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

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

The three grand divisions were abolished, the state as a whole constituted one grand division, and the Supreme Court was required to sit at Springfield, by an act of 1897.[∞]

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

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

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

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

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

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

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

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

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

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

Grand divisions. The three grand divisions were abolished, the state as a whole constituted one grand division, and the Supreme Court was required to sit at Springfield, by an act of 1897.[61]

Changes in Supreme Court districts. Under the provisions of section 6 of this article, five Supreme Court judges are elected at one time, one at another time, and one at still another time. (See discussion article 6, section 6).

It has been held that the General Assembly is empowered by the provisions of the last paragraph of this section and those of section 6 of this article, construed together, to change the boundaries of a particular Supreme Court district at the session which convenes next preceding the election of a judge in that district, even though that change results incidentally in the alteration of the boundaries of other districts in which no judges are to be elected that year. Moreover, the General Assembly is authorized by these two sections to change the boundaries of any one or more of the five districts in which judges of the Supreme Court are elected at the same time, at the session which convenes next preceding that election, even though such change or changes may result incidentally in the alteration of the boundaries of other districts in which no judges are to be elected that year. The Supreme Court has denied that the section under consideration necessarily requires all seven districts to be changed at the time of the election of the five judges The Supreme Court will not review the discretion of the General Assembly as to the equality of population, or the compactness or contiguity of the territory of the new districts, if it can see that any attempt at all was made to comply with these requirements.[62] (See article 6, section 13; and discussion, article 4, section 6.)

(As to whether an act creating new circuits or changing boundaries of circuits may be made to go into effect prior to the first day of July, without the necessity of an emergency clause and a two-thirds vote, see discussion article 4, section 13, subheading, "Date of going into effect.")

Section 6. At the time of voting on the adoption of this Constitution, one judge of the Supreme Court shall be elected by the electors thereof, in each of said districts numbered two, three, six,

[61] Hurd's Revised Statutes 1917, chap. 37, secs. 2-3d.
[62] People v Rose, 203 Ill. 46 (1903).

and seven, who shall hold his office for the term of nine years from the first Monday of June, in the year of our Lord one thousand eight hundred and seventy. The term of office of judges of the Supreme Court, elected after the adoption of this Constitution, shall be nine years; and on the first Monday of June of the year in which the term of any of the judges in office at the adoption of this Constitution or of the judge then elected, shall expire, and every nine years thereafter, there shall be an election for the successor or successors of such judges, in the respective districts wherein the term of such judges shall expire. The Chief Justice shall continue to act as such until the expiration of the term for which he was elected, after which the Judges shall choose one of their number Chief Justice.

On May 13, 1870, when the Constitution of 1870 was adopted by the constitutional convention, the Supreme Court consisted of three judges. The term of one of these three judges expired on the first Monday in June, 1870. Section 2 of article 6 of the new constitution provided that "The Supreme Court shall consist of seven judges." The section under consideration provided for the election of the four new judges on July 2, 1870, when the question of the ratification of the new constitution was submitted to the people. (See, also, section 7 of the schedule.) Five judges, therefore, were elected in 1870, and, pursuant to this section, five judges are to be elected every nine years thereafter, on the first Monday in June. The terms of the other two judges in office at the time of the adoption of the constitution of 1870 by the constitutional convention, expired, respectively, in 1873 and 1876. Therefore, under the provisions of this section, one Supreme Court judge is to be elected every nine years after 1873 and 1876, respectively, on the first Monday in June. Thus, elections for judges of the Supreme Court are held every three years. The provisions of the present statute are as follows: "The judges of the Supreme Court shall hereafter be elected as follows, to-wit: In the first, second, third, sixth and seventh districts on the first Monday of June, in the year of our Lord 1879, and every nine years thereafter. In the fourth district, on the first Monday of June, in the year of our Lord 1876, and every nine years thereafter. In the fifth district, on the first Monday of June, in the year of our Lord 1873, and every nine years thereafter." [a]

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

(As to the meaning of the last sentence of this section, see discussion under article 4, section 21, subheading "Judicial officers.")

[a] People v. Rose, 203 Ill. 46 (1903); Hurd's Revised Statutes, 1917, chap. 46, sec. 10.

Section 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.

(See discussion article 6, section 2, subheading, "Appeals and writs of error.")

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

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

The three grand divisions were abolished, the state constituted one grand division, the Supreme Court required to sit at Springfield, and the election of but one Supreme Court clerk provided for, by an Act of 1897.[64]

Section 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. Such Appellate Courts shall be held by such number of Judges of the Circuit Courts, and at such times and places, and in such manner, as may be provided by law; but no Judge shall sit in review upon cases decided by him; nor shall said Judges receive any additional compensation for such services.

(As to the meaning of the clause of this section, "and from which appeals and writs of error shall lie to the Supreme Court, in all criminal cases,

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

and cases in which a franchise, or freehold, or the validity of a statute is involved," see discussion article 6, section 2, subheadings, "Appellate jurisdiction," and "Appeals and writs of error.")

Branch Appellate Courts. The General Assembly is not prohibited by the provisions of this section from creating branch appellate courts, even though they are auxiliary to the main appellate courts. The organization, jurisdiction and districts of these branch courts, however, must comply with the requirements of this section.[65]

Jurisdiction. The appellate courts have no original jurisdiction in any case. They are merely intermediate courts of review, and have appellate jurisdiction only. Therefore, the appellate courts may not be empowered to issue writs of *mandamus*,[66] prohibition[67] or *certiorari*,[68] except in aid of their appellate jurisdiction. Nor, in the opinion of the Attorney General, may an appellate court issue a summons in garnishment, for to do so would be to exercise an original jurisdiction.[69]

Trial judge sitting in review. In the case of Provident Assurance Society v King,[70] the facts were these: The case had been assigned by the appellate court for the first district, to the branch appellate court, in that district, for review. Judge Stein, who had heard the case below, in the circuit court, had become a justice of that branch court, and for that reason, a motion was made to have the case reassigned to the main appellate court. The motion was not allowed. The Supreme Court held that the provision of the section of the constitution under consideration, "but no judge [of a circuit court] shall sit in review upon cases decided by him," prohibited Judge Stein from taking part in the hearing or decision of the case on appeal, and that, for the reason that the party was entitled to a hearing by a full court, it was error not to reassign the case, when such a court, namely, the main appellate court, was available in that district.

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

Original jurisdiction. The term "causes in law and equity" has been held to include the "prosecution of every claim or demand in a court of justice which was known, at the adoption of the constitution, as an action at law or a suit in chancery. It also includes all actions since provided for, in which personal or property rights are involved, which belong to the same class or are of the same nature as previously existing actions at law or in equity. Such are cases where the legislature creates a new statutory remedy for the recovery of property or for damages occasioned by the infringement

[65] Birkenfield v People, 191 Ill. 272 (1910).
[66] Hawes v People, 124 Ill. 560 (1888); People v Hoyne, 262 Ill. 82 (1914).
[67] People v Circuit Court, 169 Ill. 201 (1897).
[68] People v Hoyne, 262 Ill. 82 (1914); People v Pam, 276 Ill. 181 (1916).
[69] Report Attorney General 1916, p. 671.
[70] Provident Assurance Society v King, 216 Ill. 416 (1905).

of a right." The term "causes in law and equity" does not, therefore, include election contests.[71] However, it has been held that the General Assembly is not prohibited from conferring jurisdiction upon circuit courts to hear election contests,[72] and it has been held that section 4 of article 10 of the constitution, by implication, confers jurisdiction upon the circuit courts to hear election contests relating to the removal of county seats.[73] (See discussion article 10, section 4.)

The General Assembly is without power to deprive the circuit courts of this original jurisdiction in any cause at law or in equity, as for instance, by conferring exclusive jurisdiction in criminal cases or the enforcement of trusts, upon other courts. It may, however, confer concurrent jurisdiction in such cases upon other courts.[74] Section 26 of this article merely conferred concurrent jurisdiction in criminal and *quasi*-criminal matters upon the criminal court of Cook County and so did not operate to divest the circuit or superior court of Cook county of jurisdiction in such matters.[75]

The circuit courts take jurisdiction of so-called statutory "appeals" from non-judicial bodies, such as highway commissions, only when they have original jurisdiction over the subject matter involved, and not in the exercise of any appellate jurisdiction, for there cannot be an appeal, in the strict sense of the term, from a non-judicial body.[76] (See discussion article 6, section 2, subheading, "Original jurisdiction.")

Appellate jurisdiction. The circuit courts have no appellate jurisdiction by virtue of the section under consideration, in the absence of enabling legislation.[77] (See discussion article 6, section 2, subheading, "Appeals and writs of error.")

Terms of office of judges. The General Assembly is prohibited by this section from fixing the term of office for which circuit judges are to be elected at any period other than one of six years, even though, in a particular case, the judges are the first to be elected after an increase in the number of circuit judges in Cook county.[78] Apparently, however, section 15 of this article authorized the General Assembly to provide for the election of additional judges at the time of the adoption of the alternative system of judicial circuits therein provided for, for terms of less than six years each.[79] The regular terms of office of circuit judges have been held to begin upon the day of election.[80] (See discussion article 6, section 14, subheading, "Judicial elections.")

Section 13. The State, exclusive of the county of Cook and other counties having a population of one hundred thousand, shall be divided into judicial circuits, prior to the expiration of the terms of office of the present judges of the Circuit Courts. Such circuits shall be formed of contiguous counties, in as nearly compact form

[71] Douglas v Hutchinson, 183 Ill. 323 (1899).
[72] Kerr v Flewelling, 235 Ill. 326 (1908).
[73] Douglas v Hutchinson, 183 Ill. 323 (1899).
[74] Myers v People, 67 Ill. 503 (1873); Mapes v People, 69 Ill. 523 (1873); Wilson v People, 94 Ill. 426 (1880); Howell v Moores, 127 Ill. 67 (1889); Frackelton v Masters, 249 Ill. 30 (1911).
[75] Berkowitz v Lester, 121 Ill. 99 (1887).
[76] Drainage Commissioners v Harms, 238 Ill. 414 1909).
[77] City of Aurora v Schoeberlein, 230 Ill. 496 (1907); Maxwell v People, 189 Ill. 546 (1901).
[78] People v Knopf, 198 Ill. 340 (1902).
[79] People v Wall, 88 Ill. 75 (1878); People v Knopf, 198 Ill. 340 (1902).
[80] People v Sweitzer, 280 Ill. 436 (1917).

and as nearly equal as circumstances will permit, having due regard to business, territory and population, and shall not exceed in number one circuit for every one hundred thousand of population in the State. One judge shall be elected for each of said circuits by the electors thereof. New circuits may be formed and the boundaries of circuits changed by the General Assembly, at its session next preceding the election for circuit judges, but at no other time: Provided, that the circuits may be equalized or changed at the first session of the General Assembly, after the adoption of this Constitution. The creation, alteration or change of any circuit shall not effect the tenure of office of any judge. Whenever the business of the Circuit Court of any one, or of two or more contiguous counties, containing a population exceeding fifty thousand, shall occupy nine months of the year, the General Assembly may make of such county, or counties, a separate circuit. Whenever additional circuits are created, the foregoing limitation shall be observed.

(See discussion article 6, section 15).

Section 14. The General Assembly shall provide for the times of holding court in each county; which shall not be changed, except by the General Assembly next preceding the general election for judges of said courts; but additional terms may be provided for in any county. The election for judges of the Circuit Courts shall be held on the first Monday in June, in the year of our Lord one thousand eight hundred and seventy-three, and every six years thereafter.

Time of holding court. The Supreme Court has held that, under this section, the General Assembly may prescribe the time for holding the circuit court in a particular county, in an act applicable only to that one county.[51] The only General Assembly which has the power to change the time of holding court is that which convenes just prior to the judicial election. Any General Assembly, however, may provide for additional terms of court in any county.[52]

Judicial elections. This section prohibits the General Assembly from fixing any time other than that specified, for the election of circuit judges, even though in a particular case, they are the first to be elected after an increase in the number of circuit judges in Cook county.[53] Apparently, however, this rule did not apply to the first election of judges after the adoption of the alternative system provided for by section 15 of this article. Nor does it apply to the election of judges of the superior court of Cook County.[54] (See discussion article 6, section 12, subheading, "Terms of office of judges.")

[51] Karnes v People, 73 Ill. 274 (1874); City of Mt. Vernon v Fire Brick Co., 204 Ill. 32 (1903).
[52] Kepley v People, 123 Ill. 367 (1888).
[53] Kepley v People, 123 Ill. 367 (1888).
[54] People v Wall, 88 Ill. 75 (1878); People v Knopf, 198 Ill. 340 (1902).

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

Adoption of alternative system. The Supreme Court held, in the case of People v Wall,[85] that the alternative system of judicial circuits provided for by this section could be adopted by the General Assembly, in lieu of the system provided for by section 13 of this article, at any time. This alternative system was adopted in 1877. (As to the first judges elected under this plan, see discussion article 6, section 12, subheading, "Terms of office of judges;" article 6, section 14, subheading, "Judicial elections").

Alterations in circuits. It was held that once the alternative system of judicial circuts provided for by this section was adopted, the provisions of section 13 of this article, that "new circuits may be formed and the boundaries of circuits changed by the General Assembly, at its session next preceding the election for circuit judges therein, but at no other time," applied as limitations upon the time when alterations in circuits could be made. The session of the General Assembly referred to is that which convenes, and not necessarily that which regularly adjourns, next prior to the judicial election.[86] (As to whether an act creating new circuits or changing boundaries of circuits may be made to go into effect prior to the first day of July without being passed as an emergency act, see discussion article 4, section 13, subheading, "Date of going into effect").

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

(As to the meaning of .e first clause of the second sentence of this section, see discussion article 4, section 21, subheading, "Judicial officers.")

It has been suggested that the General Assembly is without power, under this section, to provide for extra compensation for a circuit judge holding court for another judge outside of his own district.[87] (See discussion article 6, sections 17, 18, 23, subheadings, "Interchange of judges.")

[85] People v Wall, 88 Ill. 75 (1878); People v Knopf, 198 Ill. 340 (1902).
[86] People v Wall, 88 Ill. 75 (1878); People v Rose, 166 Ill. 122 (1897).
[87] Hall v Hamilton, 74 Ill. 437 (1874).

This section merely prohibits the performance of duties imposed by law, other than judicial duties, for a compensation. Thus, it does not prevent a judge of the Supreme Court from practicing law, under a private contract, for a remuneration.[88]

Section 17. No person shall be eligible to the office of Judge of the circuit or any inferior court, or to membership in the "Board of County Commissioners," unless he shall be at least twenty-five years of age, and a citizen of the United States, nor unless he shall have resided in this State five years next preceding his election, and be a resident of the circuit, county, city, cities, or incorporated town in which he shall be elected.

Judges of courts. The Supreme Court held that a provision similar to this, in section 11 of article 5 of the constitution of 1848, did not apply to judges of city courts. The Attorney General has placed the same construction upon the present provision. The Supreme Court, however, now seems inclined to hold that the section under consideration does apply so as to fix the qualifications of judges of city courts.[89] The Attorney General has ruled that the provisions of this section apply so as to fix the qualifications of judges of county courts.[90]

County commissioners. The term "board of county commissioners", as used in this section, refers only to the three officers of that name elected in counties not under township organization, and does not refer to the board of commissioners of Cook County. This section does not, therefore, require the members of that board to possess the specified qualifications.[91] (See discussion article 7, section 6; article 10, section 7.)

Interchange of judges. There is nothing in this section to prohibit the General Assembly from authorizing a judge of a circuit court to hold court for another judge, outside of his own county.[92] (See discussion article 6, section 16, and sections 18 and 23, subheadings, "Interchange of judges.")

