GENERAL STATUTES

OF THE

STATE OF MINNESOTA

IN FORCE

JANUARY 1, 1889.

COMPLETE IN TWO VOLUMES.

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VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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MINNESOTA STATUTES 1888 SUPPLEMENT

PREFACE.

THE character of this book is best indicated by its title. It contains all the laws of a general nature enacted since the General Statutes of 1878, whether now in force, amended, or repealed; the Ramsey county jury law of 1876; together with references to various laws enacted before 1879, and made the subject of subsequent legislation. The arrangement of the Statutes and notes follows the chapter, title, and section subdivision of the General Statutes. By this means, it will be found that the use of the two volumes in connection with each other has been greatly facilitated. By turning to the corresponding chapter and section in this book it will be ascertained whether the law as contained in the first volume has been repealed or amended, whether there has been new legislation on the same subject, or whether there have been decisions pertinent to it. Many cross-references to analogous statutes are inserted in the text and foot-notes. It will thus be seen that the two volumes are not only dependent on each other, but that the second is practically a revision of the first.

Both the General Statutes of 1878 and the laws contained in the Supplement have been most carefully and exhaustively annotated, with citations of Minnesota decisions down to the latest publications in the NORTHWESTERN REPORTER. A very liberal collection of decisions from other states on parallel statutory provisions, with many from the Federal courts, has been added. The probate laws will be found to be freely annotated from the decisions of Massachusetts, Vermont, Michigan, and Wisconsin, where the probate practice and doctrines are very similar to those of Minnesota.

Thus, section 1, chapter 54, of the General Statutes of 1878, which has not been changed, is fully annotated under the head of chapter 54, section 1, in the Supplement; while section 9 of the same chapter, which was amended in 1885, appears as amended under chapter 54, section 9, with full notes.

When an act or section has been repealed, it will be shown under the appropriate chapter and section. Thus, under chapter 20, relating to the Preservation of Game: § 1, [Repealed 1887, *c.* 142, § 7. See § 21*a*, *post.*] The latter clause referring to the new act replacing it.

The date of the taking effect of an act is not given, where it follows the

usual course, and takes effect from and after its passage, but all exceptions to that custom are noted.

The titles of all important acts are given in foot-notes.

The methods of citation and abbreviation employed are such as are in common use.

A full and complete Index has been added, with many cross-reference heads; and, in many instances, sections will be found indexed under two or more important topics.

NOTES ON THE CONSTITUTION,

TOGETHER WITH THE

AMENDMENTS ADOPTED SINCE 1878.

ARTICLE I.

BILL OF RIGHTS.

Sec. 2. Rights and privileges of citizens.

"Law of the land" or "due process of law," defined. Baker v. Kelley, 11 Minn. 480 (Gil. 358;) Beaupre v. Hoerr, 13 Minn. 366, (Gil. 339;) State v. Becht, 23 Minn. 411.

Public officers and their emoluments are not among the "rights and privileges" protected. Commissioners Hennepin Co. v. Jones, 18 Minn. 199, (Gil. 182.)

Gen. St. c. 66, § 311, concerning the liability of property to execution for the purchase price, is constitutional. Rogers v. Brackett, 34 Minn. 279, 25 N. W. Rep. 601.

Gen. St. c. 34, § 56, allowing double costs against railroad companies in stock-killing cases, is constitutional. Johnson v. Chicago, M. & St. P. Ry. Co., 29 Minn. 425, 13 N. W. Rep. 673; Schimmele v. Chicago, M. & St. P. Ry. Co., 34 Minn. 216, 25 N. W. Rep. 347.

A statute making railroad companies liable to their employes for injuries resulting from the negligence of co-employes, is constitutional. Bucklew v. Central Iowa Ry. Co., (Iowa,) 21 N. W. Rep. 103.

Special and exclusive privileges, see Graffty v. City, (Ind.) 8 N. E. Rep. 609; Nash v. Lathrop, (Mass.) 6 N. E. Rep. 559; Des Moines St. Ry. Co. v. Des Moines Broad-Gauge St. Ry. Co., (Iowa,) 33 N. W. Rep. 610.

See note to § 7, *post*.

Sec. 4. Right of trial by jury.

This section simply adopts the law as it existed at the time of the adoption of the constitution, and does not operate to extend the right of trial by jury to cases where it did not before exist. Whallon v. Bancroft, 4 Minn. 109, (Gil. 70;) S. P., Ewing v. Filley, 43 Pa. St. 384. It does not extend to and include proceedings by *mandamus*, State v. Sherwood, 15 Minn. 221, (Gil. 172;) State v. City of Lake City, 25 Minn. 404, 427; nor to proceedings to condemn private property for public use under the exercise of the right of eminent domain, Ames v. Lake Superior & M. R. Co., 21 Minn. 241, 293. See cases cited in 22 Minn. 180. Nor to proceedings for the assessment and collection of taxes, Commissioners of Mille Lacs Co. v. Morrison, 22 Minn. 178, 181; nor to proceedings to punish contempts, State v. Becht, 23 Minn. 411; nor to proceedings for laying out highways, under Gen. St. c. 13, §§ 33–43, as amended by Laws 1867, c. 30, § 4, and Laws 1868, c. 48, § 2, Bruggerman v. True, 25 Minn. 123, 126; nor to an action involving the adjustment and settlement of mutual accounts growing out of a common transaction between the parties, Garner v. Reis, 25 Minn. 475, 477; but does extend to an action brought to recover the value of certain wheat alleged to have been delivered by the bailee in excess of the quantity deposited with plaintiff by defendant, though involving a long account, St. Paul & S. C. R. Co. v. Gardner, 19 Minn. 132, (Gil. 99.)

The omission by defendant, in a civil action before a justice of the peace, to demand a jury, is a waiver of the right. An express waiver entered on the justice's minutes is unnecessary. Gibbens v. Thompson, 21 Minn. 400.

The parties to an election contest have no right to a trial by jury, in the district court. Newton v. Newell, 26 Minn. 529, 6 N. W. Rep. 346.

The statute making a resident or tax-payer of a city a competent juror in suits to which it is a party, does not impair the right of trial by jury. McClure v. City of Red Wing, 28 Minn. 186, 9 N. W. Rep. 767.

An act establishing a municipal court may provide for the trial of causes involving merely the violation of municipal ordinances, in a summary manner, without a jury. City of Mankato v. Arnold, 36 Minn. 62, 30 N. W. Rep. 305.

Right of jury trial in prosecutions for violation of laws relating to the sale of intoxicating liquors, see Littleton v. Fritz, (Iowa,) 22 N. W. Rep. 641; State v. Schmitz, Id. 673.

See note to § 6, *post*.

Sec. 5. Cruel or unusual punishment.

This section does not prohibit the delegation to the jury of the power to fix the punishment in a capital case. State v. Lautenschlager, 22 Minn. 514, 524.

Sec. 6. Criminal prosecutions—Rights of accused.

An act changing the place of holding court in the district, but not changing the district, is not in conflict with this section. State v. Gut, 13 Minn. 341, (Gil. 315;) State v. Robinson, 14 Minn. 447, (Gil. 333;) and a change, on the application of the state, from a county in one judicial district to an adjoining county in another district (Gen. St. c. 113) is not unconstitutional, State v. Miller, 15 Minn. 344, (Gil. 277.)

The right of the accused to be present when the witnesses testify before the jury, may be waived by him, at least when counsel are present for him. State v. Reckerds, 21 Minn. 47, 50.

As to the right to a jury trial in proceedings to punish contempts, see State v. Becht, 23 Minn. 411; meaning of "jury of the county," State v. Kemp. 34 Minn. 61, 24 N. W. Rep. 349. A jury required to be selected from a list of inhabitants of a city within the county, is a "jury of the county." Id. The jury called for is a body of twelve men, and this applies to prosecutions in justices' courts, if the defendant demands such a jury. State v. Everett, 14 Minn. 439, (Gil. 330.)

The accused is "informed of the nature and cause of the accusation," in a perjury case, by an indictment following form No. 24, Gen. St. c. 108, § 2. State v. Thomas, 19 Minn. 484, (Gil. 418.)

As to the right to a speedy trial, see People v. Schufelt, (Mich.) 28 N. W. Rep. 79.

As to the right of the accused to be confronted by witnesses, see State v. Matlock, (Iowa,) 30 N. W. Rep. 495; Williams v. State, (Wis.) 21 N. W. Rep. 56; Hair v. State, (Neb.) Id. 464; People v. Dow, (Mich.) 31 N. W. Rep. 597.

Sec. 7. Criminal prosecutions — Rights of accused — Due process of law.

A judgment of acquittal in a *qui tam* action for a penalty, is not appealable, jeopardy having once attached. Kennedy v. Raught, 6 Minn. 235, (Gil. 155.)

It is a violation of this section to require an accused person to appear and be sworn and examined before the grand jury; and an indictment so found will be set aside. State v. Froiseth, 16 Minn. 296, (Gil. 260.)

A city ordinance, empowering city councilmen and fire-wardens to arrest persons at fires, and detain them until the extinguishment of the fire, for disobedience of orders, is repugnant to this section and § 4, *supra*. Judson v. Reardon, 16 Minn. 431, (Gil. 387.)

Laws 1868, c. 73, allowing an appeal "from a judgment heretofore or hereafter rendered, within one year after entry thereof," is, as to final judgments, the time to appeal from which had expired before its passage, repugnant to this section and to § 2, *supra*. Beaupre v. Hoerr, 13 Minn. 366, (Gil. 339.)

The statute relating to bastardy (Gen. St. c. 17, § 7) is not repugnant to this section. State v. Becht, 23 Minn. 1.

Commitment for contempt, in disobeying an order to deliver property to a receiver in supplementary proceedings, is not a deprivation of liberty without "due process of law." State v. Becht, 23 Minn. 411.

The provision of Laws 1877, c. 131, "that in all cases where judgment heretofore has been, or hereafter may be, obtained in any court of record by means of the perjury, subornation of perjury, or any fraudulent act, practice, or representation of the prevailing party, an action may be brought by the party aggrieved to set aside said judgment at any time within three years after the discovery by him of such perjury, subornation of perjury, or of the facts constituting such fraudulent act, practice, or representation," so far as respects a judgment which had become absolute and not subject to be set aside, reversed, or modified, prior to the passage of the act, is void, as operating to deprive the judgment creditor of his property without due process of law. Wieland v. Shillock, 24 Minn. 345, 349.

The legislature cannot give a mechanic's lien on property without the owner's consent; but where the statute gives such lien to a subcontractor, etc., the making of the principal contract by the owner is evidence of consent to such lien. O'Neil v. St. Olaf's School, 26 Minn. 329, 4 N. W. Rep. 47. Gen. St. 1878, c. 90, § 2, giving a lien to subcon-

tractors, is constitutional. Bohn v. McCarthy, 29 Minn. 23, 11 N. W. Rep. 127; Laird v. Moonan, 32 Minn. 358, 20 N. W. Rep. 354.

