lay down railroad tracks, when the legislative power of the State can not, by special law, do so; that the agent can exercise a larger power than the principal? It is a general rule of law that the derivative authority expires with the original authority from which it proceeds. The derivative authority can not, generally, mount higher or *exist longer* than the original authority.

Why the judicial department should apply a strict construction against a mechanic who seeks to obtain his rights under the lien law, when it proceeds "with great caution" in considering the forfeiture of a corporate franchise, is not known to the writer and can not be explained; but it is safe to say that the difference in principle, if there

is any, undoubtedly rests on some microscopic, aboriginal legal germ which will remain unknown until discovered and defined by such wonderful legal minds as emanate the decisions now under review.

In *People v. Chicago West Div. R'y Co.*, the common council passed an ordinance permitting the company to extend its road on Ogden avenue to the city limits, and specifying that it should be in operation to Lawndale, "as soon as the same can be constructed, operated and kept in repair without actual loss." In 1884, a committee of the council, upon notice to the company, found that the road could then be constructed, operated and repaired without actual loss, and so reported to the council. An order was then passed, directing the company to construct the road within sixty days. The company refused to comply with the order, and a mandamus suit was commenced to compel such compliance. The opinion of the court, after stating that the company, under its special charter of 1865, was authorized to construct roads on "such terms and conditions, and with such rights and privileges as the council has or may by *contract* prescribe," says :

In the original ordinance, no right to alter or change the terms upon which the railway company accepted the terms of the ordinance was reserved, and in the absence of such reservation we are aware of no principle upon which the city, without the consent of the railway company, can impose upon it other and additional obligations.

This clearly is a re-affirmance of the decisions which were announced before the new constitution, and which held that such ordinances were "contracts," but I can not understand how such a decision can now be maintained in the face of the constitutional provisions now existing, except that such provisions, as in the Wilson case, were not known to the court. The very essence of a "contract" is that both parties are mutually bound, and that neither can revoke it without consent of the other. The plain object of Sec. 14 of the Bill of Rights is to prevent such contracts and keep these railway corporations under governmental control. The laws passed by the council are therefore mere permits or licenses, and it is immaterial whether future regulation is expressly reserved or not.

This decision follows the noted Dartmouth College case, which was decided by the Supreme Court of the United States in 1819, but when we consider that the Federal court modified the effect of that decision by its opinion in the "Granger cases," and the "Railroad Commission cases," and that the people of Illinois, in 1870, provided in the new constitution, that no law making an irrevocable grant of special privileges or immunities should be passed, it seems strange that the servants of the judicial department of the State should still arbitrarily decide that an ordinance permitting a railroad to be built is a "contract," in which the right of future regulation must be expressly reserved in order to exist.

In this connection it may be remarked that the first "Granger Law," under the new constitution was declared unconstitutional; which decision so offended the people that the writer of the opinion was retired from the bench, and a man of supposed granger tendencies elected in his stead. Curiously enough it is the supposed granger who wrote this opinion which ignores the constitution.

Appended to this pamphlet will be found our State constitution, which will give in full the fundamental principles of our civil government. These principles should be familiar to every citizen, for on them rests the continuance of our boasted liberty. It is a political platform on which we can all stand.

It will be noted that the entire government is to be conducted by three distinct departments. But of the three, the most important is the one to which the common

people pay the least attention, and which is probably the poorest managed. In this government of the people, for the people, by the people, the affairs of the judiciary should be conducted on business principles, with a view of administering right and justice between man and man, freely, without purchase, without denial and without delay, but it is not so.

The constitution does not state just what particular details of government shall belong to each department, and so if a question shall arise between the departments, or if any act of the executive or legislative departments be brought into question, the Supreme Court is the final arbitrator. So when we see that every act or question which may affect life, liberty, or the pursuit of happiness, may be brought before the judicial department for review, and that the judges of that department are bound only by an oath of office and the dictates of their conscience, and that their decision is often mere whim, we can not over-estimate the importance of a judicial election, and the character of the candidates. This is all the more so when we consider that while the term of office for governor and senators is only four years, and for representatives only two years, the Supreme Court justices hold office for nine years, with no provision for removing them except by impeachment in the State Senate.

There are seven justices of this court. The terms of five of them expire in June, 1888. The five that are elected at that time will constitute one more than is "necessary to every decision." That majority will, in the succeeding nine years, have more control over the application of the fundamental principles of our State government, than all the governors, senators and representatives who will hold office during the same length of time, as it may, by artful construction, fritter away the effect and intent of all executive and legislative acts, or even abolish the constitution itself. The dangerous monopolies, conspiracies and pools which now threaten the safety of the Nation, well understand the importance of continuing judges in office who sympathize with their interests, and a desperate effort will quietly but surely be made by them to pack the supreme bench. Between now and the time of that important election, the common people will have abundant opportunity to fully examine the records of the court for the past nine years. It may be that life, liberty and the pursuit of happiness will be promoted by a clean sweep and a new deal. In such important offices the common people need servants who are thoroughly acquainted with the principles of the constitution, and who can apply those principles of equal rights and equal justice without fear or favoritism. These jugglers of legal technics have done more to unseal confidence in the laws, breed contempt for courts, and create fears that the supposed protection of law was inadequate, than the wild harangues of socialists. Bomb throwers and riotous strikers, without wealth, influence or intelligence, may be promptly dealt with, but wealthy conspirators and criminals with unlimited influence and unbounded cheek, aided by this juggling with the law by friendly courts, march onward triumphant and unrestrained.

If the purity of the ballot box can be maintained, and right and justice honestly administered, this Nation has little to fear from socialism or anarchy. Such chaotic conditions do not exist under a good administration of law and order. The sense of justice and fair dealing is innate. It starts with the first breath of life and exists so long as the heart palpitates. It is more an attribute of the untutored laborer than of the learning of the technical judge. Governments are not corrupted by socialism and anarchy; it is the corruption of the government by moneyed conspirators and unreliable courts which begets the socialist. The majesty of the law must be maintained by its faithful execution and not by the spasmodic use of policemen's clubs, armed detectives militia supported by private contribution.

When that department of the government which was created solely for the administration of free right and justice becomes so biased and uncertain that the "remedy in the laws" is costly, incomplete and tedious, then, surely, the poor, illiterate and down trodden must take the law into their own hands, and we will enter upon a reign of communism, socialism and anarchy. It is lawlessness, under the forms of law which lead to contempt of and disrespect to the laws themselves.

We have reached the condition described by David Davis, a justice of the United States Supreme Court, a senator from Illinois and president of the National Senate, who said:

Great corporations and consolidated monopolies are fast seizing the avenues of power that lead to the control of the government. It is an open secret that they rule States through procured legislatures and corrupted courts; that they are strong in Congress; that they are unscrupulous in the use of means to conquer prejudice and acquire influence. This condition of things is truly alarming, for, unless it be changed quickly and thoroughly, free institutions are doomed to be subverted by an oligarchy resting upon a basis of money and of corporate power.

That the judges should not escape responsibility for the defects and omissions in the laws, the following method of correction was provided for in the constitution:

Sec. 31, Art. 6. All judges of courts of record, inferior to the Supreme Court, shall, on or before the first day of June of each year, report in writing to the judges of the Supreme Court such defects and omissions in the laws as their experience may suggest, and the judges of the Supreme Court shall, on or before the first day of January of each year, report in writing to the governor such defects and omissions in the constitution and laws as they may find to exist, together with appropriate forms of bills to cure such defects and omissions in the laws.