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

[88] Town of Bruce v Dickey, 116 Ill. 527 (1886).
[89] People v Wilson, 15 Ill. 388 (1854); People v Lippincott 67 Ill. 333 (1873); People v Olson, 245 Ill. 288 (1910); Report Attorney General 1914, p. 975; but see Franklin v Westfall, 273 Ill. 402 (1916).
[90] Report Attorney General 1914, p. 1169.
[91] People v McCormick, 261 Ill. 413 (1914).
[92] Jones v Albee, 70 Ill. 34 (1873).

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

Interchange of judges. The General Assembly is not prohibited from authorizing one county judge to hold county court in another county, even though he may thus hold a branch court, while the regular county judge is sitting.[93] Nor is the General Assembly without power to authorize a county judge to hold a city court.[94] (See discussion article 6, section inability of the probate judge. Similarly, under these conditions the judge of a probate court may be empowered by statute to sit in the county court.[95] In the opinion of the Attorney General, the General Assembly may authorize a county judge to hold a city court.[96] (See discussion article 6, section 16, and sections 17 and 23, subheadings, "Interchange of judges.")

Effect of establishment of probate courts. The establishment of a probate court in a particular county, pursuant to section 20 of this article, operates to deprive the county court of that county of jurisdiction over the matters embraced in that section, namely, "all probate matters, the settlement of estates of deceased persons, the appointment of guardians and conservators, and settlements of their accounts; n all matters relating to apprentices, and in cases of sales of real estate of deceased persons for the payment of debts." As to such matters, the jurisdiction of the probate courts, once established, is exclusive.[97] However, the establishing of a probate court in a particular county does not operate to divest the county court of that county of a statutory jurisdiction not included within these terms.[97]

Thus, the constitution contemplates two classes of county courts; one having jurisdiction over all of the matters embraced in section 18, and the other, composed of the county courts in counties in which probate courts have been established, having jurisdiction over "proceedings for the collection of taxes and assessments" and "such other jurisdiction as may be provided by general law." To this extent, by virtue of the constitution itself, the jurisdiction of the county courts is not uniform.[98] (See discussion article 6, section 29, subheading, "Constitutional exceptions to rule of uniformity.")

Jurisdiction not exclusive. The section under consideration does not operate to vest in county courts exclusive original jurisdiction over "proceedings for the collection of assessments and taxes." The General Assembly may, therefore, confer a concurrent jurisdiction over such matters upon circuit courts.[99] The Supreme Court suggested, in the case of Shaw v Moderwell, that under this section county courts, in counties wherein probate courts have not been established, do not have exclusive jurisdiction of "matters of probate", and that concurrent jurisdiction over such matters might be conferred upon other courts.[1] This case was decided, however, on the basis of the fact that in authorizing circuit courts to hear will contests, the General Assembly had not conferred upon circuits courts an orig-

[93] Pike v City of Chicago, 155 Ill. 656 (1895).
[94] City of Moline v C. B. & Q. Ry. Co., 262 Ill. 52 (1914).
[95] Report of Attorney General 1912, p. 283.
[96] Klokke v Dodge, 103 Ill. 125 (1882); Meserve v Delaney, 105 Ill. 53 (1882).
[97] People v Loomis, 96 Ill. 377 (1880).
[98] Klokke v Dodge, 103 Ill. 125 (1882); Meserve v Delaney, 105 Ill. 53 (1882).
[99] Hundley v Commissioner's of Lincoln Park, 67 Ill. 559 (1873).
[1] Shaw v Moderwell, 104 Ill. 64 (1882).

inal jurisdiction in a "matter of probate." That is, this proceeding is not one to establish, but rather, to impeach a will. (As to the meaning of the terms, "matters of probate," "appointment of guardians and conservators and settlement of their accounts", see discussion article 6, section 20, subheadings, "Probate matters," "Appointment of guardians and conservators.")

Estates of deceased persons. The provisions of this section, vesting in the county courts in counties wherein probate courts have not been established, jurisdiction over the "settlement of estates of deceased persons" excludes the possibility that such courts may settle the estates of persons not actually dead.[2] However, the General Assembly may confer jurisdiction upon these courts to settle the estates of persons presumed in law to be dead, when the distributees are required to give bond to protect those persons, if, actually, they are then alive.[3]

Under this clause the General Assembly may regulate the procedure of a probate court relating to the sale of the real estate of deceased persons for the payment of debts, so as to authorize probate courts to adjudicate the rights of claimants to the land prior to the sale.[4]

Statutory jurisdiction. There is no limitation in the last clause of this section as to the type of jurisdiction that may be conferred upon county courts "by general law." However, in view of the provisions of section 12 of this article, the jurisdiction of county courts in "causes in law or equity," other than those enumerated in section 18, such as criminal cases and cases relating to the enforcement of testamentary trusts, may not be made exclusive so as to deprive circuit courts of jurisdiction over such cases.[5] (See discussion article 6, section 12, subheading "Original jurisdiction.")

An act which confers a particular jurisdiction upon all county courts except that of Cook County, is not a "general law" within the meaning of this section.[6] Similarly, under section 29 of this article, it has been held that the General Assembly may not confer a particular jurisdiction upon county courts in counties wherein probate courts have not been established, unless the same jurisdiction is conferred upon the other county courts. Although the constitution itself creates a lack of uniformity in the jurisdiction of county courts, (see discussion preceding subheading "Effect of establishment of probate courts"), this exception does not go to the extent of authorizing the General Assembly to confer a jurisdiction upon county courts in counties wherein probate courts have been established, which is not conferred upon county courts in the other counties.[7] (See discussion article 6, section 29, subheading, "Constitutional exceptions to rule of uniformity.")

The last clause of this section, as to counties that have adopted township organization, was held to be so modified by the provision of section 4 of the schedule, as not to be self-executing. That is, it did not operate to repeal, without further legislation, the jurisdiction of these county courts, which had been conferred by special act.[8] (See discussion, section 4 of the schedule.)

[2] Thomas v People, 107 Ill. 517 (1883).
[3] Stevenson v Montgomery, 263 Ill. 93 (1914).
[4] Newell v Montgomery, 129 Ill. 58 (1889).
[5] Myers v People, 67 Ill. 503 (1873); Mapes v People, 69 Ill. 523 (1873); In re Estate of Mortenson, 248 Ill. 520 (1911); Frackelton v Masters, 249 Ill. 30 (1911).
[6] Myers v People, 67 Ill. 503 (1873).
[7] Klokke v Dodge, 103 Ill 125 (1882); Meserve v Delaney, 105 Ill. 53 (1882).
[8] Blake v Peckham, 64 Ill. 362 (1872).

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

(See discussion article 6, section 2, subheading, "Appeals and writs of error").

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

Establishment of probate courts. The Supreme Court held that under this section the General Assembly was not required, at the time it first established probate courts, to establish one at that time in each county having a population in excess of 50,000 inhabitants, and that the General Assembly was not prohibited from limiting the original act establishing probate courts to counties having a population of 100,000 inhabitants. It was suggested, moreover, in this case, that under this section the General Assembly might have gone so far as to establish a probate court in one county, by a special act, applicable to that one county, alone.[9] (The present probate court act is applicable to counties having a population of 70,000, or more.)[10]

(As to interchange of judges, see discussion article 6, section 18, subheading, "Interchange of judges." As to whether the jurisdiction of probate courts is exclusive, see discussion article 6, section 18, subheading, "Effect of establishment of probate courts.")

Jurisdiction limited. The section under consideration has been construed to confine the jurisdiction of probate courts to the subjects named. Thus, the General Assembly is without power to confer upon probate courts a jurisdiction not embraced within the terms used in this section, such as the foreclosure of mortgages executed by guardians on their ward's property, testamentary trusts, and, perhaps, the levying of inheritance taxes.[11]

Probate matters. It was suggested in an early case that the term "probate matters" was used in this section in its broadest and most general sense. However, it was later held that this term merely embraces "all matters necessarily involved in the disposition of the estates of deceased persons from the time of the owners' death until the property has been

[9] Knickerbocker v People, 102 Ill. 218 (1882).
[10] Hurd's Revised Statutes 1917, chap. 37, p. 882.
[11] People v Loomis, 96 Ill. 377 (1880); In re Estate of Mortenson, 248 Ill. 520 (1911); Frackelton v Masters, 249 Ill. 30 (1911); Report Attorney General 1915, p. 384.

placed in the possession of those to whom it devolves;" and that it does not, therefore, include the enforcement of testamentary trusts. Nor does it include any of the matters embraced in the other terms used in the section under discussion, such as "the appointment of guardians and conservators," except that of "the settlement of the estates of deceased persons." With this latter term, it was held the term "probate matters" is coextensive.[12]

(As to the nature of a will contest in the circuit court, see discussion article 6, section 18, subheading, "Jurisdiction not exclusive." As to estates of deceased persons, see discussion article 6, section 18, subheading, "Estates of deceased persons").

Appointment of guardians and conservators. Under this clause, the General Assembly may empower probate courts to authorize guardians to sell their minor wards' real estate.[13] Probate courts, under this clause, may be given jurisdiction to adjudge persons to be drunkards or spendthrifts, and to appoint conservators for them.[14] However, the jurisdiction of probate courts with reference to the settlement of accounts of guardians, under the constitution, is limited to that specific subject and does not extend to the settlement of the equities between the guardian and ward, arising outside of the guardianship.[15]

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

Officers to be elected. This section requires the officers named therein to be elected. For instance, the General Assembly is prohibited by this section from authorizing the appointment of constables by the board of trustees of a village.[16]

Jurisdiction of justices of the peace and police magistrates. This section operated to abrogate all laws in force at the time of the adoption of the constitution of 1870, which had clothed police magistrates with powers not generally possessed by justices of the peace. It placed justices of the peace and police magistrates, so far as their jurisdiction is concerned, upon the same footing. They are to exercise the same powers and jurisdiction. For example, a statute enacted since 1870, which conferred a particular jurisdiction upon justices of the peace was held to have impliedly conferred the same jurisdiction upon police magistrates.[17]

Section 27 of article 5 of the constitution of 1848 provided as follows: "There shall be elected in each county in this State, in such districts as the General Assembly may direct, by the qualified electors thereof, a competent number of justices of the peace, who shall hold their offices for the term of four years, and until their successors shall have been elected and

[12] Winch v Tobin, 107 Ill. 212 (1883); In re Estate of Mortenson, 248 Ill. 520 (1911); Frackelton v Masters, 249 Ill. 30 (1911).
[13] Winch v Tobin, 107 Ill. 212 (1883).
[14] Ure v Ure, 223 Ill. 454 (1906).
[15] People v Seelye, 146 Ill. 189 (1892).
[16] People v Bollam, 182 Ill. 528 (1899).
[17] Brown v Jerome, 102 Ill. 371 (1882); Commissioners of Highways v Jackson, 165 Ill. 17 (1897).

qualified, and who shall perform such duties, receive such compensation, and exercise such jurisdiction as may be prescribed by law." The Supreme Court held in construing this section that: "As to these officers there is no limit placed by the constitution as to legislative power. They may create as many as they please, in such districts as they please, and prescribe their jurisdiction as they please, nor is it necessary that all the justices of the peace of the state should have a uniform jurisdiction." [18]

The section of the constitution of 1870 under consideration and section 29 of this article, however, were construed to have abrogated all laws enacted prior to 1870, which conferred a varied jurisdiction upon different justices of the peace, leaving the jurisdiction of all justices of the peace to be defined by a general law then in force.[19] Moreover, the requirement of uniformity in the jurisdiction of justices of the peace and police magistrates has been held to extend to territorial jurisdiction. That is, an act was held void which created two districts for justices of the peace in Cook county, when the districts downstate were co-extensive with the counties.[20]

Section 22. At the election for members of the General Assembly in the year of our Lord one thousand eight hundred and seventy-two, and every four years thereafter, there shall be elected a State's Attorney in and for each county, in lieu of the State's Attorneys now provided by law, whose term of office shall be four years.

(As to salaries of state's attorneys, generally, see discussion article 6, section 32, subheading, "Compensation of state's attorneys"; article 10, section 10, subheading "County officers." As to the salaries of state's attorneys in Cook County, see discussion article 6, section 25. As to increases in the compensation of state's attorneys during their term of office, see discussion article 4, section 21, subheading, "Municipal officers." As to the qualifications of state's attorneys, see discussion article 7, section 6.)

Section 23. The county of Cook shall be one judicial circuit. The Circuit Court of Cook county shall consist of five judges, until their number shall be increased, as herein provided. The present Judge of the Recorder's Court of the city of Chicago, and the present Judge of the Circuit Court of Cook county, shall be two of said judges, and shall remain in office for the terms for which they were respectively elected, and until their successors shall be elected and qualified. The Superior Court of Chicago shall be continued, and called the Superior Court of Cook County. The General Assembly may increase the number of said judges, by adding one to either of said courts for every additional fifty thousand inhabitants in said county over and above a population of four hundred thousand. The terms of office of the judges of said courts hereafter elected, shall be six years.

Jurisdiction. The superior court of Cook County, under the provisions of this section and those of section 24 of this article, has the same

[18] In re Welsh, 17 Ill. 161 (1855).
[19] Phillips v Quick, 63 Ill. 445 (1872).
[20] People v Meech, 101 Ill. 200 (1882).

jurisdiction as a circuit court. Moreover, the superior and circuit courts of Cook County are of the same class and grade and they have the same jurisdiction as all other circuit courts. (See discussion article 6, section 29, subheading, "Provisions mandatory.") A special statutory jurisdiction expressly conferred upon circuit courts, has been held to have been impliedly conferred upon the superior court of Cook County.[21]

However, the superior court of Cook county is actually a separate court, existing independently of the circuit court of that county. One of these courts, therefore, may not exercise revisory powers over the judgments and decrees of the other.[22]

The provisions of section 26 of this article did not operate to vest an exclusive jurisdiction over criminal and *quasi*-criminal matters in the criminal court of Cook county, so as to divest the circuit and superior courts of that county of jurisdiction over those matters. Rather, the constitution contemplated that as to these matters, the three courts just mentioned should have concurrent jurisdiction.[23] (See discussion article 6, section 12, subheading, "Original jurisdiction;" article 6, section 26, subheading, "Original jurisdiction not exclusive.")

(As to the power of a circuit or superior court judge, sitting in the criminal court, tc act as a judge of the circuit or superior court, see discussion article 6, section 26, subheading, "Judges.")

Elections and terms. Although the constitution, (article 6, section 14), fixes the day of election of circuit judges as the first Monday in June, in 1873, and every sixth year thereafter, it does not fix the day of election of judges of the superior court of Cook county. Therefore, the General Assembly, although it may not prescribe another day for the election of circuit judges, may provide for the election of judges of the superior court at any time. (See discussion article 6, section 14, subheading, "Judicial elections"). The section under consideration, however, does fix the terms of office of the judges of the superior court as well as those of judges of the circuit court, at six years. Hence, even as to the first judges elected after an increase in the number thereof pursuant to this section, the General Assembly is without power to provide that either circuit or superior court judges may be elected for terms of less than six years each. These terms begin upon the day of election.[24] (See discussion article 6, section 12, subheading, "Terms of office of judges.")

Branch courts. The provisions of the section under consideration and those of section 24 of this article, do not require the judges of either the circuit or superior court to sit *en banc*. Rather, the constitution contemplates that each judge shall hold a branch court independently of the others, and while thus engaged, shall have all of the powers of a circuit court.[25]

Interchange of judges. The General Assembly is not prohibited from authorizing downstate judges of courts of record to sit as judges of the superior or circuit court of Cook County.[26] (See discussion article 6, section 16, and sections 17 and 18, subheadings, "Interchange of judges.")

