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

This section had the effect of repealing all special laws relating to the fees of county and township officers. Thus an act passed prior to the adoption of the constitution, which provided for fees, for county and township officers in 51 counties different from those received by the same officers, in the other 51 counties in the state, was repealed by this section.[64]

(For a discussion of the question of the application of this section to compensation as well as fees of officers see discussion article 10, section 12, subheading, "Fees and compensation").

Section 12. All laws fixing the fees of State, County and Township officers shall terminate with the terms, respectively, of those who may be in office at the meeting of the first General Assembly after the adoption of this constitution; and the General Assembly shall, by general law, uniform in its operation, provide for and regulate the fees of said officers and their successors, so as to reduce the same to a reasonable compensation for services actually rendered. But the General Assembly may, by general law, classify the counties by population into not more than three classes, and regulate the fees according to class.

This article shall not be construed as depriving the General Assembly of the power to reduce the fees of existing officers.

In general. The previous section having abolished special acts relative to fees, and remitted the officers to the general law for the determination of their fees, it was intended that this section should abrogate the general laws with the expiration of the term of the officers then in office.[65] In the meantime, the General Assembly was directed to provide for, and regulate the fees of those officers, by a general law which would reduce the fees to a reasonable compensation for services actually rendered.

[redacted]

Fees and compensation. It appears that sections 11 and 12 were intended to relate only to the fees, to be charged the public, by township and county officers, as distinguished from the personal compensation of those

[64] Board of Supervisors v Jones, 63 Ill. 531 (1872); and see Union County v Patton, 63 Ill. 458 (1872).

[65] Chance v Marion County, 64 Ill. 66 (1872).

officers, since, at least as far as county officers are concerned, their compensation is regulated by section 10 of this article. This was the understanding in the constitutional convention of 1869-70. When section 11 was under consideration in that convention, a delegate suggested that this section was inconsistent with section 10, previously adopted, since that section fixed the compensation of all county officers. Another delegate responded that section 11 purported only to regulate the fees to be paid by the public and had no reference to the salaries of officers. (Debates, p. 1366.)

In Board of Supervisors v Johnson[66] decided in 1872, the Supreme Court took the view that section 11 related only to fees to be charged the public and had no application to the personal compensation of officers. In that case it was contended that an act of 1867, fixing the compensation to be paid the county superintendent of schools in all counties, except Cook county, at $4 per day, was repealed by this section of the constitution. But the court said: "The *per diem* allowance to the county superintendent of schools may be regarded as 'compensation' and not as 'fees' in the sense in which that word is used in the constitution. Hence the 11th section cited can have no application and does not operate to repeal the law under which the compensation of the appellee was fixed." In 1912, the Attorney General said, in speaking of section 12: "This section relates to fees and has no relation whatever to compensation of public officers".[67]

However, it will be noted that section 12 provides that the fees shall be reduced to a "reasonable compensation for services actually rendered." But it is probable that these words were used to indicate that the fees should be proportioned to the services actually rendered the public and have no reference to the personal compensation of the officer receiving the fee. This latter view is strengthened perhaps by the case of Cook County v Fairbank.[68] In that case a statute provided for a probate docket fee in proportion to the value of the estate probated. In the particular case this fee amounted to $1,250. It was held that this fee was not a reasonable compensation for services actually rendered. The court noted that the clerk did not receive the fee as personal compensation but that it was paid into the county treasury. The court said: "Clearly the framers of the constitution intended that the fees of the probate courts in counties of the third class should be based upon the amount, quality and quantity of the services performed by the clerks of said courts and not arbitrarily fixed on the basis of the value or amount of the estate which might pass through those courts".

However, it must be noted that the compensation of county officers is, in some degree, dependent upon the fees, since it is payable out of the fees collected. And in the case of township officers, the fees frequently constitute the entire compensation of the officer. Again, it must be noticed that section 11 provides that "the compensation herein provided for shall apply only to officers hereafter elected". One of the delegates in the constitutional convention moved to strike out the words quoted on the ground that the purpose of this section was the regulation of fees to be charged the public, and had no reference to personal compensation, but this motion was tabled without debate.

In the case of People v Vickroy,[69] decided in 1915, the Supreme Court took the view that sections 11 and 12 of the constitution regulated the personal compensation of the officers as well as the fees to be charged the public. In that case a statute provided that the town collector should receive a commission of two per cent on all moneys collected by him but that in certain classes of counties all excess of commissions and fees over $1,500

[66] 64 Ill. 149 (1872); and see Board of Supervisors v Christianer, 68 Ill. 453 (1873).

[67] Report Attorney General (1912), p. 214; but see Report Attorney General 1914, p. 355.

[68] 222 Ill. 578 (1906).

[69] 256 Ill. 384. See Hoyne v Danisch, 264 Ill. 467 (1914).

should be paid into the county treasury, with a proviso that the town board of auditors might reduce the compensation to an amount below $1,500. However, when the town board attempted to reduce the compensation, the Supreme Court held that this statute violated sections 11 and 12 of article 10 of the constitution. The court said: "The plain purpose of sections 11 and 12 of article 10 of the constitution was that the fees should be uniform in order to bring about a reasonable compensation for services actually rendered; that this uniformity might be based upon the classification of counties into three classes, regulated according to class. If the argument of counsel for appellant on this point is upheld it would place such a construction upon these constitutional provisions as would justify the fixing of a different salary in the manner herein provided for every town collector in the state. One town might pay a very large salary and another town of the same size with the same amount of work, immediately adjoining, might pay a very small salary. Such a construction would effectually destroy all regulation of fees according to the three different classes of counties, and also the purpose of the constitution that various town officials should receive a reasonable compensation for services actually rendered". The court in deciding this case made no reference to the constitutional debates, nor did it refer to the previous decision in the case of Board of Supervisors v Johnson.

It thus appears that there are directly conflicting decisions of the Supreme Court upon the question of whether sections 11 and 12 are limited in their application to the regulation of the fees to be charged the public by county or township officers, or whether those sections include within their purview also the regulation of the personal compensation of town and county officers.

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

"Following the directions of the constitution, the legislature enacted laws requiring every county officer who shall be paid, in whole or in part in fees, to keep a full, true and minute account of all fees and emoluments of his office, and on the first days of June and December of each year to make a return in writing under oath to the chairman of the county board, of all fees and emoluments of his office, of every name and character, and it is made the duty of the county board to examine such report and ascertain the balance of such fees, if any, and order such officer to pay over such balance, if any, to the county treasurer".[70]

The Supreme Court has held that this section of the constitution relates to constitutional officers and does not refer to statutory officers. Thus an act providing for an official court reporter is not invalid for failing to require a report of the fees of the reporter.[71] (For statement as to what are fees, see discussion article 10, section 10, subheading, "Fees").

[70] Watson, J. in People v Witzeman, 268 Ill. 508 (1915). See Hurd's Revised Statutes, Chap. 53, Secs. 51-2.
[71] People v Chetlain, 219 Ill. 248.

ARTICLE XI—CORPORATIONS

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

Effect on existing laws. This section did not repeal the general law relating to the organization of private corporations in force at the time of the adoption of the constitution. That law remained in effect until repealed by the General Assembly.[1]

Municipal corporations. The provisions of this section apply only to private corporations. They have no effect upon a special law organizing a municipal corporation, such as a drainage district.[2] (As to the restrictions upon special legislation relating to municipal corporations, see discussion article 4, section 22, subheading, "Necessity for general laws in other cases.")

Amendment of charters. The Supreme Court held in the case of Braceville Coal Co. v People,[3] that no corporate charter, under this section, may be either expressly or indirectly extended, changed or amended by the General Assembly, except "by general laws, applicable alike to all occupying like circumstances and existing under the same conditions; and it necessarily follows that special acts applying to particular corporations only, and not to the general body of corporations created under the act, would fall within the prohibition of this section." In this case, the court held invalid as an indirect amendment of corporate charters, by a special law, an act which required certain types of industrial corporations to pay wages weekly, for the reason that this act restricted the original charter powers of these corporations to contract in and about their business.

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

[1] Meeker v Chicago Steel Co., 84 Ill. 276 (1876).
[2] Owners of Lands v People, 113 Ill. 296 (1885).
[3] Braceville Coal Co. v People, 147 Ill. 66 (1893); see, also, People v P. G. L. & C. Co., 205 Ill. 482 (1903).

Burden of proof. This section, it was held, did not operate to require a railroad corporation created under a special act of 1869, whose right to exist as a corporation was collaterally attacked in 1882, to prove, in the first instance, that it had completed its organization and complied with its charter within the time prescribed by this section. That is, this constitutional provision did not change the rule of evidence whereby a corporation is presumed to be at least a corporation *de facto* upon the introduction in evidence of its charter and of proof of the exercise of corporate powers. Non-compliance with the constitution must be proved by the party attacking the corporate existence.[4]

Additional privileges. It was held by the federal circuit court, that this section did not invalidate additional land grants and special privileges conferred upon a fully organized and operating railroad corporation in 1869, even though they enlarged the corporation's original charter powers, when these additional grants and special privileges had not been accepted by the corporation within the time prescribed by the constitution.[5]

Extent of operation. This section does not prescribe the extent to which the charter must have been in operation at the date specified. It requires, only, that it must, at that time, have been in operation to some appreciable extent. So, where the case was not that of a mere paper organization, nor that of a dormant charter, but one where there had been an actual organization and a considerable amount of corporate activity leading to the construction of a railroad, the completion thereof being hindered by injunction proceedings, it was held that the charter was in operation at the time prescribed within the meaning of this section.[6]

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

In general. The purpose of this section was to afford representation to minority stockholders. In the opinion of the Attorney General, its provisions are mandatory and self executing, and are applicable alike to all corporations, including banks. No other method may be devised for the election of directors.[7] The Attorney General has ruled that a statute providing that "no director shall be elected unless he shall have received votes representing at least a majority of the shares" of stock must, in view of this section, be construed to mean, not that the directors must be elected by a majority of all

[4] P. & P. U. Ry. Co. v P. & F. Ry. Co., 105 Ill. 110 (1882); St. L. A. & T. Co. v Belleville Ry. Co., 158 Ill. 390 (1895).
[5] State v I. C. Ry. Co., 33 Fed. 730 (1888).
[6] Mc Cartney v C. & E. Ry. Co., 112 Ill. 611 (1884).
[7] Durkee v People, 155 Ill. 354 (1895); Report Attorney General 1900, p. 105; 1910, p. 209.

votes cast, but that they must receive at least a number of votes equal to a majority of the shares of stock. That is, where there were 300 shares of stock, 9 directors to be elected, and, under the cumulative plan of voting prescribed by the constitution, a possible total of 2,700 votes, a director, to be elected, must receive at least 151 votes, representing a majority of the shares of stock, and not necessarily 1,351 votes, representing a majority of the total vote cast. To require otherwise, would, in his opinion, defeat the purpose of the constitution, namely, that of affording representation to minority stockholders.[8] (See discussion article 4, sections 7, 8).

Bondholders. This section prohibits a corporation from providing, in either its by-laws or its corporate bonds, that bondholders may vote for directors. That privilege is confined, by the provisions of this section, to the stockholders.[9]

Preferred stockholders. The Attorney General has ruled that this section does not secure to holders of preferred stock the privilege of voting for directors. An arrangement may be entered into, in his opinion, so far as the constitution is concerned, whereby the sole voting power is confined to holders of the common stock, while the holders of preferred stock are given preference in the payment of dividends, but are denied the power to vote.[10]

Voting trusts. Under the provisions of this section, the privilege of voting for directors may only be exercised by the stockholders, in person or by revocable proxy. They may not, by contract, deprive themselves of that privilege by conferring an irrevocable authority for a period of years upon one minority stockholder, as a trustee, to vote the great majority of the stock for directors, according to his sole discretion, and without any control by the stockholders. Such a contract is contrary to the policy established by the constitution, and may be avoided, by the stockholders who were parties thereto.[11]

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

Local authorities. The federal circuit court held that the term "local authorities," as used in this section, means the officers of the municipal corporation elected by the people or appointed in a manner to which they have given their consent, as for instance, the mayor and common council of a city.[12] (See discussion article 9, section 9, subheading, "Corporate authorities.")