In the constitutional convention Mr. Underwood said of this section:

This provision will be very useful if the judges do their duty. We would thus be enabled to make our laws plain. For judges like to have laws plain after they get on the bench, however intricate they may desire them when they are off the bench. We will be enabled to abbreviate and simplify the law, and in fifteen years we will have the most perfect laws and rules of judicial procedure in America.

It is now sixteen years since those remarks were made, and it is safe to say that either the judges have not done their full duty, or that the object of the constitutional provision has sadly miscarried.

The *Chicago Tribune* said, editorially, Dec. 15, 1886, in commenting upon the decision rendered in a certain case, as follows:

The decision * * is just one of those judicial outrages which bring courts into contempt and make people despair of ever getting justice so long as lawyers with pettifogging instincts, who obey the letter and not the spirit of the law, can get upon the bench. In this particular case the technicality was so small and indistinct that even the sharp eyes of the prosecuting attorneys who drew up the indictment failed to see it. It was reserved for the microscopic eye of Judge ——— to discover it, and to magnify it into such importance as to secure the discharge of two men who were admitted to be guilty of embezzlement, the offense charged against them—a grave offense, by the way, as it involved financial trusts. The decision does serious mischief, not alone in releasing the two criminals, but in the effect it will have on other cases. Smaller gnat was never discovered by camel-swallowing judge. Judge ——— has made a mistake in going upon the bench. Such sharpness of vision could have been engaged to better advantage in the microscopical detection of germs, spores and animalcules.

Referring to the same case a Washington dispatch to the *Chicago Times* said:

A few recent instances of the administration of justice in this city are exciting pretty general attention. Eight years ago two men, Hitz and Prentiss, wrecked the German-American National Bank, which was mainly a savings bank, and several hundred poor people lost \$40,000. Hitz and Prentiss have succeeded in keeping their case in the courts and themselves out of the penitentiary until last week, when,

it being too late to procure a new indictment, Judge —— discovered that the indictment that has been hanging over them for eight years was worthless, because it omitted to specify that the German-American National Bank was doing business here at the time the crime charged occurred. On the same day an old man was sent to jail for six months for stealing five chickens. The people of Washington haven't quite recovered their breath since the shock to their nerves by the reduction of the bail of Walker, who shot a man opposite the patent office at midday early in the week. Walker was held in \$20,000 bonds to await the result of his pistol practice. When his victim died, instead of increasing his bond or sending him to jail to await the action of the grand jury, his bail was reduced to \$10,000.

Not long ago Judge Gresham decided an important railway case against the company, which caused such general surprise to the country that it was published far and wide as a remarkable event. Commenting on this case the *New York Times* said, editorially, Dec. 9, 1886, as follows:

It is evident in a well regulated state of society the performers would be subjected to annoyances in the shape of criminal prosecutions as well as of civil suits, and that they would be secluded in public institutions for long periods. Yet what was done in Wabash has been done in other roads without subjecting the actors to anything beyond troublesome litigation, in which they have commonly succeeded in wearying and worrying the other side out of court. In this very case the scheme of confining payment to the friendly bondholders was carried into effect by the order of a court, and could not have been successful without such an order.

What is unfortunately novel is to find a judge who is not in the least deterred by the wealth which such persons have amassed by such practices, from telling the plain truth about them and their doings. * * The courage which is required to tell the truth, is by no means as frequent as it ought to be upon the bench.

The *Chicago Times* Dec. 10, '86, editorially said of the same case:

He has simply discharged a manifest duty, failure in which would have justly exposed him to reprobation, while the doing of it would not be considered, in a healthy condition of popular sentiment, as at all out of the natural order.

Why, then, should Judge Gresham be lauded as a judicial hero? Is integrity such a stranger to the bench, are faithful and upright judges so few, is it so rarely that the law is interpreted to the confusion of wealthy and powerful knaves that a righteous decision in an important case should be hailed as an unexampled and most propitious event? This would be the natural inference from the hubbub which has been raised over the action of Judge Gresham in the Wabash matter. It shows that, rightly or wrongly, popular confidence in the integrity and independence of our judiciary is not very strong—a deplorable state of affairs, the causes of which may well engage the careful attention of thoughtful minds.

The Supreme Court has recognized the distinction between the three governmental departments in several cases. In *Newland v. Marsh*, 19 Ill. 381, 1857, it is said:

The judicial department of the government, being ordained for the administration of the laws, under the sanctions of and in obedience to the mandates of the Federal and State constitutions, and the limits upon the legislative power in them contained, will consider acts of the legislature in connection with those constitutions and their limitations, and give the force of *law* to acts of the legislature in so far, and in so far only, as they are within the competency of the law-making power. And, although the courts will never pronounce acts of the legislature unconstitutional without mature reflection and clear conviction, yet, under no specious pretext or sophistical reasoning can they rightfully avoid the high and imperative duty imposed, of declaring them void, whenever, in their enactment, the legislature assumes power not within the scope of legislation, and withheld from it or reserved to another department by the written constitutions of the country.

The constitution of this State declares that: "The powers of the government shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to wit, those which are legislative to one; those which are executive to another, and those which are judicial to another," and prohibits each

department from exercising any power confided to another: Const. 1848, Art. 2, Secs. 1, 2.

The legislative authority is vested in the General Assembly, the executive in the governor, and the judicial in the courts: Const. 1848, Art. 3, Sec. 1; Art. 4, Sec. 1; Art. 5, Sec. 1.

The powers of the government are thus wisely distributed among the three independent departments, and each is prohibited from exercising only such authority as is specially confided to it; thereby creating checks and balances, indispensable, in a representative government, to the security of the people against usurpation and the preservation of their rights and institutions *in fact* as well as *in form*.

It is the province of the judiciary to declare what *is* the law in any given case for judicial determination, and to enforce only *valid* enactments of the legislature.

An act, therefore, of the legislative department, notwithstanding the powers confided to it, when brought in question judicially, must, if necessary, be held void; otherwise the natural tendency to the concentration of power in the most powerful branch of the government would, in time, effect a silent but sure revolution in our political system. The legislative department assuming, and being allowed to judge of the character and extent of its own powers, would soon become the *ex parte* arbiter of private rights, and the frequent dispenser of justice between citizen and citizen unrestrained and according to its own notions of right.

The people have wisely, by constitutional provisions, guarded against consequences, and so long as these provisions are sacredly regarded and enforced their rights of persons and property will remain secure from aggression under color of authority.

In *Speight v. People*, 87 Ill. 595, the court was called upon for an opinion, at length, on all questions raised by the attorneys, which the court declined to give, apparently on the ground that a statute requiring such detailed opinion was an unwarranted interference by the legislative department, and that the legislature could not exercise any control over the judiciary.

In *People v. Thistlewood*, 103 Ill. 139, the court held that the statute relating to mandamus proceedings had no application to it, and would be followed only as a matter of courtesy.

The legislative department undoubtedly has the right to determine what "remedy in the laws" a man shall have against his neighbor. That is, whether the remedy shall be in law, or in equity, or in either, or not at all; but, after that remedy has been declared, the administration of it must remain with the courts. The act of the legislature can relate only to the person, and not to the court. The legislature can not be held responsible for a failure to administer justice. The constitution, and the inherent right of the court to prescribe its own rules of procedure, gives the courts all necessary power to properly conduct its own business in its own way, and it should, therefore, be held to a strict account by the people for any of the failures of its own distinct department.

