ANNOTATIONS

TO

MINNESOTA STATUTES

VOLUME I

Embracing complete legislative history of the Minnesota Statutes, full explanatory notes by the Revisor, and annotations through Volume 218 of Minnesota Reports.

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PREFACE

These annotations are based upon original research. We started September 12, 1941, under authority granted to the Revisor of Statutes under Laws 1939, Chapter 442, Section 5, and completed under additional authority granted by Laws 1943, Chapter 545, Section 4, and printed and published in accordance with Laws 1945, Chapter 461.

Reference has been made to dicta as well as authoritative cases. The annotations are in complete paragraph form and follow the arrangement of Minnesota Statutes 1941, progressively and consecutively. Great care has been taken in preparing the data relating to the origin and legislative history of each section. The annotation paragraphs digest Minnesota supreme court decisions, federal decisions relating to our statutes, opinions of the attorney general, and Law Review articles, with numerous references to text books and other sources of the law, and are classified under each section to which they are applicable. The annotations cover Minnesota decisions commencing with Vol. 1 and including Vol. 218. We have eliminated cases which are more misleading than helpful. No attempt has been made to create a volume on comparative law by quoting decisions of other states. Only those federal decisions construing Minnesota statutes have been referred to.

Citators are the basis of about 50 per cent of the paragraphs and the remaining paragraphs are derived from cases discovered from research.

In those cases where the annotations under a section of law are numerous an analysis has been prepared and inserted immediately following the section number and the applicable cases digested under separate analytical divisions.

To conserve space, catchwords and abbreviations have been liberally used.

The present policy of the legislature is to publish the statutes biennially; and the annotations quinquennially, with annual supplements to keep them up to date.

In editing these annotations we have found it advisable, in the interest of clarity, to follow generally, but not specifically, the folio lines or running titles at the top of the pages of the statutes.

Respectfully submitted,

WILLIAM B. HENDERSON,

Revisor of Statutes.

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TO
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CONSTITUTION OF THE STATE OF MINNESOTA

ARTICLE I

BILL OF RIGHTS

Section 1. OBJECT OF GOVERNMENT. Member of legislature is not privileged from service upon him of a summons in a civil action during a session of the legislature. Rhodes v Walsh, 55 M 542, 57 NW 212.

State may make valid contract within scope of contract clause of federal constitution conferring even perpetual exemption from taxation, unless restricted by provisions in state constitution. 23 MLR 703.

Section 2. RIGHTS AND PRIVILEGES.

1. Law of the land
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1. Law of the land

DEFINED. "Law of the land" defined. Baker v Kelley, 11 M 480 (358); Beaupre v Hoerr, 13 M 366 (339); State v Becht, 23 M 411; Wilson v Red Wing School District, 22 M 488, 491.

SUFFICIENCY OF PROVISIONS IN CITY CHARTER IN CONDEMNATION PROCEEDINGS TO PROTECT CONSTITUTIONAL RIGHTS. Provisions of city charter authorizing council to fix and affirm amount of damages for taking land in condemnation proceeding, with right of appeal to district court granting to the court power to determine whether council had jurisdiction, whether value of property to be taken was fair, whether damages assessed were fair and impartial, and either to annul or confirm award, protects all constitutional rights of landowner. *In re Improvement of Third Street, St. Paul*, 177 M 146, 225 NW 86.

2. Rights and privileges

ENUMERATION. The rights, privileges, and immunities of citizens exist notwithstanding there is no specific enumeration thereof in the state constitution. Thiede v Town of Scandia Valley, 217 M 218, 14 NW(2d) 400.

PUBLIC OFFICERS AND THEIR EMOLUMENTS are not among the "rights and privileges" protected. County Board v Jones, 18 M 199 (182).

IMMUNITY. An immunity from certain forms of action is not a right. No person has a vested right to a mere remedy, or in an exemption from it. Kipp v Johnson, 31 M 360, 363, 17 NW 957.

LIMITATION. If a limitation in a statute was intended to operate on a right acquired under a tax sale, so as to make it unassailable in any form of action, the legislature could not affect the right by repeal of the law or otherwise. Whitney v Wegler, 54 M 235, 238, 55 NW 927.

NATIONAL GUARD MEMBERS SUBJECT TO COURT-MARTIAL IN PEACE TIMES. Provisions of Military Code authorizing trial, in times of peace, of national guard members by court-martial for violation thereof and their punishment, if found guilty, are constitutional. State ex rel v Wagener, 74 M 518, 77 NW 424; State ex rel v Fisher, 174 M 82, 218 NW 542.

LOWER RAILWAY FARE FOR NATIONAL GUARDSMEN. L. 1909, c. 493, establishing a rate lower than maximum passenger rate for carrying national guardsmen upon railway lines within state when traveling under orders in discharge of their military duties does not deprive the company of the equal protection of the laws. State ex rel v C. M. & St. P. Ry. Co. 118 M 372, 137 NW 2.

ERECTION OF STORE BUILDING IN RESIDENTIAL DISTRICT. Prohibiting owner from erecting store building upon land within residential district is an unlawful invasion of the rights secured to him by the constitution. State ex rel v Houghton, 134 M 226, 158 NW 1017.

RIGHT TO WORK IN OWN BUSINESS. The constitution guarantees to everyone the right to work in his own business and any attempt to deprive him of that right is unlawful. Rorabeck v Motion Picture Machine Operators Union of Mpls. 140 M 381, 168 NW 766.

TERRITORY OF ADJOINING SCHOOL DISTRICT ATTACHED UPON PETITION OF VOTERS OF ANNEXING DISTRICT. Provision authorizing county board to attach territory of adjoining school district to a school district with a borough, village, or city of over 7,000 wholly or partly within its boundaries, on petition of majority of voters of latter district, if board deems same for best interests of such territory, does not infringe any rights secured by the constitution. Kramer v Renville County, 144 M 195, 175 NW 101; Ind. School District No. 36 v Ind. School District No. 68, 165 M 384, 206 NW 719.

REVOCATION OF LICENSE TO PRACTICE DENTISTRY. L. 1919, c. 386, prescribing grounds for revocation of license to practice dentistry, making a violation of specified regulations of such practice a misdemeanor, violates equality provision of constitution by excluding from its provisions all persons lawfully practicing dentistry at time of its enactment. State v Luscher, 157 M 192, 195 NW 914; State v Graves, 161 M 422, 201 NW 933.

TESTING CATTLE FOR TUBERCULOSIS. L. 1923, c. 269 (Minn. St. 1941, ss.35.19 to 35.24), adopting the "area plan" for suppressing tuberculosis among cattle, does not violate the provisions of the constitution securing equal protection of the laws. Schulte v Fitch, 162 M 184, 202 NW 719.

ADMISSION TO PRACTICE LAW. L. 1929, cc. 267, 424, prescribing the conditions upon which certain persons shall be admitted to practice law, violate the equality provisions of the constitution. In re Application of George W. Humphrey to Practice Law, 178 M 331, 227 NW 179; In re Application of Walter E. Grantham to Practice Law, 178 M 335, 227 NW 180.

WORKMENS COMPENSATION ACT; TERMINATION OF COMPENSATION; REHEARING ON CLAIM. In claim arising under workmens compensation act compensation was declared at an end and the rights of parties fully determined prior to the passage of L. 1933, c. 74 (Minn. St. 1941, s. 176.34), the commission has no authority to grant a new hearing under that section, since the substantive rights of the parties are affected. Johnson v Jefferson, 191 M 631, 255 NW 87.

INDUSTRIAL LOAN AND THRIFT COMPANIES MAY CHARGE 8% INTEREST ON SHORT LOANS. L. 1933, c. 246, permitting loan and thrift companies to charge 8% interest in advance on short-term loans of less than one year, does not deny the equal protection of the law to other money lenders similarly situated, because it does not distinguish between different classes of money lenders but applies same rate of interest to all lenders. Messaba Loan Co. v Sher, 203 M 589, 282 NW 823.

PUBLIC RIGHTS ordinarily may be asserted only by the proper public authority. In certain cases where the public authority fails to perform its duty a taxpayer may assert the public right on behalf of himself and all other taxpayers, but one who is not a taxpayer has no such right because he does not have an interest in the subject matter of the suit. Schultz v Krosch, 204 M 585, 588, 284 NW 782.

3. Disfranchisement

VOTING FOR MORE THAN ONE PROPOSITION. L. 1895, c. 124, s. 2, provides that "The elector shall only vote for or against one proposition, and if the elector places a cross mark opposite more than one such proposition, said ballot shall not be counted for any such proposition, but shall be as to such proposition null and void", does not disfranchise electors having right to vote upon organization of new county in this state, in violation of this section. State ex rel v Falk, 89 M 269, 94 NW 879.

FAILURE TO COMPLY WITH STATUTORY REGULATION. When it appears that an election was fairly and honestly conducted, that those voting thereat in fact possessed the qualifications prescribed by the constitution and cast their votes in a good-faith attempt to exercise the right secured to them by the constitution, and no taint of fraud or bad faith appears, the supreme court has never held such votes illegal and void for failure to comply with some statutory regulation, unless required to do so by the unequivocal mandate of the law-making power. McEwen v Prince, 125 M 417, 422, 147 NW 275.

See 1922 OAG 144.

4. Slavery or involuntary servitude

ENFORCED LABOR. Violation of municipal ordinance is a criminal offense within the meaning of the constitution. Enforced labor is involuntary servitude within the meaning of this section. If a court has no jurisdiction to try a case for violation of ordinance under which defendant is convicted, its judgment therein is void and defendant's imprisonment illegal and without authority of law. This may be taken advantage of on habeas corpus, and the prisoner discharged. State v West, 42 M 147, 152, 43 NW 845.

State v West, 42 M 147, 43 NW 845, cited with approval. State ex rel v Anderson, 47 M 270, 50 NW 226.

COURT ACTING WITHOUT AUTHORITY. If a court acts without authority in the particular case, its judgment and orders are mere nullities; not voidable, but simply void, protecting no one acting under them, and constituting no hindrance to the prosecution of any right. State ex rel v Kinmore, 54 M 135, 140, 55 NW 830.

MUNICIPAL ORDINANCES NOT CRIMINAL STATUTES. Municipal ordinances are not criminal statutes. Violations thereof are not crimes and are not governed by the rules of the criminal law, save in certain specified exceptional particulars. State v Oleson, 26 M 507, 5 NW 959; City of St. Paul v Smith, 27 M 364, 7 NW 734; State v Lee, 29 M 445, 13 NW 913; City of Mankato v Ar-

nold, 36 M 62, 30 NW 305; State v West, 42 M 147, 43 NW 845; State v Sexton, 42 M 154, 43 NW 845; State v Harris 50 M 128, 52 NW 385, 531; State v Robitshek, 60 M 123, 124, 61 NW 1023; State v Grimes, 83 M 460, 86 NW 449; State v Marciniak, 97 M 355, 105 NW 965; City of Madison v Martin, 109 M 292, 123 NW 809; State v McDonald, 121 M 207, 141 NW 110; City of St. Paul v Robinson, 129 M 383, 152 NW 777; State v Broms, 139 M 402, 166 NW 771; City of Virginia v Erickson, 141 M 21, 168 NW 821; State v Nelson, 157 M 505, 196 NW 279; City of Red Wing v Nibbe, 160 M 274, 199 NW 918.

DEFECTIVE AND IRREGULAR JUDGMENT. When judgment of court is defective and irregular in omitting to sentence defendant to hard labor, it is not absolutely void, and cannot be impeached collaterally on habeas corpus. State ex rel v Welfer, 68 M 465, 466, 71 NW 681.

RELEASE ON HABEAS CORPUS. In order to secure release on habeas corpus it must be made to appear that the judgment is void. State ex rel v Reed, 132 M 295, 296, 156 NW 127.

VALID PORTION OF EXCESSIVE SENTENCE MUST BE SERVED. There is implied in the constitution a withholding from a justice of the peace of the right to render a judgment which may involve imprisonment for more than three months. A sentence by a justice of the peace imposing costs in addition to imprisonment may not coerce payment of these costs by imprisonment when the total penalty of imprisonment exceeds three months. State ex rel v Maher, 164 M 289, 204 NW 955.

REVOCATION OF LICENSE UPON CONVICTION OF AN OFFENSE NOT A PUNISHMENT. The revocation of a license upon conviction of an offense does not constitute "punishment" within the meaning of that word as used in the constitution. State v Harris, 50 M 128, 52 NW 387, 531; State ex rel v Parks, 199 M 622, 625, 273 NW 233.

5. Class legislation

For a discussion of special legislation in Minnesota, see 7 MLR 133.

UNLAWFUL DISCRIMINATION IN SALE OF MILK, CREAM, AND BUTTERFAT. L. 1909, c. 468, to prevent unlawful discrimination in sale of milk, cream, and butterfat, does not violate this section. The classification of the act is not an arbitrary one. State v Bridgeman & Russell Co. 117 M 188, 134 NW 496; State v Fairmont Cry. Co. 162 M 146, 202 NW 714.

UNFAIR DISCRIMINATION. L. 1923, c. 120 (Minn. St. 1941, s. 32.11), defining unfair discrimination in the buying of butterfat and prescribing a penalty, is constitutional, following State v Fairmont Cry. Co. 162 M 146, 202 NW 714. State v Fairmont Cry. Co. 168 M 378, 210 NW 163, 608.

THRESHER'S LIEN. R. L. 1905, s. 3546, creating and defining a thresher's lien, is not class legislation. Phelan v Terry, 101 M 454, 112 NW 872.

LIEN ON PERSONAL PROPERTY FOR TRANSPORTATION AND STORAGE CHARGES. L. 1905, c. 328, as amended by L. 1907, c. 114 (Minn. St. 1941, ss. 514.18 to 514.21), gives a lien on personal property transported and stored at request of owner or legal possessor thereof. It intended that one transporting and storing property at request of chattel mortgagor in legal possession should have lien superior to interest of chattel mortgagee. Act is constitutional. Monthly Instalment Loan Co. v Skellet Co. 124 M 144, 144 NW 750.

ATTORNEY FEES IN FORECLOSURE OF MECHANIC'S LIEN. Statute allowing attorney fees in action to foreclose mechanic's lien, is not class legislation. Lindquist v Young, 119 M 219, 138 NW 28; Behrens v Kruse, 121 M 90, 140 NW 339.

WORKMEN'S COMPENSATION ACT. Excluding domestic servants, farm laborers, casual employees, and such railroads and railroad employees as are engaged in interstate commerce from the provisions of Workmen's Compensa-

tion Act does not render it unconstitutional as class legislation. Mathison v Mpls. St. Ry. Co. 126 M 286, 148 NW 71.

Mathison v Mpls. St. Ry. Co. 126 M 286, 148 NW 71, followed. State ex rel v District Court, 128 M 221, 150 NW 623; State v Moilen, 140 M 112, 117, 167 NW 345; Seamer v G. N. Ry. Co. 142 M 376, 172 NW 765; Hyett v N. W. Hospital for Women and Children, 147 M 413, 180 NW 552; Thornton Bros. Co. v Northern States Power Co. 151 M 435, 186 NW 863, 187 NW 610.

COMMON-LAW AND OTHER WIDOWS. Statute is not unconstitutional as class legislation because based upon an arbitrary distinction between widows of common-law marriages and widows of ceremonial marriages. Minegar v Mpls Fire Dept. Relief Ass'n. 126 M 332, 148 NW 279.

MOTOR VEHICLES PASSING DRAFT ANIMALS, SPEED REGULATED. L. 1911, c. 365, s. 15, prohibiting operator of motor vehicle from passing draft animal driven by woman, child, or aged person at greater speed than four miles per hour, is not class legislation. Schaar v Conforth, 128 M 460, 151 NW 275.

MISUSE BY CONTRACTOR OF MONEY PAID HIM BY LANDOWNER FOR MAKING IMPROVEMENTS ON LAND. L. 1915, c. 105 (Minn. St. 1941, s. 514.02), providing that misuse by contractor, with intent to defraud, of money paid him by landowner for improvements on the land is larceny, is not class legislation. State v Harris, 134 M 35, 158 NW 829.

FALSE STATEMENTS TO OBTAIN CREDIT. L. 1909, c. 431 (Minn. St. 1941, s. 620.50), punishing making or use of false statements to obtain credit, is not class legislation. State v Elliott, 135 M 89, 160 NW 204.

CHANGING SITE OF SCHOOLHOUSE. L. 1925, c. 43, providing that independent school districts in counties having not less than 400,000 inhabitants may change site of schoolhouse by majority vote of those voting at the election is unconstitutional. Population of county bears no legitimate relation to subject matter of act and furnishes no proper basis for a classification of school districts for such purposes. Jensen v Ind. School District No. 17, 163 M 412, 204 NW 49.

LIQUIDATION OF INSOLVENT BANKS. L. 1925, c. 38 (Minn. St. 1941, ss. 49.07 to 49.09), governing liquidation of insolvent banks, is not class legislation because it applies only to state banking corporations. State ex rel v Ind. School District, 143 M 433, 174 NW 414; State ex rel v State Securities Comm. 145 M 221, 176 NW 759; Petters & Co. v Veigel, 167 M 286, 209 NW 9; Hoff v First State Bank, 174 M 36, 218 NW 238; Paul v Farmers & Merchants State Bank, 187 M 411, 245 NW 832.

ATTACHMENT OF RENTS FROM TAX-DELINQUENT REAL ESTATE BY COUNTY AUDITOR. Minn. St. 1941, s. 280.38, providing for attachment by county auditor of rents received from real estate upon which taxes are delinquent, does not violate this section, prohibiting class legislation. Johnson v Richardson, 197 M 266, 266 NW 867.

TRANSIENT MERCHANTS; EXEMPT PERSONS. Ordinance requiring transient merchants selling natural products of the farm, including cattle, hogs, sheep, veal, poultry, eggs, butter, and fresh or frozen fish, to be licensed and to file a bond, and exempts from its provisions (a) persons selling produce raised on farms occupied and cultivated by them; and (b) persons selling milk, cream, fruit, vegetables, grain, or straw, is violative of state constitutional provisions against class legislation. State v Pehrson, 205 M 573, 287 NW 313. See 1940 OAG 213, 214.

SPECIAL BURDENS ON PARTICULAR INDIVIDUALS. Legislation which selects particular individuals from a class and imposes on them special burdens from which others in same class are exempt is class legislation, violative of uniformity clause of state constitution. State ex rel Cooley, 56 M 540, 58 NW 150; State ex rel v Wagener, 77 M 483, 80 NW 633; State v Broden, 181 M 341, 232 NW 517; Reed v Bjornson, 191 M 254, 253 NW 102; Dimke v Finke, 209 M 29, 295 NW 75. 1934 OAG 804.

CLASSIFICATION BASED UPON SUBSTANTIAL DISTINCTIONS. If the classification be based upon substantial distinctions making one class really different from another, it is not violative of the constitution even if some inequalities may result. Seamer v G. N. Ry. Co. 142 M 376, 172 NW 765; State v Fairmont Cry. Co., 162 M 146, 202 NW 714; Dimke v Finke, 209 M 29, 295 NW 75.

LIEN ON REAL PROPERTY OF OLD AGE ASSISTANCE RECIPIENT. L. 1939, c. 315, requiring lien on all real property of recipient of old age assistance, is not an improper classification and does not violate the state constitution. Dimke v Finke, 209 M 29, 295 NW 75. 18 MLR 751.

See 25 MLR 520 for a review of the Homestead Lien Law.

RETIREMENT OF POLICE AND FIREMEN. Laws 1939, Chapter 136, requiring retirement at 65 years of age of all police and firemen in cities of first class but which allows those who have reached 65 without pension rights to continue in service until their pension rights have matured, subject to rules of civil service commission, is not unconstitutional as "class legislation". Burns v City of St. Paul, 210 M 217, 297 NW 638.

6. Impairment of contract

SOLICITING ORDERS FOR INTOXICATING LIQUORS IN CERTAIN TERRITORY FORBIDDEN. L. 1913, c. 484, prohibiting soliciting of orders for sale of intoxicating liquors within certain territory, is not an unreasonable restraint upon the freedom or liberty of private contract. State v Droppo, 126 M 68, 147 NW 829. See 1940 OAG 163.

INHERITANCE TAX STATUTE, as amended, does not infringe the constitutional provision against impairing the obligation of contracts. State ex rel v Probate Court, 128 M 371, 150 NW 1094; State ex rel v Probate Court, 168 M 508, 210 NW 389; In re Estate of Taylor, 175 M 310, 219 NW 153, 221 NW 64.

Distinguished in State v Chadwick, 133 M 117, 157 NW 1077, 158 NW 637.

State v Chadwick, 133 M 117, 157 NW 1077, 158 NW 637, distinguished. State ex rel v Probate Court, 142 M 415, 172 NW 318.

OBLIGATION OF CONTRACT. The legislature has no constitutional power to limit the time to commence an action to vindicate a right under an existing contract to a date anterior to the inception of any cause of action arising out of the contract. A statute which in this manner bars the existing contract rights of claimants without affording them an opportunity to assert them, is an attempt to arbitrarily impair the obligation of the contract. Jentzen v Pruter, 148 M 8, 13, 180 NW 1004.

BY-LAWS OF LIVE STOCK EXCHANGE MAY BE ANNULLED BY STATUTE. By-laws regulating business conduct of members of incorporated live stock exchange may be annulled by the legislature in the proper exercise of the police power without impairing the contract obligations of the state and the corporation or of the corporation and its members. Grisim v South St. Paul Live Stock Exchange, 152 M 271, 188 NW 729.

TERMINATION OF RIGHT OF REDEMPTION. The procedure provided for termination of right of redemption under L. 1935, c. 278 (Minn. St. 1941, ss. 340.57 to 340.59), while different from the procedure prescribed by Minn. St. 1941, s. 281.13, falls within permissible legislative changes respecting the remedy and does not substantially impair any contract obligation. State v Aitkin County Farm Land Co., 204 M 495, 284 NW 63.

7. Generally

LICENSING AUCTIONEERS. Statute providing that county board or county auditor may license any voter in county as an auctioneer, and providing for a penalty for selling property at auction without such license, does not violate this section. Wright v May, 127 M 150, 149 NW 9.

CERTIFICATE OF AUTHORITY TO ACT AS BANK ISSUED BY SECURITIES COMMISSION. L. 1919, c. 86 (Minn. St. 1941, ss. 45.04, 45.06, 45.07), imposing upon securities commission duty to determine whether certificate of authority to do business as bank should be issued, applies to proceedings pending before superintendent of banks at time of enactment; so construed, is not in contravention of this section. Carlson v Pearson, 145 M 125, 176 NW 346.

VETERANS PREFERENCE. Purpose of L. 1931, c. 347 (Minn. St. 1941, ss. 197.47, 197.48), relating to veterans preference, was to make operative again provisions of L. 1919, c. 192 (Minn. St. 1941, ss. 197.45, 197.46), (soldiers preference law). Both acts are constitutional. State ex rel v McDonald, 188 M 157, 246 NW 900.

EXERCISE OF DISCRETION BY PUBLIC COMMISSION OR OFFICIAL. Courts cannot by mandamus control the exercise of discretion vested in a public official or commission, but may determine whether, on a given state of facts and under the law and rules applicable thereto, a commission or official had any discretion. State ex rel v Ritchel, 192 M 63, 255 NW 627.

EXEMPTIONS FROM SOLDIERS PREFERENCE LAWS. Minn. St. 1941, s. 197.46, exempting from the application of soldiers preference laws the position of private secretary or deputy of any official or department or any person holding a "strictly confidential" relation to the appointing officer, does not apply to position of assistant chief of the fire department of the city of Duluth. State ex rel v Fisher, 194 M 75, 259 NW 694.

UNEMPLOYMENT BENEFITS. In establishing a system of unemployment benefits the legislature is not bound to occupy the whole field. It may confine its restriction to those classes where the need is deemed most urgent. Question of classification is primarily for the legislature. To declare a statute unconstitutional the court must be able to say that the legislature could not reasonably and intelligently make the classification it did. Eldred v Division of Employment and Security, 209 M 58, 295 NW 412.

COMMITMENT OF FEEBLE-MINDED PATIENTS TO STATE INSTITUTIONS. Minn. St. 1941, s. 525.762, does not violate this section. State ex rel v Carlgren, 209 M 362, 296 NW 573.

TAXATION OF CHAIN STORES. The legislature possesses a broad discretion as to classification in the field of taxation. The classification in the chain store tax act does not contravene the provisions of this section. C. Thomas Store Sales System, Inc., v Spaeth, 209 M 504, 297 NW 9.

POLICE POWER. The state's exercise of the police power is limited by the due process and equal protection clauses of the Fourteenth Amendment and the commerce clause of the U. S. Constitution and by this section. State v Ernst, 209 M 586, 297 NW 24, 25 MLR 942.

SALES OF SECONDHAND CARS, BOND, FEE. L. 1939, c. 284, s. 1 (Minn. St. 1941, s. 168.50), requiring filing of surety bond with registrar of motor vehicles and payment of $5.00 fee before sale of used motor vehicles brought into state for purpose of sale, is violative of the provisions of this section. State v Ernst, 209 M 586, 297 NW 24.

See 25 MLR 942 for a discussion of this case.

REGULATIONS OF CHIEF OIL INSPECTOR. Provision in a statute that "the chief oil inspector may issue regulations not inconsistent with law to assist in the enforcement of this act" includes right to make reasonable regulations pertaining to the issuance of licenses. This does not amount to a delegation of legislative power but is rather an administrative or executive function and a delegation of such functions would not violate the provisions of this section. 1938 OAG 419.

8. Certain acts held constitutional

G. S. c. 66, s. 311, concerning the liability of property to execution for purchase price, is constitutional. Rogers v Brackett, 34 M 279, 25 NW 601.

G. S. c. 34, s. 56, allowing double costs against railroads in stock-killing cases, is constitutional. Johnson v C. M. & St. P. Ry. Co., 29 M. 425, 13 NW 673; Schimmele v C. M. & St. P. Ry. Co. 34 M 216, 25 NW 347.

L. 1887, c. 13, making railroads liable to their employees for injuries resulting from negligence of coemployees, is constitutional. Lavallee v St. P. M. & N. Ry. Co. 40 M 249, 41 NW 974.

G. S. 1894, ss. 2660, 2661, allowing plaintiff reasonable attorney fees in actions brought under the statute to recover possession of land taken without compensation by railroad for its right of way, are constitutional. Cameron v C. M. & St. P. Ry Co. 63 M 384, 65 NW 652.

L. 1899, c. 225, regulating business of persons selling farm products on commission, is constitutional. State ex rel v Wagener, 77 M 483, 80 NW 417; State v Edwards, 94 M 225, 102 NW 697.

L. 1895, c. 174, prohibiting blacklisting and coercing and influencing of employees by employers, is constitutional. State ex rel v Justus, 85 M 279, 88 NW 759.

L. 1895, c. 259, making it unlawful to sell intoxicating liquors in a village, after people thereof had voted against issuance of license for such sales, is constitutional. State v Johnson, 86 M 121, 90 NW 161, 1133.

L. 1909, c. 142 (Trading Stamp Act), is constitutional. State ex rel v Sperry & Hutchinson Co. 110 M 378, 126 NW 120.

Statute imposing double or treble damages for trespass on state-owned lands is constitutional, even though the trespass may be punishable as a crime. State v Shevlin-Carpenter Co. 99 M 158, 108 NW 738; State v Shevlin-Carpenter Co. 102 M 470, 113 NW 634, 114 NW 738.

L. 1909, c. 113, (Minn. St. 1941, s. 413.12), providing for annexation of territory to villages and cities, applies both to existing and to future municipal corporations of that kind and, so construed, is constitutional. State ex rel v Village of Gilbert, 127 M 452, 149 NW 951.

G. S. 1913, s. 1786 (Minn. St. 1941, s. 463.09), requiring service of written notice as a condition precedent to maintaining suit against a city to recover damages on account of illness from use of contaminated water supplied by waterworks owned and operated by city, does not violate any constitutional provision. Frasch v City of New Ulm, 130 M 41, 133 NW 121.

Ex. L. 1919, c. 39 (Minn. St. 1941, c. 229), giving Railroad and Warehouse Commission authority to fix reasonable commission charges, is constitutional. State v Rogers & Rogers, 149 M 151, 182 NW 1005.

L. 1921, c. 357, providing for county school tax levies in certain counties, the classification being based on area and assessed valuation, the proceeds of the levies to be distributed among the districts producing less than a stated per pupil revenue, is constitutional. State v Cloudy & Traverse, 159 M 200, 198 NW 457.

Cooperative Marketing Act (G. S. 1923, ss. 6079 to 6113) does not contravene the provisions of this section. Minn. Wheat Growers Coop. Mark. Assn. v Huggins, 162 M 471, 203 NW 420.

The Blue Sky Law (L. 1925, c. 192) is not unconstitutional. State v Nordstrom, 169 M 214, 210 NW 1001.

A statute making bank robbery or any attempt thereat punishable by life imprisonment does not violate any constitutional guaranty. State v Colcord, 170 M 504, 212 NW 894.

L. 1913, c. 445 (Salary Act), providing that voters of the district at the annual town meeting may fix the salaries of their school officers in ten-town school districts having less than 30 schools and a high school, is constitutional. Gunderson v Williams, 175 M 316, 221 NW 231.

