limit the incidental expenses of members of the General Assembly to $50 each per session.[3] And a joint resolution, directing the payment (out of an appropriation for legislative expenses) to each member of the General Assembly of a sum equal to the cost of railroad fare for twenty-one round trips between his home and the state capital, is void for the reason that it has the effect of increasing the compensation of the members of the General Assembly during their official terms, as well as increasing the allowance of $50 to each member for each session.[4]

In 1917, the Attorney General rendered an opinion in which he intimated that the attorney fees and other expenses of a member of the General Assembly in connection with an election contest for his seat in the General Assembly might well be considered the personal expenses of the member, the payment of which by the state would be in conflict with this section of the constitution.[5]

The Attorney General in 1910, held that this section did not prohibit a change in the time and manner of the payment of the compensation of members of the General Assembly.[6]

Special laws changing fees, percentage or allowances of public officers. In 1871, the General Assembly under the provisions of section 24 of the schedule, passed a bill authorizing the city of Quincy to issue bonds in aid of railroads. The bill provided for a tax levy and authorized the tax officials of the county in which Quincy is located to retain, as fees, a certain percentage of the taxes collected under the terms of the bill. The Governor vetoed the bill on the ground that the provision authorizing the tax officials to retain, as fees, a part of the taxes collected was in conflict with that provision of the constitution (article 4, section 22) prohibiting special laws "creating, increasing or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed."[7]

Elective state officers. The salaries of the elective state officers cannot be changed during their official terms.[8] But an appropriation to the Governor "for the care of the executive mansion and grounds, and for heating lighting, expenses of public receptions, wages and sustenance of employes, automobile and stable expense and other incidental expenses of the executive mansion," does not have the effect of increasing his salary, particularly when the appropriation act provides that no part of the appropriation may be expended except upon itemized vouchers showing that an obligation of the character contemplated by the appropriation has been incurred. And so appropriations to the Lieutenant Governor for traveling expenses, to the Secretary of State for editing the Blue Book and to the Superintendent of Public Instruction for conducting certain examinations, do not increase the salaries of these officers, when it is clear from the appropriation act that the money appropriated can be used only to pay obligations incurred pursuant to the purpose of the appropriations. Such appropriations are not intended as the personal compensation of these officers, but are intended to defray the cost of performing the duties required of them. Thus, with reference to the appropriation to the Secretary of State for editing the Blue Book, the court said: "That it was not contemplated or intended that the Secretary of State should personally edit the Blue Book and receive this compensation is too clear to admit of argument; and should he do so, this appropriation would not be available, as he must by his receipted vouchers

[3] Fergus v Russel, 270 Ill. 304 (1915).
[4] Fergus v Russel, 270 Ill. 626 (1915).
[5] Veto Messages 1917, p. 85.
[6] Report Attorney General 1910, p. 90.
[7] Veto Message Senate Journal 1871, p. 377.
[8] Estate of Ramsay v Whitbeck, 183 Ill. 550 (1915); Whittemore v People, 227 Ill. 453 (1907).

show that the money secured from this appropriation has been expended by him for this purpose."[9]

The constitution does not expressly forbid a change in the salary of an appointive state officer during his term. There is some question whether or not the salary of an appointive state officer who is appointed for a definite term, may be increased during his term. The question has never been passed upon by the Supreme Court. (See discussion preceding sub-heading "In general").

Judicial officers. Section 25 of article 6, which provides that the compensation of the judges of the circuit and superior courts of Cook County "shall not be changed during their continuance in office" applies to the terms for which such judges are elected, and not to the individuals holding the offices. The fact that section 16 of article 6 provides that the salaries of circuit judges (other than those of Cook County) "shall not be increased or diminished during the terms for which such judges shall be respectively elected" does not show that the framers of the constitution intended a different meaning to be attached to section 25. While the language employed in the two cases is different, both mean the same, and both apply to the terms of office and not to the individuals. In Foreman v People,[10] the facts were as follows: A judge of the superior court was elected in 1899 for a term of six years. Before the expiration of his term, he resigned. In 1901, the General Assembly passed an act increasing the compensation of judges of the superior court. In 1902, another judge was elected to fill the vacancy, and the question presented was whether or not the second judge, having been elected after the passage of the act of 1901, was entitled to the increased compensation. The court held that he was not, for the reason that the constitutional limitation applied to the term of office and not to the continuance in office of the individual. (See article 6, sections 7, 16).

Municipal officers. Section 11 of article 9 in part provides that "the fees, salary or compensation of no municipal officer who is elected or appointed for a definite term of office shall be increased or diminished during such term." The word "municipal" has been given a broad interpretation. In Wolf v Hope,[11] the court said: "In our judgment the provision quoted from section 11 of article 9 of the constitution was intended to include all officers not specifically mentioned in other provisions of the constitution, occupying offices created by the laws of the state in and for any of the political subdivisions of the state, and within the meaning of that section the judge of a city court is a municipal officer." In accordance with this doctrine, the Supreme Court has held that county superintendents of schools, state's attorneys, clerks of the probate court, city treasurers and boards of election commissioners are municipal officers whose salaries or compensation cannot be changed during their terms of office.[12] And the Attorney General has held that the provision applies to village clerks, county commissioners, clerks of city courts, town assessors, county superintendents of highways, oil inspectors appointed by county judges, aldermen and drainage commissioners.[13] The Attorney General, in a recent opinion, has also held that the act of the General Assembly, passed in 1919, increasing the amount of the fees authorized to be charged and retained by justices of the peace, police magistrates and constables, does not apply to the justices, magistrates and constables now in office.[14]

[9] Fergus v Russel. 270 Ill. 304 (1915).
[10] 209 Ill. 567 (1904); see, also, Report Attorney General 1912, pp. 525, 526.
[11] 210 Ill. 50 (1904).
[12] Jimison v Adams County, 130 Ill. 558 (1889); People v Williams, 232 Ill. 519 (1908); Cook County v Sennott, 136 Ill. 314 (1891); City of Chicago v Wolf, 221 Ill. 130 (1906); People v Cook County Commissioners, 260 Ill. 345 (1913).
[13] Report Attorney General 1908, p. 692; pp. 477, 564, 569, 570; 1914, p. 1239; 1915, pp. 318, 738; 1910, p. 900.
[14] Opinion Attorney General, August 1, 1919.

The Supreme Court has decided, however, that this section does not prevent the establishment of police pension funds.[15] And the Attorney General has ruled that it does not apply to the clerk of the house of representatives, the secretary of the senate or probation officers, for the reason that these officers do not hold their offices for a definite term.[16]

County officers. Section 10 of article 10 provides in part as follows: "The county board except as provided in section nine of this article, shall fix the compensation of all county officers, with the amount of their necessary clerk hire, stationery, fuel and other expenses . . . Provided that the compensation of no officer shall be increased or diminished during his term of office." Section 9 of article 10 provides that the General Assembly shall fix the salaries of the clerks of all courts of record, the treasurer, sheriff, coroner and recorder of deeds of Cook County. Who are county officers within the meaning of section 10 of article 10? In section 8 of article 10 county judges, county clerks, sheriffs, treasurers, coroners, circuit clerks and recorders of deeds are expressly designated as county officers. It has been held that county superintendents of schools and state's attorneys are not county officers within the meaning of this section,[17] but that the members of the board of commissioners for Cook County are county officers.[18] And it has been held that this section does not include officers created by statute, but applies only to officers created by the constitution.[19]

It would seem that the question whether or not an officer is a county officer is relatively unimportant, in so far as changing his compensation is concerned, for, in any event, if he is an officer "in and for any of the political subdivisions of the state" his compensation cannot be changed during his term of office. (See discussion preceding sub-heading). But the words "with the amount of their necessary clerk hire, stationery, fuel and other expenses," which appear in section 10 of article 10, do have an important bearing in determining whether or not the compensation of a county officer has been altered, and it therefore becomes necessary to consider the decisions relating to the compensation of county officers, such as county clerks, treasurers, sheriffs, circuit clerks and coroners. (See discussion article 10, section 10, sub-heading "County officers").

With reference to these officers, it has been held that the county board in providing for their salaries and expenses may do one of two things. (1) The board may fix the personal salary of the officer, together with his necessary clerk hire and expenses, in one sum. (2) The board may fix the personal salary in one sum and the necessary clerk hire and expenses of his office in another sum. If the first method is followed, then the officer is limited to the amount allowed, and the county board can make no other allowances to him during his term whether for personal salary or expenses, for the reason that such additional allowances would operate to increase his compensation during his term.[20] If the second plan is followed, the county board, while it may not allow the officer an additional sum for personal salary, may, during the officer's term, make additional allowances to him for the expenses of his office, without violating the constitutional provision forbidding increases in salary during the term.[21] And, while a county officer cannot create a binding obligation against the county by making an expenditure for expenses in excess of the amount fixed by the county board

[15] People v Abbott, 274 Ill. 380 (1916).
[16] Report Attorney General 1912, p. 979; 1917-18, p. 425.
[17] Jimison v Adams County, 130 Ill. 558 (1889); Butzow v Kern, 264 Ill. 498 (1914).
[18] Wulff v Aldrich, 124 Ill. 591 (1888).
[19] People v Chetlain, 219 Ill. 248 (1906); McAuliffe v O'Connell, 258 Ill. 186 (1913).
[20] Kilgore v People, 76 Ill. 548 (1875); Brissenden v County of Clay, 161 Ill. 216 (1896).
[21] Daggett v Ford County, 99 Ill. 334 (1881); Coles County v Messer, 195 Ill. 540 (1902).

for that purpose,"[22] the board may, if it sees fit, approve and order the payment of the obligation so incurred.[23] But if the expenses for an office are provided for in a separate, specific sum, the officer is entitled to only that portion of the sum which is actually used for the expenses of his office, and this rule will not operate to reduce the officer's compensation during his term.[24] Thus, if a circuit clerk is allowed $2,500 per year as personal salary and $4,000 per annum for expenses, he is not allowed to retain the whole amount of $4,000, if as a matter of fact, he was required to expend only $2,000 for expenses. If, however, personal salary and expenses are fixed in one sum, then the officer is entitled to the whole amount, irrespective of his expenditures for office expenses, for to reduce the amount thus fixed would be to reduce the salary of the officer, contrary to the constitutional provision.[25]

It must be remembered, however, that regardless of the method of fixing compensation and expenses adopted by the county board, the personal salary and expenses of the office cannot, in certain cases, exceed the fees collected by the office. (See discussion article 10, section 10, subheading, "Salaries").

Section 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 empaneling grand or petit juries;

Providing for the management of common schools;

Regulating the rate of interest on money;

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

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

The protection of game or fish;

Chartering or licensing ferries or toll bridges;

Remitting fines, penalties or forfeitures;

[22] Daggett v Ford County, 99 Ill. 334 (1881); Coles County v Messer, 195 Ill. 540 (1902); but see Briscoe v Clark County, 95 Ill. 309 (1880).

[23] People v Fuller, 238 Ill. 116 (1909).

[24] Cullom v Doloff, 94 Ill. 330 (1880); Jennings v Fayette County, 97 Ill. 419 (1881).

[25] Jennings v Fayette County, 97 Ill. 419 (1881); Brissenden v County of Clay, 161 Ill. 216 (1896).

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.

In general. The constitution of 1848 contained certain provisions designed to restrict the power of the General Assembly to pass private, local or special laws. That instrument provided that "no private or local law shall embrace more than one subject and that shall be expressed in the title" (article 3, section 23), and in a few specific instances forbade the passage of special laws. Under the constitution of 1848, the General Assembly with respect to divorces, township organization and the formation of corporations, could enact general laws only (article 3, section 32; article 7, section 6; article 10, section 1.) These limitations, however, had little effect in reducing the number of private and special laws. The convention of 1862 sought to place additional restrictions on the power of the General Assembly in this respect, but the constitution proposed by that body was rejected by the people. It was for the purpose of checking the passage of a great number of private and special laws at each session of the General Assembly that this section of the present constitution was adopted by the convention of 1869-70. (See Constitutional Conventions in Illinois, Second Edition, pp. 14, 18, 21, 24, 44).

This section of the constitution forbids the enactment of special and local laws only to the extent of the subjects enumerated therein. As to all other subjects the General Assembly, unless forbidden by other provisions of the constitution, may pass special laws. Thus, the General Assembly may pass special laws with reference to drainage districts,[26] sanitary districts[27] parks,[28] or grain inspection.[29] This rule, however, must be construed in connection with that clause of this section which forbids the passage of local or special laws "granting to any corporation, association or individual any special or exclusive privilege." A law which relates to a subject not enumerated in this section may confer special privileges, in which event it will be void.[30] (See discussion subsequent subheadings, "Special privileges and immunities" and "Necessity for general laws in other cases").

This section does not necessarily prohibit legislation on a particular subject or with reference to a particular class; nor does it absolutely prevent the enactment of laws which may be operative in only a few localities, or even in a single locality. If a law is general in the sense that it applies without discrimination to all persons or localities similarly situated it is not a special law.[31] Thus, a law which confers a special power on boards of park commissioners in incorporated cities is not a local or special law merely because it does not apply to boards of park commissioners not

[26] Owners of Lands v People, 113 Ill. 296 (1886); Herschbach v Kaskaskia Sanitary District, 265 Ill. 388 (1914).

[27] Wilson v Board of Trustees, 133 Ill. 443 (1890); People v Bowman, 247 Ill. 276 (1910); Rylands v Clark, 278 Ill. 39 (1917).

[28] Commissioners of Lincoln Park v Fahrney, 250 Ill. 256 (1911).

[29] People v Harper, 91 Ill. 357 (1878).

[30] People v Rinaker, 252 Ill. 266 (1911).

[31] People v Wright, 70 Ill. 388 (1873); Potwin v Johnson, 108 Ill. 70 (1883); Hawthorn v People, 109 Ill. 302 (1883); People v Hazelwood, 116 Ill. 319 (1886); Park v Modern Woodmen of America, 181 Ill. 214 (1899); City of Mt. Vernon v Evens Brick Co., 204 Ill. 32 (1903).

in incorporated cities; it does apply to all boards in incorporated cities and that is all that is necessary.[32] And an act, general in its terms, which purports to validate defective annexations of a city, village or town by another city, village or town is not special even though it may, as a matter of fact, apply only to one city in the state.[33] (See discussion subsequent subheading, "Special privileges and immunities").