The legislature provided that "no judge shall instruct the petit jury in any case, civil or criminal, unless such instructions are reduced to writing." It is well known that this law has produced a great deal of confusion in the decisions of the court, and has served as the basis of many unjust reversals by the higher courts. The instruction to the jury is nothing more than the legal opinion of the judge, in reference to the facts in the case at issue. If the legislature can not compel an opinion at length, as was held in the *Speight* case, before referred to, how can it compel a judge to give an opinion in writing? The same principle must control both cases. As was held in the *Thistlewood* case, all such statutes are followed merely by courtesy. If, therefore, the court elects to adopt such statute, as a rule of procedure, and it leads to results distasteful to the people, it alone must take the responsibility and the consequences.

If the hired men who are now employed to administer the affairs of the judicial department have not conducted their business in a satisfactory manner, it may be an easy matter for the people to discontinue the service of these hired men, at the expiration of the term of employment. But, before the office of supreme judge can be regarded as a desirable position by such constitutional lawyers as should hold the office, the laws must be changed by the legislature in several respects. When legal ability is a man's capital, it is for sale in the market, as any other man's stock in trade, and the people should not expect to purchase the best ability when corporations stand always ready to take it at a higher price. It is frequently the case that judges and prominent lawyers accept a salaried position from a corporation when they would look with disdain on the position of supreme judge. Not long ago a supreme judge resigned to accept the office of circuit judge, because the inferior office was the most desirable; and it is well known that the late Justice Dickey also desired to make a similar change.

The legislature should change the place of holding court to Springfield, or some other central locality, where it should be always in session. The State of Iowa has recently abolished the plan of requiring the judges to "board around," and it should be done here. At present there are only two terms a year for the Appellate and Supreme Courts, and as a consequence it takes about two years from the time a case is commenced in the Circuit Court to the final hearing in the Supreme Court. This is a burlesque on the constitutional provision that every person ought to obtain right and justice "promptly and without delay." The terms of court should be so arranged that a case appealed from the Circuit Court could be finally disposed of within ninety days after, and the parties attending to their regular business.

The legislature should increase the salary of the supreme judges to not less than the circuit judges are now paid in Cook county, which is \$7,000, and inasmuch as these judges would be compelled to support two residences—one at the place of holding court and the other their own home, they should also be provided with living quarters by the State in one of the public buildings, or a building should be erected for that purpose.

It is an outrage that discredits our system of government, that public servants who are called upon to spend the best years of their life in such high and responsible positions of trust should be confronted with a prospect of poverty after service, or an alternative of increasing their incomes by accepting railway passes and practicing law for a compensation. It is with the greatest difficulty that a judge can regain a general practice of the law, and if his salary has been so small and expenses so great that want must necessarily follow to one's person and family, it would be a strange exhibition of human nature if public duty entirely overcame personal suffering.

The legislature should pass a law under which matters of right and justice could be determined with certainty. The rights of persons should no longer depend on distinctions between actions, nor should rights be denied in one suit because a different form of action is more technically appropriate. All or any of the known legal writs should be proper in any legal or equitable suit where such writ will aid in the administration of free right and justice. If it has been determined by a court that a party is entitled to a certain sum, that party should have the right to collect that sum either by execution, mandamus or decree. I suggest the following bill:

AN ACT RELATING TO CIVIL RIGHTS.

1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly:* That any person who has received or may receive from any other person or persons, any injury or wrong in his person, property or reputation, shall find a certain

remedy in the laws, by filing his declaration in any of the actions at law now existing or hereafter to be created; or such person may, at his option, file a petition in chancery, according to the practice of chancery courts in other cases, such person hereby being given a complete and prompt remedy in law or in equity.

2. In all such suits in chancery, actions at law or other judicial proceedings, the same shall not be dismissed, nor shall the relief asked for be denied because either party, or any of the parties, may have any other or different remedy; and in all such suits, actions and proceedings, or in either of them, the writs of ejectment, execution, habeas corpus, injunction, mandamus, quo warranto, replevin or restitution, shall be issued either at law or in chancery as prayed for, where such writs or either or any of them will provide an effective remedy in determining the right and justice of the subject-matter in controversy.

3. The words "person," or "party," as used in this act, shall be held to extend to and include persons, parties, corporation, corporations, receiver, receivers, trustee, trustees, company, companies, partner, partners, and all other individuals acting either for themselves or in a representative capacity, and all bodies politic and corporate. And the remedies hereby given may also be applied for, either at law or in equity, to prevent any abridgment of rights, or any injury to person, property, or reputation, or to enforce any or all rights, duties or obligations of whatsoever kind. And in case such injury, rights, duties or obligations, affect or include a large number of persons, any one of such persons may commence his proceeding in law or in equity to determine the same, and all such persons who are not joined as plaintiffs or complainants may be made party defendants. And in case two or more persons have received similar injury, or their rights have been similarly abridged, they may join in one such suit, action or proceeding.

4. All acts and parts of acts in conflict with this act are hereby repealed.

In support of such a bill, it may be said that a plain, simple system in the judicial department of the State would undoubtedly promote a speedy administration of right and justice, but such a simplification would undoubtedly be opposed by judges and many lawyers. However, our present system has for some time been so growing in disrepute, that a code practice has been suggested by some and others have favored the equity system exclusively. It has been my attempt in drawing this bill, to allow both the common law and equity practice to remain, leaving the complaining party to his choice. Both the law court and the chancery court have for many years had jurisdiction of accounts, which concurrent jurisdiction, I think, has never given any cause for complaint. It is frequently the case that a remedy is denied in chancery after a long and expensive litigation, merely because the party has a remedy at law. If this kind of injustice is continued it is the fault of the legislature.

Now I will explain another inequality between persons which this bill is intended to correct, and will also show how the "remedy in the laws" has been doctored for the unequal protection of corporations.

When a man dies, his property goes to his children. If it is partnership property, the death terminates the partnership and the business is closed up. In case the business was successful and the man worked up a great name, it often happens that the value of the good name—called good will—is in a business sense lost. To avoid this, as well as the necessity of closing up the business, the law allows men to incorporate, in which case the amount of interest the man has is represented by shares of stock. Then, in case of death, the corporation goes right on, the good will is preserved and it is only the shares of stock which go to the Probate Court for administration. The corporation is just the same as a man, except that the man dies and the corporation does

not. Corporations may be formed for almost every purpose—from a church or social club to a railroad combine. But what I wish to call attention to particularly, is, that while the man and the corporation live they are in *theory* of law of equal rights.

It is of course well known that a warrant may be sworn out against a man at any time charging murder, and thus he may be wrongfully put on trial to defend his life; or, he may be charged with stealing, and thus his property may be put in jeopardy. In either case he may be thrust in jail and thus restrained of his liberty. But suppose a railway company, which is illegally organized and is operating under an illegal charter, desires to use a man's lot as a freight yard, or suppose it unlawfully lays its track in front of a man's house. Under the present laws and decisions that man can not question the legality of the corporation or its charter, without first obtaining the consent of either the State's attorney or the Attorney general, which is seldom given—and such illegal proceedings can not be enjoined unless the man can show some irreparable injury or special damage, which is over and above the damage suffered by the people in general.

Why these corporate persons should be so carefully protected, when the property and even the lives of natural persons may be so easily subjected to annoyance, is not reasonable or just, and need not be fortified by argument—it is self-evident.