Municipal control. The Supreme Court has held that this section "merely means that the constitution has conferred upon the city power

[8] Report Attorney General 1908, p. 679.
[9] Durkee v People, 155 Ill. 354 (1895).
[10] Report Attorney General 1916, p. 164.
[11] Luthy v Ream, 270 Ill. 170 (1915).
[12] Potter v C & E. S. Ry. Co., 158 Fed. 521 (1908).

to determine whether street railways shall be operated upon its streets, and if so, upon what streets. To this extent, and no further, the constitution has committed to the city, the control of the operation of street railways in its streets."[13] While, in granting its consent to the use of its streets by street railways, the city may impose such reasonable conditions as, in its discretion, the public welfare may require, such as an annual license fee for each car or an annual mileage tax,[14] (see discussion article 9, section 1, subheading, "License fees"), nevertheless, this power of the city to impose such conditions is subject to the paramount power of the state to regulate public utilities. (See discussion article 2, section 2; article 13, sections 1, 7.) For example, in the case of C. & S. T. Co. v I. C. Ry. Co.,[15] where a city had granted the use of a street to an interurban electric railway on the condition that the railway conform to the grade of the street, throughout its length, including the crossing of a steam railroad, it was held that the state, acting through the railroad and warehouse commission, could, for the public safety, refuse to permit the crossing of the steam railroad by the electric line to be effected at grade. Similarly, in the case of City of Chicago v O'Connell,[16] where an ordinance contract, entered into between a city and a street railway, specified, as the conditions of the grant of permission to use the streets, regulations as to rates of fare, transfers, routing, equipment, and number of cars, it was held that these regulations could be superseded by an order as to the same matters made by the state, acting through the public utilities commission.

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

Foreign banking corporations. The Attorney General has ruled that sections 5 to 8, inclusive, of this article, establish a public policy against the granting of permission to banking corporations existing under the laws of other states or of foreign countries, to do business, through branch banks, in Illinois. In his opinion, the regulations prescribed by these sections of the constitution could not be effectually enforced against any but Illinois corporations.[17]

Validation of special charters. The Supreme Court held, in the case of People v Lowenthal,[18] that sections 2, 5 and 7 of this article impliedly

[13] City of Chicago v O'Connell, 278 Ill. 591 (1917); (recently affirmed by the United States Supreme Court).
[14] Byrne v Chicago General Ry. Co., 169 Ill. 75 (1897); Chicago General Ry. Co., v City of Chicago, 176 Ill. 253 (1898).
[15] 246 Ill. 146 (1910).
[16] 278 Ill. 591 (1917); (recently affirmed by the United States Supreme Court); Public Utilities Commission v C. & W. T. Ry. Co., 275 Ill. 555 (1916).
[17] Report Attorney General 1916, p. 190.
[18] 93 Ill. 191 (1879).

validated all charter powers granted to banking corporations of deposit or discount, by special acts which had been enacted prior to 1870, and which had not been submitted to the people, pursuant to article 10, section 5, of the constitution of 1848. This was on the assumption that the constitution of 1848 required such acts to be so submitted. (See discussion following subheading.)

Referendum requirements. The constitution of 1848 (article 10, section 5) contained the following provision: "No Act of the General Assembly, authorizing corporations or associations with banking powers, shall go into effect, or in any manner be in force, unless the same shall be submitted to the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for and against such law." This provision, the Supreme Court held in the case of People v Lowenthal,[19] applied, so far as original laws were concerned, only to laws relating to banks of issue; that is, banks having the power to issue bank notes or bills of credit. It did not require an act creating a banking institution with banking powers other than those of issue, namely, the power to accept deposits and to discount notes, to be submitted to the people.

Moreover, this provision of the constitution of 1848 did not require all amendments to banking laws to be submitted to the people. For example, it was held that amendments to a banking law which changed the mode of assessing bank property for purposes of taxation, and which modified the court procedure to be followed in enforcing the liability of bank stockholders, did not have to be submitted to the people, for the reason that the subject matter of these amendments related to revenue and judicial remedies, respectively, and not directly to banking functions.[20]

It will be noted, however, that the section of the constitution of 1870, now under consideration, differs from that quoted from the constitution of 1848, in that the present constitution expressly provides that "No act of the General Assembly authorizing or creating corporations or associations, with banking powers, *whether of issue, deposit or discount, nor amendments thereto,*' shall be effective without a vote of the people. The words in italics are not to be found in the corresponding section of the constitution of 1848. (As to the present status of banks of issue in Illinois, see discussion article 11, section 7).

The Supreme Court has held that this provision applies to an act authorizing the creation of non-stock savings bank associations with power to accept deposits and to discount notes,[21] and the Attorney General has suggested that it might apply to an act authorizing the creation of wage loan corporations, with power to borrow money and to make loans on the security of wage assignments,[22] so as to require these acts to be submitted to a popular vote.

It was held that the term "amendments thereto," as used in this section, included an act authorizing corporations, generally, including banks, to change the corporate name, so as to require that act to be submitted to the people, for the reason that it was the means of effecting an amendment of an important part of a bank's charter.[23]

(As to the history of the constitutional regulation of banking in this state, see Constitutional Conventions in Illinois, Second Edition, pp. 13, 41-42, 141.)

Methods of submission. The constitution requires that banking laws submitted to the people be submitted to a vote of the people of the state as a

[19] 93 Ill. 191 (1879).
[20] Bank of Republic v County of Hamilton, 21 Ill. 53 (1858); Smith v Bryan, 34 Ill. 364 (1864).
[21] Reed v People, 125 Ill. 592 (1888).
[22] Report Attorney General 1913, p. 30.
[23] Sykes v People, 132 Ill. 32 (1890); but see Hurd's Revised Statutes 1917, section 17, chapter 16a.

whole, and prohibits the submission of such acts to the people of particular localities, alone. As a result, the General Assembly is without power to enact local legislation relating to banks.[24]

The constitution does not prescribe the manner in which the voters of the state shall be afforded knowledge of the contents of the provisions of a banking law submitted for their approval. The General Assembly is, therefore, free to prescribe the manner in which the act submitted is described on the ballots.[25]

The Attorney General has ruled that since a referendum on banking laws is required by the constitution, women may not be authorized to vote on such a question.[26] (See discussion article 7, section 1, subheading, "Woman Suffrage.")

The submission of an amendment to a banking law is a constitutional step in the legislative process, and the courts may not determine the constitutionality of such a proposed law until every step in its enactment has been taken. Thus, in the case of Spies v Byers,[27] it was held that the court had no power, before the act was submitted to the people, to determine whether the private bank bill of 1917 had been validly enacted.

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

Extent of liability—provisions self executing. Under this section, the liability of a bank stockholder for the debts of the bank includes both the amount invested by him in the stock of the bank and a further amount, equal thereto, for which he is personally liable, but it is only for the latter sum that he may be sued by creditors of the bank. Thus, if a bank which has a capital of $50,000, owes $100,000, and is unable to pay its debts, and A owns $500 worth of the bank stock, the creditors may not only subject the capital of the bank, including A's $500, to the payment of their claims, but they may, in addition, since the capital is insufficient to liquidate the debt, sue A personally, for $500, the amount of the stock held by him. They may not, however, hold him personally liable for more than that amount. The constitution does not contemplate that, in addition to having his share of the capital stock subjected to the payment of claims against the bank, a stockholder shall also be personally liable to creditors of the bank for an amount equal to twice the value of the stock held by him, as was suggested in an early case.[28]

This liability extends, however, only to the obligations contracted or incurred by the bank while the stockholder holds the stock, irrespective of when those obligations mature. It does not extend to obligations maturing or becoming payable while he owns the stock, when the credit was extended to the bank prior to the time when he became a stockholder. The term "liabilities accruing" does not mean "causes of action accruing." An assignment of the stock does not operate to release the original stockholder from his constitutional liability.[29]

[24] Dupee v Swigert, 127 Ill. 494 (1889).
[25] People v La Salle treet Bank, 269 Ill. 518 (1915).
[26] Report Attorney General 1916, pp. 146, 350.
[27] 287 Ill. 627 (1919).
[28] Golden v Cervenka, 278 Ill. 409 (1917).
[29] Golden v Cervenka, 278 Ill. 409 (1917).

Each stockholder is liable, to the extent indicated, by virtue of the constitution, for all of the debts of the bank. For example, a section of an act was held void which provided that a claim against a bank should be apportioned ratably among the stockholders, and that each stockholder should be liable only for his *pro rata* share of the debt. However, in this case the court held that the act as a whole would not be rendered incapable of enforcement by the invalidity of the section referred to, for the reason that: "The constitutional provision in regard to the liabilities of stockholders in banking institutions is a self-executing provision, and needs no legislation to enforce it. Being a part of the organic law, it requires no popular election to make its effect more binding. No banking Act can go into operation in this state of which the constitutional provision in question shall not be a part. By virtue of the inherent power of the constitution itself, such provision is grafted into every banking law, which is passed by the legislature or submitted to the votes of the people."[20]

Enforcement. The constitutional liability of bank stockholders for debts of the bank runs to the creditors, personally. It is a several and individual liability on the part of each stockholder to each creditor, and not to the creditors as a class. It is the creditors alone, individually or collectively, who can enforce the stockholders' liability. The creditors' rights being granted by the constitution, they cannot be restricted by the legislature. Therefore, the General Assembly is without power to authorize the collection of the debts due the creditors, and the consequent discharge of the stockholders from liability, by a receiver appointed by a court, without the creditors' consent.[21]

Minors. The Attorney General has ruled that the section under consideration prevents the issuance of bank stock to a minor, for the reason that the privilege of a minor to repudiate his stock purchase is incompatible with the unusual and absolute liability of bank stockholders for the debts of the bank.[22]

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

Since 1866, the federal government, by a prohibitive tax, has prevented the issue of bank notes and bills of credit by all banks other than national banks. This, of course, was known to the framers of the constitution, in 1870. The provisions relating to banks of issue were inserted, however, to become operative in case the tax should be removed and the issue of bank notes and bills of credit by state banks should again become practicable.[23]

[20] Dupee v Swigert, 127 Ill. 494 (1889).
[21] Golden v Cervenka, 278 Ill. 409 (1917).
[22] Report Attorney General 1918, p. 77.
[23] Debates, pp. 1678-85.

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

(As to be present status of banks of issue in this state, see discussion article 11, section 7.)

Section 9. Every railroad corporation organized or doing business in this State, under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made and in which shall be kept, for public inspection, books, in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers. The directors of every railroad corporation shall, annually, make a report, under oath, to the Auditor of Public Accounts, or some officer to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. And the General Assembly shall pass laws enforcing by suitable penalties the provisions of this section.

Corporate acts in other states. The federal circuit court held that this section did not render invalid corporate bonds executed at the New York office of an Illinois railroad corporation. The court said that the constitution "does not prevent the corporation from having [in addition to its local office] an office beyond the limits of the state, nor invalidate the acts of such corporations when performed out of the state."[34]

Section 10. The rolling stock, and all other movable property belonging to any railroad company or corporation in this State, shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and

[34] Hervey v I. M. Ry. Co., 28 Fed. 169 (1884).

the General Assembly shall pass no law exempting any such property from execution and sale.

Effect on early decisions. Prior to the adoption of the constitution of 1870, the Supreme Court had held that the locomotives, freight and passenger cars, rails, ties and spikes, belonging to a railroad, constituted real property, at least for the purposes of railroad mortgages.[35] It will be noted that the express provisions of the section under consideration apparently establish a policy which is the opposite of that enunciated by these decisions.