A law is not special merely because it contains a provision that it shall be effective only in those communities in which the voters shall adopt it;[34] nor is a law which is limited as to the time of its duration in violation of this section.[35]

The constitutional provisions with respect to special legislation do not apply to municipal ordinances.[36]

Laying out, opening, altering and working roads or highways. "The laws for laying out and opening, altering or working roads or highways cannot be different in this state in counties under township organization from what they are in counties not under township organization, unless there is a substantial difference in the situation or circumstances of the two classes of counties when considered with reference to the purpose of the legislation in question."[37] An act of the General Assembly, which makes highway commissioners in counties not under township organization liable for damages sustained by reason of their negligence in failing to keep the roads under their jurisdiction in repair, but which does not impose the same liability on commissioners in counties under township organization, is void because there is no basis for discrimination between the two classes of commissioners in this respect.[38] On the other hand the act of the General Assembly providing for a system of hard roads is not void as being in violation of this clause because it places only a part of the roads of the state under the jurisdiction of the department of public works and buildings, since it is clear that, for the purposes of that act, there is a reasonable basis for the classification.[39]

County and township affairs. "County affairs are those relating to the county in its organic and corporate capacity and included within its governmental or corporate powers. When the constitution speaks of the affairs of a county it refers to the affairs which affect the people of that county."[40] The election of county officers is a county affair,[41] but the election of circuit judges is not, because circuit court districts, except in Cook County, embrace more than one county.[42] And laws providing for the assessment of property or creating forest preserve districts do not relate to county affairs.[43]

A law does not violate this clause merely because it classifies counties or townships on the basis of population, or on some other basis, if the classification, insofar as it relates to the subject matter of the law, is reasonable and not arbitrary; and this is true even though under the classification adopted by the General Assembly the law may apply to but one county or township.[44] Thus, the act providing for jury commissioners in counties

[32] West Chicago Park Commissioners v McMullen, 134 Ill. 170 (1890).
[33] People v City of Rock Island, 271 Ill. 412 (1916).
[34] People v Hoffman, 116 Ill. 587 (1886); People v Edmands, 252 Ill. 108 (1911).
[35] People v Wright, 70 Ill. 388 (1873).
[36] People v Cooper, 83 Ill. 585 (1876); City of Chicago v Weber, 246 Ill. 304 (1910).
[37] Kennedy v McGovern, 246 Ill. 497 (1910).
[38] Kennedy v McGovern, 246 Ill. 497 (1910).
[39] Mitchell v Lowden, 288 Ill. 327 (1919); Martens v Brady, 264 Ill. 178 (1914).
[40] People v Board of Election Commissioners, 221 Ill. 9 (1906).
[41] People v Board of Election Commissioners, 221 Ill. 9 (1906).
[42] People v Sweitzer, 282 Ill. 171 (1918).
[43] People v Commissioners of Cook Co., 176 Ill. 576 (1898); Perkins v Commissioners of Cook Co., 271 Ill. 449 (1916).
[44] People v Onahan, 170 Ill. 449 (1897); Kucera v West Chicago Park Commissioners, 221 Ill. 488 (1906).

having a population of more than 100,000 is not a special law even though at the time of its passage, it was apparent that it could apply only to one county in the state.[45] And the "Juul Law" which classifies counties into two classes, those having more and those having less than 300,000 population, is not a special law although it is apparent that only Cook County can be included in one of the classes created by the law.[46] In both of these cases the court took the view that for the purposes of the legislation then under consideration there was a reasonable basis for classifying counties on the basis of population. It must be admitted, however, that the Supreme Court in at least three cases[47] seems to take the view that a law which, though framed in general terms, can apply to only one county or township is void as being a special law, irrespective of other considerations. But when the cases are studied carefully it is apparent that the court does not hold that reasonable classifications with respect to counties and townships are not permitted but rather that the classifications in the laws considered in those cases were deemed unreasonable and arbitrary.

In accordance with the general rule that the General Assembly may make reasonable classifications for the purpose of legislating with respect to counties and townships, the court has held that it is permissible to make a distinction between counties under township organization and counties not under township organization if, for the purposes of the legislation in question, there is a reasonable basis for the distinction.[48] (See discussion subsequent sub-heading, "Special privileges and immunities.")

It must be borne in mind also that with reference to certain subjects the constitution itself authorizes the General Assembly to classify counties or to pass laws relating to but one county. Section 12 of article 10 provides "that the General Assembly may, by general law, classify the counties by population into not more than three classes and regulate the fees [of officers] according to class." Section 9 of article 10 directs the General Assembly to fix the salaries of certain Cook County officers. And section 7 of article 10, as construed by the Supreme Court, authorizes the General Assembly to pass special legislation for the management of the affairs of Cook County.[49] (See article 10, sections 7, 9, 12).

Practice in courts of justice. Laws regulating the practice in courts of justice which apply only to a particular subject or class are void under this clause, unless there is a reasonable basis for the classification. A law prescribing a special procedure in the courts with reference to the dissolution of insurance companies is valid, if it applies generally to all insurance companies,[50] but a law, which makes a special provision for the appointment of administrators of the estates of non-residents in counties having a population of more than 200,000, is void as being in violation of this clause, because in the opinion of the court, there is no reasonable basis for a distinction between counties having a population of more than 200,000 and counties having a population of less than 200,000, with respect to the subject matter of the law.[51] (See discussion subsequent sub-heading, "Special privileges and immunities.")

In the opinion of the Attorney General this clause prohibits the enactment of a law which applies to only two of the city courts in the state.[52]

The provisions of the constitution (article 4, section 34) concerning

[45] People v Onahan, 170 Ill. 449 (1897).
[46] Booth v Opel, 244 Ill. 317 (1910).
[47] Devine v Commissioners of Cook Co., 84 Ill. 590 (1877); Pettibone v West Chicago Park Commissioners, 215 Ill. 304 (1901); People v Board of Election Commissioners, 221 Ill. 9 (1906).
[48] Reynolds v Town of Foster, 89 Ill. 257 (1878); People v Board of Supervisors, 223 Ill. 187 (1906); Kennedy v McGovern, 246 Ill. 497 (1910).
[49] People v Day, 277 Ill. 543 (1917).
[50] Chicago Life Insurance Co. v Auditor of Public Accounts, 101 Ill. 82 (1881).
[51] Strong v Dignan, 207 Ill. 385 (1904).
[52] Report Attorney General 1884, p. 21.

the practice and jurisdiction of the municipal court of Chicago constitute an exception to this clause. (See discussion article 6, section 29, subheading, "Constitutional exceptions to rule of uniformity.")

Jurisdiction of justices of the peace. In 1881 the General Assembly passed a law the effect of which was to make each county in the state except Cook County, a district in which justices of the peace elected therein could exercise jurisdiction. Cook County, however, was divided into two districts, and it was provided that a justice of the peace in one district in that county could not exercise jurisdiction in the other district. The Supreme Court held that the law was in conflict with this clause.[53] A constitutional amendment (article 4, section 34), adopted in 1904, has made it possible to abolish justices of the peace and police magistrates in the city of Chicago and to limit the territorial jurisdiction of the justices of the peace of Cook County outside the city of Chicago. (See discussion article 4, section 34; article 6, section 21.)

Changes of venue. The General Assembly has no power to make special provisions concerning changes of venue from the municipal court of the city of Chicago. While the constitution (article 4, section 34) gives the General Assembly the power to pass special laws with reference to the jurisdiction and practice of the municipal court, it was not intended to change the constitutional rule prohibiting special laws relating to changes of venue in civil and criminal cases. The right to a change of venue is not a matter of practice.[54]

Incorporating cities, towns and villages or amending the charters thereof. While the constitution does not have the effect of abrogating the charters of all cities, towns and villages organized under special acts passed prior to its adoption,[55] it does prevent the amendment of special charters by special laws, and such charters can be amended only by general laws.[56] It has been held, however, that a special act which repeals a section of a special charter is not prohibited, if the purpose and effect of the repealing act is to establish and promote uniformity with reference to the powers and duties of cities, towns and villages.[57]

An Act which gives to cities, at the option of their councils, the power to abolish or continue in office city assessors, is in conflict with this clause for the reason that the effect of such an act would be to promote dissimilarity in the character and organization of such municipalities.[58] But this does not deny to the General Assembly the power to classify cities, towns and villages for the purposes of legislation, if the classifications adopted are reasonable from the standpoint of the legislative purpose sought to be accomplished.[59] The rules with reference to the classification of cities, towns and villages are similar to those concerning the classification of counties and townships. (See discussion preceding sub-heading, "County and township affairs;" see, also, discussion subsequent sub-heading, "Special privileges and immunities").

By virtue of an amendment to the constitution the General Assembly may pass special laws with reference to the local government of the city of Chicago. (See discussion, article 4, section 34).

[53] People v Meech, 101 Ill. 200 (1882).
[54] Flegen v Shaeffer, 256 Ill. 493 (1913).
[55] Covington v City of East St. Louis, 78 Ill. 548 (1875).
[56] Andrews v People, 75 Ill. 605 (1874); McCormick v People, 139 Ill. 499 (1891).
[57] People v Crawley, 274 Ill. 139 (1916).
[58] People v Cooper, 83 Ill. 585 (1876).
[59] People v Board of Trustees, 170 Ill. 168 (1897); Cummings v City of Chicago, 144 Ill. 563 (1893); Booth v Opel, 244 Ill. 317 (1910); People v Fox, 247 Ill. 402 (1910).

Grand and petit jurors. In the case of In re Scranton[60] the court said that a law exempting city firemen in the city of Chicago from jury service would be unconstitutional under this clause because it would apply only to the firemen in one city. This clause, however, applies only to the summoning and impaneling of grand and petit juries. The jury commissioners act, which applies only to counties having a poulation of more than 100,000, was held not to be a special law relating to the summoning and impaneling of grand and petit juries because, while the jury commissioners are charged with the duty of preparing lists containing the names of persons available as jurors, they have nothing to do with the summoning and impaneling of juries.[61]

Management of common schools. This clause relates only to the management of the common schools. It does not forbid special laws with reference to the formation or support of school districts.[62] But this rule must be qualified to the extent that a special law with reference to the formation of school districts cannot arbitrarily discriminate between persons and communities similarly situated, for to do so would be to violate that clause of this section forbidding the enactment of special laws conferring special privileges.[63] (See discussion subsequent sub-headings, "Special privileges and immunities" and "Necessity for general laws in other cases.")

It is interesting to note in connection with this clause that, while the Supreme Court has said that this provision does not prohibit special legislation with reference to the support of the common schools,[64] the members of the convention intended that it should. When the clause was originally introduced in the convention it contained the words "management and support." On the suggestion of one of the members of the convention that the word "management" was broad enough to include support the author of the clause amended it by striking out the words "and support." (Debates, p. 608.)

Interest rates. An act of the General Assembly which authorizes the creation of building and loan associations with power to loan money to their members at the highest premium bid therefor, does not violate this clause.[65] And the General Assembly may fix the rate of interest to be charged on delinquent special assessments levied by parks for this is not a regulation of the rates of interest on money, but is in the nature of a penalty for failure to pay the assessments.[66] It has also been held that a law which, subject to certain conditions, authorizes persons making loans of $300 or less to charge more than seven per cent interest, is not contrary to this clause, the decision apparently being based on the ground that the classification made by the law is a reasonable one in view of the legislative purpose sought to be accomplished.[67]

Election and polling places. A statute which provides that it shall not go into effect in any city or district until adopted by the voters of the city or district is not void because it contains provisions prescribing the manner in which the question of its adoption shall be submitted to the voters.[68]

[60] 74 Ill. 161 (1874).
[61] People v Onahan, 170 Ill. 449 (1897).
[62] Speight v People, 87 Ill. 595 (1877); Commissioners of Kaskaskia v Trustees of Kaskaskia, 249 Ill. 578 (1911).
[63] People v Wels; 275 Ill. 581 (1916).
[64] Commissioners of Kaskaskia v Trustees of Kaskaskia, 249 Ill. 578 (1911).
[65] Winget v Quincy Building & Homestead Association, 128 Ill. 67 (1889); but see Veto Message House Journal 1877, p. 829.
[66] McChesney v People, 99 Ill. 216 (1881).
[67] People v Stokes, 281 Ill. 159 (1917); but see Report Attorney General 1913, p. 30.
[68] Perkins v Commissioners of Cook Co., 271 Ill. 449 (1916).

This provision of the constitution does not prohibit the General Assembly from making reasonable classifications with reference to the establishment of polling places. Thus, an act which directs the board of supervisors in counties where a soldier's or sailor's home is located "to fix and establish the place or places for holding such election . . . at some convenient . . . place or places, easy of access, on the ground . . . where such home . . . is located," was held not to contravene this clause because it applies to all persons in the same class and because there is a reasonable basis for the classification.[69]

Sale or mortgage of real estate owned by minors. In Kingsbury v. Sperry[70] it was said that a statute which would attempt to give the right to sue out a writ of error to the probate court in a proceeding relating to the sale of real estate owned by a minor, without giving the same right in a similar proceeding in a county court, would violate this clause. (See discussion article 6, sections 20, 29.)

Fish and game. In People v. Wilcox[71] it was held that the purpose of this clause was to prevent the enactment of laws for the protection of fish and game that would not "operate in all the territory subject to the jurisdiction of the state." In that case an act which forbade fishing in any of the waters of the state, except Lake Michigan, by means of a hoop net or seine, unless the persons desiring to use a hoop net or seine procured a license for that purpose from the county clerk, was held void because the exclusion of Lake Michigan from its operation rendered it a special law relating to the protection of fish and game. Three judges dissented, however, on the ground that this clause does not prevent the General Assembly from making reasonable classifications for the purpose of legislating on the subject of fish and game protection, and that the exclusion of Lake Michigan in the act under consideration was based on a reasonable distinction between that body of water and other waters in the state.

In the later case of People v Dickmann[72] that portion of the fish and game act which authorized the fish and game commission to set aside "such waters within the jurisdiction of this state as they may judge best as state fish preserves," was sustained on the same reasoning as that adopted by the dissenting judges in the Wilcox case. The court in the Dickmann case said: "This provision applies equally to any of the waters under the jurisdiction of the state which the fish and game commission finds should be used for the preservation and propagation of fish. Such portions of the waters of the state may by them be set aside as a state fish preserve, as provided in said act. Such cannot be said to be a local or special law."

Remitting fines and penalties. This clause prevents the General Assembly from remitting any particular fine which has already been imposed. It is a limitation on the power of the General Assembly only and does not prevent courts from remitting fines and penalties; nor does it prevent the General Assembly from authorizing courts to remit fines. The wife abandonment act of 1913 which gives the court the power, in the event of a conviction, to direct that a part or the whole of the fine imposed shall be paid to the defendant's wife does not conflict with this provision.[73]

Increasing fees and allowances of officers. (See discussion article 4, section 21, subheading, "Special laws changing fees, percentage or allowances of public officers).

[69] People v Board of Supervisors, 185 Ill. 288 (1900); see Report Attorney General, 1917-18, pp. 300, 315.
[70] 119 Ill. 279 (1887).
[71] 237 Ill. 421 (1908).
[72] 285 Ill. 97 (1918); but see Veto Messages 1917, p. 27.
[73] People v Heise, 257 Ill. 443 (1913).

Changing the law of descent. An act which prohibits alien non-residents from "acquiring title to or taking or holding lands or real estate in this state by descent, devise, purchase or otherwise," is not special merely for the reason that under certain treaties, between the United States and certain foreign governments, citizens of those governments not residing in Illinois may inherit lands in Illinois. It is true, of course, that treaties are the supreme law of the land and take precedence over acts of the General Assembly but the act is not special for that reason. It applies generally to all alien non-residents not protected by such treaties. "Moreover, a statute ought to be upheld by the courts unless it is clear that it conflicts with the constitution. It is not clear, that the constitutional prohibition against special legislation was intended to refer to the operation of state laws upon different classes of foreigners, but only to their operation upon different classes among the citizens of the state. More especially is it not clear, that discrimination among different classes of non-resident aliens was intended to be forbidden by the prohibition of special legislation changing the law of descent."[74]

Special privileges and immunities. This clause is often construed in connection with the due process of law clause (article 2, section 2). Frequently the Supreme Court will cite cases construing this provision and the due process clause without distinction. The construction placed upon this provision by the Supreme Court makes it equivalent to that provision of the United States constitution (14th amendment) which forbids a state from denying to any person within its jurisdiction the equal protection of the laws. As a matter of fact the Illinois Supreme Court has probably given the clause under consideration a broader interpretation than has been given to the equal protection of the laws clause; that is, some laws which have been held in conflict with this provision of the constitution of Illinois probably would not have been held void under the 14th amendment of the constitution of the United States.