Not very long ago a great railroad manager was reported as having said, "the public be damned." It occurs to me that under our constitutional form of government the public *can not* be damned unless it damns itself. But that it has allowed itself to be damned can not be doubted. Every citizen who was not born with wealth has a labor problem of his own to solve, and he must do it for himself. It has been too much the custom of the people not to investigate the principles of our government, or whether the servants employed to administer those principles have been faithful to their trust or not, but, waiting in ignorance till the eve of an election, the people are deceived by the flippant oratory of professional politicians. By all means the people should organize themselves into clubs or societies, in which they can discuss their grievances and promote their interests. Birds of a feather should flock together often. If the people will not so understand the remedy, by ballot, that they may use it to promote their own interests, and not the interests of moneyed corporations and pools—they should suffer their own damnation without complaint. The most important duty of every citizen is to see that the judicial department of the government is kept pure; that it is administered by men whose nominations were not purchased by political assessment, or political service, and who enter upon their duties without any restraints or obligation, except to faithfully perform the requirements of their oath of office, that right and justice may be obtained freely and without being obliged to purchase it, completely and without denial, promptly and without delay.

C. L. BONNEY, 175 Dearborn St., Chicago.

CONSTITUTION OF 1870.

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Adopted in convention May 13, 1870; ratified by the people July 2, 1870; in force August 8, 1870.

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

ARTICLE 1.

BOUNDARIES.

The boundaries and jurisdiction of the state shall be as follows, to-wit: Beginning at the mouth of the Wabash river; thence up the same, and with the line of Indiana, to the northwest corner of said state; thence east, with the line of the same state, to the middle of Lake Michigan; thence north, along the middle of said lake, to north latitude 42° and 30'; thence west to the middle of the Mississippi river, and thence down along the middle of that river to its confluence with the Ohio river, and thence up the latter river, along its northwestern shore, to the place of beginning: *Provided*, that this state shall exercise such jurisdiction upon the Ohio river as she is now entitled to, or such as may hereafter be agreed upon by this state and the state of Kentucky.

ARTICLE II.

BILL OF RIGHTS.

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

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

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

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

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

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

§ 7. All persons shall be bailable by sufficient sureties, except for capital offenses, *60] where the proof is evident or the presumption great; and the privilege or writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

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

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

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

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

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

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

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

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

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

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

§ 18. All elections shall be free and equal.

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

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

ARTICLE III.

DISTRIBUTION OF POWERS.

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

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

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

ELECTION.

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

ELIGIBILITY AND OATH.

§ 3. No person shall be a senator who shall not have attained the age of twenty-five years, or a representative who shall not have attained the age of twenty-one years. No person shall be a senator or a representative who shall not be a citizen of the United States, and who shall not have been for five years a resident of this state, and for two years next preceding his election a resident within the territory forming the district from which he is elected. No judge or clerk of any court, secretary of state, attorney general, state's attorney, recorder, sheriff, or collector of public revenue, member of either house of congress, or person holding any lucrative office under the United States or this state, or any foreign government, shall have a seat in the general assembly: *Provided*, that appointments in the militia, and the offices of notary public and justice of the peace, shall not be considered lucrative. Nor shall any person, holding any office of honor or profit under any foreign government, or under the government of the United States, (except

postmasters whose annual compensation does not exceed the sum of \$300,) hold any office of honor or profit under the authority of this state.

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

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

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

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

APPORTIONMENT—SENATORIAL.

§ 6. The general assembly shall apportion the state every ten years, beginning with the year 1871, by dividing the population of the state, as ascertained by the federal census, by the number 51, and the quotient shall be the ratio of representation in the senate. The state shall be divided into 51 senatorial districts, each of which shall elect one senator, whose term of office shall be four years. The senators elected in the year of our Lord 1872, in districts bearing odd numbers, shall vacate their offices at the end of two years, and those elected in districts bearing even numbers, at the end of four years; and vacancies occurring by the expiration of term, shall be filled by the election of senators for the full term. Senatorial districts shall be formed of contiguous and compact territory, bounded by county lines, and contain, as nearly as practicable, an equal number of inhabitants; but no district shall contain less than four-fifths of the senatorial ratio. Counties containing not less than the ratio and three-fourths, may be divided into separate districts, and shall be entitled to two senators, and to one additional senator for each number of inhabitants equal to the ratio contained by such counties in excess of twice the number of said ratio.

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

MINORITY REPRESENTATION.

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

TIME OF MEETING AND GENERAL RULES.

§ 9. The sessions of the general assembly shall commence at 12 o'clock noon, on the Wednesday next after the first Monday in January, in the year next ensuing the election of members thereof, and at no other time, unless as provided by this constitution. A majority of the members elected to each house shall constitute a quorum. Each house shall determine the rules of its proceedings, and be the judge of the election, returns and qualifications of its members; shall choose its own officers; and the senate shall choose a temporary president to preside when the lieutenant governor shall not attend as president or shall act as governor. The secretary of state shall call the house of representatives to order at the opening of each new assembly, and preside over it until a temporary presiding officer thereof shall have been chosen and shall have taken

his seat. No member shall be expelled by either house except by a vote of two-thirds of all the members elected to that house, and no member shall be twice expelled for the same offense. Each house may punish, by imprisonment, any person not a member, who shall be guilty of disrespect to the house by disorderly or contemptuous behavior in its presence. But no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior.

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

STYLE OF LAWS AND PASSAGE OF BILLS.

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

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

§ 13. Every bill shall be read at large on three different days, in each house; [*63 and the bill and all amendments thereto shall be printed before the vote is taken on its final passage; and every bill, having passed both houses, shall be signed by the speakers thereof. No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed; and no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act. And no act of the general assembly shall take effect until the first day of July next after its passage, unless, in case of emergency, (which emergency shall be expressed in the preamble or body of the act), the general assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct.

PRIVILEGES AND DISABILITIES.

§ 14. Senators and representatives shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

§ 15. No person elected to the general assembly shall receive any civil appointment within this state from the governor, the governor and senate, or from the general assembly, during the term for which he shall be elected; and all such appointments and all votes given for any such members for any such office or appointment, shall be void; nor shall any member of the general assembly be interested, either directly or indirectly, in any contract with the state, or any county thereof, authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration thereof.

PUBLIC MONEYS AND APPROPRIATIONS.

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

§ 17. No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the auditor thereon; and no money shall be diverted from any appropriation made for any purpose, or

taken from any fund whatever, either by joint or separate resolution. The auditor shall, within 60 days after the adjournment of each session of the general assembly, prepare and publish a full statement of all money expended at such session, specifying the amount of each item, and to whom and for what paid.

§ 18. Each general assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations, general or special, requiring money to be paid out of the state treasury, from funds belonging to the state, shall end with such fiscal quarter: *Provided*, the state may, to meet casual deficits or failures in revenues, contract debts, never to exceed in the aggregate \$250,000; and moneys thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt, except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war, (for payment of which the faith of the state shall be pledged,) shall be contracted, unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of the votes cast for members of the general assembly at such election. The general assembly shall provide for the publication of said law for three *64] months at least before the vote of the people shall be taken upon the same; and provision shall be made, at the time, for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose or from other sources of revenue; which law, providing for the payment or such interest by such tax, shall be irrevocable until such debt be paid: *And, provided, further*, that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

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

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

PAY OF MEMBERS.