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

Franchises. The term "franchises," as used in this section, includes not only the right to exist as a corporation, but the power to exercise the right of eminent domain, as well.[36]

Consolidations. The federal circuit court of appeals has held that the term "parallel," as used in this section, does not necessarily mean a line which is at all points equi-distant from the other. It means railroads running in the same general direction, which are in a position to compete with each other. Nor, does the term "consolidation," as used in this section, necessarily mean a merger or the creation of a new company of a permanent nature. Rather, that term is used in the sense of "union" and applies to schemes to unite either the stock, franchises or property of two parallel or competing roads. In this case, the court held that this section operated to render void a ten year lease of one railroad to another, both being local belt lines running along various routes from railroad termini in East St. Louis to a series of Mississippi river ferries.[37]

This section does not prohibit the building by one railroad, of another and parallel track, to be used in connection with the original line as a double track system. The second line is not a competing railroad within the meaning of the constitution.[38]

This section applies, so far as consolidations are concerned, to railroads only. It does not operate to prohibit the consolidation of parallel or competing electric street railways.[39]

Residence of directors. The Attorney General has suggested that, even in the absence of legislation, this section is mandatory and self executing

[35] Palmer v Forbes, 23 Ill. 301 (1860); Hunt v Bullock, 23 Ill. 320 (1860); Titus v Mabee, 25 Ill. 257 (1861).
[36] C. W. & I. Ry. Co. v Dunbar, 95 Ill. 571 (1880).
[37] E. St. L. C. Ry. Co. v Jarvis, 92 Fed. 735 (1899).
[38] C. & M. E. Ry. Co. v C. & N. W. Ry. Co., 211 Ill. 352 (1904).
[39] Venner v C. C. Ry. Co., 258 Ill. 523 (1913).

as to the residence requirements of railroad directors.[40] The Supreme Court held, however, in the case of O. & M. Ry. Co. v People,[41] that these requirements only apply to the directors of Illinois railroad corporations, and that they did not therefore, apply to the directors of a railroad corporation existing as the result of a merger of the stock, property and franchises, of Illinois, Indiana and Ohio corporations, under the laws of these three states.

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

Public highways. Under this section, railroads are public highways only in a restricted sense. They are not public highways in the sense of public wagon roads upon which any one may travel with his own conveyance. They are public highways merely to the extent that all persons have an equal right upon them for travel and for the carriage of their goods, in the trains operated by the railroads, and to the further extent that the railroads are subject to control by governmental agencies so far as their relations with the public are concerned.[42]

It is the duty of railroads, under this section, to carry both passengers and freight, and a railroad incorporated under the laws of this state, which is engaged exclusively in the transportation of freight, may be compelled, by *mandamus*, to operate passenger trains.[43]

Moreover, the rolling stock of a railroad being personal property under the provisions of section 10 of this article, a railroad engaged in the business of switching and hauling the freight cars of other railroads, over its line, will under this section be held to the liabilities of a common carrier of those cars.[44]

Connecting tracks. The Supreme Court has held that connecting tracks, constructed by the shipper, over lands belonging to the shipper, connecting a coal mine or a manufacturing plant with the main line of a railroad, are not public highways within the meaning of this section and that they are not subject to a public use. For example it was held that the public had no right to use such a track for the shipment of supplies to a state charitable institution located near by, and that a railroad could be enjoined from making such a use of the connecting track.[45] However, a connecting track constructed by a manufacturing company in a city street, under a city ordinance, connecting its plant with a railroad line, has been held to be de-

[40] Report Attorney General 1914, p. 1224.
[41] 123 Ill. 467 (1888).
[42] T. P. & W. Ry. Co. v Pence, 68 Ill. 524 (1873); Lord v City of Chicago, 274 Ill. 313 (1916).
[43] L. & M. Ry. Co. v People, 222 Ill. 242 (1906); People v St. L. A. & T. H. Ry. Co., 176 Ill. 512 (1898).
[44] P. & P. U. Ry. Co. v C. R. I. & P. Ry. Co., 109 Ill. 135 (1884); U. S. v U. S. Y. S. Co., 192 Fed. 330 (1912).
[45] Koelle v Knecht, 99 Ill. 396 (1881); Scholl Bros. v P. & P. U. Ry. Co., 276 Ill. 267 (1916); Kenna v C. H. & S. E. Ry. Co., 284 Ill. 301 (1918).

voted to a public use and to be a public highway, within the meaning of the constitution.[46] The distinction seems to be that in the one case, the track was laid by the shipper upon his own property, for a private use, while in the other case, the track was built upon lands belonging to the city as an agency of the public, and nothing appeared to indicate that the track was for the private convenience of the shipper. Moreover, the latter situation was dealt with in cases relating, primarily, to the question as to whether the city could grant the use of its streets for other than a public use.

Maximum rates. The Act of 1907, fixing a maximum rate for railroad passenger traffic in Illinois of two cents per mile, was enacted pursuant to this section. The constitution contemplates, however, that laws establishing reasonable maximum rates of charges shall merely fix maximum rates, beyond which the railroads cannot go in fixing their charges. The General Assembly is not precluded, therefore, by having fixed a maximum rate, from authorizing the public utilities commission to fix a rate for an interurban electric railroad of less than the maximum rate of two cents per mile.[47]

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

Money, labor or property received and applied. This section does not mean that stocks and bonds of a railroad corporation are void, unless issued in satisfaction of an existing liability of the company on account of money, labor or property previously received and applied to a corporate purpose. Its framers did not intend to preclude the usual and customary manner of financing railroads by the sale of their securities for money, labor or property, to be used thereafter for corporate purposes. This section does prevent, however, the fraudulent issue of such securities, on the pretense of using the proceeds for corporate purposes when, in fact, the proceeds are not and never were intended to be so used, and when the securities do not represent money, labor or property, either in posession or in expectancy. Thus, railroads may not lend, give away or sell their stocks and bonds on credit, nor may they dispose of them except for a present consideration and for a legitimate corporate purpose.[48]

However, if railroad stocks or bonds are properly issued within the limitations suggested, and then, later, the proceeds thereof are actually misappropriated or used for an illegitimate purpose, the corporation will not be allowed to avoid its liability to holders of the securities on the ground that the securities were void when issued. To this extent, at least, securities will not be held to be void in the hands of innocent purchasers. "In

[46] People v Blocki, 203 Ill. 363 (1903); Chicago Dock Co. v Garrity, 115 Ill. 155 (1885); Truesdale v P. G. S. Co., 101 Ill. 561 (1882).
[47] Public Utilities Commission v C. & W. T. Ry. Co., 275 Ill. 555 (1916).
[48] P. & S. Ry. Co. v Thompson, 103 Ill. 187 (1882); People v U. E. Ry. Co., 263 Ill. 32 (1914); Ry. Co. v Dow, 120 U. S. 287.

short, when one, for a present consideration, in good faith purchases bonds or stocks in the regular course of business from a railroad company, and such consideration is accepted by the proper officers of the company, and nothing appears to show that it is to be used or applied to other than legitimate corporate purposes, such bonds or stocks, when thus issued, will be regarded as being issued for money, labor or property 'actually received and applied' within the meaning of the constitutional provision."[49]

This section not only forbids the issue of railroad securities where no money, labor or property is received, as a consideration, for corporate purposes; it also forbids a reckless, fraudulent or dishonest issue in excess of the consideration received. The mere fact, however, that the value of the securities issued exceeds the value of the money, labor or property received therefor will not render the transaction fraudulent and the issue void. Thus, where all that appeared in a petition by a state's attorney for leave to file an information in the nature of *quo warranto* was that $1,400,000 worth of securities had been issued for money, labor and property worth but $400,000, it was held that not even a *prima facie* case had been made out, and that to make the securities void under the constitution, there must appear, in addition to such facts, the further fact either of fraudulent intent or of such an excess that the law will presume fraud.[50] Such a case was held to have been made out when it was shown in a similar petition that as a part of a fraudulent scheme to evade the constitutional requirement in making a dishonest and fictitious issue of stocks and bonds, first, $5,000,000 worth of stock had been given away to another corporation, at par, without any consideration whatever, and, second, $4,387,000 worth of bonds had been issued and delivered for the construction of a railroad which, when completed and equipped, did not cost more than half that sum.[51]

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

The Supreme Court has held that this section "was inserted out of abundance of caution, and simply declares such property to be subject to the recognized power of eminent domain, and, like other private property, protected by the limitation, that private property shall not be taken without just compensation, to be ascertained by a jury, unless the same is to be made by the State. It is simply a declaration of the law as to the power of the State, as held and known before any such declaration was made. It is simply a recognition of the truth, (and the placing of it beyond cavil), that the property of corporations is, insofar as concerns the ownership thereof, and insofar as concerns the profit or gain to be made from its use—to all intents and purposes—private property, although applied to a use in which the public have an interest."[52]

(As to the whole subject of eminent domain, see discussion article 2, section 13.)

[49] P. & S. Ry. Co. v Thompson, 103 Ill. 187 (1882).
[50] People v U. E. Ry. Co., 263 Ill. 32 (1914).
[51] People v U. E. Ry. Co., 269 Ill. 212 (1915).
[52] Mitchell v I. & St. L. Ry. & C. Co., 68 Ill. 286 (1873); L. S. & M. S. Ry. Co. v C. & W. I. Ry. Co., 97 Ill. 506 (1881); A. & S. Ry. Co. v Vandalia Ry. Co., 268 Ill. 68 (1915).

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

Franchises. The term "franchises", as used in this section includes not only the power to exist as a corporation but the power of a railroad corporation to exercise the right of eminent domain, as well.[53]

Joint rates. The Attorney General has ruled that this section authorizes and requires the General Assembly not merely to regulate the charges made by each carrier separately, but to regulate, also, the joint through rate tariff agreements made by two railroads hauling the goods over different parts of the same route.[54]

Unjust discriminations. The General Assembly has the power, irrespective of this section, by virtue of its "police power," to enact laws preventing unjust and unreasonable discriminations in railroad rates and to enforce that legislation by adequate and appropriate methods. (See discussion, article 2, section 2). Moreover, the railroad charters were originally granted subject to the common law duty of carriers to charge reasonable rates which would not unjustly discriminate between either individuals or communities. This constitutional provision merely makes it mandatory for the General Assembly to enact legislation embodying these policies. However, the discriminations forbidden both by the common law and by the constitution are those which are unjust or unreasonable in fact. Both the common law and the constitution recognize that not all discriminations are prohibited. By implication, therefore, this section denies to the General Assembly the power to prohibit discriminations which are neither unjust nor unreasonable.[55]

Penalties. The constitutional convention contemplated that the penalty of forfeiture of franchises should be invoked only in cases of extreme necessity, after more lenient penalties, such as graduated fines, had proved to be ineffectual. Thus, a statutory provision requiring the forfeiture of all franchises for the first offense of unreasonable or unjust discrimination, violates this section.[56] (See discussion, article 2, section 11.)

(As to the extent to which the General Assembly may delegate to a commission the power to fix railroad rates, see discussion, article 4, section 1, subheading, "Delegation of legislative power.")

[53] C. & W. I. Ry. Co. v Dunbar, 95 Ill. 571 (1880).
[54] Report Attorney General 1908, p. 526.
[55] C. & A. Ry. Co. v People, 67 Ill. 11 (1873).
[56] C. & A. Ry. Co. v People, 67 Ill. 11 (1873).

ARTICLE XII—MILITIA

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

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

Section 3. All militia officers shall be commissioned by the Governor, and may hold their commissions for such time as the General Assembly may provide.

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

Section 5. The military records, banners and relics of the State, shall be preserved as an enduring memorial of the patriotism and valor of Illinois, and it shall be the duty of the General Assembly to provide by law for the safe-keeping of the same.