[21] Jones v Albee, 70 Ill. 34 (1873); Berkowitz v Lester, 121 Ill. 99 (1887); Cobe v Guyer, 237 Ill. 516 (1909).
[22] Mathias v Mathias, 202 Ill. 125 (1903).
[23] Berkowitz v Lester, 121 Ill. 99 (1887).
[24] People v Knopf, 198 Ill. 340 (1902); People v Sweitzer, 280 Ill. 436 (1917).
[25] Jones v Albee, 70 Ill. 34 (1873); Hall v Hamilton, 74 Ill. 437 (1874).
[26] Jones v Albee, 70 Ill. 34 (1873); Hall v Hamilton, 74 Ill. 437 (1874).

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

(As to the construction placed upon the last two sentences of this section, see discussion article 6, section 23.)

Section 25. The judges of the Superior and Circuit Courts, and the State's Attorney, in said county, shall receive the same salaries, payable out of the State treasury, as is or may be paid from said treasury to the circuit judges and State's Attorney's of the State, and such further compensation, to be paid by the county of Cook, as is or may be provided by law; such compensation shall not be changed during their continuance in office.

The words "salary" and "compensation," in this section, are used interchangeably. They refer, not to the fees incident to the office of state's attorney of Cook county, but to the sums of money paid to the state's attorney of that county by the state and county, as a salary. Were it not for the long continued legislative practice of allowing to the state's attorney of Cook county the fees incident to his office, the view that the salaries paid by the state and county should constitute the sole source of that officer's official compensation, would, the court said, have prevailed. However, in view of that practice, it was held that the compensation of the state's attorney of Cook county was not confined to his salary, and that he might retain the fees of his office which exceeded the amount of the salary.[27] (As to whether a down state state's attorney's salary must be fixed by the General Assembly or by the county board, see discussion article 6 section 32, subheading, "Compensation of state's attorneys"; article 10, section 10, subheading, "County officers.")

This section, it has been held, does not require that whenever the compensation of the circuit or superior court judges is increased, that of the state's attorney must also be increased at the same time.[28] However, the power of the General Assembly, under the last clause of this section, to increase the compensation of these officers, either that which is paid by the state or that which is paid by the county, is subject to two limitations as to time. In the first place, it has been held that the last clause of this section, though slightly different in language, constitutes one of a series of statements in the constitution which establishes a policy prohibitive of changes in an officer's compensation during the official term for which he has been elected, without regard to the actual tenure of the individual.[29] (See discussion article 4, section 21, subheading, "Municipal officers.") In the second place, in the case of judges of the circuit and superior courts of Cook County, this term of office, in the absence of other constitutional provisions, begins upon the day of election, without regard to the day upon

[27] Cook County v Healy, 222 Ill. 310 (1906).
[28] People v Olsen, 222 Ill. 117 (1906).
[29] Foreman v People, 209 Ill. 567 (1904).

which the votes are canvassed, the commission issued, or the time when the judge qualifies.[30]

(As to the time when the provisions of this section relating to judges' compensation became operative, see discussion, section 21 of the schedule.)

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

Provisions self-executing. This section became operative immediately upon the adoption of the constitution. All statutes relating to the Recorder's Court which were inconsistent with the new constitution, were abrogated, and all those not inconsistent therewith, were continued in force. Thus, the act requiring grand and petit jurors for the Recorder's Court to be drawn from within the city of Chicago was repealed, for the jurors in this court are to come from the county as a whole.[31]

Jurisdiction in habeas corpus. The clauses of the section under consideration, limiting the jurisdiction of the criminal court in civil cases, and creating the exceptions thereto, retained for the criminal court the jurisdiction of the Recorder's Court in *habeas corpus* proceedings. In addition, this jurisdiction is vested in the criminal court by the clause conferring the jurisdiction of a circuit court upon that court in all cases of a criminal and *quasi*-criminal nature.[32]

Original jurisdiction not exclusive. Although a contrary doctrine was suggested in an early case, it has been held that the original jurisdiction vested by this section in the criminal court of Cook county in criminal and *quasi*-criminal cases, is not exclusive. The superior and circuit courts of Cook county, being of the same class and grade and having the same jurisdiction as other circuit courts, have concurrent jurisdiction in such cases, because they are cases embraced within the term "causes in law and equity" as used in the provisions of section 12 of this article defining the jurisdiction of circuit

[30] People v Sweitzer, 280 Ill. 436 (1917).
[31] People v Bradley, 60 Ill. 390 (1871); Perl v People, 65 Ill. 17 (1872).
[32] People v Bradley, 60 Ill. 390 (1871).

courts. (See discussion article 6, section 12, subheading, "Original jurisdiction"; article 6, section 23, subheading, "Jurisdiction.") The General Assembly may, also, confer a concurrent jurisdiction in such cases upon the municipal court of Chicago.[33]

Jurisdiction of recognizances and appeals exclusive. The jurisdiction of the criminal court of Cook county over statutory recognizances and appeals taken in Cook county in criminal and *quasi*-criminal cases, is exclusive. To this extent, the appellate jurisdiction of the Cook County courts is not uniform with that of other circuit courts. However, this merely means that whenever a statute gives a right to take a recognizance or an appeal in such a case, that statute must require the recognizance or appeal to be taken to the criminal court. The General Assembly may, therefore, provide for a writ of error from either the appellate or Supreme Court, to review a judgment of the municipal court of Chicago in a criminal or *quasi*-criminal case, without violating this section, for a writ of error is not a statutory recognizance or appeal.[34]

Quasi-criminal cases. The term "*quasi*-criminal" cases, as used in the clause of this section relating to recognizances and appeals in such cases, embraces all acts which are neither crimes nor misdemeanors, but which are in the nature of crimes and which are punishable by forfeitures and penalties in civil or criminal proceedings. It thus includes cases involving the imposition of a penalty for violation of a city ordinance licensing auctioneers, for violation of a statute relating to gambling, and for violation of a statute regulating the practice of medicine.[35]

Branch courts. This section does not require that the judges of the criminal court of Cook County shall sit *en banc*. Rather, it contemplates that the individual judges shall hold branch courts.[36]

Judges. Under this section, every judge of the circuit or superior court of Cook county is, *ex officio*, a judge of the criminal court. Any one of them has the power and the right to sit as a judge of that court, even though he has not been designated so to act by the judges, for the provision of this section as to the designation of the judges in alternation is a mere regulation for the convenience of the judges themselves.[37]

However, when such a judge does sit in the criminal court, he does so as *ex officio* judge of the court, and not as judge of the circuit or superior court. While so acting, he is without power to enter an order in a case heard by him in the circuit or superior court. The term "unfinished business," as used in this section, referred only to the unfinished business of the old Recorder's Court, and not to that of a superior or circuit judge sitting in the criminal court.[38]

Section 27. The present Clerk of the Recorder's Court of the city of Chicago, shall be the Clerk of the Criminal Court of Cook

[33] City of Chicago v O'Hara, 60 Ill. 413 (1871); Berkowitz v Lester, 121 Ill. 99 (1887); People v Jacobson, 247 Ill. 394 (1910).

[34] Bratsch v People, 195 Ill. 165 (1902); People v Jacobson, 247 Ill. 394 (1910); People v Gartenstein, 248 Ill. 546 (1911).

[35] Wiggins v City of Chicago, 68 Ill. 372 (1873); Berkowitz v Lester, 121 Ill. 99 (1887); Bratsch v People, 195 Ill. 165 (1902).

[36] Cahill v People, 106 Ill. 621 (1883).

[37] Greene v People, 182 Ill. 278 (1899).

[38] U. S. Life Ins. Co. v Shattuck, 159 Ill. 610 (1896).

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

This section did not repeal the statute in force in 1870 relating to the liability of the city of Chicago for the fees of the clerk of the Recorder's Court. It continued in force for the benefit of the clerk of the new criminal court, until the General Asembly provided otherwise, even though the criminal court was given jurisdiction by section 26 of this article throughout the county, unlike that of its predecessor, the Recorder's Court, whose territorial jurisdiction was limited to the city.[39]

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

The sixth amendment to the constitution of 1870, section 34 of article 4, adopted in 1904, authorized the abolition by the General Assembly of the offices of justices of the peace, police magistrates, and constables, within the city of Chicago, should a municipal court be established. A municipal court was established and these offices, within the city, abolished, by an act of 1905.[40]

However, before that constitutional amendment was adopted, it was held that the section under consideration abolished the office of police magistrate in the city of Chicago; that it required justices of the peace in Chicago to be appointed by the Governor, and prevented their election by the people; and that it prevented the Governor from appointing anyone as a successor to a justice of the peace in Chicago who had not been recommended for that particular position by the judges.[41]

Section 29. All judicial officers shall be commissioned by the Governor. All laws relating to courts shall be general, and of uni-

[39] City of Chicago v O'Hara, 60 Ill. 413 (1871).
[40] Laws 1905, p. 157, at p. 183.
[41] People v Palmer, 64 Ill. 41 (1872); People v O'Toole, 164 Ill. 344 (1897); Kaufman v People, 185 Ill. 113 (1900).

form operation; and the organization, jurisdiction, powers, proceedings and practice of all courts, of the same class or grade, so far as regulated by law, and the force and effect of the process, judgments and decrees of such courts, severally, shall be uniform.

Purpose of the section. The constitution of 1848, as interpreted by the court, did not require uniformity in the jurisdiction, forms of action, practice or process of either the justices of the peace, the county courts, or the circuit courts. The provision of section 1 of article 5 of that instrument, that city courts "shall have a uniform organization and jurisdiction, in such cities," was construed to require uniformity in those matters only as between city courts in the same city and not as between city courts in different cities.[41]

The section under consideration is one of several by which the framers of the constitution of 1870 sought to remedy and to prevent the recurrence of the evils growing out of the special legislation relating to courts, enacted under the constitution of 1848. For instance, section 21 of this article requires the jurisdiction of justices of the peace and police magistrates to be uniform. Section 18 of this article permits county courts to have "such other jurisdiction as may be provided for by general law," and section 22 of article 4 prohibits the enactment of local or special laws "regulating the practice in courts of justice" and "the jurisdiction and duties of justices of the peace, police magistrates and constables."

Provisions self executing. This section was held to be self executing, so as to repeal, immediately upon the adoption of the constitution of 1870, all special and local laws regulating the organization, jurisdiction, powers, proceedings, practice, and the force and effect of the process, decrees and judgments of courts of the same class or grade.[42] (See, however, as to county courts, discussion article 6, section 18, subheading, "Statute of jurisdiction," and section 4 of the schedule.)

Provisions mandatory. The provisions of this section have been construed to be mandatory as to legislation enacted since 1870. For instance, the Supreme Court has held that since the circuit courts and the circuit and superior courts of Cook county are courts of the same class and grade, they must, under this section, be given the same jurisdiction.[43] A general city court act is prohibited by the section under consideration, from being applicable to a city located in two counties, for the reason that a city court in that city would, unlike all other city courts, be required to have the machinery for making available a grand and petit jury from both counties.[44] (See discussion article 6, section 1, subheading, "City courts.")

Constitutional exceptions to rule of uniformity. There are several provisions of the constitution which have been construed to create exceptions to the requirements as to uniformity, prescribed by the section under consideration.

For instance, the clause in this section, "all laws relating to courts shall be general and of uniform operation," has been construed to be limited to the matters specifically enumerated in the rest of the section. Therefore, special laws authorizing circuit judges to appoint court reporters or regulating the making up of the jury list, inasmuch as these laws do not

[41] McDonnell v Olwell, 17 Ill. 375 (1856); Stow v People, 25 Ill. 81 (1860); People v Rumsey, 64 Ill. 44 (1872).
[42] People v Rumsey, 64 Ill. 44 (1872); Hart v People, 89 Ill. 407 (1878).
[43] Ferguson v People, 90 Ill. 510 (1878); Berkowitz v Lester, 121 Ill. 99 (1887).
[44] People v Rodenberg, 254 Ill. 386 (1912).

relate to the organization, jurisdiction, powers, proceedings or practice of courts, are not invalid.[46] (See discussion section 6 of the schedule.)

It has been held that section 14 of article 6 authorizes the General Assembly to pass special and local legislation with reference to the time of holding terms of court in different counties, and that acts of that character enacted prior to 1870 were, therefore, not repealed by the section under discussion.[47]

Section 20 of this article has been construed to deprive county courts in counties wherein probate courts have been established, of jurisdiction over the matters embraced in that section, and of itself, to disrupt the uniformity of the jurisdiction of county courts. This exception does not extend, however, to authorizing the General Assembly further to destroy the uniformity of jurisdiction of county courts by legislation applicable only to those county courts in counties wherein probate courts have been established.[48]

The provision of section 26 of this article, that all recognizances and appeals in Cook County in criminal and *quasi*-criminal cases shall be taken to the criminal court of that county, has been held to make the jurisdiction of the criminal court over those matters exclusive and to create an exception to what otherwise might be a requirement of the section under consideration, that the appellate jurisdiction of the circuit courts must be uniform.[49]

The sixth amendment to the constitution of 1870, section 34 of article 4, adopted in 1904, provided that if municipal courts should be created in Chicago, "the jurisdiction and practice of said municipal courts shall be such as the General Assembly shall prescribe." The municipal court of Chicago was established in 1905. The Supreme Court has held that this provision authorized special legislation as to these matters with reference to the municipal court of Chicago, and so created an exception to the requirements as to uniformity of the section under discussion. For instance, as coming within this exception, the Supreme Court has held valid special acts, applicable alone to the municipal court, relating to pleadings, charges to juries, judicial notice, the conditions under which judgments may become liens, and the power of that court to make rules of procedure. It has been held, however, that the term "practice" as used in section 34 of article 4, does not embrace changes of venue, so as to authorize special legislation, applicable alone to the municipal court, on that subject.[50] (See discussion article 4, section 22, subheading, "Changes of venue.") This exception in favor of special legislation applicable to the municipal court of Chicago however, has been held not to extend to authorizing the General Assembly to pass special laws regulating the practice in the appellate and Supreme Courts with reference to cases brought thereto on either appeal or writ of error from the municipal court of Chicago. Uniformity in the jurisdiction, practice and procedure of either the appellate or Supreme Court as required by section 29 of this article, it was held, means that the powers of those courts shall be exercised alike in all cases from all courts of the same class. The municipal court of Chicago and city courts, on the one hand, and probate courts and county courts exercising probate jurisdiction on the other hand, have been held to be in the same classes, within this rule.[51]

[46] People v Raymond, 186 Ill. 407 (1900); compare People v Rumsey, 64 Ill. 44 (1872); People v Onahan, 170 Ill. 449 (1897).

[47] Karnes v People, 73 Ill. 274 (1874).

[48] Klokke v Dodge, 103 Ill. 125 (1882).

[49] Bratsch v People, 195 Ill. 165 (1902).

[50] Well v Federal Life Ins. Co., 264 Ill. 425 (1914); Morton v Pusey, 237 Ill. 26 (1908); City of Chicago v Williams, 254 Ill. 360 (1912); Lott v Davis, 264 Ill. 272 (1914); Hopkins v Levandowski, 250 Ill. 372 (1911); Felgen v Shaeffer, 256 Ill. 493 (1912).

[51] Morton v Pusey, 237 Ill. 26 (1908); Clowry v Holmes, 238 Ill. 577 (1909); David v Commercial Accident Co., 243 Ill. 43 (1909); People v Hibernian Banking Ass'n., 245 Ill. 522 (1910); Sixby v Chicago City Ry. Co., 260 Ill. 478 (1913); Kingsbury v Sperry, 119 Ill. 279 (1887); Dawson v Eustice, 148 Ill. 346 (1894).