§ 21. The members of the general assembly shall receive for their services the sum of \$5 per day, during the first session held under this constitution, and 10 cents for each mile necessarily traveled in going to and returning from the seat of government, to be computed by the auditor of public accounts; and thereafter such compensation as shall be prescribed by law, and no other allowance or emolument, directly or indirectly, for any purpose whatever, except the sum of \$50 per session to each member, which shall be in full for postage, stationery, newspapers and all other incidental expenses and perquisites; but no change shall be made in the compensation of members of the general assembly during the term for which they may have been elected. The pay and mileage allowed to each member of the general assembly shall be certified by the speaker of their respective houses, and entered on the journals and published at the close of each session.

SPECIAL LEGISLATION PROHIBITED.

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

- Granting divorces;
- Changing the names of persons or places;
- Laying out, opening, altering and working roads or highways;
- Vacating roads, town plats, streets, alleys and public grounds;
- Locating or changing county seats;
- Regulating county and township affairs;
- Regulating the practice in courts of justice;

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

Providing for changes of venue in civil and criminal cases;

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

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

Summoning and impaneling grand or petit juries;

Providing for the management of common schools;

Regulating the rate of interest on money;

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

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

The protection of game or fish; [*65]

Chartering or licensing ferries or toll bridges;

Remitting fines, penalties or forfeitures;

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

Changing the law of descent;

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

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

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

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

IMPEACHMENT.

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

MISCELLANEOUS.

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

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

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

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

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

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

§ 31. The General Assembly may pass laws permitting the owners of lands to construct

drains, ditches and levees for agricultural, sanitary or mining purposes, across the lands of others, and provide for the organization of drainage districts and vest the corporate authorities thereof, with power to construct and maintain levees, drains and ditches, and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this State, by special assessments upon the property benefited thereby. [This section was submitted to the voters at the election in November 1878 as an amendment was adopted and became a part of the constitution.]

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

*66] § 33. The general assembly shall not appropriate out of the state treasury, or expend on account of the new capitol grounds, and construction, completion, and furnishing of the state house, a sum exceeding, in the aggregate, \$3,500,000, inclusive of all appropriations heretofore made, without first submitting the proposition for an additional expenditure to the legal voters of the state, at a general election; nor unless a majority of all the votes cast at such election shall be for the proposed additional expenditure.

ARTICLE V.

EXECUTIVE DEPARTMENT.

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

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

ELECTION.

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

§ 4. The returns of every election for the above named officers shall be sealed up and transmitted, by the returning officers, to the secretary of state, directed to "The speaker of the house of 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 have an equal and the highest number of votes, the general assembly shall, by joint ballot, choose one of such persons for said office. Contested elections for all of said offices shall be determined by both houses of the general assembly, by joint ballot, in such manner as may be prescribed by law.

ELIGIBILITY.

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

GOVERNOR.

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

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

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

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

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

§ 11. In any case of vacancy, during the recess of the senate, in any office which is not elective, the governor shall make a temporary appointment until the next meeting of the senate, when he shall nominate some person to fill such office; and any person so nominated, who is confirmed by the senate, (a majority of all the senators elected concurring by yeas and nays,) shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the senate, shall be again nominated for the same office at the same session, unless at the request of the senate, or be appointed to the same office during the recess of the general assembly.

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

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

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

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

VETO.

§ 16. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider the bill. If, then, two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the governor. But in all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. Any bill which shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the general assembly shall, by their adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the secretary of state, within ten days after such adjournment, or become a law.

LIEUTENANT GOVERNOR.

§ 17. In case of the death, conviction on impeachment, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties and emolu-

ments of the office, for the residue of the term, or until the disability shall be removed, shall devolve upon the lieutenant governor.

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

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

OTHER STATE OFFICERS.

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

§ 21. The officers of the executive department, and of all the public institutions of the state, shall, at least ten days preceding each regular session of the general assembly, severally report to the governor, who shall transmit such reports to the general assembly, together with the reports of the judges of the supreme court of the defects in the constitution and laws; and the governor may at any time require information in writing, under oath, from the officers of the executive department, and all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices.

THE SEAL OF STATE.

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

FEEES AND SALARIES.

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

DEFINITION AND OATH OF OFFICE.

§ 24. An office is a public position created by the constitution or law, continuing during the pleasure of the appointing power, or for a fixed time, with a successor *69] elected or appointed. An employment is an agency, for a temporary purpose, which ceases when that purpose is accomplished.

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

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

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

ARTICLE VI.

JUDICIAL DEPARTMENT.

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

SUPREME COURT.

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

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

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

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

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

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

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

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

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

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

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

The boundaries of the districts may be changed at the session of the general [*70 assembly next preceding the election for judges therein, and at no other time; but whenever such alterations shall be made, the same shall be upon the rule of equality of population, as nearly as county bounds will allow, and the districts shall be composed of contiguous counties, in as nearly compact form as circumstances will permit. The alteration of the districts shall not affect the tenure of office of any judge.

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

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

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

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

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

§ 10. At the time of the election for representatives in the general assembly, happening next preceding the expiration of the terms of office of the present clerks of said court, one clerk of said court for each division shall be elected, whose term of office shall be six years from said election, but who shall not enter upon the duties of his office until the expiration of the term of his predecessor, and every six years thereafter one clerk of said court for each division shall be elected.

APPELLATE COURTS.

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

CIRCUIT COURTS.

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

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

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

§ 15. The general assembly may divide the state into judicial circuits of greater population and territory, in lieu of the circuits provided for in section 13 of this article, and

provide for the election therein, severally, by the electors thereof, by general ticket, of not exceeding four judges, who shall hold the circuit courts in the circuit for which they shall be elected, in such manner as may be provided by law.

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

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

COUNTY COURTS.

§ 18. There shall be elected in and for each county, one county judge and one clerk of the county court, whose terms of office shall be four years. But the general assembly may create districts of two or more contiguous counties, in each of which shall be elected one judge, who shall take the place of, and exercise the powers and jurisdiction of county judges in such districts. County courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians and conservators, and settlements of their accounts, in all matters relating to apprentices, and in proceedings for the collection of taxes and assessments, and such other jurisdiction as may be provided for by general law.

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

PROBATE COURTS.

§ 20. The general assembly may provide for the establishment of a probate court in each county having a population of over 50,000, and for the election of a judge thereof, whose term of office shall be the same as that of the county judge, and who shall be elected at the same time and in the same manner. Said courts, when established, [*72 shall have original jurisdiction of all probate matters, the settlement of estates of deceased persons, the appointment of guardians and conservators, and settlement of their accounts; in all matters relating to apprentices, and in cases of the sales of real estate of deceased persons for the payment of debts.

JUSTICES OF THE PEACE AND CONSTABLES.

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

STATE'S ATTORNEYS.

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

COURTS OF COOK COUNTY.

§ 23. The county of Cook shall be one judicial circuit. The circuit court of Cook county shall consist of five judges, until their number shall be increased, as herein provided. The present judge of the recorder's court of the city of Chicago, and the present judge of the circuit court of Cook county, shall be two of said judges, and shall remain in office for the terms for which they were respectively elected, and until their successors shall be elected and qualified. The superior court of Chicago shall be continued, and called the superior court of Cook county. The general assembly may increase the number of said judges, by adding one to either of said courts for every

additional 50,000 inhabitants in said county, over and above a population of 400,000. The terms of office of the judges of said courts hereafter elected, shall be six years.