The Forestry Act (L. 1925, c. 407) is not unconstitutional. State v Phillips, 176 M 472, 223 NW 912.

L. 1927, c. 149 (basic science act) is constitutional. State v Broden, 181 M 341, 232 NW 517.

L. 1921, c. 417 (Minn. St. 1941, ss. 275.11 to 275.16), fixing $60.00 per capita as the maximum tax levy in all school districts in the state, is not unconstitutional. Ind. School District v Borgen, 187 M 539, 246 NW 119.

L. 1933, c. 359 (Minn. St. 1941, s. 273.13), providing for a lower assessed valuation on the first $4,000 of the actual value of real estate used for homestead purposes than on other real estate, is constitutional. Apartment Operators Assn. v City of Minneapolis, 191 M 365, 254 NW 443; 510 Groveland Avenue, Inc. v Erickson, 201 M 381, 276 NW 287.

Minn. St. 1941, ss. 281.55 to 281.62, is constitutional. State ex rel v Hubbard, 203 M 111, 280 NW 9.

Minn. St. 1941, s. 201.20, is constitutional. State ex rel v Ferguson, 203 M 603, 281 NW 765.

(Old Age Pension Act). Every law is presumed to be constitutional in the first instance. An act will not be declared unconstitutional unless its invalidity appears clearly or it is shown beyond a reasonable doubt that it violates some constitutional provision. Power of the court to declare a law unconstitutional is to be exercised only when absolutely necessary in the particular case and then with great caution. State ex rel v Fitzgerald, 117 M 192, 134 NW 728; State v Fairmont Cry. Co. 162 M 146, 202 NW 714; Reed v Bjornson, 191 M 254, 253 NW 102; Muller v Hamm Brg. Co. 197 M 608, 268 NW 204; Dimke v Finke, 209 M 29, 295 NW 75.

Ex. L. 1937, c. 88 (Minn. St. 1941, ss. 281.55 to 281.62), is constitutional. State ex rel v Hubbard, 203 M 111, 280 NW 9.

L. 1939, c. 369 (Minn. St. 1941, ss. 526.09 to 526.11), which subjects persons who are irresponsible for their conduct in sexual matters and thereby dangerous to others to the jurisdiction of the probate court, is not in violation of constitutional limitations on the jurisdiction of that court. State ex rel v Probate Court, 205 M 545, 287 NW 297.

Ex. L. 1937, c. 93, is constitutional. C. Thomas Stores v Spaeth, 209 M 504, 297 NW 9.

L. 1939, c. 136 (Minn. St. 1941, s. 422.47), providing for compulsory retirement of police and firemen, is constitutional, following State v Pehrson, 205 M 573, 287 NW 313. Burns v City of St. Paul, 210 M 217, 297 NW 217.

Minn. St. 1941, ss. 27.01 to 27.15, requiring licenses and bonds from wholesale dealers in farm products for the protection of their vendors, but excluding farmers selling their own products, and exempting certain farmers' cooperatives, does not contravene the constitution. State v Marcus, 210 M 576, 299 NW 241.

Section 3. LIBERTY OF THE PRESS.

For a discussion of the laws relating to freedom of the press, see 14 MLR 787.

DEATH PUNISHMENT. L. 1889, c. 66, providing mode of inflicting the death punishment, manner in which it shall be carried into effect, and declaring a violation to be a misdemeanor, complies with the requirements of this section. State v Pioneer Press, 100 M 173, 110 NW 867.

WHEN PUBLICATION LIBELOUS. Publication which conveys the meaning that a public official in an official report charged a public servant with misconduct in office is libelous if not true in substance. Fullerton v Thompson, 123 M 136, 143 NW 260.

WHEN PUBLICATION NOT LIBELOUS PER SE. The interest which every citizen has in good government requires that the right be not unduly curtailed to express his opinion upon public officials and political leaders, to seek and convey information concerning their plans and purposes, and to freely criticize proposed methods and measures. The article does not charge plaintiff with any moral or legal delinquency, nor reflect upon his character, and the acts and purposes imputed to him as member-elect of legislature and political leader are neither corrupt nor such as are regarded by the public generally as dishonorable or discreditable from the viewpoint of practical politics. Therefore the publication is not libelous per se. Lydiard v Wingate, 131 M 355, 155 NW 212.

DETERRING ENLISTMENTS. L. 1917, c. 463, making it a criminal offense to advocate that men should not enlist in the military forces or aid in prosecuting the war, does not infringe the constitutional provision preserving freedom of speech and of the press. Circulating a pamphlet which impugns the motives of the President and Congress in entering into the war and seeks, by unfounded assertions, to incite antagonism to the war, the natural tendency of which is to deter enlistments, violates L. 1917, c. 463. State v Holm, 139 M 267, 166 NW 181; State v Townley, 140 M 413, 168 NW 591; State v Gilbert, 141 M 263, 169 NW 790; State v Randall, 143 M 203, 173 NW 425.

INDICTMENT INSUFFICIENT. Indictment not sufficient to charge a violation of L. 1917, c. 463, s. 3. State v Hartung, 147 M 128, 179 NW 646.

PUBLISHING MATTERS INIMICAL TO PUBLIC WELFARE. These constitutional provisions preserve right to speak and to publish without previously submitting for official approval the matter to be spoken or published, but do not grant immunity to those who abuse this privilege, nor prevent state from making it a penal offense to publish or advocate matters or measures inimical to the public welfare. State v Pioneer Press, 100 M 173, 110 NW 867; State v Holm, 139 M 267, 275, 166 NW 181.

INSTIGATING RIOT AND DISORDER. No person has a constitutional right by means of the privilege of freedom of speech to force his thoughts upon the attention of the public in public places in such manner that riot and disorder will inevitably result. State v Broms, 139 M 402, 404, 166 NW 771.

LIMITATIONS ON POWER OF LEGISLATURE. So carefully have been the rights of the people of this state guarded against encroachments upon their liberty of speech and press, that even in construing criminal acts, for punishment of the abuse of these rights, the powers of the legislature have been limited to publications which are blasphemous, obscene, seditious, or scandalous in character, or "tended to excite the public mind", and thereby become a public offense, and such as by the falsehoods and malice, injuriously affect the standing, reputation, or pecuniary interests of individuals. State v Pioneer Press, 100 M 173, 110 NW 867; Campbell v Motion Picture M. Op. Union, 151 M 220, 222, 186 NW 781. 6 MLR 333.

For a discussion on the outlook in labor disputes, see 6 MLR 533.

CONDITIONALLY PRIVILEGED PUBLICATION. A publication being conditionally privileged, malice is not presumed from its falsity alone, in order to award damages the jury must find both falsity and malice. Friedell v Blakely Printing Co. 163 M 226, 203 NW 974; Clancy v Daily News, 202 M 1, 10, 277 NW 264.

NEWSPAPER BUSINESS A PUBLIC NUISANCE. A newspaper business conducted in violation of L. 1925, c. 285, is a public nuisance. The inherent nature of the business of regularly and customarily publishing and circulating a malicious, scandalous, and defamatory newspaper bears such relation to the social and moral welfare that the legislature, in the legitimate exercise of the police power, may declare it a public nuisance. The constitutional liberty of the press means the right to publish the truth with impunity, with good motives, and for justifiable ends; liberty to publish with complete immunity from legal censure and punishment for the publication so long as it is not harmful in its character when tested by such standards as the law affords. State ex rel v Guilford, 174 M 457, 218 NW 770; State ex rel v Guilford, 179 M 40, 228 NW 326. 16 MLR 97.

Recent developments in newspaper libel, 13 MLR 21.

Truth: a defense to libel, 16 MLR 43.

The statute (Minn. L. 1925, c. 285), so far as it authorized the proceedings in this action under clause (b) of section one, is an infringement of the liberty of the press guaranteed by the Fourteenth Amendment. Near v Minnesota, 283 US 697, 722, 75 LE 1357, 51 SC 625.

FALSE AND MALICIOUS MISREPRESENTATIONS OF OBJECTS AND MOTIVES OF THIS COUNTRY IN ENTERING UPON A WAR. The right of

free speech does not cover false and malicious misrepresentations of the objects and motives of this country in entering upon a war, made in a public speech for the purpose of discouraging the recruiting of troops, while the war is flagrant and armies are being raised. Gilbert v Minnesota, 254 US 325, 332, 65 LE 289, 41 SC 126.

NO RIGHT TO SPEAK OR PUBLISH WITHOUT RESPONSIBILITY. Freedom of speech and of the press, as secured by the Constitution, is not an absolute right to speak or publish without responsibility whatever one may choose or an immunity for every possible use of language. Gilbert v Minnesota, 254 US 325, 332, 65 LE 289, 41 SC 126; Gitlow v New York, 268 US 652, 666, 69 LE 1146, 45 SC 630.

NOT AN ABSOLUTE RIGHT. Liberty of speech and of the press is not an absolute right and the state may punish its abuse. Near v Minnesota, 283 US 697, 708, 75 LE 1357, 51 SC 625.

Section 4. TRIAL BY JURY.

1. Nature of right in civil cases
2. Jury trial in inferior court
3. Trial by jury upheld
4. Trial by jury denied
5. No jury trial in prosecutions for violations of local ordinances
6. Jury trial waived
7. Five-sixths verdict by jury

1. Nature of right in civil cases

WHAT RIGHTS OF TRIAL BY JURY RECOGNIZED BY CONSTITUTION. The effect of this clause in the constitution is, first, to recognize the right of trial by jury as it existed in the Territory of Minnesota at the time of the adoption of the state constitution; and, second, to continue such right unimpaired and inviolate. It neither takes from or adds to the right as it previously existed, but adopts it unchanged. Wherever the right of trial by jury could be had under the territorial laws it may now be had, and the legislature cannot abridge it; and those cases which were triable by the court without the intervention of a jury, may still be so tried. Whallon v Bancroft, 4 M 109 (70); County Board v Morrison, 22 M 178; Garner v Reis, 25 M 475; Lommen v Mpls. Gaslight Co. 65 M 196, 68 NW 53; Peters v City of Duluth, 119 M 96, 137 NW 390; State ex rel v Ryder, 126 M 95, 147 NW 953; Morton Brick & Tile Co. v Sodergren, 130 M 252, 153 NW 527; Hawley v Wallace, 137 M 183, 163 NW 127. See 15 MLR 812.

ESSENTIAL ELEMENTS. The essential elements of a trial by jury are numbers, impartiality, and unanimity. The jury must be one of twelve, they must be impartial, and their verdict must be unanimous. Lommen v Mpls. Gaslight Co. 65 M 196, 68 NW 53.

MEANING OF "CASES AT LAW". The term "cases at law" means ordinary common law actions, as distinguished from suits in equity and admiralty and what are called "remedial" cases in Article 6, Section 2. State ex rel v Minn. Thresher Mfg. Co. 40 M 213, 41 NW 1021.

"CASES AT LAW" CONSTRUED. The term "cases at law" as used in the constitution has been construed as referring to ordinary common law actions as distinguished from equity or admiralty causes and special proceedings such as quo warranto, mandamus, and the like. Hawley v Wallace, 137 M 183, 163 NW 127; Westerlund v Peterson, 157 M 377, 197 NW 110; Swanson v Alworth, 168 M 84, 90, 209 NW 907.

CORRECT RULE. The correct rule is the one stated in Swanson v Alworth, 168 M 84, 209 NW 907. Coughlin v Farmers & Mechanics Savings Bank, 199 M 102, 104, 272 NW 166.

"REMEDIAL CASES" DEFINED. The cases intended by the term "remedial cases" are those where the remedy is afforded summarily through certain extraordinary writs, such as prohibition, mandamus, certiorari, and quo warranto. Any greater or less extensive meaning could hardly be given to the term without making it so indefinite as to make it difficult to say what it means. That is the sense in which the term was used in the constitution. Lauritsen v Seward, 90 M 313, 322, 109 NW 404.

PETIT JURY. L. 1921, c. 365, defines a petit jury as a body of 12 ment or women, or both, and is constitutional. State v Rosenberg, 155 M 37, 192 NW 194.

GUARANTY APPLIES ONLY TO ACTIONS AT LAW. The constitutional guaranty of a jury trial relates only to actions at law. State ex rel v Guilford, 174 M 457, 219 NW 770.

WHERE NO CAUSE OF ACTION. Where plaintiff has no cause of action at law against defendant for damages he is not entitled to a trial by jury. Larson v Larson, 133 M 452, 158 NW 707.

DEMAND FOR JURY TRIAL LIMITED TO PROPER ISSUES. When part of issues in a case are triable by a jury and part by a court, party desiring jury trial should confine his demand therefor to the former issues specifically. Greenleaf v Egan, 30 M 316, 15 NW 254; Chadbourne v Zilsdorf, 34 M 43, 24 NW 308; Lace v Fixen, 39 M 46, 38 NW 762; Peterson v Ruhnke, 46 M 115, 48 NW 768; Holland Piano Mfg. Co. v Smith, 155 M 6, 192 NW 355.

MIXED ACTIONS. In mixed actions, based on both a legal and an equitable cause of action, a party has a constitutional right, if seasonably and properly demanded, to a trial by jury of the legal action; but in an action, not of a strictly legal nature, where plaintiff seeks both equitable and legal relief, neither party is entitled to a jury trial as a matter of right. Koeper v Town of Louisville, 109 M 519, 124 NW 218.

WHEN JURY TRIAL MAY BE HAD. A statute is not objectionable on constitutional grounds because it does not provide for a jury trial in the first instance. This guaranty is satisfied if at some reasonable time, as on appeal, the right is preserved. Gove v County of Murray, 161 M 66, 68, 200 NW 833.

DETERMINATION OF RIGHT. Whether the action is triable by the court or by the jury is determined by a reference to the complaint. Johnson v Peterson, 90 M 503, 97 NW 384; Shipley v Bolduc, 93 M 414, 101 NW 952; Williams v Howe, 137 M 462, 162 NW 1049.

EQUITABLE ACTION. In case of an equitable action no right to a jury trial exists. Bond v Welcome, 61 M 43, 63 NW 3; Shipley v Bolduc, 93 M 414, 101 NW 952.

COMPLAINT DETERMINES RIGHT. The determination whether the right to trial by jury exists is in some cases based entirely upon the allegations of the petition or complaint which inaugurated the action. Bond v Welcome, 61 M 43, 63 NW 3; Shipley v Bolduc, 93 M 414, 101 NW 952; Williams v Howes, 137 M 462, 162 NW 1049; King v International Lbr. Co. 156 M 494, 195 NW 450.

COURT MAY LOOK BEYOND COMPLAINT TO DETERMINE RIGHT. The rule that the determination of the question whether the right to trial by jury exists is based entirely upon the allegations of the petition or complaint which inaugurated the action is not a restrictive one and the court may look further than the complaint. Swanson v Alworth, 168 M 84, 209 NW 907.

LEGISLATURE CANNOT IMPAIR RIGHT. By extending equitable jurisdiction to new subjects the legislature cannot impair the right to trial by jury. It cannot confer equity jurisdiction in matters in respect to which such jurisdiction did not exist before the adoption of the constitution, and draw to it a legal cause of action cognizable exclusively in a law court and triable by a jury and have both tried by a court without a jury. Westerlund v Peterson, 157 M 379, 385, 197 NW 110.

WHEN LEGISLATURE MAY PROVIDE FOR TRIAL WITHOUT JURY. The legislature may provide for trial without a jury in actions analogous to equitable suits at common law, or where new rights and remedies are created which were unknown to the common law. Peters v City of Duluth, 119 M 96, 137 NW 390; Johnson v Peterson, 90 M 503, 97 NW 384; Yanish v Pioneer Fuel Co. 64 M 175, 66 NW 198; Roussain v Patten, 46 M 308, 48 NW 1122.

LEGISLATURE MAY PROVIDE FOR TRIAL BY JURY. The legislature can designate as triable by a jury issues in proceedings which were nonexistent at the common law. In the following proceedings and actions the statutes provide for trial of issues by the jury where the constitutional right does not exist.

S. 117.14, appeal in eminent domain proceedings

S. 230.05, proceedings to procure elevator site

SS. 117.36, 117.37, action to determine the validity of railroad condemnation

S. 105.24, appeal in drainage ditch proceedings

S. 108.26, county drainage proceedings

S. 109.13, town ditch proceedings

S. 222.06, to determine parallel or competing lines of railroad

S. 334.12, questions of fraud in obtaining a negotiable instrument

S. 586.12, trial of issues of fact in mandamus proceedings. 11 MLR 451.

FACTS CONSTITUTING CASE AT LAW. An action to recover the value of 1,000 bushels of wheat alleged to have been delivered by plaintiff to defendants out of its Mankato elevator in excess of the quantity deposited by them therein and to have been by defendants converted to their own use is a case at law within this section, and defendants were entitled to a jury trial. St. Paul & Sioux City Ry. Co. v Gardner, 19 M 132 (99).

COURT MAY REFER ACTION INVOLVING COMPLICATED ACCOUNTS. A cause of action involving the taking and adjustment of complicated accounts between the parties is of equitable cognizance and court may order a reference to take and state the accounts. Fair v Stickney Farm Co. 35 M 380, 29 NW 49; Bond v Welcome, 61 M 43, 63 NW 3.

COMPLICATED ACCOUNTS INVOLVED. Although equity may assume jurisdiction where the accounts are complicated, and may even interfere with the legal remedy, whenever an action at law will furnish an adequate remedy, equity does not assume jurisdiction because an accounting is demanded or needed, on account of the complication of accounts. Nordeen v Buck, 79 M 352, 82 NW 644.

QUO WARRANTO. This section does not apply to proceedings upon information in nature of quo warranto. State v Minn. Thresher Mfg. Co. 40 M 213, 41 NW 1020; Lauritsen v Seward, 99 M 313, 109 NW 404; Hunt v Hoffman, 125 M 249, 253, 146 NW 733.

STRUCK JURIES. L. 1895, c. 328, providing for struck juries, does not conflict with this section. Lomen v Mpls. Gaslight Co. 65 M 196, 68 NW 53; Riley v C. M. & St. P. Ry. Co. 67 M 165, 69 NW 718.

MANDAMUS. The right to a jury trial in respect to issues of fact in a proceeding by mandamus, instituted in the supreme court, is not secured nor allowed to either party under the constitution of the state. State ex rel v City of Lake City, 25 M 404, 428.

INSOLVENCY PROCEEDINGS. In insolvency proceedings, insolvent debtor is not entitled to a trial by jury, such right not having existed at time of adoption of the constitution of the state. In re Howes, 38 M 403, 38 NW 104.

ORDER OF JUDGMENT. L. 1895, c. 320, providing that where party is entitled on the trial to have a verdict directed in his favor and moves for same the court may, on a motion for a new trial or on an appeal in such motion, order judgment in his favor notwithstanding the verdict, does not deny the right to trial by jury. Kernan v St. Paul City Ry. Co. 64 M 312, 67 NW 71; Crane v Knauf, 65 M 447, 68 NW 79.

ERRONEOUS DENIAL OF JURY TRIAL. Where jury trial is erroneously denied the error is prejudicial and demands a new trial, even though the case was tried fully and fairly before a judge and the decision seems just, if there was an issue of fact so determinative that a jury's findings thereon, differing from those of the judge, might have required a different result. Wilcox v Hedwall, 185 M 8, 239 NW 763.

WHEN ERRONEOUS DENIAL OF JURY TRIAL IS WITHOUT PREJUDICE. Even though trial by jury be erroneously denied, the error is without prejudice if the trial before a judge was fair and complete and the decision was the only one possible as a matter of law on all the evidence. Wilcox v Hedwall, 185 M 8, 239 NW 763.

PROVISION IN MINNESOTA STANDARD INSURANCE POLICY FOR ARBITRATION OR APPRAISAL. Provision in Minnesota standard policy for arbitration or appraisal in case of disagreement as to loss does not violate this section. Glidden Co. v Retail Hdwe. Mut. F. I. Co. 181 M 518, 233 NW 310.

JUROR NOT A U. S. CITIZEN. The failure in a criminal case to discover at the trial that one of the jurors was not a U. S. citizen and consequently not qualified, is not ground for a new trial. Defendant might waive the competency of a juror without any infringement of the constitutional guaranty that the right of trial by jury shall remain inviolate. State v Durnam, 73 M 150, 75 NW 1127; State v Olson, 195 M 493, 263 NW 437.

IN ACTION AGAINST CITY, RESIDENTS OF CITY MAY BE JURORS. With respect to an impartial jury it is no denial of an impartial tribunal in an action brought against a city for damages caused by an overflow into plaintiff's land to have among the jurors residents and taxpayers of defendant city. McClure v City of Red Wing, 28 M 186, 9 NW 767.

WILFUL TRESPASS IN CUTTING TIMBER, TREBLE DAMAGES. A statutory action for treble damages for wilful trespass in cutting timber on state lands is a case at law rather than a criminal proceeding. The state occupies the same position as a private suitor. State v Shevlin-Carpenter Co. 99 M 158, 108 NW 935; 102 M 470, 113 NW 634, 114 NW 738; affirmed in 218 US 57, 54 LE 930, 30 SC 603.

ELECTION CONTEST. Contesting the election of a county officer in the courts is a special proceeding, not a civil action, consequently no right of trial by jury. Ford v Wright, 13 M 518 (480)

WILL CONTEST. In a will contest there is no right to a jury trial. The granting of a jury trial of the issues in such a case rests within the absolute discretion of the trial court. It may submit such issues to a jury either with or without the consent of the parties. It had the right to withdraw the issues from the jury even if the issues had been framed. Schmidt v Schmidt, 47 M 451, 50 NW 598; In re Estate of Enyart, 180 M 256, 260, 230 NW 781.

PROPERTY TAKEN UNDER POWER OF EMINENT DOMAIN. Owner of property taken under power of eminent domain conferred by a city charter is not entitled as a matter of right to have his damages assessed by a jury. Upon an appeal to the district court he is not entitled to a jury trial unless the court grants it in the exercise of its discretion. Board of Water Comrs. v Roselawn Cemetery, 138 M 458, 165 NW 279.

ISSUE BETWEEN JUDGMENT CREDITOR AND GARNISHEE. The issue between a judgment creditor and garnishee as to whether the latter is under any liability to the judgment debtor which can be subject to garnishment, arises under a statutory proceeding which is equitable in nature. In consequence there is no constitutional right to trial by jury. Bassi v Bassi, 165 M 100, 205 NW 947.

2. Jury trial in inferior courts

MUNICIPAL COURTS. It is competent for the legislature, in establishing municipal courts, to provide for the trial and hearing of complaints and causes

involving merely the violation of municipal ordinances in a summary manner without a jury. City of Mankato v Arnold, 36 M 62, 30 NW 305.

CONCILIATION COURT, BOND FOR REMOVAL OF CAUSE TO MUNICIPAL COURT. A statute requiring that losing party in the conciliation court, where the controversy is heard informally and determined summarily, must, as a condition to removal and a jury trial in municipal court, execute a bond to pay the judgment rendered in the conciliation court and such judgment as may be rendered in the municipal court, unreasonably burdens the right to a jury trial and is unconstitutional. Flour City Fuel & Transfer Co. v Young, 150 M 452, 185 NW 934.

CONCILIATION COURT, RIGHT OF REMOVAL TO MUNICIPAL COURT. In the conciliation court of Minneapolis there is no trial by jury. There is a right of removal in the losing party to the municipal court where a trial by jury is given. The giving of a trial by jury in the municipal court upon removal, with no jury trial in the conciliation court, satisfies the constitutional guaranty of a jury trial. Flour City Fuel & Transfer Co. v Young, 150 M 452, 185 NW 934.

3. Trial by jury upheld

ACTION ON LONG ACCOUNT. An act providing that when both parties to the action did not consent, the court on the motion of either or on its own motion might direct a reference when the trial of an issue of fact requires the examination of a long account on either side, violates this section as applied to cases at law. Roos v State, 6 M 428 (291).

DENIAL OF JURY TRIAL REVIEWABLE ON APPEAL. If a jury trial is denied, where the litigant is entitled to it and asserts his rights, the error can be reviewed only on appeal. Swanson v Alworth, 159 M 193, 198 NW 453.

ENFORCEMENT OF ATTORNEY'S LIEN. Where there has been a settlement between attorney and client, former retaining from the moneys of his client, with client's consent, amount of his fee, he cannot thereafter force client into court by summary statutory proceeding for enforcement of attorney's lien and have the settlement confirmed or amount of his fee determined anew by the court. In such case if client should sue the attorney for some or all of money retained by the attorney, he would have the constitutional right to trial by jury, which the attorney's lien statute does not and cannot impair. Westerlund v Peterson, 157 M 377, 197 NW 110.

ACTION AGAINST SURETY ON CONTRACT. A suit against a surety on the contract is an action for the recovery of money based upon the promise to pay. Therefore it is triable by jury. Pierce v Maetzold, 126 M 445, 148 NW 302; Raymond Farmers Ele. Co. 207 M 117, 119, 290 NW 231.

ACTION FOR MERCHANDISE SOLD. In an action for merchandise sold both plaintiff and defendant have a constitutional right to a trial by jury. Flour City Fuel & Transfer Co v Young, 150 M 452, 185 NW 934.

4. Trial by jury denied

MANDAMUS. This section does not extend to and include proceedings by mandamus. State v Sherwood, 15 M 221 (172); State v City of Lake City, 25 M 404, 427.

QUO WARRANTO. This section does not apply to proceedings upon information in the nature of quo warranto. State v Minn. Thresher Mfg. Co. 40 M 213, 41 NW 1020.

INSOLVENCY. In involuntary proceedings in insolvency the debtor is not entitled to a jury trial. In re Howes, 38 M 403, 38 NW 104.

MECHANIC'S LIEN. Defendant in an action to foreclose a mechanic's lien interposing a counterclaim setting up a legal cause of action is not entitled, as a

matter of right, to a jury trial thereon. Johnson Service Co. v Kruse, 121 M 28, 140 NW 118.

CONTEMPTS. This section does not extend to and include proceedings to punish contempts. State v Becht, 23 M 411.

MILITARY CODE. Provisions of Military Code authorizing trial in times of peace of members of national guard by court-martial for violation of these rules and regulations and their punishment, if found guilty, are not contrary to this section. State ex rel v Wagener, 74 M 518, 77 NW 424.

BILLS OF PEACE, MULTIPLICITY OF SUITS. In equitable actions in nature of bills of peace or to prevent multiplicity of suits the parties defendant are not, as a matter of right, entitled to have issues of fact submitted to a jury. State ex rel v Kingsley, 85 M 215, 88 NW 742.

ASSESSMENT AND COLLECTION OF TAXES. This section does not extend to and include proceedings for the assessment and collection of taxes. County Board v Morrison, 22 M 178, 181.

REGISTRATION OF LAND TITLE. This section does not apply to a proceeding to register a land title. Peters v City of Duluth, 110 M 96, 137 NW 390.

ADVERSE CLAIMS TO REAL ESTATE. In an action to determine adverse claims to real estate and to cancel deeds, plaintiff is not entitled to a jury trial. Roussain v Patten, 46 M 308, 48 NW 1122.

LAYING OUT HIGHWAYS. This section does not extend to and include proceedings for laying out highways under G. S. c. 13, ss. 33 to 43, as amended by L. 1867, c. 30, s. 4, and L. 1868, c. 48, s. 2. Bruggerman v True, 25 M 123, 126.

ACCOUNTING FOR PROPERTY HELD IN TRUST. Action for accounting taken and held in trust by defendant for plaintiff and for partition of part thereof and appointment of receiver to effect same is of an equitable nature and properly triable by the court without a jury. Judd v Dike, 30 M 380, 15 NW 672.

TITLE TO LAND HELD IN TRUST. One defendant held title to land with trust in favor of plaintiff. He conveyed to a codefendant who had notice of plaintiff's rights. This codefendant conveyed to a third person with like notice. Under these facts plaintiff had no cause of action at law against defendants for damages and was not entitled to a trial by jury. Larson v Larson, 133 M 452, 158 NW 707.

TRUST DEPOSIT IN SAVINGS ACCOUNT. An action to set aside and invalidate a trust deposit in a savings account in a bank is not a jury case, even if the relief asked is the recovery of money in such account. Coughlin v Farmers & Mechanics Savings Bank, 199 M 102, 272 NW 166.

CONDEMNATION PROCEEDINGS UNDER POWER OF EMINENT DOMAIN. This section does not extend to and include 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 M 241, 293.

MUTUAL ACCOUNTS. This section does not extend to and include an action involving the adjustment and settlement of mutual accounts growing out of a common transaction between the parties. Garner v Reis, 25 M 475, 477.

In an accounting action there is no right to a jury trial. The court may discharge the jury midway in the trial and decide the controversy as a court case. Raymond Farmers Ele. Co. v American Surety Co. 207 M 117, 290 NW 231.