Class legislation. This section does not operate to prohibit the General Assembly from enacting laws relating to courts which are applicable only to situations within a particular class, provided that the law applies alike to all in that class, and that there is a reasonable basis for the classification. For instance, an act prescribing a special rule of evidence in proceedings under the Torrens Land Title Act was sustained because it applied equally to all cases in that system of adjudicating titles to real estate. Conversely, an act requiring the public administrator to be appointed as administrator of the estate of non-resident intestates leaving property in counties having a population of more than 200,000 inhabitants, while any person might receive such an appointment in other counties, was held void as being based upon an arbitrary and unreasonable classification.[52] (See discussion article 4, section 22, subheading, "Special privileges and immunities.")

Rules of court. The provisions of this section apply only to legislation, and not to rules of court regulating practice.[53]

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

The Attorney General has ruled that the last clause of this section includes justices of the peace and police magistrates.[54] (See discussion article 5, section 12, subheading, "Power of Governor").

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

[52] Waugh v Glos, 246 Ill. 604 (1910); Strong v Dignan, 207 Ill. 385 (1904); Knickerbocker v People, 102 Ill. 218 (1882); Tissier v Cahn, 130 Ill. 110 (1889); Chicago Terminal Ry. Co. v Greer, 223 Ill. 104 (1906); People v McGoorty, 270 Ill. 610 (1915).

[53] Hinckley v Dean, 104 Ill. 630 (1882).

[54] Report Attorney General 1914, pp. 161, 1200.

In January, 1869, the General Assembly passed an act requiring the judges of the circuit courts to report to the judges of the Supreme Court, by September of that year, the redundancies, omissions, inconsistencies and imperfections in the statutes, together with bills remedying these defects. The Supreme Court judges were to examine these reports and bills, and to submit those which they approved either to the General Assembly or to the statutory revision commission, should one be established. The circuit judges were to receive $1,000 each, for these services. It was understood, at the time, that the arrangement was primarily a scheme to increase the salaries of the circuit judges, which, as fixed by the constitution of 1848, were very low. A statutory revision commission was established in March, 1869. Sixteen of the twenty-nine circuit judges reported defects in the laws and suggested remedies therefor. All of the judges received the extra compensation. The Supreme Court judges approved some of these reports and bills and forwarded nearly all of them to the statutory revision commission. Most of this material dealt with substantive changes in the practice act and criminal code. The commission complied with some of the proposed changes, and disregarded those which, in their opinion, embodied undesirable innovations.[55]

The constitutional convention of 1869-70, by the provisions of the section under consideration, intended to perpetuate these functions of the courts.[56] The judges have not, however, complied therewith, to any great extent. One of the few instances when the judges have done so, occurred in March, 1919, when Justice James H. Cartwright of the Supreme Court sent two communications, one his own, and the other that of Judge Charles M. Thomson, of the circuit court of Cook County, to the Governor, indicating defects in the real estate and divorce statutes, together with bills embodying suggested remedies. These the Governor forwarded to the General Assembly.[57]

In 1909, after several primary election laws had been held unconstitutional, the Governor requested the judges of the Supreme Court either to indicate the defects and omissions in the laws relating to the nomination of candidates for public office, and to submit bills to remedy these defects, or to draft a new primary election bill which would, in their opinion, be constitutional. The judges replied that under the provisions of this section the Governor was without power to require either the judges of the Supreme Court as individuals, or the Supreme Court, as a court, to furnish information or bills of this character. The judges said that under these provisions the responsibility of determining when it becomes the duty of the judges of the Supreme Court to make a report of defects and omissions in the laws rests with the judges themselves, and that such a duty does not arise except when a case has come before the court in regular course, and an act of the General Assembly has been held to be either invalid, inoperative or ineffective. Then the judges may, in their discretion determine to advise the General Assembly, through the Governor, of the defects and omissions in that act, and of the changes necessary to remedy them. The judges said that it is not the duty of the judges to aid in originating legislation, either by determining the constitutionality thereof or by preparing bills therefor. An opinion of the type requested, it was said, would, in any event, be of no binding effect, should a case come before the Supreme Court, in due course, involving the questions considered in that opinion.[58]

Section 32. All officers provided for in this article shall hold their offices until their successors shall be qualified, and they shall,

[55] See Statutory Revision in Illinois, pp. 26, 27-28, 32.
[56] Debates, p. 1185.
[57] Senate Journal, March 25, 1919.
[58] Correspondence between Governor and Supreme Court, 243 Ill. 9 (1909).

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

Officers holding over. The Supreme Court has suggested, and the Attorney General has ruled that the first clause of this section authorizes and requires state's attorneys, justices of the peace, police magistrates, and constables to hold office and to exercise the powers thereof after either their resignation or the expiration of the official term, until the successor has qualified.[59]

Terms of office. It has been held that the General Assembly is free to prescribe the length of the terms of office of judges of city courts, for the reason that judges of city courts are not officers whose terms of office are otherwise provided for in this article, within the meaning of this section. Apparently, the provision of this section, with reference to four year terms, applies only to justices of the peace, police magistrates and constables.[60]

Compensation of state's attorneys. This section has been construed to authorize the General Assembly to fix the compensation of state's attorneys, since their compensation is not otherwise provided for in this article.[61] (See discussion article 10, section 10, subheading, "County officers").

Filling vacancies. The Attorney General has ruled that the provisions of this section as to the filling of vacancies are mandatory; that the clause relating to the method of filling vacancies in the offices "of judges" applies to judges of the superior court of Cook County and of county courts; and that the clause relating to the method of filling vacancies "of all such other offices," applies to state's attorneys, justices of the peace and police magistrates.[62]

In 1917, a bill was passed by the General Assembly authorizing the Governor to fill vacancies in the office of probate judge by appointment where the unexpired term was for more than one year and for less than two years. The Attorney General expressed a doubt as to the constitutionality of this bill, in view of the provision of the section under consideration, that "vacancies in such elective offices shall be filled by election; but where the unexpired term does not exceed one year the vacancy shall be filled by appointment." He suggested, however, that the Supreme Court might hold the bill valid, on the

[59] People v Supervisors, 100 Ill. 33 (1881); Report Attorney General 1912, p. 1290; 1914, pp. 436, 1065; 1916, p. 926.
[60] People v Sweitzer, 280 Ill. 436 (1917); People v Olson, 245 Ill. 288 (1910).
[61] Hoyne v Danish, 264 Ill. 467 (1914); Butzow v Kern, 264 Ill. 498 (1914).
[62] Report Attorney General 1910, p. 171; 1916, p. 122; 1915, p. 785; 1914, p. 165; 1900, p. 239; 1912, p. 693; 1912, pp. 694, 699.

ground that a judge of a probate court held an office created, not by the constitution, but by the legislature, to which, therefore, this constitutional provision would not apply. The Governor vetoed the bill because, in his view, it clearly contravened the provision quoted from the section under discussion.[63]

Section 33. All process shall run; In the name of the People of the State of Illinois; and all prosecutions shall be carried on; In the name and by the authority of the People of the State of Illinois; and conclude; Against the peace and dignity of the same.

"Population," whenever used in this article, shall be determined by the next preceding census of this State, or of the United States.

In general. The provisions of the first paragraph of this section appeared, substantially in their present form, in section 7 of article 4 of the constitution of 1818, and in section 26 of article 5 of the constitution of 1848. The following discussion, therefore, is based upon the judicial interpretations of similar provisions in all three constitutions.

Process. The term "all process," as used in this section, has been construed to include writs of *scire facias*, summons, judgment, execution, fee bills, the final process of courts of equity, such as executions, writs of attachment, sequestration and assistance, and an order of a court of equity directing a person's arrest for contempt of court.[64] The Supreme Court has said that the term included all writs issued at the common law in the name of the King and all writs since created as the equivalent thereof, but that the term did not include writs issued in a purely statutory proceeding unknown to the common law. In this case the court held that the term "process" did not include a copy of a tax judgment certified to the collector as authority for the sale of real estate for taxes.[65] The Attorney General has ruled, however, that the term includes an order issued by the Governor to carry out his commutation of the sentence of a person convicted of murder, which is directed to a sheriff, commanding him to remove the prisoner from a county jail to a penitentiary, and commanding the warden thereof to receive and confine him for life.[66]

The first clause of this section has been construed to be mandatory. Process which does not comply therewith is void.[67] A writ has been held to comply with this provision, however, which omitted the words "In the name of the." It has also been held that the required words need not necessarily appear on the margin of the writ but that it is sufficient if they appear in the body of the writ.[68] (See discussion article 4, section 11.)

Prosecutions. It has been held that the term "prosecutions," as used in this section, is limited to prosecutions of a public or criminal nature, where the formal accusation of offenders is made either by presentment, informa-

[63] Report Attorney General 1918, p. 193; Veto Messages 1917, p. 32.
[64] McFadden v Fortier, 20 Ill. 509 (1858); Knott v Pepperdine, 63 Ill. 219 (1872); I. C. Ry. Co. v Herr, 54 Ill. 356 (1870); Reddick v Administrators, 7 Ill. 670 (1845); Armsby v People, 20 Ill. 155 (1858); Leighton v Hall, 31 Ill. 108 (1863).
[65] Curry v Hinman, 11 Ill. 420 (1849).
[66] Report Attorney General 1900, p. 186.
[67] Sidwell v Schumacker, 99 Ill. 426 (1881).
[68] Knott v Pepperdine, 63 Ill. 219 (1872); Harris v Jenks, 3 Ill. 475 (1840).

tion or indictment. It includes an information in the nature of *quo warranto*.[69] The Supreme Court held that the term does not include a so-called "information" in a statutory proceeding before a justice of the peace to collect a penalty for malfeasance in office, where the statute merely required a complaint which could have been made orally.[70] Nor does it include an action of debt to recover a penalty for violation of an act regulating the practice of medicine.[71] Similarly, a special statutory proceeding in equity, begun by the Attorney General upon information, to dissolve a mutual benefit association,[72] and a proceeding to disbar an attorney from practice in the circuit court,[73] have been held not to be embraced within the term.

The second clause of this section, like the first, has been held to be mandatory. Prosecutions which do not comply therewith, as to both beginning and ending, are void.[74] An information has been held to comply with this provision, however, which began as follows: "who sues for the People of the State of Illinois in this behalf and for said people, and in the name and by the authority thereof, etc."[75] Indictments have been held sufficient which concluded "Against the peace and dignity of the same People of the State of Illinois," and "Against the peace and dignity of the People of the State of Illinois."[76] (See discussion article 4, section 11.)

[69] Donnelly v People, 11 Ill. 552 (1850); Parris v People, 76 Ill. 274 (1875); People v Larsen, 265 Ill. 406 (1914).
[70] Newton v People, 72 Ill. 507 (1874).
[71] People v Gartenstein, 248 Ill. 546 (1911).
[72] Indemnity Association v Hunt, 127 Ill. 257 (1889).
[73] Moutray v People, 162 Ill. 194 (1896).
[74] Whitesides v People, 1 Ill. 21 (1819); Donnelly v People, 11 Ill. 552 (1850); Parris v People, 76 Ill. 274 (1875).
[75] People v Larsen, 265 Ill. 406 (1914).
[76] Chesshire v People, 116 Ill. 493 (1886); Zarresseler v People, 17 Ill. 101 (1855).

ARTICLE VII—SUFFRAGE

Section 1. Every person having resided in this State one year, in the county ninety days, and in the election district thirty days next preceding any election therein, who was an elector in this State on the first day of April, in the year of our Lord one thousand eight hundred and forty-eight, or obtained a certificate of naturalization, before any court of record in this State, prior to the first day of January, in the year of our Lord one thousand eight hundred and seventy, or who shall be a male citizen of the United States, above the age of twenty-one years, shall be entitled to vote at such election.

Guaranty of right to vote. This section guarantees the right to vote of every person, possessing the qualifications named herein, who has not been disfranchised by conviction for an infamous crime under section 7 of this article. Any deprivation of this right violates this provision of the constitution. Thus in the case of People v Strassheim,[1] a primary election act was held invalid, when construed in connection with the registration law, because, in effect, it deprived persons becoming 21 within four months before the election, or persons naturalized within that period, or their right to vote.[2] But in the case of People v Hoffman[4] it was held that the requirement of registration three weeks before an election was not an unconstitutional requirement, although voters becoming qualified in this period would thereby be deprived of their vote. The reasoning of the court in this case was that the fact that the constitution mentioned several qualifications for electors implies that the General Assembly should have the power to provide machinery for the determination of these qualifications, and the registration act is a reasonable means of determining who are qualified voters.[4]

It may here be noted however, that an idiot or distracted person cannot vote, although he may possess all of the qualifications named in the constitution.[5]

In this connection it must be noted that section 18 of article 2 provides that all elections shall be free and equal and this provision is, to some extent, a guaranty similar to that contained in the section under discussion. (See discussion article 2, section 18; article 7, section 7.)

[1] 240 Ill. 279 (1909): see Sanner v Patton, 155 Ill. 553 (1895).
[2] See Rouse v Thompson, 228 Ill. 522 (1907).
[3] 116 Ill. 587 (1886).
[4] For other cases holding that qualified voters were not denied the right of suffrage, see People v Nelson, 133 Ill. 565 (1890); People v Edmands, 252 Ill. 108 (1911); Christie v People, 206 Ill. 337 (1903); Cholsser v York, 211 Ill. 56 (1904).
[5] Behrensmeyer v Kreitz, 135 Ill. 591 (1891); Welsh v Shumway, 232 Ill. 54 (1908).

Residence. The word "resided", as used in this section, means "having a permanent abode".[6] Whether or not an abode is permanent is largely a question of intention,—that is when a person has a home at a given place, with no present intention of removing therefrom, he is generally held to be a resident of that place.[7] His temporary absence, without any intention of removing permanently, will not deprive him of his residence there.[8] Nor will an intention to move to another place, if certain events occur, operate to deprive a person of his residence. Thus a man was held to be a resident of a town even though he intended to move away, if he should not be able to find work in that town.[9]

The question of the residence of married women for purposes of suffrage has given rise to some difficulty because of the common law principle that the wife's domicile is constructively that of her husband. The Attorney General has said that this common law rule has no application to the problem of determining the wife's residence for the purposes of suffrage.[10] In one case a husband resided in the county for more than ninety days but his wife resided in the county but 65 days prior to the election. The Supreme Court held that the wife's vote should be rejected in this case, since, while the husband's domicile is constructively the wife's, actual residence is necessary for suffrage purposes.[11] But it must be noted that a married woman cannot have the intention to acquire a residence apart from that of her husband, if she intends to return to the residence of her husband. Thus where a married woman lived in an election district more than thirty days but her husband resided elsewhere in the county it was held that she could not vote in the district where she was living since she intended to return to her husband and her residence was therefore not in this election district.[12]

The Attorney General has pointed out that it is not necessary that an elector shall have been naturalized for one year or for any period before he may vote. All that is necessary is that he shall have resided in the political subdivisions for the periods named in the constitution.[13]

Absentee voting law. The question has arisen whether this section of the constitution prohibits an absentee voting law. The specific question is whether the provision as to residence contemplates that suffrage shall be exercised by the voter in person, at the voting place in the precinct or district in which he resides. The Supreme Court has never passed upon this question. In 1912 the Attorney General indicated that he felt some doubt as to whether or not an absentee voting law would be constitutional under this section, although, upon the consideration of decisions from other states, he was perhaps inclined to the view that such an act would be a valid enactment.[14] In 1917 the General Assembly passed an act providing for absentee voting by persons in the military or naval service of the United States. Upon that occasion the Attorney General said that while he had some doubts as to the constitutionality of such a measure, his doubts were not serious enough to compel him to advise against the passage of the act.[15] It has been suggested that section 4 of this article authorizes an absentee voting law so far as such a law respects soldiers and sailors in the service of the federal government.[16]

[6] Johnson v People, 94 Ill. 505 (1880); Spragins v Houghton, 3 Ill. 377 (1840).
[7] Welsh v Shumway, 232 Ill. 54 (1908); Beardstown v Virginia, 81 Ill. 541 (1876); Dorsey v Brigham, 177 Ill. 250 (1898).
[8] Rehrensmeyer v Kreitz, 135 Ill. 591 (1891).
[9] Welsh v Shumway, 232 Ill. 54 (1908).
[10] Report Attorney General 1918, p. 283.
[11] Dorsey v Brigham, 177 Ill. 250 (1898).
[12] Dorsey v Brigham, 177 Ill. 250 (1898).
[13] Report Attorney General (1912), p. 413.
[14] Report Attorney General 1912, p. 1266.
[15] Report Attorney General 1918, pp. 300, 345.
[16] Report Attorney General 1918, p. 300.