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

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

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

§ 27. The present clerk of the recorder's court of the city of Chicago shall be the clerk of the criminal court of Cook county, during the term for which he was elected. The present clerks of the superior court of Chicago, and the present clerk of the circuit court of Cook county, shall continue in office during the terms for which they were respectively elected; and thereafter there shall be but one clerk of the superior court, to be elected by the qualified electors of said county, who shall hold his office for the term of four years, and until his successor is elected and qualified.

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

GENERAL PROVISIONS.

§ 29. All judicial officers shall be commissioned by the governor. All laws relating to courts shall be general, and of uniform operation; and the organization, jurisdiction, powers, proceedings and practice of all courts, of the same class or grade, so far as regulated by law, and the force and effect of the process, judgments and decrees of such courts, severally, shall be uniform.

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

§ 31. All judges of courts of record, inferior to the supreme court, shall, on or before the first day of June, of each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest; and the judges of the supreme court shall, on or before the first day of January of each year, report in writing to the governor such defects and omissions in the constitution and laws as they may find to exist, together with appropriate forms of bills to cure such defects and omissions in the laws. And the judges of the several circuit courts shall report to the next general assembly the number of days they have held court in the several counties composing their respective circuits, the preceding two years.

§ 32. All officers provided for in this article shall hold their offices until their suc-

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

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

ARTICLE VII.

SUFFRAGE.

§ 1. Every person having resided in this state one year, in the county 90 days, and in the election district 30 days next preceding any election therein, who was an elector in this state on the first day of April, in the year of our Lord 1848, or obtained a certificate of naturalization before any court of record in this state prior to the first [*74 day of January, in the year of our Lord 1870, or who shall be a male citizen of the United States, above the age of 21 years, shall be entitled to vote at such election.

§ 2. All votes shall be by ballot.

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

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

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

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

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

ARTICLE VIII.

EDUCATION.

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

§ 2. All lands, moneys, or other property, donated, granted or received for schools, college, seminary or university purposes, and the proceeds thereof, shall be faithfully applied to the objects for which such gifts or grants were made.

§ 3. Neither the general assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the state or any such public corporation, to any church, or for any sectarian purpose.

§ 4. No teacher, state, county, township or district school officer shall be interested in the sale, proceeds or profits of any book, apparatus or furniture used or to be used in any school in this state, with which such officer or teacher may be connected, under such penalties as may be provided by the general assembly.

§ 5. There may be a county superintendent of schools in each county, whose qualifications, powers, duties, compensation, and time and manner of election, and term of office, shall be prescribed by law.

ARTICLE IX.

REVENUE.

§ 1. The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, innkeepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.

*75] § 2. The specification of the objects and subjects of taxation shall not deprive the general assembly of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this constitution.

§ 3. The property of the state, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property.

§ 4. The general assembly shall provide, in all cases where it may be necessary to sell real estate for the non-payment of taxes or special assessments for state, county, municipal or other purposes, that a return of such unpaid taxes or assessments shall be made to some general officer of the county having authority to receive state and county taxes; and there shall be no sale of said property for any of said taxes or assessments but by said officer, upon the order or judgment of some court of record.

§ 5. The right of redemption from all sales of real estate for the non-payment of taxes or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate, for a period of not less than two years from such sales thereof. And the general assembly shall provide by law for reasonable notice to be given to the owners or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire: *Provided*, that occupants shall in all cases be served with personal notice before the time of redemption expires.

§ 6. The general assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

§ 7. All taxes levied for state purposes shall be paid into the state treasury.

§ 8. County authorities shall never assess taxes, the aggregate of which shall exceed 75 cents per \$100 valuation, except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county.

§ 9. The general assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property, or otherwise. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property, within the jurisdiction of the body imposing the same.

§ 10. The general assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.

§ 11. No person who is in default, as collector or custodian of money or property belonging to a municipal corporation, shall be eligible to any office in or under such corporation. The fees, salary or compensation of no municipal officer who is elected or appointed for a definite term of office, shall be increased or diminished during such term.

§ 12. No county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state [*76 and county taxes, previous to the incurring of such indebtedness. Any county, city, school district, or other municipal corporation, incurring any indebtedness as aforesaid, shall before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same. This section shall not be construed to prevent any county, city, township, school district, or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this constitution in pursuance of any law providing therefor.

ARTICLE X.

COUNTIES.

§ 1. No new county shall be formed or established by the general assembly, which will reduce the county or counties, or either of them, from which it shall be taken, to less contents than 400 square miles; nor shall any county be formed of less contents; nor shall any line thereof pass within less than ten miles of any county seat of the county or counties proposed to be divided.

§ 2. No county shall be divided, or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county, voting on the question, shall vote for the same.

§ 3. There shall be no territory stricken from any county, unless a majority of the voters living in such territory shall petition for such division; and no territory shall be added to any county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for, and obliged to pay its proportion of the indebtedness of the county from which it has been taken.

COUNTY SEATS.

§ 4. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed in pursuance of law, and three-fifths of the voters of the county, to be ascertained in such manner as shall be provided by general law, shall have voted in favor of its removal to such point; and no person shall vote on such question who has not resided in the county six months, and in the election precinct ninety days next preceding such election. The question of the removal of a county seat shall not be oftener submitted than once in ten years, to a vote of the people. But when an attempt is made to remove a county seat to a point nearer to the center of a county, then a majority vote only shall be necessary.

COUNTY GOVERNMENT.

§ 5. The general assembly shall provide, by general law, for township organization, under which any county may organize whenever a majority of the legal voters of such county, voting at any general election, shall so determine, and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of the said county by the board of county commissioners, may be dispensed with, and the affairs of said county may be transacted in such manner as the general assembly may provide. And in any county that shall have adopted a township organization, the question of continuing the same may be submitted to a vote of the electors of such county, at a general election, in the manner that now is or may be provided by law; and if a majority of all the votes cast upon that question shall be against township organization, then such organization shall cease in said county; and all laws in force in relation to counties not having township organization, shall immediately take effect and be in force in such county. No two townships shall have the same name, and the day of holding the annual township meeting shall be uniform throughout the state.

*77] § 6. At the first election of county judges under this constitution, there shall

be elected in each of the counties in this state, not under township organization, three officers, who shall be styled "The board of county commissioners," who shall hold sessions for the transaction of county business as shall be provided by law. One of said commissioners shall hold his office for one year, one for two years, and one for three years, to be determined by lot; and every year thereafter one such officer shall be elected in each of said counties for the term of three years.

§ 7. The county affairs of Cook county shall be managed by a board of commissioners of fifteen persons, ten of whom shall be elected from the city of Chicago, and five from towns outside of said city, in such manner as may be provided by law.

COUNTY OFFICERS AND THEIR COMPENSATION.