In the discussion in the first sub-heading under this section it has been pointed out that laws are not local or special merely because they may be operative in certain parts of the state only, or because they apply only to a certain class of persons. The discussion under other preceding sub-headings show that, even as to the subjects upon which the General Assembly is expressly forbidden to pass local or special legislation, that body may make reasonable classifications for the purposes of legislation. And so it is with reference to the clause now under consideration. A law does not confer special privileges merely because it applies only to certain parts of the state or to a certain class. There may be a sound basis for limiting its application, in which event it will not be in conflict with this clause. "A law is not to be denominated local simply because it may operate only in certain of the municipalities of the state, if, by its terms, it includes and operates uniformly throughout the state under like circumstances and situations. The cities and villages of the state may be classified for purposes of legislation on the basis of population, if such basis has some reasonable relation to the purposes and objects to be attained by the legislation and in some rational degree accounts for the variant provisions of the enactment. A classification of cities, towns, and villages by population cannot be arbitrarily adopted as a ground or reason for investing some of them with powers denied or not granted to others, if, though there be difference in population, there is no difference of situation or circumstances of the municipalities placed in the different classes, and the difference in population has no reasonable relation to the purposes and objects to be attained by the statute."[75]

"Legislation which applies only to a certain class in the community is not necessarily special legislation, within the meaning of the fundamental law of the state. Laws are general and uniform when alike in their operation upon all persons in like situation. When a law is made applicable

[74] Wunderle v Wunderle, 144 Ill. 40 (1893).
[75] L'Hote v Village of Milford, 212 Ill. 418 (1904).

only to one class of individuals, however, there must be some actual, substantial difference between the individuals so classified and other individuals in the state or community, when considered with reference to the purposes of the legislation. The class, if the law confers a benefit upon it, must be composed of individuals possessing in common some disability, attribute or qualification, or in some condition marking them as proper objects in whom to vest the specific right granted unto them. Members of the medical profession may properly be placed in one class, and constitutional laws applicable to that class alone, relating to the practice of medicine, may be enacted, but a statute regulating the descent of property could not be valid if it applied only to that class."[76]

"Not only must the law operate generally upon all the individuals composing a class to whom privileges are granted, but there must be a sound basis, in reason and principle, for regarding the class of individuals as a distinct and separate class . . . a class cannot be created by arbitrary declaration of the law-making power and endowed with special legislative favors. It is essential to the validity of the classification, in such instances, it shall be based on material distinctions in the situation and circumstances of the individuals who are to be embraced therein, and the grounds of distinction and classification must have relation, in reason and principle, to the privileges proposed to be granted to the individuals, as a class, by the proposed legislation."[77]

The General Assembly may pass a law regulating warehouses without violating this clause of the constitution for the operation of a warehouse is a separate and distinct business and constitutes a class in itself.[78] An act which bars a suit for damages for personal injuries against a city, town or village unless written notice of the claim for damages is given within six months after the cause of action accrues is not special, even though counties, townships and other municipal corporations are not included in the act for, with respect to this matter, there is, in the opinion of the court, a reasonable basis for classification as between the several kinds of municipalities.[79] A law regulating the business of plumbing may prescribe different rules and regulations with reference to that business in cities and villages of small population than in cities of greater population because a less complicated system of plumbing will be required in the smaller communities.[80] It is proper for the General Assembly to require that a bank in a large city, shall have a larger capital stock than a bank in a smaller community.[81] An act providing that women may not work more than ten hours in any one day in a hotel is not a special act merely because it does not include boarding houses.[82] And an act to regulate the practice of medicine does not confer special privileges because it exempts from the provisions thereof persons who have been continuously engaged in the practice of medicine for a period of ten years prior to the passage of the law.[83]

An act which grants to manufacturers of beer, soda and mineral water the right to have issued a search warrant for the purpose of recovering bottles and containers bearing the names of such manufacturers is special and void because other manufacturers of goods sold in similar bottles and

[76] Jones v C. R. I. & P. Ry. Co., 231 Ill. 302 (1907).
[77] People v Board of Supervisors, 185 Ill. 288 (1900).
[78] Munn v People, 69 Ill. 80 (1873).
[79] Erferd v City of Peoria, 229 Ill. 546 (1907).
[80] Douglas v People, 225 Ill. 536 (1907); see, also L'Hote v Milford, 212 Ill. 418 (1904); C. T. R. R. Co., v Greer, 223 Ill. 104 (1906); People v Edmands, 252 Ill. 108 (1911); People v Grover, 258 Ill. 124 (1913).
[81] People v Adams State Bank, 272 Ill. 277 (1916).
[82] People v Elerding, 254 Ill. 579 (1912).
[83] Williams v People, 121 Ill. 84 (1887); see, also, Kettles v People, 221 Ill. 221 (1906); People v Evans, 247 Ill. 547 (1910); People v Logan, 284 Ill. 83 (1918). For other cases in which legislative classifications have been sustained, see Vogel v Pekoc, 157 Ill. 339 (1895); Arms v Ayer, 192 Ill. 601 (1901); People v Nellis, 249 Ill. 12 (1911); People v Kaelber, 253 Ill. 552 (1912); People v Brady, 262 Ill. 578 (1914); G. S. Johnson Co. v Beloosky, 263 Ill. 363 (1914); Martens v Brady, 264 Ill. 178 (1914); People v City of Rock Island, 271 Ill. 412 (1916); Perkins v Commissioners of Cook Co., 271 Ill. 449 (1916); People v Gordon, 274 Ill. 462 (1916); Casparis Stone Co. v Industrial Board, 278 Ill. 77 (1917); People v Stokes, 281 Ill. 159 (1917).

containers are denied the privileges conferred by the act on others of the same class.[84] An act which has the effect of prohibiting the sale of patented medicines by persons other than registered pharmacists, although it requires no inspection of patented medicines sold by such pharmacists, is void because it confers a special privilege on registered pharmacists.[85] An act which makes it a criminal offense for an employer to discharge an employe because the employe is a member of a labor union is void as creating an unwarrantable distinction between union and non union men.[86] An act which requires employers of labor to disclose to prospective employes, residing in another state, or in some place in this state other than the place of the proposed employment, the existence of labor disputes at the proposed place of employment, is void because, in the opinion of the court, it discriminates against prospective employes residing in the immediate vicinity of the place of the contemplated employment.[87] An act which requires coal mine operators to maintain washrooms for their employes cannot be sustained, if it does not also apply to other employers engaged in businesses in which the employes become covered with dust and grease in much the same manner as mine workers, for the effect of such a law would be to impose special burdens on coal mine operators and thus confer special privileges on other employers in the same general class.[88] A law granting exemption from service of civil process to members of the General Assembly, and not to others similarly situated is unconstitutional as conferring special privileges on members of the General Assembly.[89] A law which prohibits the use of second hand material in mattresses, quilts and comforters manufactured for sale, and which does not apply to the manufacture of pillows, is class legislation forbidden by this clause of the constitution.[90] A law authorizing the formation of high school districts which is so worded that certain territory in the state, though similarly situated, cannot be organized as a high school district is void for the reason that it confers special privileges on the people residing in territory that may be so organized.[91] And an act which permits cities having a population of more than 20,000 to use, for general city purposes, all of the road and bridge taxes levied and collected on property within their respective limits is void because, with respect to the subject matter of the act, there is no basis for classifying cities on the basis of population, or for discriminating between cities on the one hand and towns and villages on the other.[92]

It is clear from the decisions of the Supreme Court just mentioned that a law is not necessarily local or special legislation conferring special privileges or immunities because it applies only to certain parts of the state or only to a certain class. The General Assembly may classify for the purposes of legislation and laws which contain classifications will be sustained if there is any reasonable basis for the classifications. But what is a reasonable classification is always a question for the court and it is oftentimes a difficult matter to distinguish between cases in which classifications are upheld and cases in which classifications are held void. (See discussion preceding sub-headings).

[84] Lippmann v People, 175 Ill. 101 (1898); Horwich v Walker-Gordon Laboratory Co., 205 Ill. 497 (1903).

[85] Noel v People, 187 Ill. 587 (1900).

[86] Gillespie v People, 188 Ill. 176 (1900); see, also, Fiske v People, 188 Ill. 206 (1900); Mathews v People, 202 Ill. 389 (1903).

[87] Josma v Western Steel Car and Foundry Co., 249 Ill. 508 (1911).

[88] Starne v People, 222 Ill. 189 (1906); but see People v Solomon, 265 Ill. 28 (1914).

[89] Phillips v Browne, 270 Ill. 450 (1918).

[90] People v Weiner, 271 Ill. 74 (1915).

[91] People v Weis, 275 Ill. 581 (1916); see, also, People v Rinaker, 252 Ill. 266 (1911). For other cases in which legislative classifications have been held void, see Jones v C. R. I. & P. Ry. Co., 231 Ill. 302 (1907); Manowsky v Stephan, 233 Ill. 409 (1908); Off & Co. v Moorehead, 235 Ill. 40 (1908); People v Schenck, 257 Ill. 384, (1913); Miller v Sincere, 273 Ill. 194 (1916); Board of Administration v Miles, 278 Ill. 174 (1917); People v Campbell, 285 Ill. 557 (1918).

[92] People v Fox, 247 Ill. 402 (1910).

It should also be noted that this section of the constitution provides that "the General Assembly shall not pass local or special laws . . . granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever." Apparently, two elements are necessary before this prohibition becomes operative: (1) The law must be a local or special law. (2) It must confer special privileges, immunities or franchises. The Supreme Court, however, as indicated by the foregoing discussion of cases, has practically disregarded the first element. If a law adopts a classification which the court regards as improper, it will be held to violate this section, although it is in reality a general law. Apparently, in the opinion of the court, a law making an improper classification is, by virtue of that fact, a local or special law.

With reference to special laws granting special franchises, also forbidden by this clause, it has been held that the power to appoint a state officer is a franchise, and that a law which authorizes private corporations to appoint the officers, who shall be charged with the duty of enforcing the provisions thereof, confers a special franchise on those corporations and is, to that extent, void.[93]

While this clause of the constitution expresses the public policy of the state as being opposed to any kind of a monopoly,[94] it does not declare the public policy of the state to be opposed to the elimination of competition in certain cases and the provision of the public utilities act which authorizes one public utility, subject to the approval of the public utilities commission, to acquire stock in another utility is not in conflict therewith. "The public policy of the state, as declared by section 22 of article 4 of the constitution, is not opposed to the elimination of competition in all cases, but only applies where a monopoly, in the sense in which that word was used in the common law, would be thereby created, viz., where competition is eliminated by conferring upon a specified person or corporation the right to exclude all others from engaging in the same business in the same field of operation, or by upholding the validity of contracts and agreements which place it within the power of certain individuals or corporations to control production and fix prices, thereby resulting in injury to the public."[95]

Necessity for general laws in other cases. This clause which requires the enactment of general laws in all cases where such laws are applicable addresses itself to the General Assembly alone. When that body concludes that a special law is necessary on a subject not expressly enumerated in this section, and with reference to which the constitution does not elsewhere forbid special laws, its determination of this question is final and not subject to review by the courts.[96] Thus, the General Assembly, because the constitution does not expressly forbid special laws on those subjects may, as pointed out in the first subheading under this section, pass special laws with reference to drainage and sanitary districts and parks. But it must be remembered that even with respect to subjects on which the constitution does not expressly forbid special legislation the provisions of the clause relating to special privileges, immunities and franchises must be observed. The constitution does not expressly forbid special laws with reference to the formation of school districts but a law relating to the formation of school districts may discriminate between persons and communities similarly situated, in which event it is void as conferring special privileges.[97] And a law authorizing the formation of forest preserve districts, if it is not applicable to all

[93] Lasher v People, 183 Ill. 226 (1899); but see State Board of Agriculture v Brady, 266 Ill. 592 (1915); Illinois Farmers' Institute v Brady, 267 Ill. 98 (1915); see, also, Morrison v People, 196 Ill. 454 (1902); Report Attorney General 1910, pp. 85, 125; 1912, p. 126.

[94] People v Chicago Gas Trust Co., 130 Ill. 268 (1889); Dunbar v American Telephone Co., 238 Ill. 456 (1909).

[95] Public Utilities Commission v Romberg, 275 Ill. 432 (1916).

[96] Owners of Lands v People, 113 Ill. 296 (1886); People v Bowman, 247 Ill. 276 (1910); Commissioners of Lincoln Park v Farhney, 250 Ill. 256 (1911); Herschbach v Kaskaskia Sanitary District, 265 Ill. 388 (1914).

[97] People v Weis, 275 Ill. 581 (1915).

persons and communities in substantially the same situation, is void even though the constitution does not expressly prohibit special legislation with reference to forest preserve districts.[98]

In connection with this clause it must be borne in mind, however, that other sections of the constitution require the enactment of general laws on subjects not enumerated in this section and that, in these cases, the question whether or not a law is general is a question for the courts.

(For appropriations in private laws, see discussion article 4, section 16. For uniformity relating to organization, jurisdiction, etc., of courts, justices of the peace, etc., see discussion article 6, sections 21, 29. For taxation and tax exemptions, see discussion article 9, sections 1, 3. For fees of state, county and township officers, see discussion article 10, sections 11, 12. For township organization, see discussion article 10, section 5. For corporations, see discussion article 11, sections 1, 2. See, also, discussion article 2, section 2; article 4, section 34; and see, also, article 6, section 18; article 10, section 4.)

Section 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.

In the opinion of the Attorney General a law which would prevent the bringing of suits on the bonds of state officers after five years from the date of the expiration of their terms of office would be unconstitutional as being in violation of this section;[99] and the same officer has held that an act which merely authorizes a municipality, if it sees fit, to cancel contracts for public improvements and to pay more than the contract price to the original contractor is void, even though it is not mandatory.[1] But a municipality may release a liability in its favor for something deemed of an equal or greater value.[2]

Section 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.

(See article 5, section 15; article 6, section 30).

[98] People v Rinaker, 252 Ill. 266 (1911).
[99] Report Attorney General 1914, p. 783, Veto Message Senate Journal 1907-08, p. 1761.
[1] Veto Messages 1919, p. 40.
[2] City of Chicago v P. C. C. & St. L. Ry. Co., 244 Ill. 220 (1910).

Section 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.

(See article 4, section 15; article 8, section 4).

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

Suits against the state in its own name. The state cannot be made a party defendant in a proceeding to levy a special assessment to defray the cost of constructing a local improvement, even though it owns property that will be benefited by the improvement.[3] It is improper for the Attorney General to file a cross petition in a condemnation proceeding because a cross petitioner in such a proceeding is in effect a defendant;[4] and this seems to be true even though it has been held proper to require the state to pay the costs in an abandoned condemnation proceeding in which it was the petitioner.[5] But it is entirely proper for a defendant in a suit in equity brought by the state to file a cross bill.[6]

Suits against state officers. As long as a State officer is acting within the scope of his authority, a suit against him is a suit against the state and cannot be maintained. Thus, a suit cannot be maintained against the penitentiary commissioners to recover damages for breach of a contract to furnish convict labor, or to compel performance thereof.[7] Nor can a suit for damages for personal injuries sustained as a result of the falling down of a grandstand at the state fair grounds be maintained against the state board of agriculture.[8] But a state officer who attempts to transcend his authority, may be restrained by the courts. An officer who attempts to enforce the collection of fees under an improper interpretation of a statute,[9] or who is about to pay out money under an unconstitutional statute,[10] may be enjoined by the courts. A state officer, who attempts to deprive an individual of the free enjoyment of his property cannot set up as a defense to an injunction suit against him the fact that the suit against him is in effect a suit against the state, for by his actions in interfering with the use of another's property he is transcending his authority.[11] And a civil service employee

[3] In re City of Mt. Vernon, 147 Ill. 359 (1893); Report Attorney General 1900, p. 191; see, also, City of Chicago v City of Chicago, 207 Ill. 36 (1904).
[4] People v Sanitary District of Chicago, 210 Ill. 171 (1904).
[5] Deneen v Unverzagt, 225 Ill. 378 (1907).
[6] Brundage v Knox, 279 Ill. 450 (1917).
[7] People v Dulaney, 96 Ill. 503 (1880).
[8] Minear v State Board of Agriculture, 259 Ill. 549 (1913); but see State Board of Agriculture v Brady, 266 Ill. 592 (1915).
[9] G. A. Insurance Co. v Van Cleave, 191 Ill. 410 (1901).
[10] Burke v Snively, 208 Ill. 328 (1904).
[11] Joos v Illinois National Guard, 257 Ill. 138 (1913).

who has been discharged without cause is entitled to a writ of *mandamus* to compel the Auditor of Public Accounts to issue a warrant for the salary justly due him for the time that he was illegally prevented from performing the duties of his position.[12] (See discussion article 3, subheading, "Independence of departments").