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

The power vested in Congress to organize, arm, equip and discipline the state militia is not exclusive. The state may exercise concurrent power of legislation not inconsistent with that of Congress. The control and authority over the militia is retained by the state except in so far as that power has been vested in Congress. The state may provide for organizing such portion of the militia into an active force as it may deem necessary to enforce its laws and maintain order. The organization of the active militia into the Illinois national guard is not a violation of the prohibition in the United States constitution against the keeping of troops by a state in time of peace. When the militia is not in the national service, the General Assembly may direct as to the organization of the militia. It is within the police power of the state to prohibit the organization of military companies other than those organized by the state or the United States.[1]

The Attorney General has said that a member of the national guard is subject to arrest by the civil authorities for treason, felony or breach of the peace even while engaged in active service for the state. It is no bar to a prosecution in the civil courts that the offender has been tried by court martial and punished for the same offense.[2]

(In connection with this article, see discussion article 2, section 15.)

[1] Dunne v People, 94 Ill. 120 (1879).
[2] Report Attorney General 1915, p. 230.

ARTICLE XIII—WAREHOUSES

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

In general. The warehouse article as a whole impliedly requires operators of public warehouses to refrain from practices that might have a tendency to make their private interests adverse to their duties as public warehousemen. For example, it has been held that, even in the absence of legislation, a public warehouseman is prohibited by this article from mixing his own grain with that of his customers and issuing warehouse receipts to himself therefor. Similarly, the General Assembly is without power to authorize such a practice.[1]

The provisions of the section under consideration contemplate that grain belonging to different owners will not, normally, be kept separate and that the holders of warehouse receipts will not, normally, receive back the same identical grains stored.[2]

Regulation of public warehouses. This article is not the source of the power of the General Assembly to regulate public warehouses. The General Assembly has the power to regulate public warehouses, that is, warehouses devoted to a public use and affected by a public interest, by virtue of what is commonly called the "police power."[3] (See discussion article 2, section 2.)

However, an elevator or warehouse where grain or other property is stored for a compensation, is not necessarily made a public warehouse for purposes of state regulation by this constitutional provision. It must, to be a public warehouse, for purposes of regulation by the state, be devoted to a public use and be affected by a public interest, in fact. In other words, it is the public agency and not the private business which the state, by the warehouse article of the constitution seeks to regulate. For example, it has been held that a cold storage warehouse, wherein fruit, vegetables, and dairy products are regularly stored for a compensation for residents of several states, and which is open to the use of all the members of the public, is a public warehouse for purposes of regulation by the state, not because of the provisions of the section under consideration, alone, but because it is devoted to a public use, in fact. On the other hand a grist mill does not become a public warehouse by virtue of this section of the constitution, when, infrequently, and in isolated cases, the owner of the mill stores grain for others, with or without charge, under an option to buy it and use it in his mill.[4]

[1] Hannah v People, 198 Ill. 77 (1902).
[2] Snydacker v Blatchley, 177 Ill. 506 (1899).
[3] Munn v People, 69 Ill. 80 (1873); Munn v Illinois, 94 U. S. 113 (1876); Public Utilities Commission v Monarch Refrigerator Co., 267 Ill. 528 (1915).
[4] Munn v People, 69 Ill. 80 (1873); Public Utilities Comission v Monarch Refrigerator Co., 267 Ill. 528 (1915); Mayer v Springer, 192 Ill. 270 (1901).

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

(See discussion article 13, section 7.)

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

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

The provisions of this section and those of section 6 of this article authorize the enactment of legislation embracing the policies therein enunciated, applicable to railroads and common carriers. Therefore, since the constitution establishes both the policy of the regulation and the classification of those subject thereto, legislation which requires railroads to maintain scales for the weighing of grain at stations where grain is shipped, cannot be held invalid as being either unreasonable or class legislation. (See discussion article 13, section 7.) Moreover, this section makes the carrier responsible for any loss of grain in transit, to the full extent of its common law liability in such cases. Its only available excuses for such a loss are those recognized at common law, namely, an act of God, or the public enemy, or the contributory negligence of the shipper. Therefore, the carrier may not limit its liability, by a provision in a bill of lading, for loss caused by leakage, shrinkage or discrepancies in elevator weights. Such provisions are contrary to this section and are void.[a]

[a] Shellabarger Elevator Co. v I. C. Ry. Co., 278 Ill. 333 (1917).

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

Track which can be used. The Supreme Court has held that the phrase in the first clause of this section, "any track . . . used, or which can be used, by such railroad companies," includes only those connecting tracks, spurs or switch tracks which can lawfully be used by the railroad company by virtue of some contract with, or license or permission received from the owner thereof. Moreover, in the absence of such authority, the mere fact that the track has been used, infrequently, without right, will not bring the case within this rule. In other words, the constitution can not be construed to compel a trespass.[6]

Duty to permit connections. Under the second clause of this section, a railroad company must permit connections to be made with its tracks from coal mines, coal banks, coal yards and public warehouses. (As to whether these connections, when made, are subject to a public use, see discussion article 11, section 12, subheading, "Connecting tracks.") The railroad company may exercise a reasonable discretion as to the point of connection at the time it is made, but not afterward. Once a connection has been made, it may not be discontinued by the railroad. If the privilege is abused, other remedies than removal must be resorted to, to stop and procure reparation for the abuse. If the connection is disrupted by the railroad it must be restored, and the General Assembly is not prohibited from authorizing the public utilities commission to require the railroad company, in reasonable cases, to restore the connection at its own expense.[7]

The duty of the railroad company to permit connections to be made and maintained between its line and a public warehouse, however, does not grant a perpetual right to the shipper to have the connection maintained at the original grade. A city, for the public safety, may require the main line to be elevated. Moreover, the railroad company has the right to elevate its tracks in good faith, for efficiency, economy or safety of operation. In such cases, the connection may be severed, but the warehouseman has the right, under the provisions of this section, to a connection at the new grade.[8]

It has been held that the second clause of this section, relative to connections with coal yards and coal banks, refers only to the duties of carriers and not to those of the owners of the coal banks or coal yards. Therefore, it does not have any bearing on the question as to whether coal mining is a public utility for purposes of regulation by legislation applicable to that business alone.[9]

[6] Hoyt v C. B. & Q. Ry. Co., 93 Ill. 601 (1879); C. M. & N. Ry. Co. v National Elevator Co., 153 Ill. 70 (1894).

[7] Chicago Dock Co. v Garrity, 115 Ill. 155 (1885); C. & A. Ry. Co. v Suffern, 129 Ill. 274 (1889); Public Utilities Commission v L. E. & W. Ry. Co., 277 Ill. 574 (1917); U. S. Adv. Opinions, 1918-19, p. 410.

[8] Lord v City of Chicago, 274 Ill. 313 (1916).

[9] Millett v People, 117 Ill. 294 (1886).

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

(See discussion article 13, sections 1, 4.)

Section 7. The General Assembly shall pass laws for the inspection of grain, for the protection of producers, shippers and receivers of grain and produce.

The General Assembly has the power to pass grain inspection laws and to vest the enforcement thereof in a commission, irrespective of this constitutional provision, by virtue of its "police power." (See discussion article 2, section 2.) The Supreme Court has held that under this section, "no system is prescribed, and the General Assembly is, therefore, left to the exercise of its discretion in the enactment of statutes, in compliance with this mandate." Legislation of this character, moreover, may be made applicable only to cities of more than 100,000 population, for "the constitution itself, in article 13, section 2, discriminates between public warehouses in cities of not less than 100,000 inhabitants, and those in cities of less population, and recognizes that there is a necessity for regulations in respect to the former, not necessary to the latter."[19]

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

ARTICLE XIV—AMENDMENTS TO THE CONSTITUTION

Section 1. Whenever two-thirds of the members of each house of the General Assembly shall, by a vote entered upon the journals thereof, concur that a Convention is necessary to revise, alter or amend the constitution, the question shall be submitted to the electors at the next general election. If a majority voting at the election vote for a convention, the General Assembly shall, at the next session, provide for a convention, to consist of double the number of members of the senate, to be elected in the same manner, at the same places, and in the same districts. The General Assembly shall, in the act calling the Convention, designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the expenses necessarily incurred by the convention in the performance of its duties. Before proceeding the members shall take an oath to support the Constitution of the United States, and of the State of Illinois, and to faithfully discharge their duties as members of the Convention. The qualification of members shall be the same as that of members of the Senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the General Assembly. Said Convention shall meet within three months after such election, and prepare such revision, alteration or amendments of the Constitution as shall be deemed necessary, which shall be submitted to the electors for their ratification or rejection, at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted and approved, by a majority of the electors voting at the election, no such revision, alterations or amendments shall take effect.

This section has never been interpreted by the Supreme Court. The Attorney General, however, has been called upon to construe some of its provisions.

Women cannot vote on the question of calling a constitutional convention; nor can they vote for delegates to the convention.[1] (See discussion article 7, section 1, subheading, "Woman suffrage").

A member of the General Assembly may be a candidate for the position of delegate but. if he is elected and qualifies as a delegate, he vacates his seat in the General Assembly.[2] (See discussion article 3, section 3, subheading, "Qualifications of members of the General Assembly").

Delegates must be nominated and elected in the same manner as

[1] Report Attorney General 1917-18, p. 1128. See Scown v Czarnecki, 264 Ill. 305 (1914).

[2] Opinion Attorney General, March 1, 1919.

senators and, since senators are nominated in primary elections, delegates must also be nominated in primary elections.[3]

(For a further discussion of the provisions of this section, see Constitutional Conventions in Illinois, Second Edition, pp. 50-56)

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

Vote required. An amendment to the constitution is not adopted unless it is voted upon favorably by a majority of the voters participating in the election at which it is submitted. The fact that it receives the favorable votes of a majority of those voting for members of the General Assembly is not sufficient, unless that majority is equal to a majority of the total number of votes cast at the election.[4] The phrase "majority of votes" means a majority of male votes, as women cannot vote on the question of adopting a constitutional amendment.[5] (See discussion article 7, section 1, subheading, "Woman suffrage").

Amendments to more than one article. While the General Assembly has no power to propose amendments to more than one article of the constitution at the same session, this does not deprive the General Assembly of the power to propose an express amendment to one article, the effect of which will be to work implied changes in other articles, provided that the implied changes are germane and incidental to the purpose of the express amendment.[6] An amendment, however, must be proposed to that article of the constitution to which it has the most definite relationship. For example, the Attorney General has held that a constitutional amendment with reference to taxation must be proposed to the article relating to revenue, and cannot be proposed to the article relating to the legislative department.[7] The Attorney General has also held that this provision of the constitution cannot be evaded by having the General Assembly

[3] Opinion Attorney General, January 28, 1919.
[4] People v Stevenson, 281 Ill. 17 (1917).
[5] Report Attorney General 1916, pp. 146, 351. See Scown v Czarnecki, 264 Ill. 305 (1914).
[6] City of Chicago v Reeves, 220 Ill. 274 (1906).
[7] Report Attorney General 1913, p. 100. See City of Chicago v Reeves, 220 Ill, 274 (1906).

propose an amendment to one article at its regular session, and then calling a special session of the General Assembly at which an amendment to another article is proposed, both to be submitted to the voters at the same election; in his opinion amendments to only one article of the constitution can be submitted at any given election.[8] (See Constitutional Conventions in Illinois, Second Edition, pp. 29-35, 46, 98, 135-137).

Date of going into effect. An amendment to the constitution becomes a potential and operative part of the constitution as soon as it is proclaimed adopted by the proper canvassing authorities.[9]

[8] Report Attorney General 1912, p. 102.
[9] People v Board of Supervisors, 100 Ill. 195 (1881).