ELECTION CONTEST. Party to election contest, though basis of contest is a violation of the Corrupt Practices Act and though it may result in an annulment of the election, is not entitled to a jury trial of the issues of fact under this section, providing that the right of trial by jury shall remain inviolate and extend to all cases at law without regard to the amount in controversy; the effect of this provision is to recognize and continue the right of jury trial as it existed in the territory at the adoption of the constitution, there being at that time no right to

a jury trial in similar proceedings and such proceedings not being a case at law within the meaning of the constitution. Whallon v Bancroft, 4 M 109 (70); St. P. & S. C. R. Co. v Gardner, 19 M 132 (99); Ames v Lake Shore & M. R. Co. 21 M 241; County Board v Morrison, 22 M 178; Bruggerman v True, 25 M 123; In re Howes, 38 M 403, 38 NW 104; State v Minn. Thresher Mfg. Co. 40 M 213, 41 NW 1020; Schmidt v Schmidt, 47 M 451, 50 NW 598; State v Kingsley, 85 M 215, 88 NW 742; Peters v City of Duluth, 119 M 96, 137 NW 390; State v Ryder, 126 M 95, 147 NW 953; Norton B. & T. Co. v Sodergren, 130 M 252, 153 NW 527; Hawley v Wallace, 137 M 183, 187, 163 NW 127.

Parties to an election contest have no right to a trial by jury in the district court. Newton v Newell, 26 M 529, 6 NW 346.

ADMITTING WILL TO PROBATE, APPEAL. In appeal to the district court from an order of the probate court admitting a will to probate, a party has not a right to a jury trial of the issue of the validity of the will. Schmidt v Schmidt, 47 M 451, 50 NW 598.

On appeal from probate court to district court from the allowance of a will, parties have no constitutional right nor statutory right to a trial by jury of the issues of testamentary capacity or undue influence. Whether such issues shall be submitted to a jury is within the discretion of the trial court. Lewis v Murray, 131 M 439, 155 NW 392.

INTERPLEADER. Where a party is ordered to interplead and his right to a fund paid into court by a defendant depends upon the power of the court to relieve him from the legal consequences of an accepted bid, he is not entitled to a jury trial. St. Nicholas Church v Kropp, 135 M 115, 160 NW 500.

TRANSPORTATION OF INTOXICATING LIQUOR. L. 1921, c. 335, providing that when a peace officer finds intoxicating liquor being transported in violation of law he shall seize it and the vehicle used in transporting it and arrest any person in charge of any of the property, does not violate this section in providing that the proceeding against the property should be tried by the court without a jury. State v Cadillac Touring Car, 157 M 138, 195 NW 778.

JUDGMENT CREDITOR AND GARNISHEE. Issue between judgment creditor and garnishee as to whether the latter is under any liability to the judgment debter which can be subject to garnishment arises under a statutory proceeding which is equitable in nature. In consequence there is no constitutional right to a trial by jury. Bassi v Bassi, 165 M 100, 205 NW 947.

COMMITMENT OF SEXUALLY IRRESPONSIBLE PERSONS. The constitutional right to a trial by jury does not apply to proceedings for the care and commitment of sexually irresponsible persons dangerous to others. State ex rel v Probate Court, 205 M 545, 287 NW 297.

ABATEMENT OF A NUISANCE. L. 1913, c. 562, intended to repress the nuisance of bawdy houses by equitable attack upon the property of those engaged in or abetting them and not to punish offenders by the infliction of personal penalties, except as for contempt, does not violate the constitutional guaranty of a jury trial merely because the thing declared a nuisance and against which the remedies of the act are provided, would, in its maintenance, have constituted a crime at the time of the adoption of the constitution. State ex rel v Ryder, 126 M 95, 147 NW 953.

In an action to abate a nuisance, based upon L. 1925, c. 285, the defendants are not entitled to a jury trial. State ex rel v Guilford, 174 M 457, 219 NW 770.

5. Jury trial denied in prosecutions under local ordinances

MUNICIPAL COURTS. An act establishing a municipal court may provide for the trial of causes involving merely violation of ordinances in a summary manner without a jury. City of Mankato v Arnold, 36 M 62, 30 NW 305; State v Harris, 50 M 128, 52 NW 531; State v Grimes, 83 M 460, 86 NW 449; State v Marciniak, 97 M 355, 105 NW 965; State v Collins, 107 M 500, 120 NW 1081; State v Nelson, 157 M 506, 196 NW 279.

So much of an ordinance of St. Paul establishing a fire department as authorizes a member of the council or a fire warden to arrest and detain until the fire is extinguished any person who, at a fire, shall without sufficient excuse refuse to obey an order or direction, is repugnant to this section. Judson v Reardon, 16 M 431 (387).

Sp. L. 1889, c. 351, s. 7, which provides that a judge of the municipal court of St. Paul shall hear and dispose of cases involving violations of city ordinances in a summary manner, construed to mean without a jury trial. The fact that at the time the ordinance was passed there was a statute covering the same subject matter as the ordinance and that persons charged with violating the statute were entitled to a jury trial does not affect the result. State ex rel v Parks, 199 M 622, 273 NW 233.

Neither this section nor the statutes of the state give a right of a trial by jury to persons charged with petty offenses under city ordinances. City of St. Paul v Robinson, 129 M 383, 152 NW 777.

Violations of municipal ordinances to which a punishment is attached are criminal offenses. If the prescribed punishment may be greater than three months, or $100.00 fine, the accused can be required to answer for them only upon the indictment or information of a grand jury. State ex rel v West, 42 M 147, 153, 43 NW 845.

JUSTICES OF THE PEACE. A person committed to the care and custody of a board in charge of an institution of the character of the Minnesota state reform school is not punished, nor is he imprisoned, in the ordinary meaning of those words. Hence the constitutional provision which regulates and limits the jurisdiction of justices of the peace in criminal matters has no application. The mode of procedure is not in violation of that portion of the fundamental law of the state which provides that the right of a trial by jury shall remain inviolate. State ex rel v Brown, 50 M 353, 357, 52 NW 935.

6. Jury trial waived

INTENTION TO WAIVE MUST CLEARLY APPEAR. A party cannot be held to have waived his constitutional right to a jury trial unless an intention to do so appears affirmatively or by necessary inference from unequivocal acts or conduct. Hasey v McMullen, 109 M 332, 337, 123 NW 1078.

CONDUCT OR ACTIONS OF PARTIES. Where it is sought to predicate a waiver on the conduct or actions of the parties, the waiver must clearly appear. St. Paul & S. C. Ry. Co. v Gardner, 19 M 132 (90); Hasey v McMullen, 109 M 332, 123 NW 1078.

BY STATUTE OR BY CONDUCT. A jury trial may be waived in the manner pointed out in G. S. 1894, s. 5385, or by such unequivocal acts and conduct before the court as clearly show a willingness and intention to do so. Poppitz v German Ins. Co. 85 M 118, 88 NW 438.

CONSENT TO TRIAL BY COURT. In an action where only a money judgment was demanded against some defendants and equitable relief sought from others, but they were not served with process and did not appear, all that could be tried was the issues as to the defendants against whom only a money judgment was asked and those issues tried alone were for a jury. Consent by plaintiff to have the case tried by the court was a waiver of the right to a jury trial. St. Paul Dist. Co. v Pratt, 45 M 215, 219, 47 NW 789.

CONSENT TO COURT TRIAL. Where plaintiff's counsel on the call of the calendar acquiesces in a case being marked for the court calendar and thereafter requests a resetting of the case as a court case, and later consents to the case being set as the last case on the court calendar, he waives a jury trial. Paynesville Land Co. v Grabow, 160 M 414, 200 NW 481.

WAIVER OF JURY TRIAL DISREGARDED. The court may disregard a waiver of a jury trial by the parties, and require the issues to be submitted to a jury. The matter is addressed to the court's sound discretion. The waiver

of a jury in this case applied only to the term of court at which it was made. Wittenberg v Onsgard, 78 M 342, 81 NW 14.

DEMAND FOR TRIAL OF ALL ISSUES. Plaintiff did not waive his rights by demanding that all the issues be tried by a jury. Williams v Howe, 137 M 462, 162 NW 1049.

STIPULATION FOR REFERENCE. Defendant entered into a stipulation for the appointment of a referee to hear, try, and determine the action and thereby waived any right which he might have had to demand a jury trial. Deering v McCarthy, 36 M 302, 30 NW 813.

FAILURE TO OBJECT TO REFERENCE. Plaintiff who makes no objection to an oral order for reference at the call of the calendar nor to subsequent formal order of reference waives his right to a jury trial, notwithstanding an objection at the commencement of the proceedings before the referee. Gondreau v Beliveau, 210 M 35, 297 NW 352.

WORKMEN'S COMPENSATION ACT. This section, securing the right of trial by jury in all cases at law, expressly provides that such right may be waived. Where employer and employee both become subject to the provisions of the Workmen's Compensation Act they thereby waive a jury trial as to matters governed by such provisions. Such right remains unchanged as to all other matters and other persons. Mathison v Mpls. St. Ry. Co. 126 M 286, 297, 148 NW 71.

JUSTICE OF THE PEACE. In an action before a justice of the peace it is not necessary in order effectively to waive the right to a jury trial that there be an express waiver entered upon the justice's docket. It may be waived by a failure to call for a trial by jury at the trial. Gibbens v Thompson, 21 M 398.

7. Five-sixths verdict by jury

IN ACTION BASED UPON FEDERAL EMPLOYERS LIABILITY ACT. In an action in a state court based upon the Federal Employers Liability Act, the five-sixths jury law (L. 1913, c. 63) applies. Winters v Mpls. & St. L. R. Co. 126 M 260, 148 NW 106; McNaney v C. R. & I. P. Ry. Co. 132 M 391, 396, 157 NW 650.

Section 5. NO EXCESSIVE BAIL OR UNUSUAL PUNISHMENT

1. Cruel or unusual punishment
2. Excessive bail

1. Cruel or unusual punishment

"CRUEL AND UNUSUAL PUNISHMENT" DEFINED. The term "cruel and unusual punishment," as used in the constitution, has no special reference to the duration of the term of the imprisonment for a particular crime, though it would operate to nullify the imposition by legislation of a term flagrantly in excess of what justice and common humanity would approve. The purpose of incorporating that particular provision in the constitution was to prevent those punishments which in former times were deemed appropriate without regard to the character or circumstances of the crime, but which later standards in such matters condemned as unjust and inhuman; such punishment as burning at the stake, the pillory, stocks, dismemberment, and other extremely harsh and merciless methods of compelling the victim to atone for and expiate his crime. The intention was to guard against a return of such inhuman methods. State v Moilen, 140 M 112, 117, 167 NW 345.

CRIMINAL SYNDICALISM. L. 1917, c. 215, defining and declaring the crime of criminal syndicalism and imposing penalties for violation thereof, does not, as to the penalties imposed, come within the prohibition of this section against excessive fines or cruel or unusual punishment. State v. Moilen, 140 M 112, 167 NW 345.

NO CLEAR DEPARTURE FROM CONSTITUTION. Minn. St. 1941, s. 614.46, does not offend this section since there has been no clear departure therein from our fundamental law and the spirit and purpose thereof, the punishment imposed not being manifestly in excess of constitutional limitations. State v Eich, 204 M 134, 282 NW 810; State v Ives, 210 M 141, 297 NW 563.

POWER OF JURY TO FIX 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 M 514, 524.

MISAPPROPRIATION OF FEES. A register of deeds intentionally misappropriated fees received by him which, under the law, he should have turned over to the county treasurer and, upon conviction, he was sentenced to pay a fine of $500 and be confined at hard labor in the state prison for one year. This punishment was not cruel and unusual within the inhibition of this section. State v Borgstrom, 69 M 508, 72 NW 799, 975.

BRIBERY. Defendant was convicted of the crime of asking for a bribe to influence his vote and action as an alderman. A sentence that defendant be confined in the state prison for six years and six months is neither cruel, unusual, nor excessive. State v Durnam, 73 M 150, 75 NW 1127.

POSSESSION OF GAME. L. 1903, c. 336, s. 45, provides that no person shall have in possession at any time any wild duck of any variety and that whoever offends against any of its provisions should be punished by a fine of not less than $10.00, nor more than $25.00, and costs of prosecution, or by imprisonment in the county jail for not less than ten, nor more than 30, days for each and every bird so had in possession with intent to sell. The sentence was that defendant pay a fine of $20,000 and be imprisoned in the county jail until the fine was paid, not exceeding 200 days. The act is not unconstitutional on the ground that it provides for the imposition of excessive fines and the infliction of cruel and unusual punishments. State v Poole, 93 M 148, 100 NW 647.

BANK ROBBERY. A statute making bank robbery or any attempt thereat punishable by life imprisonment does not violate any constitutional guaranty and is not prohibited as cruel or unusual. State v Colcord, 170 M 504, 212 NW 894.

COOPERATIVE MARKETING ACT. This section of the constitution does not apply to the Cooperative Marketing Act. Minn. Wheat Growers Coop. M. Ass'n. v Higgins, 162 M 471, 203 NW 420.

GRAND LARCENY. Minn. St. 1941, s. 622.06, does not violate either state or federal constitutions prohibiting cruel or unusual punishment. State v Tremont, 196 M 36, 263 NW 906.

STATE TRAINING SCHOOL. L. 1895, c. 153, relating to the state training school for boys and girls, is constitutional. It does not provide for cruel, unusual, or unequal punishment. State v Brown, 50 M 353, 52 NW 935; State ex rel v Phillips, 73 M 77, 75 NW 1029. See 7 MLR 410, 8 MLR 167.

NUISANCE. L. 1913, c. 562, intended to repress the nuisance of bawdy houses by equitable attack upon the property of those engaged in or abetting them, is not penal, either in its general aspect or in its details, with reference to the forfeiture and sale of personal property used in maintaining the nuisance, the closing to all purposes for one year of premises in which the lewd business is carried on, the imposition of a money exaction against the property and persons participating in the nuisance, or otherwise; and does not contravene constitutional limitations as to excessive fines and unusual punishments. State ex rel v Ryder, 126 M 95, 147 NW 953. See 11 MLR 374, 14 MLR 690, 26 MLR 753.

CONTEMPT. Defendant was found guilty of violating an interlocutory injunction and sentenced to pay a fine of $250.00, with imprisonment in the county jail for not more than six months in case of failure to pay the fine. In cases of contempt such fines and imprisonments are not in contravention of this section. State ex rel v District Court, 98 M 136, 107 NW 963.

DIVORCE, INTEREST IN LAND OF SPOUSE. R. L. s. 3591, which provides that when a divorce is granted because of the husband's imprisonment or his adultery the wife is entitled to the same interest in his lands as if he were dead, to be allowed in the same manner, is not unconstitutional because inflicting a cruel and unusual punishment. Glaser v Kaiser, 103 M 241, 114 NW 762.

2. Excessive bail

FUGITIVE FROM JUSTICE. Where a person is held as a fugitive from justice under a rendition warrant issued by the governor of this state he ordinarily should not be released on bail pending a decision in a habeas corpus proceeding to test the legality of his arrest. State ex rel v Moeller, 182 M 369, 234 NW 649.

EXCESSIVE SENTENCE. A sentence for contempt of court strictly in accordance with the terms of the statute may be considered severe but it is not excessive. Wenger v Wenger, 200 M 436, 445, 274 NW 517.

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Section 6. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS

1. Speedy and public trial
2. To be informed of nature of accusation
3. To be confronted by witnesses
4. Trial by jury of county or district

1. Speedy and public trial

COURT HAS NO DISCRETION. The right to a speedy trial is guaranteed by the constitution to every person accused of a criminal offense and the court has no discretionary power to deny that right, except such temporary delays as arise from continuances or postponements for cause shown. This provision in the constitution is intended to avoid oppression and to prevent delays by imposing upon the courts an obligation to proceed with reasonable dispatch to the trial of criminal accusations. The period in which a speedy trial may be had begins to elapse from the time the accused person evinces a readiness to go to trial and whether a speedy trial is denied an accused person is for the courts to determine. State v Artz, 154 M 290, 191 NW 605; State v Rank, 162 M 393, 203 NW 49.

JUDICIAL QUESTION. Whether a trial is a speedy trial within the meaning of the constitution is a judicial question. State v Le Flohic, 127 M 505, 507, 150 NW 171; State v Kloempken, 145 M 496, 176 NW 642; State v Lightheart, 153 M 40, 189 NW 408.

BRIBERY. The accused bribed, or offered to bribe, a witness to absent himself from a trial to which he had been duly subpoened. The accused can only be convicted of a misdemeanor, under G. S. 1894, s. 6383, of which a justice of the peace has jurisdiction. G. S. 1894, c. 106, which provides for preliminary examination of persons accused of crime, authorizes the committing magistrate to hold the accused to the grand jury in cases where the evidence does not show that any higher crime has been committed than one of which a justice of the peace has jurisdiction, if the grand jury has power to indict for the same; but the constitution guaranties a speedy trial and, unless the grand jury is in session at the time the accused is committed or will meet shortly afterwards, it is an abuse of the powers of the committing magistrate to hold the accused to await the action of the grand jury in such a case and the accused is entitled to redress by habeas corpus. State ex rel v Sargent, 71 M 28, 73 NW 626. See 7 MLR 575, 588.

FACTS CONSTITUTING DENIAL OF SPEEDY TRIAL. Where a person is arraigned upon an indictment charging him with a felony, the case is set for trial on a day certain, and the accused appears personally with his attorney insisting upon trial, and the indictment is dismissed on motion of the prosecution and no further steps are had for a period of ten years, such a lapse of time amounts to a denial to the accused of the speedy trial granted him by this section. State v Artz, 154 M 290, 191 NW 605.

MUNICIPAL COURT, TRIAL OF VIOLATIONS OF STATE LAWS. A municipal court organized under L. 1895, c. 229, which contains the provision that the court shall hear and dispose of in a summary manner causes presented by a police officer either with or without process for violation of the criminal laws of the state within the county or for violations of the ordinances of the city, to the extent that it seeks to deprive the defendant of a jury trial when charged with an offense against the state law, violates the constitutional provision that in all criminal prosecutions the accused shall enjoy the right to a speedy public trial by an impartial jury of the county or district wherein the crime shall have been committed. When the legislature, by the enactment of L. 1911, c. 365, expressly prohibited cities, villages, towns, and other municipalities from adopting local ordinances, rules, or regulations limiting or restricting the speed of motor vehicles, it must be held that the legislative intent was to give the accused in any prosecution for violating the state speed regulations the right to have the question whether in fact he was violating the law submitted to and passed upon by a jury. The legislature has not prohibited the adoption by municipalities of appropriate traffic regulations other than those pertaining to the speed in operation of motor vehicles, and as to all such other reasonable regulations the field is open to the adoption of a suitable ordinance and any prosecutions for the violation of such ordinance the proceedings before the magistrate would be summary and without a jury. 1922 OAG 198.

PETTY OFFENSES. The provision of the constitution that in all criminal prosecutions the accused shall enjoy the right to a speedy public trial by an impartial jury is not intended to, and does not, cover the multitude of so-called petty offenses arising under municipal ordinances. City of Mankato v Arnold, 36 M 62, 30 NW 305; State v Harris, 50 M 128, 52 NW 387; State v O'Connor, 58 M 193, 59 NW 999; State v Grimes, 83 M 460, 86 NW 449; Madison v Martin, 109 M 292, 123 NW 809; State v Robinson, 129 M 383, 152 NW 777; State v Broms, 138 M 402, 166 NW 771; State v Nelson, 157 M 506, 196 NW 279; State ex rel v Parks, 199 M 622, 273 NW 233.

APPELLATE PROCEDURE FROM MUNICIPAL COURTS. For the purpose of appellate procedure, prosecutions for the violation of municipal ordinances are criminal actions. In such proceedings in municipal courts established since the taking effect of R. L. 1905, appeals to the district court must be taken pursuant to G. S. 1913, ss. 7638, 7639. An appeal in such proceeding taken pursuant to G.S. 1913, s. 7602, as amended by L. 1917, c. 283, is properly dismissed. Village of Crosby v Stemich, 160 M 261, 199 NW 918.

FILING OF INFORMATION BY COUNTY ATTORNEY. Defendant was convicted on his plea of guilty to an information filed by the county attorney on his own initiative pursuant to Minn. St. 1941, ss. 628.29 to 628.31. The provision of Minn. St. 1941, s. 628.32, requiring the appointment of counsel for the defendant before the taking of a plea, applies to an information filed under that section upon the application of the defendant to plead guilty, and not to an information under ss. 628.29 to 628.31 filed on the initiative of the county attorney. State v McDonnell, 165 M 423, 206 NW 952.

ASSISTANCE OF COUNSEL. It is not the duty of a justice of the peace to advise the defendant in a criminal prosecution that he is entitled to have assistance of counsel in his defense. State ex rel v City of Red Wing, 175 M 222, 220 NW 611.

DEFENDANT IN PRISON FOR ONE CRIME. The fact that a defendant is in prison for one crime is not cause for the state to delay his trial for another crime. State v McTague, 173 M 153, 216 NW 787.

NO DEMAND FOR TRIAL OR OPPOSITION TO POSTPONEMENTS. In the absence of a demand for trial or opposition to postponements, a defendant in a criminal prosecution is not in a position to successfully move that the indictment be dismissed upon the ground that he is denied a speedy trial. State v McTague, 173 M 153, 216 NW 787.

WAIVER. The defendant's silence, in the face of numerous continuances and long delay, waives the right to a speedy trial. State v McTague, 173 M 153, 216 NW 787.

DEATH PUNISHMENT. L. 1889, c. 20, providing the mode of inflicting the punishment of death, the manner in which it shall be carried into effect, and declaring a violation of any provision thereof a misdemeanor, is not in conflict with the right to a speedy and public trial. State v Pioneer Press Co. 100 M 173, 110 NW 867.

COURTROOM TEMPORARILY CLEARED OF SPECTATORS. When the spectators at a criminal trial of lascivious or immoral character are so obtrusive as to embarrass a witness during the examination and it becomes apparent to the trial court that the due administration of justice is being impeded, the court may temporarily clear the courtroom of all persons except court officers, counsel, and witnesses, and the defendant, without infringing upon defendant's right to a public trial. State v Callahan, 100 M 63, 110 NW 342. See 5 MLR 554.

EXCLUSION OF WITNESSES OR SPECTATORS FROM COURTROOM. The trial judge may exclude the witnesses, or any particular witness or spectator, from the courtroom while witnesses are being examined. State v Quirk, 101 M 334, 112 NW 409.

FILIATION PROCEEDING. A filiation proceeding is civil in character but even rules of criminal procedure could apply, defendant, because of his own conduct contributing to the delay, was not entitled to dismissal for lack of speedy trial. State v Hansen, 187 M 235, 244 NW 809.

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2. To be informed of nature of accusation

PURPOSE. The purpose of the provision that in all criminal prosecutions the accused shall enjoy the right to be informed of the nature and cause of the accusation is that the accusation, whether by indictment or information, must be sufficiently specific fairly to apprise the accused of the nature of the charge against him, that he may know what to answer and be prepared to meet the exact charge against him, and that the record may show, as far as may be, for what he is put in jeopardy. State v Nelson, 74 M 409, 414, 77 NW 223, 225.

SUFFICIENCY OF WORDS OF STATUTE. A person may be charged in an indictment in the words of the statute, without a particular statement of facts and circumstances, when, by using those words, the act in which an offense consists is fully, directly, and expressly alleged, without uncertainty or ambiguity. State v Comfort, 22 M 271; State v Abrisch, 41 M 41, 42 NW 543; State v Howard, 66 M 309, 68 NW 1096; State v O'Neill, 71 M 399, 402, 73 NW 1091; State v Rosenfield, 111 M 301, 303, 126 NW 1068; State v Mayo, 118 M 336, 338, 136 NW 849; State v Danaher, 141 M 490, 169 NW 420; State v Eich, 204 M 134, 140, 282 NW 810.

INSUFFICIENCY OF WORDS OF STATUTE. If the statute does not set forth all of the elements necessary to constitute the offense an accusation which simply follows the words of the statute is not sufficient, but additional necessary allegations must be made. State v Howard, 66 M 309, 68 NW 1096; State v Bradford, 78 M 387, 81 NW 202; State v Eich, 204 M 134, 140, 282 NW 810.

INSUFFICIENCY OF CRIMINAL COMPLAINT. A criminal complaint, which charged that appellant did unlawfully and wilfully make, aid, countenance, and assist in making a noise, riot, disturbance, and improper diversion in a public place, and did collect with bodies and crowds for unlawful purposes, and to the annoyance and disturbance of citizens, etc., contrary to the provisions of a certain city ordinance, does not charge the commission of any specific act constituting disorderly conduct, and is open to objection that it does not state facts sufficient to constitute a public offense, and does not inform appellant of the particular act with which he is charged. State v Swanson, 106 M 288, 119 NW 45.

STATEMENT OF CONCLUSIONS NOT SUFFICIENT. An indictment stating generally that defendant acted wrongfully, unlawfully, recklessly, and with culpable negligence is insufficient, unless the facts justifying such conclusion, not the conclusion itself, are particularly stated. State v MacDonald, 105 M 251, 253, 117 NW 482.

INDICTMENT DEFECTIVE. An indictment for selling mortgaged personal property without the consent of the mortgagee, which fails to show that an unpaid debt secured by the mortgage existed at the time of the sale, is fatally defective. State v Isaacson, 155 M 377, 193 NW 694.

DEFECTS IN FORM OF INDICTMENT. An indictment is not insufficient by reason of any imperfection in matter of form, which does not tend to prejudice the substantial rights of the accused, but the specific acts constituting the elements of the crime charged must be set forth with reasonable certainty to inform the defendant of the nature of his offense, which is his constitutional right, of which he cannot be deprived. State v Clements, 82 M 448, 85 NW 229.

MINNEAPOLIS MUNICIPAL COURT. The Minneapolis municipal court act provides where an offender in custody is brought before the court without process the clerk shall enter upon the records a brief statement of the offense with which he is charged, which shall stand as a complaint unless the court directs a more formal complaint to be made; and does not contravene the provision of this section that the accused shall be informed of the nature and cause of the accusation. State v Messolongitis, 74 M 165, 77 NW 29.

ARRAIGNMENT AND NOTICE OF CHARGE. The record establishes that defendant was accorded his statutory and constitutional rights of proper arraignment and notice of the charge brought against him. State v Barnett, 193 M 336, 258 NW 508.

SEDITIOUS AND DISLOYAL TEACHING. Defendant was indicted by the grand jury charged with the crime of seditious and disloyal teaching. It was not necessary that the indictment allege the names of the persons to whom defendant's language was addressed. State v Hartung, 141 M 207, 169 NW 712.

CRIMINAL SYNDICALISM. L. 1917, c. 215, the criminal syndicalism act, is not so indefinite as to violate the provision of the constitution that in any criminal prosecution the accused shall be entitled to know the nature of the accusation against him. State v Workers' Socialist Pub. Co. 150 M 406, 185 NW 931.

ABDUCTION FOR PURPOSE OF PROSTITUTION. The indictment accused defendant of abducting his youthful victim for the purpose of prostitution. There was no proof that the girl was taken for any purpose than the satisfaction of defendant's lust. The record does not even suggest that he proposed to offer her, or cause her to offer herself, to other men. In that situation, defendant has been deprived of his constitutional right to be informed of the nature and cause of the accusation against him. State v Marsh, 158 M 111, 196 NW 930.

ABDUCTION FOR PURPOSE OF MARRIAGE. An indictment charging defendant with feloniously taking for the purpose of marriage a named child of the age of 15 years from the custody of its parents without their consent, is valid. State v Sager, 99 M 54, 108 NW 812.

SEDUCTION UNDER PROMISE OF MARRIAGE. An indictment which charges the seduction under promise of marriage of a certain person "then and there an unmarried female of previous chaste character" is good as against the objection that it does not state facts sufficient to constitute the offense. State v Abrisch, 41 M 41, 42 NW 543; State v Wenz, 41 M 196, 42 NW 933; State v Framness, 43 M 490, 45 NW 1098; State v Sortveit, 100 M 12, 110 NW 100.

PERJURY. The accused is informed of the nature and cause of the accusation, in a perjury case, by an indictment following form No. 24, G. S. 1878, c. 108 s. 2. State v Thomas, 19 M 484 (418); State v Stein, 48 M 466, 31 NW 474.

PERJURY. In a prosecution for perjury the indictment fully set out the testimony of defendant, consisting of a number of distinct and separate statements of fact, followed by a general allegation that all of this testimony was false, but containing no special averment negativing any of the facts alleged to have been falsely deposed or specifying wherein they were false. This indictment did not inform the accused of the nature and cause of the accusation against him within the meaning of that provision of this section. State v Nelson, 74 M 409, 77 NW 223.

SUBORNATION OF PERJURY. An indictment for subornation of perjury which states that the false testimony was given at the trial of a designated civil action, in a designated court, at a designated time and place, sufficiently identifies the subject matter in respect to which the offense is claimed to have been committed. State v Smith, 153 M 167, 190 NW 48.

FELONY. One who at common law would be an accessory before the fact may, by virtue of R. L. 1905, c. 4758, be charged directly with the commission of the felony as principal and on his trial evidence may be received to show that he procured the crime to be committed. The admission of this evidence is neither a variance from, nor a violation of, the provision of this section that the accused shall be informed of the nature and cause of the accusation against him. State v Whitman, 103 M 92, 114 NW 363.

UNLAWFUL ACCEPTANCE OF DEPOSIT IN BANK. The indictment charged that the accused did then and there, as a private banker, wrongfully, unlawfully, and feloniously accept and receive in deposit in said bank from one P. E. certain money, to wit, the sum of $100, the property of said P. E., good and lawful money and current as such and of the value of $100, a better description of which said money is to the grand jury unknown. The description of the property deposited, when taken in connection with the allegation that a better description is to the grand jury unknown, is sufficient. State v Quackenbush, 98 M 515, 108 NW 953.