A senior creditor's right to redeem from a mortgage sale, when once vested, cannot be divested without due process of law. Willis v. Jelineck, 27 Minn. 18, 6 N. W. Rep. 373.

The legislature may empower cities to pass ordinances punishing acts (in this case the keeping of a house of ill-fame) which are indictable offenses under the statutes of the state. State v. Lee, 29 Minn. 445, 13 N. W. Rep. 913.

The insolvent law of 1881 is not unconstitutional, in providing that claims are to be passed on by the receiver, his decision being reviewable by the district court. Weston v. Loyhed, 30 Minn. 221, 14 N. W. Rep. 892. The insolvent law of 1881 is valid, as against the objections that a receiver may be appointed on grounds not inconsistent with the debtor's solvency; that a creditor, in order to share in the estate, must file a release of his debt; and that the creditor is not given a jury trial on the question whether, by reason of the alleged fraud of the debtor, the estate shall be distributed among the creditors without their filing releases; and that it is inoperative as against citizens of other states. Wendell v. Lebon, 30 Minn. 234, 15 N. W. Rep. 109.

A law increasing the interest on taxes refunded from one per cent. to ten per cent. per annum, payable out of the county treasury, is invalid so far as it is retroactive. Power of the legislature over property acquired by a county for its own use. The legislature cannot compel taxation for a private purpose. State v. Foley, 30 Minn. 350, 15 N. W. Rep. 375.

Laws 1883, *c.* 125, regulating the practice of medicine, and prohibiting practice by any one not having a certificate from the state examining board, and authorizing a refusal of certificate for "dishonorable or unprofessional" conduct, held valid. State v. Medical Examining Board, 32 Minn. 324, 20 N. W. Rep. 238. As to the rights of an applicant for a certificate, see Id.

The right of redemption existing at the time of a tax sale cannot be enlarged or abridged by subsequent legislation. Merrill v. Dearing, 32 Minn. 479, 21 N. W. Rep. 721.

Proviso in Gen. St. 1878, *c.* 46, § 3, limiting time for selling land of a decedent to pay debts, is constitutional. In re Ackerman, 33 Minn. 54, 21 N. W. Rep. 852.

A special law, fixing the compensation to be paid by the defendant to the surveyor general for scaling logs coming within its boom at a less rate than that payable under the general law, is not unconstitutional, as partial or unequal. Merritt v. Knife Falls Boom Corp., 34 Minn. 245, 25 N. W. Rep. 403.

Gen. St. 1878, *c.* 34, § 56, giving extra costs in actions against railway companies which have failed to maintain fences, is not unconstitutional, as being unequal or partial. Johnson v. Chicago, M. & St. P. Ry. Co., 29 Minn. 425, 13 N. W. Rep. 673; Schimmele v. Chicago, M. & St. P. Ry. Co., 34 Minn. 216, 25 N. W. Rep. 347.

The making and enforcing of regulations as to the keeping of dogs, is within the police power. City of Faribault v. Wilson, 34 Minn. 254, 25 N. W. Rep. 449.

An ordinance restricting the sale of intoxicating liquor to districts to be designated by the mayor is unconstitutional, State v. Kantler, 33 Minn. 69, 21 N. W. Rep. 856.

The provision that "all persons shall, before conviction, be bailable," does not affect the power of the court to admit to bail, in its discretion, after conviction. State v. Levy, 24 Minn. 362, 368.

"Due process of law" defined. Davidson v. Farrell, 8 Minn. 258, (Gil. 225, 229;) Baker v. Kelley, 11 Minn. 480, (Gil. 358, 375;) Wilson v. Red Wing School-Dist., 22 Minn. 488, 491.

Due process of law, property taken for taxes, see Griswold College v. City, (Iowa,) 22 N. W. Rep. 904; Auer v. City, Id. 914.

A statute authorizing the court, in determining that a complaint is malicious, to enter judgment against complainant, is valid. State v. Smith, (Wis.) 26 N. W. Rep. 258.

And see, generally, as to "due process of law," In re McPherson, (N. Y.) 10 N. E. Rep. 685; In re McMahon v. Palmer, (N. Y.) 6 N. E. Rep. 400; Baltimore & O. & C. R. Co. v. North, (Ind.) 3 N. E. Rep. 144; Millett v. People, (Ill.) 7 N. E. Rep. 631.

In the exercise of the police power, the legislature may compel railroad companies to construct farm crossings. Illinois Cent. R. Co. v. Willenborg, (Ill.) 7 N. E. Rep. 698.

A statute requiring the fencing of railroads, and making railroad companies liable for damages resulting from their failure to comply therewith, is valid. Emmons v. Minneapolis & St. L. Ry. Co., 35 Minn. 503, 29 N. W. Rep. 202.

Section 4, *c.* 149, Gen. Laws 1885, relating to dairy products, is a valid exercise of the police power. Butler v. Chambers, 36 Minn. 69, 30 N. W. Rep. 308.

A statute making it a criminal offense to manufacture or sell an article intended as a substitute for butter is unconstitutional. People v. Marx, (N. Y.) 2 N. E. Rep. 29.

See, *generally*, as to police power, Brechbill v. Randall, (Ind.) 1 N. E. Rep. 362; People v. Cipperly, (N. Y.) 4 N. E. Rep. 107; Welch v. Bowen, (Ind.) 2 N. E. Rep. 722; Eastman v. State, (Ind.) 10 N. E. Rep. 97; Martin v. Blattner, (Iowa,) 25 N. W. Rep. 131.

See, also, note to § 2, *ante*, and note to § 11, *post*.

Sec. 8. Redress for injuries and wrongs.

An act requiring the payment of an assessment or tax, as a condition precedent to the right to sue to set it aside as illegal, is unconstitutional. Weller v. City of St. Paul, 5 Minn. 95, (Gil. 70.)

The act of February 14, 1862, suspending the privileges of persons aiding in the Rebellion of prosecuting and defending actions and judicial proceedings, conflicts with this section. Davis v. Pierse, 7 Minn. 13, (Gil. 1;) Keough v. McNitt, 7 Minn. 30, (Gil. 16;) McFarland v. Butler, 8 Minn. 116, (Gil. 91;) Jackson v. Butler, Id. 117, (Gil. 92.)

A statute (other than an act of limitation) which bars a claimant of land of his rights therein, unless he brings a specified action within a given time, or does some other act to satisfy the statute, (Laws 1862, *c.* 4, § 7,) is unconstitutional. Baker v. Kelley, 11 Minn. 480, (Gil. 358.)

The proviso in Gen. St. *c.* 11, § 154, as amended by Laws 1869, *c.* 23, that, in all actions brought against any county to test the validity of a forfeiture of land for non-payment of taxes, the plaintiffs shall pay the costs, is not repugnant to that clause of this section declaring that any person "ought to obtain justice freely and without purchase." Willard v. Commissioners of Redwood Co., 22 Minn. 61, 64.

The remedy by distress for rent is not a violation of this section, because the tenant is required to give security in order to replevy the property distrained. Dutcher v. Culver, 24 Minn. 584, 590.

Sec. 11. Ex post facto laws—Impairing obligation of contracts.

EX POST FACTO AND RETROACTIVE ACTS. A statute (Gen. St. 1866, *c.* 73, § 89) changing the rule requiring direct evidence of both marriages in bigamy cases, and permitting indirect evidence thereof, is *ex post facto* as respects offenses alleged to have been committed prior to its passage. State v. Johnson, 12 Minn. 476, (Gil. 378.)

A statute increasing the number of the state's peremptory challenges on future criminal trials is not *ex post facto*, even as to offenses alleged to have been previously committed. State v. Ryan, 13 Minn. 370, (Gil. 343.)

Where the punishment for an offense prescribed by statute at the time of its commission is imprisonment only, the offender cannot be convicted and punished for such offense under a subsequent amendatory act prescribing fine *or* imprisonment. State v. McDonald, 20 Minn. 136, (Gil. 119.)

There is no constitutional limitation upon the power of the legislature over the subject of criminal punishment, except those prescribed in this section and § 5, *supra*. State v. Lautenschlager, 22 Minn. 514.

See, further, Coles v. County of Washington, 35 Minn. 124, 27 N. W. Rep. 497; Atkins v. Atkins, (Neb.) 25 N. W. Rep. 724; Marion v. State, (Neb.) 29 N. W. Rep. 911; County of Logan v. People, (Ill.) 6 N. E. Rep. 475; Stokes v. Riley, (Ill.) 9 N. E. Rep. 69; Powell v. City of Madison, (Ind.) 8 N. E. Rep. 31; Johnson v. County of Wells, Id. 1; McLane v. Bonn, (Iowa,) 30 N. W. Rep. 478; followed Craig v. Florange, 32 N. W. Rep. 356.

LAWS IMPAIRING THE OBLIGATION OF CONTRACTS. The wife's contingent right of dower is subject to legislative control, and may be modified or taken away. Morrison v. Rice, 35 Minn. 436, 29 N. W. Rep. 168.

The obligation of an antenuptial contract cannot be impaired, nor the rights of the parties thereunder affected, by subsequent legislation. Desnoyer v. Jordan, 27 Minn. 290, 7 N. W. Rep. 140.

The rights of a chattel mortgagee, under a clause authorizing him to take possession in case he shall at any time deem himself insecure, is not to be impaired by subsequent legislation (such as Laws 1879, *c.* 65, § 2,) forbidding him to exercise the right without just cause. Boice v. Boice, 27 Minn. 371, 7 N. W. Rep. 687.

The right to foreclose under a power of sale, pursuant to statute in force at the time of the execution of a mortgage, cannot be taken away by subsequent legislation. O'Brien v. Krenz, 36 Minn. 136, 30 N. W. Rep. 458.

Gen. St. 1878, *c.* 81, § 13, in so far as it increases the amount to be paid on redemption from foreclosure of mortgages executed before its passage, imposing a greater rate of interest than that required by the law in force when such mortgages were made, impairs their obligation, and is void. Hillebert v. Porter, 28 Minn. 496, 11 N. W. Rep. 84.

The exemption law of August 12, 1858, though intended to operate upon debts contracted prior to its passage, affects the remedy only, and is not unconstitutional. Grimes v. Byrne, 2 Minn. 89, (Gil. 72.)

Where three years have expired since decedent's death, a devise becomes vested, and does not become charged with liens by the subsequent repeal of the proviso to Gen. St. *c.* 46, § 3, that claims shall not be a lien after the expiration of such period. The rights of the devisee, in such case, cannot be taken away or impaired by legislative enactment. Gates v. Shugrue, 35 Minn. 392, 29 N. W. Rep. 57.