Claims against the state. This section does not prevent the General Assembly from appropriating money to pay just claims against the state.[13] (See discussion article 4, section 16, subheading, "Private laws").

Section 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.

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

While a constitutional amendment may have the effect of extending the term of a public officer after his election,[14] the General Assembly has no power to add seven months to the terms of the county superintendents of schools then in office.[15] Nor can the General Assembly pass a law providing for the election in 1902 of a successor to a judge whose term of office expired in 1899.[16]

Section 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.

This section applies only to operative miners and not to a carpenter employed to work on buildings outside of a mine.[17] The purpose of this section is to protect the operative miner while he is working in a mine, and not after he has left it. And it relates not to the health of the miner but to his protection from personal injury while he is in the mine.[18] With respect to protection from personal injury, legislation for miners as a class is permitted by the constitution but beyond that the General Assembly may not go. Legislation for miners on other subjects is void unless it applies to all persons similarly situated.[19] Thus, the miner's wash room act was

[12] People v Stevenson, 272 Ill. 215 (1916).
[13] Fergus v Russel, 277 Ill. 20 (1917).
[14] People v Board of Supervisors, 100 Ill. 495 (1881).
[15] Report Attorney General 1913, p. 35.
[16] People v Knopf, 198 Ill. 340 (1902); Veto Message Senate Journal 1873, p. 413; but see Crook v People, 106 Ill. 237 (1883).
[17] Rogers v Carterville Coal Co., 254 Ill. 104 (1912).
[18] Starne v People, 222 Ill. 189 (1906).
[19] Millett v People, 117 Ill. 294 (1886); Harding v People, 160 Ill. 459 (1896); Cook v Big Muddy Mining Co., 249 Ill. 41 (1911).

held void as special legislation because it did not apply to foundry men and others engaged in employments in which contact with grease and dirt is unavoidable.[20]

Contributory negligence is no defense to an action for damages for personal injuries sustained as a result of a wilful violation of a statute passed pursuant to the command of this section of the constitution.[21] And mine owners may be required to pay fees for inspection services rendered by the state.[22]

Section 30. The General Assembly may provide for establishing and opening roads and cartways, connected with a public road, for private and public use.

It was held by the Supreme Court that under the constitution of 1848 the General Assembly had no power to provide for the establishment of a private roadway over the lands of another without his consent.[23] This section of the constitution was adopted for the purpose of overcoming the court's previous holding. (Debates, p. 889).

Section 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.[24]

In general. This section was amended in 1878. It was held that under the original section, drainage districts could not be vested with power to levy special assessments.[25] The purpose of the amendment was to give the General Assembly the power to authorize drainage districts to levy special assessments. (See discussion article 9, section 9, subheading, "Municipalities that may be authorized to make local improvements by special assessments or by special taxation").

While this section is not self-executing or mandatory upon the General Assembly to pass laws providing for the organization of drainage districts,[26] it is a general grant of power to the General Assembly, and confers upon that body, by implication, all other powers necessary to make the general

[20] Starne v People, 222 Ill. 189 (1906); People v Solomon, 265 Ill. 28 (1914).

[21] Carterville Coal Co. v Abbott, 181 Ill. 495 (1899); Brunnworth v Kerens Coal Co., 260 Ill. 202 (1913).

[22] C. W. & V. Coal Co. v People, 181 Ill. 270 (1899).

[23] Nesbitt v Trumbo, 39 Ill. 110 (1866); Crear v Crossly, 40 Ill. 175 (1866).

[24] As amended by the first amendment to the constitution. The amendment was proposed by resolution of the General Assembly in 1877. It was ratified by the voters on November 5, 1878, and proclaimed adopted on November 29, 1878. The section as it originally appeared is as follows:

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

[25] Updike v Wright, 81 Ill. 49 (1876).

[26] Hollenbeck v Detrich, 162 Ill. 388 (1896).

grant effective.[27] The power of the General Assembly with reference to drainage districts is practically unlimited. The General Assembly "has the right at all times to regulate and control them, their franchises and their funds, and to alter, modify of abolish them at pleasure so[provided] that their property is not diverted from the uses and objects for which it was given or purchased."[28] The General Assembly may authorize the annexation of unorganized lands benefited by the necessary drains of an organized district,[29] and it may require an upper district to contribute toward the cost of an outlet drain, constructed by a lower district, but used by both districts.[30] Laws may be passed creating special districts,[31] or directing the corporate authorities of cities,[32] or highway commissioners,[33] to act as drainage commissioners for a district comprised of the territory embraced within the limits of the municipality or political subdivision in which they have jurisdiction. (See discussion subsequent subheading, "Corporate authorities").

This section of the constitution probably does not deprive the General Assembly of the power to authorize the formation of drainage districts, with power to construct drains, ditches and pumping plants by general taxation.[34] As a matter of fact, a city which is organized as a drainage district, while it may install a pumping plant under a special assessment proceeding, cannot levy special assessments to defray the cost of the operation and maintenance thereof, but must do so by general taxation.[35] The ordinary drainage district, however, may levy special assessments to pay the cost of operating and maintaining a pumping plant.[36] The distinction is that a city has the power of levying general taxes, while an ordinary drainage district, under the law authorizing its creation, generally has no power to levy general taxes.

A drainage district may be given the power to acquire its right of way for ditches and drains by eminent domain proceedings.[37] (See article 2, section 13).

Corporate authorities. It is well settled that, under the provisions of sections 9 and 10 of article 9, only the corporate authorities of a municipal corporation may levy taxes for its needs, and that the corporate authorities of a municipality are those persons who are either elected by the people of the municipality or selected in some mode assented to by them. In the earlier drainage cases, the court took the view that this rule did not apply to drainage districts, and that unless the General Assembly deemed it necessary, there was no need that the corporate authorities of such districts should be elected by the people or selected in some mode to which the people had assented.[38] It must be admitted, however, that the court, in those cases was influenced by the view that, in the drainage law then under consideration, a drainage district could not be organized except on a petition of a majority of the land owners in the proposed district.[39] The court apparently was of the opinion that the assent of the people in a drain-

[27] Kilgour v Drainage Commissioners, 111 Ill. 342 (1884).
[28] People v Bowman, 247 Ill. 276 (1910); see also, Hollenbeck v Detrich, 162 Ill. 388 (1896); City of Chicago v Town of Cicero, 210 Ill. 290 (1904).
[29] People v Swearingen, 273 Ill. 630 (1916).
[30] Drainage Commissioners v Rector Drainage District, 266 Ill. 536 (1915). See People v Block, 276 Ill. 286 (1916).
[31] Owners of Lands v People, 113 Ill. 296 (1885); Herschbach v Kaskaskia Sanitary District, 265 Ill. 388 (1914).
[32] Village of Hyde Park v Spencer, 118 Ill. 446 (1886).
[33] Kilgour v Drainage Commissioners, 111 Ill. 342 (1884); see, also, Huston v Clarke, 112 Ill. 344 (1884).
[34] Wilson v Board of Trustees, 133 Ill. 443 (1890).
[35] McChesney v Village of Hyde Park, 151 Ill. 634 (1894).
[36] Brooks v Hatch, 261 Ill. 179 (1913).
[37] C. C. C. & St. L. Ry. Co. v Polecat Drainage District, 213 Ill. 83 (1904); see, also, Veto Messages 1917, p. 9.
[38] Huston v Clarke, 112 Ill. 344 (1884); Owners of Lands v People, 113 Ill. 296 (1885); Sny Island Drainage District v Shaw, 252 Ill. 142 (1911).
[39] Owners of Lands v People, 113 Ill. 296 (1885).

age district with reference to the appointment of its corporate authorities, was obtained when a majority of the land owners petitioned for the organization of the district. In Herschbach v Kaskaskia Sanitary District,[40] and Funkhouser v Randolph,[41] special acts creating drainage districts were held void, because no provision was made for the election or appointment of the corporate authorities in a manner approved by the people; and the earlier cases were expressly distinguished on the ground that the drainage law involved in those cases permitted the organization of a drainage district only on the petition of a majority of the land owners in the proposed district.

Assessments and benefits. Under this section, the General Assembly has the power to authorize the levy of special assessments against all property in a drainage district which is benefited thereby. The constitution does not limit such assessments to assessments against lands only.[42] But the assessments must not exceed the benefits,[43] and the owner of property assessed must be given an opportunity to be heard on the question whether his property is assessed more than it is benefited.[44] However, benefits other than those of an agricultural or sanitary nature, may be considered in spreading a special assessment.[45]

A district organized prior to 1878, may not levy special assessments to pay its outstanding obligations. It may levy such assessments for the construction and maintenance of new levees, drains and ditches and "to keep in repair all drains, ditches and levees heretofore constructed under the laws of this state," but that is the full extent of the power conferred.[46]

(See discussion article 9, section 9).

Section 32. The General Assembly shall pass liberal Homestead and Exemption laws.

Section 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, three and a half millions of dollars, 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.

The phrase "new capitol grounds" is not limited to such grounds as the state had at the time of the adoption of the constitution. It was intended "to cover and include all grounds belonging to the capitol without regard to when they were purchased."[47]

[40] 265 Ill. 388 (1914).
[41] 287 Ill. 94 (1919).
[42] Spring Creek Drainage District v E. J. & E. Ry. Co., 249 Ill. 260 (1911).
[43] Winkleman v M. & I. L. Drainage District, 170 Ill. 37 (1897); People v Whitesell, 262 Ill. 387 (1914).
[44] People v Brown, 253 Ill. 578 (1912); People v Schwartz, 284 Ill. 159 (1918).
[45] Commissioners of Highways v Drainage Commissioners, 127 Ill. 581, (1889); Vandalia Drainage District v Vandalia R. R. Co., 247 Ill. 114 (1910).
[46] Winkleman v M. & I. L. Drainage District, 170 Ill. 37 (1897).
[47] People v Stuart, 97 Ill. 123 (1880).

Section 34. The General Assembly shall have power, subject to the conditions and limitations hereinafter contained, to pass any law (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago. The law or laws so passed may provide for consolidating (in whole or in part) in the municipal government of the city of Chicago, the powers now vested in the city, board of education, township, park and other local governments and authorities having jurisdiction confined to or within said territory, or any part thereof, and for the assumption by the city of Chicago of the debts and liabilities (in whole or in part) of the governments or corporate authorities whose functions within its territory shall be vested in said city of Chicago, and may authorize said city, in the event of its becoming liable for the indebtedness of two or more of the existing municipal corporations lying wholly within said city of Chicago, to become indebted to an amount (including its existing indebtedness and the indebtedness of all municipal corporations lying wholly within the limits of said city, and said city's proportionate share of the indebtedness of said county and sanitary district which share shall be determined in such manner as the General Assembly shall prescribe) in the aggregate not exceeding five per centum of the full value of the taxable property within its limits, as ascertained by the last assessment either for State or municipal purposes previous to the incurring of such indebtedness (but no new bonded indebtedness, other than for refunding purposes, shall be incurred until the proposition therefor shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special); and may provide for the assessment of property and the levy and collection of taxes within said city for corporate purposes in accordance with the principles of equality and uniformity prescribed by this Constitution; and may abolish all offices, the functions of which shall be otherwise provided for; and may provide for the annexation of territory to or disconnection of territory from said city of Chicago by the consent of a majority of the legal voters (voting on the question at any election, general, municipal or special) of the said city and of a majority of the voters of such territory, voting on the question at any election, general, municipal or special; and in case the General Assembly shall create municipal courts in the city of Chicago it may abolish the offices of justices of the peace, police magistrates and constables in and for the territory within said city, and may limit the jurisdiction of justices of the peace in the territory of said county of Cook outside of said city to that territory, and in such case the jurisdiction and practice of said municipal courts shall be such as the General Assembly shall prescribe; and the General Assembly may pass all laws which it may deem requisite to effectually provide a complete system of local government in and for the city of Chicago.

No law based upon this amendment to the Constitution, affecting the municipal government of the city of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special; and no local or special law based upon this amendment affecting specially any part of the city of Chicago shall take effect until consented to by a majority of the legal voters of such part of said city voting on the question at any election, general, municipal or special. Nothing in this section contained shall be construed to repeal, amend or affect section four (4) of Article XI of the Constitution of this State.

This section was adopted as an amendment to the constitution in 1904. Under the constitution (article 4, section 22), the General Assembly is forbidden to pass special laws relating to cities. Chicago, the largest city in the state, had long felt the need for special laws with reference to its local affairs. One purpose of this amendment was to give the General Assembly the power to enact special laws with respect to the local government of that city. It was also deemed desirable to abolish justices of the peace in the city of Chicago and to limit the territorial jurisdiction of the justices of the peace residing outside of the city but within the county of Cook. However, the constitution (article 6, section 21) provides that the jurisdiction of justices of the peace shall be uniform. It was impossible to limit the territorial jurisdiction of justices of the peace in Cook County, without also limiting the territorial jurisdiction of justices of the peace in other counties in a similar manner.[48] In order to give the General Assembly the power to limit the territorial jurisdiction of justices of the peace in Cook County only, it was necessary to amend the constitution. To give the General Assembly this power was another purpose of this amendment. (See Constitutional Conventions in Illinois, Second Edition, pp. 38, 39). The legality of the amendment was challenged on the ground that it amended more than one article of the constitution, but it was sustained. (See discussion article 14, section 2, subheading, "Amendments to more than one article").

"Since the adoption of this amendment, the General Assembly is not restricted in the passage of local or special laws applicable alone to the city of Chicago in furtherance of the general purposes of the amendment, except such restrictions and conditions as are contained in the amendment itself . . . There being no limitations or restrictions in the constitutional amendment itself as to the form of the ballot to be used in voting upon any special law passed in pursuance of this amendment, and the legislature having express power to pass any law, local special or general, providing for a scheme or charter of local municipal government for the city of Chicago, there can be no valid objection to a provision incorporated in the law to be voted upon, providing for the form of the ballot to be used in the election to adopt or reject such law."[49]

In 1913, the Attorney General was called upon to construe the provision, "no local or special law . . . affecting specially any part of the city of Chicago, shall take effect until consented to by a majority of the legal voters of such part of said city voting on the question . . ." A bill passed by the General Assembly sought to consolidate the several park districts in the city of Chicago. The parks were not co-extensive with the limits of the city, but the bill provided that if it received a majoirty of the total number of votes cast on the question in the entire city, it should be declared adopted. The Attorney General ruled that this provision of the bill was in conflict with the constitution, for the reason, that under its terms,

[48] People v Meech, 101 Ill. 200 (1882).
[49] Swigart v City of Chicago, 223 Ill. 371 (1906).

a park district comprising only a part of the city, might be forced into a consolidation, even though a majority of the voters in the park district voted against the adoption of the bill.[50]

This section seems to have contemplated that all special laws enacted under it should be submitted to the legal voters of the city of Chicago before taking effect. However, it should be noted that the part of the section relating to a local referendum is limited to laws "affecting the municipal government of the city of Chicago", and that the power to enact special legislation may be construed as broader than the requirement for a local popular vote. An act passed in 1919 (Laws 1919, p. 411) made certain changes with respect to officers of the municipal court, without providing for a local referendum. The validity of this law has not been passed upon by the Supreme Court.

A large number of cases construing this section have come up in connection with the act relating to the municipal court. Since all of these cases are discussed elsewhere, there will be no discussion concerning them at this time. References are given, however, to the articles and sections in connection with which these cases are discussed. (For discussion as to character and territorial jurisdiction of the municipal court, see statement article 6, section 1. With reference to concurrent jurisdiction of municipal court and criminal court of Cook County, see discussion article 6, section 26. With reference to the power of the General Assembly to fix the term of office of judges of the municipal court, see discussion article 6, section 32. For statement as to power of General Assembly to pass special laws relating to practice and jurisdiction of municipal court, see discussion article 4, section 22, sub-heading "Changes of venue" and article 6, section 29).