BRIBERY. The bribery indictment followed the language of the statute and was not bad for duplicity; the allegations were not repugnant; the state was not obliged to elect as to which specific charge defendant would be tried for. State v Ekberg, 178 M 437, 227 NW 497.

BRIBERY. An information for bribery averring the official character of the offeree and that the bribe was offered to him as such officer is good as against objection that it did not charge that the accused knew that the offeree was such officer, overruling State v Howard, 66 M 309, 68 NW 1096. State v Lopes, Sr. 201 M 20, 275 NW 374.

FORGERY. An indictment which charges that on a certain day and at a certain place the defendant, with intent to defraud, did then and there feloniously forge a certain promissory note, of the tenor following, and then sets out in the indictment the note in full, states facts sufficient to constitute a public offense in plain and concise language, and sufficiently informs the defendant of the nature and cause of the accusation against him, and the word "forge," as used in the indictment, is not a mere legal conclusion. State v Greenwood, 76 M 211, 78 NW 1042.

FORGERY. An indictment or information is sufficient if it sets forth in the language of the statute the elements of the offense intended to be punished. State v Omodt, 198 M 165, 269 NW 360.

POLYGAMY. The indictment in this case follows the precise form prescribed by the statute for an indictment of this character, G. S. 1878, c. 108, s. 2, No. 25. It must be held good. Bilansky v State, 3 M 427 (313); State v Ryan, 13 M 370; State v Armington, 25 M 29, 34.

MURDER. An indictment for murder in the first degree may allege the killing to have been done "with the premeditated design to effect the death", the words used in the statute in defining the offense, instead of "with malice aforethought", the words used in the form for an indictment for murder given in the statute. State v Holong, 38 M 368, 37 NW 587.

* * * * *

3. To be confronted by witnesses

RIGHT TO BE PRESENT WHEN WITNESSES TESTIFY WAIVED. The right of accused to be present when witnesses testify before the jury may be waived by him, at least when counsel are present for him. State v Reckerds, 21 M 47, 50.

VIEW OF PREMISES BY JURY. A view of the premises by the jury in the absence of the defendant does not violate his right to be confronted by the wit-

nesses against him nor his right to be present when his trial is had. State v Rogers, 145 M 303, 309, 177 NW 358.

ENDORSEMENT ON INFORMATION. In an information under the statute, neither the constitution nor the statute requires the endorsement thereon of the words, "a true bill", nor is it necessary to insert the names of the witnesses. State v Workman, 157 M 168, 195 NW 776.

* * * * *

4. Trial by jury of county or district

"JURY OF THE COUNTY" CONSTRUED. A law providing that the list of persons selected to serve as jurors before the city justice of a city shall be composed of the qualified electors of that city exclusively is not unconstitutional. State v Kemp, 34 M 61, 24 NW 349.

VENUE. An act changing the place of holding court in the district, but not changing the district, is not in conflict with this provision. State v Gut, 13 M 341 (315); State v Robinson, 14 M 447 (333).

VENUE. A change, on the application of the state, from a county in one judicial district to an adjoining county in another district does not contravene this provision. State v Miller, 15 M 344 (277).

VENUE. An indictment for a crime committed in an organized county, to which others are attached for judicial purposes, may be entitled as in all of the counties, and found by a grand jury drawn from all. State v Stokely, 16 M 282 (249).

VENUE. Venue of prosecution for embezzlement was properly laid in Hennepin county, where crime was committed. State v Heidelberg, 216 M 383, 12 NW(2d) 781.

TWELVE-MAN JURY. The jury called for is a body of 12 men and this applies to prosecutions in courts of justices of the peace, if the defendant demands such a jury. State v Everett, 14 M 439 (330); State v Anderson, 25 M 66.

ELEVEN-MAN JURY. A criminal trial before 11 jurors, with defendant's consent, is not unconstitutional. State v Sackett, 39 M 69, 38 NW 773; State v Zabrocki, 194 M 346, 260 NW 507.

DRAWING JURORS. L. 1898, c. 151, regulating the manner of drawing jurors in counties having a population of 200,000, is a general law and constitutional. State v Ames, 91 M 365, 98 NW 190.

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Section 7. FURTHER RIGHTS OF ACCUSED.

1. Twice in jeopardy
2. Self-incrimination
3. Bail
4. Held due process of law
5. Held not due process of law
6. Habeas Corpus

1. Twice in jeopardy

APPLICATION. The constitutional provision that no person shall be twice put in jeopardy of punishment for the same offense, applies only to criminal prosecutions. Boetcher v Staples, 27 M 308, 7 NW 263; State v Shevlin-Carpenter Co. 99 M 158, 108 NW 935.

REQUISITES. The accused is put in jeopardy of punishment in the legal and constitutional sense when a jury is impaneled and sworn to try his case upon a valid indictment. After this the accused is entitled to have the trial proceed to a verdict unless some intervening necessity prevents. The inability of the jury to

agree is such a necessity; yet, in a prosecution for a felony, defendant has a right, unless he has waived it, to be present. When the jury is discharged, for failure to agree, without the consent of defendant and during his enforced absence (he being confined in prison) he cannot be tried again for the same offense. State v Sommers, 60 M 90, 61 NW 907; City of St. Paul v Stamm, 108 M 81, 118 NW 154; State v Kiewel, 166 M 302, 305, 207 NW 646. 1 MLR 90. 7 MLR 588.

A plea of former acquittal is sufficient when it shows on its face that the second indictment is based upon the same single criminal act which was the basis of the indictment upon which the defendant was acquitted. State v Klugherz, 91 M 406, 98 NW 99.

TIME FOR MAKING PLEA. A plea to a charge in an indictment or information of former jeopardy must be entered at the time of arraignment. That issue cannot be raised by objection made at the close of the trial. State v Warner, 165 M 79, 205 NW 692.

IDENTITY OF OFFENSE. A conviction for a simple larceny of a $4.00 hat is a bar to an indictment for larceny of the same from a shop, the stealing in both cases being the same. State v Wiles, 26 M 381, 4 NW 615.

Before a defendant may avail himself of the plea of former jeopardy it is necessary for him to show that the present prosecution is for the identical act and that the crime both in law and in fact was settled by the first prosecution. Where the facts constitute but one offense, though it may be susceptible of division into parts, as in larceny for stealing several articles of property at the same time a prosecution to final judgment for stealing some of the articles will bar a subsequent prosecution for stealing any of the articles taken at the same time. The same rule applies where the acquittal or conviction of a greater offense necessarily includes a lesser one. It is the identity of the offense, and not of the act, which is referred to in the constitutional guarantee against putting a person twice in jeopardy. Where two or more persons are injured in their persons, though it be by a single act, yet, since the consequences affect, separately, each person injured, there is a corresponding number of distinct offenses. State v Fredlund, 200 M 44, 273 NW 353.

One acquitted of rape under an indictment where no age of the female raped is averred may again be tried for the same act under an indictment charging carnal knowledge and abuse of a female child under the age of consent and the plea of former jeopardy is not available. State v Winger, 204 M 164, 282 NW 819.

DISTINCTION BETWEEN OFFENSES. Defendant was tried for the crime of carnal knowledge of a female under the age of consent, committed on January 16, 1914, and acquitted. He was subsequently tried and convicted for a like offense committed with the same female on July 16, 1914. The acquittal of the offense of January 16 was not a bar to the prosecution for the offense of July 16 and the court properly disallowed the plea of former acquittal without submitting it to the jury. Where the state is permitted to prove all similar offenses which have taken place within a designated period without electing upon which it will rely and can convict if the jury finds that defendant has committed any one of such offenses, an acquittal is a bar to a second prosecution for any specific offense committed within the designated period. Where the state, although permitted to prove several similar offenses, is required to point out the specific offense for which it seeks a conviction and the jury is required to acquit unless it finds the defendant had committed that particular offense, an acquittal is not a bar to another prosecution for another like offense. State v Healy, 136 M 264, 161 NW 590.

A plea of guilty to violation of the city ordinance against drunkenness in a public place is not a bar to a prosecution under another city ordinance declaring it an offense to drive a vehicle on the city streets when under the influence of intoxicating liquor,—the two offenses having been committed on the same day. State v Ivens, 210 M 334, 298 NW 50.

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

ERRONEOUS JUDGMENT. A justice of the peace has jurisdiction to make a warrant in a criminal proceeding returnable in a city ward adjoining that for

which he was elected and to there proceed to judgment. Such a judgment, even though erroneous, will sustain a plea of former conviction. State v Bowen, 45 M 145, 47 NW 650.

CONVICTION FRAUDULENTLY OBTAINED. A conviction of a criminal offense fraudulently obtained by the offender for the purpose of protecting himself from further prosecution and adequate punishment is no bar to a subsequent prosecution for the same offense. State v Simpson, 28 M 66, 9 NW 78.

AUTHORITY OF COURT TO CONVICT. A plea of former conviction must show authority to convict by the court in which it was had. State v Charles, 16 M 474 (426).

INCREASED PUNISHMENT FOR PREVIOUS CONVICTION OF FELONY. R. L. 1905, s. 4772, providing for increased punishment of persons convicted of certain crimes where it appears that they had previously been convicted of a felony, is not in violation of the twice in jeopardy clause of the state constitution. State v Findling, 123 M 413, 144 NW 142; State v Zywicki, 175 M 508, 221 NW 900.

VIOLATION OF STATUTE AND CITY ORDINANCE. No double jeopardy is involved in a prosecution for violation of a criminal statute of a state, after the accused has been convicted for violation of a city ordinance framed in substantially similar terms, making punishable the same act as did the state statute. State v Lee, 29 M 445, 13 NW 913; State v Hughes, 182 M 144, 233 NW 874. 3 MLR 183.

A person may be prosecuted and convicted for an act denounced as a crime by a statute and also be liable to prosecution therefor under a municipal ordinance which makes the same act an offense. State v Lee, 29 M 445, 13 NW 913; City of Virginia v Erickson, 141 M 21, 168 NW 821; State v Cavett, 171 M 505, 214 NW 479.

DISTINCT OFFENSES. The former conviction was predicated on a complaint that "goods and chattels, viz: Whiskey, kept for sale contrary to law, * * * [were] concealed in the house of one Adolph Oberman", and it describes the premises where the sale charged in the second case is alleged to have been made. The keeping of liquor for sale and the sale of liquor are separate and distinct acts and offenses. A conviction of one offense does not bar prosecution for the other. The offenses are not identical. State v Healy, 136 M 264, 161 NW 590; State v Oberman, 152 M 431, 433, 189 NW 444.

A prosecution for the sale of a security to a given person in one county is not a bar to a prosecution for a sale of a security to another person in a different county on a different date. State v Robbins, 185 M 202, 240 NW 456.

CONVICTION OF LESSER CRIME BAR TO PROSECUTION FOR GRAVER OFFENSE. A conviction of larceny in the second degree is a bar to a subsequent prosecution for the graver offense of larceny in the first degree. State v Wiles, 26 M 381, 4 NW 615; State v Wondra, 114 M 457, 131 NW 496; State v Kaufman, 173 M 139, 143, 214 NW 785.

DIRECTED VERDICT OF ACQUITTAL. The facts mentioned in the opinion did not require the court to direct a verdict of acquittal on the ground that defendant had once been in jeopardy of punishment for the offense for which tried and convicted. State v Wood, 168 M 34, 209 NW 529.

PROSECUTION FOR CHILD ABANDONMENT NOT BARRED BY PRIOR CONVICTION. Convictions for violations of statutes like sections 617.55 and 617.56, which cover so-called continuing offenses, do not bar prosecution for like offenses thereafter committed. State v Clark, 148 M 389, 182 NW 452; State v Wood, 168 M 34, 209 NW 529; State v Sweet, 179 M 32, 34, 228 NW 337.

WAIVER OF PLEA OF FORMER JEOPARDY. A defendant's constitutional right to plead former jeopardy may be waived. If such a plea is not entered at the proper time it is waived by the defendant. State ex rel v Utecht, 206 M 41, 287 NW 229.

WAIVER OF DISABILITY OF PRESIDING JUDGE. Defendant was indicted for murder in the first degree, tried, and acquitted. The judge was the father of

one of the defendant's attorneys. The state's attorneys knew that fact, but no objection was made to his presiding at the trial. Defendant was subsequently indicted for murder in the second degree and pleaded a former acquittal and jeopardy. The judge was not disqualified from presiding at the trial and the plea of defendant should be sustained. State v Ledbetter, 111 M 110, 126 NW 477.

CONTEMPT PROCEEDINGS. The doctrine of double jeopardy has no application in proceedings to punish for contempt. Each succeeding refusal to answer the same questions will ordinarily be a new offense. State v Kasherman, 177 M 200, 224 NW 838.

See 24 MLR 522 for article relative to criminal law, double jeopardy.

2. Self-incrimination

DETERMINATION OF RIGHT AGAINST. To entitle a person called as a witness to the privilege of silence the court must see, from all the circumstances of the case and the nature of the evidence which the witness is called upon to give, that there is reasonable ground to apprehend that the evidence may tend to criminate him if compelled to answer. The danger to be apprehended must be real and appreciable with reference to the ordinary operation of law in the ordinary course of things and not imaginary or unsubstantial or a mere remote and naked possibility. State v Thaden, 43 M 253, 45 NW 445; State v Tall, 43 M 273, 45 NW 449; State v Beery, 198 M 550, 270 NW 600.

The constitution of the state very implicitly provides that "no person * * * shall be compelled in any criminal case to be a witness against himself." The language is unequivocal. Nothing can be detracted from it; nothing added to it. It forbids that a man be compelled to give evidence against himself before a grand jury as well as in court. State v Froiseth, 16 M 296 (260); State v Gardner, 88 M 130, 92 NW 529.

No person can be compelled to give evidence as to any facts tending to accuse himself of crime or to prove any link in the chain of testimony which is necessary to convict him of a crime. State v Gardner, 88 M 130, 92 NW 529; State v Corteau, 198 M 433, 270 NW 144.

The constitutional prohibition does not prohibit receiving a man's evidence even against himself if he is not compelled to give it, and it does not prohibit his being compelled to give testimony against another, even though he may be charged with or suspected of the same crime; nor does it prohibit the state from calling before a grand jury one suspected of a crime under investigation, so long as he is not compelled to give evidence against himself. Hawley v Wallace, 137 M 183, 163 NW 127.

APPEARANCE BEFORE GRAND JURY. There is nothing in the constitution which prohibits the grand jury before which a person is called and examined from indicting him on the evidence of others. State v Mason, 152 M 306, 309, 189 NW 452.

It is a violation of this section of the state constitution 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 M 296 (260).

The fact that in an investigation by a grand jury of a charge against another party defendant has been required to give evidence which would tend to show that defendant had committed another crime cannot give him perpetual immunity from prosecution for the offense committed by him where such offense may be proven by independent evidence. City of Mankato v Olger, 126 M 521, 148 NW 471; State v Hawks, 56 M 129, 57 NW 455.

A man cannot be compelled to give evidence against himself before a grand jury, but one called before a grand jury investigating a particular crime may be indicted on the evidence of others, so long as he is not compelled to give evidence against himself. State v Mason, 152 M 306, 189 NW 452.

Defendant was called as a witness by the grand jury which indicted her. She claimed the privilege against self-incrimination and was not required to and did not testify; so she must have been indicted on the evidence of others and cannot complain. State v Mason, 152 M 306, 189 NW 452; State v Huber, 171 M 429, 214 NW 270.

Where, after complaint is filed against defendant in municipal court charging him with felony and warrant issued thereon, but before hearing thereon, he is subpoenaed to appear before the grand jury and compelled to give evidence as to the facts upon which the charge is based, his constitutional right not to be compelled in any criminal case to be a witness against himself is violated. State v Corteau, 198 M 433, 270 NW 144.

EQUIVALENT PROCEDURE. The state fire marshal, in virtue of Minn. St. 1941, ss. 73.04 to 73.06, by subpoena compelled defendants to appear before him and under oath answer questions directly accusing them of arson and caused a transcript of these questions and answers to be given the grand jury, which returned an indictment against defendants. This procedure was equivalent to compelling defendants to be witnesses against themselves in violation of this section of the constitution. State v. Rixon, 180 M 573, 231 NW 217.

EVIDENCE GIVEN ON FORMER TRIAL. The evidence of one of the defendants given on a former trial was properly received in evidence as against him. It was given voluntarily and its admission in evidence on the second trial was not in violation of this defendant's privilege against self-incrimination. State v. Newman, 127 M 445, 149 NW 945; State v. Liss, 145 M 45, 48, 176 NW 51.

INSOLVENCY PROCEEDINGS. In a criminal prosecution against a private banker for receiving deposits when his bank was insolvent, where the banker has made a petition in bankruptcy and his books turned over to the trustee, this trustee with the books might be examined before the grand jury upon an investigation of the affairs of the bank; and this examination did not involve an unlawful use of his private papers in violation of his constitutional rights. State v Strait, 94 M 384, 102 NW 913.

A private banker on trial for receiving money on deposit when insolvent, the schedules of creditors, assets, and liabilities filed by him in involuntary bankruptcy proceedings are not admissible in evidence to prove insolvency, when objected to upon the ground that the effect would be to compel him to be a witness against himself. State v Drew, 110 M 247, 124 NW 1091.

EXAMINATION FOR WORLD WAR. The workman had been examined for the world war. Under war regulations the results of the examinations are not disclosed except the party examined consents. He is privileged to refuse. The regulations have the force of law. The referee sought to have him consent. He refused. Berg v Penttila, 173 M 512, 217 NW 935 Thompson v Linden Construction Co. 181 M 502, 503, 233 NW 300.

PROPERTY TAKEN WITHOUT CONSENT USED AS EVIDENCE. Without the knowledge or consent of accused, the sheriff and county attorney entered upon accused premises and took and carried away certain articles of property which were used as evidence against accused on the trial. This action did not violate any of his constitutional rights under this section. State v Stoffels, 89 M 205, 94 NW 675; State v Rogne, 115 M 204, 132 NW 5; State v Hanson, 114 M 136, 130 NW 79; Hawkins v Langum, 115 M 100, 131 NW 1014.

INCRIMINATING ARTICLES WRONGFULLY TAKEN USED AS EVIDENCE. The use as evidence of incriminating articles wrongfully taken from the possession of the accused does not compel him to be a witness against himself within the inhibition of this section. State v Pluth, 157 M 145, 195 NW 789; State v McLean, 157 M 359, 196 NW 278.

PRIVATE BOOK OR MEMORANDA. The prosecution, having peaceable possession of a private book of the defendant, and not having seized it by any wrongful, surreptitious, or forcible means, had a right to offer the same in evidence as against the objection that it was not a private book of the defendant. State v Borgstrom, 69 M 508, 515, 72 NW 799, 975.

QUASI PUBLIC DOCUMENTS. Books and records of all transaction in the buying and selling of raw furs required to be kept by fur dealers pursuant to section 98.12 are "quasi public documents," and requiring a dealer to produce them for inspection as provided by such statute does not in effect compel him to give

evidence against himself or subject him to unreasonable searches and seizures in violation of this section or section 10. State v Stein, 215 M 308, 9 NW (2d) 763.

OBTAINING SPECIMENS OF HANDWRITING FOR COMPARISON. Defendant was a witness in his own behalf. He denied that checks received in evidence were in his handwriting and later presented in evidence on his own behalf specimens of his handwriting for comparison. On cross-examination he was asked to write certain words on a piece of paper as samples of his handwriting, and did so. This paper was then received in evidence and used by the state for comparison of handwriting with the writing on the checks. By voluntarily becoming a witness in his own behalf and testifying as stated, it is generally held that the defendant waives his privilege of refusing to answer questions relating to the crime charged, even if incriminating; and he may be cross-examined as to any matter pertinent to the issue, even if tending to show the commission of another crime. State v Wood, 169 M 349, 211 NW 305; State v Barnard, 176 M 349, 223 NW 452; State v Stearns, 184 M 452, 456, 238 NW 895; State v McTague, 190 M 449, 455, 252 NW 446.

GUN TAKEN BY FORCE FROM DEFENDANT PROPER AS EVIDENCE. The fact that the prosecuting witness assaulted defendant and by force took the gun from him does not preclude receiving it in evidence as against the claim that it would amount to compelling defendant to furnish evidence against himself. State v Nyhus, 176 M 238, 239, 222 NW 925.

DISCLOSURE IN SUPPLEMENTARY PROCEEDINGS. The disclosure in proceedings supplementary to execution cannot be used in a criminal proceedings against the judgment debtor. Krienke v Citizens National Bank, 182 M 549, 235 NW 24.

SECONDARY EVIDENCE OF CONTENTS OF WRITING. One charged with a crime cannot be compelled to produce a written instrument to be used as evidence against him, hence secondary evidence of its contents may be introduced by the state. The circumstances warranted the court in admitting an alleged copy of an instrument without proof that it had been compared with the original and was identical in form and contents. State v Minor, 137 M 254, 163 NW 514; State v Spalding, 166 M 167, 172, 207 NW 317.

BRIBERY. Minn. St. 1941, s. 613.04, providing that no person shall be excused from testifying in a prosecution for bribery upon the ground or for the reason that his evidence may tend to convict him of a crime or subject him to prosecution and that no person shall be prosecuted for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, is constitutional. State v Ruff, 176 M 308, 223 NW 144.

ELECTION CONTESTS. In an election contest none but the illegal voter could raise the objection that an answer to the question how he voted might tend to incriminate him. The court was not required to inform him that he might claim his privilege. Hanson v Village of Adrian, 126 M 298, 148 NW 276.

In a proceeding to remove appellant from office for a violation of the corrupt practices act, it is held that he was deprived of his constitutional right against self-incrimination in respect of two charges made against him of failing to make and file the financial statement required by the act. Defendant's refusal to testify upon the ground that his testimony might incriminate him did not justify an inference of guilt and was not an element of proof against him. Berg v Penttila, 173 M 512, 217 NW 935. 12 MLR 555. 17 MLR 187.

This section does not forbid the contestant calling the contestee as a witness, but when so called the contestee will not be required to give testimony to incriminate himself. This provision does more than relieve one from the necessity of being a witness in a criminal prosecution against himself. It protects him in any proceeding, civil or criminal, or in any investigation, from giving testimony tending to show that he committed a crime, though not then charged with it. Simmons v Holster, 13 M 249 (232); Hawley v Wallace, 167 M 183, 188, 208 NW 819.

WITNESS TESTIFYING TO PART OF TRANSACTION CLAIMING PRIVILEGE AGAINST SELF-INCRIMINATION TO AVOID GIVING WHOLE OF IT. While a witness for the state may not testify to part of a transaction and then

successfully claim his privilege against self-incrimination to avoid giving the whole of it, yet if he has done so a defendant cannot claim prejudice where the whole transaction was ultimately gone into by several witnesses for the defense and the state's witness did not take the stand again in denial or at all. State v. White, 173 M 391, 217 NW 343.

WHEN ACCUSED MAY BE CROSS-EXAMINED ON MATTER TENDING TO INCRIMINATE HIM. Where a defendant in a criminal prosecution takes the stand as a witness in his own behalf, he thereby waives his privilege and may be cross-examined concerning any matters pertinent to the issue even if tending to show the commission of another crime. State v Wood, 169 M 349, 352, 211 NW 305.

IMPROPER INTERROGATION. A deputy public examiner, before whom the defendant appeared in response to a subpoena issued by him, should not have been interrogated by the state concerning disclosures made by defendant in obedience to such subpoena. State v Stearns, 184 M 452, 455, 238 NW 895.

WAIVER OF CONSTITUTIONAL RIGHT. When defendant took the stand in his own behalf he waived his constitutional right to refuse to answer the questions which might tend to convict him of the crime for which he was on trial. By so doing he subjected himself to all proper cross-examination in relation to what he testified to on direct and touching his connection with the crime, also as to matters that might meet the inference he wished the jury to draw from his testimony as well as to any matters properly affecting his credibility. State v Youngquist, 176 M 562, 569, 223 NW 917.

INSUFFICIENCY OF OBJECTION TO RAISE QUESTION INTENDED. An objection of incompetent, irrelevant, and immaterial to introduction of sworn statement of defendant to state fire marshal under the statute does not present question whether or not statement was an involuntary one which defendant was required to give against himself. State v Rosenweig, 168 M 459, 210 NW 403.

CRIMINAL CONTEMPT. The immunity conferred upon defendants by this section extends to prosecutions for criminal contempt. The rules of evidence applied in criminal cases should be observed at the hearing in a proceeding in which a person is accused of a criminal contempt, and he cannot be called as a witness for cross-examination under the statute and compelled to testify against himself. State v Froiseth, 16 M 296 (260); State v Thaden, 43 M 253, 45 NW 447; State v Gardner, 88 M 130, 92 NW 529; State v Drew, 110 M 247, 124 NW 1091; State ex rel v District Court, 144 M 326, 330, 175 NW 908.

CONTEMPTS. For the basis of distinction between civil and criminal contempts, see 5 MLR 459; also, 8 MLR 539.

BASTARDY PROCEEDINGS. A bastardy proceeding, authorized by Minn. St. 1941, ss. 257.18 to 257.31, is a civil proceeding, not a criminal action, and defendant may be called by the prosecution for cross-examination under Minn. St. 1941, s. 595.03. State v Jeffrey, 188 M 476, 247 NW 692.

The constitution of Minnesota specifically recognizes the right to "life, liberty, or property". Thiede v Town of Scandia Valley, 217 M 218, 225, 14 NW(2d) 400.

See 19 MLR 426 for rules governing the allowance of the privilege against self-incrimination.

3. Bail

COURT MAY ADMIT TO BAIL AFTER CONVICTION. 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 M 362, (268).

FOR PERSON INDICTED FOR MURDER. Whether a person under indictment for murder should be admitted to bail will not be considered by the supreme court until after the trial court has exercised its discretion in the matter. Such an application will be denied by the supreme court when the trial court has been of the opinion the offense charged was not bailable and for that reason denied bail. In Matter of Application of Elsie Salisbury for a Writ of Habeas Corpus, 153 M 548, 194 NW 460.

FUGITIVE FROM JUSTICE. Where a person is held as a fugitive from justice under a rendition warrant issued by the governor of this state he ordinarily should not be released on bail pending a decision in a habeas corpus proceeding to test the legality of his arrest. State ex rel v Moeller, 182 M 369, 234 NW 649.

4. Held due process of law

"PROCESS" DEFINED. What constitutes due process of law in any particular case depends upon the facts and circumstances of that case. As used in this section, the word "process" cannot mean that no judgment can be authorized, except upon summons, or some writ of that nature technically known as process, first issued; for it is not doubted but that judgments may be entered upon confession, by submission to arbitration, by warrant of attorney, and perhaps, in other ways, without service of process. The intent of the language "shall be deprived of life, liberty, or property, without due process of law" is to protect the citizen in the enjoyment of life, liberty, and property and to prevent interference therewith, except in such provisions of law as the legislature may enact to protect society and secure the rights guaranteed by the constitution. That instrument has nowhere defined due process of law. Davidson v Farrell, 8 M 258 (225, 229).

"DUE PROCESS OF LAW" DEFINED. The "law of the land" or "due process of law" means that when rights are acquired by the citizen under the existing law, there is no power in any branch of the government to take them away; but when they are held contrary to the existing law, or are forfeited by its violation, then they may be taken from him in a due administration of the law itself before the judicial tribunals of the state. Baker v Kelley, 11 M 480 (358, 375); Wilson v Red Wing School District, 22 M 488, 491; State v Becht, 23 M 411, 413.

NOT LIMITED TO JUDICIAL PROCESS OR PROCEEDINGS. The meaning of "due process of law" in the constitution is not strictly limited to judicial process or proceedings. Lovell v Seeback, 45 M 465, 48 NW 23.

ORDERLY PROCEEDING. Due process of law means an orderly proceeding adapted to the nature of the case in which the citizen has an opportunity to be heard to defend, enforce, and protect his rights. State ex rel v Billings, 55 M 467, 473, 57 NW 206; State ex rel v District Court, 90 M 457, 97 NW 132.

ESSENTIALS. A hearing, or an opportunity to be heard, before judgment, is absolutely essential for due process of law. State ex rel v Billings, 55 M 467, 57 NW 206, 794; State ex rel v Probate Court, 205 M 545, 557, 287 NW 297; Dimke v Finke, 209 M 29, 36, 295 NW 75.

ACTUAL OR CONSTRUCTIVE NOTICE. Due process of law does not necessarily mean that the person affected thereby should have personal notice of the proceeding. Either actual or constructive notice is sufficient and answers every purpose of the law, if it be reasonably probable that he will be apprised of the proceeding. A section in a city charter providing for a taxpayers' appeal to to the district court from the action of the council in allowing a claim against the municipality is due process of law. State ex rel v District Court, 90 M 457, 462, 97 NW 132.

INSANITY PROCEEDINGS. Due process of law in proceedings in probate court to find a person insane require that such person be brought into court, or given notice of the proceedings being taken against him, or an opportunity to defend. State ex rel v Kilbourne, 68 M 320, 71 NW 396.