The right of the state, in the exercise of its police power, to require a railroad company to fence its road, is not impaired by a clause in the company's charter providing what fences the company shall maintain and when it shall provide them. Gillam v. Sioux City & St. P. R. Co., 26 Minn. 268, 3 N. W. Rep. 353. If, in any case, the legislature can bind the state not to exercise its police power, its intention to do so must be clearly expressed, and cannot be implied. Id.

After granting lands to the Northern Pacific Railroad Company, congress could not, by a subsequent act, require the company to pay the cost of surveys as a condition of obtaining patents. County of Cass v. Morrison, 28 Minn. 257, 9 N. W. Rep. 761.

Certain exemptions from taxation, in favor of railroad companies, held to be a contract, and not modified by an act of the legislature until the modification was accepted. See In re County of Stevens, 36 Minn. 467, 31 N. W. Rep. 942.

Legislative amendment of the charter of a private corporation, to be valid, must be accepted by the corporation. Mower v. Staples, 32 Minn. 284, 20 N. W. Rep. 225. See, also, Peoria, D. & E. R. Co. v. People, (Ill.) 6 N. E. Rep. 497.

Repeal of grant of ferry franchise, for failure to perform the duties imposed, and in the exercise of a reserved power, may be made without a judicial determination of the failure. But whether the grantee has failed, so that the repeal was effectual, is a question for the courts. Myrick v. Brawley, 33 Minn. 377, 23 N. W. Rep. 549.

The nature of the obligation of the executory contracts of states, and the remedy to enforce them, discussed. State v. Young, 29 Minn. 474, 9 N. W. Rep. 737.

Rights of purchasers of lands sold for taxes protected from subsequent legislation. State v. McDonald, 26 Minn. 145, 1 N. W. Rep. 832.

The right of a purchaser at a tax sale, which is declared void, to a return of his purchase money, and subsequent taxes paid, with interest, (under Gen. St. 1866, c. 11, § 155,) could not be impaired by legislation subsequent to the purchase. Fleming v. Roverud, 30 Minn. 273, 15 N. W. Rep. 119. Such purchase is a contract with the state, the terms of which are embodied in the law then in force. Id.; State v. Foley, 30 Minn. 350, 15 N. W. Rep. 375. See, further, as to contracts with the state, Dermott v. State, (N. Y.) 1 N. E. Rep. 242.

A statute providing that a judgment against a railroad company, for injury to person or property, shall be a lien, within the county where recovered, superior to any mortgage or trust deed executed since July 4, 1862, is not unconstitutional. Central Trust Co. v. Sloan, (Iowa,) 22 N. W. Rep. 916.

Gen. St. 1878, §§ 16, 17, and Laws 1885, c. 81, under which a lien for the keeping of horses has precedence over a prior chattel mortgage, is constitutional. Smith v. Stevens, 36 Minn. 303, 31 N. W. Rep. 55.

As to the validity of a statute allowing a set-off, in relation to vested rights, see Shoe & Leather Nat. Bank v. Wood, (Mass.) 8 N. E. Rep. 753.

See, further, as to laws impairing the obligation of contracts and vested rights, De Graff v. St. Paul & P. R. Co., 23 Minn. 144; Attorney General v. Fitchburg R. Co., (Mass.) 6 N. E. Rep. 854; Bryson v. McCrary, (Ind.) 1 N. E. Rep. 55; Edwards v. Johnson, (Ind.) 5 N. E. Rep. 716; Daniells v. Watertown, (Mich.) 28 N. W. Rep. 673, and authorities cited in note to § 7, *supra*.

Sec. 12. Imprisonment for debt — Exemption of property from execution.

No person shall be imprisoned for debt in this state, but this shall not prevent the legislature from providing for imprisonment, or holding to bail persons charged with fraud in contracting said debt. A reasonable amount of property shall be exempt from seizure or sale, for the payment of any debt or liability; the amount of such exemption shall be determined by law.

[Add the following:

Proposed amendment—Exempt property liable for certain debts.

Provided, however, that all property so exempted shall be liable to seizure and sale for any debts incurred to any person for work done or materials furnished in the construction, repair, or improvement of the same: and *provided, further*, that such liability to seizure and sale shall also extend to all real property for any debt incurred to any laborer or servant for labor or service performed. (*As proposed to be amended by Laws* 1887, c. 2. *To be submitted at the general election of* 1888.)]

The bastardy act (Gen. St. c. 17, § 7) is not repugnant to this provision, as inflicting imprisonment for debt. State v. Becht, 23 Minn. 1.

Imprisonment for contempt is not imprisonment for debt. State v. Becht, 23 Minn. 411.

Gen. St. 1878, c. 124, § 23, punishing frauds on hotel-keepers, is not unconstitutional as an attempt to imprison for debt. State v. Benson, 28 Minn. 424, 10 N. W. Rep. 471.

No property can be claimed as exempt until the legislature shall determine to what property, and to what amount the exemption shall extend. Kelly v. Dill, 23 Minn. 435. The exemption of property from sale on execution is an exemption from *all* liabilities. Tuttle v. Strout, 7 Minn. 465, (Gil. 374.) Gen. St. 1878, c. 66, § 311, providing that exempt personal property shall not be exempt in actions for purchase money, is constitutional. Rogers v. Brackett, 34 Minn. 279, 25 N. W. Rep. 601. While the legislature may provide for the exemption of a reasonable amount of property, it cannot discriminate between different classes of creditors or debts. Coleman v. Ballandi, 22 Minn. 144.

In creating the homestead exemption, the legislation need not impose any particular condition or mode of occupancy. Thus the fact that a part of the land on which a party's dwelling-house stands is used for other purposes, does not affect the right to claim the whole lot as exempt. Kelly v. Baker, 10 Minn. 154, (Gil. 124.) A homestead law, which measures the homestead by area, and not by value, is valid. Cogel v. Mickow, 11 Minn. 475, (Gil. 354,); Barton v. Drake, 21 Minn. 299.

Sec. 13. Private property for public use.

The state cannot divest itself of the power of exercising the right of eminent domain. Village of Hyde Park v. Cemetery Ass'n, (Ill.) 7 N. E. Rep. 627.

The legislature may, by a general law, authorize a railroad company to construct its road in such places as it may see fit, and for such purpose to exercise the right of eminent domain. Weir v. St. Paul, S. & T. F. R. Co., 18 Minn. 155, (Gil. 139.)

What trespasses upon real property constitute a "taking," see Weaver v. Mississippi & Rum River Boom Co., 28 Minn. 534, 11 N. W. Rep. 113. Certain trespasses upon real property occurring at intervals of a year or two, held a "taking" of the property for public use. McKenzie v. Mississippi & Rum River Boom Co., 29 Minn. 288, 13 N. W. Rep. 123.

Gen. St. c. 31, relating to "dams and mills," is constitutional, the "taking" thereunder being for a public use. Miller v. Troost, 14 Minn. 365, (Gil. 282.)

Forcing payment of a license fee as a condition of doing business is not a taking of private property for public use. City of Rochester v. Upman, 19 Minn. 108, (Gil. 78.)

Sp. Laws 1879, c. 226, legalizing an existing highway, and requiring land-owners to present claims for compensation within a limited time or be barred, held public, (though published only among the special laws,) and constitutional. State v. Messenger, 27 Minn. 119, 6 N. W. Rep. 457, followed. State v. Bruggerman, 31 Minn. 493, 18 N. W. Rep. 454.

An act providing for the exercise of the power of eminent domain need not require as a condition precedent an attempt to obtain the voluntary consent of the owner. In re Opening First Street, (Mich.) 26 N. W. Rep. 159.

What is a "securing" of the compensation, see Gray v. First Div. St. P. & P. R. Co., 13 Minn. 315, (Gil. 289, 295.)

As to the sufficiency and effect of a tender of the compensation, see Scott v. St. Paul & C. Ry. Co., 21 Minn. 322.

The provisions of Gen. St. 1878, c. 13, for laying out roads by town supervisors, are constitutional, since the damages are to be paid by the town. Woodruff v. Town of Glendale, 26 Minn. 78, 1 N. W. Rep 581.

Where defendant's charter gives it the right to take land before making compensation, the latter provision should be struck out, leaving defendant the right to take, after first making compensation. Weaver v. Mississippi & Rum River Boom Co., 30 Minn. 477, 16 N. W. Rep. 269. A statute authorizing a taking before compensation made is void. Hursh v. First Div. St. P. & P. R. Co., 17 Minn. 439, (Gil. 417.)

See, also, In re Willis Ave., (Mich.) 22 N. W. Rep. 871.

The charter of Minneapolis providing for condemnation of lands for parks, is constitutional, as against the objection that damages are to be assessed by a commission of tax-payers of the city, and that no appeal lies to the supreme court. City of Minneapolis v. Wilkin, (1st case,) 30 Minn. 140, 14 N. W. Rep. 581.

As to the rule for ascertaining the value of land taken for railroad purposes, see Winona & St. P. R. Co. v. Waldron, 11 Minn. 515, (Gil. 392.)

An act authorizing the taking of land for a state road, must require notice of proceedings before the commissioners, and provide for the owners of lands to appear. Langford v. Commissioners Ramsey Co., 16 Minn. 375, (Gil. 333.)

Sec. 15. Lands declared allodial—Leases—When void.

The right of distress for rent was not unconstitutional, because it originally existed only as an incident of feudal tenure. Dutcher v. Culver, 24 Minn. 584, 617.

A reservation, in an allodial grant of lands not agricultural, of a definite sum to be paid annually for any length of time, whether by way of rent or as a consideration for the grant, does not give such grant a feudal character. Minneapolis Mill Co. v. Tiffany, 22 Minn. 463.

A grant of land, with the right to use forever for manufacturing purposes certain water-power on payment of a certain fixed perpetual annual rent, is valid. Id.

Sec. 16. Freedom of religious belief.

A city ordinance conformable to the charter prohibiting the sale of liquors on Sunday, and requiring saloons to be closed on that day, and providing penalties for its violation, is not in conflict with this section. State v. Ludwig, 21 Minn. 202.

ARTICLE II.

NAME AND BOUNDARIES.

Sec. 2. Jurisdiction of rivers.

Power of legislature to authorize a company to maintain booms and collect boomage in a river navigable only for loose logs. Osborne v. Knife Falls Boom Corp., 32 Minn. 412, 21 N. W. Rep. 704.

Sec. 3. Acceptance of the enabling act.

This section expressly prohibits the passage of any law subjecting lands, patented under the homestead act of congress, to levy or sale on execution for any debt created prior to issuance of the patent. Russell v. Lowth, 21 Minn. 167.

As to to the power and control of the state government over the unsold lands of the United States within the state, see State v. Bachelder, 5 Minn. 223, (Gil. 178.)

ARTICLE III.

DISTRIBUTION OF THE POWERS OF GOVERNMENT.