Election district. The Supreme Court has said that the words "election district" have acquired no settled meaning. Sometimes these words are used to designate a voting precinct and at times they are used to describe a larger or a smaller district than a voting precinct.[17] In the case of People v Markiewicz[18] it was held that for the purposes of town elections, the entire town is to be considered as one voting district as respects the qualifications, of voters, although there may be several polling places in the town. A voter who has resided in the town for thirty days and who has all the other qualifications necessary to make him a legal voter may vote in the town, regardless of the fact that he has not resided in the particular election district or voting precinct for that period. The reasoning of the court in this case was that it was never intended that any voter should be qualified to take part in a town meeting and not be qualified to assist in the election of town officers.

Unnaturalized aliens. The clause giving the suffrage to persons who were electors in this state on the first day of April, 1848 was inserted to provide for the cases of certain unnaturalized aliens, who were permitted to vote under the constitution of 1848. Under the constitution of 1818 citizenship was not a requisite to suffrage.[19] Under that constitution, an unnaturalized alien, with the requisite residential qualifications might vote. When the constitution of 1848 (article 6, section 1) made citizenship a qualification for suffrage it provided that unnaturalized aliens who were residents of the state at the time of the adoption of that constitution (April 1, 1848) might vote and this provision was carried forward into the constitution of 1870. However, it has been held that persons who were foreign born, minor children of such unnaturalized alien electors on April 1, 1848 may not vote under this provision of the constitution, since these minors were not electors on that date.[20]

Naturalization in county courts. When the constitutional convention of 1869-70 assembled, some doubt existed as to whether naturalization certificates which had been granted by county courts were effectual. The provision giving the suffrage to those who had obtained certificates of naturalization before any court of record in the state before January 1, 1870 was adopted to remove this doubt so far as the right of these persons to vote was concerned. (Debates, p. 1289.) But in 1875 it was held that naturalization before a county court was valid and legal for all purposes without reference to this provision of the constitution.[21]

Woman Suffrage. The provision of this section limiting the suffrage to male citizens is held to apply only to officers created by, or elections prescribed by the constitution. The General Assembly may authorize women to vote for all other officers and in all other elections. In 1891 the General Assembly passed an act authorizing women to vote for any school officer elected under the general or special school laws of the state. In People v English[22] it was held that this act could not constitutionally give women the right to vote for county superintendents of schools, since

[17] People v Markiewicz, 225 Ill. 563 (1907); Report Attorney General 1916, p. 780.
[18] 225 Ill. 563 (1907); but see Fahey v City of Bloomington 268 Ill. 386 (1915); People v Simpson 168 Ill. 127 (1897).
[19] Spragins v Houghton, 3 Ill. 377 (1840).
[20] Beardstown v Virginia, 76 Ill. 34 (1875).
[21] People v McGowan, 77 Ill. 644 (1875); but see Knox County v Davis, 63 Ill. 405 (1872); Beardstown v Virginia 76 Ill. 34 (1875)
[22] 139 Ill. 622 (1892).

that officer was named in section 5 of article 8 of the constitution and, must therefore be elected by the male electors prescribed in section 1 of article 7 of the constitution. In the case of Plummer v Yost,[23] decided in 1893, it was held that this act was valid insofar as it gave women the right to vote for a member of the board of education, since that office is purely a creation of the General Assembly and is not mentioned in the constitution.

In 1913 the General Assembly passed an act providing that women might vote for presidential electors, members of the state board of equalization, clerk of the appellate court, county collector, county surveyor, members of the board of assessors, members of the board of review, sanitary district trustees, and for all officers of cities, villages and towns (except police magistrates), and upon all questions or propositions submitted to a vote of the electors of such municipalities or other political subdivisions of the state. The same act provided that women might vote for the following township officers: supervisor, town clerk, assessor, collector and highway commissioner, and might also participate and vote in all annual and special town meetings. In the case of Scown v Czarnecki[24] this act was upheld insofar as it concerned the qualifications of electors for the several officers named, since these officers are not mentioned in the constitution. But the court held that the provision authorizing women to vote upon all questions or propositions submitted to a vote of the electors of municipalities or political subdivisions of the state was invalid insofar as it purported to give women the right to vote in referendum elections prescribed by the constitution, such as the division of a county or the removal of a county seat. As to referendum elections not prescribed by the constitution the act was held valid. Later it was held that women were not entitled under this act to vote for judges of city courts or judges of the municipal court of Chicago, since the creation of these offices is authorized by the constitution.[25] It will thus be seen that while women may be authorized to vote for the officers named in the act of 1913, they may not be authorized to vote for constitutional officers, such, for example, as the Governor, and members of the General Assembly.

In the case of People v Byers[26] the Supreme Court held that the woman suffrage act did not authorize women to vote for delegates to national nominating conventions or party committeemen, although it might well have done so, under the constitution.

As previously noted, the woman suffrage act of 1913 gives women the right to vote for presidential electors. The General Assembly has the power to give women this right, since the constitution of the United States prescribes that presidential electors shall be chosen in such manner as the several state legislatures shall direct. (United States Constitution, article 2, section 2). However, women may not be authorized to vote for United States Senators or members of the federal House of Representatives since these officers must be elected by electors, having the "qualifications requisite for electors of the most numerous branch of the state legislatures." (United States Constitution, article 1, section 2, and the seventeenth amendment.)

Section 2. All votes shall be by ballot.

The essential right guaranteed by this section is not written or printed ballots, but secrecy in voting. It is therefore held that a statute providing for voting machines does not violate this section, since this method of voting

[23] 144 Ill. 68 (1893).
[24] 264 Ill. 305 (1914).
[25] Franklin v Westfall, 273 Ill. 402 (1916); Wells v Robertson, 277 Ill. 534 (1917).
[26] 271 Ill. 600 (1916); see People v Militzer, 272 Ill. 387 (1916).

preserves the essential element of secrecy.[27] It has been held, however, that the production of ballots for the inspection of a grand jury does not violate the secrecy of the ballot required by this section of the constitution since this provision does not contemplate secrecy after the ballots have been deposited in the ballot box.[28]

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

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

In the opinion of the Attorney General this section does not prevent a government employee who desires to abandon his residence in the state and acquire a residence elsewhere from doing so. It merely provides that the fact of his absence on government or military service shall not in itself operate as an abandonment of residence in this state.[29]

The Attorney General has also suggested that the absentee voting law for soldiers and sailors may be justified under this section.[30] (See discussion article 7, section 1, subheading, "Absentee voting law.")

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

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

Except as otherwise provided in the constitution,[31] this section fixes the qualifications of all officers provided for in that instrument. The Supreme Court has held that this provision is a limitation upon the power of the

[27] Lynch v Malley, 215 Ill. 571 (1905): but see Veto Message No. 10.
[28] People v Lueders, 269 Ill. 205 (1915).
[29] Report Attorney General 1916, p. 830.
[30] Report Attorney General 1918, pp. 300, 345.
[31] See People v Election Commissioners, 221 Ill. 9 (1906).

General Assembly and that body has no power or authority except as otherwise provided in the constitution to add any further qualifications for constitutional officers. Thus, in the case of People v McCormick[32] it was held that a statute, requiring a person elected county commissioner of Cook County to have been a resident of the county for five years preceding his election, violated this section of the constitution, since it imposed additional qualifications for a constitutional office. (See discussion article 6, section 17; article 10, section 6; article 4, section 3, subheading, "Qualifications of members of the General Assembly".)

The Attorney General has taken the view that a license to practice law is not a necessary qualification for the office of state's attorney, since that officer is a constitutional officer, and his sole qualifications are those specified by this section.[33]

When an office is created by statute, however, it is wholly within the power of the General Assembly and additional qualifications may be imposed by that body.[34] However, the Attorney General has ruled that statutory officers must have the qualifications of citizenship and residence mentioned in this section. Thus the Attorney General has held that notaries public, and overseers of the poor must have these qualifications.[35]

Section 7. The General Assembly shall pass laws excluding from the right of suffrage persons convicted of infamous crimes.

This section is a limitation upon the power of the General Assembly and that body has no power to exclude any qualified elector from the right of suffrage except for the cause mentioned in this section,—conviction for an infamous crime.[36]

In pursuance of this provision of the constitution, the General Assembly has passed laws excluding from the right of suffrage persons convicted of infamous crimes. (Hurd's Revised Statutes 1917, chap. 38, sec. 279; chap. 46, sec. 70)[37]

[32] 261 Ill. 413 (1914).
[33] Report Attorney General 1900, p. 233; but see Report Attorney General 1916, p. 762.
[34] People v McCormick, 261 Ill. 413 (1914).
[35] Report Attorney General 1900, p. 237; Report Attorney General 1915, p. 593; Report Attorney General 1918, p. 109; but see State Public Utilities Commission v Early, 285 Ill. 469 (1919).
[36] Sanner v Patton, 155 Ill. 553 (1895); Christie v People, 206 Ill. 337 (1907).
[37] See Report Attorney General 1916, p. 831; Report Attorney General 1914, p. 721; Report Attorney General 1912, p. 1266.

ARTICLE VIII—EDUCATION

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

In general. A common school education may include a high school course[1] and the fact that foreign languages, the higher mathematics, and the sciences are taught in the high school does not change its character from that of a common school.[2] But a school "devoted exclusively to teaching advanced pupils in the classics, and in all the higher branches of study usually included in the curriculum of the colleges" is not a common school.[3]

Power and duties of the General Assembly. The provision of this section that the General Assembly shall provide a thorough and efficient system of free schools gives the General Assembly a broad discretion as to the manner in which it will carry out the duty thus enjoined. In the case of Plummer v Yost[4] the court said: "The mode in which the system of free schools, prescribed by the constitution is to be organized is left entirely to the discretion of the legislature."

Section 22 of article 4, provides that the General Assembly shall not pass special laws relating to the management of the common schools, but it has been held that the broad grant of power given to the General Assembly by the section now under discussion limits the effect of section 22 of article 4 strictly to a denial of the power to pass special laws relating to the *management* of the common schools. This is illustrated by the case of Land Commissioners v Kaskaskia Commons.[5] In that case it was urged that an act authorizing the sale of the Kaskaskia commons and the use of the proceeds for school purposes on the island of Kaskaskia was a special law in violation of section 22 of article 4. But the court held that the more comprehensive language of section 1 of article 8 limited the scope of section 22 of article 4 to laws relating strictly to the management of the common schools and that this act in no sense related to the management of the schools.

The power given the General Assembly to create a system of free schools is qualified, however, by the provision that the system created must be a system "whereby all children of this state may receive a good common school education". This qualification requires that the legislative plan for the creation of the school system must be uniform in its operation. "The same privileges of attendance upon the schools must in all cases be extended

[1] Cook v Board of Directors, 266 Ill. 164 (1914); Richards v Raymond, 93 Ill. 612 (1879); Russell v High School Board, 212 Ill. 327 (1904); People v C. & N. W. Ry. Co., 286 Ill. 384 (1919).

[2] People v Moore, 240 Ill. 408 (1909).

[3] Powell v Board of Education, 97 Ill. 375 (1881); but see Boehm v Hertz, 182 Ill. 154 (1899).

[4] 144 Ill. 68 (1893).

[5] 249 Ill. 578 (1911); Fuller v Heath, 89 Ill. 296 (1878); Speight v People, 87 Ill. 595 (1877); Boehm v Hertz, 182 Ill. 154 (1899).

equally to all children similarly situated."[6] Thus in the case of People v Weis,[7] a township high school act which allowed certain townships to organize township high schools was held invalid, both as a special law in contravention of section 22 of article 4 and because such an act violated the requirements of uniformity contained in section 1 of article 8, since by virtue of this act "some may be denied the privilege of organizing the territory in which they reside into a township high school district, and thus be denied the opportunity to receive a free education at such an institution." (See discussion article 4, section 22, subheading, "Management of the common schools").

This requirement of uniformity has also been applied in holding that colored children cannot be segregated in the schools. It is held that colored children can not be excluded from the schools nearest their homes, even though equal educational facilities are given in more distant schools.[8]

It has been held that this section of the constitution prevents the exclusion of children from the public schools because of their refusal to be vaccinated, but in a case of existing or threatened epidemic children who have not been vaccinated may be excluded during the period of the epidemic.[9] The Supreme Court has several times declined to sanction a rule making vaccination a prerequisite, under all circumstances, to public school attendance.[10]

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

The primary purpose of this section is to prevent the use, for purposes other than school purposes, of school lands, granted to the state by the federal government. In the case of Grosse v People,[11] the court said: "From an inspection of this section it is apparent that it applies only to gifts or grants made prior to the adoption of the constitution of 1870. Its language plainly indicates that lands, money and other property had been theretofore donated, granted and received for schools, colleges, seminary and university purposes, and directs that such gifts or grants shall be faithfully applied to the objects for which they *were* made; and when it is considered that the federal government had, prior to the adoption of the constitution 1870, granted section 16 in each township, or lands equivalent thereto, to the state for the use of the inhabitants of such township for the use of schools, and had also granted lands and donated funds to the State for the establishment and maintenance of a state college or university and for the founding and support of a state seminary, it becomes apparent that the section of the constitution had reference primarily to these gifts and grants from the federal government. It manifestly does not extend to gifts or grants made subsequent to the adoption of the constitution."

This section finds its principal application in the rule that certain school property is exempt from taxation, since to tax such property would divert it to purposes other than school purposes. While school property in general is

[6] People v C. & N. W. Ry. Co., 286 Ill. 384 (1919).
[7] 275 Ill. 581 (1916).
[8] People v Mayor of Alton, 193 Ill. 309 (1901); People v Board of Education, 101 Ill. 308 (1882); Chase v Stephenson, 71 Ill. 383 (1874); People v Board of Education, 127. Ill. 613 (1889).
[9] Potts v Breen, 167 Ill. 67 (1897); Hagler v Larner, 284 Ill. 547 (1918).
[10] People v Board of Education, 234 Ill. 422 (1908); Lawbaugh v Board of Education, 177 Ill. 572 (1899); Hagler v Larner, 284 Ill. 547 (1918).
[11] 218 Ill. 342 (1905).

not exempt from taxation under this section of the constitution,[12] the Supreme Court has held that school lands which are part of the original federal grants for school purposes, or which were purchased with the proceeds of such grants, are exempt, under the provisions of this section, from both general taxation and special assessment.[13] It has also been held that a tax can not be assessed upon the rents received from these lands since such rents are "proceeds" of the grants within the language of this section.[14] However, this section was intended to secure only gifts made for public school purposes and has no reference to private donations to educational institutions, which are not a part of the public school system. Thus, land granted by individuals to the University of Chicago is subject to special assessments, since the University of Chicago is not a part of the public school system of the state.[15] In this connection it may be noted that section 3 of article 9 authorizes the General Assembly to exempt from taxation property used exclusively for school purposes. (See discussion article 9, section 3, subheading, "Power of General Assembly.")

In the case of Cravener v Board of Education[16] it was contended that this section of the constitution would prevent the board of education of the city of Chicago from assuming control of valuable school lands in the town of Lake upon the annexation of that town to the city of Chicago. But the court held that this section did not prevent the General Assembly from vesting legal title in a different agency, provided that the lands were to be devoted to school purposes.