RETURN OF SERVICE. The return of service of a notice of expiration of redemption as to land bid in for the state at a tax sale was improperly dated, but this fact did not deprive the notice of its statutory effect. Stein v Hanson, 99 M 387, 109 NW 821.

SERVICE OF PROCESS. G. S. 1894, s. 5203, providing for the service of process on domestic corporations having no officers in the state upon which legal service can be made, provides due process of law. Town of Hinckley v Kettle River R. Co. 70 M 105, 72 NW 835.

SERVICE OF SUMMONS. The statutes of the state authorize service of a summons on a foreign corporation by service upon an agent in the state for the solicitation of foreign traffic over its lines outside the state. Armstrong Co. v N. Y. C. & H. Ry. Co. 129 M 104, 151 NW 917.

SERVICE NOT CONFERRING JURISDICTION. Construing L. 1917, c. 429, and the appointment thereunder, by nonresident dealers in securities, of the public examiner as their agent to receive service of process, the district court did not acquire jurisdiction over defendant by delivery of the summons to the public examiner, where the cause of action arose in a foreign country and bore no relation to the subject matter of chapter 429. Dragon Motor Car Co. Ltd. v Storrow, 165 M 95, 205 NW 694.

IMMUNITY IN CRIMINAL CONTEMPTS. The immunity conferred upon defendants in criminal cases by this section extends to prosecutions for criminal contempts. State ex rel v District Court, 144 M 326, 175 NW 908.

The fact that a contempt is a misdemeanor and punishable by indictment does not render unconstitutional a statute authorizing summary proceedings therefor before the court. State v District Court, 52 M 283, 53 NW 1157.

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 ex rel v Becht, 23 M 411; Hurd v Hurd, 63 M 443, 445, 65 NW 729. See 9 MLR 368 as to the validity of statutes regulating the power of the courts to punish for contempt.

A commitment made under the provisions of a statute which provides that if any person disobey an order of the judge in proceedings supplementary to an execution he may be punished as for a contempt, and the provisions of another statute making disobedience of any lawful judgment, order, or process of a court a contempt of its authority and providing for a regular course of proceedings, in accordance with which a person charged with a contempt may be brought before the court, the charge investigated, and the person charged punished, if found guilty, are not obnoxious to the constitutional provision that no person shall be deprived of his liberty without due process of law. State v Becht, 23 M 411.

REMOVAL OF PAUPERS. G. S. 1878, c. 15, s. 14, providing for the removal of paupers from one county to another, is not invalid as authorizing an interference with the right of personal liberty without due process of law. Lovell v Seebach, 45 M 465, 48 NW 23.

IN CONDEMNATION PROCEEDINGS. Plaintiff was entitled to an opportunity to be heard and to such notice as would give it this opportunity. Personal service was not essential, nor was service by mail. Had plaintiff been named on the plat and in any of the published notices as the owner of the property proposed to be taken, there can be no doubt that there would be due process of law. It is not necessarily fatal that its name did not appear. If the published notices are of such a character as to create a reasonable presumption that plaintiff would receive the information of what was proposed and when and where it could be heard, they are suffcient. G. N. Ry. Co. v City of Minneapolis, 136 M 1, 161 NW 231.

AN IMPROVEMENT OF PUBLIC DITCH. Proceedings for the establishment, repair, and improvement of a public ditch proceed as to the collection of the cost of the improvement under the power of taxation, not that of eminent domain. If provision is made for notice to and hearing of each proprietor, at some stage of the proceedings, upon the question what proportion of the tax shall be assessed upon his land, there is no taking of his property without due process of law. Sluka v Johnson, 177 M 598, 600, 225 NW 909.

SPECIAL IMPROVEMENTS AND ASSESSMENTS, SUFFICIENT NOTICE. Minute of report and estimate of city engineer to council published in the record of the proceedings of the council is sufficient notice to the property owner of the institution of the proceedings. State v Pillsbury, 82 M 359, 85 NW 175.

IMPROVEMENT TO PUBLIC PARK, PUBLISHED NOTICE. Where an improvement is to be made to a public park the statute does not require a plat

and survey. A plan showing with reasonable certainty the nature and location of the proposed improvement and an estimate of its cost is sufficient, and the published notice prescribed by L. 1911, c. 185, referring to such plan and estimate, constitutes due process of law. Improvement of Lake of the Isles Park, 152 M 29, 188 NW 54.

SPECIAL ASSESSMENTS. Where the act authorizing a special assessment provides when and in what manner a property owner may contest the validity and amount of the assessment and gives him a proper opportunity to do so, he must make his defense at the time and in the manner provided and cannot attack the assessment in proceedings subsequently brought to enforce its collection. State v District Court, 33 M 235, 22 NW 625; Thompson v County of Polk, 38 M 130, 36 NW 267; McKusick v City of Stillwater, 44 M 372, 46 NW 769; State ex rel v District Court, 61 M 542, 64 NW 190; Jacobson v County of Lac qui Parle, 119 M 14, 137 NW 419; White Townsite Co. v City of Moorhead, 120 M 1, 138 NW 939; County of Rock v McDowell, 157 M 296, 196 NW 178.

A landowner is entitled to notice and to opportunity to contest the validity and amount of a special assessment against his property at some time before it becomes final. If no such opportunity is afforded him in the proceedings for making the assessment, and the assessment is to be collected under the general tax laws, he may present his defense in the proceedings under those laws. State ex rel v City of Red Wing, 134 M 204, 158 NW 977; Re Delinquent Taxes in Polk County, 147 M 344, 180 NW 240; Wall v Borgen, 152 M 106, 188 NW 159; County of Rock v McDowell, 157 M 296, 299, 196 NW 178.

Municipalities included in L. 1895, c. 235, as amended by L. 1899, c. 128, may make special assessments on abutting property for local improvements without notice. The right of the property owner to resist the proceeding to enforce the tax gives the opportunity to show that the property is not subject to taxation and permits other defenses. This eliminates the objection of want of due process attributed to lack of notice. State v City of Red Wing, 134 M 204, 158 NW 977; Re Delinquent Taxes in Polk County, 147 M 344, 180 NW 240; State v G. N. Ry. Co. 165 M 22, 24, 205 NW 612, 207 NW 322.

Sp. L. 1885, c. 5, creating liability for changing the grade of a city street and providing for a special tax or assessment on property benefitted to pay the same, is not unconstitutional because it does not give the owners of adjoining property a right to be heard as to who shall be appointed assessors, or a right to appeal from such appointment. Rogers v City of St. Paul, 22 M 494; Carpenter v City of St. Paul, 23 M 232; State ex rel v District Court, 33 M 295, 23 NW 222; Hennepin County v Bartleson, 37 M 343, 34 NW 222; Kelley v City of Minneapolis, 57 M 294, 59 NW 304.

L. 1901, c. 167, providing that a village council may, on its own motion, order a sidewalk constructed, is not unconstitutional because it does not give property owners an opportunity to be heard as to the propriety or the necessity of the proposed improvement. The opportunities which the property owner has to be heard when the assessment is fixed, and on the application for judgment, satisfy the due process of law requirement. State v Burnes, 124 M 471, 145 NW 377.

TEMPORARY IMPROVEMENTS TO VILLAGE STREETS.

See 38 OAG 31.

LIENS. The log-lien law of 1876 (G. S. 1894, ss. 2451 to 2465) is constitutional. Foley v Markham, 60 M 218, 62 NW 125; Brown v Markham, 60 M 233, 62 NW 123; Scott & Holston Co. v Sharoy, 62 M 528, 64 NW 1132; Smith v Duluth Log Co. 118 M 432, 137 NW 6.

A statute creating and defining a thresher's lien is not obnoxious to the state constitution, art. 1, ss. 7, 11. Phelan v Terry, 101 M 454, 112 NW 872.

The statute giving a lien to subcontractors is not unconstitutional. By statute a lien may be given in favor of builders, laborers, and material-men contracting, subsequent to the enactment of the statute, directly with the owner of the property. Such a lien is not a charge imposed upon the property of the owner by legislative enactment without his consent and without process of law. The same principle applies with respect to the statute providing for liens in favor

of subcontractors and those performing service not under contract made directly with the owner, but under the principal or immediate contractor. O'Neil v St. Olaf's School, 26 M 329, 4 NW 47; Bohn v McCarthy, 29 M 23, 11 NW 127; Laird v Moonan, 32 M 358, 20 NW 354; Smith v Stevens, 36 M 303, 31 NW 55; Kraus v Murphy, 38 M 422, 38 NW 112; Bardwell v Mann, 46 M 285, 48 NW 1120; Glass v Freeburg, 50 M 386, 52 NW 900; Berger v Turnblad, 98 M 163, 167, 107 NW 543. See 4 MLR 459.

The sections of the statute giving a lien on personal property transported and stored at the request of the owner or legal possessor thereof intend that the lien shall be superior to the interest of the chattel mortgagee and, as so construed, are constitutional. Phelan v Terry, 101 M 454, 112 NW 872; Monthly Instalment Loan Co. v Skellet Co. 124 M 144, 146, 144 NW 750; Stebbins v Balfour, 157 M 135, 195 NW 773; Sundin v Swanson, 177 M 217, 225 NW 15. See 6 MLR 237; 8 MLR 160; 14 MLR 779, 805.

L. 1939, c. 315, requiring a lien on all the real property of a recipient of old age assistance, which is given with the consent of the recipient, the foreclosure thereof to be in the manner provided for the foreclosure of a mechanic's lien. This requires notice and an opportunity to be heard and to defend in orderly proceedings before a tribunal having jurisdiction of the cause. These requirements being met, there is no taking of property without due process of law. Dimke v Finke, 209 M 29, 295 NW 75. See 25 MLR 520.

CONSTRUCTION OF SIDE TRACK. Appellant was, by an order of the railroad and warehouse commission, directed to construct a side track from its main line to a stone quarry and crushing plant near Mendota. This order did not place upon appellant a burden so unreasonable as to deprive it of property without due process of law. State v C. M. & St. P. Ry. Co. 115 M 51, 131 NW 859.

STATUTE OF LIMITATIONS. The fact that more than six years had elapsed prior to enactment of section 80.26 and that under the general statute of limitations then in force a cause of action arising out of the violation of a certain section of the statutes was barred did not prevent the legislature by section 80.26 from lifting the bar of the statute of limitations and was not violative of the due process clauses of the state and federal constitutions, because the general statute of limitations applied merely to the remedy and did not vest such a right in the defendant that the legislature could not lift the bar, since a general statute of limitations does not operate as payment of a debt or as satisfaction of liability for tort. Donaldson v Chase Securities Corp., 216 M 269, 276, 13 NW(2d) 1; Bain v National City Co., 216 M 278, 13 NW(2d) 6.

SEWER ASSESSMENTS. The provisions of a city charter relating to the confirmation of the assessment of a sewer and the rendition of judgment against the property by the district court are not unconstitutional on the ground that they do not constitute due process of law. No seizure of the property is necessary other than is involved in the institution of the proceedings in accordance with the requirements of the statute. Duluth v Dibblee, 62 M 18, 63 NW 1117; Williams v City of St. Paul, 123 M 1, 12, 142 NW 882.

The Crookston city charter provides for the payment of the cost of construction of relief sewers by a levy upon the taxable property of sewer districts into which the council is authorized to divide the city and not by special assessments against the property. Neither the charter nor the legislative act of the council dividing the city into sewer districts is unconstitutional for want of due process. Re Delinquent Taxes in Polk County, 147 M 344, 180 NW 240.

ENFORCEMENT OF LOCAL ASSESSMENTS. An amendment to a city charter providing for the enforcement of local assessments is not unconstitutional because in the form of judgment therein prescribed the land on which an instalment is adjudged a lien becomes the property of the city at the end of a year without a sale, tne owner having a right to redeem. Williams v City of St. Paul, 123 M 1, 142 NW 886.

INSOLVENCY PROCEEDINGS. The insolvency 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 M 221, 14 NW 892.

The insolvency law of 1881 is valid, as against the objections that a receiver may be appointed on grounds not inconsistent with 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 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 M 234, 15 NW 109.

POLICE POWER. The making and enforcing of regulations as to the keeping of dogs is within the police power. City of Faribault v Wilson, 34 M 254, 25 NW 449.

L. 1885, c. 149, s. 4, relating to dairy products, is a valid exercise of the police power. Butler v Chambers, 36 M 69, 30 NW 308.

G. S. 1894, s. 7002, which prohibits the sale of cream that contains less than 20% of fat, is a valid exercise of the police power and constitutional. State v Crescent Cry. Co. 83 M 284, 86 NW 107; State v Tetu, 98 M 351, 107 NW 953, 108 NW 470.

ASSESSMENT AND COLLECTION OF TAXES. L. 1881, c. 5, s. 1, providing for an assessment of taxes omitted in prior years, does not authorize the taking of property without due process of law, as the owner may contest the tax in judicial proceedings for its enforcement. Redwood County v Winona & St. Peter Land Co. 40 M 512, 41 NW 465.

L. 1893, c. 151, providing for the taxation of property undervalued or unlawfully omitted from assessment and for reassessment where there has been a gross undervaluation of such property, is constitutional. State v Weyerhauser, 68 M 353, 71 NW 265.

L. 1907, c. 408, creating the state tax commission, and L. 1909, c. 294, relating to the procedure looking to reassessments of property thereby, are valid, following State v Weyerhauser, 68 M 353, 71 NW 265. State v Minnesota & Ontario Power Co. 121 M 421, 428, 141 NW 839.

If a state may impose a tax under the due process clause of the federal constitution, it may also do so under the state constitution, since the state provision was not intended to be more restrictive than that of the federal constitution. State v Northwest Airlines, Inc. 213 M 395, 398, 7 NW(2d) 691.

The possibility of taxation of the same property by more than one state is not a constitutional objection as in violation of due process. State v Northwest Airlines, Inc. 213 M 395, 407, 7 NW(2d) 691.

RIGHTS OF STOCKHOLDERS. L. 1899, c. 272, providing for the better enforcement of the liability of stockholders; sections 2, 3, 4, 5, are not in violation of any of the provisions of the constitution in that a judicial proceeding is thereby authorized without due process of law; and are not unconstitutional because as to stockholders who became such prior to the passage of the act, they impair the obligations of a contract. Straw & Ellsworth Mfg. Co. v Kilbourne Boot & Shoe Co. 80 M 125, 83 NW 36.

Minn. St. 1841, ss. 49.04, 49.24, are not unconstitutional as an attempt to deprive a bank or its stockholders of their property without due process of law. American State Bank v Jones, 184 M 498, 239 NW 144.

The action of the commissioner of banks in approving a reorganization agreement under L. 1933, c. 55, 277, is not conclusive upon those creditors who do not assent thereto. They may contest the agreement in any appropriate action brought to recover upon their claims and litigate all questions which could have been raised on the hearing before the commissioner. There being such opportunity, there is no violation of the due process provision of the constitution. Timmer v Hardwick State Bank, 194 M 586, 261 NW 456.

Defendant owns here all or a majority of the stock in numerous state banks in other states and thereby has control of and manages all such banks, together with numerous national banks. Its property and business, as a unit, are located in, and managed from, Minneapolis. Defendant's bank stocks have a business situs here and their taxation locally is not a denial of due process, even as to the stocks in state banks in other states which are taxed by the domiciliary states. State v First Bank Stock Corp. 197 M 544, 267 NW 519, 269 NW 37.

Certain schedules in bankruptcy proceeding and certain affidavits, though the affidavits contained some matters of hearsay, were properly received in evidence. The statute authorizing such evidence does not deprive the stockholders of their property without due process of law. Finch, Van Slyck & McConville v Vanasek, 132 M 9, 155 NW 754.

CERTIFICATE OF AUTHORITY TO DO BUSINESS AS A BANK. L. 1919, c. 86, imposing upon the securities commission the duty of determining whether a certificate of authority to do business as a bank should be issued, applies to proceedings pending before the superintendent of banks at the time of its enactment and, so construed, is not unconstitutional as violative of the due process provision of the constitution. Carlson v Pearson, 145 M 125, 176 NW 346.

LIVE STOCK EXCHANGE. L. 1921, c. 344, does not deprive defendant's members of their property without due process of law. Grisim v South St. Paul Live Stock Exchange, 152 M 271, 188 NW 729.

CANCELATION OF CONTRACT FOR SALE OF LAND. L. 1897, c. 223, requiring written notices for the cancelation of a contract for the future conveyance of land, if applied to the contracts here in question, does not deprive defendants of property without due process of law. Finnes v Selover, Bates & Co. 102 M 334, 113 NW 883; Walsh v Selover, Bates & Co. 109 M 136, 123 NW 291; Finnes v Selover, Bates & Co. 114 M 339, 131 NW 371.

PARTY COMPELLED TO ACT AT HIS PERIL. The due process clause does not render unconstitutional a statute which compels a party to act at his peril. The criterion in such cases is to examine whether common social duty would, under the circumstances, have suggested a more circumspect conduct. State v Eich, 204 M 134, 282 NW 810.

GROSS EARNINGS. The claim that a tax on the gross earnings of an express company, including receipts from transfer and pick-up and delivery services rendered to railroads under contract, violates the due process provision of the constitution because the statute does not authorize the tax falls by reason of the supreme court holding that the tax is authorized by the statute. State v Railway Express Agency, 210 M 556, 575, 299 NW 657.

ORDER OF STATE FIRE MARSHAL PRIMA FACIE EVIDENCE. The prime facie evidence of the existence of the facts, as stated in the state fire marshal's order provided by Minn. St. 1941, s. 73.15, does not change the burden of proof. The prima facie case which the statute creates simply means that the burden of going forward with the evidence shifts. This statute is not unconstitutional as violative of the due process provision of the constitution. State Fire Marshal v Sherman, 201 M 594, 277 NW 249.

BARBERS' CODE FORMULATED BY GOVERNOR. L. 1937, c. 235, authorizing the governor to formulate a barbers' code fixing the minimum price for barbers' services, such services having a sufficient relation to public health warranting regulations, does not contravene the due process clause of the constitution. State v McMasters, 204 M 438, 283 NW 767.

ABATEMENT OF NUISANCES. L. 1913, c. 562, the abatement act, is not violative of the due process of law provision of the constitution because of the provision of section 7 requiring the giving of a bond if the premises are opened within a year. State ex rel v Wheeler, 131 M 308, 155 NW 90.

L. 1913, c. 562, s. 3, making the general reputation of the place as being a bawdy house prima facie evidence of the existence of the nuisance, or section 5, creating a presumption of knowledge on the part of all the defendants, do not authorize interference with property rights without due process of law. State ex rel v New England F. & C. Co. 126 M 78, 147 NW 951.

The requirement of due process cannot be waived or dispensed with either by the legislature or by an executive tribunal to which it delegates the duty of administering a law. Juster Bros. Inc. v Christgau, 214 M 108, 7 NW(2d) 501.

The prospect that observance of constitutional limitations will work serious inconvenience in the administration of a legislative act does not justify the denial

of due process of law in making administrative decisions. Juster Bros. Inc. v Christgau, 214 M 108, 7 NW(2d) 501.

That a school board or other administrative tribunal, in discharging an employee, acts in the triple capacity of complainant, prosecutor, and judge does not subject its decision to attack for lack of due process of law. State ex rel v Board of Education, 213 M 550, 7 NW(2d) 544.

ACTS HELD CONSTITUTIONAL. Minn. St. 1941, s. 65.12, gives both the insured and the insurer the right to an appraisal and is constitutional. Abramowitz v Continental Ins. Co. 170 M 215, 212 NW 449; Itasca Paper Co. v Niagara Fire Ins. Co. 175 M 73, 220 NW 425; Glidden Co. v Retail Hdwe. Mut. F. Ins. Co. 181 M 518, 233 NW 310.

See 15 MLR 708.

G. S. 1878, c. 46, s. 3, proviso limiting time for selling land of a decedent to pay debts, is constitutional. In re Ackerman, 33 M 54, 21 NW 852.

Ex. L. 1881, c. 81, providing for the service of process by publication on unknown claimants in actions to determine adverse claims to land, is constitutional. Shepherd v Ware, 46 M 174, 48 NW 713.

The procedure for the care and management of the property of infant heirs situated in this state and for the sale of such property for the benefit of such heirs is for the legislature to provide and regulate. A statutory provision authorizing a notice of the application to the probate court for the appointment of a guardian of the estate of such infant heirs to be served on the next of kin is constitutional. Kurtz v St. Paul & Duluth R. Co. 48 M 339, 51 NW 221; Kurtz v West Duluth Land Co. 52 M 140, 53 NW 1132.

G. S. 1878, c. 11, s. 58, as amended by L. 1885, c. 2, s. 5, (G. S. 1894, s. 1567), which provides for issuing distress warrants for the collection of personal property taxes without prior notice or opportunity to be heard, is constitutional and not open to the objection that it is not due process of law. Nelson Lbr. Co. v McKinnon, 61 M 219, 63 NW 630.

L. 1893, c. 124, s. 9, as amended by L. 1895, c. 115, s. 5, providing that it shall be unlawful for any person to consign by common carrier to any commission merchant or sale market at any time any elk, moose, caribou, or deer, or any part thereof except the skin or head, is not in violation of the constitution. State ex rel v Chapel, 64 M 130, 66 NW 205.

L. 1899, c. 225, licensing, regulating, and defining the business of commission merchants or persons selling agricultural products and farm produce on commission, is constitutional. State ex rel v Wagener, 77 M 483, 80 NW 633.

The provisions of G. S. 1894, ss. 2660, 2661, allowing plaintiff reasonable attorney fees in actions brought under the statute to recover possession of land taken without compensation by a railroad company for its right of way, are constitutional. Cameron v C. M. & St. P. Ry. Co. 63 M 384, 65 NW 652.

G. S. 1878, c. 34, s. 56, giving extra costs in actions against railway companies which have failed to maintain fences, is not unconstitutional, as being unfair or partial. Johnson v C. M. & St. P. Ry. Co. 29 M 425, 13 NW 673; Schimmele v C. M. & St. P. Ry. Co. 34 M 216, 25 NW 347.

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 M. & St. L. Ry. Co. 35 M 503, 29 NW 202.

L. 1893, c. 66, regulating the sale and redemption of transportation tickets of common carriers and providing punishment for the violation of same, is not unconstitutional (at least as to tickets purchased after the passage of the act), as depriving a citizen of his property without due process of law. State v Corbett, 57 M 345, 59 NW 317; State v Manford, 97 M 173, 106 NW 907.

A statute imposing upon a common carrier a penalty of $25.00 for failure to settle and adjust within 30 days a claim against it, is not unconstitutional as depriving carriers of their property without due process of law. Riskin v G. N. Ry. Co. 126 M 138, 147 NW 960.

G. S. 1878, c. 83, relating to actions against boats and vessels, section 9 of which authorizes and directs that when judgment has been rendered in favor of plaintiff and against the boat or vessel defendant, execution shall issue against the obligors

in a bond entered into according to the provisions of section 7, is not unconstitutional. Stapp v Steamboat Clyde, 43 M 192, 45 NW 430; 44 M 510, 47 NW 160.

Ex. L. 1919, c. 50, defining and regulating maternity hospitals, is not unconstitutional and infringes no rights of the defendant relative to the taking of property without due process. State v Women's & Children's Hospital Assn. 150 M 247, 184 NW 1022.

L. 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 nonprofessional conduct, is valid. State v Medical Examining Board, 32 M 324, 20 NW 238.

L. 1887, c. 9, regulating the practice of medicine and licensing physicians, is constitutional. State v Fleisher, 41 M 69, 42 NW 696.

G. S. 1878, c. 13, s. 47, providing that where a road has been used for six years it shall be deemed to have been dedicated to the public, is valid. Miller v Town of Corinna, 42 M 391, 44 NW 127.

R. L. 1905, s. 2315, as amended by L. 1907, c. 117, s. 2, regulating the practice of dentistry, does not violate the provisions providing that no person shall be deprived of life, liberty, or property without due process of law. State v Crombie, 107 M 171, 119 NW 660.

L. 1889, c. 19, regulating the practice of dentistry, is constitutional. State v Vandersluis, 42 M 129, 43 NW 789.

L. 1895, c. 163, demanding a rescale of timber in certain cases, does not violate the due process of law provision of the constitution. State v Brooks-Scanlon Lbr. Co. 122 M 400, 142 NW 717.

R. L. 1905, ss. 2327 to 2341, being a comprehensive statute regulating the business of pharmacy in this state, creating a state board of pharmacy, prescribing its duties, providing for the licensing of pharmacists, and imposing fees for the issuance and renewal of licenses, is a proper subject for legislative supervision under the police power and not unconstitutional either as depriving persons licensed under prior statutes of vested rights or otherwise obnoxious to the principles of the fundamental law. State v Hovorka, 100 M 249, 110 NW 870.

L. 1907, c. 346, relating to the registration of pharmacists, is constitutional. Minnesota State Phar. Assn. v State Board of Pharmacy, 103 M 21, 114 NW 245.

The business of employment agencies is a proper subject for police regulation. Moore v City of Minneapolis, 43 M 418, 45 NW 719.

L. 1889, c. 7, ss. 1, 2, requiring baking powder containing alum to be so marked as to show that fact, is constitutional. Stolz v Thompson, 44 M 271, 46 NW 410. See State v Alsesen, 50 M 5, 52 NW 220; Weideman v State, 55 M 183, 56 NW 688.

L. 1889, c. 246, providing for the inspection of illuminating oils in tank cars, is a bona fide police regulation. Willis v Standard Oil Co. 50 M 290, 52 NW 652.

Under the facts appearing in this case, this state was not prohibited by the requirements of due process from taxing the entire fleet of airplanes of defendant owner domiciled in this state, although some proportion of the fleet was constantly and continuously in other states and was subject to tax there. The test is whether the planes and defendant, during the tax period, were subject to the sovereign power of this state and were receiving substantial benefits and protection under the government and laws of this state.

State v Northwest Airlines, Inc. 213 M 395, 7 NW(2d) 691.

L. 1887, c. 191, regulating actions for libel, is not invalid as unequal or partial legislation because it applies only to publishers of newspapers. Allen v Pioneer Press Co. 40 M 117, 41 NW 936. See Cobb v Bord, 40 M 479, 42 NW 396.

As to unequal or partial legislation see notes to the constitution, article 4, ss. 33, 34, post. See annotations to section 2, ante, and to section 11, post.

Minn. St. 1941, s. 161.14 to 161.17, is a regulatory statute. Assuming that it authorizes the county board to grant to one owning the fee on both sides an additional right burdening the public easement, it does not involve the taking of property in violation of this section. Town of Kinghurst v International Lbr. Co. 174 M 305, 219 NW 172.

The building restrictions imposed under L. 1915, c. 128, are constitutional. State ex rel v Houghton, 144 M 1, 174 NW 885, 176 NW 159; State ex rel v Houghton, 182 M 77, 233 NW 831.

L. 1917, c. 397, the juvenile court act, is not designated to punish, but to rescue, a delinquent child and is not repugnant to the objection that it does not provide for due process of law. Peterson v McAuliffe, 151 M 467, 187 NW 226.

5. Held not due process of law

Any method of procedure which a legislature may see fit to enact, having for its purpose the deprivation of a person of his life, liberty, or property, is in no sense the process of law designated and imperatively required by the constitution. To the person charged with being insane to a degree requiring the interposition of the authorities and the restraint provided for, there must be given notice of the proceeding and an opportunity to be heard in the tribunal which is to pass judgment upon his right to his personal liberty in the future. There must be a trial before judgment can be pronounced and there can be no proper trial unless there is guaranteed the right to produce witnesses and to submit evidence. Any statute having for its object the deprivation of the liberty of a person cannot be upheld unless this right is secured, for the object may be attained in defiance of the constitution and without due process of law. Sections of L. 1893, c. 5, prescribing the course of procedure and authorizing the commitment of persons to public or state, and to private hospitals for the insane, are invalid because in conflict with the due process clause of the constitution. State ex rel v Billings, 55 M 467, 474, 55 NW 206, 794; State ex rel v Kilbourne, 68 M 320, 322, 71 NW 396.

Where a member of the Minneapolis Fire Department Relief Association is determined by the association to be disabled within the meaning of its constitution and by-laws and is granted a pension as therein provided, his right to the pension is a vested legal right of which he cannot be deprived except by due process of law, namely, by notice and opportunity to be heard in any proceedings had by the association for the purpose of terminating his rights. Stevens v Mpls. Fire Dept. Relief Assn, 124 M 381, 145 NW 35.

See 23 MLR 540.

That part of L. 1901, c. 278, providing for the service of summons in a personal action against a natural person who is a citizen of another state, but carries on business in this state, or his agent in charge of the business, without a seizure of his property by process of the court, is unconstitutional. Cabanne v Graf, 87 M 510, 92 NW 461.

In actions in personam of a strictly judicial character and proceeding according to the course of the common law, service of the summons by publication in a newspaper upon resident defendants personally within the state, who can be found therein, is not due process of law. Bardwell v Collins, 44 M 97, 46 NW 315.

G. S. 1878, c. 81, s. 28, providing for service by publication against certain defendants in actions to foreclose mortgages upon real estate, is void both as to resident and to non-resident defendants. Smith v Burd, 50 M 503, 52 NW 922.