The statute (Comp. St. c. 4, § 15) authorizing either branch of the legislature to call for the opinion of the supreme court, or any one of the judges thereof, upon any subject, is unconstitutional. In re Application of the Senate, 10 Minn. 78, (Gil. 56.)

The judicial and executive departments of the government are independent, and the governor cannot compel the supreme court to give its opinion of an act of the legislature. Rice v. Austin, 19 Minn. 103. (Gil. 74.)

The court will not grant a *mandamus* to compel official action on the part of the governor, Rice v. Austin, *supra;* or on the part of the secretary of state, State v. Dike, 20 Minn. 363. (Gil. 314.) Officers of the executive department are not amenable to the courts, and cannot, even as to ministerial acts, be controlled by *mandamus* or injunction. Western R. Co. v. De Graff, 27 Minn. 1, 6 N. W. Rep. 341.

The exemption of the executive officers from the control of the courts applies to a state auditor, as commissioner of the land-office. State v. Whitcomb, 28 Minn. 50, 8 N. W. Rep. 902. See, further, as to the exemption of officers of executive department from the control of the courts, Secombe v. Kittelson, 29 Minn. 555, 12 N. W. Rep. 519.

The power of the governor to remove officers is administrative. State v. Hawkins, (Ohio,) 5 N. E. Rep. 228.

Justices of the peace, taking testimony in a contest for a seat in the legislature, are not subject to the courts, and cannot be restrained by prohibition. State v. Peers, 33 Minn. 81, 21 N. W. Rep. 860.

A statute prescribing the manner of constructing a particular bridge, the expense thereof, and the proportions the adjoining towns or counties shall contribute to its cost, is an exercise of legislative, not judicial, power. Guilder v. Town of Dayton, 22 Minn. 366.

Power to incorporate villages is legislative. Laws 1883, c. 73, assuming to delegate the power to the district court, held unconstitutional. State v. Simons, 32 Minn. 540, 21 N. W. Rep. 750.

Laws 1883, c. 125, § 9, authorizing the medical examining board to revoke the certificates of physicians for dishonorable conduct, is not invalid as investing the board with judicial power. State v. State Board of Med. Examiners, 34 Minn. 387, 26 N. W. Rep. 123.

See, further, as to legislative and judicial functions, Board of Education v. Blakewell, (Ill.) 10 N. E. Rep. 378; State v. Johnson, (Ind.) 5 N. E. Rep. 553; Johnson v. County of Wells, (Ind.) 8 N. E. Rep. 1.

The legislature may authorize municipal bonds in aid of railroads, and taxation to provide for the payment of the same. Davidson v. Commissioners Ramsey Co., 18 Minn. 482, (Gil.) 432.

A park act held not unconstitutional because it was left to the city to determine whether it should go into effect. State v. District Court, Hennepin Co., 33 Minn. 235, 22 N. W. Rep. 625. See, also, Farnum v. Johnson, (Wis.) 22 N. W. Rep. 751.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

Sec. 1. Proposed Amendment — Legislature — How composed—Sessions — Introduction of bills during last days of session.

[The legislature shall consist of the senate and house of representatives, which shall meet biennially at the seat of government of the state, at such time as shall be prescribed by law, but no session shall exceed the term of ninety legislative days, and no new bill shall be introduced in either branch, except on the written request of the governor, during the last twenty days of such sessions, except the attention of the legislature shall be called to some important matter of general interest by a special message from the governor. (*As proposed to be amended by Laws* 1887, *c.* 3, *to be submitted at the general election of* 1888.)]*

Under a provision prohibiting the introduction of bills after the first fifty days, held, that a bill regularly introduced to organize certain territory into the "township of M," might afterwards be amended to the "county of M." Pack v. Barton, (Mich.) 11 N. W. Rep. 367.

Sec. 5. Journals.

Effect of journal entries to overthrow the presumption that an enrolled bill, properly authenticated, was passed in accordance with the requirements of the constitution, see State v. City of Hastings, 24 Minn. 78.

Sec. 7. Compensation of members.

[The amendment to this section proposed by Laws 1881, *c.* 2, § 2, was not adopted.]

Sec. 9. Restrictions as to holding office.

The disability ceases when the office of senator and representative terminates, whether by lapse of time, resignation, or otherwise. Barnum v. Gilman, 27 Minn. 466, 8 N. W. Rep. 375.

Sec. 10. Revenue bills.

An act which merely makes an appropriation of public money is not a bill for raising a revenue, though it may necessitate taxation. Curryer v. Merrill, 25 Minn. 1.

*The amendment to art. 4, § 1, proposed by Laws 1881, c. 2, § 1, was not adopted.

Sec. 11. Passage of bills—Approval.

Whether the rules of the two houses were designed to be placed upon the same footing with the rules incorporated in the constitution, see Supervisors Ramsey Co. v. Heenan, 2 Minn. 330, 335, (Gil. 281, 286.) See, also, State v. City of Hastings, 24 Minn. 78, 81.

An act passed on the 7th, presented to the governor on the 8th, on which date the legislature adjourned *sine die*, and signed by him on the 12th, one of the intervening days being Sunday, is signed within the time prescribed. Stinson v. Smith, 8 Minn. 366. (Gil. 326.) In construing the provision giving the governor three full working days after adjournment of the legislature in which to consider and approve bills passed during the last three days of the session, Sundays intervening, after adjournment, are not to be considered. Id.; followed, Moulton v. Doran, 10 Minn. 67, (Gil. 49.)

Sec. 12. Joint resolution.

The consent of the state to the bringing of an action against the trustees of the hospital for the insane, to determine the title to lands of the state held by them, may be expressed by a joint resolution of the two houses, and need not be by bill. St. Paul & C. Ry. Co. v. Brown, 24 Minn. 517, 574.

Sec. 13. Enacting clause.

This section is imperative, and must be strictly followed. Supervisors Ramsey Co. v. Heenan, 2 Minn. 330, (Gil. 281.) See, also, State v. City of Hastings, 24 Minn. 78, 81.

Sec. 20. Reading of bills.

This section is imperative, and must be strictly followed. See cases last cited. See State v. Liedtke, 9 Neb. 464, 4 N. W. Rep. 72.

Sec. 21. Authentication.

The authentication of an enrolled bill, in compliance with this section, is presumptive, but not conclusive, evidence that the act was passed in accordance with the requirements of the constitution. State v. City of Hastings, 24 Minn. 78. See, also, Supervisors Ramsey Co. v. Heenan, 2 Minn. 330, (Gil. 281.)

Failure of presiding officer to sign bill. See Cottrell v. State, 9 Neb. 125, 1 N. W. Rep. 1008.

Sec. 27. Subject and title of laws.

Where the title of an act is such that the legislature can be deemed to be fairly apprised of its general character by its subject, as expressed in such title, and all the provisions of such act have a just and proper reference thereto, and are such as by the nature of the subject so indicated are manifestly appropriate in that connection, and might reasonably be looked for in a measure of such character, it is sufficient. State v. Cassidy, 22 Minn. 312; State v. Klein, 22 Minn. 328.

The act of March 9, 1867, relative to the titles, terms, and business of courts in counties unorganized for judicial purposes, does not conflict with this section. State v. Gut, 13 Minn. 341, (Gil. 315.) See, also, City of St. Paul v. Colter, 12 Minn. 41, (Gil. 16.)

Section 2 of the "homestead exemption act," (Gen. St. c. 68,) providing that a mortgage or other alienation of the homestead by the husband, without the signature of the wife, shall not be valid, is not in conflict with this section. Barton v. Drake, 21 Minn. 299, 303.

Chapter 10, Laws 1873, entitled "An act to establish a fund for the foundation and maintenance of an asylum for inebriates," is not repugnant to this section. State v. Cassidy, 22 Minn. 312; State v. Klein, 22 Minn. 328.

Sp. Laws, 1865, c. 10, consolidating certain railroad companies, authorizing the bridging of the Mississippi, and amending a prior statute, is void for non-compliance with this section. Winona & St. P. R. Co. v. Waldron, 11 Minn. 515, (Gil. 392.) See, also, State v. Kinsella, 14 Minn. 524, (Gil. 395.)

Laws 1881, c. 10, § 22, concerning notice of expiration of period of redemption in tax sales, is invalid for failure to comply with this section. State v. Smith, 35 Minn. 257, 28 N. W. Rep. 241.

The subject of § 3, c. 87, Laws 1860, relative to publication of notice in foreclosure, is sufficiently expressed in the title of the chapter. Atkinson v. Duffy, 16 Minn. 45, (Gil. 30.)

The title of Laws 1874, c. 67, concerning forcible entries and detainers, sufficiently expresses its subject. Hoffman v. Parsons, 27 Minn. 236, 6 N. W. Rep. 797.

An act may embrace provisions for the organization of a county and of several town-

ships therein. Attorney General v. Weimar, (Mich.) 26 N. W. Rep. 773; Attorney General v. Hollister, Id. 777.

A section inflicting a penalty on any person who may become intoxicated in any public place, contained in an act, the title of which shows its whole purpose to be the regulation of the sale of liquors, is invalid. People v. Beadle, (Mich.) 26 N. W. Rep. 800.

Under an act entitled "An act to *regulate* the sale of intoxicating liquors," an amendatory section *prohibiting* the sale thereof within certain limits is void. People v. Gadway, (Mich.) 28 N. W. Rep. 101.

It has been held that only the provisions foreign to the title are invalid, and that the remaining provisions will stand. Henckle v. Town of Keota, (Iowa,) 27 N. W. Rep. 250; State v. Hards, (Neb.) Id. 139; State v. Caldwell, (Neb.) 22 N. W. Rep. 228; State v. Schroeder, 51 Iowa, 197, 1 N. W. Rep. 431. *Contra*, Skinner v. Wilhelm, (Mich.) 30 N. W. Rep. 311.