[50] Veto Message Senate Journal 1913, p. 2290.

ARTICLE V—EXECUTIVE DEPARTMENT

Section 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.

In general. It seems obvious that the officers named in this section are constitutional officers and must, therefore, be elected by the electors prescribed in artice 7, section 1. Thus an act giving women the right to vote for all officers to be elected under the general and special school laws was held invalid insofar as it purported to give women the right to vote for the Superintendent of Public Instruction.[1] (See discussion article 7, section 1, subheading, "Woman suffrage".)

The Supreme Court has apparently reached the view that a civil service act depriving the officers named in this section of their power to appoint subordinates does not violate this section.[2] (See discussion article 3, subheading, "Independence of Departments".)

Secretary of State. The Secretary of State has certain constitutional duties such as the duty to reside at the seat of government and keep the public records there, and the duty to keep and use the great seal of the state of Illinois. (See article 5, section 22). Concerning these duties Justice Dunn said in People v. McCullough:[3] "The legislature cannot absolve the Secretary of State from the performance of these duties or impose them upon another. So far as the constitution confers any power upon him, he is beyond the reach of the legislature. It cannot deprive him of the custody of the great seal of the state or authorize another officer to affix it to any document, and it cannot require the public records, books and documents to be kept elsewhere than at the capital. But the Secretary of State is not independent of the legislature in the performance even of these duties. He is subject to its control in all things connected with them, where the constitution has not imposed a limitation upon the power of the legislature. What are the public records, books and papers which are to be kept at the seat of government must be ascertained by an examination of the statutes. They are only such records, books and papers as some statute names. While they must be kept at the seat of government, the legislature may require them to be kept in the state house in offices provided for that purpose. While no other officer can be authorized to use the great seal, the Secretary of State

[1] Plummer v Yost, 144 Ill. 68 (1893).
[2] People v McCullough, 254 Ill. 9 (1912); People v Brady, 275 Ill. 261 (1916).
[3] People v McCullough, 254 Ill. 9 (1912).

can use it only as directed by law. The legislature may regulate the form in which the records and accounts shall be kept and reports shall be made, and, in general, control whatever the constitution has not prescribed."

Attorney General. In the case of Fergus v Russel,[4] the Supreme Court took the view that the provision of this section that the Attorney General "shall perform such duties as may be prescribed by law" conferred upon the Attorney General all of the duties which the English Attorney General had at common law, and since the English Attorney General was the sole officer authorized to represent the British Crown, the Attorney General of the state of Illinois must conduct all of the litigation and do all of the legal business for the state. In that case the court said: "The Attorney General is the chief law officer of the state, and the only officer empowered to represent the people in any suit or proceeding in which the state is the real party in interest, except where the constitution or a constitutional statute may provide otherwise. With this exception, only, he is the sole official adviser of the executive officers and of all boards, commissions and departments of the state government, and it is his duty to conduct the law business of the state, both in and out of the courts. The appropriation to the Insurance Superintendent for legal services and for traveling expenses of attorneys and court costs in prosecutions for violations of insurance laws is unconstitutional and void." (See Constitutional Convention Bulletin No. 1, pp. 13, 16.)

Auditor of Public Accounts. It has been held that the Auditor of Public Accounts is vested with certain powers of which the General Assembly may not deprive him. In the case of People v. Brady[5] the court said: "It is not within the power of the General Assembly to deprive the Auditor of Public Accounts of the power conferred upon him by the constitution to audit claims and charges against the state created in pursuance of an appropriation made by law." But it has been held that it is within the power of the General Assembly to require that claims or charges against the state be approved by some official before they are presented to the Auditor.[6] (See discussion article 4, section 17, subheading, "Auditor's Warrant".)

Section 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.

Section 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 one thousand eight hundred and seventy-two, and every four years thereafter; for Superintendent of

[4] 270 Ill. 304 (1915). And see Dahnke v People, 168 Ill. 102 (1897).
[5] 277 Ill. 124 (1917).
[6] People v Lowden, 285 Ill. 618 (1918).

Public Instruction on the Tuesday next after the first Monday of November, in the year one thousand eight hundred and seventy, 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.

Section 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 "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.

The Attorney General has ruled that the requirements of this section as to canvass of the votes must be complied with before the officers are entitled to assume office. Thus, where both houses of the legislature were deadlocked in organizing and for that reason could not hold the joint meeting required by this section, the inauguration of the state officers was necessarily postponed until this joint meeting had been held and the votes canvassed, although it will be noticed that section 1 of this article fixes a definite date for the inauguration.[7] The Attorney General has also held that, while this section precludes the House of Representatives from engaging in other business prior to the joint meeting required by this section, it does not prevent the Senate from transacting other business.[8]

Section 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.

The last sentence of this section does not prevent the General Assembly from imposing *ex officio* duties upon the officers named. Thus the Supreme

[7] Report Attorney General 1912, p. 1237.
[8] Report Attorney General 1912, p. 1240.

Court has held that a statute making the Superintendent of Public Instruction *ex officio* trustee of a state normal school does not violate this section, since it merely prescribes additional duties for that officer and does not require him to hold any other office than that of Superintendent of Public Instruction.[9]

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

In general. Article 3 provides that the powers of the government shall be 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 another, except as otherwise provided in the constitution. Under this provision, it is held that the investiture of the Governor with supreme executive power makes the chief executive independent of the judiciary and the courts can not, therefore, control his actions.[10] (See discussion article 3, subheading, "Independence of departments".)

Governor's power to execute laws. In the early case of Field v People[11], the Supreme Court, in construing a similar section of the constitution of 1818, laid down the far reaching principle that the constitution is a limitation upon the power of the General Assembly, but a grant of power to the executive and judicial branches of the government. The court held that it followed from this principle that the Governor has no implied powers except such as are necessarily incidental to the execution of his express powers. And since no specific power is granted by this section, none can be implied. The Attorney General, on at least three occasions, has advised the Governor that the chief executive may exercise no power by virtue of this clause. Thus the Attorney General has said that the Governor has no power by virtue of this section to enforce the Sunday closing law or dram shop act,[12] nor has the Governor power to aid the courts in the execution of their process, except by virtue of his power to use the militia in case the courts are obstructed in enforcing their process.[13]

Section 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.

[9] People v Inglis, 161 Ill. 256 (1896).
[10] People v Dunne, 258 Ill. 441 (1913).
[11] 3 Ill. 79 (1839).
[12] Report Attorney General 1906, p. 54; 1915, p. 78.
[13] Report Attorney General 1918, p. 805.

Section 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.

The Attorney General has said that the Governor might issue an additional proclamation, during a special session of the General Assembly, naming additional subjects for legislative consideration. But such a message should be in the form of an independent proclamation, and not an amendment to the original proclamation.[14]

It is a direct violation of this section of the constitution for the General Assembly, at a special session, to pass an act upon a subject matter not mentioned in the governor's proclamation convening the special session.[15] However, it was the opinion of the Attorney General that an amendment to the federal constitution might be ratified at a special session of the General Assembly, despite the fact that this purpose was not mentioned in the Governor's proclamation. This opinion was based upon the view that the provision of this section that the "General Assembly shall enter upon no business except that for which they were called together" merely prohibits that body from performing legislative acts other than those mentioned in the proclamation convening the General Assembly. In the opinion of the Attorney General the ratification of the amendment to the federal constitution was not a legislative act. But the Attorney General in the same opinion, suggests the advisability of avoiding all doubt by permitting a regular session of the General Assembly to ratify such an amendment.[16]

Section 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.

The principal difficulty arising under this section is the determination of when a disagreement exists between the two houses, with respect to the time of adjournment. Mr. Elliott Anthony, in introducing this section in the constitutional convention of 1869-70 said: "The term 'disagreement' is a technical term and consists of five steps; (1) The originating house non-concurs; (2) the amending house insists; (3) the originating house insists; (4) the amending house adheres; (5) the originating house adheres". (Debates p. 748).

In this connection the case of People v Hatch[17] is interesting. That case arose under the constitution of 1848, which contained a provision similar to this, except that the certificate of the house first moving the adjournment was not a prerequisite to the Governor's power to act. The facts of that case were as follows: On the 6th day of June, 1863, the Senate adopted a resolution for final adjournment at 6 o'clock in the afternoon of that day. The House amended this resolution by inserting the 22nd day of

[14] Report Attorney General 1912, pp. 964, 966.
[15] Veto Messages 1911, pp. 31, 33.
[16] Report Attorney General 1912, p. 83.
[17] 33 Ill. 9 (1863).

June and, when the senate refused to concur in this amendment, and, before the House had taken any further action, Governor Yates, by proclamation, declared the legislature adjourned. When this matter was brought before the Supreme Court, the court scrupulously refrained from expressing an opinion as to the legality of the Governor's action. However, Justice Breese, in a separate opinion, expressed the view that it was for the General Assembly to determine whether the Governor had cause to take this action but that the subsequent actual departure of the General Assembly was an acquiescence in the Governor's action. It will be observed that all of the steps mentioned in Mr. Anthony's definition of a disagreement did not occur in this case.

It seems to have been the consensus of opinion, in the convention of 1869-70 that some alteration of the section, as it stood in the constitution of 1848, was desirable to prevent a recurrence of the prorogation of 1863. (Debates p. 776-779.) There was some disagreement as to how this could best be accomplished. The expedient of requiring the certificate of the House first moving the adjournment that the disagreement actually existed was finally adopted as the most effective safeguard against arbitrary action by the Governor.

In 1911, the Attorney General rendered an opinion that when the Governor had received the certificate of disagreement from the house first moving the adjournment, the Governor was the sole judge of whether or not a disagreement actually existed and his discretion was not reviewable by the courts. The Attorney General also took the view that if the Governor should adjourn the General Assembly to a specified date, he might, before that date, exercise his constitutional power to call a special session, if an emergency requiring such a session should arise.[18]

Section 10. The Governor shall nominate, and by and with the advice and consent of the Senate, (a majority of all the Senators elected 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.

While this section deprives the General Assembly of the power to appoint to office it does not mean that all state officers whose offices are created by the constitution or by law, must be appointed by the governor.[19] The General Assembly may create offices and provide that they shall be filled by the appointment of some officer other than by the Governor. Thus, the General Assembly may authorize the courts to appoint boards of election commissioners, election judges, county mine examining boards and park commissioners.[20] But it has been held that the power to appoint and remove city fire marshalls can not be vested in the courts, since this power is an executive power, which the separation of the departments of the government precludes the courts from exercising.[21] Likewise it has been held that the power to appoint probation officers is a judicial function and

[18] Report Attorney General 1912, p. 73.
[19] People v Evans, 247 Ill. 547 (1910), but see Veto Message, No. 16.
[20] People v Board of Supervisors, 223 Ill. 187 (1906); People v Hoffman, 116 Ill. 587 (1886); People v Evans, 247 Ill. 547 (1910); People v Morgan, 90 Ill. 558 (1878); see People v Kipley, 171 Ill. 44 (1898).
[21] City of Aurora v Schoeberlein, 230 Ill. 496 (1907).

can not be vested otherwise than in the courts.[22] And, while the General Assembly may confer the power of appointment upon other officers than the Governor, it cannot give to a private individual, association or corporation the power to make appointments to office, for this would be, in effect, a grant of a special franchise to such private individual, association or corporation.[23] (See discussion, article 4, section 22, sub-heading, "Special privileges and immunities;" article 3, sub-heading, "Appointment of officers;" article 9, section 9, sub-heading, "Corporate authorities.")

It must be remembered, however, that not every position is an office within the meaning of this section. In the case of Bunn v People,[24] which was decided prior to the adoption of the constitution of 1870, it was held that a similar provision in the constitution of 1848 did not prevent the General Assembly from appointing the commissioners who were to be charged with the duty of supervising the construction of the new state house. The basis of this decision was that the commissioners were not officers within the meaning of the constitutional provision, but were mere agents or employees, for a single and special purpose, whose powers and duties ceased upon the completion of their task. In this connection, it may be noted that section 24 of article 5 provides that an office is a public position, created by the constitution or law, continuing during the pleasure of the appointing power, or for a fixed time, with a successor elected or appointed.

And it has been held that this provision of the constitution is not violated merely because the General Assembly imposes *ex officio* duties upon an existing officer. Thus, the General Assembly may provide that the highway commissioners of a township shall be *ex officio* drainage commissioners of that township.[25] The mere imposition of *ex officio* duties does not, in the opinion of the Supreme Court, constitute the creation of a new office.

Section 11. In case of a 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.

What is a "vacancy" within the meaning of this section? If an officer dies, or resigns, or is removed it is clear that his office thereby becomes vacant. But does a vacancy exist when there is an office which has never been filled? The only case bearing upon this question is the case of People v Forquer[26] arising under the constitution of 1818. Article 3, section 8 of the constitution of 1818 reads as follows: "When any officer, the right of whose appointment is by this constitution, vested in the General Assembly, or in the Governor and senate shall, during the recess, die or his

[22] Witter v Cook County Commissioners, 256 Ill. 616 (1912).
[23] Lasher v People, 183 Ill. 226 (1899).
[24] 45 Ill. 397 (1867).
[25] Kilgour v Drainage Commissioners, 111 Ill. 342 (1884); Owners of Lands v People, 113 Ill. 296 (1885).
[26] 1 Ill. 104 (1825).

office by any means become vacant, the Governor shall have power to fill such vacancy by granting a commission which shall expire at the end of the next session of the General Assembly." Claiming to act under this section, the acting Governor, in 1825, during a recess of the senate, appointed William Ewing, Paymaster General in the militia. This office had been created by statute in 1821 but the position had never been filled. The Supreme Court held that this appointment was not justified under the constitution, since the vacancy must arise during the recess of the senate in order to give the Governor the power to make such an appointment. Just how far this decision is applicable as a precedent in construing the present constitution is a doubtful matter, in view of the differences between the language of the constitution of 1818 and that of 1870.

One difficulty involved in construing this section of the constitution is illustrated by the following hypothetical case: Suppose the General Assembly passed an act on June 25, creating an office to be filled by appointment of the Governor with the consent of the senate. Suppose, then, the General Assembly adjourned *sine die* on June 26, and the act was approved by the Governor on June 27, so that it took effect on July 1. Would the Governor, have the right to assume that there was then a vacancy arising during the recess of the senate so that he might make a temporary appointment under this section of the constitution? It is common in the drafting of bills to make express provision regarding this matter. For example the Civil Administrative Code (Hurds Revised Statutes 1917, Chap. 24½, sec. 12) provides that "If the senate is not in session at the time this act takes effect, the Governor shall make a temporary appointment as in case of a vacancy".

The Attorney General has held that "an office does not become vacant on the expiration of the fixed term of the incumbent of the office where under the law he holds until his successor is elected or appointed and qualified." Thus, where the term of a public administrator expired during a recess of the senate the Governor had no power immediately to appoint his successor, since the incumbent holds office until his successor is appointed and qualified.[27]

This section applies to offices which are not elective, but it may be noted that section 20 of article 5, provides for appointment in several cases to fill vacancies in elective offices.

Section 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.

In general. The constitution of 1818 contained no such provision as this, and it was held by the Supreme Court in the early case of Field v. People[28] that the Governor had no power of removal as an incident to his power of appointment. This section was inserted in the constitution of 1870 to insure the nullification of that decision.[29] (Debates, p. 748).