Where the record sets forth the manner in which service of a summons or other jurisdictional notice was made, and such service is ineffectual to confer jurisdiction, it will not be presumed that a valid service was made in some other way. Holmes v Loughren, 97 M 83, 105 NW 558.

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 M 329, 4 NW 47.

L. 1887, c. 170, the mechanic's lien act, making failure by the owner to enjoin the erection of a building conclusive evidence of his consent and making title under sale on the lien superior to prior titles and encumbrances, is unconstitutional. Meyer v Berlandi, 39 M 438, 40 NW 513.

L. 1889, c. 190, amending the occupying claimant's law, is invalid so far as it is made to apply retroactively to a case where plaintiff had failed to pay the value of improvements within one year from the rendition of the verdict, such failure to pay having vested title in the adverse holder. Craig v Dunn, 47 M 59, 49 NW 396.

L. 1873, c. 55, allowing an occupant of land to recover of a claimant of the same the value of the improvements made by the occupant before notice of the defects in his title or to retain possession of the land if they are not paid, is constitutional, but the occupant is not entitled to recover interest upon the value of those improvements. The provisions of the act which require the claimant to pay all taxes and assessments paid upon the land by the occupant which are a valid charge upon the land are constitutional. The provision requiring the repayment, by the claimant to the occupant, of the purchase money paid by the latter for the land, with interest, is unconstitutional, as applied to the facts in this case. Madland v Benland, 24 M 372.

L. 1907, c. 448, s. 40, providing that the owners of land benefited by the construction of a new ditch and its connection with a ditch already constructed, for which their lands were not assessed, shall pay into the county treasury the same proportion of benefits received by their lands that the lands assessed for the original ditch were forced to pay, is unconstitutional in that it deprives a class of landowners of their property for a public purpose without any compensation and without due process of law. Lyon County v Lien, 105 M 55, 116 NW 1017.

L. 1907, c. 191, providing for the construction of a ditch over lands adjoining those of the owner seeking to drain his own wet lands, where the construction of such ditch or drain is of benefit to the lands of adjoining owner, and permitting the supervisors to decide upon the application for such a ditch as they deem proper. Subsequent proceedings followed the analogy of local improvement assessments. The law is unconstitutional because, in effect, it authorized the condemnation and assessment of the property of individuals for a purely private purpose and deprived the landowner of his property without due process of law. State ex rel v Town Board, 102 M 442, 114 NW 244.

L. 1905, c. 230, so far as it attempts to confer upon the county board, without notice to or opportunity by interested property owners to be heard, authority to enlarge a previously constructed ditch, by widening its banks or deepening its channel and to assess the cost and expense to adjacent property, is not due process of law and is unconstitutional. State v McGuire, 109 M 88, 122 NW 1120.

That portion of G. S. 1913, s. 5571, which provides that in judicial ditch proceedings claims against a county shall be audited and allowed by the district judge after dismissal of the proceedings, without providing notice to the county, is unconstitutional as not affording due process of law. State ex rel v District Court, 138 M 204, 164 NW 815; Gove v Murray County, 147 M 24, 179 NW 569.

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 violative of the due process clause. Judson v Reardon, 16 M 431(387).

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

An ordinance of the city of Minneapolis requiring that all pasteurized milk sold within the city must be pasteurized within the city limits in unconstitutional as it violates the due process clause of the constitution. State ex rel v City of Minneapolis, 190 M 138, 251 NW 121.

An ordinance of the city of Minneapolis which assumes to prescribe the hours when barbershops may be open for busines is unconstitutional insofar as it prescribes such hours in that it violates the due process clause of the constitution. State ex rel v Johannes, 194 M 10, 259 NW 537. See 19 LRA 802.

Prior to 1904 a municipal court, under the constitution, had jurisdiction of only such criminal offenses as involved a punishment not exceeding a fine of $100.00 or imprisonment not exceeding three months. The Duluth charter of 1891 provided that the council might impose punishment for the breach of any ordinance to the extent of a fine and imprisonment and any person fined might be imprisoned until the fine be paid, not to exceed in all 90 days. The ordinance of 1898, enacted under such authority, imposed for its violation a punishment by fine or imprisonment, or both. The home rule charter of 1900 subjected violators of the ordinance to fine or imprisonment and continued in force previous ordinances consistent with it. The municipal court had no jurisdiction to try a case under the 1891 charter and the ordinance of 1898, because thereunder the offense was punishable by both fine and imprisonment. The home rule charter of 1900 did not make effective this in-

valid legislation. State v West, 42 M 147, 43 NW 845; State ex rel v Bates, 105 M 440, 117 NW 844.

The municipal court of the city of Faribault is without power to try a person upon a criminal complaint made by a private individual charging an offense beyond the jurisdiction of a justice of the peace but within the jurisdiction prescribed by L. 1925, c. 120, s. 3, creating the court. The information designated in section 3 means an information made and filed by a duly constituted prosecuting officer and the proceedings thereunder must conform to the provisions of Minn. St. 1941, ss. 628.29 to 628.33. State ex rel v Municipal Court, Faribault, 164 M 328, 205 NW 63.

L. 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, in violation of the due process clause. Beaupre v Hoerr, 13 M 366 (339).

L. 1877, c. 131, which provides 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 the judgment at any time within three years after the discovery by him of such perjury, subornation of perjury, or the facts constituting such fraudulent act, practice, or representation, 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 M 345, 349.

A law increasing the interest on taxes refunded from 1% to 10% per annum, payable out of the county treasury, is invalid so far as retroactive. Power of the legislature over property acquired by a county for its own use and not specifically appropriated to public purposes cannot be transferred to an individual or appropriated to private purposes by legislative enactment. State v Foley, 30 M 350, 15 NW 375.

A tax by a state without jurisdiction to impose it is unconstitutional as a violation of due process.

State v Northwest Airlines, Inc. 213 M 395, 7 NW(2d) 691.

L. 1895, c. 249, providing for the location of section and quarter section corners by the county surveyor on the application of the resident owners of the section, is unconstitutional for the reason that it deprives the landowners of their property without due process of law. Davis v County Board, 65 M 310, 67 NW 997.

Insofar as L. 1893, c. 150, undertook to confer jurisdiction upon the district court to proceed as against lands upon which the state had lost its lien for taxes and had no color of right to enforce collection thereof, it was unconstitutional because not due process of law. Kipp v Elwell, 65 M 525, 68 NW 105.

L. 1907, c. 183, prohibiting the maintaining of any action for the refundment of money paid for assessment sales certificates under the St. Paul charter after two years from the date when notice of the expiration of the period of redemption could have lawfully been given, is unconstitutional, as applied to the facts of this case, the same being in violation of the contract under which such certificates were sold by the city. Gray v City of St. Paul, 105 M 19, 116 NW 1111.

G. S. 1913, s. 2560, insofar as it authorizes local highway officials, without notice to the abutting landowner or opportunity by him to be heard, as a penalty for his failure to pay the expense of cutting down trees thereby authorized to be removed from the highway, to make an ex parte sale of the trees and appropriate the proceeds to the use of the municipality, even though the amount may greatly exceed such expense, is unconstitutional as an attempt to deprive the owner of his property without due process of law. Town of Rost v O'Connor, 145 M 81, 176 NW 166.

L. 1929, c. 361, subjecting motor vehicles using the public highways of this state owned by companies whose property in this state is taxed on the basis of gross earnings to a registration tax as provided by statute for the registration and taxation of motor vehicles and providing that the tax on the basis of gross earnings paid by any such company shall be in lieu of all other taxes upon its property except motor vehicles using the public highways of this state, is unconstitutional as

violative of the due process clause. Railway Express Agency v Holm, 180 M 268, 230 NW 815.

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

L. 1923, c. 298, providing that employees shall be given one day of rest in each week in certain specified employments, but excluding certain other specified employments from its operation, violates the equality provision of the state constitution. State v Pocock, 181 M 376, 201 NW 610.

The last sentence of Minn. St. 1941, s. 154.04, is unconstitutional insofar as applied to licensed beauty culturists in that it deprives them of the right to pursue their calling in respect to trimming and dressing women's hair. Johnson v Ervin, 205 M 84, 285 NW 77.

6. Habeas corpus

SCOPE. The office of the writ of habeas corpus is to afford the citizen a speedy and effective method of securing his release when illegally restrained of his liberty. When directed to an inquiry into the cause of imprisonment in judicial proceedings, its scope extends to questions affecting the jurisdiction of the court, the sufficiency in point of law of the proceedings, and the validity of the judgment or commitment under which the prisoner is restrained. It cannot be employed as a writ of quo warranto to inquire into the title of the person to the office of judge of the court whose judgment or commitment is assailed, nor as a writ of error to review alleged errors committed on the trial, nor as an appeal or writ of certiorari. As a general rule the writ extends to defects appearing upon the face of the record only. State ex rel v Bailey, 106 M 138, 139, 118 NW 676.

JURISDICTIONAL DEFECTS. When one is confined under the final judgment of a court, he can be released on habeas corpus only on jurisdictional defects. Such writ cannot be allowed to perform the functions of a writ of error or appeal. If the court had jurisdiction of the person and the subject matter and could render a judgment upon a showing of any sufficient state of facts, any judgment which it may render, however erroneous, irregular, or unsupported by evidence, will be sustained as against an attack by habeas corpus. State ex rel v Wolfer, 119 M 368, 370, 138 NW 315.

COMPETENT TRIBUNAL. The judgment is void, if the court was without jurisdiction to render it, for a court without jurisdiction is not a "competent tribunal" within the meaning of the habeas corpus statute. State v West, 42 M 147, 43 NW 845; State v Kinmore, 54 M 135, 55 NW 830; State v Wagener, 74 M 518, 77 NW 424; State v Justus, 85 M 114, 88 NW 415; State ex rel v Reed, 132 M 295, 296, 156 NW 127.

ERRONEOUS JUDGMENT OR SENTENCE. In order to secure release on habeas corpus it is not enough for the relator to show that the judgment or sentence under which he is held was erroneous. The writ of habeas corpus may not be prosecuted by any person imprisoned by virtue of the final judgment of any competent tribunal, even though the judgment is tainted with error. In such case the prisoner is put to his right of appeal or writ of error. In order to secure release on habeas corpus it must be made to appear that the judgment is void. State v Kinmore, 54 M 135, 55 NW 830; State v Billings, 55 M 467, 57 NW 206, 794; State ex rel v Reed, 132 M 295, 296, 156 NW 127.

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Section 8. REDRESS FOR INJURIES AND WRONGS.

CONDITION PRECEDENT. An act which imposes, as a condition precedent to the party's right to bring an action to set aside an illegal assessment or special tax, is inconsistent with this section. Weller v City of St. Paul, 5 M 95 (70); Morrison v City of St. Paul, 5 M 108 (83).

CONDITION PRECEDENT. 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 M 584, 590.

CONDITION PRECEDENT. A statute requiring, as a condition precedent for probate proceedings, the payment of specified sums arbitrarily prescribed with reference to the value of the estates, is repugnant to this section. State v Gorman, 40 M 232, 41 NW 948; Mearkle v Hennepin County, 44 M 546, 47 NW 165; De Graff v Ramsey County, 46 M 319, 48 NW 1135; Rand v County Board, 50 M 391, 52 NW 901.

CONDITION PRECEDENT. A statute requiring, as a condition to the right of trial in a civil action by a jury, the payment in advance of a reasonable jury fee is constitutional. The constitution does not guarantee to the citizen the right to litigate without expense, but simply protects him from the imposition of such terms as unreasonably and injuriously interfere with his right to a remedy in the law or impede the due administration of justice. Adams v Corriston, 7 M 456 (365, 370); McGeagh v Nordberg, 53 M 235, 237, 55 NW 117.

CONDITION PRECEDENT. L. 1907, c. 183, which prohibits the maintaining of any action for the refundment of money paid for assessment sale certificates under the charter of the city of St. Paul after two years from the date when notice of expiration of the period of redemption could have lawfully been given, as applied to the facts in this case, is unconstitutional as violative of the provisions of this section. Gray v City of St. Paul, 105 M 19, 116 NW 1111.

CONDITION PRECEDENT. L. 1913, c. 562, s. 7, is not, because of the provision in the abatement proceeding requiring the giving of a bond if the premises are opened within a year, violative of the provisions of this section. State ex rel v Wheeler, 131 M 308, 155 NW 90.

CONDITION PRECEDENT. L. 1862, c. 4, s. 7, provides that any person claiming any right, title, or interest in any land, after a sale under the provisions of the act adverse to the claim of the purchaser at any such tax sale, his heirs or assigns, shall, within one year from the time of the recording of the tax deed for such premises, commence an action for the purpose of testing the validity of such sale or be forever barred in the premises. Section 6 contains a similar provision with reference to an action to test the validity of the assessment. If by this is meant that an action to test the validity of the sale is barred, unless brought within one year from the recording of the deed, it is a statute of limitation, and is valid; but if it be meant that a party shall be barred of his rights in the property, unless he bring such an action within the time, the provision is unconstitutional; and, in ejectment at any time by the owner against the purchaser at the tax sale, defending his possession under the tax deed, the plaintiff may impeach the deed. Baker v Kelley, 11 M 480 (358).

CONDITION PRECEDENT. The legislature has the power to require a party to pay the necessary costs of litigation or to prescribe rules for the guidance of courts and litigants, but beyond this the legislature cannot attach any conditions or limits to the rights that are guaranteed absolutely, freely, and certainly by the constitution. Baker v Kelley, 11 M 480 (358, 376).

PRIVILEGES. The Constitution, art. 4, s. 6, as construed that a member of the legislature is not privileged from the service upon him of a summons in a civil action during a session of the legislature, is not in violation of the Constitution, art. 1, s. 8. Rhodes v Walsh, 55 M 542, 57 NW 212. See 6 MLR 605.

SUSPENSION OF PRIVILEGES. 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 Pierce, 7 M 13 (1); Keough v McNitt, 7 M 30 (16); McFarland v Butler, 8 M 116 (91); Jackson v Butler, 8 M 117 (92).

BAR TO RIGHTS. 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, (L. 1862, c. 4, s. 7) is unconstitutional. Baker v Kelley, 11 M 480 (358); Taylor v Winona & St. Peter R. Co. 45 M 66, 47 NW 453; Gray v City of St. Paul, 105 M 19, 116 NW 1111.

BAR TO RIGHTS. The limitation of L. 1881, c. 135, s. 7, was intended to operate as confirming the tax sale, with certain exceptions, and the right acquired

under it. As such it was constitutional and the repeal in L. 1887, c. 127, s. 1, cannot affect it. Whitney v Wegler, 54 M 235, 55 NW 927.

BAR TO RIGHTS. G. S. 1894, s. 5029, to the effect that where a judgment of a justice of the peace has remained undisturbed for a period of not less than two years such justice shall be presumed to have had jurisdiction of the subject matter of the action and the parties thereto at the time of rendering such judgment, where it appears by his docket that he did acquire and had such jurisdiction, construed. After the lapse of the limitation of two years such a judgment cannot be impeached in a collateral action or proceeding, by extrinsic evidence showing that the justice did not in fact have jurisdiction to render the judgment, but it may be impeached when directly attacked. Vaule v Miller, 69 M 440, 72 NW 452.

BAR TO RIGHTS. Short statutes of limitations as to actions to test the validity of tax sales do not apply to actions for the possession of real estate nor to actions where the party invoking the statute alleges title in himself and asks the court to determine the question of the title upon the merits and adjudge it to be in him, for such a judgment would carry with it as a necessary incident the unquestionable right to the possession of the land. Baker v Kelley, 11 M 480 (358); Kipp v Johnson, 31 M 360, 362, 17 NW 957; Feller v Clark, 36 M 338, 340, 31 NW 175; London & N.W. Am. M. Co. v Gibson, 77 M 394, 80 NW 205; 777; Henningsen v City of Stillwater, 81 M 215, 83 NW 983; Holmes v Loughren, 97 M 83, 105 NW 558; Willard v Hodapp, 98 M 269, 271, 107 NW 954.

BAR TO RIGHTS. The statute requiring actions to set aside foreclosure sales and defenses thereto for certain named defects in the foreclosure proceeding to be brought or interposed within a certain period is not unconstitutional as against one in possession prior to the enactment of the statute upon the ground that one in possession cannot constitutionally be required by an after enacted statute to bring an action or interpose a defense against an adverse claimant, unless such one in possession is in possession claiming under the chain of title affected by the foreclosure. Fitger v Alger, Smith & Co. 130 M 520, 153 NW 997.

BAR TO RIGHTS. L. 1913, c. 209, limiting the time within which an action may be brought to declare a conveyance a mortgage to 15 years, has no application to a conveyance made before its passage, given to secure a debt not to mature within 15 years after the statute became operative. The legislature has no constitutional power to limit the time to commence an action under an existing contract to a date anterior to the inception of any cause of action arising out of the contract. For similar reasons L. 1909, c. 181, limiting the time in which to foreclose a mortgage to 15 years from the date of the mortgage, unless the time of maturity of the debt is stated in the mortgage, is not operative to limit the right to foreclose an existing mortgage to 15 years from its date, if the right to foreclose did not accrue until after the expiration of 15 years. Jentzen v Pruter, 148 M 8, 180 NW 1004.

OBTAINING JUSTICE FREELY. The proviso in G. S. 1866, c. 11, s. 154, as amended by L. 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 cost, 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 County, 22 M 61, 64.

OBTAINING JUSTICE FREELY. The provisions of G. S. 1894, ss. 2660, 2661, allowing plaintiff reasonable attorney's fees in actions brought under the statute to recover possession of land taken, without compensation, by a railroad company for its right of way, are constitutional. These provisions do not violate the clause securing to every person the right to obtain justice freely and without prejudice, completely and without denial, promptly and without delay, conformable to the laws. Cameron v C. M. & St. P. Ry. Co. 63 M 384, 392, 65 NW 652; Pfaender v C. & N. W. Ry. Co. 86 M 218, 222, 90 NW 393, 1133.

OBTAINING JUSTICE FREELY. L. 1895, c. 328, providing for struck juries, is not in conflict with the constitutional provision that every person ought to obtain justice freely and without purchase. Lommen v Mpls. Gaslight Co. 65 M 196, 68 NW 53.

OBTAINING JUSTICE FREELY. L. 1895, c. 328, s. 1, providing for struck juries, requires the sheriff to attend at his office at the time designated for striking a jury and, in the presence of the parties or their attorneys, or such of them as attend for that purpose, select from the persons qualified to serve as jurors in the county 40 such persons as he shall think most indifferent between the parties and best qualified to try such issue; and then the party requiring such jury, his agent or attorney, shall first strike off one of the names and the opposite party, his agent or attorney, another, and so on alternately until each has struck out 12. If the sheriff selects as partial or unfair list it is the duty of the court to set aside the list on a motion in the nature of a challenge to the array or to quash the panel. It is not necessary to establish affirmatively intentional partiality on the part of the sheriff. If the panel returned by him is in fact composed of partial or otherwise unfit or incompetent jurors, this would be sufficient ground for quashing the panel without showing intentional wrong on the part of the sheriff. The provision of the statute that the jury so struck shall be called as they stand on the panel is a mandatory one. This right is not an inconsequential one. The law is too plain to need interpretation or construction and it was written for a purpose and that purpose is expressed in no uncertain terms and should be given full mandatory force. Riley v C. M. & St.P. Ry. Co. 67 M 165, 167, 69 NW 718.

OBTAINING JUSTICE FREELY. It is in the power of the legislature to require suitors and litigants to pay reasonable, legally-prescribed fees or costs. The constitutional right to obtain justice freely and without purchase has not been understood to be a right to have judicial proceedings carried on without expense to the parties. Adams v Corriston, 7 M 456 (365); Willard v County Board, 22 M 61; State ex rel v Gorman, 40 M 232, 233, 41 NW 948.

OBTAINING JUSTICE FREELY. Suitors in the probate court, a court of exclusive jurisdiction, should not be required to pay, as a condition to their suits being entertained, a tax measured by the value of their property, and without regard to the nature or extent of the judicial proceedings which may be invoked or become necessary. That would be contrary to that clause of the constitution which guarantees justice "freely and without purchase, completely and without denial". State ex rel v Gorman, 40 M 232, 236, 41 NW 948.

A CERTAIN REMEDY. Plaintiff agreed with defendant to locate him on a valuable quarter section of pine land, which had been long withdrawn from market for railroad purposes, and to instruct him as to what he should do as such settler and do all that was necessary or could be done to bring the land into the market and enable defendant to acquire title thereto under the homestead or pre-emption laws of the United States. For such services defendant agreed to pay plaintiff when defendant should acquire the right to make final proof for such land. The contract was void as against public policy and did not come within the provisions of this section. Houlton v Dunn, 60 M 26, 61 NW 898. See 14 MLR 165, 24 MLR 412.

A CERTAIN REMEDY. A city charter, relating to the condemnation of land for public purposes, provides that before payment of the award to the landowner he shall furnish an abstract of title showing his right thereto and, on his failure to do so, the council shall pay the award to the city treasurer for the owner or, in case the city attorney shall certify that the title is doubtful, the award shall be paid to the clerk of the district court for such persons as show themselves entitled to it. These provisions are not unconstitutional in that they deprive the landowner of that certain remedy in the laws for all injuries or wrongs which he may receive in his person, property, or character. Coles v City of Stillwater, 64 M 105, 107, 66 NW 138.

A CERTAIN REMEDY. This section provides that every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property, or character. Unless there is some plain provision of law to the contrary, a married woman should receive the same protection of all her rights as a woman which her husband does as a man; and for any injury sustained to her reputation, person, property, character, or any natural right, she should have the same right to appeal, in her own name alone, to the courts for redress and protection that her husband has to appeal in his name alone.

A married woman can maintain an action against persons who wrongfully entice her husband from her and alienate his affections and thereby cause a separation between them. Lockwood v Lockwood, 67 M 476, 481, 70 NW 784. See 6 MLR 676, 17 MLR 93.

A CERTAIN REMEDY. A husband or wife may maintain an action to recover damages for the alienation of the affections of the other spouse. Lockwood v Lockwood, 67 M 476, 492, 70 NW 784; Bathke v Kressin, 78 M 272, 80 NW 950; Id., 82 M 226, 84 NW 796; White v White, 101 M 451, 452, 112 NW 627.

A CERTAIN REMEDY. In order to recover damages for alienating the affections of his wife a husband must show that the defendant took an active and intentional part in causing the estrangement. Such an action will not lie where it is grounded solely upon the negligence of the defendant. Lilligren v Burns I D Agency, 135 M 60, 160 NW 203.

A CERTAIN REMEDY. L. 1899, c. 225, defining, regulating, and licensing the business of commission merchants or persons selling agricultural products and farm produce on commission, is not in conflict with the provisions of this section. State ex rel v Wagener, 77 M 483, 80 NW 633; State v Edwards, 94 M 225, 231, 102 NW 225.

A CERTAIN REMEDY. A tribal Indian, whether he be a citizen or not, may maintain an action in the courts of this state to redress any wrong committed outside the limits of his reservation against his person or property. Bemway-hin-ness v Eshelby, 87 M 108, 91 NW 291; Ain-dus-o-kee-shig v Beaulieu, 98 M 98, 107 NW 820.

A CERTAIN REMEDY. The constitution guarantees to every citizen liberty and a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property, or character; and a person's business, occupation, or calling is, aside from the chattels or money employed therein, property within the meaning of the law and entitled to its protection. Gray v Building Trades Council, 91 M 171, 97 NW 663, 1118.

A CERTAIN REMEDY. If one employer by conference with another employer prevents, without excuse or justification, a third person from procuring employment with such other employer, he is liable for damages under the statute to the person so interfered with. Joyce v G. N. Ry. Co. 100 M 225, 110 NW 975.

A CERTAIN REMEDY. It is not unlawful for the members of labor unions to agree among themselves that they will not work for a building contractor with whom they have a controversy nor for any subcontractor on any contract he may have on hand. An agreement among union employees in the building trades, who have a bona fide dispute with a contractor, to withhold their services from such contractor or his subcontractors until the dispute is settled, is not a violation of the statute which makes unlawful any conspiracy to do an act injurious to trade and commerce nor of the statute which forbids combinations in restraint of trade. Grant Const. Co. v St. Paul Building Trades Council, 136 M 167, 161 NW 520, 1055. See 1 MLR 437, 4 MLR 544, on boycotting and picketing.

A CERTAIN REMEDY. Whether a publication that an employer of labor is "unfair" is or is not unlawful depends upon the circumstances of each case, a notification to customers that plaintiffs are "unfair" may portend a threat or intimidation, in which case it will constitute a boycott and is unlawful, but a mere notification of that sort without more is not a threat, is not unlawful. Gray v Building Trades Council, 91 M 171, 97 NW 663, 1118; Steffes v Motion Picture M. O. U. 136 M 200, 202, 161 NW 524. See 22 MLR 120.

A CERTAIN REMEDY. The constitution guarantees to everyone the right to work in his own business and any attempt to deprive him of that right is unlawful. "Bannering" plaintiff's place of business as unfair to organized labor and thereby deterring the public from patronizing him, if done for the purpose of compelling him not to work as an operator himself in his own business, is

unlawful and may be enjoined. Rorabeck v Motion Picture M. O. U. 140 M 481, 168 NW 766.

A CERTAIN REMEDY. A combination to boycott a motion picture theatre is one in restraint of trade and forbidden by the terms of the statute. The word "trade" is used in the statute in its broad sense and is not restricted to trade involving useful commodities. Campbell v Motion Picture M. O. U. 151 M 220, 186 NW 781. See 13 MLR 614.

A CERTAIN REMEDY. The state cannot, with decent regard for the provision giving everybody a remedy for wrong done his property and the special provision against the taking of property for public use without compensation, leave out property which it uses or damages in a public project and prevent the owner from having compensation, all because it cannot be sued. State v Stanley, 188 M 390, 394, 247 NW 509.

A CERTAIN REMEDY. The exercise of the right of eminent domain and the instituting of condemnation proceedings in furtherance of that right are legislative functions of government. The only questions which are judicial are the public use and the adequacy of compensation. Such being the case the officers discharging legislative functions properly delegated to them have control of the proceedings while they remain legislative in character. In the absence of statute, the general rule is that discontinuance of condemnation proceedings may be had at any time before the rights of the parties have become reciprocally vested, as determined by the time when the property owner has a right to payment of the award and the state has the right to take and hold the premises. Witt v St. P. & N. P. Ry. Co. 35 M 404, 29 NW 161; State v Appleton, 208 M 436, 438, 294 NW 418. See 1934 OAG 452.

A CERTAIN REMEDY. Condemnation proceedings were duly had in 1928 to acquire right of way for the construction of a state highway. The final certificate was made, approved by the court, and filed in 1931. Intervention was not available after the closing of the condemnation proceedings. That remedy is purely statutory and available only during the pendency of the proceedings. The final certificate was intended to and in fact took the place of the final decree applicable under Minn. St. 1941, s. 117.17. State v Hall, 195 M 79, 261 NW 874.

A CERTAIN REMEDY. When a person has knowledge of the contract rights of another his wrongful inducement of a breach thereof is a wilful destruction of the property of another and cannot be justified as legitimate competition. The wilful and successful participation therein by a third party for the purpose of destroying the business and property rights of the person having the contract is actionable when followed by damage. Sorenson v Chevrolet Motor Co. 171 M 260, 214 NW 754. See 12 MLR 147, Interference with Contract, Effect and Motive.

A CERTAIN REMEDY. To be entitled to recognition in the courts of this state a party must, in the absence of statutory provisions to the contrary, be either a natural or artificial person. Voluntary unincorporated associations, not engaged in some business enterprise, can neither sue nor be sued in their association name. Actions in which such associations are involved must be brought in the name of the members. St. Paul Typothetae v St. Paul Bookbinders Union, 94 M 351, 102 NW 725.

A CERTAIN REMEDY. This section insures a certain remedy in the laws for all injuries or wrongs, but does not guarantee or command continuation of a specific remedy. State ex rel v Stassen, 208 M 523, 527, 294 NW 647.

A CERTAIN REMEDY. The due process clause in the constitution was never intended to limit the subjects on which the police power of a state may lawfully be exerted. This guaranty has never been construed as being incompatible with the principle, equally vital because essential with peace and safety, that all property is held under the implied obligation that the owner's use of it shall not be injurious to the community. The police power of the state includes the right to destroy or abate a public nuisance. Property so destroyed is not taken for public use and therefore there is no obligation to make compensation

for such taking. The rights of private property are subservient to the public right to be free from nuisances which may be abated without compensation. The statute involved does not violate the due process of law guaranty. State ex rel v Wheeler, 131 M 308, 155 NW 90; State ex rel v Guilford, 174 M 457, 465, 219 NW 770.

A CERTAIN REMEDY. At common law one who has been prevented from securing employment by reason of the wrongful and malicious interference of another may recover damages from the wrongdoer. This principle is applicable to such interference if it prevents the formation of a contract as well as to interference with existing contractual relations. As the term is used in this class of cases, "malice" means nothing more than the intentional doing of an injurious act without justification or excuse. Carnes v St. Paul Union Stockyards Co. 164 M 457, 205 NW 630, 206 NW 396.

A CERTAIN REMEDY. Contracts for the purchase of the influence of the majority of a city council and contracts for the purchase of the influence of private persons upon the action of present and future city councils are against public policy and for that reason are void. Influence in this sense is not a salable article under our system of laws and morals. Goodrich v N. W. Tel. Exch. Co. 161 M 106, 111, 201 NW 290.