SECTIONS SEPARATELY SUBMITTED

ILLINOIS CENTRAL RAILROAD

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

The Illinois Central Railroad was chartered in 1851. By its charter it was authorized to construct a railroad "from the southern terminus of the Illinois and Michigan canal, to the city of Cairo, with a branch to the city of Chicago, and also a branch, via the city of Galena, to a point on the Mississippi river, opposite the town of Dubuque, in the state of Iowa." Whenever this line crossed lands owned by the state, the charter granted a right of way not exceeding two hundred feet in width across those lands. In addition the railroad was granted 2,595,000 acres of land, received by the state from the federal government for railroad purposes. In return for these grants the railroad was required to pay five per cent of its annual gross income to the state. Moreover, an annual tax was to be assessed by the Auditor of Public Accounts upon all the corporate assets, as determined from a statement of those assets filed annually by the company with the Auditor. If this tax should exceed three-fourths of one per cent the excess was to be deducted from the annual payment of five per cent. In case the sum of these two taxes should not equal seven per cent of the annual income of the company, it was required to pay seven per cent of its yearly income to the state in lieu of all other taxes. (Charter of Illinois Central Railroad Company, Private Laws, 1851, pp. 61-74; Brownson, History of the Illinois Central Railroad to 1870, University of Illinois studies in the Social Sciences 1915.)

During the period from 1859 to 1870 the railroad paid annually into the state treasury the seven per cent. of its gross earnings required by the charter. The proposed constitution of 1862 had a provision that the legislature should not modify, alter, remit or impair the obligation to make this payment. In the constitutional convention of 1869-70 representatives of the counties through which the railroad operated wished to have the amount received by the state under the charter distributed among the counties in which the right of way lay, in view of the fact that those counties were compelled to forego the collection of taxes from the railroad. But the opponents of this measure finally prevailed and the last clause of the section making this fund applicable solely to state purposes was adopted. (Debates, pp. 1199-1202; 1243-1256.)

This section was submitted to the people separately and was adopted by a vote of 147,032 in favor of the section, to 21,310 votes against it. The only counties in which a majority of the voters were opposed to the adoption of the section were Champaign, Fayette, Iroquois, Kankakee and Marion. (Debates, pp. 1894-1895.)

This section has met with slight attention from the courts. However, the provisions of the charter of the company exempting it from taxation have been strictly construed. (See discussion article 9, section 3, subheading, "Commutations—Illinois Central Railroad Company.")

In the report of the case of State of Illinois v Illinois Central Railroad Company, decided by the Supreme Court in 1910,[1] there is a resumé of the relations between the railroad and the state, including the court's interpretation of the duties of the company under its charter, particularly with respect to the mode of computing its gross revenue.

MINORITY REPRESENTATION.

(See article 4, sections 7, 8).

MUNICIPAL SUBSCRIPTION TO RAILROADS OR PRIVATE CORPORATIONS

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

Railroads. The constitution of 1848 provided in section 38 of article 3 that the credit of the state should not be given in aid of any individual, association or corporation. (See Constitutional Conventions in Illinois, Second Edition, p. 13). This precluded the state from making donations to railroads or making subscriptions to railroad stocks, but it did not prevent counties, cities, townships and other municipalities, when authorized by the General Assembly, from making such donations or subscriptions.[2] When the constitutional convention of 1869-70 assembled, the municipalities of the state were engaged in a reckless competition to secure railroads by voting extravagant subsidies. This provision of the constitution was inserted to stop this practice. A separate vote was had upon this section and it was adopted by a large majority.

By far the greater number of cases arising under this section have arisen with reference to the construction to be given to the last clause, which provides that subscriptions may be made after the adoption of the constitution "where the same have been authorized, under existing laws by a vote of the people of such municipalities prior to such adoption". In the main it appears that four questions arise with respect to whether or not specific subsidies fall within this saving clause:

(1) The first question relates to the exact date from which the voting of subscriptions is prohibited. In one case a subscription was voted at a

[1] 246 Ill. 188; see. also. People v I. C. R. R. Co., 273 Ill. 220 (1916); Report Attorney General 1914. pp. 44-76; 1916. pp. 31-2.

[2] Prettyman v Supervisors of Tazewell County, 19 Ill. 406 (1858).

town meeting held at 9:00 A. M., July 2, 1870, the date of the election at which the constitution was adopted.[3] The Supreme Court of the United States held that this subscription was a valid subscription within the last proviso of the section, since it was voted prior to the adoption of the constitution.[4] However, in another case, where the proposition of railroad aid and the matter of adopting the constitution were balloted upon at the same polls the Supreme Court of Illinois held that the vote authorizing the subscription was not taken prior to the adoption of the constitution.[5]

(2) Another question arose with respect to the interpretation to be given the words "under existing laws" in the clause which allows subscriptions to be made after the adoption of the constitution if they were "authorized under existing laws by a vote of the people of such municipalities prior to such adoption." The Supreme Court took the view that the words "under existing laws" referred to laws existing at the time of the vote of the people of the particular municipality, rather than laws existing at the time of the adoption of the constitution. Thus where a subscription was voted in 1867 without legislative authority, and in 1869 an act was passed validating such election, it was held that the subscription could not be made after July 2, 1870, since it was not authorized under existing laws prior to the adoption of the constitution.[6]

(3) A somewhat peculiar question arose where subscriptions were authorized upon certain conditions by vote taken prior to 1870, and after that date it was attempted to make the subscription upon altered conditions. The Supreme Court took the view that a subscription could be made after the adoption of the constitution only upon the exact condition, by which the people, by the vote taken prior to such adoption, had authorized it to be made.[7]

(4) It will be noticed that the first portion of this section inhibits **both** donations and subscriptions, while the saving clause by its terms refers only to subscriptions. However, the Supreme Court held that donations were impliedly included within the saving proviso.[8]

(See Schedule, section 24).

Private corporations. While, under the constitution of 1848 the General Assembly might authorize counties, cities, townships and other municipalities to make donations to, or subscriptions to the capital stock of railroads,[9] it was held that such municipalities could not be authorized to make donations to private manufacturing corporations, since such an expenditure of municipal funds would not be for a "corporate purpose" within the purview of section 5 of article 9 of the constitution of 1848.[10] (See discussion article 9, section 9, subheading, "Corporate purposes."). However, in one case this separate section has been applied in holding invalid a municipal donation to a private corporation, without any reference to the question of whether the donation was for a corporate purpose. In 1867 the General Assembly incorporated the Washingtonian Home for the care of inebriates, and provided that the city of Chicago should pay to the Home one-tenth of the money received from liquor licenses. The Supreme Court, without any consideration of whether this donation was for a "corporate purpose", held that it was invalid as a donation to a private corporation within the prohibition of the section under discussion.[11] But a statute mak-

[3] This section was submitted to the people separately, and the Supreme Court held that, under section 12 of the schedule, sections submitted separately took effect upon the day upon which they were approved by the people (July 2, 1870), instead of the date specified in the schedule for the remainder of the constitution to go into effect (August 8, 1870). See Schall v Bowman, 62 Ill. 321 (1872).

[4] Louisville v Savings Bank, 104 U. S. 469 (1881).
[5] People v Town of Bishop, 111 Ill. 124 (1884).
[6] Williams v People, 132 Ill. 574 (1890).
[7] Richeson v People, 115 Ill. 450 (1886).
[8] C. & I. R. R. Co. v Pinckney, 74 Ill. 277 (1874).
[9] Prettyman v Supervisors of Tazewell County, 19 Ill. 406 (1858).
[10] Mather v City of Ottawa, 114 Ill. 659 (1885); Bissell v City of Kankakee, 64 Ill. 249, (1872); English v People, 96 Ill. 566 (1880).
[11] Washingtonian Home v City of Chicago, 157 Ill. 414 (1895).

ing a city liable for loss of private property occasioned by the action of a mob was held not to fall within the inhibition of this section.[12] It was also held that an agreement between the city of Chicago and a railroad, whereby the city agreed to pay all damage sustained by private property owners in the elevation of the railroad tracks, did not violate this section.[13]

CANALS

The Illinois and Michigan Canal, or other canal or waterway owned by the State shall never be sold or leased until the specific proposition for the sale or lease thereof shall first have been submitted to a vote of the people of the State at a general election, and have been approved by a majority of all the votes polled at such election. The General Assembly shall never loan the credit of the State or make appropriations from the treasury thereof, in aid of railroads or canals;

Provided, that any surplus earnings of any canal, waterway or water power may be appropriated or pledged for its enlargement, maintenance or extension; and,

Provided, further, that the General Assembly may, by suitable legislation, provide for the construction of a deep waterway or canal from the present water power plant of the Sanitary District of Chicago at or near Lockport, in the township of Lockport, in the county of Will, to a point in the Illinois river at or near Utica, which may be practical for a general plan and scheme of deep waterway along a route which may be deemed most advantageous for such plan of deep waterway; and for the erection, equipment and maintenance of power plants, locks, bridges, dams and appliances sufficient and suitable for the development and utilization of the water power thereof; and authorize the issue, from time to time, of bonds of this State in a total amount not to exceed twenty million dollars, which shall draw interest, payable semi-annually, at a rate not to exceed four per cent per annum, the proceeds whereof may be applied as the General Assembly may provide, in the construction of said waterway and in the erection, equipment and maintenance of said power plants, locks, bridges, dams and appliances.

All power developed from said waterway may be leased in part or in whole, as the General Assembly may by law provide, but in the event of any lease being so executed, the rental specified therein for water power shall be subject to a revaluation each ten years of the term created, and the income therefrom shall be paid into the treasury of the State.[14]

[12] City of Chicago v Cement Co., 178 Ill. 372 (1899).
[13] City of Chicago v P. C. C. C. & St. L. Ry. Co., 244 Ill., 220 (1910).
[14] As amended by the seventh amendment to the constitution. The amendment was proposed by a resolution of the general assembly in 1907. It was ratified by the voters on November 3, 1908, and proclaimed adopted on Novembr 24, 1908. The original section was as follows:
"The Illinois and Michigan Canal shall never be sold or leased until the specific proposition for the sale or lease thereof shall first have been submitted

Almost as soon as Illinois was admitted to statehood, the project for a canal, connecting the waters of Lake Michigan with those of the Illinois river, took form. In 1822, the federal government made the first grant of land to the state for canal purposes. The problem of financing this internal improvement proved a difficult one, and it was not until 1848 that the Illinois and Michigan Canal, connecting the south branch of the Chicago river with the Illinois river at Utica, was opened to navigation. The total cost of this improvement was approximately six and one half million dollars. At this time, and until 1871, the title to the canal was vested in a board of trustees, who managed the waterway for the benefit of its creditors. The canal had a prosperous career during this period, and in April, 1871, all of the creditors were paid and the trust was dissolved. At this time the trustees paid over to the state a balance of approximately ninety-six thousand dollars. (See Putnam, The Illinois and Michigan Canal, University of Chicago Press, 1918, pp. 61-65).

The provision against leasing or selling the canal was inserted in the constitution of 1870 to prevent the railroads from buying or leasing the canal for the purpose of drying it up, and thereby throttling competition. The second sentence providing against any appropriation of money by the General Assembly in aid of canals was inserted to prevent the canal from becoming a burden upon the state in case its expenses should exceed its revenues. (Debates, pp. 311-479; 484-487). This section was submitted to the people separately and was adopted by a large majority.

Commencing in 1879 the annual expenses of the canal exceeded the annual tolls , and the General Assembly fell into the practice of making biennial appropriations from the state treasury to cover the deficits. However, in 1904, in the case of Burke v Snively,[15] it was held that such appropriations violated this provision of the constitution. In that case the court said: "We are of the opinion that the true meaning of the constitutional provision with reference to the canal is, that the legislature should have power to operate it to the extent, and to the extent only, that the income of the canal would defray the expenses of operation, maintenance and preservation, and that no moneys shall be appropriated from the treasury of the state in aid of the operation, maintenance or preservation thereof, and that if the earnings of the canal produced a surplus, appropriations of such surplus might be made to aid in the enlargment or extension of the canal, should the legislature deem it wise to so appropriate such surplus."