The Attorney General has held that an act permitting the use of the proceeds or rents of school lands, (part of the original federal grants for school purposes), to pay for draining such lands, is in violation of this section of the constitution.[17]

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

In the case of County of Cook v Industrial School,[18] decided in 1888, it was held that this section prohibited the payment of money to sectarian institutions for the care of delinquent children committed to such schools by the courts of this state. However, in Dunn v Chicago Industrial School,[19] decided in 1917, the court held that such payments might be made to sectarian schools where it appeared that the amount paid was less than the cost of the actual care of the children. The court took the view that where the amount

[12] Grosse People, 218 Ill. 342 (1905); City of Chicago, v City of Chicago, 207 Ill. 37 (1904).
[13] City of Chicago v People, 80 Ill. 384 (1875); People v Trustees, 118 Ill. 52 (1886).
[14] People v City of Chicago, 216 Ill. 537 (1905).
[15] University of Chicago v People, 118 Ill. 565 (1886).
[16] 133 Ill. 145 (1890).
[17] Report Attorney General 1908, p. 61.
[18] 125 Ill. 540 (1888); see County of McLean v Humphreys, 104 Ill. 378 (1882).
[19] 280 Ill. 613 (1917).

paid was less than the amount required to maintain the children in a state institution, it could not be said that a donation had been made for a sectarian purpose. The decision has been followed in later cases.[20]

It has been held that this section does not prohibit a church from erecting a church building on a poor farm, since such an arrangement results in a gift of the building, by the church, to the county, rather than any gift by the county to the church.[21]

It has also been held that this section does not prevent the use of a public school house for religious meetings, since this use in no way interferes with the use of the building for school purposes and is consistent with the faithful application of the property to school purposes.[22]

This section is frequently construed in connection with section 3 of article 2, which provides that no preference shall be given by law to any religious denomination or mode of worship. (See discussion article 2, section 3.)

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

(See article 4, sections 15, 25.)

Section 5. There may be a County Superintendent of Schools in each county whose qualifications, powers, duties, compensation, and time and manner of election, and term of office, shall be prescribed by law.

It has been held that the provision of this section that the "time and manner of election" of the county superintendent of schools "shall be prescribed by law" does not give the General Assembly the power to fix the qualifications of electors so as to permit women to vote for that officer.[23] (See discussion article 7, section 1, subheading, "Woman suffrage.")

Since 1870, the county superintendent of schools has been elected by popular vote. It has been suggested, however, that this section does not necessarily require a popular election. Some have thought that an election of the county superintendent of schools by the county board would suffice to satisfy this section of the constitution. There is, however, no authoritative construction as to this.

The Attorney General has said that women might be permitted, by statute, to hold the office of county superintendent of schools, since the General Assembly has the power to fix the qualifications of that officer.[24]

[20] Dunn v Addison School, 281 Ill. 352 (1917); Trost v Ketteler Manual Training School, 282 Ill. 504 (1918); St. Hedwig's School v Cook County, 289 Ill. 432 (1919).
[21] Reichwald v Catholic Bishop, 258 Ill. 44 (1913).
[22] Nichols v School Directors, 93 Ill. 61 (1879).
[23] People v English, 139 Ill. 622 (1892); but see Scown v Czarnecki, 264 Ill. 305 (1914).
[24] Report Attorney General 1914, p. 1162.

ARTICLE IX—REVENUE

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

The general property tax. The first clause of this section and sections 9 and 10 of article 9 establish the general property tax in this state. This section relates to state taxes and sections 9 and 10 refer to municipal taxes.

In General.

The basic principle of the general property tax is that *all* property, irrespective of its character, whether real or personal, tangible or intangible, shall be taxed at the same rate and in proportion to its value. The general property tax was established in this state by the constitution of 1818[1] (article 8, section 20), and the principle was carried forward into the constitution of 1848 (article 9, section 2) and the present constitution. In construing the section of the constitution of 1870 now under consideration the Supreme Court has said: "Under section 1 of article 9 of the constitution we think it is plain that the burdens of taxation were intended to be cast equally upon all the property of the state, of every description. Where revenue was needed a tax is required to be levied, on a valuation, so that every person and corporation shall be required to pay a tax in proportion to the value of his, her or its property. Uniformity of taxation on all property was the cardinal principle of that section of the constitution . . .."[2]

Under the last clause of this section of the constitution the General Assembly is given the power to tax occupations and persons or corporations owning or using franchises and privileges "in such manner as it shall from time to time direct by general law uniform as to the class upon which it operates". The constitution of 1848 contained a similar provision but the constitution of 1818 did not confer any such power upon the General As-

[1] Sawyer v City of Alton, 4 Ill. 127 (1841). Although the framers of the first constitution contemplated the establishment of the general property tax there was no serious attempt to apply that system of taxation until 1839. In that year, however, the General Assembly passed a law which fully established the general property tax in this state. See Rhinehart v Schuyler, 7 Ill. 473 (1843).

[2] Loan and Homestead Association v Keith, 153 Ill. 609 (1894).

sembly. Since 1848 the General Assembly, with respect to occupations, franchises and privileges has been empowered to impose taxes otherwise than in proportion to the value of property, although the principle of uniformity as to class is expressly enjoined upon the taxing authorities. This clause has given rise to much litigation and it is not an easy matter to reconcile all of the judicial decisions on this subject. (See discussion subsequent subheading, "Taxation of occupations, franchises and privileges.")

In recent years there has been much criticism of the general property tax in this and in other states. Many states have already abandoned the principle of the general property tax. The proposed tax amendment of 1916, would have permitted the General Assembly of this state to classify property for the purposes of taxation—that is, would have authorized the General Assembly to provide for the taxation of personal property otherwise than in proportion to value, or, at least, on a different basis than real estate.

(For a discussion concerning the history and criticisms of the general property tax, see Constitutional Conventions in Illinois, Second Edition, pp. 76-89; Constitutional Convention Bulletin No. 4, pp. 220-244).

Property subject to taxation.

Obviously real estate and tangible personal property, such as furniture and farm implements, are property within the meaning of the constitutional provisions relating to taxation. And while it has been contended that intangible personal property, such as notes, mortgages and bonds, is not subject to taxation, the courts have declined to adopt that view. "The word property is not alone used in our language to denote tangible things, but is properly applied to denote intangible rights of value. One may have a property in a patent right or a copy right, which is as much ideal as is a right of action. We may safely assume that it was the policy of the convention which framed this clause of the constitution, that each person pay a direct tax in proportion to the pecuniary interests which he has in the state, and to be protected and defended by the laws."[3]

A person who loans money to another must pay taxes on the money loaned by him.[4] If a note and mortgage are taken to secure the purchase price of a tract of land both the note and the land are subject to taxation.[5] Leasehold estates in state lands, city warrants and certificates of purchase at mortgage foreclosure sales are taxable.[6] The capital stock and franchise of a corporation are property within the meaning of the constitution and, as such, are subject to taxation.[7] The General Assembly also has the power to provide for the taxation of shares of stock in the hands of the stockholder.[8] And, in Huck v Chicago and Alton Railroad Company[9] it was held that, under the peculiar facts in that case, railroad lines leased by a railroad company were taxable in the hands of the lessee.

Coal rights are taxable either as a part of the land or separately. If the same person owns both the land and the coal rights it is proper, in assessing the land, to add thereto the value of the coal rights. But if the land and the coal rights are owned by different persons then each should be assessed and taxed separately.[10]

[3] People v Worthington, 21 Ill. 171 (1859).
[4] People v McConnell, 12 Ill. 138 (1850).
[5] People v Worthington, 21 Ill. 171 (1859); see, also, People v Rhodes, 15 Ill. 305 (1853).
[6] Carrington v People, 195 Ill. 484 (1902); Easton v Board of Review, 185 Ill. 255 (1899); Wedgbury v Cassell, 164 Ill. 622 (1897).
[7] Porter v R. R. I. & St. L. R. R. Co., 76 Ill. 561 (1875); Ottawa Glass Co. v McCaleb, 81 Ill. 556 (1876).
[8] Ottawa Glass Co. v McCaleb, 81 Ill. 556 (1876); Danville Banking and Trust Co. v Parks, 88 Ill. 170 (1878); In re St. Louis L. & I. Co. 194 Ill. 609 (1902); Illinois National Bank v Kinsella 201 Ill. 31, (1903); First National Bank of Urbana v Holmes, 246 Ill. 362 (1910).
[9] 86 Ill. 352 (1877).
[10] Consolidated Coal Co. v Baker, 135 Ill. 545 (1895).

Property in the course of transportation from one state to another is not subject to taxation in this state.[11]

Uniformity.

It has been emphasized by the courts that the principles sought to be established by the framers of the present constitution, in providing for the taxation of property in proportion to value, were those of equality and uniformity. "The great central idea of the constitution and of its framers, was not a system of revenue based on the valuation of property, but uniformity and equality in the assessment of the tax upon it when valued, so that every person should pay a tax in proportion to it. That is the leading idea."[12] The requirement that all property shall be taxed in proportion to value is, therefore, but a means of attaining uniformity and equality of taxation, and that this was the intention of the framers of the constitution cannot be doubted. It is probably true that in 1870 a system of taxation in proportion to value established a standard by which substantial equality and uniformity of taxation was attained. Regardless of that question, however, there can be but little doubt that the means, prescribed by the convention of 1869-70, of obtaining equality and uniformity—that is, taxation in proportion to value—does not today have the effect of securing equality and uniformity of taxation. (See Constitutional Convention Bulletin No. 4, pp. 232-244.)

It can probably be safely said that under the earlier constitutions the courts were inclined to take a more liberal view as to what was a sufficient compliance with the rule of uniformity. Thus, in Rhinehart v Schuyler[13] it was held that a statute which classified all lands of the state into three classes, and fixed the value of each class, was not in violation of the principle of uniformity. This case involved primarily the revenue law of 1827, and it must be admitted that the decision turned largely on the point of practical necessity. In the early years of the history of the state it would have been a difficult matter to have provided for the assessment or fixing of the value of each tract of land separately. In another early case it was held that an act which provided for the assessment of bank shares on a later date than that for the assessment of other property was not in violation of the constitutional requirement with respect to uniformity.[14] However, it was held that under the constitution of 1848 the General Assembly could not direct the imposition of a five per cent penalty for failure to pay taxes on or before a specified date because that would have resulted in lack of uniformity.[15]

With reference to the rule of uniformity prescribed by the present constitution it has been said: "To secure that uniformity, two things are essential: First, the assessments shall be just and equal, in proportion to the value of the property liable to assessment; and, secondly, when thus assessed, the rate shall be uniform as to every person, and on every species of property returned by the assessor for taxation."[16] This does not mean, however, that assessments must always be made by the same officer or class of officers or that the same methods of ascertaining values must be followed for all classes of property. Thus, the General Assembly may provide for the assessment of the capital stock of some corporations by the State Board of Equalization and the capital stock of other corporations by the local asses-

[11] Burlington Lumber Co. v Willetts, 118 Ill. 559 (1886).
[12] People v Salomon, 46 Ill. 333 (1868).
[13] 7 Ill. 473 (1845); see, also, Sawyer v City of Alton, 4 Ill. 127 (1841); Town of Pleasant v Kost, 29 Ill. 490 (1863).
[14] McVeagh v City of Chicago, 49 Ill. 318 (1868).
[15] Scammon v City of Chicago, 44 Ill. 269 (1867); but see Chambers v People, 113 Ill. 509 (1885); For other early cases with reference to uniformity see O'Kane v Treat, 25 Ill. 557 (1861); Darling v Dunn, 50 Ill. 424 (1869); Livingston County v Welder, 64 Ill. 427 (1872); Burr v City of Carbondale, 76 Ill. 455 (1875).
[16] Sherlock v Village of Winnetka, 68 Ill. 530 (1873).

sors.[17] And the constitution does not prevent the State Board of Equalization from ascertaining the value of the capital stock of corporations by a method which requires the adding together the market value of the stock and the amount of the corporate indebtedness (exclusive of current obligations) and deducting from that total the value of the corporate tangible property.[18] The General Assembly may also classify counties and provide for different assessing officers in one class of counties than in other classes.[19] But it is improper to tax property assessed by the State Board of Equalization at a different rate than the property assessed by other assessment officers.[20]

"The fact that certain credits and deductions may be allowed in the assessment of personal property does not establish want of uniformity."[21] Nor is the principle of uniformity violated when two overlapping taxing districts are authorized to levy taxes for the same purpose. Thus, the town of Bloomington and the city of Bloomington may both levy taxes for road and bridge purposes, even though the two municipalities overlap.[22] But a statute which creates the office of commissioner of Canada thistles and provides for his compensation by the imposition of a tax on the lands from which the commissioner removes thistles is void because it is in violation of that provision of the constitution which requires that taxes on property shall be levied in proportion to value, and thus contravenes the principle of uniformity secured by that instrument.[23]

While the general rule is that all taxes on property must be levied in proportion to the value of the property taxed, the opinion of the court in Raymond v Hartford Fire Insurance Company[24] implies that this rule is not without exception. In that case the court said that the second clause of section 1 of article 9 is not limited to taxes on occupations or franchises and privileges as distinguished from taxes on property. "The contention that the statute violates the first section above set out is, that the second clause of that section does not relate to property taxes strictly so called, but to taxes which the legislature may authorize to be levied on different kinds of business or occupations, and that such taxes were intended by the framers of the constitution to be in addition to, and not in lieu of, the tax on property by valuation provided for in the first clause, and that although the legislature has the power to impose the tax authorized by the act of 1899 on foreign insurance corporations as a class, for the privilege of doing business in this State, it has no power to relieve them of their personal property tax imposed by the general revenue law, enacted under the first clause. There is no substantial difference between this section of the present constitution and section 2 of article 9 of the constitution of 1848, and this court has held that said second clause is not confined to occupations, but applies also to property interests, which may be included in the method of taxation adopted by the legislature, and which method may be different from that prescribed by the first clause of said section 1."

This opinion clearly implies that, with respect to the objects and subjects enumerated in the last clause of section 1 of article 9, the General Assembly may provide for the taxation of property otherwise than in proportion to value. However, it must be remembered that the statements of the court on this point were not necessary to the decision. The court said that the act of the General Assembly then under

[17] Coal Run Coal Co. v Finlen, 124 Ill. 666 (1888); Sterling Gas Co. v Higby, 134 Ill. 557 (1899); Hub v Hanberg, 211 Ill. 43 (1904); see, also, People v Salomon, 46 Ill. 333 (1868).

[18] Porter v R. R. I. & St. L. R. R. Co., 76 Ill. 561 (1875); see, also, C. & A. R. R. Co., v People, 98 Ill. 350 (1881). The case of In re St. Louis L. & I. Co. 194 Ill. 609 (1902) involves the same principle.

[19] People v Commissioners of Cook County 176 Ill. 576 (1898).

[20] C. C. C. & St. L. Ry. Co. v People, 223 Ill. 17 (1906).

[21] Edwards v People, 88 Ill. 340 (1878).

[22] Highway Commissioners v City of Bloomington, 253 Ill. 164 (1912).

[23] People v Board of Commissioners, 221 Ill. 493 (1906); see, also, Cook County v Fairbank, 222 Ill. 576 (1906).

[24] 196 Ill. 329 (1902); see, also, Hub v Hanberg, 211 Ill. 43 (1904).

consideration, which provided that all foreign fire insurance companies should pay into the state treasury two per cent of the gross amount of premiums received for business done in this state in lieu of all other personal property taxes, was not in conflict with section 1 of article 9, but held that it was in conflict with sections 9 and 10 of the same article. (See discussion article 9, section 9, subheading, "Commutation of municipal taxes"). The main purpose of the second clause of the section of the constitution under consideration was to permit the imposition of occupation and franchise taxes in addition to the general property tax and not in lieu thereof. If the issue is ever squarely presented it may well be doubted that the Supreme Court will hold that under this clause the General Assembly may provide for the taxation of any property otherwise than in proportion to value. (For a further consideration of this case see discussion article 9, section 3, subheading, "Commutations—Illinois Central Railroad Company" and article 9, section 6, sub-heading "Commutation of state taxes").