A CERTAIN REMEDY. One who is under an investigation which may result in an indictment may present to the investigating officers evidence tending to show that he is not guilty of an offense and that the prosecution is without foundation or constitutes blackmail. He may hire another, lawyer or layman, to investigate and present the results of his investigation, or to get and present evidence, and to make arguments based on such investigations or such evidence, to the end that an indictment will not be presented, and that the prosecution be ended. A contract to do service of this kind for one accused offends no public policy of the state; but a contract whereby one undertakes to suppress the investigation of a crime charged, or to induce the withholding of evidence bearing upon it, or by persuasion or personal solicitation or the use of personal influence to induce public officers not to prosecute, is within the condemnation of the law as against public policy in that it actually obstructs or tends to obstruct public justice. Wells v Floody, 155 M 126, 129, 192 NW 939.

A CERTAIN REMEDY. Contracts for contingent fees between an attorney and his client are valid, provided they are not in contravention of public policy, and it is only when the attorney has taken advantage of the client by reason of his poverty, or the surrounding circumstances, to exact an unreasonable and unconscionable proportion of such claim that it is condemned. Hollister v Ulvi, 199 M 269, 271 NW 493.

DEPRIVATION OF A CERTAIN REMEDY. L. 1887, c. 191, which regulates actions for libel, is not invalid on the ground that it deprives a person of a certain remedy for injuries to his reputation. Allen v Pioneer Press Co. 40 M 117, 41 NW 936.

DEPRIVATION OF A CERTAIN REMEDY. L. 1877, c. 131, s. 1, which provides that in all cases where judgment heretofore has been, or hereafter may be, obtained in any court of record by means of the perjury, subordination 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 the 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. As respects judgments recovered after its passage the act is constitutional. It does not deprive a party of the certain remedy in the law guaranteed by this section. Spooner v Spooner, 26 M 137, 1 NW 838.

DEPRIVATION OF A CERTAIN REMEDY. R. L. 1905, s. 3389, relative to dismissals of applications to register land, does not violate the provisions of this section. Peters v Duluth, 119 M 96, 105, 137 NW 390.

DEPRIVATION OF A CERTAIN REMEDY. Under R. L. 1905, s. 3395, providing that where a person acquires an interest in land, pending proceedings

to register the title thereof, and prior to the entry of decree, he must appear and answer in such proceeding "at once", persons who delayed more than six months after actual notice of proceedings to register the title to certain land before making application for permission to answer in such proceedings in order to assert interests alleged to have been acquired pendente lite, were not entitled to answer as a matter of right. Brown v Hagadorn, 119 M 491, 138 NW 941.

DEPRIVATION OF A CERTAIN REMEDY. L. 1913, c. 467, the Workmens Compensation Act, does not infringe the rights set forth in this section. Mathison v Mpls. Street Ry. Co. 126 M 286, 297, 148 NW 71; State ex rel v District Court, 128 M 221, 224, 150 NW 623.

DEPRIVATION OF A CERTAIN REMEDY. So far as it covers rights and remedies in the field of industrial accident and occupational disease, the Workmens Compensation Act is exclusive of all common law remedies; but inasmuch as it allows compensation only for the occupational diseases expressly enumerated, an employe who has become afflicted with a disabling ailment, not among those so enumerated, through negligence of the employer amounting to the omission of a statutory duty, has an action at law for damages. Donnelly v Mpls. Mfg. Co. 161 M 240, 201 NW 305.

Section 10. RIGHT AGAINST UNREASONABLE SEARCHES.

An action for damages will lie for maliciously and without probable cause procuring the issuance and execution of a search warrant for goods alleged to have been stolen. In such an action plaintiff shows prima facie a cause of action by proof that upon search the property was not found, that the return of the warrant so showed, and that for a long time he had borne a good reputation in the community for honesty and integrity. Olson v Tvete, 46 M 225, 48 NW 914.

A search warrant fair on its face protects the officer executing it and those called by the officer to assist, even though the complaint upon which it is issued is insufficient. The place to be searched is particularly described so as to meet the constitutional requirement when the description in the warrant furnishes data from which the officer is enabled to definitely locate the place. The warrant authorized a search of the plaintiff's dwelling, it being part of the premises named in the warrant. McSherry v Heimer, 132 M 260, 156 NW 130; Ingraham v Booton, 117 M 105, 134 NW 505.

The right to be secure against unreasonable searches and seizures was not denied when inspection of the stock books of the holding company of the street railway company was authorized and required. City of Minneapolis v Mpls. St. Ry. Co. 154 M 401, 191 NW 1004. See 1934 OAG 146.

There was no unreasonable search and seizure as contemplated by the constitutional provision. State v Ryan, 156 M 186, 191, 194 NW 396.

An unlawful search cannot be justified by the fact that it discloses the commission of a crime which is not a felony. Only unreasonable searches and seizures are prohibited. A person lawfully arrested may, as an incident thereto, be searched and articles found in his possession which are the subject of crime or the means of committing it or which may be used as evidence at the trial or which may be used in committing violence or in effecting an escape may be seized. In the cases in which a person may be lawfully arrested without a warrant, he may be lawfully searched without a warrant. The crime charged against defendant is punishable only by a fine and imprisonment in the county jail and is not a felony under our statute. Consequently the officers could not lawfully arrest him therefor without a warrant, unless the offense was committed or attempted in their presence. It cannot be said that a criminal offense is committed in the presence of an officer unless the acts constituting the offense become known to him at the time they are committed through his sense of sight or through other senses. Although a person may actually be committing a criminal offense, it is not committed in the presence of an officer within the meaning of the statute, if the officer does not know it. Where the officer could not observe or become cognizant of the act constituting the offense by the use of his senses it could not be committed in his presence so as to authorize an arrest without a warrant. Under such circumstances a search is unlawful be-

cause made without a warrant and not as an incident to a lawful arrest. The search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained or of using them as evidence against them. In the former case no property rights therein exist, therefore, the stolen or forfeited goods unlawfully seized may be used as evidence against the possessor thereof at the time seized. State v Pluth, 157 M 145, 195 NW 789; State v McLean, 157 M 359, 196 NW 278; State v Denner, 159 M 189, 198 NW 430.

L. 1901, c. 252, prohibiting and punishing the keeping of blind pigs, or places for the unlawful sale of intoxicating liquors, is not unconstitutional as authorizing unreasonable searches and seizures. State v Stoeffels, 89 M 205, 210, 94 NW 675; State v Hanson, 114 M 136, 130 NW 79; Hawkins v Langum, 115 M 100, 131 NW 1014; State v Rogne, 115 M 204, 132 NW 5; State v Hesse, 154 M 89, 191 NW 267.

See State v. Stein, 215 M 308, 9 NW (2d) 763, cited under Article 1, Section 7.

Section 11. PASSAGE OF CERTAIN LAWS PROHIBITED.

1. Ex post facto laws
2. Contracts impaired
3. Contracts not impaired
4. Abdicating police power
5. Attainder

1. Ex post facto laws

The act of the legislature of February 14, 1862, suspending the privilege of all persons aiding the rebellion against the United States of prosecuting and defending actions and judicial proceedings in this state, is, so far as applies to citizens of this state, unconstitutional. Its terms apply as well to acts of rebellion committed before its passage as to those committed afterwards and, in respect to the former, it is clearly ex post facto. Davis v Pierse, 7 M 13 (1, 5); Jackson v Butler, 8 M 117 (92).

G. S. 1866, c. 73, 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 M 476 (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 M 370 (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 M 136 (119). Overruled by State v Smith, 62 M 540, 544, 64 NW 1022.

There is no constitutional limitation upon the power of the legislature over the subject of criminal punishment except those prescribed in the Constitution, art. 1, ss. 5 and 11. State v Lautenschlager, 22 M 514; Coles v Washington County, 35 M 124, 27 NW 497; Easton v Hayes, 35 M 418, 419, 29 NW 59; Fuller v Morrison County, 36 M 309, 30 NW 824; Easton v Hayes, 38 M 463, 38 NW 364.

L. 1891, c. 6, which require that under certain circumstances moneys paid by purchasers at tax sales of the lands therein mentioned be refunded by the counties in which the lands are situated, is unconstitutional and void insofar as it relates to so-called "school lands". State ex rel v Bruce, 50 M 491, 52 NW 970.

The mere voluntary performance of another's duty is not of itself the basis of an obligation. A man may not, by his own unauthorized act in paying taxes on the land of another, make that other his debtor or acquire any lien on or equitable right in that land. Coles v Washington County, 35 M 124, 27 NW 497; Bryant v Nelson-Frey Co. 94 M 305, 308, 102 NW 859.

Unless there be a constitutional inhibition or an interference with a vested right, the rule is that the legislature has power to validate invalid contracts or ratify and confirm any act it might lawfully have authorized in the first place. The power of the legislature to legalize is the same as its power to originally authorize. Calderwood v Schlitz Brewing Co. 107 M 465, 473, 121 NW 221.

G. S. 1878, c. 11, s. 97, as amended by L. 1881, c. 10, s. 19, relating to the recovery of purchase money on void tax sales, is valid in its retro-active operation. Schoonover v Galarnault, 45 M 174, 47 NW 654.

In public drainage undertakings the county is a mere governmental agency of the state and the contracts which it is required to make and the funds it must provide for such purpose are within the control of the legislature. L. 1913, c. 567, in its retroactive aspect, cannot be held to impair any contract obligation or interfere with any vested rights of the county. State ex rel v George, 123 M 59, 142 NW 945; State ex rel v Hansen, 140 M 28, 167 NW 114.

L. 1915, c. 152, placed all telephone companies doing business in this state under the supervision and control of the railroad and warehouse commission, and any telephone company, holding a franchise from a municipality at the time the law took effect, is permitted, by section 15 thereof, to surrender such franchise and receive, in lieu thereof, from the commission an indeterminate permit to occupy the streets of the municipality with its poles and wires. No private proprietary right, vested in the village of Litchfield by the franchise issued by its council in 1905, was impaired or affected by the written declaration of surrender tendered by relator to the village clerk for filing pursuant to section 15. State ex rel v Holm, 138 M 281, 164 NW 989.

L. 1913, c. 562, relating to the abatement of bawdy houses, does not contravene the constitutional provisions regarding ex post facto laws. State ex rel v Ryder, 126 M 95, 147 NW 953; State ex rel v New England F. & C. Co. 126 M 78, 81, 147 NW 951; State v Cadillac Touring Car, 157 M 138, 144, 195 NW 778.

See 11 MLR 374, Abatement of public nuisance under National Prohibition Act not a punishment.

2. Contracts impaired

A section of a statute, so far as it provides for the release and discharge of securities, is in conflict with the provision of the constitution which prohibits the passage of any law impairing the obligation of contracts. Swift v Fletcher, 6 M 550 (386, 394).

The act of the legislature of February 14, 1862, suspending the privilege of all persons aiding the rebellion against the United States of prosecuting and defending actions and judicial proceedings in this state, is, so far as it denies a remedy on contracts made with certain persons, or in which such persons are interested, an impairment of their obligations, as well as a withholding of a constitutional privilege. Davis v Pierse, 7 M 13 (1, 5); Jackson v Butler, 8 M 117 (92).

Under the bankruptcy act, 11 USCA, s. 107(f), the lien of a judgment procured less than four months preceding the filing of the petition in bankruptcy is annulled thereby, even as to property of the bankrupt, his homestead, set aside to him as exempt. Landy v Martin, 193 M 252, 258 NW 573.

The act approved March 10, 1860, providing that the owner of a homestead under the laws of this state may remove therefrom, or sell and convey the same, and such removal or sale and conveyance shall not render such homestead liable or subject to forced sale on execution or other process hereafter issued on any judgment or decree of any court in this state or of the district court of the United States for the State of Minnesota against such owner; nor shall any judgment or decree of any such court be a lien on such homestead for any purpose, so far as it attempts to divest a judgment creditor who has a lien of a judgment against the owner of a homestead of his right to sell the property, in the event it ceased to be a homestead, is invalid. Tillotson v Millard, 7 M 513 (419).

Under the law in force prior to 1889, the homestead of the debtor, upon his decease, became assets for the payment of his debts, subject only to the homestead rights of his widow and minor children, if any. The Probate Code of

1889 provided that the homestead of the deceased shall descend to his heirs generally, in order of descent, free from all debts or claims upon the estate of the deceased. This provisioin is invalid as respects contracts made before its enactment, for the reason that it impairs their obligation by so materially affecting the subsisting remedy as to substantially lessen their value. Dunn v Stevens, 62 M 380, 64 NW 924, 65 NW 348.

L. 1933, c. 339, under which the time for redemption from mortgage foreclosure sales may be extended, impairs the obligation of the mortgage contract. Blaisdell v Home B. & L. Assn. 189 M 422, 249 NW 334; State ex rel v Erickson, 191 M 188, 253 NW 529.

See 18 MLR 319, Moratory legislation for the relief of mortgagors.

The insolvents herein, on and prior to April 24, 1895, were indebted to appellant in the sum of $650.00 on two promissory notes. On May 20, 1895, they made an assignment for the benefit of creditors, which was in form and substance an assignment under the general insolvency law of the state as it was prior to the approval on April 24, 1895, of L. 1895, c. 67, purporting to provide for the discharge of debtors whether creditors filed releases or not. The assignment made no reference to the act of 1895, but it expressly provided that the trust estate was for the benefit only of creditors who released their claims. Appellant made proof of its claim, but filed no release thereof. On June 30, 1898, one of the insolvents petitioned the district court for a discharge from all his debts pursuant to the act of 1895, and such proceedings were had that the court made its order granting him a discharge from all his debts held by the creditors named in the order, including appellant, and distributing the trust estate as provided in such act. Appellant did not, under the facts in this case waive by the mere proof of its claim, its constitutional right as to the impairment of its contract, and that the order was erroneous as to it. Union Bank of St. Paul v Rugg, 78 M 256, 80 NW 1121.

An ordinance of a municipality, surrendering a part of its powers to a corporation to secure and encourage works of improvement, which require the outlay of money and labor, to subserve the public interests of its citizens, when accepted and acted upon, becomes a contract between the city and the corporation which relied upon it, and the grantee cannot be arbitrarily deprived of the rights thus secured. It is protected by the organic law which forbids the impairment of contracts. City of St. Paul v C. M. & St. P. Ry. Co. 63 M 330, 63 NW 267, 65 NW 649, 68 NW 458; Northwestern T. E. Co. v City of Minneapolis, 81 M 140, 146, 83 NW 527, 86 NW 69; City of Duluth v Duluth Tel. Co. 84 M 486, 489, 87 NW 1127; Lerch v City of Duluth, 88 M 295, 92 NW 1116; N. W. Tel. Co. v Twin City Tel. Co. 89 M 495, 95 NW 460.

A municipality, acting through its legislative body, has no power to enter into contracts which curtail or prohibit an exercise of its legislative or administrative authority over streets, highways, or public grounds, whenever the public interests demand that it should act. State ex rel v Board of Park Commissioners, 100 M 150, 110 NW 1121.

L. 1907, c. 183, which prohibits the maintaining of any action for the refundment of money paid for assessment sale certificates under the charter of the city of St. Paul after two years of the date when notice of expiration of the period of redemption could have lawfully been given, is unconstitutional as applied to the facts of this case, being in violation of the contract under which such certificates were sold by the city. Gray v City of St. Paul, 105 M 19, 116 NW 1111.

The right of parties in tax proceedings are determined by the law in force at the time of the tax sale and this includes the proceedings necessary to perfect title by a proper notice of the expiration of the period for redemption. Such statutes enter into and form a part of the contract between the state and the purchaser and cannot be repealed or so modified as to affect any of the substantial rights of either the holder of the certificate or the owner of the land. State ex rel v Krahmer, 105 M 422, 426, 117 NW 780.

G. S. 1878, c. 81, s. 13, insofar 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 M 496, 11 NW 84; State ex rel v Foley, 30 M 350, 15 NW 375; Comstock, Ferre & Co. v Devlin, 99 M 68, 73, 108 NW 888.

The right of redemption from a tax sale must be governed by the law in force at the date of the sale; it can neither be shortened nor extended by subsequent legislation. Merrill v Dearing, 32 M 479, 21 NW 721.

The right to foreclose, pursuant to the statute in force at the time of the execution of the mortgage, under the power of sale contained in it, cannot be taken away by subsequent legislation. O'Brien v Krenz, 36 M 136, 30 NW 458.

Upon a foreclosure under the power in a mortgage executed after the passage of L. 1858, c. 35, and prior to an amendatory act passed in 1860, there is only one year in which to redeem. In chapter 35, which gives one year to redeem, the clause "or such other time as may be prescribed by law", as applied to the present mortgage, does not authorize an act changing the time to redeem, as it would impair the obligation of contracts. Goenen v Schroeder, 8 M 387 (344).

L. 1878, c. 53, s. 13 (G. S. 1878 c. 81, s. 13), so far as it applies to mortgages with powers executed prior to its passage, and requires to be paid, for redemption from sales under the powers in such mortgages, a greater rate of interest than that required to be paid on such redemption by the laws in force at the time of executing such mortgages, impairs their obligation and is void. Hillebert v Porter, 28 M 496, 11 NW 84.

Under the statutes of this state a mortgagor of land is entitled to the full usufruct of the mortgaged land until his rights therein are barred by foreclosure of the mortgage and the expiration of the period of redemption. This applies to rents and royalties accruing under a mining lease. This right he cannot, by stipulation in the mortgage or contemporaneous with it, contract away; nor can the act of the sheriff in making a sale of rents and profits on foreclosure by advertisement detract anything from the rights of the mortgagor. Orr v Bennett, 135 M 443, 161 NW 165.

The executive order issued by the governor directing sheriffs to refrain from conducting mortgage foreclosure sales until May 1, 1933, or until further order, was an attempt to exercise legislative power and not within his power. State ex rel v Moeller, 189 M 412, 249 NW 330.

L. 1923, c. 264, s. 27, prohibiting third parties to buy or handle products under contract to cooperative marketing associations, infringes the liberty of contract guaranteed by the constitution. Minnesota Wheat Growers Coop. M. Assn. v Radke, 163 M 403, 204 NW 314. See 10 MLR 59.

See 12 MLR 147, Interference with contract, effect of motive.

See 12 MLR 274, Impairing obligation of contract.

See 18 MLR 595, Moratory legislation for the relief of delinquent taxpayers.

3. Contracts not impaired

The exemption law, L. 1858, c. 35, was intended to operate upon debts contracted prior to its passage. It operates only on the remedy and is constitutional. The legislature has full power to control remedies so long as it does not infringe upon existing rights. Grimes v Byrne, 2 M 89 (72). See 24 MLR 991.

Under L. 1856, c. 5, an appeal may be taken from an order granting a new trial, made before the passage of the act. The act affects only the remedy and does not impair the obligation of contracts or vested rights and is valid. Converse v Burrows & Prettyman, 2 M 229 (191).

L. 1858, c. 61, regulating the foreclosure of real estate and prescribed the terms and conditions upon which a mortgagor may retain possession of real estate after foreclosure, does not impair the obligation of a mortgage contract, whether as applied to contracts made prior or subsequent to the passage of the act. Stone v Bassett, 4 M 298 (215); Heyward v Judd, 4 M 483 (374); Freeborn v Pettibone, 5 M 277 (219).

An indorsement on a promissory note of a sum paid on it is no part of the note. State v Monnier, 8 M 212 (182).

When a mortgage was given the mortgagor had one year after the sale of the mortgaged premises within which to redeem but was not allowed the possession between the time of the sale and the redemption; before the foreclosure of the mortgage the law was so changed as to give the mortgagor the possession of the premises during the year allowed for redemption, on payment of the interest. This change in the law did not impair the obligation of the mortgage contract. Berthold v Fox, 13 M 501 (462).

Regulating the construction and maintenance, by railroad companies, of fences and cattle-guards at and along their track, is the exercise of the police power of the state. If the legislature may bind the state not to exercise this power, an intention to do so cannot be implied, but must appear in express and unmistakable terms. A clause in a railroad charter providing what fences and other structures required for protection of life and property the company shall maintain and when it shall provide them is not sufficient to conclude the state from a future exercise of the police power. Gillam v Sioux City & St. P. R. Co. 26 M 268, 3 NW 353; Fleming v St. Paul & Duluth R. Co. 27 M 111, 6 NW 448; Watier v C. St. P. M. & O. Ry. Co. 31 M 91, 16 NW 537; Finch v C. M. & St. P. Ry. Co. 46 M 250, 48 NW 915. See 19 MLR 667, Necessity that plaintiff be member of class protected by statute.

Subject to some extent to an exception in favor of the right of the state to amend the charter of a private corporation, under an express reservation of authority to do so, or in the exercise of its police power, the rule is that amendment of such charters, to be binding and effectual, must be accepted on the part of corporators. Mower v Staples, 32 M 284, 20 NW 225; Grisim v South St. Paul Live Stock Exchange, 152 M 271, 276, 188 NW 729; MacLaren v Wold, 172 M 334, 215 NW 428; Midland Cooperative Wholesale v Range Cooperative Oil Assn. 200 M 538, 540, 274 NW 624.

Where the legislature grants a franchise and in the same act imposes on the grantee certain duties and reserves the power to repeal the act in case grantee fail to perform those duties, it may, in case he does so fail, repeal the act without a previous judicial determination that he had so failed. Whether he had failed, so that the repeal was effectual, is a question for the courts. Myrick v Brawlay, 33 M 377, 23 NW 549.

A mortgagee, when he takes a mortgage, takes it, in legal contemplation, with full knowledge of and subject to the right of a person keeping the property at the request of the mortgagor or other lawful possessor to the statutory lien, as he would do to a common-law lien. G. S. 1878, c. 90, ss. 16, 17, and L. 1885, c. 81, giving a lien for his just and reasonable charges to a person who keeps horses at the request of the owner or lawful possessor thereof, is not unconstitutional as violating any contract of the mortgagee. Smith v. Stevens, 36 M 303, 31 NW 55.

L. 1887, c. 170, the mechanic's lien law, is unconstitutional and G. S. 1878, c. 90, on the same subject, remain in full force. Meyer v Berlandi, 39 M 438, 40 NW 513.

The lien of a livery or boarding stable keeper for his just and reasonable charges for keeping, supporting, and caring for animals and vehicles at the request of the owner or person in lawful possession is acquired solely by virtue of L. 1891, c. 28 (G. S. 1894, ss. 6249, 6250, 6251), and by the terms of section 2 is expressly made secondary and subordinate to the lien of any previously executed and properly filed chattel mortgage. Petzenka v Dallimore, 64 M 472, 67 NW 365.

By L. 1905, c. 328, amended by L. 1907, c. 114, (ss. 514.18 to 514.21), giving a lien on personal property transported and stored at the request of the owner or legal possessor thereof, it was intended that one transporting and storing property at the request of a chattel mortgagor in legal possession should have a lien superior to the interest of the chattel mortgage; and, as so construed, is constitutional. Monthly Instalment Loan Co. v Skellet Co. 124 M 144, 144 NW 750.

One who furnishes labor and material in the repair of an auto at the instance of the conditional vendee in possession has a lien under section 514.18 prior to the right of the conditional vendor, but his lien is lost by a surrender

of possession. He has a lien under sections 514.35 to 514.39, but no priority over the conditional vendor, for the statute gives none. Sundin v Swanson, 177 M 217, 225 NW 15.

See 6 MLR 233, Automobiles, garage keepers' statutory liens. See, also, 14 MLR 779.

A mortgage, executed in April, 1877, contained a power of sale authorizing the mortgagee, in case of default in the conditions of the mortgage, to sell the mortgaged premises at public auction and convey the same to the purchaser, agreeable to the statute in such case made and provided. There is nothing in the retrospective application of L. 1878, c. 53, to the mode of executing this power, which conflicts with the terms of the mortgage or impairs its obligation as a contract. Webb v Lewis, 45 M 285, 47 NW 803.

L. 1889, c. 30, amends the insolvent law of 1881. Section 1 provides that the release of any debtor under this act shall not operate to discharge any other party liable as surety, guarantor, or otherwise for the same debt, and includes stockholders who are liable for the debts of the corporation. This provision is not unconstitutional, as applied to cases where the liability of the stockholder was incurred before its passage. Willis v Mabon, 48 M 140, 50 NW 1110; McKusick v Seymour, Sabin & Co. 48 M 158, 167, 50 NW 1114; Straw & E. Mfg. Co. v. Kilbourne Boot & Shoe Co. 80 M 125, 83 NW 36.

An act authorizing any stockholders of a private corporation to require that the real property of the corporation not necessary for the transaction of its business and the payment of its debts be appraised and partitioned, so that its stockholders who require it shall have conveyed to them in severalty so much of such property as, according to the appraised value, shall bear to the whole property so appraised the same proportion as the stock held by each bears to the whole stock issued, and providing that such conveyance shall be in full of their interest in the property so appraised, merely authorizes stockholders to require a dividend of profits in property instead of in money, and it impairs no rights of the corporation or of its stockholders or creditors and is not unconstitutional. Merchant v Western Land Assn. 56 M 327, 57 NW 931.

The statutes of this state (enacted subsequently to the adoption of the constitution) providing for a commuted system of taxation of the property of railroad companies by permitting them to pay an annual gross earnings tax in lieu of the taxation of their property on the basis of a cash valuation, were unconstitutional until validated by the constitutional amendment of 1871 (art. 4, s. 32a). Such validation was a qualified one, the right to repeal or amend the statutes being reserved; hence, L. 1895, c. 168, relating to the taxation of railroad lands, does not impair the obligation of any contract and is constitutional. State ex rel v Stearns, 72 M 200, 75 NW 210; sustained by 179 US 223; State v Duluth & Iron Range R. Co. 77 M 433, 437, 80 NW 626; State v Sioux City & St. Paul Ry. Co. 82 M 158, 84 NW 794.

L. 1895, c. 326, does not impair vested rights and is constitutional, even as applied to a redemption from a judgment entered and docketed before the passage of the act. Dunn v Dewey, 75 M 153, 77 NW 793.

R. L. 1905, s. 2872, relating to the increase of capital stock of railway corporations, does not violate the provision of the constitution which forbids the enactment of any law impairing the obligation of contracts. State v G. N. Ry. Co. 100 M 445, 111 NW 289.

R. L. 1905, s. 3546, creating and defining a thresher's lien, does not impair the obligation of contracts. Phelan v Terry, 101 M 454, 112 NW 872.

The holder of a tax certificate has a lien upon the land which ripens into a title in fee upon the expiration of the time for redemption and the failure of the landowner to redeem after the giving of the statutory notice of the expiration of the redemption period. Prior to the enactment of L. 1905, c. 271, the holder of a tax certificate could not protect his title without causing a notice of expiration of the time of redemption to be given. The notice might be given at any time after the expiration of the statutory period. This statute required the notice to be given within six years after the entry of the tax judgment. The statute does not impair any of the obligations of the contract. State ex rel v Krahmer, 105 M 422, 117 NW 780; Babcock v Johnson, 108 M 217, 221,

121 NW 909; State ex rel v Krahmer, 112 M 372, 128 NW 288; Byers v Minnesota Commercial Loan Co. 118 M 266, 136 NW 880; Downing v Lucy, 121 M 301, 141 NW 183. See 23 MLR 991.

State assignment certificates issued under L. 1902, c. 2, were not included within the limitation of L. 1905, c. 271. L. 1915, c. 77, applies to all state assignment certificates. The provision of this statute requiring the holder of a tax certificate to give notice of expiration of redemption and to record his certificate within seven years does not impair the obligation of the certificate holder's contract with the state. Compliance with this law imposes the duty of paying subsequent taxes, but this does not impair his contract. Northern Counties Land Co. v Excelsior L. M. & D. Co. 146 M 207, 178 NW 497; Hutchinson v Child, 164 M 195, 204 NW 648.

There is in this state no constitutional right belonging to the taxpayer to redeem from tax sales, nor any right to notice of expiration of redemption from such sale. Whatever rights he may possess in respect thereof, depend entirely upon statutory enactment. State v Aitkin County Farm Land Co. 204 M 495, 284 NW 63.

See 1934 OAG 355, 837.

L. 1903, c. 253, approved at the general election of 1904, increasing the rate of the gross earnings tax of railroad companies doing business in this state to four per cent, impairs no contractual or other vested right of defendant and is not repugnant to the constitution. State v G. N. Ry. Co. 106 M 303, 119 NW 202; State v C. G. W. Ry. Co. 106 M 290, 119 NW 211.

The city of Duluth by ordinance granted to the Duluth-Thunder Bay Railway Company a franchise on specified terms and conditions to construct a railway along Arthur avenue extended. The company accepted the ordinance and is constructing the railway. Prior to the passage of the ordinance, but subsequent to its introduction in the council, the Duluth Terminal Railway Company instituted condemnation proceedings to acquire the right to construct a railway along the same portion of the street. The two rights being inconsistent, the franchise granted by the ordinance is the prior and superior right. The placing of a limitation on the power of eminent domain by an amendment to the general law conferring the power did not impair the obligation of a contract or destroy any property right. Duluth Terminal Ry. Co. v City of Duluth, 113 M 459, 130 NW 18; Warnock Co. Inc. v Hudson Mfg. Co. 200 M 196, 199, 273 NW 710. See 22 MLR 108.