The Supreme Court has held that the provision against selling or leasing the canal without a popular vote prevented the canal commissioners from giving the city of Chicago the right to maintain perpetually a sewer under the canal. All that can be given in such a case is a license, revocable at will.[16]

In 1908 this section was amended to provide for the construction of a deep waterway from Lockport to Utica. After the passage of this amendment it was urged upon the Supreme Court that an act of the General Assembly providing for an eight foot waterway from Lockport to Utica, for which the obligations of the state were to be issued, violated this section, since the proviso stipulating a "deep waterway" meant a waterway which ocean-going vessels could navigate. But the court refused to hold that an eight foot waterway was not a deep waterway.[17]

to a vote of the people of the state, at a general election, and have been approved by a majority of all the votes polled at such election.

"The General Assembly shall never loan the credit of the State or make appropriations from the treasury thereof, in aid of railroads or canals: Provided that any surplus earnings of any canal may be appropriated for its enlargement or extension."

[15] 208 Ill. 328 (1904).

[16] City of Chicago v Green, 238 Ill. 258 (1909): Report Attorney General 1914, p. 123; 1918, p. 699; but see People v Economy Power Company, 241 Ill. 290 (1909).

[17] Hubbard v Dunne, 276 Ill. 598 (1917).

CONVICT LABOR.

Hereafter it shall be unlawful for the Commissioners of any Penitentiary, or other reformatory institution in the State of Illinois, to let by contract to any person, or persons, or corporations, the labor of any convict confined within said institution.[18]

[18] The separate section relating to convict labor was added as the fourth amendment to the constitution. The amendment was proposed by resolution of the general assembly in 1885. It was ratified by the voters on November 2, 1886, and proclaimed adopted on November 22, 1886. The original amendment contains no title.

SCHEDULE

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

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

The provisions of this section are the same as those of section 1 of the schedule of the constitution of 1848. The Supreme Court had occasion to construe these provisions of the constitution of 1848 in the case of Wood v Blanchard.[1] The constitution of 1818 had expressly created the office of coroner, and had left the matter of providing for the election and duties of that officer, to the General Assembly. Legislation of that character, enacted in 1819, as amended in later years, was still in force when the constitution of 1848 was adopted. That constitution did not expressly create or continue the office of coroner. The question arose, whether, under the constitution of 1848, there was such an office as that of coroner. The General Assembly had not, since the adoption of the constitution of 1848, expressly created such an office. The court held: "If there be such an office as coroner in this State, it must depend for its existence upon legislative enactments; either those adopted by the constitution, or since passed, or upon constitutional inference; for, as before remarked, it is not expressly created by the constitution. The election law, and the law concerning sheriffs and coroners, of 1845, provide for the election of coroners, and prescribe their duties. Although the old constitution created the office, these laws would be ample, without its aid, to do so; but it is not to be denied, that they were passed with a view to fill the office already created, rather than creating it. Still, as the new constitution expressly continued in force all previous laws, not inconsistent with it, it has certainly continued these former laws in force. The legislature had the right to enact precisely such laws as these under the new constitution, and had this been done, it would thereby have created the office of coroner and prescribed his duties beyond all question. I then ask confidently, whether the convention did not do the same thing, by continuing these old laws in force? Suppose the schedule to the constitution had declared, in express terms, that the laws then in force, providing for the election of coroners and prescribing their duties, should continue in force till repealed or altered by the legislature. Who could

[1] 19 Ill. 38 (1857).

truthfully deny that it was the intention of the convention that the office of coroner should continue to exist? So that I think I may truly say that if the legislature, in passing those laws, did not intend to create the office of coroner, the convention, by continuing them in force, did intend to continue that office in existence, subject to the control of the legislature. The language of the first section of the schedule of the new constitution is this: 'That all laws in force at the adoption of this constitution, not inconsistent herewith,' 'shall continue and be as valid as if this constitution had not been adopted.' Now when we admit that the legislature might, under the new constitution, have enacted just such laws as those referred to, we admit that those laws are not inconsistent with the constitution, for the legislature could pass no laws inconsistent with it. If then they are not inconsistent with it, they are declared to be as valid as if the constitution had not been adopted. All the laws thus continued in force are, strictly speaking, reenactments by the convention, and we therefore look to that for their validity. We repeat, therefore, that we are warranted in saying that the office of coroner was continued by the adoption of the new constitution."

The court also held that this view was materially strengthened by the fact that in section 14 of the schedule of the constitution of 1848 the framers of that instrument recognized the continued existence of the office of coroner by the provision: "That if this contsitution shall be ratified by the people, the governor shall forthwith, after having ascertained the fact, issue writs of election to the sheriffs of the several counties of this state; or, in case of vacancy, to the coroners, for the election of all the officers whose election is fixed by this constitution or schedule; and it shall be the duty of said sheriffs or coroners to give at least twenty days' notice of the time and place of said election, in the manner now prescribed by law."

(It should be noted, in connection with the foregoing discussion, that although sections 1 and 14 of the schedule of the constitution of 1848 were taken over into sections 1 and 17, respectively, of the schedule of the constitution of 1870, the office of coroner was expressly created by the constitution of 1870 in sections 8 and 9 of article 10 of that instrument. The Wood v Blanchard case is discussed here, not because of the fact situation involved, but because of the principles of constitutional construction which it serves to illustrate.)

The case of City of Bloomington v Pollock,[1] arose under the provisions of section 1 of the schedule of the constitution of 1870. The facts in that case were as follows: In 1860, the city passed an ordinance fixing the grade to which a certain street was to be raised. The street was not raised to that grade until 1889. A house had been erected on a lot abutting upon the street in 1858. The house and lot were purchased by Pollock in 1878. When the street level was raised in 1889, Pollock sued the city for the damage to his property resulting from the improvement, and recovered. The city appealed, and the court held: "Another claim made is, that the ordinance, of 1860, establishing the grade to which the street was raised in 1889, was passed before the adoption of the constitution of 1870; that prior to the constitutional guaranty in that instrument of just compensation for private property damaged for public use, [article 2, section 13], the city had the right, using due care and skill, to change the surface of the street without incurring liability for resulting damage, and that therefore appellant is not bound to respond in damages in this cause. This claim is predicated upon section 1 of the schedule to the constitution . . . Assuming that the ordinance is a 'law' within the meaning of this section, yet the only effect of said section is, that the ordinance continued in force as a valid official establishment of the grade of the street, and the only 'right' preserved to the city was the right to raise the street to that grade without further legislation on its part fixing the grade determined therein as the official grade

[1] 141 Ill. 346 (1892).

of the street. If the ordinance, in fact, carries with it, as an element, immunity from the burden of compensating for damage done private property, then it is a law in regard to which it is impossible to affirm that it is 'not inconsistent' with the constitution, and in that event it is not within the purview of said section 1 of the schedule, and, by necessary implication, was repealed by section 13 of article 2 of the constitution. But, as we understand it, the sole and only function of the ordinance was to establish the grade of the street. The matter of the liability or non-liability for injury that might or might not thereafter be occasioned by bringing the street to the grade so established, was and is a matter wholly dehors the ordinance itself, and the question of such immunity or liability depends exclusively upon the mandate of the law which is in force at the time the grading is in fact done. In our opinion there is no merit in this claim of immunity made by appellant."

(See discussion article 2, section 13, subheading, "What constitutes damage".)

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

The Supreme Court has held that this section "of the schedule is clearly a saving clause inserted in the constitution, saving to the state all fines, taxes, penalties and forfeitures then due and owing to the state, and applies to nothing else. This statute, [the wife abandonment act of 1903, under which all fines imposed might be directed by the court to be paid to the wife and children instead of to the state], in nowise affects any fines, taxes, penalties or forfeitures which were due and owing to the State of Illinois at the time of the adoption of the constitution of 1870."[•]

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

Section 4. County courts for the transaction of county business in counties not having adopted township organization, shall continue in existence, and exercise their present jurisdiction until the board of county commissioners provided in this Constitution, is organized in pursuance of an act of the General Assembly; and the county courts in all other counties shall have the same power and

[•] People v Heise, 257 Ill. 443 (1913).

jurisdiction they now possess until otherwise provided by general law.

The first clause of this section did not operate to prohibit the General Assembly from conferring additional powers upon county courts in counties not under township organization, between the date of the adoption of the constitution of 1870 and the date of the organization of the board of county commissioners. The words "present jurisdiction," as used in that clause, did, however, limit the nature of the additional powers that might be conferred upon those courts to the type of jurisdiction exercised at the time of the adoption of the new constitution. For example, in the case of Shaw v Hill,[4] the facts were as follows: An act of 1872 authorized the county court to call elections relating to the removal of county seats. An order for such an election was entered by the county court in a county not under township organization. It was objected that the statute could not, in view of the provisions of this section, apply to county courts in such counties. The court held: "The 'board of county commissioners,' which, by section 6 of article 10 of the constitution of 1870, will succeed the present county court in the transaction of county business in counties not under township organization, has not yet been elected, and will not be until in November, 1873. The fourth section of the schedule of the constitution of 1870, continued in existence the county court for the transaction of county business in counties which had not adopted township organization, until the election of the 'board of county commissioners,' and authorized such courts to 'exercise their present jurisdiction'. The words 'present jurisdiction' cannot be construed with reference to laws in existence at the time the constitution went into operation. They are not a prohibition upon the legislature in the enactment of any additional laws regulating such courts, but are to be regarded as a mere limitation upon the power to change the jurisdiction from 'county business' to civil or criminal causes." (See article 10, section 6.)

The second clause of this section was held to have preserved a particular jurisdiction conferred by a special act of 1865 upon a county court in a county under township organization, until the enactment in 1872 of a general law defining the jurisdiction of all county courts. That statute, which was passed in compliance with the requirements of article 6, sections 18 and 29, as to the uniformity of the jurisdiction of county courts, necessarily, in view of those sections and of this clause, had the effect of repealing the special act of 1865, by implication.[5]

(See discussion article 6, section 18, subheading, "Statutory jurisdiction," and article 6, section 29, subheadings, "Purpose of the section," and "Provisions self-executing.")

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

This section continued in existence, subject to legislative action, the city courts created by the General Assembly pursuant to the provisions of article 5, section 1 of the constitution of 1848. These courts were not specifically enumerated in the constitution of 1870. The constitution did not, therefore, prohibit the General Assembly from abolishing, in 1871,

[4] 67 Ill. 455 (1873); Broadwell v People, 76 Ill. 554 (1875).
[5] Blake v Peckham, 64 Ill. 362 (1872).

a particular city court created by a special act of 1869. A general city court act of 1874 was construed to have impliedly continued in existence the various city courts not theretofore abolished, with a uniform name, jurisdiction, and procedure.[6]

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

The last clause of this section has been construed in three decisions of the Supreme Court. In the case of People v Rumsey[7], the facts were as follows: An Act of 1867, applicable only to Cook county, authorized the judges of the courts of that county to appoint shorthand court reporters. The reporters appointed under that act rendered services after the adoption of the constitution of 1870. In a *mandamus* proceeding to compel the county treasurer to pay the reporters for these services, the court said: "On the part of the relators, it is urged that they are authorized by section six of the schedule to continue to exercise and perform the duties of their appointment, until they shall be removed, in the manner prescribed by laws under which they were appointed. The section of the schedule only authorizes persons to continue to fill any office or appointment unless otherwise directed by the constitution. If the constitution, in any of its provisions, has repealed the law under which the appointment was made, then the appointment must cease." It was held that the special act under which these reporters were appointed had been impliedly repealed by article 6, section 29 of the constitution of 1870, which required uniformity in the laws relating to courts, immediately upon the adoption of the constitution. (See discussion article 6, section 29, subheading, "Provisions self-executing.")