§ 8. In each county there shall be elected the following county officers, at the general election to be held on the Tuesday after the first Monday in November, A. D. 1882: A county judge, county clerk, sheriff, and treasurer; and at the election to be held on the Tuesday after the first Monday in November, A. D. 1884, a coroner and clerk of the circuit court, (who may be *ex-officio* recorder of deeds, except in counties having 60,000 and more inhabitants, in which counties a recorder of deeds shall be elected at the general election in 1884). Each of said officers shall enter upon the duties of his office, respectively, on the first Monday of December, after his election, and they shall hold their respective offices for the term of four years, and until their successors are elected and qualified: *Provided*, that no person having once been elected to the office of sheriff, or treasurer, shall be eligible to re-election to said office for four years after the expiration of the term for which he shall have been elected.*

§ 9. The clerks of all the courts of record, the treasurer, sheriff, coroner and recorder of deeds of Cook county, shall receive, as their only compensation for their services, salaries to be fixed by law, which shall in no case be as much as the lawful compensation of a judge of the circuit court of said county, and shall be paid, respectively, only out of the fees of the office actually collected. All fees, perquisites and emoluments (above the amount of said salaries) shall be paid into the county treasury. The number of the deputies and assistants of such officers shall be determined by rule of the circuit court, to be entered of record, and their compensation shall be determined by the county board.

§ 10. The county board, except as provided in section 9 of this article, shall fix the compensation of all county officers, with the amount of their necessary clerk hire, stationery, fuel and other expenses, and in all cases where fees are provided for, said compensation shall be paid only out of, and shall in no instance exceed, the fees actually collected; they shall not allow either of them more per annum than \$1,500, in counties not exceeding 20,000 inhabitants; \$2,000 in counties containing 20,000 and not exceeding 30,000 inhabitants; \$2,500 in counties containing 30,000 and not exceeding 50,000 inhabitants; \$3,000 in counties containing 50,000 and not exceeding 70,000 inhabitants; \$3,500 in counties containing 70,000 and not exceeding 100,000 inhabitants; and \$4,000 in counties containing over 100,000 and not exceeding 250,000 inhabitants; and not more than \$1,000 additional compensation for each additional 100,000 inhabitants: *Provided*, that the compensation of no officer shall be increased or diminished during his term of office. All fees or allowances by them received, in excess of their said compensation, shall be paid into the county treasury.

§ 11. The fees of township officers, and of each class of county officers, shall be uniform in the class of counties to which they respectively belong. The compensation herein provided for shall apply only to officers hereafter elected, but all fees established by special laws shall cease at the adoption of this constitution, and such officers shall receive only such fees as are provided by general law.

§ 12. All laws fixing the fees of state, county and township officers, shall terminate with the terms, respectively, of those who may be in office at the meeting of the first general assembly after the adoption of this constitution; and the general assembly shall, by general law, uniform in its operation, provide for and regulate the fees of said officers and their successors, so as to reduce the same to a reasonable compensation for services actually rendered. But the general assembly may, by general law, classify the counties by population into not more than three classes, and regulate the fees according to class. *78] This article shall not be construed as depriving the general assembly of the power to reduce the fees of existing officers.

* This section as amended was proposed by the general assembly, 1879, ratified by a vote of the people November 2 1880, proclaimed adopted by the governor November 22, 1880.

§ 13. Every person who is elected or appointed to any office in this state, who shall be paid in whole or in part by fees, shall be required by law to make a semi-annual report, under oath, to some officer to be designated by law, of all his fees and emoluments.

ARTICLE XI.

CORPORATIONS.

§ 1. No corporation shall be created by special laws, or its charter extended, changed or amended, except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the state, but the general assembly shall provide, by general laws, for the organization of all corporations hereafter to be created.

§ 2. All existing charters or grants of special or exclusive privileges, under which organization shall not have taken place, or which shall not have been in operation within ten days from the time this constitution takes effect, shall thereafter have no validity or effect whatever.

§ 3. The general assembly shall provide, by law, that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

§ 4. No law shall be passed by the general assembly granting the right to construct and operate a street railroad within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

BANKS.

§ 5. No state bank shall hereafter be created, nor shall the state own or be liable for any stock in any corporation or joint stock company or association for banking purposes, now created, or to be hereafter created. No act of the general assembly authorizing or creating corporations or associations with banking powers, whether of issue, deposit or discount, nor amendments thereto, shall go into effect or in any manner be in force unless the same shall be submitted to a vote of the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for or against such law.

§ 6. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held, for all its liabilities accruing while he or she remains such stockholder.

§ 7. The suspension of specie payments by banking institutions, on their circulation, created by the laws of this state, shall never be permitted or sanctioned. Every banking association now, or which may hereafter be organized under the laws of this state, shall make and publish a full and accurate quarterly statement of its affairs, (which shall be certified to, under oath, by one or more of its officers,) as may be provided by law.

§ 8. If a general banking law shall be enacted, it shall provide for the registry and countersigning, by an officer of state, of all bills or paper credit, designed to circulate as money, and require security, to the full amount thereof, to be deposited with the state treasurer, in United States or Illinois state stocks, to be rated at ten per cent. below their par value; and in case of a depreciation of said stocks to the amount of ten per cent. below par, the bank or banks owning said stocks shall be required to make up said deficiency by depositing additional stocks. And said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, at the time of any transfer thereof, and to whom such transfer is made.

RAILROADS.

§ 9. Every railroad corporation organized or doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in this state for

the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books, in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfer of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers. The directors of every railroad corporation shall, annually, make a report, under oath, to the auditor of public accounts, or some officer to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. And the general assembly shall pass laws enforcing by suitable penalties the provisions of this section.

§ 10. The rolling stock, and all other movable property belonging to any railroad company or corporation in this state, shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the general assembly shall pass no law exempting any such property from execution and sale.

§ 11. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place, except upon public notice given, of at least sixty days, to all stockholders, in such manner as may be provided by law. A majority of the directors of any railroad corporation, now incorporated or hereafter to be incorporated by the laws of this state, shall be citizens and residents of this state.

§ 12. Railways heretofore constructed, or that may hereafter be constructed in this state, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the general assembly shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this state.

§ 13. No railroad corporation shall issue any stock or bonds, except for money, labor or property actually received, and applied to the purposes for which such corporation was created; and all stock dividends, and other fictitious increase of the capital stock or indebtedness of any such corporation, shall be void. The capital stock of no railroad corporation shall be increased for any purpose, except upon giving sixty days' public notice, in such manner as may be provided by law.

§ 14. The exercise of the power, and the right of eminent domain, shall never be so construed or abridged as to prevent the taking, by the general assembly, of the property and franchises of incorporated companies already organized, and subjecting them to the public necessity the same as of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation, when, in the exercise of the said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right.

§ 15. The general assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

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ARTICLE XII.

MILITIA.

§ 1. The militia of the state of Illinois shall consist of all able-bodied male persons, resident in the state, between the ages of eighteen and forty-five, except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this state.

§ 2. The general assembly, in providing for the organization, equipment and discipline of the militia, shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

§ 3. All militia officers shall be commissioned by the governor, and may hold their commissions for such time as the general assembly may provide.

§ 4. The militia shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at musters and elections, and in going to and returning from the same.

§ 5. The military records, banners and relics of the state, shall be preserved as an

enduring memorial of the patriotism and valor of Illinois, and it shall be the duty of the general assembly to provide, by law, for the safe keeping of the same.

§ 6. No person having conscientious scruples against bearing arms shall be compelled to do militia duty in time of peace: *Provided*, such person shall pay an equivalent for such exemption.

ARTICLE XIII.

WAREHOUSES.

§ 1. All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

§ 2. The owner, lessee or manager of each and every public warehouse situated in any town or city of not less than 100,000 inhabitants, shall make weekly statements under oath, before some officer to be designated by law, and keep the same posted in some conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such place as shall be designated by law, which statement shall correctly set forth the amount and grade of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued, and are, at the time of making such statement, outstanding therefor; and shall, on the copy posted in the warehouse, note daily such changes as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior or superior grades without the consent of the owner or consignee thereof.