Power of Governor. The power of the Governor to remove an officer under this section, for the causes specified, is absolute.[30] He is not limited

[27] Report Attorney General 1910, p. 172; see Report Attorney General 1908, p. 288.
[28] 3 Ill. 79 (1839).
[29] Wilcox v People, 90 Ill. 186 (1878).
[30] Wilcox v People, 90 Ill. 186 (1878).

to any particular mode of removal: he may remove an officer without notice or hearing and his discretion in such a removal is not reviewable by the courts.[31]

In the case of Wilcox v People[32] it was contended that the Governor's power of removal under this section was limited to officers whom he had appointed with the consent of the senate, but the court held that the Governor may remove any officer whom he appoints. However, the power of removal is limited to officers appointed by the Governor and has no application to elective officers, unless the General Assembly shall, by a constitutional statute, give the Governor the power to remove such elective officers. Thus, while the Governor may remove a notary public for incompetence,[33] he may not under this section of the constitution, remove a justice of the peace or a state's attorney since the latter are elective officers.[34] Indeed, it seems that a statute, giving the Governor power to remove a justice of the peace or a state's attorney would be unconstitutional, since section 30 of article 6 appears to specify the only method by which these officers may be removed. (See article 6, section 30). But, as previously noted, the section now under consideration does not preclude the General Assembly from vesting the Governor with power to remove elective officers. A statute giving the Governor power to remove a sheriff who permits a prisoner to be taken from him by the action of a mob, is constitutional.[35]

Section 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.

In general. This provision vests in the Governor the exclusive power to grant reprieves, commutations and pardons and a statute granting this power to another is invalid. Thus the Supreme Court has held that an act allowing a judge, who has committed a prisoner to the House of Correction, to vacate the order of commitment, thereby discharging the prisoner, is invalid as an infringement upon the Governor's pardoning power.[36] Similarly, where a prisoner entered a plea of guilty, but no judgment was entered upon this plea until three years later, it was held that this indefinite suspension of the punishment amounted to a reprieve which it was beyond the power of the court to grant.[37]

The Governor's pardoning power extends to all offenses. An offense is defined as a "transgression of law" and it follows that the pardoning power applies to misdemeanors as well as felonies.[38]

Convictions. But it will be noticed that the Governor has power to pardon only after conviction. Some doubt exists as to what amounts to a conviction. The Supreme Court, under the constitution of 1848, held that a sentence of the court, and not a mere finding of guilt by a jury, constituted a conviction.[39] But that decision rested upon the provision of the constitu-

[31] Wilcox v People, 90 Ill. 186 (1878).
[32] 90 Ill. 186 (1878).
[33] Report Attorney General 1914, p. 164.
[34] Report Attorney General 1914, p. 161; 1915, p. 92.
[35] People v Nellis, 249 Ill. 12, (1911).
[36] People v LaBuy, 285 Ill. 141 (1918); see, also, Report Attorney General 1915, p. 466; 1908, p. 56.
[37] People v Allen, 155 Ill. 61 (1895); see Report Attorney General 1910, p. 299.
[38] Report Attorney General 1913, p. 739; see People v LaBuy, 285 Ill. 141 (1918).
[39] Faunce v People, 51 Ill. 311 (1869).

tion of 1848 requiring the Governor to report to the General Assembly the pardons granted, reporting among other things the sentence. On the other hand the Attorney General has taken the view that a plea of guilty or a finding of guilt by a jury constitutes a conviction under the present constitution. Thus, it was the opinion of the Attorney General that the present probation system (act of June 19, 1911,) violates this section of the constitution, since it gives a court power to suspend sentence after a plea of guilty or a finding of guilt by a jury, thereby infringing the Governor's pardoning power.[40]

Parole law. The Supreme Court has held that the parole law providing for the establishment of a board of pardons does not encroach upon the province of the Governor since the board of pardons has power only to investigate, and the final discharge or commutation must be made by the Governor.[41] Indeed, the Attorney General has said that, so far from being in conflict with this section of the constitution, the parole law was passed in pursuance of the constitutional provision that the Governor may grant pardons "subject to such regulations as may be provided by law relative to the manner of applying therefor."[42]

Reprieves, commutations and pardons. The Attorney General has stated that, under a grant of the pardoning power in this form the Governor may grant any form of pardon known to the common law. It may be full and absolute or partial and conditional. If the pardon be full and absolute it blots out entirely the judgment of conviction and the offense. But a conditional pardon or a commutation does not blot out the judgment of conviction. It operates merely on the punishment. So while the Governor may shorten a sentence, he has no power in the opinion of the Attorney General, to change a judgment of conviction of murder to one of manslaughter so as to make the parole law applicable.[43]

And it has been held that a pardon can not remit the court costs, since the right to such costs is vested in those who are to receive them,[44] nor may a pardon remit an informer's right to a portion of the fine where a part of the fine is given, by statute, to an informer.[45]

Section 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.

In the case of City of Chicago v Chicago Ball Club[46] the court held that this section prevents the General Assembly from giving to cities, or their governing authorities, any control whatever over the state militia.

(For other provisions relating to militia, see article 12.)

[40] Report Attorney General 1912, p. 109; see People v Allen, 155 Ill. 61 (1895).
[41] People v Joyce, 246 Ill. 124 (1910).
[42] Report Attorney General 1914, p. 440.
[43] Report Attorney General 1912, p. 1131.
[44] Holliday v People, 10 Ill. 215 (1848).
[45] Meul v People, 198 Ill. 258 (1902).
[46] 196 Ill. 54 (1902).

Section 15. The Governor, and all civil officers of the State, shall be liable to impeachment for any misdemeanor in office.

The Supreme Court has said that the term "all civil officers of the state" as used in this section does not include those officers who are mentioned as county officers in article 10, section 8, viz.—the county judge, county clerk, sheriff, treasurer, coroner, clerk of the circuit court and recorder of deeds."[47]

(For other provisions of the constitution relating to impeachment or removal of officers, see article 6, section 30; article 4, section 24; article 5, section 12)

Section 16. Every bill passed by the General Assembly shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections, to the House in which it shall have originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If then two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the Governor; but in all such cases the vote of each house shall be determined by yeas and nays to be entered upon the journal.

Bills making appropriations of money out of the Treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections, and if the Governor shall not approve any one or more of the items or sections contained in any bill, but shall approve the residue thereof, it shall become a law as to the residue in like manner as if he had signed it. The Governor shall then return the bill, with his objections to the items or sections of the same not approved by him, to the house in which the bill shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider so much of said bill as is not approved by the Governor. The same proceedings shall be had in both houses in reconsidering the same as is hereinbefore provided in case of an entire bill returned by the Governor with his objections; and if any item or section of said bill not approved by the Governor shall be passed by two-thirds of the members elected to each of the two houses of the General Assembly, it shall become part of said law notwithstanding the objections of the Governor. Any bill which shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him

[47] Donahue v County of Will, 100 Ill. 94 (1881).

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.[18]

In general. The Governor is under no duty to ascertain that a bill presented to him has been passed in compliance with the constitutional requirements relating to the passage of bills. It follows, that when he signs a bill no inference arises as to the regularity of its passage.[19] (See discussion article 4, section 13, sub-heading, "Necessity for journal entries.")

A bill signed by the Governor does not become a law unless it is a bill passed by both houses of the General Assembly. Thus in the case of People v Lueders[20] the central registration act was held void because, as signed by the Governor, it omitted several amendments to the original bill which were concurred in by both houses.

Date of going into effect. While a bill signed by the Governor becomes a law as soon as it is signed by him, it does not become effective until July 1st following its passage, unless passed as an emergency measure by a vote of two-thirds of all members elected to each house. If a bill is neither signed nor vetoed by the Governor within ten days after its presentation to him, it becomes a law at the expiration of the 10 days and under ordinary circumstances goes into effect on July 1 following. A serious question arises, however, in a case where the ten days begin before July 1st, but do not expire until after July 1st, following the passage of the bill by the two houses. As a matter of practice the General Assembly never continues in session after July 1st and in any case when the ten days expires after July 1st the situation is always accompanied by the adjournment of the General Assembly before the expiration of the ten days, in which event, the Governor, under the terms of this section, has ten days from the date of adjournment in which to consider the bill. Under such circumstances if the Governor retains the bill for the full period of ten days after adjournment it is not clear when the bill becomes an effective law. If he files it with the Secretary of State without objection before July 1st it is not only not clear as to when it becomes an effective law, but it is also uncertain as to when it becomes a law. (See discussion article 4, section 13, subheading, "Date of going into effect.")

[18] As amended by the third amendment to the constitution. The amendment was proposed by resolution of the general assembly in 1883. It was ratified by the people on November 4, 1884, and proclaimed adopted on November 28, 1884. The section as it originally appeared is as follows:

"Section 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, 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."

[19] Neiberger v McCullough, 253 Ill. 312 (1912).

[20] 283 Ill. 287 (1918); see Cook County v Healy, 222 Ill. 310 (1906).

Time allowed Governor to consider bills. It will be noticed that there are two ten day periods given the Governor for his consideration of bills. When a bill is presented to the Governor during a session of the General Assembly the Governor has ten days from the date when the bill is presented to him in which to consider the bill. If, however, the General Assembly adjourns during this ten day period, the Governor has an additional ten days from the date of the adjournment. From the first ten day period, Sundays are expressly excluded and the Supreme Court has held that, by implication, Sundays are to be excluded from the second ten day period.[51]

In the opinion of the Attorney General holidays other than Sundays are not to be deducted in computing the ten day periods. The Attorney General has stated that the Governor may not veto or approve a bill on Sunday, but he may approve or veto a bill on holidays other than Sunday. The Attorney General has likewise held that the day upon which the bill is presented to the Governor should be excluded and the day upon which the Governor exercises his powers should be included in determining the ten day period.[52]

The Supreme Court has stated that after the Governor has actually approved or disapproved a bill and has filed it with the Secretary of State, it is beyond his power to take any further action with respect to that bill, even though the time allowed him by the constitution for his consideration of the bill has not yet expired.[53] But the Governor may revoke his approval or disapproval of a bill, provided he has not yet filed the bill in the office of the Secretary of State. Thus in People v McCullough[54] it was held that the Governor might, after approving a bill, revoke his approval and veto the bill, if it had not yet been filed in the office of the Secretary of State.

It appears from the case of People v Rose[55] however, that if the Governor has filed a bill with the Secretary of State without either his approval or disapproval, within the ten day period, the Governor's power to act with respect to that bill has not been exhausted. In that case the Supreme Court refused to issue a writ of *mandamus* to compel the Secretary of State to authenticate as a law a bill so filed by the Governor with the Secretary of State, until the expiration of the ten days allowed the Governor for his consideration.

Appropriations. That part of section 16 which will be considered in this subheading is as follows: "Bills making appropriations of money out of the treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections. And if the Governor shall not approve any one or more of the items or sections contained in any bill, but shall approve the residue thereof, it shall become a law, as to the residue, in like manner as if he had signed it. The Governor shall then return the bill, with his objections to the items or sections of the same not approved by him, to the house in which the bill shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider so much of said bill as is not approved by the Governor."

Governor's power to veto items.

"The purpose of the amendment was to enlarge the veto power by authorizing the Governor to veto items in appropriation bills. Prior to the

[51] People v Rose, 167 Ill. 147 (1897).
[52] Report Attorney General 1918, p. 571.
[53] People v McCullough, 210 Ill. 488 (1904); People v Hatch, 19 Ill. 283 (1857).
[54] 210 Ill. 488 (1904).
[55] 167 Ill. 147 (1897).

adoption of the amendment, the Governor was forced to treat an appropriation bill as any other bill. He had to accept such a bill as a whole or veto it as a whole. If the Governor disapproved of one or two items in an appropriation measure consisting of several items, he was compelled to accept the measure as presented to him, or reject it in its entirety. The difficulties attending the passage of an extensive appropriation bill had the effect of causing the chief executive to refrain from rejecting such a bill *in toto*, even if he strongly disapproved of certain items of appropriations therein contained. For example, a bill making appropriations for the expenses of the state government could hardly be rejected as a whole merely because it contained one or two undesirable items. For this reason the Governor's power to veto appropriation bills was decidedly limited." (Constitutional Conventions in Illinois, Second Edition, pp. 36-7.)

The principal question relating to the Governor's power in this connection is the question of what constitutes an item which the Governor may veto. Thus where an appropriation read "To the State Board of Agriculture $153, 150" followed by an enumeration of the various purposes for which this sum was to be expended with an amount for each purpose, the total being $153, 150, the Supreme Court held that each of the constituent amounts were items and the Governor might legally veto one of them.[56] On the other hand, the court has held that the Governor might not, where the biennial appropriation read $2,500 per annum, veto the words "per annum," nor might the Governor cut a figure in this manner,—"I approve in the sum of $3,500 and veto all in excess of said sum of $3,500."[57]

Necessity for itemization.

It is apparent both from the context of this amendment to the constitution and from a consideration of the purpose for which it was adopted that an appropriation must be for a definite amount. Otherwise the power of the Governor to veto items in appropriation bills would be defeated. The Supreme Court has therefore held that an appropriation of "such sums as may be necessary to refund the taxes on real estate" is invalid, since no definite amount is appropriated.[58]

The determination of when an appropriation bill is sufficiently itemized to satisfy this section of the constitution is a difficult problem. In the case of People v Brady,[59] the Supreme Court said: "The word 'item' is in common use and well understood as a separate entry in an account or a schedule, or a separate particular in an enumeration of a total which is separate and distinct from other particulars or entries." This definition, however, throws no light upon the question of the extent to which itemization is necessary in order to comply with the constitution. It seems clear that the General Assembly must have a reasonable discretion to determine what shall constitute items. Thus in the case of Martens v Brady[60] it was contended that an appropriation of $400,000 for the construction and maintenance of roads could not be made in one item. But the court held that these matters were so related as properly to constitute a single item. "It is not to be supposed that the Governor would veto one of these items and approve the other." Again in the case of Mitchell v Lowden[61] it was urged that the appropriation of $60,000,000 for the construction of hard roads was not sufficiently itemized. In that case the court said: "The single purpose for which the money appropriated is to be used is the construction of the system of roads. There will, perhaps be many contracts for the construction of parts of the roads, but each contract is not an item which

[56] People v Brady, 277 Ill. 124 (1917).
[57] Fergus v Russel, 270 Ill. 304 (1915).
[58] Fergus v Russel, 270 Ill. 304 (1915).
[59] 277 Ill. 124 (1917).
[60] 264 Ill. 178 (1914).
[61] 288 Ill. 327 (1919).

can be separately stated and for which a definite amount can be appropriated. There will, perhaps, be many contracts for the purchase of materials and tools, but each contract of purchase is not an item which can be separately stated and for which a definite sum can be appropriated. Nor is the purchase of all of one kind of material such an item. All are items of the aggregate, but the constitution does not require an itemization in minute detail of every expenditure of money in connection with the general purpose for which an appropriation is made. The legislature could not know at the time of making the appropriation, even, approximately, the amount required for each of the various contracts or purchases." On the other hand, the Attorney General has said that a bill giving the board of commissioners of the deep waterway the right to expend $500,000 for the purchase of lands, machinery, supplies salaries, wages, and materials is in direct violation of the injunction to itemize contained in this section.[63] (See Constitutional Convention Bulletin No. 4, pp. 269-287.)

(For an historical discussion relating to the development of the veto power of the Governor of Illinois see Debel, "The Veto Power of the Governor of Illinois," University of Illinois Studies in the Social Sciences, 1917.)

Section 17. In case of the death, conviction or impeachment, failure to qualify, resignation, absence from the State, or other disability of the Governor, the powers, duties and emoluments of the office for the residue of the term, or until the disability shall be removed, shall devolve upon the Lieutenant Governor.

Section 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.

Section 19. If there be no Lieutenant Governor, or if the Lieutenant Governor shall, for any of the causes specified in section seventeen 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.

Section 20. If the office of Auditor of Public Accounts, Treasurer, Secretary of State, Attorney General, or Superintendent of

[63] Report Attorney General 1912, p. 960; and see Report Attorney General 1912, p. 1013; People v Brady, 277 Ill. 124 (1917).

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.