In the case of People v Lippincott,[8] it appeared that the General Assembly, in 1869, had created a city court in a particular city, pursuant to article 5, section 1 of the constitution of 1848. The relator had, in 1869, been elected to fill the office of judge of that court for a six year term. In 1871, the General Assembly had repealed the act creating the court, and provided that no officer thereof should receive any compensation for services rendered thereafter. In a *mandamus* proceeding to compel the Auditor of Public Accounts to audit and allow the relator's claim for compensation as judge of the city court, during the remainder of the six year term, the court held: "But the counsel for relator places the incapacity of the legislature to deprive relator of his office, upon section 6 of the schedule . . . It was not the purpose of this section to continue all offices otherwise under the control of the legislature, in order that every incumbent might be insured the peaceable possession of his office during his unexpired term. But the purpose is indicated in the heading to the schedule, viz: 'That no inconvenience may arise from the alterations and amendments made in the constitution of this state, and to carry the same into complete effect, it is thereby ordained and declared'; and the proviso to section 6, '*unless by this constitution it is otherwise directed*,' shows that it was intended the right of persons then in office to continue to exercise the duties thereof, was to be entirely subject to the other provisions of the instrument. In that connection we will look at section

[6] People v Lippincott, 67 Ill. 333 (1873); People v City of Aurora, 78 Ill. 218 (1875); 84 Ill. 156 (1876); Wolf v Hope, 210 Ill. 50 (1904).
[7] 64 Ill. 44 (1872); compare, People v Raymond, 186 Ill. 407 (1900).
[8] 67 Ill. 333 (1873).

5 of the schedule, and immediately preceding the above: 'All existing courts which are not in this constitution specifically enumerated, shall continue in existence and exercise their present jurisdiction *until otherwise provided by law.*' The court in question is not one of those specifically enumerated in the constitution. If so, then, by the express language just quoted, its existence was continued, subject to the power of the legislature to determine it, which was done by the act of April 6, 1871, and the relator was thereby constitutionally deprived of his office." (See discussion, section 5 of the schedule.)

In the case of Board of Supervisors v Christianer,* the facts were these: Christianer had been elected to the office of county superintendent of schools, in 1869. In a suit to recover compensation for services rendered as county superintendent of schools, in 1872, the court held: "Appellee having been elected prior to the adoption of the present constitution, the question arises whether his compensation is to be fixed under the law of 1867, or under the provisions of the act of 1872. The 6th section of the schedule to the constitution declares that all persons then filling any office or appointment shall continue in the exercise of the duties thereof, according to their respective commissions or appointments. Appellee was within this saving clause, and could hold his office for the period for which he was elected, viz: for four years from November, 1869. The 10th section of article 10 provides for fixing the compensation of all county officers by the county board, but it is expressly stated, in the 11th section, 'the compensation herein provided for shall apply to officers hereafter elected.' It seems it was the intention of the framers of the constitution, that persons then occupying any county office should not only continue in the exercise of its duties, but should enjoy the emoluments attached thereto by general laws, all fees allowed by special laws having been repealed by the adoption of the constitution. We are inclined to the opinion, therefore, that this clause of the constitution is a limitation on the power of county boards to fix or change the compensation of officers previously elected. In this view of the several constitutional provisions bearing on this question, we must regard the act of 1872 as only intended to have a prospective action and to apply to county officers that should be elected after the adoption of the constitution."

Section 7. On the day this Constitution is submitted to the people for ratification, an election shall be held for judges of the Supreme Court in the second, third, sixth and seventh judicial election districts designated in this Constitution, and for the election of three judges of the Circuit Court in the county of Cook, as provided for in the article of this Constitution relating to the Judiciary, at which election, every person entitled to vote, according to the terms of this Constitution, shall be allowed to vote, and the election shall be otherwise conducted, returns made and certificates issued, in accordance with existing laws, except that no registry shall be required at said election: Provided, that at said election in the county of Cook no elector shall vote for more than two candidates for circuit judge. If, upon canvassing the votes for and against the adoption of this Constitution, it shall appear that there has been polled a greater number of votes against than for it, then no certificates of election shall be issued for any of said Supreme or Circuit Judges.

*68 Ill. 453 (1873).

(As to the Supreme Court judges, see discussion article 6, section 6. As to the circuit judges, see article 6, section 23.)

Section 8. This Constitution shall be submitted to the people of the State of Illinois for adoption or rejection, at an election to be held on the first Saturday in July in the year of our Lord one thousand and eight hundred and seventy, and there shall be separately submitted at the same time, for adoption or rejection, sections nine, ten, eleven, twelve, thirteen, fourteen and fifteen, relating to railroads, in the article entitled "Corporations;" the article entitled "Counties;" the article entitled "Warehouses;" the question of requiring a three-fifths vote to remove a county seat; the section relating to the Illinois Central Railroad; the section in relation to minority representation; the section relating to municipal subscriptions to railroads or private corporations; and the section relating to the Canal. Every person entitled to vote under the provisions of this Constitution, as defined in the article in relation to "Suffrage" shall be entitled to vote for the adoption or rejection of this Constitution, and for or against the articles, sections and question aforesaid, separately submitted; and the said qualified electors shall vote at the usual places of voting, unless otherwise provided; and the said election shall be conducted, and returns thereof made according to the laws now in force regulating general elections, except that no registry shall be required at said election: Provided, however, that the polls shall be kept open for the reception of ballots until sunset of said day of election.

The meaning of the term "qualified electors," as used in this section, was commented upon in the case of Beardstown v Virginia.[10] In that case while construing the provision of section 1 of article 7, "who was an elector in this state on the first day of April, in the year of our Lord, 1848," the court said: "Reference is made by appellants to the use of the words 'qualified electors,' in the 8th section of the schedule of the constitution of 1870, and in the 11th section of the schedule of the constitution of 1848, as indicating a distinction made by the constitution between 'electors' and 'qualified electors.' The words in the schedule of the constitution of 1870 are used in this connection: 'Every person entitled to vote under the provisions of this constitution, as defined in the article in relation to 'suffrage,' shall be entitled to vote for the adoption or rejection of this constitution, and for or against the articles, sections, and questions aforesaid, separately submitted; and the said qualified electors shall vote at the usual places of voting.' etc. And the words are used in the same connection in the schedule of the constitution of 1848. Now, plainly, the words 'qualified electors,' are not here used, in any way, in contradistinction from 'electors,' but merely as expressive of the class of persons who might vote at the approaching election upon the question of the adoption of the constitution. 'The said qualified electors shall vote,' etc., that is, the persons having the said qualifications of voters as named in the preceding clause. The persons who, on the first day of April, 1848, were electors, were qualified

[10] 76 Ill. 34 (1875).

electors; and *vice versa;* there is no distinction between them, and the constitution does not sanction the idea of a distinction."

(As to the meaning of the word "electors," see discussion article 7, section 1, subheading, "Unnaturalized aliens.")

(All of the provisions required by this section to be submitted to the people separately, were adopted. As to the form of the ballot used at the election, see section 10 of the schedule. As to the date when the separate sections became effective, see discussion, section 12 of the schedule).

Section 9. The Secretary of State shall, at least twenty days before said election, cause to be delivered to the County Clerk of each county blank poll-books, tally lists and forms of return, and twice the number of properly prepared printed ballots for the said election that there are voters in such county, the expense whereof shall be audited and paid as other public printing ordered by the Secretary of State is, by law, required to be audited and paid; and the several county clerks shall, at least five days before said election, cause to be distributed to the board of election, in each election district in their respective counties, said blank poll-books, tally-lists, forms of return, and tickets.

Section 10. At the said election the ballots shall be in the following form:

NEW CONSTITUTION TICKET

For all the propositions on this ticket which are not cancelled with ink or pencil; and against all propositions which are so cancelled.

For the new Constitution.

For the sections relating to railroads in the article entitled "Corporations."

For the article entitled "Counties."

For the article entitled "Warehouses."

For a three-fifths vote to remove County Seats.

For the section relating to the Illinois Central Railroad.

For the section relating to Minority Representation.

For the section relating to Municipal Subscriptions to Railroads or Private Corporations.

For the section relating to the Canal.

Each of said tickets shall be counted as a vote cast for each proposition thereon not cancelled with ink or pencil, and against each proposition so cancelled, and returns thereof shall be made accordingly by the judges of election.

Section 11. The returns of the whole vote cast, and of the votes for the adoption or rejection of this Constitution, and for or against the articles and sections respectively submitted, shall be made by the several county clerks, as is now provided by law, to the Secretary of State, within twenty days after the election; and the returns of the said votes shall, within five days thereafter, be examined and canvassed by the Auditor, Treasurer and Secretary of State, or any two of them, in the presence of the Governor, and proclamation shall be made by the Governor, forthwith of the result of the canvass.

Section 12. If it shall appear that a majority of the votes polled are "For the New Constitution," then so much of this Constitution as was not separately submitted to be voted on by articles and sections, shall be the supreme law of the State of Illinois, on and after Monday the eighth day of August, in the year of our Lord one thousand eight hundred and seventy; but if it shall appear that a majority of the votes polled were "Against the New Constitution," then so much thereof as was not separately submitted to be voted on by articles and sections, shall be null and void.

If it shall appear that a majority of the votes polled, are "for the sections relating to Railroads in the article entitled "Corporations"; sections nine, ten, eleven, twelve, thirteen, fourteen and fifteen, relating to Railroads in the said article, shall be a part of the Constitution of this State; but if a majority of said votes are against such sections, they shall be null and void. If a majority of the votes polled are for the article entitled "Counties," such article shall be part of the Constitution of this State and shall be substituted for article seven, in the present Constitution entitled "Counties"; but if a majority of said votes are against such article, the same shall be null and void. If a majority of the votes polled are "for the article entitled "Warehouses," such article shall be part of the Constitution of this State, but if a majority of the votes are against said article, the same shall be null and void. If a majority of the votes polled are for either of the sections separately submitted, relating respectively to the "Illinois Central Railroad," "Minority Representation," "Municipal Subscriptions to Railroads or Private Corporations," and the "Canal," then such of said sections as shall receive such majority shall be a part of the Constitution of this State; but each of said sections so separately submitted against which, respectively, there shall be a majority of the votes polled, shall be null and void: Provided, that the section relating to "Minority Representation," shall not be declared adopted unless the portion of the Constitution not separately submitted to be voted on by articles and sections shall be adopted, and in case said section relating to "Minority Representation" shall become a portion of the Constitution, it shall be substituted for sections seven and eight of the Legislative Article. If a majority of the votes cast at such election shall be for

a three-fifths vote to remove a county seat, then the words "a majority" shall be stricken out of section four of the Article on Counties, and the words "three-fifths" shall be inserted in lieu thereof; and the following words shall be added to said section, to-wit: "But when an attempt is made to remove a county seat to a point nearer to the center of a county, then a majority vote only shall be necessary." If the foregoing proposition shall not receive a majority of the votes, as aforesaid, then the same shall have no effect whatever.

Although the constitution, as a whole, pursuant to the provisions of the first paragraph of this section, became effective August 8, 1870, the articles and sections required by section 8 of the schedule to be submitted separately, became effective immediately upon their adoption by the vote of the people, on July 2, 1870.[11]

Section 13. Immediately after the adoption of this Constitution, the Governor and Secretary of State shall proceed to ascertain and fix the apportionment of the State for members of the first House of Representatives under this Constitution. The apportionment shall be based upon the Federal census of the year of our Lord one thousand eight hundred and seventy of the State of Illinois, and shall be made strictly in accordance with the rules and principles announced in the article on the Legislative Department of this Constitution: Provided, that in case the Federal census aforesaid can not be ascertained prior to Friday, the twenty-third day of September, in the year of our Lord one thousand eight hundred and seventy, then the said apportionment shall be based on the State census of the year of our Lord one thousand eight hundred and sixty-five, in accordance with the rules and principles aforesaid. The Governor shall, on or before Wednesday, the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and seventy, make official announcement of the said apportionment, under the great seal of the State; and one hundred copies thereof, duly certified, shall be forthwith transmitted by the Secretary of State to each county clerk for distribution.