§ 3. The owners of property stored in any warehouse, or holder of a receipt for the same, shall always be at liberty to examine such property stored, and all the books and records of the warehouse in regard to such property.

§ 4. All railroad companies and other common carriers on railroads shall weigh or measure grain at points where it is shipped, and receipt for the full amount, and shall be responsible for the delivery of such amount to the owner or consignee thereof, at the place of destination.

§ 5. All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or public warehouse can be reached by any track owned, leased or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee, and any public warehouse, coal bank or coal yard, may be reached by the cars on said railroad.

§ 6. It shall be the duty of the general assembly to pass all necessary laws to [*§1 prevent the issue of false and fraudulent warehouse receipts, and to give full effect to this article of the constitution, which shall be liberally construed so as to protect producers and shippers. And the enumeration of the remedies herein named shall not be construed to deny to the general assembly the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common law remedies.

§ 7. The general assembly shall pass laws for the inspection of grain, for the protection of producers, shippers and receivers of grain and produce.

ARTICLE XIV.

AMENDMENTS TO THE CONSTITUTION.

§ 1. Whenever two-thirds of the members of each house of the general assembly shall, by a vote entered upon the journals thereof, concur that a convention is necessary to revise, alter or amend the constitution, the question shall be submitted to the electors at the next general election. If a majority voting at the election vote for a convention, the general assembly shall, at the next session, provide for a convention, to consist of double the number of members of the senate, to be elected in the same manner, at the same places, and in the same districts. The general assembly shall, in the act calling the convention, designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with expenses necessarily incurred by the convention in the performance of its duties. Before pro-

ceeding, the members shall take an oath to support the constitution of the United States, and of the state of Illinois, and to faithfully discharge their duties as members of the convention. The qualification of members shall be the same as that of members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the general assembly. Said convention shall meet within three months after such election, and prepare such revision, alteration or amendments of the constitution as shall be deemed necessary, which shall be submitted to the electors for their ratification or rejection, at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alterations or amendments shall take effect.

§ 2. Amendments to this constitution may be proposed in either house of the general assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed amendments, together with the yeas and nays of each house thereon, shall be entered in full on their respective journals; and said amendments shall be submitted to the electors of this state for adoption or rejection, at the next election of members of the general assembly, in such manner as may be prescribed by law. The proposed amendments shall be published in full at least three months preceding the election, and if a majority of the electors voting at said election shall vote for the proposed amendments, they shall become a part of this constitution. But the general assembly shall have no power to propose amendments to more than one article of this constitution at the same session, nor to the same article oftener than once in four years.

SEPARATE SECTIONS.

ILLINOIS CENTRAL RAILROAD.

No contract, obligation or liability whatever, of the Illinois Central Railroad Company, to pay any money into the state treasury, nor any lien of the state upon, or right to tax property of said company in accordance with the provisions of the charter of said company, approved February 10th, in the year of our Lord 1851, shall ever be released, suspended, modified, altered, remitted, or in any manner diminished or impaired by legislative or other authority; and all moneys derived from said company, after the payment of the state debt, shall be appropriated and set apart for the payment of the ordinary expenses of the state government, and for no other purposes whatever.

MUNICIPAL SUBSCRIPTIONS TO RAILROADS OR PRIVATE CORPORATIONS.

No county, city, town, township or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation: *Provided, however,* that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption.

CANAL.

The Illinois and Michigan Canal shall never be sold or leased until the specific proposition for the sale or lease thereof shall first have been submitted to a vote of the people of the state at a general election, and have been approved by a majority of all the votes polled at such election. The general assembly shall never loan the credit of the state, or make appropriations from the treasury thereof, in aid of railroads or canals: *Provided,* that any surplus earnings of any canal may be appropriated for its enlargement or extension.

SCHEDULE.

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

§ 1. That all laws in force at the adoption of this constitution, not inconsistent therewith, and all rights, actions, prosecutions, claims, and contracts of this state, individuals, or bodies corporate, shall continue to be as valid as if this constitution had not been adopted.

§ 2. That all fines, taxes, penalties and forfeitures, due and owing to the state of Illinois under the present constitution and laws, shall inure to the use of the people of the state of Illinois, under this constitution.

§ 3. Recognizances, bonds, obligations, and all other instruments entered into or executed before the adoption of this constitution, to the people of the state of Illinois, to any state or county officer or public body, shall remain binding and valid; and rights and liabilities upon the same shall continue, and all crimes and misdemeanors shall be tried and punished as though no change had been made in the constitution of this state.

§ 4. County courts for the transaction of county business in counties not having adopted township organization, shall continue in existence and exercise their present jurisdiction until the board of county commissioners provided in this constitution is organized in pursuance of an act of the general assembly; and the county courts in all other counties shall have the same power and jurisdiction they now possess until otherwise provided by general law.

§ 5. All existing courts which are not in this constitution specifically enumerated, shall continue in existence and exercise their present jurisdiction until otherwise provided by law.

§ 6. All persons now filling any office or appointment shall continue in the exercise of the duties thereof according to their respective commissions or appointments, unless by this constitution it is otherwise directed.

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§ 18. All laws of the state of Illinois, and all official writings, and the executive, legislative and judicial proceedings, shall be conducted, preserved and published in no other than the English language.

§ 19. The general assembly shall pass all laws necessary to carry into effect the provisions of this constitution.

§ 20. The circuit clerks of the different counties having a population over sixty [*33 thousand, shall continue to be recorders (*ex-officio*) for their respective counties, under this constitution, until the expiration of their respective terms.

§ 21. The judges of all courts of record in Cook county shall, in lieu of any salary provided for in this constitution, receive the compensation now provided by law until the adjournment of the first session of the general assembly after the adoption of this constitution.

§ 22. The present judge of the circuit court of Cook county shall continue to hold the circuit court of Lake county until otherwise provided by law.

§ 23. When this constitution shall be adopted, and take effect as the supreme law of the state of Illinois, the two-mill tax provided to be annually assessed and collected upon each dollar's worth of taxable property, in addition to all other taxes, as set forth in article fifteen of the now existing constitution, shall cease to be assessed after the year of our Lord one thousand eight hundred and seventy.

§ 24. Nothing contained in this constitution shall be so construed as to deprive the general assembly of power to authorize the city of Quincy to create any indebtedness for railroad or municipal purposes, for which the people of said city shall have voted, and to which they shall have given, by such vote, their assent, prior to the thirteenth day of December, in the year of our Lord one thousand eight hundred and sixty-nine: *Provided*, that no such indebtedness, so created, shall in any part thereof be paid by the state, or from any state revenue, tax or fund, but the same shall be paid, if at all, by the said city of Quincy alone, and by taxes to be levied upon the taxable property thereof: *And, provided, further*, that the general assembly shall have no power in the premises that it could not exercise under the present constitution of this state.

§ 25. In case this constitution and the articles and sections submitted separately be adopted, the existing constitution shall cease in all its provisions; and in case this constitution be adopted, and any one or more of the articles or sections submitted separately be defeated, the provisions of the existing constitution (if any) on the same subject shall remain in force.

§ 26. The provisions of this constitution required to be executed prior to the adoption or rejection thereof shall take effect and be in force immediately.

Done in convention at the capitol, in the city of Springfield, on the thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States of America the ninety-fourth.

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