For further illustration of the rule that the subject must be expressed in the title, see State v. Cantieny, 34 Minn. 1, 24 N. W. Rep. 458; Mississippi, etc., Boom Co. v. Prince, Id. 79, 24 N. W. Rep. 361; Gillitt v. McCarthy, Id. 318, 25 N. W. Rep. 637; Butler v. Chambers, 36 Minn. 69, 30 N. W. Rep. 308; Supervisors Ramsey Co. v. Heenan, 2 Minn. 330, (Gil. 281;) State v. Smith, 35 Minn. 257, 28 N. W. Rep. 241; Attorney General v. Amos, (Mich.) 27 N. W. Rep. 571; Callaghan v. Judge, (Mich.) 26 N. W. Rep. 806; Northwestern Manuf'g Co. v. Chambers, (Mich.) 25 N. W. Rep. 372; Gatling v. Lane, (Neb.) 22 N. W. Rep. 453; Herdman v. Marshall, Id. 690; State v. Ream, (Neb.) 21 N. W. Rep. 398; Stewart v. Father Mathew Soc., 41 Mich. 67, 1 N. W. Rep. 931; Miller v. Hurford, 11 Neb. 377, 9 N. W. Rep. 477, and 13 Neb. 13, 12 N. W. Rep. 832; State v. County of Pierce, 10 Neb. 476, 6 N. W. Rep. 763; Continental Imp. Co. v. Phelps, 47 Mich. 299, 11 N. W. Rep. 167; Tingue v. Village of Port Chester, (N. Y.) 4 N. E. Rep. 625; In re McPherson, (N. Y.) 10 N. E. Rep. 685; Mix v. Illinois Cent. R. Co., (Ill.) 6 N. E. Rep. 42; Crawfordsville, etc., Turnpike Co. v. Fletcher, (Ind.) 2 N. E. Rep. 243; Board of Water Com'rs v. Dwight, (N. Y.) 3 N. E. Rep. 782.

Sec. 30. Manner of voting.

Cited, State v. City of Hastings, 24 Minn. 78.

Sec. 32*a*. Taxation of railroad companies.

See In re County of Stevens, 36 Minn. 467, 31 N. W. Rep. 942.

*Sec. 33. Prohibition of special legislation.

The legislature is prohibited from enacting any special or private laws in the following cases:

1. For changing the name of a person, or constituting one person the heir at law of another.

2. For laying out, opening, or altering highways.

3. For authorizing persons to keep ferries across streams wholly within this state.

4. For authorizing the sale or mortgage of real or personal property of minors or other persons under disability.

5. For changing any county-seat.

6. For assessment or collection of taxes, or for extending the time for the collection thereof.

7. For granting corporate powers or privileges, except to cities.

8. For authorizing the apportionment of any part of the school fund.

9. For incorporating any town or village.

10. For granting to any individual, association, or corporation, except municipal, any special or exclusive privilege, immunity, or franchise whatever.

11. For vacating roads, town plats, streets, alleys, and public grounds.

But the legislature may repeal any existing special law relating to the foregoing subdivisions. (*Proposed to be amended by Laws* 1881, *c.* 3, § 1, *and adopted at the general election of* 1881. *Gen. Laws* 1883, *p.* 2.)

Indirect special legislation by an act purporting to legalize proceedings required to be provided for by general laws. See Independent School-Dist. v. City of Burlington, 60 Iowa, 500, 15 N. W. Rep. 295.

Chapter 231, Laws 1885, declaring valid the incorporation of villages attempted to be incorporated under Laws 1883, *c.* 73, is valid. 34 N. W. Rep. 164.

Under subd. 7. See Morton v. Power, 33 Minn. 521, 24 N. W. Rep. 194; Green v. Knife Falls Boom Corp., 35 Minn. 155, 27 N. W. Rep. 924.

Under subd. 9. See State v. County of Sauk, (Wis.) 22 N. W. Rep. 572.

See, generally, Green v. Knife Falls Boom Corp., 35 Minn. 155, 27 N. W. Rep. 924; State v. Berka, (Neb.) 30 N. W. Rep. 267; State v. Piper, (Neb.) 24 N. W. Rep. 204; Cooper v. County of Mills, (Iowa,) 28 N. W. Rep. 633; Baldwin v. Ely, (Wis.) Id. 392; State v. Pugh, (Ohio,) 1 N. E. Rep. 439; People v. Loew, (N. Y.) 7 N. E. Rep. 297; Johnson v. Wells, (Ind.) 8 N. E. Rep. 1; In re Mayor, (N. Y.) 2 N. E. Rep. 642; People v. Haselwood, (Ill.) 6 N. E. Rep. 480; State v. Anderson, (Ohio,) Id. 571; State v. Hudson, (Ohio,) 5 N. E. Rep. 225.

*Sec. 34. General laws in place of special.

The legislature shall provide general laws for the transaction of any business that may be prohibited by section one of this amendment, and all such laws shall be uniform in their operation throughout the state. (*Proposed to be amended by Laws* 1881, c. 3, § 1, *and adopted at the general election of* 1881. *Gen. Laws*, 1883, *p.* 2.)

*Sec. 35. Proposed amendment — Freedom of markets — Conspiracy.

[Any combination of persons, either as individuals or as members or officers of any corporation, to monopolize the markets for food products in this state, or to interfere with or restrict the freedom of such markets, is hereby declared to be a criminal conspiracy, and shall be punished in such manner as the legislature may provide. (*As proposed to be amended by Laws* 1887, c. 1, *to be submitted at the general election of* 1888.)]

ARTICLE V.

EXECUTIVE DEPARTMENT.

Sec. 1. How constituted.

Cited, State v. Dike, 20 Minn. 363, (Gil. 314.)

Sec. 4. Governor—Duties.

The governor cannot fill a vacancy in the office of judge of probate, by virtue of the power to fill vacancies conferred by this section. Crowell v. Lambert, 9 Minn. 283, (Gil. 267, 271.)

Sec. 5. Terms of office and salaries of state officers.

The official term of the secretary of state, treasurer, and attorney general shall be two years; the official term of the state auditor shall be four years; and each shall continue in office until his successor shall have been elected and qualified. The further duties and the salaries of said executive officers shall each be prescribed by law. (*Proposed to be amended by Laws* 1883, c. 1, § 1, *and adopted at the general election of* 1883; *Gen. Laws* 1885, *p.* 1.)

Sec. 7. Commencement of term of office in 1858.

Cited, State v. Munch, 22 Minn. 67, 71.

separate and distinct one from the other, as if each was vested in a separate court. Holmes v. Campbell, 12 Minn. 221, (Gil. 141.)

The supreme court has jurisdiction by *quo warranto* to enforce the forfeiture of the charter of a corporation. State v. St. Paul & S. C. R. Co., 35 Minn. 222, 28 N. W. Rep. 245.

Mandamus may be issued to all courts of inferior jurisdiction, and to individuals. Crowell v. Lambert, 10 Minn. 369, (Gil. 295.) The supreme court cannot issue an alternative writ of *mandamus*, inasmuch as, in such proceedings, the defendant is entitled to a trial by jury. But a peremptory writ may be issued on notice. Harkins v. Supervisors Scott Co., 2 Minn. 342, (Gil. 294.)

For the same reason it cannot issue the writ of prohibition under such form as will entitle the parties to join issue upon the return to be tried by a jury, but will issue the writ in the form of an order to show cause, the return to which may be controverted by affidavits, and the proceeding be determined as a motion. Prignitz v. Fischer, 4 Minn. 366, (Gil. 275.)

The provision of the charter of St. Paul that no appeal shall lie from the judgment of the city justice in cases of assault, where the judgment or fine imposed, exclusive of costs, is less than twenty-five dollars, does not attempt to take away the right of review by *certiorari*, and is not in conflict with this section. Tierney v. Dodge, 9 Minn. 166, (Gil. 153.)

The very nature of its appellate jurisdiction confines the court to a consideration of such questions as, originating in another court, have been there actually or presumably considered and passed upon in the first instance. Orders entered *pro forma* will not be reviewed. Johnson v. Howard, 25 Minn. 558.

The validity of Gen. St. 1878, c. 86, § 21, relating to dismissal of appeals in supreme court, doubted, if the section is imperative, without power in the court to relieve. Baldwin v. Rogers, 28 Minn. 68, 9 N. W. Rep. 79.

The court will not review questions, *e. g.*, the assessment of damages or costs by the clerk of the district court, which have not been actually passed on by the court below, unless substantial error is quite apparent, and adequate relief cannot be had below. Babcock v. Sanborn, 3 Minn. 141, (Gil. 86.)

The appointment, by a judge of the supreme court, of commissioners in proceedings to condemn lands for railroad purposes, is not an exercise of original jurisdiction unwarranted by this section. Warren v. First Div. St. P. & P. R. Co., 18 Minn. 384, (Gil. 345.)

There is no right to a jury trial in the "remedial cases" here referred to. State v. City of Lake City, 25 Minn. 404, 427.

Sec. 3. Judges of supreme court, how elected.

The judges of the supreme court shall be elected by the electors of the state at large, and their term of office shall be six years, and until their successors are elected and qualified.* (*As proposed to be amended by Laws* 1883, *c.* 3, *and adopted at the general election of* 1883; *Gen. Laws* 1885, *p.* 2.)

When district judge assigned to sit in supreme court.

Whenever all or a majority of the judges of the supreme court shall, from any cause, be disqualified from sitting in any case in said court, the governor, or, if he shall be interested in the result of such case, then the lieutenant-governor, shall assign judges of the district court of the state, who shall sit in such case in place of such disqualified judges, with all the powers and duties of judges of the supreme court. (*Added* 1876.)

Sec. 4. Judicial districts—Term of office of judges.

The state shall be divided by the legislature into judicial districts, which shall be composed of contiguous territory, be bounded by county lines, and contain a population as nearly equal as may be practicable. In each judicial district one or more judges, as the legislature may prescribe, shall be elected by the electors thereof, whose term of office shall be six years; and each of said judges shall severally have and exercise the powers of the court under such limitations as may be prescribed by law. Every district judge shall at the time of his election be a resident of the district for which he shall be elected, and shall reside therein during his continuance in office. In case any court of common pleas heretofore established shall be abolished, the judge of

* See *post*, § 4, note *.

such court may be constituted by the legislature one of the judges of the district court of the district wherein such court has been so established, for a period not exceeding the unexpired term for which he was elected.* (*As amended* 1875 *and* 1883; *Gen. Laws* 1885, *p.* 2.)

The legislature may provide that a district court shall be held at one place for each district, including several counties in its territorial jurisdiction, or at several places, including one or more counties or parts of counties. State v. Robinson, 14 Minn. 447, (Gil. 333, 338.)

Sec. 5. District court—Jurisdiction.

"Original" jurisdiction is not to be deemed equivalent to "exclusive" jurisdiction. Crowell v. Lambert, 10 Minn. 369, (Gil. 295, 298.)

The district court was intended to receive and exercise, in the first instance, all the judicial power not vested by the constitution in other courts, without regard to the amount in controversy. If less than $100, plaintiff cannot recover costs. Agin v. Heyward, 6 Minn. 110, (Gil. 53;) followed, Southern Minn. R. Co. v. Stoddard, Id. 150, (Gil. 92;) Cressey v. Gierman, 7 Minn. 398, (Gil. 316.) Where one sues on his own and other's behalf, also, the court has jurisdiction if all the claims sued for amount to more than $100, though plaintiff's alone is less than that amount. Goncelier v. Foret, 4 Minn. 13, (Gil. 1.)

The district court may try indictments for selling liquor without license. State v. Bach, 36 Minn. 478, 30 N. W. Rep. 764.

Sec. 7. Probate courts.