In 1910 the Attorney General, rendered an opinion that the state board of agriculture[63] and the state horticultural society[64] were public institutions within the meaning of this section and must therefore submit a semi-annual report to the Governor. It is the opinion of the Attorney General that this section applies not only to state officers who receive fees for services performed in their official capacities, but includes as well officers who merely disburse appropriations made to them by the General Assembly through warrants drawn by the auditor on the treasurer.[65]

It has been held that the approval of a report by the Governor does not operate to relieve the officer making the report from liability in the event that he has made an incorrect report.[66]

Section 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 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.

(See discussion article 5, section 20.)

Section 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.

(See discussion article 5, section 1, sub-heading "Secretary of State".)

[63] Report Attorney General 1910, p. 666.
[64] Report Attorney General 1910, p. 163.
[65] Report Attorney General 1904, p. 385.
[66] People v Whittemore, 253 Ill. 378 (1912).

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

Disposition of fees collected by state officers in their official capacities. Fees collected by the officers named in this article for services performed in their official capacities must be paid into the state treasury without any deduction whatever.[67]

It has been held that a contract whereby the state treasurer was to deposit money in certain banks, the interest on such money to be paid to that officer personally, is illegal as contrary to the public policy of the state declared by this provision of the constitution.[68]

Changes in salaries during terms of office. (See discussion article 4, section 21, subheadings, "In general" and "Elective state officers".)

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

In general. The question whether a person performing services for the state was an officer or an employee first arose under the constitution of 1848. That constitution did not define the words "office" or "employment". It did provide, however, that the General Assembly should not make appointments to office. In Bunn v People[69] the question presented was whether or not the commissioners charged with the duty of supervising the construction of the new state house were officers whose appointments by the General Assembly was forbidden by the constitution. In holding that the commissioners were not officers, and that they therefore might be appointed by the General Assembly, the court defined the words "office" and "employment" and this definition was, in substance, carried forward into this section of the present constitution.

Salaries of state officers. Section 16 of article 4 provides that bills making appropriations for the salaries of state officers shall contain no provision on any other subject. In making appropriations for the salaries and wages of the officers and employees of the state it becomes necessary

[67] People v Sargent, 254 Ill. 514 (1912); Report Attorney General 1914, p. 225; Board of Trade v Cowen, 252 Ill. 554 (1911); Whittemore v People, 227 Ill. 453 (1907).

[68] Estate of Ramsey v Whitbeck, 183 Ill. 550 (1900).

[69] 45 Ill. 397 (1867).

to determine who are officers and who are employees, and this is often a difficult question. In Fergus v Russel[70] several items of appropriations for certain persons performing services for the State were held invalid because these persons in the opinion of the court were officers and the items were included in a bill making appropriations for purposes other than that of salaries of state officers. In that case the court, in referring to this section of the constitution, said: "This definition contains two essential elements, both of which must be present in determining any given position to be an office: (1) The position must be a public one, created either by the constitution or by law; and (2) it must be a permanent position with continuing duties. To determine whether the first element is present we have but to look to our constitution and our statutes to see whether the particular position under consideration has been created by the constitution or by law. An office is created by law only as a result of an act passed for that purpose. The mere appropriation by the General Assembly of money for the payment of compensation to the incumbent of a specified position does not have the effect of creating an office or of giving such incumbent the character of an officer, as an office cannot be created by an appropriation bill. To ascertain whether the second element is present it is necessary to determine the character of the position. This is not determined by the method in which the occupant or holder of the position is selected—whether by appointment or election. If the duties of the office are continuing and it is necessary to elect or appoint a successor to the several incumbents, then the second element is present whether the incumbent be selected by appointment or by election, and whether the incumbent be appointed during the pleasure of the appointing power or be elected for a fixed term." Applying the rule thus laid down the court held that the following persons were officers whose salaries could not be appropriated in a bill dealing with another subject: assistant attorney generals in charge of the inheritance tax office, the chief and deputy grain inspectors, members of the board of veterinary examiners, the secretary of the board of pardons, the executive officer of the state board of health, the secretary of the civil service commission, the director of the state geological commission, members and secretary of the board of examiners of architects, members and secretary of the board of dental examiners, members of the board of barber examiners, the state inspector of apiaries, members of the state board of pharmacy, deputy fire marshals, members and secretary of the state board of registered nurses, members and secretary of the Illinois stallion registration board, secretary of the industrial commission, members and secretary of the board of examiners of horse shoers and members and secretary of the optometry board.[71] It has also been held that factory inspectors and superintendents of free employment agencies are officers whose salaries must be appropriated in a bill relating to no other subect.[72]

Removal of state officers. This definition has also been applied in construing section 12 of article 5 which relates to the Governor's power to remove state officers. In the case of People v. Wilcox[73] it was held that the West Chicago Park Commissioners were officers of the state within this definition and that the Governor might therefore remove them from office under section 12 of article 5. In that case the court said: "The members of the board of West Chicago Park Commissioners are agents, by whom in part the people of the state carry on the government. Their functions are essentially political and concern the state at large although they are to be discharged within the town of West Chicago. . . . And whether tested by

[70] 270 Ill. 304 (1915).

[71] Report Attorney General 1916, pp. 17-21. Most of these offices were abolished by the Civil Administrative Code (1917).

[72] Ritchie v People, 155 Ill. 98 (1895); Mathews v People, 202 Ill. 389 (1903). For definition of the word office as used in a statute see People v Coffin, 282 Ill. 599 (1918).

[73] 90 Ill. 186 (1878).

the decision in the Bunn case or by the constitutional definition we can not doubt that these park commissioners come fully within the term officers."

Tenure of office. In the case of People v Loeffler[74] it was contended that the city civil service act was invalid since it created a tenure of office unknown to the constitution,– tenure during good behavior or until the incumbent is removed,– thereby violating this section of the constitution. But the court said that the positions to which the civil service act applies are more in the nature of employments than offices, and, at any rate, when offices are created by statute those offices are wholly within the control of the legislature which created them.

Section 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.

Necessity for an oath. In 1875 in the case of School Directors v People,[75] the Supreme Court held that where a statute prescribes the prerequisites to the assumption of office by a township treasurer and does not name an oath as one of the necessary formalities, the treasurer is thereby exempted from taking an oath. In that case the court said: "It certainly has not been understood by the legislative department that this constitutional provision is self-executing, as express provisions of law have been enacted, prescribing with particularity every essential step to be taken by each person elected or appointed to an office, the mode of election or appointment, the giving of bonds, the manner, time, etc., of taking the oath of office (where such oath is required) in order to become qualified to perform the duties of the office. If it were supposed that this constitutional provision was self-enforcing, all the numerous laws requiring the taking of official oaths would be supererogatory. But the section of the constitution referred to expressly leaves it in the discretion of the legislature to exempt 'inferior officers' from taking the prescribed oath of office. The township treasurer is appointed by the board of trustees of schools and falls within the designation of 'inferior officers'. As the legislature, in prescribing the prerequisites to the right to perform his official duties, has required only that the township treasurer shall be a resident of the townshfp, and neither a trustee nor a director, and be appointed by the trustees, and give an official bond in a sufficient amount to cover all liabilities, it is not unreasonable to infer the legislative intention that he should not take an oath of office. . . . Not requiring an oath of office to be taken, is the dispensing with it by the legislature in this case." Similarly, it has been held that where a statute pre-

[74] 175 Ill. 585 (1898).
[75] 79 Ill. 511 (1875).

scribes for drainage commissioners an oath different from the constitutional oath, only the statutory oath need be taken.[76]

Other oaths or tests. The word "test", as used in this section, is synonymous with the word "oath". Thus, a statute requiring election commissioners to be selected from members of the two leading political parties, does not violate this section of the constitution as imposing an additional test.[77] Similarly, a civil service act is not invalid as requiring an additional test, when it requires an examination as a criterion of fitness to office.[78]

The Attorney General has held that the word oath, as used here, refers only to an oath concerning religion or politics. The Attorney General has held that a statute requiring an election commissioner, in assuming office, to take oath that he has resided in the city for ten years, does not violate this section.[79]

[76] People v Gary, 196 Ill. 310 (1902).
[77] People v Hoffman, 116 Ill. 587 (1886).
[78] People v Kipley, 171 Ill. 44 (1898).
[79] Report Attorney General 1913, p. 220.

ARTICLE VI—JUDICIAL DEPARTMENT

Section 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 in such courts as may be created by law in and for cities and incorporated towns.

Exercise of judicial powers. This section vests all of the judicial powers of the state in the courts established and authorized to be created by the provisions of article 6 of the constitution. The exception in this section has been held to refer to the provisions of sections 11 and 20 of this article, relating to the appellate and probate courts, respectively.[1] The General Assembly is, therefore, prohibited from authorizing a person who is not a judge of one of these courts to perform a judicial function. Thus, a clerk of a court may not be authorized by statute to enter a default judgment in vacation.[2] A mayor of a city may not be empowered by statute to hear and decide cases involving the violation of city ordinances.[3] The General Assembly may not authorize a recorder of deeds to adjudicate titles to real estate, the adjudication to be complete unless attacked within five years.[4] An attorney at law who has not been elected or appointed as a judge, in the manner prescribed by the constitution, cannot by mere agreement of the parties, act as a judge of the circuit court.[5] Three citizens may not be authorized by municipal ordinance to ascertain and assess damages for injuries to property caused by stray cattle.[6] A county clerk may not be empowered by statute to impose penalties upon persons violating a statute requiring the cleaning of streams running through their property.[7] Nor may an administrative agency, such as a civil service commission or the industrial board, be authorized by statute to punish for contempt witnesses who neglect or refuse to obey the agency's subpoenas.[8] Such powers, being judicial, can only be exercised by judges of the courts created by the constitution.

However, neither the section under consideration, nor article 3, prevents the exercise of powers involving discretion and judgment which are in their nature judicial, by administrative agencies charged primarily with the enforcement of the laws. For example, executive boards administering the laws regulating the practice of medicine or of architecture, may be empowered by statute to revoke a practitioner's license, after a notice and hearing, for violation of the statutory provisions. The exercise of such

[1] Berkowitz v Lester, 121 Ill. 99 (1887).
[2] Hall v Marks, 34 Ill. 358 (1864); Veto Messages 1919, p. 42.
[3] People v Maynard, 14 Ill. 419 (1853); Beesman v City of Peoria, 16 Ill. 484 (1855).
[4] People v Chase, 165 Ill. 527 (1897); compare People v Simon, 176 Ill. 165 (1898).
[5] Davis v Wilson, 65 Ill. 525 (1872); Hoagland v Creed, 81 Ill. 506 (1876).
[6] Bullock v Geomble, 45 Ill. 218 (1867).
[7] C. C. C. & St. L. Ry. Co. v People, 212 Ill. 638 (1904).
[8] People v Kipley, 171 Ill. 44 (1898); McIntyre v People, 227 Ill. 26 (1907); Report Attorney General 1914, p. 639; Veto Message No. 1.

powers, since it involves the hearing of evidence, the application of the law to the facts determined, and the adjudication of private rights, may perhaps be said to be the exercise of judicial powers. Nevertheless, such statutes have been upheld on the ground that the exercise of these *quasi*-judicial powers is merely incidental to the primary function of the administrative agencies, namely, the administration and enforcement of the laws.[9] (See discussion article 3, subheading, "In general.")

Jurisdiction of city courts. The clause "in and for cities and incorporated towns" has been construed to confine the territorial jurisdiction of city courts to the cities in which they are created. For example, it has been held that the General Assembly is prohibited from authorizing a city court to send its original process outside of the city.[10] The municipal court of Chicago, which is a city court created pursuant to the provisions of the clause under consideration,[11] may not be empowered to try criminal cases, transferred to it from the criminal court of Cook County, which arise outside of the city.[12] A similar provision in section 1 of article 5 of the constitution of 1848 was construed to prevent the General Assembly from conferring jurisdiction upon a city court over civil and criminal cases arising in towns outside of the city.[13]

This limitation upon the territorial jurisdiction of city courts, however, has been held not to apply to the performance by the judge of a city court, of purely ministerial functions, such as authorizing the sale of a ward's real estate by a guardian, in a case where the real estate was located outside of the city.[14] Moreover, once a city court has acquired jurisdiction and has rendered judgment, it may send its process outside of the city to enforce that judgment,[15] and a city court may send its process outside of the city, into the county, to summon witnesses and grand and petit jurors.[16] (See discussion article 2, section 5, and section 9, subheading, "Locality from which jury is to come.")

The provisions of sections 23 to 26 of this article do not so limit the provisions of this section or so exhaust the grant of judicial powers with reference to Cook County as to preclude the establishment of city courts in that county.[17] However, the clause under consideration is so limited by the requirements of sections 5 and 9 of article 2, relating to jury trials, and of section 29 of this article, relating to uniformity, as to prohibit the application of a general city court act to a city located in two counties.[18] (See discussion article 6, section 29, subheading, "Provisions mandatory;" article 2, section 5, and section 9, subheading, "Locality from which jury is to come.")

(As to the qualifications of electors voting for city judges, see discussion article 7, section 1, subheading, "Woman suffrage." As to the qualifications of judges of city courts, see discussion article 6, section 17, subheading, "Judges of courts." As to whether the compensation of a city judge may be increased or diminished during his term of office, see discussion article 4, section 21, subheading, "Municipal officers." As to whether the General Assembly may prescribe the terms of office of city judges, see discussion article 6, section 32, subheading, "Term of office." As to the requirements of uniformity in the organization, jurisdiction pro-

[9] People v Apfelbaum, 251 Ill. 18 (1911); Klafter v Board of Examiners, 259 Ill. 15 (1913).
[10] Ladies of Maccabees v Harrington, 227 Ill. 511 (1907); Wilcox v Conklin, 255 Ill. 604 (1912).
[11] Israelstam v U. S. Casualty Co., 272 Ill. 161 (1916); People v Olson, 245 Ill. 288 (1910).
[12] Miller v People, 230 Ill. 65 (1907).
[13] People v Evans, 18 Ill. 361 (1857); People v Lippincott, 67 Ill. 333 (1873); Reid v Morton, 119 Ill. 118 (1886).
[14] Reid v Morton, 119 Ill. 118 (1886).
[15] People v Barr, 22 Ill. 241 (1859); Miller v People, 230 Ill. 65 (1907).
[16] Miller v People, 183 Ill. 423 (1900); City of Chicago v Knobel, 232 Ill. 112 (1908).
[17] Chicago Terminal Ry. Co. v Greer, 223 Ill. 104 (1906).
[18] People v Rodenberg, 254 Ill. 386 (1912).

ceedings and practice of city courts, including the municipal court of Chicago, see discussion article 6, section 29).

Section 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.

Original jurisdiction. The specification in this section of the three classes of cases in which the Supreme Court may exercise original jurisdiction has been construed to deny to that court the power to exercise original jurisdiction in any other class of cases, such as election contests,[19] or cases of *certiorari*,[20] injunction,[21] or prohibition.[22]

There have been no judicial interpretations of the clause, "cases relating to the revenue," as used in this section of the constitution. However, the construction placed upon the same words, as used in a statute, may be of interest. Under the statute permitting cases "relating to the revenue" to be brought direct to the Supreme Court from the trial court for review, it has been held that such a case is not presented when all that appears is that taxes have been collected and that two or more governmental agencies are claiming them.[23] A case does relate to the revenue, within the meaning of the statute, when a controversy, in which the revenue is directly and not incidentally affected, arises between a tax authority and a taxpayer, such as a *mandamus* proceeding to compel the listing of property for assessment,[24] or a proceeding to enjoin the collection of taxes.[25]

The Supreme Court takes jurisdiction of so-called "appeals" from boards of review, pursuant to statute, in cases where property is alleged to be exempt from taxation, not by virtue of its appellate jurisdiction, for there can not be an appeal in the strict sense of the term from a non-judicial body, but by virtue of its original jurisdiction in cases "relating to the revenue."[26] (See discussion article 6, section 12, subheading, "Original jurisdiction.")