(As to legislative apportionments, generally, see discussion article 4, section 6. As to the apportionment made by the Governor and Secretary of State, pursuant to this section, see House Journal 1871, first session, pp. 33-34, 58-62, 62-64.)

Secion 14. The districts shall be regularly numbered, by the Secretary of State, commencing with Alexander County as Number One, and proceeding then northwardly through the State, and ter-

[11] Schall v Bowman, 62 Ill. 321 (1872).

minating with the county of Cook; but no county shall be numbered as more than one district, except the County of Cook, which shall constitute three districts, each embracing the territory contained in the now existing representative districts of said county. And on the Tuesday after the first Monday in November, in the year of our Lord one thousand eight hundred and seventy, the members of the first House of Representatives under this Constitution shall be elected according to the apportionment fixed and announced as aforesaid, and shall hold their offices for two years, and until their successors shall be elected and qualified.

(As to legislative apportionments, generally, see discussion article 4, section 6.)

Section 15. The Senate, at its first session under this Constitution, shall consist of fifty members, to be chosen as follows: At the General Election held on the first Tuesday after the first Monday of November, in the year of our Lord one thousand eight hundred and seventy, two Senators shall be elected in districts where the term of Senators expire on the first Monday of January, in the year of our Lord one thousand eight hundred and seventy-one, or where there shall be a vacancy, and in the remaining districts one Senator shall be elected. Senators so elected shall hold their office two years.

(As to legislative apportionments, generally, see discussion article 4, section 6.)

Section 16. The General Assembly, at its first session held after the adoption of this Constitution, shall proceed to apportion the State for members of the Senate and House of Representatives, in accordance with the provisions of the article on the Legislative Department.

(As to legislative apportionments, generally, see discussion article 4, section 6.)

Section 17. When this constitution shall be ratified by the people, the Governor shall forthwith, after having ascertained the fact, issue writs of election to the sheriffs of the several counties of this State, or in case of vacancies, to the coroners, for the election of all the officers, the time of whose election is fixed by this constitution or schedule, and it shall be the duty of said sheriffs or coro-

ners to give such notice of the time and place of said election as is now prescribed by law.

(See discussion, section 1 of the schedule.)

Section 18. All laws of the State of Illinois, and all official writings, and the Executive, Legislative and Judicial proceedings, shall be conducted, preserved and published in no other than the English language.

In general. "It does not militate against the continuing vitality of this section that it is found in the schedule and not in the body of the constitution, for a schedule to a constitution forms a part of such constitution, and is of equal authority therewith. The provisions most usually found in schedules are of temporary character, and for the purpose of preventing inconvenience and confusion upon the constitution taking effect; but from the very nature of the provision in question it is permanent in its scope and operation."[12] The provisions of this section are self-executing.[13]

Official writings. The reports and notices required by law to be furnished by municipal officers constitute "official writings," as that term is used in this section. A city may, therefore, be enjoined from publishing these reports and notices in the German language in a German newspaper.[14] The Attorney General has ruled that the term "official writings" includes the contents of the charters of domestic insurance companies, and that a proposed company having a name expressed in the German language cannot, therefore, be organized under the laws of this state.[15] The Attorney General has also ruled that the term includes the annual financial statements required by law to be published by insurance companies, so as to invalidate the publication of such statements in newspapers printed in any other than the English language.[16]

Legislative proceedings. The ordinances enacted by a city, a board of forest preserve commissioners, and by a board of county commissioners have been held to constitute "legislative proceedings" as that term is used in this section. This section therefore, prohibits the publication of such ordinances in the German language, or in the English language, in a German newspaper.[17]

Judicial proceedings. The term "judicial proceedings," as used in this section, has been held to include special assessment notices, and administrators' notices of adjustments of claims so as to prohibit their pub-

[12] City of Chicago v McCoy, 136 Ill. 344 (1891).
[13] Stein v Meyers, 253 Ill. 199 (1912).
[14] City of Chicago v McCoy, 136 Ill. 344 (1891).
[15] Report Attorney General 1916, p. 258.
[16] Report Attorney General 1916, p. 271.
[17] City of Chicago v McCoy, 136 Ill. 344 (1891); Perkins v Commissioners of Cook County, 271 Ill. 449, at p. 474 (1916); People v Day, 277 Ill. 543 (1917).

lication in a German newspaper, whether the notices are printed in English or in German.[18]

This section does not require all court proceedings to be conducted in English. For example, it has been held that this section has no application to oral testimony, depositions, or documentary evidence.[19] Nor does it operate to prevent the minutes and notes from which the clerk makes up the record, from being entered in an unusual system of abbreviations, such as "Petit, Oct. 17, 1913, Jury verd. fdg. issue for pltf. das. at $9,500.00 & costs. Jdg. on fdg."[20] The requirement of this section, that judicial proceedings be conducted in the English language, is confined to the formal record history of the cause, as distinguished from the temporary memoranda made by the clerk. For example, a judgment was held void because the formal and final record thereof was entered in a system of abbreviations which would be unintelligible to an English speaking person, such as "Fndg. deft. g. withh. prem. descr. in complt.; judg. on fndg. & C."[21]

The Attorney General ruled that this section requires all judicial proceedings to be preserved, so as to render invalid a proposed act of 1917 requiring the destruction of the records of the disposition of cases of delinquent children, when delinquency did not recur within two years. Upon the basis of this ruling, the Governor vetoed the bill.[22]

Section 19. The General Assembly shall pass all laws necessary to carry into effect the provisions of this Constitution.

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

(See article 10, sections 8, 9.)

Section 21. The judges of all courts of record in Cook county shall, in lieu of any salary provided for in this Constitution, receive the compensation now provided by law until the adjournment of the first session of the General Assembly after the adoption of this Constitution.

This section operated to limit the time when judges of the courts of record in Cook County were to begin to receive the compensation provided for in the constitution of 1870, to the date of the adjournment *sine die* of the regular session of the General Assembly of 1871-72.

The "compensation now provided by law," for the judge of the old circuit court of Cook County, consisted, under the constitution of 1848

[18] People v McCoy, 136 Ill. 344 (1891); Report Attorney General 1900, p. 850.
[19] Loehde v Glos, 265 Ill. 401 (1914).
[20] People v Petit, 266 Ill. 628 (1915).
[21] Stein v Meyers, 253 Ill. 199 (1912); Loehde v Glos, 265 Ill. 401 (1914).
[22] Veto Messages 1917, p. 51.

and the statutory provisions in force in 1870, of $1,000 per annum from the state, $1,500 per annum from the county, and of certain docket fees. The new constitution (article 6, section 23) provided that the circuit court of Cook county should consist of five judges. Section 16 of article 6 of that instrument provided that the circuit judges outside of Cook county should receive $3,000 per annum from the date of the adoption of the new constitution, until otherwise provided by law. Section 25 of article 6 provided that the circuit judges in Cook 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 . . . of the state, and such further compensation to be paid by the county of Cook as is or may be provided by law." In a *mandamus* proceeding begun in 1872, to compel the payment by the state to a judge of the circuit court of Cook county, who had been elected under the new constitution, of a salary of $3,000 per annum, the court held that all of the judges of the circuit court of Cook county, until the adjournment of the first session of the General Assembly, were entitled under the provisions of section 21 of the schedule to a salary from the state of but $1,000 per annum. The court suggested, however, that each of the new judges of the circuit court of that county might also be entitled to the $1,500 per annum paid by the county to the single judge of the old circuit court, and also to the docket fees received by that judge.[23]

In a later case it appeared that: "The legislature commenced its first session on the 4th of January, 1871, and on the 17th day of April, of that year, after winding up the business in the way usual before an adjournment *sine die*, in pursuance of a resolution adopted before, both houses were declared by the respective presiding officers adjourned to the 15th of November, 1871; that the Governor of the state convened the General Assembly, for certain purposes specified in his proclamation, in June, 1871, and after disposing of the business for which the legislature was assembled, both houses adjourned in the same month without day; that afterwards the General Assembly was by the Governor again convened on the 13th day of October, 1871, to consider certain subjects mentioned in his proclamation, and after disposing of the business presented by the Governor, the General Assembly during the same month adjourned without day. At the time before fixed, on the 15th day of November, 1871, the General Assembly reassembled, and continued to transact business until April 12, 1872, when it adjourned without day."[24] The court held that the adjournment on April 12, 1872, was "the adjournment of the first session of the General Assembly," contemplated by the provisions of the section under consideration.

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

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

[23] People v Lippincott, 63 Ill. 504 (1872).
[24] People v Auditor, 64 Ill. 82 (1872).

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

Under the constitution of 1848, the General Assembly had the power to authorize the corporate authorities of a city to subscribe to the capital stock of a railroad company, without a vote of the people. On August 7, 1869, under a city ordinance, the people of the city of Quincy voted in favor of authorizing the corporate authorities of the city to make a subscription to the capital stock of a railroad company. No statute had been passed by the General Assembly empowering the city to hold stock in a railroad company, or authorizing a vote of the people of the city on such a question. The making of the subscription, therefore, was deferred until enabling legislation of this character could be enacted. On December 13, 1869, the date referred to in the section under discussion, the constitutional convention met. This convention inserted a provision in the new constitution prohibiting municipalities from subscribing to the capital stock of any railroad or private corporation. This provision did not, however, apply to subscriptions authorized, under existing laws, by a vote of the people, prior to the adoption of the constitution. (See discussion, separate section 2). "The effect of this provision of the constitution would clearly have defeated the proposed Quincy subscription, as the vote then had was not under an existing law. The convention, with the view, no doubt, of leaving the proposed Quincy subscription unaffected by this clause of the constitution, adopted section 24 of the schedule."[33] At the first session of the General Assembly after the adoption of the constitution, an act was passed authorizing the city to proceed with the subscription voted for on August 7, 1869. The Supreme Court held that this act was validly enacted, pursuant to the provisions of the section under consideration, saying: "We are, therefore, of opinion, that while section 24 of the schedule did not, in the least, legalize or sanction what had been done by the voters of the city, its obvious intent and effect were to leave the matter and the power of the legislature over it unaffected by the constitution of 1870; in other words, to leave the vote and the power of the legislature to confer the right upon the city to take stock, precisely as they would have been under the constitution of 1848."[34]

Section 25. In case this Constitution, and the articles and sections submitted separately, be adopted, the existing Constitution

[33] Q. M. & P. Rv. Co. v Morris, 84 Ill. 410 (1877).
[34] Q. M. & P. Ry. Co. v Morris, 84 Ill. 410 (1877); compare veto message, Senate Journal, 1871, p. 377; Quincy v Cooke, 107 U. S. 549 (1882).

shall cease in all its provisions, and in case this Constitution be adopted, and anyone or more of the articles or sections submitted separately be defeated, the provisions of the existing constitution, if any, on the same subject shall remain in force.

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

INDEX TO CONSTITUTION OF 1870.[1]

[1] The Constitution of 1870 contains five separate sections. Four of these separate sections were submitted and adopted at the same time as the complete constitution. The separate section relating to convict labor was adopted as an amendment to the constitution in 1886. Under the terms of section 12 of the schedule the separate section relating to minority representation, if adopted, was to be substituted for sections 7 and 8 of article 4.

While the original separate sections are not designated by numbers it has been deemed necessary for the purposes of this index, to number them. In this index the separate section relating to the Illinois Central railroad is designated as separate section 1; the separate section relating to minority representation is considered separate section 2; that relating to municipal subscriptions to railroads or private corporations is designated separate section 3; that relating to the canal as separate section 4; and that relating to convict labor as separate section 5.

In the text of the Constitution of 1870, as it appears in this volume, the separate section relating to minority representation, having been adopted, appears as sections 7 and 8 of article 4, and in this index all references concerning minority representation are made to sections 7 and 8 of article 4. But, since the section relating to minority representation, in the original document, appears as the second separate section, it was thought best, in dealing with the separate sections, to permit that section to be considered as separate section 2 and to designate the following separate section as separate section 3.

INDEX.

INDEX.