One elected to fill a vacancy in the office of probate judge holds for the full term of two years, and not merely for the unexpired portion of his predecessor's term. Crowell v. Lambert, 9 Minn. 283, (Gil. 267;) followed State v. Black, 22 Minn. 336, 338.

Where a county, "established," but not "organized," nor authorized to have a probate court, is attached for judicial purposes to an organized county, the probate court of the latter has jurisdiction over the former. State v. Wilcox, 24 Minn. 143.

The powers and duties of probate judges, under Gen. St. 1878, *c.* 10, § 124, as to the incorporation of cities, are not judicial; nor is the act invalid as conferring on probate courts or judges judicial power beyond that authorized by the constitution. State v. Ueland, 30 Minn. 29, 14 N. W. Rep. 58; followed, State v. Ostrum, 35 Minn. 480, 29 N. W. Rep. 585; State v. Wiswell, 35 Minn. 480, 29 N. W. Rep. 586.

The probate court has jurisdiction to place persons under guardianship, control the management and disposition of property and person, and, so far as matters of guardianship are concerned, have jurisdiction after the guardianship has terminated. Jacobs v. Fouse, 23 Minn. 51.

Relationship to a guardian *ad litem* will not disqualify a judge from acting in the case. Bryant v. Livermore, 20 Minn. 313, (Gil. 271.)

Sec. 8. Justices of the peace,

The legislature cannot confer on a justice of the peace jurisdiction over offenses punishable by imprisonment in the state prison. State v. Charles, 16 Minn. 474, (Gil. 426.)

The "amount in controversy" does not include costs. Watson v. Ward, 27 Minn. 29, 6 N. W. Rep. 407.

A justice of the peace has no jurisdiction of a prosecution for obstructing a highway in which the title to real estate is involved. State v. Cotton, 29 Minn. 187, 12 N. W. Rep. 529.

The title to real estate must come in question *on the evidence*, not on the pleadings merely, before the justice will lose jurisdiction. Goenen v. Schroeder, 8 Minn. 387, (Gil. 344. See, also, Goenen v. Schroeder, 18 Minn. 66, (Gil. 51.)

See Burke v. St. Paul, M. & M. Ry. Co., 35 Minn. 172, 28 N. W. Rep. 190, cited *supra*, § 1.

Sec. 9. Judges other than those provided for in the constitution.

See Carson v. Smith, cited in note to art. 6, § 1, *supra*.

*The amendments to art. 4, §§ 2, 3, 4, were proposed and adopted in the following form: *First.* That section two of said article be amended by striking out the word "three," where it occurs in said section, and inserting in lieu thereof the word "four." *Second.* That section three of said article be amended by striking out the word "seven," where it occurs in said section, and inserting in lieu thereof the word "six." *Third.* That section four of said article be amended by striking out the word "seven," where it occurs in said section, and inserting in lieu thereof the word "six." Gen. Laws 1883, *c.* 3; Gen. Laws 1885, p. 2.

Sec. 10. Vacancies.

The election provided for in the last clause is one which becomes necessary by reason of the happening of a vacancy. The clause has no control over elections of judges in the ordinary course. State v. Black, 22 Minn. 336.

In estimating the period of "thirty days" mentioned in this section, neither the day of the happening of the vacancy, nor the day of election, is to be included. State v. Brown, 22 Minn. 482.

See, also, Crowell v. Lambert, cited in note to section 7, *supra*.

Sec. 13. Clerk of district court.

"Shall be prescribed by law," includes common as well as statute law. Walter v. Greenwood, 29 Minn. 87, 12 N. W. Rep. 145.

The holder of a certificate of election, as clerk of the district court, is entitled to the possession of the office, on *mandamus*, as the court will not, in such proceeding, try the question of his eligibility. State v. Sherwood, 15 Minn. 221, (Gil. 172.)

Sec. 14. Process and pleading.

The provision prescribing the style of process includes all such writs, original, mesne, or final, by which the authority of the state is exerted in obtaining jurisdiction over the person or property of the citizens, and which require the exercise of the sovereign power for their enforcement. Hinkley v. St. Anthony Falls W. P. Co., 9 Minn. 55, (Gil. 44.)

A district court summons is not process required to run in the name of the state. Hanna v. Russell, 12 Minn. 80, (Gil. 43;) Lowry v. Harris, Id. 255, (Gil. 166.)

A summons, after the address to the defendant, proceeded: "You are hereby summoned and required, in the name of the state of Minnesota, to answer." Held sufficient. Cleland v. Tavernier, 11 Minn. 194, (Gil. 126.)

That an execution does not run in the name of the state is a defect of form only, which does not make it void. Thompson v. Bickford, 19 Minn. 17, (Gil. 1.)

Sec. 15. Court commissioners.

The court commissioner has the powers of a judge *at chambers*, but not those of a *district court in vacation*. Gere v. Weed, 3 Minn. 352, (Gil. 249;) followed, Pulver v. Grooves, 3 Minn. 359, (Gil. 252.)

As to the powers of court commissioners in *habeas corpus* proceedings, see State v. Hill, 10 Minn. 63, (Gil. 45.)

ARTICLE VII.

ELECTIVE FRANCHISE.

Sec. 1. Who are entitled to vote.

See State v. Fitzgerald, 32 N. W. Rep. 788; State v. Gurley, (Minn.) 35 N. W. Rep. 179.

See, also, note to § 7 of this article.

Sec. 6. Elections to be by ballot.

Gen. St. 1878, c. 1, providing for numbering of tickets to correspond with the number of the voter on the poll-list, violates this section. Brisbin v. Cleary, 26 Minn. 107, 1 N. W. Rep. 825.

See, also, Attorney General v. City of Detroit, (Mich.) 24 N. W. Rep. 887.

Sec. 7. Eligibility to office.

This provision, and § 1 of this article, did not affect the previous law as to eligibility at the election in October, 1857, at which time the constitution was submitted to the people for adoption. Territory v. Smith, 3 Minn. 240, (Gil. 164.)

To be eligible to the office of county attorney, the candidate need not be skilled in the law or admitted to practice. This section deemed unwise. State v. Clough, 23 Minn. 17.

*Sec. 9. Official year—General elections—Time of holding.

The official year for the state of Minnesota shall commence on the first Monday in January in each year, and all terms of office shall terminate at that time; and the general election shall be held on the first Tuesday after the first Monday in November. The first general election for state and county officers, except judicial officers, after the adoption of this amendment, shall be held in the year A. D. one thousand eight hundred and eight-four, and thereafter the general election shall be held biennially. All state, county, or other officers elected at any general election, whose term of office would otherwise expire on the first Monday of January, A. D. one thousand eight hundred and eighty-six, shall hold and continue in such offices respectively until the first Monday in January, one thousand eight hundred and eighty-seven. (*Proposed to be amended by Laws* 1883, *c.* 2, § 1, *and adopted at the general election of* 1883; *Gen. Laws* 1885, *p.* 2.)

See State v. Frizzell, 31 Minn. 460, 18 N. W. Rep. 316.

ARTICLE VIII.

SCHOOL FUNDS—EDUCATION AND SCIENCE.

Sec. 1. General and uniform system of public schools.

The school law (Sp. Laws 1869, *c.* 92) is not in conflict with this section or with § 3 of this article. Board of Education Sauk Centre v. Moore, 17 Minn. 412, (Gil. 391.)

Laws 1877, *c.* 75, "to provide uniform and cheap text-books for the public schools," is not in conflict with this section, nor is it repealed by Laws 1877, *c.* 74. Curryer v. Merrill, 25 Minn. 1.

Sec. 2. Proceeds of sales of school lands.

The proceeds of such lands as are or hereafter may be granted by the United States for the use of schools, within each township in this state, shall remain a perpetual school fund to the state, and not more than one-third of said lands may be sold in two years, one-third in five years, and one third in ten years; but the lands of the greatest valuation shall be sold first: *provided*, that no portion of said lands shall be sold otherwise than at public sale. The principal of all funds arising from sales, or other disposition of lands or other property, granted or intrusted to this state in each township for educational purposes, shall forever be preserved inviolate and undiminished; and the income arising from the lease or sale of said school land shall be distributed to the different townships throughout the state, in proportion to the number of scholars in each township between the ages of five and twenty-one years, and shall be faithfully applied to the specific objects of the original grants or appropriations.

Investment of proceeds of sales of school lands.

[Suitable laws shall be enacted by the legislature for the safe investment of the principal of all funds which have heretofore arisen, or which may hereafter arise, from the sale or other disposition of such lands, or the income from such lands accruing in any way before the sale or disposition thereof, in interest bearing bonds of the United States, or of the state of Minnesota, issued after the year one thousand eight hundred and sixty, or of such other state as the legislature may by law from time to time direct.]

Swamp lands to be sold—Disposition of proceeds.

All swamp lands now held by the state, or that may hereafter accrue to the state, shall be appraised and sold in the same manner and by the same officers,

and the minimum price shall be the same, less one-third, as is provided by law for the appraisement and sale of the school lands under the provisions of title one of chapter thirty-eight of the General Statutes. The principal of all funds derived from sales of swamp lands, as aforesaid, shall forever be preserved inviolate and undiminished. One-half of the proceeds of said principal shall be appropriated to the common-school fund of the state. The remaining one-half shall be appropriated to the educational and charitable institutions of the state, in the relative ratio of cost to support said institutions.*

Sec. 3. Schools to be provided in each township.

See note to § 1 of this article, *supra.*

*Sec. 5. Loan of permanent school funds—Assessment for repayment.

The permanent school funds of the state may be loaned upon interest at the rate of five per cent. per annum to the several counties or school-districts of the state, to be used in the erection of county or school buildings. No such loan shall be made until approved by a board consisting of the governor, the state auditor, and the state treasurer, who are hereby constituted an investment board for the purpose of the loans hereby authorized; nor shall any such loan be for an amount exceeding three per cent. of the last preceding assessed valuation of the real estate of the county or school-district receiving the same. The state auditor shall annually, at the time of certifying the state tax to the several county auditors, also certify to each auditor to whose county, or to any of the school-districts of whose county, any such loan shall have been made, the tax necessary to be levied to meet the accruing interest or principal of any such loan, and it shall be the duty of every such county auditor forthwith to levy and extend such tax upon all the taxable property of his county, or of the several school-districts, respectively, liable for such loans, (as the case may be,) and in all such cases the tax so assessed shall be fifty per cent. in excess of the amount actually necessary to be raised on account of such accruing principal or interest. It shall be levied, collected, and paid into the county and state treasuries in the same manner as state taxes; and any excess collected over the amount of such principal or interest accruing in any given year shall be credited to the general funds of the respective counties or school-districts. No change of the boundaries of any school-district after the making of any such loan shall operate to withdraw any property from the taxation herein provided for; nor shall any law be passed extending the time of payment of any such principal or interest, or reducing the rate of such interest, or in any manner waiving or impairing any rights of the state in connection with any such loan. Suitable laws, not inconsistent with this amendment, may be passed by the legislature for the purpose of carrying the same into effect. (*As proposed to be amended by Laws* 1885, *c.* 1, *and adopted at the general election of* 1886; *Gen. Laws* 1887, *p.* 1.)