The original jurisdiction of the Supreme Court in *mandamus* is not exclusive. As far as it extends, it is concurrent with that of the circuit courts. Since 1907, however, it has been held that this jurisdiction is not a general one, but that it is limited to cases where the rights, interests or franchises of the state or of the whole people are involved or where high official duties affecting the public at large are to be enforced, and to emergency cases relating to local public interests or private rights. Whether a given case is of such a character is to be determined by the Supreme Court, in the exercise of its discretion.[27]

[19] Canby v Hartzell, 167 Ill. 628 (1897); Baird v Hutchinson, 179 Ill. 435 (1899).

[20] People v Superior Court, 234 Ill. 186 (1908); Courter v Simpson Construction Co., 264 Ill. 488 (1914).

[21] Bryant v People, 71 Ill. 32 (1873).

[22] People v Circuit Court, 169 Ill. 201 (1897); People v Circuit Court, 173 Ill. 272 (1898).

[23] Reed v Village of Chatsworth, 201 Ill. 480 (1903); People v Holten, 259 Ill. 219 (1913).

[24] People v Webb, 256 Ill. 361 (1912).

[25] Mushbaugh v Village of East Peoria, 260 Ill. 27 (1913)

[26] Maxwell v People, 189 Ill. 546 (1901); City of Aurora v Schoeberlein, 230 Ill. 496 (1907).

[27] People v City of Chicago, 193 Ill. 507 (1901); People v Board of Trade, 193 Ill. 577 (1901); People v Board of Education, 197 Ill. 43 (1902).

The original jurisdiction of the Supreme Court in *habeas corpus* is not exclusive, but is concurrent with that of the other courts.[28]

Appellate jurisdiction. A statement of the judicial interpretation of the constitutional provisions relating to the appellate jurisdiction of the Supreme Court, involves a consideration of sections 2 and 11 of this article. Before the establishment of the appellate courts in 1877, the Supreme Court was of the opinion that the clause of section 2, "and appellate jurisdiction in all other cases," operated to vest in the Supreme Court appellate jurisdiction in all cases other than those in which it was given original jurisdiction.[29] However, for many years this phrase has been held to mean merely that whenever jurisdiction is conferred upon the Supreme Court, whether by the constitution or by statute, in cases other than those relating to the revenue, in *mandamus* and *habeas corpus*, that jurisdiction must be appellate.

The only provisions of the constitution which vest an appellate jurisdiction in the Supreme Court are those of section 11 of this article, which provide, in part, that: "After the year of our Lord one thousand eight hundred and seventy-four, 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." Construing the section under discussion and these provisions of section 11, together, the constitution confers appellate jurisdiction upon the Supreme Court, in but the four classes of cases referred to, namely, "criminal cases, and cases in which a franchise, or freehold, or the validity of a statute is involved." Of this appellate jurisdiction, in these cases, the Supreme Court may not be deprived. In all other cases, the appellate jurisdiction of the Supreme Court depends entirely upon statute.[30]

The provisions quoted from section 11 do not, however, require that the four classes of cases mentioned shall be brought direct from the trial courts to the Supreme Court for review. The General Assembly may provide that any one, or more, or all of these cases shall first be taken to the appellate court, or it may provide that any one, or more, or all of them shall be taken direct to the Supreme Court from the trial courts.[31] Where one of these four classes of cases may be taken direct to the Supreme Court, it has been held that the right to a review in that court of a question relating to a franchise, a freehold or the validity of a statute, is waived, if the party first takes the case to the appellate court for a review of other questions.[32] This rule does not apply, however, if the question as to the validity of a statute does not arise until an attempt is made to obtain a review in the Supreme Court of a decision of the appellate court.[33] Inasmuch as in cases other than the four classes of cases referred to in section 11, the appellate jurisdiction of the Supreme Court is entirely dependent upon statute, the General Assembly might, if it desired, deny to litigants a right to a review of such cases in the Supreme Court, and might make the decisions of the appellate court, in such cases, final. Therefore, it may limit the appellate jurisdiction of the Supreme Court, in such cases, either to questions of law or of fact.[34]

[28] People v Siman, 284 Ill. 28 (1918).

[29] Schlattweiler v St. Clair Co., 63 Ill. 449 (1872); Peak v People, 76 Ill. 289 (1875).

[30] Chicago & Alton Ry. Co. v Fisher, 141 Ill. 614 (1892); Freitag v U. S. Y. Co., 262 Ill. 551 (1914); Courter v Simpson Construction Co., 264 Ill. 488 (1914).

[31] Young v Stearns, 91 Ill. 221 (1878); Fleischman v Walker, 91 Ill. 318 (1878).

[32] Millers Ins. Co. v People, 170 Ill. 474 (1898); Case v City of Sullivan, 222 Ill. 56 (1906); Town of Scott v Artman, 237 Ill. 394 (1908).

[33] Sixby v Chicago City Ry. Co., 260 Ill. 478 (1913); Freitag v U. S. Y. Co., 262 Ill. 551 (1914).

[34] Kerfoot v Cromwell Mound Co., 115 Ill. 502 (1884); Chicago & Alton Ry. Co. v Fisher, 141 Ill. 614 (1892); Lake Shore Michigan Southern Ry. Co v Richards, 152 Ill. 59 (1894).

There appear to have been no judicial interpretations of the phrases quoted above from section 11, "cases in which a franchise, or freehold, or the validity of a statute is involved," as they are used in the constitution. However, the construction placed upon these terms as used in a statute permitting such cases to be taken direct to the Supreme Court for review, may have a hearing upon the meaning of the constitutional provisions.

The word "involved" as used in this statute, does not necessarily mean that the proceeding must have been instituted for the express purpose of determining the question relating to a franchise, freehold, or validity of a statute.[35]

The term "franchise" in this statute, is used, not in the broad, popular sense, but, rather, in the strict legal sense of a special privilege, not enjoyed as of common right, which is conferred by the sovereign power or derived from prescription. This privilege need not, however, be exclusive. The term includes the power to exist as a corporation,[36] the power to exercise the right of eminent domain,[37] the power to collect tolls on ferries, bridges and wharves,[38] the constitutional privilege of a portion of the people to vote for candidates for public office,[39] and perhaps the power to issue bank notes.[40] The term has been held not to include the privilege of a foreign corporation to do business in this state,[41] the privilege granted by a city to use certain streets in the operation of a street railroad,[42] the privilege given by a city to run a dramshop,[43] or privileges such as that of membership in a private corporation,[44] that of a citizen to sue in certain cases in the name of the People on his own relation,[45] or the privilege of holding public office.[46]

A "freehold" is involved, within the meaning of the statute, in a case where the title to a freehold estate in real property is so put in issue by the pleadings, that the decision of the case makes necessary a determination of that question, or where the necessary result of a judgment or decree, such as a judgment in condemnation proceedings, is that one party loses and another gains a freehold estate in real property. That is, the title to the freehold must be directly and not incidentally affected.[47] Thus, a freehold is not involved in a suit to remove a cloud upon title.[48]

The "validity of a statute" is not involved in a case where the determination of that question is not pertinent to a decision of the case, as, for example, in a proceeding to construe a will, where it is alleged that the statute creating the corporation appointed as trustee, is invalid.[49] It is involved when plaintiff in error or appellant, to obtain a reversal, must show that certain statutes, if applicable, were passed as a valid exercise of legislative power, even though, in view of the other questions, it is not necessary for the Supreme Court to determine that question in order to decide the case.[50]

Appeals and writs of error. A statement of the judicial interpretation of the constitutional provisions relating to appeals to and writs of error

[35] C. & W. I. Ry. Co. v Dunbar, 95 Ill. 571 (1880).
[36] People v Holtz, 92 Ill. 426 (1879); People v Continental Benefit Ass'n., 280 Ill. 113 (1917).
[37] C. & W. I. Ry. Co. v Dunbar, 95 Ill. 571 (1880).
[38] People v Holtz, 92 Ill. 426 (1879).
[39] People v Holtz, 92 Ill. 426 (1879); U. S. v Hrasky, 240 Ill. 560 (1909).
[40] C. & W. I. Ry. Co. v Dunbar, 95 Ill. 571 (1880).
[41] People v Continental Benefit Ass'n., 280 Ill. 113 (1917).
[42] C. & W. I. Ry. Co. v Dunbar, 95 Ill. 571 (1880).
[43] People v City of Chicago, 257 Ill. 380 (1913).
[44] Board of Trade v People, 91 Ill. 80 (1878).
[45] Hesing v Attorney General, 104 Ill. 292 (1882).
[46] People v Holtz, 92 Ill. 426 (1879; People v Welch, 260 Ill. 532 (1913).
[47] Skinner v Lake View Ave Co., 57 Ill. 151 (1870); Perry v Bozarth, 198 Ill. 328 (1902); Town of Mattoon v Elliott, 259 Ill. 72 (1913); see discussion of this same question by E. M. Leesmann in the Illinois Law Review, VIII, pp. 176-86; XIV, pp. 223-25.
[48] Hockett v Logan, 257 Ill. 326 (1913).
[49] Dean v Northern Trust Co., 259 Ill. 148 (1913).
[50] Rittenhouse & Embree Co. v Brown, 254 Ill. 549 (1912); Barrett Mfg. Co. v City of Chicago, 259 Ill. 578 (1913).

from the Supreme Court, necessarily involves a consideration of sections 2, 8, 11 and 19 of this article. These sections contain the following provisions:

Sec. 2. "The Supreme Court shall . . . have original jurisdiction in cases relating to the revenue, in *mandamus* and *habeas corpus*, and appellate jurisdiction in all other cases."

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

Sec. 11. "After the year of our Lord one thousand eight hundred and seventy-four, 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."

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

It has been held that none of these constitutional provisions, in the absence of further legislation, grants to litigants a right to an appeal, in the strict sense, as distinguished from other methods of obtaining a review, to the Supreme Court. An appeal, in that sense, is entirely a creature of statute and until legislation has been enacted granting a right to an appeal and prescribing the conditions upon which it shall be available, an appeal does not lie.[51] (See discussion article 6, section 12, subheading, "Appellate jurisdiction".)

The remainder of the discussion, under this subheading, will be devoted to the subject of writs of error. It has already been suggested (see discussion preceding subheading, "Appellate jurisdiction") that before the appellate courts were established, in 1877, the Supreme Court had construed section 2 of this article as vesting in that court appellate jurisdiction in all cases other than those in which it was given original jurisdiction. Similarly, it was then held that section 2, in connection with sections 8 and 19, made a writ of error, from the Supreme Court to the trial court, a constitutional writ of right in every case, whether it was a case known to the common law, or a statutory proceeding conducted according to the course of the common law, or a statutory proceeding conducted in a summary manner, such as a condemnation proceeding. That is, the constitution was construed to have extended the common law rule under which a writ of error was a writ of right only in common law cases or in statutory proceedings conducted according to the course of the common law.[52] However, it is now held that, construing section 2 with section 11 of this article, there are only four cases in which the constitution confers appellate jurisdiction upon the Supreme Court, namely, "criminal cases, and cases in which a freehold, a franchise or the validity of a statute is involved." In all other cases, the appellate jurisdiction of the Supreme Court is entirely dependent upon statute. (See discussion preceding subheading, "Appellate jurisdiction"). Similarly, it is now held that under sections 2, 8, 11 and 19 of this article, it is only in these four classes of cases that there is a constitutional right to a writ of error from the Supreme Court. In all other cases, that right depends upon the common law as modified by statute.

However, this constitutional right to a writ of error from the Supreme Court in criminal cases, and cases in which a franchise, a freehold or the validity of a statute is involved, is not necessarily that of a

[51] Smith v People, 98 Ill. 407 (1881); Gallagher v People, 207 Ill. 247 (1904); Drainage Commissioners v Harms, 238 Ill. 414 (1909); Andrews v Rumsey, 75 Ill. 598 (1874).

[52] Schlattweiler v St. Clair County, 63 Ill. 449 (1872); St. L. & S. E. Ry. Co. v Lux, 63 Ill. 523 (1872); Peak v People, 76 Ill. 289 (1875); Haines v People, 97 Ill. 161 (1880).

right to a writ of error direct from the Supreme Court to the trial court. As has been suggested, (see discussion preceding sub-heading, "Appellate jurisdiction"), the General Assembly may require any one or more or all of these cases to be taken first to the appellate court.[53] On the other hand when one of these four cases, such as a criminal case, is required to be taken first to the appellate court, a writ of error from the Supreme Court to the appellate court to obtain a review of the latter courts' decision, is a constitutional writ of right and must be allowed when claimed.[54] Moreover, it has been intimated by the Supreme Court that the provisions of section 11 of this article deny to the General Assembly the power to provide for any method, other than that of writ of error or appeal, of bringing one of these four classes of cases up from the appellate court to the Supreme Court, for review. Nevertheless, the General Assembly may provide that a writ of *certiorari* may issue from the Supreme Court to the appellate court for the purpose of determining whether or not one of these four classes of cases merits review, when the writ actually awarded to bring up the record, after the case is deemed worthy of review, is a writ of error.[55]

It should be noted that a constitutional right to a writ of error does not include a right to have the writ of error made a *supersedeas*.[56]

Although sections 8 and 19 of this article have often been referred to by the court, the principal basis for the determination of the question as to when a writ of error from the Supreme Court was available, in the great majority of the cases, has been, not the constitution, but the common law, as modified by statute. That is, the constitutional provisions authorize the use of writs of error as a means of obtaining a review of cases by the Supreme Court, but, except in the four classes of cases of which mention has been made, the actual availability of a writ of error in a particular case has been determined, not by the constitution, but by the common law, as extended or changed by legislation.[57]

Very little has been said, in this note, with reference to sections 8 and 19 of this article. Section 8 appears to have been intended merely to require that appeals and writs of error, which were available because of some body of law other than that section, should be taken to the Supreme Court in the particular grand division in which the trial court was located, unless the parties agreed otherwise. That is, that section probably was not intended to have any bearing upon the question as to when a writ of error from the Supreme Court was or was not available in a particular case. Rather, it appears to have been inserted in the constitution for the purpose of directing to which grand division cases should be sent for review. The three grand divisions, however, were abolished, the state as a whole constituted one grand division, and the Supreme Court required to meet at Springfield, by an act of 1897.[58] Perhaps it may be said that since the enactment of that statute, section 8 is inoperative. There has been but one case in which the Supreme Court has really discussed the meaning, insofar as writs of error are concerned, of section 19. In that case the court said: "Plainly, this does not confer the right to a writ of error from this court in all cases decided by the county court. Whether the case shall be taken, by appeal or by writ of error, to this court, or to some other court, must be provided by law. It is but a direction to the General Assembly to prescribe, by law, how appeals and writs of error shall be allowed from final determinations of county courts . . ."[59]

[53] Young v Stearns, 91 Ill. 221 (1878); George v George, 250 Ill. 251 (1911); Public Utilities Commission v C. & W. T. Ry. Co., 275 Ill. 555 (1916).

[54] Smith v People, 98 Ill. 407 (1881); Gallagher v People, 207 Ill. 247 (1904).

[55] Freitag v U. S. Y. Co., 262 Ill. 551 (1914).

[56] Public Utilities Commission v C. & W. T. Ry. Co., 275 Ill. 555 (1916).

[57] Haines v People, 97 Ill. 161 (1880); Hart Bros. v West Chicago Park Commissioners, 186 Ill. 464 (1900); George v George, 250 Ill. 251 (1911); Sweeney v Chicago Telephone Co., 212 Ill. 475 (1904); Peak v People, 76 Ill. 289 (1875); Kingsbury v Sperry, 119 Ill. 279 (1887); Loomis v Hodson, 224 Ill. 147 (1906); Hall v Thode, 75 Ill. 173 (1874).

[58] Hurd's Revised Statutes, 1917, chap. 37, secs. 2-3d.

[59] Kingsbury v Sperry, 119 Ill. 279, 282 (1887).