In 1915 the General Assembly passed a law providing for the payment of the tuition of high school pupils residing in districts having no high schools. The general school law provides for the distribution of the state school fund to each county on the basis of the number of persons under the age of 21, and for the distribution of the share of each county to the several townships in that county on the same basis. The act of 1915 directed the county superintendent of schools of each county, before distributing that county's share of the state school fund among the townships therein, to deduct from the total amount received from the state school fund, an amount sufficient to pay the cost of the tuition of all pupils of that county residing in school districts having no high school but attending a high school in some other school district. In Board of Education v Haworth[25] this act was held void on the ground that its effect was to compel tax payers in school districts maintaining a high school to contribute indirectly to the cost of giving a high school education to pupils residing in districts not maintaining a high school, thus violating the fundamental principle of uniformity of taxation secured by this section of the constitution. The effect of this decision is far reaching. The act of 1915 did not relate in any manner to the levy or collection of taxes. Its only purpose was to make certain provisions concerning the distribution of public moneys. It seems that the Haworth case must be accepted as a decision to the effect that the principle of uniformity applies not only to the levy and collection of taxes but as well to the distribution of public moneys raised by taxation.

(For a further consideration of the question of uniformity of taxation see discussion under the four following center subheadings).

Assessment of property for the purposes of taxation.

One of the most difficult questions in connection with the whole problem of uniformity of taxation relates to the assessment of property for the purpose of levying taxes. The courts realize, of course, that absolute or perfect uniformity and equality in assessing property for taxation is impossible. All that can be expected is a reasonable effort to carry out the principles enjoined by the constitution. Individuals will necessarily differ in opinion as to the value of property. Accordingly it has been held that the courts will not interfere with the assessment of property for the purposes of taxation unless it appears that in fixing the value of the property the assessing authorities acted fraudulently.[26] If, by fraud, property has been valued excessively the courts will restrain the collection of taxes

[25] 274 Ill. 538 (1916); but see People v C. & N. W. Ry. Co., 286 Ill. 384 (1919). See Sangamon County v City of Springfield, 63 Ill. 66 (1872).

[26] Republic Life Insurance Co. v Pollak, 75 Ill. 292 (1874); Ottawa Glass Co. v McCaleb, 81 Ill. 556 (1876); Burton Stock Car Co. v Traeger, 187 Ill. 9 (1900).

on such property to the extent that the assessment is excessive.[27] Courts will, of course, restrain the collection of taxes if the taxes are not authorized by law, or if the property sought to be taxed is not subject to taxation, but in those cases the principles of equality and uniformity are not involved.[28] But, if the tax is authorized and the property is subject to taxation, the courts will interfere only in the event that there has been fraud in valuing the property.

The question then arises as to what is fraud in the assessment of property. Overvaluation, while it may be evidence of fraud, does not necessarily establish fraud.[29] An assessment will not be interfered with by the judiciary merely because the assessing authorities have committed an error of judgment. If the tax payer has received the honest judgment of the assessing officers the courts have no power to intervene.[30] But "where . . . . the valuation is so grossly out of the way as to show that the assessor could not have been honest in his valuation—must reasonably have known that it was excessive—it is accepted as evidence of a fraud upon his part against the taxpayer and the court will interpose."[31] And the objection of fraudulent over-valuation may be raised even though the property of the objector has not been assessed at its full value; if it is fraudulently assessed at a higher rate than other property of the same class the courts will restrain the collection of taxes on that part of the assessment which is excessive as compared with the assessment of other property in the same class.

The necessity for the assessment of all property in the same class on a similar basis was first pointed out by the Supreme Court of the United States. In Raymond v Chicago Union Traction Company[32] that court held that, unless all property in the same class was so assessed, the fourteenth amendment to the constitution of the United States would be violated. The courts of this state have since established the same rule. Thus, the State Board of Equalization cannot arbitrarily assess the capital stock of one corporation at a higher rate, and on a different basis of estimating its value, than the capital stock of other corporations.[33] But it seems that an arbitrary distinction between different classes of property does not warrant the interposition of the courts. Thus, in a case where the assessor valued personal property at seventy-five per cent of its true value and real estate at forty-three per cent of its true value the court held that an owner of a particular class of personal property was not entitled to a reduction in his taxes.[34]

Generally, the objection that the assessing authorities have acted in a fraudulent manner arises in connection with an alleged over-valuation. But the courts have power to interfere in the case of fraudulent undervaluation by compelling the assessing authorities to assess in the manner prescribed by law all property so undervalued, or not valued at all.[35]

With respect to the whole problem of judicial revision of assessments it may be stated that the courts will not interfere with the action of the assessing authorities unless the proof of fraud on the part of those authorities is clear and convincing,[36] and the burden of showing fraud is upon the tax payer.[37] As has been suggested this rule is based largely on the ground that perfect uniformity in taxation, because of the difference of opinion as to

[27] People's Gas Light Co. v Stuckhart, 286 Ill. 164 (1919).
[28] Lowenthal v People, 192 Ill. 222 (1901).
[29] People v Bourne, 242 Ill. 61 (1907).
[30] First National Bank of Urbana v Holmes, 246 Ill. 362 (1910).
[31] Pacific Hotel Co. v Lieb, 83 Ill. 602 (1876); see, also, People's Gas Light Co. v Stuckhart, 286 Ill. 164 (1919); People v K. and H. Bridge Co., 287 Ill. 246 (1919).
[32] 207 U. S. 20 (1907).
[33] People's Gas Light Co. v Stuckhart, 286 Ill. 164 (1919); see, also, Bureau County v C. B. & Q. R. R. Co., 44 Ill. 229 (1867).
[34] First National Bank of Urbana v Holmes, 246 Ill. 362 (1910).
[35] People v State Board of Equalization, 191 Ill. 528 (1901).
[36] Sanitary District of Chicago v Gifford, 257 Ill 424 (1913).
[37] Consolidated Coal Co. v Baker, 135 Ill. 545 (1891).

the value of property, is impossible. But it has also been based on the ground that the judiciary has no power to assess property for the purposes of taxation. This section of the constitution provides that the value of property for the purposes of taxation shall "be ascertained by some person or persons to be appointed in such manner as the General Assembly shall direct and not otherwise," and this provision denies the courts the power to assess property. (See discussion subsequent center subheading, "Assessment officers.").

Exemptions.

The rule of uniformity with respect to taxation prescribed by the constitution requires that all property shall pay taxes in proportion to value. Except as permitted by the constitution itself the General Assembly has no power to exempt any property from taxation. (See discussion article 9, section 3).

Commutations.

Under the earlier constitutions it was held that the rule of uniformity did not prevent the commutation of taxes—that is, that rule did not operate to deny the General Assembly the power to authorize the acceptance of a specific sum of money or something else of value in lieu of taxes in proportion to the value of the property owned by the person or corporation whose taxes were commuted. And there is perhaps a possibility that, even under the present constitution, commutation of state taxes as to certain persons or corporations is not forbidden. (See discussion article 9, section 3, subheading, "Commutations—Illinois Central Railroad Company," and article 9, section 6, sub-heading "Commutation of state taxes.")

Special assessments and special taxation.

The application of the rule of uniformity with reference to special assessments and special taxation is considered elsewhere in this volume. It will not be necessary, therefore, to consider the subject at this time. (See discussion article 9, section 9, sub-heading "Special assessments and special taxation for local improvements," center subheading, "In general.")

Assessment officers.

This section of the constitution expressly requires that the value of property for the purposes of taxation shall "be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct and not otherwise." No person can act as an assessor unless he is appointed or elected to that office in the manner prescribed by the General Assembly. And the General Assembly cannot confer on the courts the power to assess property for the purposes of taxation. "In the creation of the three departments of government the authority to tax has necessarily been given to the legislative branch. 'The power to tax is not judicial' . . . It is incompetent for the legislature to confer the power to tax upon the judiciary or the executive branch of government. The assessment of taxes is not a judicial act; it partakes of no element of a judicial character." [88]

The courts, therefore, have no power to fix the value of property for the purposes of taxation. And it is largely for this reason that the courts will not interfere with an assessment of property unless there is a clear

[88] School Directors v School Directors, 232 Ill. 322 (1908).

showing of fraudulent conduct on the part of the assessor with respect to the objecting tax payer. If the courts should raise or lower assessments of property according to their views as to the value of the property in controversy they would be substituting their judgment for that of the assessor and the effect of such action would be to make the courts the assessing officers contrary to that provision of the constitution which requires the assessing officers to be elected or appointed in such manner as the General Assembly shall prescribe.[39] But the courts will interfere if an assessment has been made with the intention of committing a fraud against a tax payer[40] and will also issue writs of *mandamus* to compel the assessing authorities to observe the requirements of law with reference to property assessments.[41] (See preceding center subheading, "Assessment of property for the purposes of taxation.")

However, the General Assembly may provide that different officers shall assess different classes of property. This provision of the constitution does not mean that the same officer or same class of officers shall assess all property for the purposes of taxation. Thus, the General Assembly may provide that the State Board of Equalization shall assess railroad property and the capital stock and franchises of certain corporations, and and that the local assessors shall assess all other property.[42] And no assessor may assess property required by law to be assessed by some other officer. If a statute requires the assessment of railroad property by the State Board of Equalization, an assessment of such property by local assessors is void.[43]

Necessity for assessment of property.

Under this section of the constitution there can be no lawful levy of a tax on property without an assessment or valuation.[44] And it has been intimated in some of the judicial decisions that there must be an assessment for each tax—that is, if taxes are levied yearly, there must be yearly assessments.[45] In Crozer v People,[46] however, it was held that the provisions of the present revenue law which provide for the annual levy of taxes but require only quadrennial assessments of real estate are valid. But it must be admitted that the revenue law provides for the yearly revision of the assessment of real estate. The assessment officers are authorized to add to or lower the assessment on any particular parcel of real estate in any year between the years of the quadrennial assessments. Under these circumstances it might well be said that the revenue law provides for yearly assessments of real estate as well as yearly tax levies.

Taxation of occupations, franchises and privileges. The last clause of this section of the constitution authorizes the levy of taxes in certain cases otherwise than in proportion to the value of property.

[39] Spencer and Gardner v People, 68 Ill. 510 (1873); Republic Life Insurance Co. v Pollak, 75 Ill. 292 (1874); Hulbert v People, 189 Ill. 114 (1901); People's Gas Light Co. v Stuckhart, 286 Ill. 164 (1919).

[40] Pacific Hotel Co. v Lieb, 83 Ill. 602 (1876); People v K. & H. Bridge Co., 287 Ill. 246 (1919).

[41] State Board of Equalization v People, 191 Ill. 528 (1901); see, also, First National Bank of Urbana v Holmes, 246 Ill. 362 (1910).

[42] Sterling Gas Co., v Higby, 134 Ill. 557 (1890); Hub v Hanberg, 211 Ill. 42 (1904).

[43] C. &. A R. R. Co. v People, 98 Ill. 350 (1881); People v Wiggins Ferry Co., 257 Ill. 452 (1913); see, also, DuPage County v Jenks, 65 Ill. 275 (1872).

[44] Hodges v Crowley, 186 Ill. 305 (1900); Howe v People, 86 Ill. 288 (1877); but see Raymond v Hartford Fire Insuarnce Co., 196 Ill. 329 (1902).

[45] Hodges v Crowley, 186 Ill. 305 (1900); Pettibone v W. Chicago Park Commissioners, 215 Ill. 304 (1905); Town of Lebanon v O. & M. Ry. Co., 77 Ill. 539 (1875).

[46] 206 Ill. 464 (1904).

In general.

The first clause of this section, as has already been pointed out, relates to taxes upon property. The general rule with respect to property taxes is that such taxes must be uniform and equal. And for the purpose of maintaining uniformity and equality the constitution requires that all property taxes shall be levied in proportion to the value of the property taxed and that all property, except as exempted by the constitution, shall be taxed in proportion to value. It is true that the opinion of the court in the case of Raymond v Hartford Fire Insurance Company[47] intimates that under certain circumstances property taxes for state purposes may be imposed otherwise than in proportion to value. (See discussion of that case preceding center subheading "Uniformity"). But the general rule is that property taxes are not uniform unless levied on *all* property in proportion to value. Under the last clause of this section, however, the General Assembly may tax occupations, franchises and privileges otherwise than in proportion to value, and such taxes are generally imposed in addition to taxes on property. Occupation and franchise taxes are not void for want of uniformity merely because they may be imposed on some other basis than value.[48] The only rule of uniformity required with respect to such taxes is that they shall be uniform upon the class upon which they operate.[49]

The power of the General Assembly to levy occupation and franchise taxes is not limited to the objects and subjects mentioned in the last clause of this section. Under the provisions of section 2 of article 9 the General Assembly may impose such taxes on any and all occupations and franchises.[50] And this power may be delegated to cities and villages by the General Assembly.[51] But, while the General Assembly may tax all occupations and franchises, subject only to the rule of uniformity as to class, cities and villages, although they may be given the same general power as the General Assembly, can tax only such occupations and franchises as are expressly included in the statute delegating the power to impose such taxes.[52] (See discussion article 9, section 2)

License fees.