See an act legalizing the canvass of the votes upon this amendment. 1887, *c.* 151, *post*, *c.* 123, *§ 63.

*Paragraph in brackets adopted 1877. Last paragraph proposed by Laws 1881, c. 4, § 1, and adopted at the general election of 1881. Gen. Laws 1883, p. 3.

ARTICLE IX.

FINANCES OF THE STATE, AND BANKS AND BANKING.

Sec. 1. Taxes to be equal—Local improvements—Water tax.

All taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state: *provided*, that the legislature may, by general law or special act, authorize municipal corporations to levy assessments for local improvements upon the property fronting upon such improvements, or upon the property to be benefited by such improvements, or both, without regard to a cash valuation, and in such manner as the legislature may prescribe: *and provided, further*, that for the purpose of defraying the expenses of laying water-pipes and supplying any city or municipality with water, the legislature may, by general or special law, authorize any such city or municipality, having a population of five thousand or more, to levy an annual tax or assessment upon the lineal foot of all lands fronting on any water-main or water-pipes laid by such city or municipality within corporate limits of said city, for supplying water to the citizens thereof, without regard to the cash value of such property, and to empower such city to collect any such tax assessments, or fines or penalties for failure to pay the same, or any fine or penalty for any violation of the rules of such city or municipality in regard to the use of water, or for any water-rate due for the same. (*As proposed to be amended by Laws* 1881, *c.* 1, § 1. *Adopted at the general election of* 1881. See Gen. Laws 1883, p. 1.)

DECISIONS UNDER ORIGINAL SECTION. Before the amendment of 1869, it was held that this section was applicable to city assessments for grading streets, and that such assessments must be apportioned upon the basis of cash valuation of the property assessed. An act of the legislature authorizing assessments not according to valuation, but benefits conferred, was held unconstitutional and void. Stinson v. Smith, 8 Minn. 366, (Gil. 326;) Bidwell v. Coleman, 11 Minn. 78, (Gil. 45.)

If taxes imposed are distributed on just principles, applicable alike to all for whose benefit the appropriation is made or intended, substantial equality is attained, and no constitutional right is invaded. Comer v. Folsom, 13 Minn. 219, (Gil. 205.)

Equality, as nearly as may be, *must be aimed at* in every law imposing a tax. The course to be pursued and the means to be used *in pursuance of this rule* are necessarily left to the discretion of the legislature, and the infraction of the constitution must be palpable before the courts will declare the law unconstitutional. A substantial compliance with this rule by the legislature is all that can be required, but they must in no case run counter to it or disregard it. Sanborn v. Commissioners Rice Co., 9 Minn. 273, (Gil. 258, 261.)

In the exposition of tax laws under our state constitution, which requires equality and uniformity in the imposition of taxes upon property upon a cash valuation, such a construction must be adopted as will avoid duplicate taxation, unless a contrary interpretation is compelled by some express provision or necessary implication of the statute. Commissioners Rice Co. v. Citizens' Nat. Bank, 23 Minn. 280.

Chapter 10, Laws 1873, entitled "An act to establish a fund for the foundation and maintenance of an asylum for inebriates," requiring the payment of a license fee of ten dollars for the maintenance and support of such asylum from all dealers in liquors, in addition to all other fees and licenses, is a legitimate exercise of the police power of the state, and does not impose an unequal tax, within this section. State v. Cassidy, 22 Minn. 312; State v. Klein, Id. 328.

In regranting the franchises of the St. Paul & S. C. R. Co. it was competent for the legislature to change and modify the terms of the original charter in regard to the payment of a certain per cent. of its gross earnings in lieu of all taxation. Such modification is not prohibited by either § 1 or § 3 of this article. City of St. Paul v. St. Paul & S. C. R. Co., 23 Minn. 469.

Section 30, *c.* 1, Laws 1860, requiring the county auditor to add fifty per cent. to the assessor's valuation of personal property in case of neglect or failure to list or to swear to the return, is in conflict with this section, and § 3 of this title. McCormick v. Fitch, 14 Minn. 252, (Gil. 185.)

Legislature may provide for constructing bridges, and distribute the expense to the counties and towns between which it is constructed. An act so providing is not in conflict with §§ 1–4, art. 9, or § 5, art. 11, of the constitution. Guilder v. Town of Otsego, 20 Minn. 74, (Gil. 59.)

Sp. Laws 1870, c. 100, appointing commissioners for the rebuilding of a bridge across Crow river, is not obnoxious to §§ 1–4, inclusive, of this title. Guilder v. Town of Dayton, 22 Minn. 366; Guilder v. Town of Otsego, 20 Minn. 74, (Gil. 59.)

The levy of a poll tax, under the city charter of Faribault, (Sp. Laws 1872, p. 114, § 8; p. 121, § 3,) is not repugnant to this section, by reason of the exemption of members of fire companies. City of Faribault v. Misener, 20 Minn. 396, (Gil. 347.)

Gen. St. 1878, c. 11, § 97, providing that the purchase money to be refunded to the purchaser at a void tax sale shall be paid out of the county treasury, is not in conflict with this section. State v. Cronkhite, 28 Minn. 197, 9 N. W. Rep. 681.

DECISIONS SINCE THE AMENDMENT OF 1869. The amendment was properly adopted by the people. Dayton v. City of St. Paul, 22 Minn. 400.

Where authority is conferred on a municipal corporation to provide for the apportionment and assessment of taxes for expenses incurred in "works" of public improvement, the power to tax for such purpose is limited, so that a tax materially greater than the expense is void. Minnesota Linseed Oil Co. v. Palmer, 20 Minn. 468, (Gil. 424.) The legislature has power, in matters of local improvement in municipalities, to authorize the common council or board of public works to determine the amount to be raised for such improvement, the property to be assessed therefor, and to apportion such assessment, making it final, except in case of fraud or mistake; following Rogers v. City of St. Paul, 22 Minn. 494; Carpenter v. City of St. Paul, 23 Minn. 232. The term "local improvements," as used in the amendment of 1869, c. 51, Laws 1869, (Gen. St. 1878, p. 26,) to this section, means improvements in a particular locality, by which the real property adjoining or near such locality is especially benefited, such as the grading, paving, curbing, etc., of streets, though it may be one of the most generally traveled thoroughfares. Rogers v. City of St. Paul, 22 Minn. 494. Widening and straightening a street is a local improvement. Cook v. Slocum, 27 Minn. 509, 8 N. W. Rep. 755.

A charter making an abutting property owner liable to a traveler injured by a defective sidewalk is invalid, not being within the taxing power. Noonan v. City of Stillwater, 33 Minn. 198, 22 N. W. Rep. 444. But the expense of building and maintaining may be imposed on the property owners. Id.

While only "municipal corporations" may levy assesements for local improvements, such levy may be made in behalf of the corporation by its authorized agents,—in this case, a board of park commissioners. State v. District Court Hennepin Co., 33 Minn. 235, 22 N. W. Rep. 625. The requirement of equality applies to local assessments. Discretion of the legislature in providing means to secure equality. An act is not void because inequality *may*, but only where it *will*, result. Id. Sp. Laws 1883, c. 281, creating a board of park commissioners in Minneapolis, is not unconstitutional, the board not being a municipal corporation, Id.; nor because it authorizes the purchase of lands at any agreed price, part of which is the exemption of the owner's remaining land from assessment, Id.; nor because its taking effect was left to the vote of the city, Id.

See, further, as to assessments on property benefited, Spencer v. Merchant, (N. Y.) 3 N. E. Rep. 682; County of Hennepin v. Bartleson, 34 N. W. Rep. 222.

A law authorizing counties to make assessments for local improvements is constitutional. In re Dowlan, 36 Minn. 430, 31 N. W. Rep. 517.

Certain exemptions in favor of railroad companies held not unconstitutional. See In re County of Stevens, 36 Minn. 467, 31 N. W. Rep. 942.

See, further, as to equal taxation, State v. Graham, (Neb.) 22 N. W. Rep. 114; Central Iowa Ry. Co. v. Supervisors, (Iowa,) 25 N. W. Rep. 128.

Sec. 2. Annual tax—Minnesota state railroad bonds.

The amendment to this section, restricting the power of the legislature to provide for payment of the Minnesota state railway bonds, adopted November 6, 1860, is invalid as impairing the obligation of contracts, by impairing the bondholder's remedy. State v. Young, 29 Minn. 474, 9 N. W. Rep. 737.

An act authorizing the issue of municipal bonds to aid in improving a private water power is unconstitutional. Coates v. Campbell, (Minn.) 35 N. W. Rep. 366.

A statute authorizing a certain town to raise by taxation a sum to pay bounties to soldiers of the civil war held to be for a private purpose, and void. Mead v. Inhabitants of Acton, (Mass.) 1 N. E. Rep. 413.

Sec. 3. Property subject to taxation.

This section must be construed in connection with §§ 1, 2, and 4 of this article, and in view of the condition of things at the time of the adoption of the constitution. Commissioners Rice Co. v. Citizens' Nat. Bank, 23 Minn. 280.

No tax can be assessed upon the personal property of non-residents, except upon goods, wares, and merchandise kept for sale, stock employed in mechanic arts, and capital and machinery employed in any branch of manufacture or other business. City of St. Paul v. Merritt, 7 Minn. 258, (Gil. 198.) Personal property owned by a non-resident, sent into the state to be sold here, is taxable here. McCormick v. Fitch, 14 Minn. 252, (Gil. 185.)

The legislature has authority to pass laws for taxing shares in national banks in the manner prescribed by act of congress of June 3, 1864. Smith v. Webb, 11 Minn. 500, (Gil. 378.)

The five-million loan amendment to the constitution is a particular provision as to a particular subject-matter, and within its own sphere, so far as that subject-matter is concerned, is supreme, and its effect cannot be controlled by the general provisions of this section, that "laws shall be passed taxing * * * all real and personal property at its true value in money." State v. Winona & St. P. R. Co., 21 Minn. 315.

An exemption from taxation in a charter granted prior to the constitution is not affected by §§ 1 and 3 of this title. City of St. Paul v. St. Paul & S. C. R. Co., 23 Minn. 469, 474.

The Cottage Hospital, of Minneapolis, is an institution of purely public charity, within the exemption of such institutions from taxation. County of Hennepin v. Brotherhood of Gethsemane, 27 Minn. 460, 8 N. W. Rep. 595. A parochial school is an institution of purely public charity, and as such exempt from taxation, County of Hennepin v. Grace, 27 Minn. 503, 8 N. W. Rep. 761; but a parsonage is not exempt. Id. A parsonage or rectory belonging to a church is not exempt from taxation. St. Peter's Church, Shakopee, v. County of Scott, 12 Minn. 395, (Gil. 280.)

The levy of a poll-tax, under city charter of Faribault, (Sp. Laws 1872, p. 114, § 8; p. 121, § 3,) is not repugnant to this section by reason of the exemption of members of fire companies. City of Faribault v. Misener, 20 Minn. 396, (Gil. 347.)

Sec. 5. Public debt—Internal improvements.

Neither this section, nor § 6 or § 10 of this article, prohibit the bonding of cities in aid of railroads. The inhibition is upon the state only. Davidson v. Commissioners Ramsey county, 18 Minn. 482, (Gil. 432, 442.)

Sec. 10. State railroad bonds.

Under the amendment adopted April 15, 1858, the state was not entitled to any priority of lien in reference to the railroad bonds to be deposited with the state treasurer, over other bonds of the same issue held by or issued to individuals. Minnesota & Pac. R. Co. v. Sibley, 2 Minn. 13, (Gil. 1.) See, also, Chamberlain v. Sibley, 4 Minn. 309, (Gil. 228;) Huff v. Winona & St. P. R. Co., 11 Minn. 180, (Gil. 114.)

Sec. 12. State fund—Safe-keeping—Embezzlement.

That part of the act of March 10, 1873, entitled "An act to amend Gen. St. c. 8, § 131, relating to the duties of county treasurers, and the care of the public funds," which provides for a deposit in banks, by the county treasurers of the funds in the county treasuries, is constitutional and valid, and applies to all the funds in such treasuries. First Nat. Bank of Stillwater v. Shepard, 22 Minn. 196.

What constitutes embezzlement under this section, without any further legislation, see State v. Munch, 22 Minn. 67, 71, 75.

Sec. 13. Banking laws.

An enactment imposing an individual liability for corporate debts upon the stockholders of a bank becoming thereafter organized, though not organized for the purpose of issuing notes to circulate as currency, is not repugnant to the constitution. Allen v. Walsh, 25 Minn. 543.

*Sec. 14*b*. Municipal debts in aid of railroads.

This amendment is not retrospective, and had no effect upon legislation passed prior to its adoption authorizing the issuance of such bonds. State v. Town of Clark, 23 Minn. 422.

The limitation of municipal aid to railways, to ten per cent. of the assessed valuation of the municipality, held not exceeded. Coe v. Caledonia & Miss. Ry. Co. 27 Minn. 197, 6 N. W. Rep. 621.

*Sec. 15. Municipal indebtedness for railroads.

The legislature shall not authorize any county, township, city, or other municipal corporation to issue bonds, or to become indebted in any manner, to

aid in the construction or equipment of any or all railroads to any amount that shall exceed five per centum of the value of the taxable property within such county, township, city, or other municipal corporation; the amount of such taxable property to be ascertained and determined by the last assessment of said property made, for the purpose of state and county taxation, previous to the incurring of such indebtedness. (*Adopted at the general election of* 1879; *Gen. Laws* 1881, *p.* 17.)

ARTICLE X.

CORPORATIONS HAVING NO BANKING PRIVILEGES.

Sec. 2. Corporations not to be formed by special acts.

For the reason of the clause "except for municipal purposes," see Tierney v. Dodge, 9 Minn. 166, (Gil. 153, 158;) City of St. Paul v. Colter, 12 Minn. 41, (Gil. 16.)

Chapter 92, Sp. Laws 1869, incorporating the board of education of Sauk Centre, is not in conflict with this section. Board of Education Sauk Centre v. Moore, 17 Minn. 412, (Gil. 391.)

Extending the duration of an existing corporation is not the creation of a new one. Cotton v. Mississippi & R. R. Boom Corp., 22 Minn. 372.

An act of the state legislature, enlarging the territorial limits, within which the franchise to establish and operate a ferry granted by the territorial legislature may be exercised, is not in conflict with this section. McRoberts v. Washburne, 10 Minn. 23, (Gil. 8.)

The act of March 8, 1861, amending the charter of the Nebraska & Lake Superior Railroad Company, is not repugnant to this section, as creating a new corporation. Ames v. Lake Superior, etc., R. Co., 21 Minn. 241, 282, 283; followed, Green v. Knife Falls Boom Corp., 35 Minn. 155; 27 N. W. Rep. 924. See, also, First Div. St. P., etc., R. Co. v. Parcher, 14 Minn. 297, (Gil. 224.)

Sec. 3. Liabilities of stockholders.

Sufficiency of the complaint in an action to charge stockholders under this section. Dodge v. Minnesota Plastic Slate Roofing Co., 16 Minn. 368, (Gil. 327.)

See Allen v. Walsh, cited in note to art. 9, § 13, *supra.*

Sec. 4. Lands taken for public use.

This section does not confine the exercise of a right of eminent domain to the procuring of a mere right of way. Cotton v. Mississippi & R. R. Boom Corp., 22 Minn. 372.

Sec. 13, *c.* 1, Extra Sess. Laws 1857, providing that in condemnation proceedings under such chapter the railroad company should acquire an absolute fee-simple in the lands condemned, instead of an easement merely, is not void; but, if affected at all by this section, would be limited and qualified only thereby. Scott v. St. Paul & C. Ry. Co., 21 Minn. 322.

As to the meaning of the term "compensation," as rules for ascertaining the amount, see Winona & St. P. R. Co. v. Denman, 10 Minn. 267, 280, (Gil. 208, 219;) Same v. Waldron, 11 Minn. 515, 539, 542, (Gil. 392, 414, 417.)

See note to art. 1, § 13, *supra.*

ARTICLE XI.

COUNTIES AND TOWNSHIPS.

Sec. 1. Counties—County lines and county-seats.

Legislative power over counties is supreme, except as restrained by the constitution, either expressly or by necessary implication. State v. McFadden, 23 Minn. 40.

Not only the constitution, but the statutes both before and since, recognize a distinction between "organized" and "established" counties. State v. Parker, 25 Minn. 215, 219.

So far as it relates to the removal of county-seats, this section is abrogated by §§ 33

and 34 of art. 4, *supra*. Nichols v. Walter, (Minn.) 33 N. W. Rep. 800; Weber v. Tinlin, (Minn.) 34 N. W. Rep. 29.

The provision requiring the laws for removal of a county-seat to be approved by a majority of the electors means a majority of the electors voting at the election at which such law is submitted. Taylor v. Taylor, 10 Minn. 107, (Gil. 81;) Bayard v. Klinge, 16 Minn. 249, (Gil. 221;) Everett v. Smith, 22 Minn. 53; Dayton v. City of St. Paul, 22 Minn. 400, 403.

A change of a county-seat can be effected only by an act of the legislature providing for the change, upon the proposition being approved by the people of the county. The act of March 18, 1858, providing the mode of changing county-seats, is unconstitutional. Roos v. State, 6 Minn. 428, (Gil. 291.)

Sec. 2. Organization of cities into counties.

This section contrasted with § 1 as to what will constitute a constitutional majority of votes. Taylor v. Taylor, 10 Minn. 107, (Gil. 81, 99;) Bayard v. Klinge, 16 Minn. 249, (Gil. 221, 227.)

Sec. 3. Organization of townships.

Cited, State v. Mantor, 14 Minn. 437, (Gil. 327.)

Sec. 4. Election of county and township officers.

This section is satisfied if provision is made for the election of such officers at stated periods, unless they are fixed at times designed substantially to destroy the elective character of the office. State v. Benedict, 15 Minn. 198; (Gil. 153.)

It was not violated by a provision in an act, providing for the appointment of a county officer, that the appointee should hold till January 1, 1871, as it does not raise a presumption of a design to deprive the office of its elective character. Id.

See State v. Fitzgerald, (Minn.) 32 N. W. Rep. 788; State v. Gurley, 35 N. W. Rep. 179.

Sec. 5. Local taxation.

This section does not invalidate the bonding of cities in aid of railroads. Davidson v. Commissioners Ramsey Co., 18 Minn. 482, 494, (Gil. 432, 442.)

An act providing for the construction of a bridge across a stream, the boundary line between two counties and between two towns, and distributing the expense in certain proportions between the two counties and two towns, is not in conflict with this section. Guilder v. Town of Otsego, 20 Minn. 74, (Gil. 59.) See, also, Guilder v. Town of Dayton, 22 Minn. 366, 369.

No class of persons but the electors of a town, and the officers chosen by them, can determine the action of the town on questions (such as the issuance of bonds in aid of a railway,) involving local taxation. Laws 1877, c. 106, § 7, (Gen. St. 1878, c. 34, § 98,) held invalid, because it assumes to vest this power in a majority of the resident taxpayers, whether electors or not. Harrington v. Town of Plainview, 27 Minn. 224, 6 N. W. Rep. 777.

ARTICLE XIII.

IMPEACHMENT AND REMOVAL FROM OFFICE.

Sec. 2. Removal from office.

See State v. Benedict, 15 Minn. 198, (Gil. 153, 157.)

ARTICLE XIV.

AMENDMENTS TO THE CONSTITUTION.

Sec. 1. Amendments to constitution—Ratification.

An amendment proposed for ratification is ratified if it receives a majority of all the votes in its favor, though it be less than a majority of the votes cast at an election for

other purposes, held at the same time and place. Dayton v. City of St. Paul, 22 Minn. 400. See, also, Taylor v. Taylor, 10 Minn. 107, (Gil. 81.)

Distinct propositions in one amendment, see State v. Timme, 54 Wis. 318, 11 N. W. Rep. 785.

Authentication—Variance between amendment as proposed and as adopted. See Koehler v. Hill, 60 Iowa, 543, 14 N. W. Rep. 738, 15 N. W. Rep. 609.

See, generally, State v. Babcock, (Neb.) 22 N. W. Rep. 372; Koehler v. Hill, (Iowa,) 14 N. W. Rep. 738; McMillan v. Blattner, (Iowa,) 25 N. W. Rep. 245.

Sec. 2. Constitutional convention.

See Taylor v. Taylor and Dayton v. City of St. Paul, § 1, *supra*.

SCHEDULE.

Sec. 2. Territorial laws continued.

This section preserved in operation the common-law remedy of distress for rent. Dutcher v. Culver, 24 Minn. 584. See St. Paul & S. C. R. Co. v. Gardner, 19 Minn. 132, (Gil. 99, 106.)

Sec. 16. First election.

Cited, State v. Munch, 22 Minn. 67, 71.

Sec. 22. Provision in case of rejection of constitution.

This section and § 18 are cited in Taylor v. Taylor, 10 Minn. 107, (Gil. 81.)

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MINNESOTA STATUTES 1888 SUPPLEMENT