The power of the General Assembly, and of municipalities, under a proper delegation of power, to impose license fees as a condition precedent to the right to engage in certain callings or occupations, or to exercise franchises and privileges, has generally been sustained. Sometimes the license fee has been sustained, not as a tax, but as a regulation of an occupation or franchise under the police power of the state. In other cases such license fees have been upheld as taxes imposed in accordance with this provision of the constitution. There is, of course, a definite distinction between a license fee imposed as a means of regulation and a fee imposed for the purpose of revenue. If the fee is exacted as a means of regulation there is no need for compliance with the constitutional requirements concerning uniformity of taxation. But, if the fee is exacted for revenue pur-

[47] 196 Ill. 329 (1902); see, also, Sterling Gas Co. v Higby, 134 Ill. 557 (1890).
[48] Metropolis Theatre Co. v City of Chicago, 246 Ill. 20 (1910).
[49] Harder's Storage Co v City of Chicago, 235 Ill. 58 (1908).
[50] Price v People, 193 Ill. 114 (1901); Bessette v People, 193 Ill. 334 (1901).
[51] City of East St. Louis v Wehrung, 46 Ill. 392 (1862); Wiggins v City of Chicago, 68 Ill. 372 (1873); Walker v City of Springfield, 94 Ill. 364 (1880). There has been some confusion as to the source of the power of cities and villages to levy occupation and franchise taxes. In Braun v City of Chicago, 110 Ill. 186 (1884) it was held that this section of the constitution had no bearing on the power of cities and villages to impose such taxes, and that the power of such municipalities to impose them was controlled solely by sections 9 and 10 of article 9. In Banta v City of Chicago, 172 Ill. 204 (1898) the court held that cities and villages had no power under sections 9 and 10 of article 9 to levy such taxes, and that the power to do so is derived only as a delegation from the General Assembly of its powers under this section of the constitution.
[52] Condon v Village of Forest Park, 278 Ill. 218 (1917).

poses then it appears that the constitutional requirement that occupation and franchise taxes shall be uniform as to the class upon which they operate must be observed. Sometimes it is difficult to ascertain whether a license fee is imposed as a means of regulation or for the purposes of revenue. In such a case it would seem that the right to impose the license fee will be sustained as being for regulation purposes, regardless of other considerations, if the subject of the fee is properly a subject for police regulation.[52] But sometimes the subject is not within the police power and in that event the fee must stand or fall as a tax under the last clause of this section.[53]

In a large number of early cases, both under the constitution of 1848 and the constitution of 1870, the court took the view that license fees, even if exacted for the purposes of revenue, were not taxes in a constitutional sense, and that there was no need to observe the rule of uniformity as to class. Thus, it has been held that license fees imposed upon foreign insurance companies,[55] liquor dealers,[56] auctioneers,[57] real estate brokers,[58] and itinerant merchants[59] are not taxes in a constitutional sense. But it must be admitted that in some of these cases the legislative acts might have been sustained as police measures. In the later cases, however, the court points out that, unless a measure imposing a license fee can be sustained as a police regulation, it must be regarded as a tax and conform to the constitutional requirements with reference to uniformity as to class. "Although it has sometimes been said that a license fee exacted for the purpose of revenue is not a tax, such statement must be understood as meaning that it is not a tax in the sense of the property tax authorized by the constitution, which must be levied according to valuation, since it is a tax and is levied by virtue of paragraph 41. The question here is whether this ordinance is valid either as an exercise of the police power or the power of taxation granted to municipalities by the paragraph in question."[60]

With respect to a statute or ordinance imposing a license fee for revenue purposes the question to be determined is whether or not the measure will operate uniformly upon all in the same class. When is the constitutional provision complied with? "The only limitation found in our constitution upon the power of the legislature to tax occupations is, that the tax shall be 'uniform as to the class upon which it operates.' The power given to cities and villages to tax and regulate theatrical and other exhibitions, shows and amusements, carries with it the power to classify the subjects and to fix a different license fee for each class. The power to classify must be exercised in a reasonable manner, but a very wide range of discretion is allowed legislative bodies in the exercise of this power. Classification of subjects for taxation may not be made arbitrarily, but necessarily there must be great freedom of discretion, even though it results in ill-advised, unequal and oppressive legislation. A classification will be sustained where it is based upon a reasonable difference of situations or conditions."[61] No case has been found in which the courts of this state have held a licensing measure in conflict with the requirement of uniformity as to class. On the other hand it has been held that the imposition of a larger license fee on a foreign insurance company than a

[52] City of Paxton v Fitzsimmons, 253 Ill. 355 (1912); see, also, C. W. & V. Coal Co. v People, 181 Ill. 270 (1899).

[53] Condon v Village of Forest Park, 278 Ill. 218 (1917).

[55] People v Thurber, 13 Ill. 554 (1852); Walker v City of Springfield, 94 Ill. 364 (1880).

[56] City of East St. Louis v Wehrung, 46 Ill. 392 (1868); Timm v Harrison, 109 Ill. 593 (1884); U. S. Distilling Co. v City of Chicago, 112 Ill. 19 (1884).

[57] Wiggins v City of Chicago, 68 Ill. 372 (1873).

[58] Braun v City of Chicago, 110 Ill. 186 (1884).

[59] City of Carrollton v Bazzette, 159 Ill. 284 (1896); see, also, Bessette v People, 193 Ill. 334 (1901).

[60] Condon v Village of Forest Park, 278 Ill. 218 (1917); see, also, Banta v City of Chicago, 172 Ill. 204 (1898); Price v People, 193 Ill. 114 (1901); Harder's Storage Co. v City of Chicago, 235 Ill. 58 (1908); Metropolis Theatre Co. v City of Chicago, 246 Ill. 20 (1910).

[61] Metropolis Theatre Co. v City of Chicago, 246 Ill. 20 (1910).

domestic insurance company is not forbidden;[62] and that dram shops in one part of a city may be required to pay a larger license fee than dram shops in other parts of the same city.[63] (See discussion article 9, section 2).

Inheritance taxes.

The inheritance tax act of 1895 which provides for certain exemptions and prescribes different rates of taxation for different classes of heirs was challenged on two grounds: (1) That it imposed a property tax otherwise than in proportion to value; and (2) that if it did not impose a property tax, it did not operate uniformly upon all persons in the same class. The court held that the inheritance tax act did not impose a property tax, but a tax upon the right to succeed to property. With reference to the second point the court held that the classifications prescribed by the act were reasonable and that therefore the rule of uniformity as to class was not violated.[64]

Property taxes otherwise than in proportion to value.

The second clause of this section of the constitution has generally been held not to give authority to levy property taxes. Its main purpose is to authorize with respect to certain subjects, the imposition of taxes otherwise than in proportion to value, and in addition to taxes on property. However, the opinion of the court in the case of Raymond v Hartford Fire Insurance Company[65] seems to hold that the General Assembly, with reference to the property of any person or corporation subject to an occupation, franchise or privilege tax, may provide a method of imposing taxes for state purposes otherwise than in proportion to value. (See discussion of that case preceding center subheading, "Uniformity"). And it has also been held in several cases that a tax on the capital stock of corporations is levied under the second clause of this section of the constitution, even though such a tax is regarded as a property tax.[66] However, it would seem that these cases are necessarily overruled by the decision in Consolidated Coal Company v Miller.[67] In that case the question involved was whether or not the General Assembly could exempt from taxation the capital stock of certain corporations. It was contended that, if capital stock taxes were imposed under the last clause of this section, the only question for the court to determine was whether or not the law providing for the taxation of capital stock was uniform as to class—that is, whether or not there was a reasonable basis for distinction between the corporations whose capital stock was taxable and those whose capital stock was exempt from taxation. The court held, however, that the question of uniformity as to class, or the reasonableness of the legislative classification of corporations for the purpose of imposing capital stock taxes, had no application; that the only question to determine was whether or not the General Assembly had the power, under section 3 of article 9 of the constitution, to exempt from taxation the capital stock of certain corporations; and that, since section 3 of article 9 did not authorize the exemption, the General Assembly had no such

[62] Hughes v City of Cairo, 92 Ill. 339 (1879); Home Insurance Co. v Swigert, 104 Ill. 653 (1882).

[63] City of East St. Louis v Wehrung, 46 Ill. 392 (1868); see, also Timm v Harrison, 109 Ill. 593 (1884); Wiggins Ferry Co. v City of East St. Louis, 102 Ill. 560 (1882); Howland v City of Chicago, 108 Ill. 496 (1884).

[64] Kochersperger v Drake, 167 Ill. 122 (1897); Magoun v Illinois Trust and Savings Bank, 170 U. S. 283 (1897); see, also In re Estate of Speed, 216 Ill. 23 (1905); In re Estate of Benton, 234 Ill. 366 (1908); People v Tatge, 267 Ill. 634 (1915).

[65] 196 Ill. 329 (1902).

[66] Porter v R. R. I. & St. L. R. R. Co., 76 Ill. 561 (1875); Sterling Gas Co. v Higbee, 134 Ill. 557 (1890); see, also, Hub v Hanberg, 211 Ill. 43 (1904).

[67] 236 Ill. 149 (1908); see, also, People v National Box Co. 248 Ill. 141 (1911).

power. If the question of uniformity as to class has no application to such a case it seems necessarily to follow that capital stock taxes are imposed under the first clause of section 1 of this article and not the last clause.

Section 2. The specification of the objects and subjects of taxation shall not deprive the General Assembly of the power to require other subjects or objects to be taxed, in such manner as may be consistent with the principles of taxation fixed in this Constitution.

In the case of Banta v City of Chicago[68] the court said that taxes on occupations, franchises and privileges could be imposed only on those occupations, franchises and privileges that were expressly enumerated in section 1 of this article. But in a later case it was said: "The familiar canon of construction that such enumeration should be held by implication to inhibit the taxation of any occupation not specified in the section, cannot be given application, for the reason such construction is expressly forbidden by section 2 of article 9 of the organic law. Expressions in Banta v City of Chicago, *supra*, that such canon of construction is applicable were made inadvertently."[69] In accordance with that rule the right of the state to exact a license fee from persons engaged in operating private employment agencies was sustained, although that occupation or business is not enumerated in section 1 of article 9. And so the General Assembly may authorize cities and villages to levy or impose a license fee on livery stable keepers, or a wheel tax on vehicles using the public streets.[70]

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

Necessity for legislation. This section of the constitution is not self-executing. No property is entitled to exemption from taxation by virtue of the constitution itself. Exemptions from taxation can be had only under legislative enactments.[71] The constitution authorizes the General Assembly to pass laws exempting certain classes of property from taxation. But the General Assembly need not act, or if it does act, it need not exempt all property authorized by the constitution to be granted exemption. Frequently the courts have denied the right of exemption from taxation to certain property not because there was no constitutional authority for the

[68] 172 Ill. 204 (1898).
[69] Price v People, 193 Ill. 114 (1901); see, also, Bessette v. People, 193 Ill. 341 (1901); Report Attorney General 1916, p. 390.
[70] Howland v City of Chicago, 108 Ill. 496 (1884); Harder's Storage Co. v City of Chicago, 235 Ill. 58 (1908).
[71] People v Anderson, 117 Ill. 50 (1886); In re Walker, 200 Ill. 566 (1903).

exemption thereof, but because the General Assembly, while it might have extended the right of exemption to that property, had not seen fit to do so.[72] And the courts have always taken the position that statutes granting tax exemptions should be construed strictly in favor of the state. Property will not be entitled to exemption from taxation unless it is clearly within, not only the constitutional authorization, but the terms of the statute under which the right to exemption is claimed.[73] And the burden is on the person asserting the claim of exemption from taxation with respect to certain property to prove clearly and conclusively that the property in question is exempt under the provisions of a constitutional statute.[74]

Because of the fact that all exemptions from taxation should be construed strictly, a statute providing for tax exemptions will not be given a retrospective effect unless it is clear that the General Assembly so intended. And so it was held in People v Deutsche Gemeinde[75] that property, which became exempt under a statute effective July 1, 1909, was liable for the taxes levied thereon prior to that date.

Power of the General Assembly. This section of the constitution is a limitation on the power of the General Assembly. "The enumeration in the constitution of certain specified property which may be exempted is a limitation upon the power of the legislature to exempt any other property, under the well known rule that an enumeration of certain specified things excludes all others not therein mentioned."[76] In accordance with the rule thus announced it has been held that the General Assembly has no power to exempt from taxation promissory notes held by a building and loan association and executed by its members, moneys held by fraternal beneficiary societies, and the capital stock of corporations.[77] And the Attorney General has held that there is no constitutional authority to exempt the property of the state masonic home for aged masons, the Grand Army of the Republic, or war veterans, or to exempt shares of bank stock.[78] In Easton v Board of Review[79] it was held that city warrants in the hands of a purchaser were not exempt from taxation. The decision was based on the fact that there was no law authorizing the exemption of such warrants but the court was evidently of the opinion that the General Assembly would have no constitutional power to provide for their exemption.

The constitution provides that "such . . . property as may be used exclusively for . . . school, religious, cemetery and charitable purposes may be exempted from taxation . . . by general law." This is a limitation on the power of the General Assembly. Property used in connection with any one or more of these purposes cannot be granted exemption from taxation unless used *exclusively* for such purpose or purposes.

[72] Cook County v City of Chicago, 103 Ill. 646 (1882); In the matter of Swigert, 123 Ill. 267 (1887); People v City of Chicago, 124 Ill. 636 (1888); Sanitary District of Chicago v Martin, 173 Ill. 243 (1898); People v St. Francis Academy, 233 Ill. 26 (1908).

[73] People v Seaman's Friend Society, 87 Ill. 246 (1877); Monticello Seminary v People, 106 Ill. 398 (1883); People v Anderson, 117 Ill. 50 (1886); Montgomery v Wyman, 130 Ill. 17 (1889); McCullough v Board of Review, 186 Ill. 15 (1900); Sanitary District of Chicago v Honberg, 226 Ill. 480 (1907); Board of Directors v Board of Review, 248 Ill. 590 (1911).

[74] People v Deutsche Gemeinde, 249 Ill. 132 (1911).

[75] 249 Ill. 132 (1911).

[76] People v Deutsche Gemeinde, 249 Ill. 132 (1911). The same rule was applied under the constitution of 1848; see People v Barger, 62 Ill. 452 (1872). The property of the University of Illinois is State property and may, therefore, be granted exemption from taxation. See Board of Trustees v Board of Supervisors, 76 Ill. 184 (1875).

[77] Loan and Homestead Association v Keith, 153 Ill. 609 (1894); In re St. ouis L. & I. Co., 194 Ill. 609 (1902); Supreme Lodge v Board of Review, 223 Ill. 54 (1906); Consolidated Coal Co. v Miller, 236 Ill. 149 (1908); People v National Box Co., 248 Ill. 141 (1911).

[78] Report Attorney General, 1908, p. 436; 1910, pp. 60, 62; 1912, p. 742; see, also, Report Attorney General 1910, pp. 59, 566, 576.

[79] 183 Ill. 255 (1899).

When is property used *exclusively* for any one or more of these purposes? This question has caused considerable difficulty and very few of the decisions of the Supreme Court on this point have been concurred in by all of the judges of that court; in fact most of the decisions have been made by a bare majority of the judges. The effect of the decisions however, is to place a strict construction on the word "exclusively."

With reference to the exemption from taxation of property used exclusively for school purposes it has been held that a school "is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptation of the word", and that the property of dancing, riding and deportment schools can, under no circumstances, be released from its liability to pay taxes.[80] But when is property owned by a school, such as is contemplated by the constitution, used exclusively for school purposes? Land owned by a school but not used for any purpose is not a proper subject for exemption from taxation.[81] "The fact that the rents and revenues of property are devoted to school purposes does not exempt the property from taxation. The property itself must be directly used for school purposes before it is entitled to be exempted."[82] But lands owned by a private educational institution and used for the purpose of growing vegetables and fruits for the use of those attending the institution, and not with a view to profit, are used exclusively for school purposes and, as such, are subject to exemption from taxation.[83]

"As applied to the uses of property, a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction."[84] It has been held that there is no constitutional authority for the exemption of "parsonages or residences actually and exclusively used by persons devoting their entire time to church work." In People v First Congregational Church[85] it was said: "Where a building is used primarily for religious purposes and secondarily for some secular purpose, as for the business meetings of the church corporation, or if there should be in the church building some room used as a lodging room for the sexton or some other person employed by the organization, the building would not thereby lose its character as one used for religious purposes, but where the property is used primarily for a family residence by the pastor it cannot be held that it is used exclusively for religious purposes. The legislature cannot, by its enactment, make that a religious purpose which in fact is not a religious purpose."

A private hospital which receives free of charge all who apply for admission, but which maintains more desirable rooms for those who are willing to pay for them, is, nevertheless, an institution for charitable purposes, if the money that it receives is used for the enlargement and betterment of the hospital and not with a view to profit.[86]

(As to the power of the General Assembly to exempt property from special assessments and special taxation, see discussion subsequent subheading, "Special assessments and special taxation")

Property donated for school purposes. Section 2 of article 8 of the constitution provides that "all lands, moneys, or other property, donated granted or received for school, college, seminary or university purposes,

[80] People v Deutsche Gemeinde, 249 Ill. 132 (1911).
[81] People v Deutsche Gemeinde, 249 Ill. 132 (1911); Theological Seminary v People, 101 Ill. 578 (1882); Monticello Seminary v Board of Review, 242 Ill. 477 (1909).
[82] Monticello Seminary v Board of Review, 249 Ill. 481 (1911).
[83] Monticello Seminary v People, 106 Ill. 398 (1883).
[84] People v Deutsche Gemeinde, 249 Ill. 132 (1911).
[85] 232 Ill. 158 (1908); see, also, First Congregational Church v Board of Review, 254 Ill. 220 (1912); but see In re Walker, 200 Ill. 566 (1903).
[86] Sisters of St. Frances v Board of Review, 231 Ill. 317 (1907). See People v Seaman's Friend Society, 87 Ill. 246 (1877).