L. 1901, c. 224, under which respondent organized as a corporation for pecuniary profit, has been expressly repealed in the revision of 1905 and no provision substituted giving to such corporation exemption of its burying grounds from special assessments. Such exemptions are not vested rights but bounties that may be withdrawn by the legislature at any time. State v. Crystal Lake Cemetery Assn. 155 M 187, 193 NW 170.

The inheritance tax statute, as amended, does not infringe the constitutional provision against impairing the obligation of contracts. State ex rel v Probate Court, 128 M 371, 150 NW 1094; State ex rel v Probate Court, 168 M 508, 210 NW 389; In re Taylor's Estate, 175 M 310, 219 NW 153, 221 NW 64; In re Lund's Estate, 183 M 368, 236 NW 626. See 1 MLR 314, Jurisdiction for inheritance taxation. See MLR 631. Also, 13 MLR 273, are bonds tangible or intangible property. See 1938 OAG 104.

Under the Minnesota inheritance tax law (L. 1905, c. 288, s. 1, as amended by L. 1911, c. 372, s. 1), providing for a succession tax when a transfer is by will or intestate law of property within the jurisdiction of the state and decedent is a nonresident, bonds of a railroad company, incorporated under the laws of Minnesota, having its principal place of business and general offices in the state, payable in New York, owned by a resident of Illinois and in his possession there at the time of his death, the persons succeeding thereto being residents of Illinois, the railway being subject to jurisdiction in states other than Minnesota and it not being necessary to invoke the laws of Minnesota or resort to its courts, are not subject to a succession tax in Minnesota, distinguishing State v Probate Court, 128 M 371, 150 NW 1094. State v Chadwick, 133 M 117, 157 NW 1077, 158 NW 637.

Capital stock represents the interest of its owner in the corporation, and the rights of such owner rest on the laws of the state which created the corporation and a transfer by will of the capital stock of a domestic corporation is subject to the inheritance tax of this state, although the testator was a resident of another state and kept the certificates of stock in such state and the courts of that state could acquire jurisdiction of the corporation by service of process therein. The situation of a stockholder differs from that of a bondholder; State v Chadwick, 133 M 117, 157 NW 1077, 158 NW 637, distinguished. State ex rel v Probate Court, 142 M 415, 172 NW 318.

L. 1919, c. 86, imposing upon the securities commission the duty of determining whether a certificate of authority to do business as a bank should be issued, applies to proceedings pending before the superintendent of banks at the time of its enactment; so construed the statute is not unconstitutional as in contravention of the provision forbidding the enactment of laws impairing the obligation of contracts. Carlson v Pearson, 145 M 125, 176 NW 346.

Laws 1933, Chapter 55, as amended by Laws 1933, Chapter 277, permitting reorganization of state banks, does not impair obligation of contracts in violation of this section. Baltrusch v Citizens State Bank, 211 M 77, 300 NW 201.

L. 1921, C. 85, creating a compensation insurance board and authorizing such board to establish rates for compensation insurance, is not retroactive and the rates adopted by the board do not apply to contracts of insurance entered into before the act became operative. Builders L. M. L. Ins. Co. v Compensation Ins. Board, 151 M 427, 186 NW 860.

Where a statute deprives an individual of a legal right he enjoyed when it was enacted, it should be construed to be prospective in its operation unless a contrary construction is essential to give it effect, or its terms are so explicit as to preclude any other interpretation. Builders L. M. L. Ins. Co. v Compensation Ins. Board, 151 M 427, 186 NW 860; Thorman v State Bank of Waverly, 166 M 433, 435, 208 NW 185.

The obligation of an antenuptial contract cannot be impaired, nor the rights of the parties thereunder affected, by subsequent legislation. Desnoyer v Jordan, 27 M 295, 7 NW 140; Hosford v Rowe, 41 M 245, 250, 42 NW 1018; Appleby v Appleby, 100 M 408, 419, 111 NW 305.

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 forbidding him to exercise the right without just cause. Boice v Boice, 27 M 371, 7 NW 687.

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, could not be impaired by legislation subsequent to the purchase. Such purchase is a contract with the state, the terms of which are embodied in the law then in force. Fleming v Roverud, 30 M 273, 15 NW 119; State v Foley, 30 M 350, 15 NW 375; Coles v Washington County, 35 M 124, 27 NW 497; Otis v City of St. Paul, 94 M 57, 59, 101 NW 1066, 1134; Comstock, Ferre & Co. v Devlin, 99 M 68, 73, 108 NW 888.

The right of redemption from a tax sale must be governed by the law in force at the date of the sale; it can neither be shortened nor extended by subsequent legislation. Merrill v Dearing, 32 M 479, 21 NW 721.

Under G. S. 1866, c. 11, s. 155, the purchaser at a tax sale was entitled to refundment when such sale was "declared void by a judgment of court". The action in which such judgment was rendered was commenced 23 years after such sale. The holder of the tax title could have performed this condition precedent by bringing such an action himself, and his right to refundment was barred; that the limitation to be applied by analogy to the performance of this condition precedent is not the six-year limitation, which could be applied to the cause of action for refundment when it accrues, but the 15-year limitation, which applies to actions for the recovery of the possession of real estate; and, if such tax sale is not declared void by a judgment in an action commenced within 15 years after the time to redeem from such sale expires, the right to refundment is barred, whether the real estate is held adversely by either party, or is vacant during such 15 years. State ex rel v Norton, 59 M 424, 61 NW 458.

Rights of purchasers of lands sold for taxes protected from subsequent legislation. State v McDonald, 26 M 145, 1 NW 832.

Where a court by its judgment determines the construction of a contract between the parties that construction is final and cannot again be made the subject of litigation between them. The legislature cannot, by subsequent enactment, change the rights of the parties under the contract. Seastrand v Foley & Co. 144 M 239, 175 NW 117.

As between the purchaser at a tax sale and the owner of the property sold a contract relationship exists and the law as then in existence determines the contractural rights and obligations of the parties, but that rule does not prevent the legislature from making changes in the manner of enforcing the lien for taxes, provided such changes do not substantially impair any of the obligations of the contract. State v Aitkin County Farm Land Co. 204 M 495, 496, 284 NW 63. See 23 MLR 991. See 1934 OAG 837.

See 18 MLR 849, Validity of "tax bargain" statutes.

Liberty of contract means freedom to contract within the law governing the subject and the persons making the contract, and L. 1925, c. 38, does not infringe such right. Valid laws in force at the time a contract is made enter into and become a part of the contract and cannot be said unconstitutionally to impair the obligation of such contract. Hoff v First State Bank of Watson, 174 M 36, 218 NW 238; Hagen v First State Bank of Watson, 180 M 113, 114, 230 NW 267; Paul v Farmers & Merchants State Bank, 187 M 411, 415, 245 NW 832. See 14 MLR 553, 677.

L. 1933, c. 44, authorizing the sheriff to adjourn mortgage foreclosure sales for not to exceed 90 days, is not shown to have substantially diminished the value of plaintiff's mortgage or to have substantially or seriously retarded or obstructed its enforcement and is valid. State ex rel v Moeller, 189 M 412, 249 NW 330.

L. 1933, c. 366, providing for the continuance of the right of redemption from a sale for delinquent taxes for a period of 12 months after proof of service of a notice of expiration of the time within which redemption can be made, is constitutional. State ex rel v Moeller, 189 M 412, 249 NW 330; Blaisdell v Home B. & L. Assn. 189 M 422, 448, 249 NW 334, 893, affirmed 290 US 398; State ex rel v Erickson, 191 M 188, 253 NW 529; Absetz v McClellan, 207 M 202, 290 NW 298. See 18 MLR 319, 595.

Valid laws in force at the time contract is made enter into and become a part thereof and cannot be said unconstitutionally to impair obligations assumed subsequent to their enactment. Timmer v Hardwick State Bank, 194 M 586, 261 NW 456; Baltrusch v Citizens State Bank, 211 M 77, 300 NW 201; Propp v Johnson, 211 M 159, 300 NW 615.

The threatened action of the civil service commission of the city of Minneapolis that it would require said employees to take promotional examinations did not violate this section, forbidding impairment of obligation of contract. Tanner v Civil Service Comm. of Minneapolis, 211 M 450, 456, 1 NW(2d) 602.

4. Abdicating police power

In 1892 the council of the city of Minneapolis enacted a certain ordinance requiring the St. P. M. & M. Ry. Co. to construct certain bridges and approaches thereto at the intersections of certain streets with the railroad tracks. By section 8 thereof the council expressly agreed that, in consideration of the performance of the conditions of the ordinance by the railway company, the city would thereafter construct and maintain all crossings or approaches made necessary by the opening of new streets. The railway company contended that this ordinance constituted a valid contract with the city and, they having complied with it, it was beyond the power of the city to later require them to construct the bridge in question; that to require the company to do so would impair the obligation of the contract, in violation of the constitution. The power of the state to require the defendants to construct this bridge, or any other bridge, at streets crossing the right of way, is an exercise of the police power, which can be neither contracted away nor lost by inaction on the part of the

public authorities. The contract was beyond the authority of the council and ultra vires and void. State v Minnesota T. Ry. Co. 80 M 108, 83 NW 32; State ex rel v St. P. M. & M. Ry. Co. 98 M 380, 403, 108 NW 261; State ex rel v N. P. Ry. Co. 98 M 429, 108 NW 269; State ex rel v Wisconsin, M. & P. R. Co. 98 M 536, 108 NW 822; Mpls., St. P. R. & D. E. T. Co. v City of Minneapolis, 124 M 351, 145 NW 609; State ex rel v G. N. Ry. Co. 134 M 249, 256, 158 NW 972; City of St. Paul v C. St. P. M. & O. Ry. Co. 139 M 322, 326, 166 NW 335; State ex rel v C. M. & St. P. Ry. Co. 135 M 277, 280, 160 NW 773; City of St. Paul v Minnesota T. Ry. Co. 155 M 277, 280, 160 NW 773; City of St. Paul v Minnesota T. Ry. Co. 155 M 237, 193 NW 175.

A contract ultra vires in the general and primary sense that it is wholly outside the power of the corporation to make under any circumstances is ordinarily void in toto; but whether a contract strictly within the scope of the corporation's powers, but ultra vires in the restricted or secondary sense that the power has been irregularly exercised, or that it was beyond the power of the corporation in some particular or through some undisclosed circumstances, is wholly void or not, depends upon the circumstances of the particular case. Where a municipal corporation let a contract for the construction of a sewer without complying with charter requirements and without obtaining the consent of two property owners through whose lands the sewer was to pass or of the federal authorities for its outlet on government land the contract was ultra vires in the secondary and restricted sense only. Bell v Kirkland, 102 M 213, 214, 113 NW 271.

The right of private enterprises to railroad side-track facilities, whether based upon contract, prescription, or estoppel, as against the railroad company, is subject to a city's police power to order a separation of railroad and street grades where public necessity so requires. Twin City Separator Co. v C. M. & St. P. Ry. Co. 118 M 491, 137 NW 193.

Since the owners of private railroad bridges have the legally enforceable and uncompensable duty to alter the structures pursuant to a command under the police power, the city cannot undertake to perform this private duty even though proper bridge clearances would permit the city to enjoy the benefits of river traffic when improvements were completed by the federal government. Bybee v City of Minneapolis, 208 M 55, 292 NW 617.

5. Attainder

Under the constitutional provision that there shall be no forfeiture of estate for conviction of crime and the statute providing that one sentenced to life imprisonment shall be deemed civilly dead, plaintiff did not by his sentence of life imprisonment forfeit his property rights. Hall v Crook, 144 M 82, 174 NW 519.

Section 12. IMPRISONMENT FOR DEBT; PROPERTY EXEMPTION.

1. Imprisonment for debt
2. Property exemption
3. Proviso

1. Imprisonment for debt

The bastardy act is not repugnant to the provision prohibiting imprisonment for debt. State v Becht, 23 M 1.

The possible penalties in bastardy proceedings are not imposed as a penalty for begetting the child, but because of the failure to comply with an order or judgment of the court. State v Jaffrey, 188 M 476, 480, 247 NW 692.

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

In a proceeding in contempt to coerce the payment of money one cannot be imprisoned when unable to pay. He can be imprisoned only when he can pay but will not. Cohen v Mirviss Mfg. Co. 173 M 100, 216 NW 606.

When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he performs it. Johnson v Froelich, 196 M 81, 264 NW 232.

The sentence of the court in a constructive contempt proceeding provided that defendant might purge himself of the sentence of imprisonment by compliance with the judgment, but does not make the proceeding one to enforce plaintiff's judgment and to coerce compliance by the defendant. Provisions authorizing one guilty of contempt to purge himself are proper and within the sound discretion of the court. State ex rel v District Court, 113 M 304, 129 NW 583; State ex rel v Searles, 141 M 267, 170 NW 198; Wilkins v Corey, 172 M 102, 214 NW 776; Wenger v Wenger, 200 M 436, 444, 274 NW 517.

See 9 MLR 368, Validity of statutes regulating power of courts to punish for contempt.

See 22 MLR 424, Power of court to order payment of debt arising ex contractu.

An order punishing, by imprisonment for contempt, an assignor in insolvency for refusing to turn over money to the assignee, does not violate the constitution, as inflicting imprisonment for debt. Burt v Minneapolis Stockyards & Packing Co. 56 M 397, 57 NW 940.

Where husband is ordered to pay suit money and temporary alimony to his wife and is unable to pay, and did not voluntarily create the disability so as to avoid the payment, he cannot be imprisoned until he obeys the order. Where he has power to comply with the order but fails to do so he is guilty of contempt of court and may be imprisoned until he purges himself of the contempt by paying the money as ordered. Under these circumstances the enforcement of the order does not violate the provision forbidding imprisonment for debt. Hurd v Hurd, 63 M 443, 65 NW 728; Laff v Laff, 161 M 122, 200 NW 936; State v Strong, 192 M 420, 256 NW 900. See 18 MLR 45, Nonpayment of alimony, enforcement by commitment.

An order in contempt proceedings imposing a fine for disobedience of a writ of mandamus commanding the furnishing of telephone service and imprisonment until compliance with it is of a dual character. In respect of the fine it is in vindication of the authority of the court and imposes punishment for a criminal contempt or quasi-criminal in character and is reviewable on certiorari. In respect of the imprisonment it is a remedy of a party to coerce obedience and is reviewable on appeal. Such an order does not impose a fine nor an imprisonment such as is prohibited by section 588.02. State ex rel v Searles, 141 M 267, 170 NW 198.

L. 1887, c. 170, (Mechanic's lien act, since repealed) making it a felony for a contractor to fail to pay his men, violates this section, as inflicting imprisonment for debt. Meyer v Berlandi, 39 M 438, 40 NW 513.

L. 1915, c. 105, which provides that the misuse by a contractor, with intent to defraud, of moneys paid to him by the landowner for whom the contractor is making improvements on the land shall be larceny, is not legislation resulting in imprisonment for debt. The purpose of the statute is to punish a fraudulent act because of the fraud, not to collect a debt. State v Harris, 134 M 35, 158 NW 829.

G. S. 1878, c. 124, s. 23, punishing frauds on hotel-keepers, is not unconstitutional as an attempt to imprison for debt. State v Benson, 28 M 424, 10 NW 471.

Coercing compliance with the judgment of the court by imprisonment does not infringe the inhibition against imprisonment for debt. Campbell v Motion Picture Machine Operators, 151 M 238, 186 NW 787; City of Minneapolis v Mpls. St. Ry. Co. 154 M 401, 412, 191 NW 1004. See 16 MLR 796.

The payment of attorney's fees allowed in contempt proceedings to enforce a provision in the judgment of divorce for the payment of support money may be coerced by imprisonment. Sessions v Sessions, 178 M 75, 81, 226 NW 211, 701.

The statute does not authorize the enforcement of the payment of costs by imprisonment as was done by the judgment in this case. State v Wiebke, 154 M 61, 191 NW 249.

See 7 MLR 408, Alimony as a debt, imprisonment for nonpayment.

See 22 MLR 424, Imprisonment for debt.

2. Property exemption

The exemption of property from sale on execution is an exemption from all liabilities. Tuttle v Strout, 7 M 465 (374).

No property can be claimed as exempt until the legislature determines to what property and to what amount the exemption shall extend. Kelly v Dill, 23 M 435; Liebetrau v Goodsell, 26 M 417, 4 NW 813.

Immediately upon his purchase the judgment debtor took possession of and occupied the premises as his homestead. He instantaneously went into the actual occupancy of the property, claiming it as exempt under the laws of this state and continually thereafter resided upon same until he sold to plaintiff. There was no intervening space of time, no appreciable or perceptible interval, between the act which made him the owner and that of occupancy. He took possession instantly and there was no period in which the lien of the judgment attached as against the homestead right. The facts in the case of Kelly v Dill, 23 M 435, and in the case of Liebetrau v Goodsell, 26 M 417, 4 NW 813, are easily distinguishable from those existing in the case at bar. Neumaier v Vincent, 41 M 481, 482, 43 NW 376.

As used in the homestead exemption laws, the terms "occupancy" and "residence" refer to an actual occupancy of the premises and an actual residence thereon as a home or dwelling-place. If the owner removes from and ceases to actually occupy the premises for more than six months, without filing the notice required by G. S. 1878, c. 68, s. 9, his right to claim the same as a homestead ceases, although he may have removed therefrom with the intention of returning and resuming his occupancy at some future time. This right will not be regained by his mere intention and preparation to return, unaccompanied by an actual resumption of his occupancy. Quehl v Peterson, 47 M 13, 49 NW 390.

A judgment lien on real property is not defeated by a homestead right acquired by the judgment debtor after the docketing of the judgment. Rusch v Lagerman, 194 M 469, 261 NW 186.

In creating the homestead exemption the legislation need not impose any particular condition or mode of occupancy. The fact that part of the land on which one'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 M 154 (124); Umland v Holcombe, 26 M 286; Jacoby v Parkland D. Co. 41 M 227, 43 NW 52; Delisha v M. St. P. R. & D. E. T. Co. 110 M 518, 126 NW 276; Lockey v Lockey, 112 M 512, 128 NW 833. See 1 MLR 90.

To constitute a homestead the claimant's residence or dwelling must be, or must have been, situated thereon. The dwelling being on one tract and the claimant owning another, which merely touches the first at a corner, the second is not part of the homestead. Kresin v Mau, 15 M 116 (87).

A mortgagee of a tract of land exceeding 80 acres, including the homestead of the mortgagor, is not bound by a judgment, to which he is not a party, foreclosing a mechanic's lien and reducing the exempt homestead below the limit of 80 acres. In default of a lawful selection of his homestead premises to that extent, by the mortgagor, while owned and occupied by him, or by the court, or under its direction, the mortgagor, or his assigns, upon succeeding to the title of the mortgaged premises, including such homestead, may make such selection to the lawful limit as against such judgment. Talbot v Barager, 37 M 208, 34 NW 23.

Eighty acres of land and the dwelling house thereon, owned by a married man who had left his wife and children, and which were occupied by him with a woman unlawfully living with him as his wife, constituted his homestead. His deed, not signed by his lawful wife, was void as to such homestead. Upon his death intestate such homestead descended to his lawful wife and children and their rights therein vested on the day he died, without any acts on their part or on the part of the probate court. Rux v Adam, 143 M 35, 172 NW 912.

A homestead law which measures the homestead by area and not by value is valid. Cogel v Mickow, 11 M 475 (354); Barton v Drake, 21 M 299.

A lien claimant having a lien anterior and superior to a homestead right may enforce his lien without any reference to such homestead right and in such case the homestead claimant cannot be permitted to select land which he regards as his homestead so as to interfere with the enforcement of the lien. Tuttle v Howe, 14 M 145 (113).

Any property authorized to be acquired and held as a homestead, under G. S. 1866, c. 68, s. 1, and held and occupied as such, is protected against any mortgage, except for the purchase money, given by the owner, if a married man, without the signature of his wife. A debt incurred for lumber to build a dwelling house on a lot held under a contract of purchase and claimed and occupied as a homestead represents no part of the purchase money of such homestead. Smith v Lackor, 23 M 454, 457.

In an action brought against the husband alone, the wife not being a party, the court entered judgment directing defendant and his wife to convey to plaintiff an undivided half interest in land the title to which was in defendant and which was the homestead of defendant and his wife, adjudging that in case of failure to convey the judgment stand as a conveyance. Defendant and his wife did not convey, nor did either of them. The judgment was void as to the wife and the husband. Brokl v Brokl, 133 M 218, 158 NW 250.

Two separate ten-acre tracts of land, touching only at the corners, between which is a regular roadway, if owned, occupied, and cultivated as one farm, may constitute a homestead, although the residence and appurtenances are all located upon one tract. Brixius v Reimringer, 101 M 347, 112 NW 273.

Where owner of homestead insures same against loss by fire and the property is later destroyed, one who furnishes material for construction of the building, in the absence of some contract stipulation, has no claim to or lien upon the insurance money by force of this section or otherwise and such insurance money is exempt from garnishment. Remington v Sabin, 132 M 372, 157 NW 504. See 1932 OAG 257.

Minn. St. 1941, s. 176.23, which provides that compensation awarded shall have the same preference against the assets of the employer as other unpaid wages for labor, does not make the homestead subject to a judgment upon an award. Aase v Langston, 175 M 161, 220 NW 421.

The provision making the homestead liable to seizure and sale for any debt incurred to a laborer or servant has reference to the relation of master and servant or employer and employee and makes the homestead of the master or employer liable for debts incurred by him to his laborers and servants. It does not create liability against the homestead of one who is not the master or employer of the laborer or servant although he has, by some collateral contract or agreement with the employer, made himself liable for the payment of the debt. Lahto v Peterson, 175 M 389, 221 NW 534.

By the recovery and docketing of a money judgment for a debt for work done and material furnished in the construction, repair, and improvement of a homestead, a judgment lien is obtained upon the homestead. Keys v Schultz, 212 M 109, 2 NW (2d) 549.

L. 1939, c. 315, which provides a lien in favor of the state on any real estate owned by a recipient of old age assistance, which lien is not enforceable during the lifetime of the recipient nor during the life of the surviving spouse, if the property is occupied as a homestead, does not violate the exemption provision of this section, since homestead exemption is a creature of statute. If chapter 315 be deemed a limitation on homesteads, because allowing imposition of lien without wife's consent, it is nonetheless a valid enactment. Dimke v Finke, 209 M 29, 295 NW 75. See MLR 520, Old age pensions, validity of homestead lien law.

1934 OAG 796, Classification of homesteads for purposes of taxation.

See 11 MLR 635, Exemption of crops growing upon the homestead.

See 25 MLR 66, Scope of the homestead exemption.

G. S. 1878, c. 66, s. 311, which provides that exempt personal property shall not be exempt in actions for purchase money, is constitutional. Rogers v Brackett, 34 M 279, 25 NW 601; Langevin v Bloom, 69 M 22, 71 NW 697.

The legislature may provide for the exemption of a reasonable amount of property but it cannot discriminate between different classes of debts or creditors. Coleman v Ballandi, 22 M 144; Keller v Struck, 31 M 446, 18 NW 280; Meyer v Berlandi, 39 M 438, 441, 40 NW 513.

L. 1885, c. 184, s. 17, purports to exempt from seizure for the debts of the insured and beneficiary the insurance money payable by all mutual insurance companies doing business in the state and of which the insured is a member. The only limit to the amount of insurance money thus attempted to be exempted is the

aggregate capacity or power of all such companies doing business in the state to insure the life of one individual. This is no proper or reasonable limitation. The amount thus exempted is unreasonable and section 17 is unconstitutional. In re How, Insolvent, 59 M 415, 61 NW 456.

The rule laid down in the former opinion (59 M 415, 61 NW 456) is modified to the extent that so far as L. 1885, c. 184, s. 17, attempts to exempt the insurance moneys there mentioned from the creditors of the beneficiary when such moneys are a gift to the beneficiary, for which she parted with no consideration and by reason of which her creditors are not injured, section 17 is constitutional. In re How, Insolvent, 61 M 217, 63 NW 627.

Under Minn. St. 1941, ss. 64.18, 550.37 (14, 15), insurance money payable on a life policy on the life of the husband to his wife is exempt from attachment by garnishment in an action against the widow. Rose v Marchessault, 146 M 6, 177 NW 658.

See 22 MLR 1052, Validity and effect of statute exempting the proceeds and avails of life insurance policies from the claims of creditors.

Where a horse which is exempt from sale on execution is delivered by the owner to the keeper of a livery or boarding stable, with a request to feed and care for him, the horse becomes thereby subject to a lien to secure the feed and keeping, as provided by G. S. 1894, s. 6249. The statute is not unconstitutional as to exempt property. Flint v Luhrs, 66 M 57, 68 NW 514.

L. 1919, c. 511, s. 4, giving keepers of boarding and lodging houses a lien upon the baggage and other personal effects of boarders and lodgers, does not contravene this section. Halsey v Svitak, 163 M 253, 203 NW 968.

Plaintiff's lien for labor was not affected by the defendant's voluntary bankruptcy proceeding, instituted about a month after the docketing of the judgment, and the lien may be enforced by either special or general execution. Gregory v Cale, 115 M 508, 133 NW 75; Nadeau v Ball, 179 M 6, 228 NW 168.

So much of L. 1913, c. 375, as is contained in the proviso thereto rendering the wage exemption prescribed by the main portion of the act inoperative as against a debt for necessaries supplied to the debtor or his family dependent upon him, where he has been paid $35.00 or more on account of his wages for the 30 days next preceding the levy, is obnoxious to this section, but the remainder of the act is not thereby invalidated. Bofferding v Mengelkoch, 129 M 184, 152 NW 135.

The statute exempting the library and implements of a professional man from sale on execution does not exempt the equipment and apparatus of a private hospital owned and operated by a practicing physician. DeCoster v Nenno, 171 M 108, 213 NW 538.

An automobile is not exempt from levy and sale as a "wagon" under Minn. St. 1941, s. 550.37 (6). Whitney v Welnitz, 153 M 162, 190 NW 57; Poznanovic v Maki, 209 M 379, 296 NW 415.

A farmer is not entitled to an exemption as a "mechanic, miner, or other person" under Minn. St. 1941, s. 550.37 (8). Poznanovic v Maki, 209 M 379, 296 NW 415.

3. Proviso

The provision that exempt property shall be liable for debts incurred for work done or material furnished in the construction, repair, or improvement of the same, is not unconstitutional because the subject is not expressed in the title of L. 1887, c. 2, by which the proposed amendment to the constitution was submitted to the people. In proposing an amendment to the constitution it is not necessary that the legislature pass a formal act or statute. It may be done by a joint resolution of both houses. It is not the action of the legislature in proposing the amendment but the action of the people in adopting it that gives it effect as part of the organic law of the state. Julius v Callahan, 63 M 154, 65 NW 267.

A subcontractor who furnishes material for a joint courthouse and city hall being erected for a county and a city cannot acquire a mechanic's lien on the building or on the land on which it is being erected. The last proviso of this section, as amended in 1888, does not give any lien on such a building or any right of seizure and sale of the same for material so furnished. Burlington Mfg. Co. v Board of Courthouse & City Hall Commrs. 67 M 327, 69 NW 1091.

The provision 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 is self-executing and has the effect of subjecting property exempt from other debts to seizure and sale for the debts specified to the same extent and in the manner as if no exemption law existed. Where the debt is for materials furnished to erect a dwelling on a homestead the creditor can obtain an ordinary money judgment and seize and sell the property on execution the same as any other real estate of his debtor. Nickerson v Crawford, 74 M 366, 77 NW 292.

Since the amendment of the constitution in 1888 homesteads are subject to mechanics' liens. Marking off and grading a part of the homestead and erecting a second dwelling house thereon does not operate as a waiver of the homestead right in such tract, but constitutes an improvement of the homestead for which mechanics' liens may be filed against it. Gale v Hopkins, 165 M 177, 206 NW 164.

The entry and docketing of a judgment against a bankrupt, pending the bankruptcy proceedings and before the discharge of the bankrupt, becomes a valid lien upon real property of the bankrupt, which by reason of the homestead exemption at the time of the adjudication in bankruptcy did not pass to the bankrupt estate, but which was liable to the payment of the debt represented by the judgment, because not a part of the homestead when the debt was created; the homestead exemption having been enlarged by statute after the creation of the debt. Gregory Co. v Cale, 115 M 508, 133 NW 75.

A homestead is not exempt from an execution on a judgment entered on an indebtedness incurred for labor and materials furnished in erecting a house on the homestead and a lien for the sum due may be acquired in the action as well by levying an attachment as by docketing the judgment. Bagley v Pennington, 76 M 226, 78 NW 1113; Westerman Lbr. Co. v Raschke, 167 M 243, 208 NW 960; Westerman Lbr. Co. v Raschke, 172 M 198, 215 NW 197.

The amendment to this section, adopted in 1888, relating to exemption from seizure and sale of property for debts and liabilities, was wholly prospective in its operation; and the collection of debts contracted or entered into for work done or materials furnished in the construction of a building upon debtor's homestead prior to its adoption cannot be enforced under its provisions as against such homestead. Brown v Hughes, 89 M 150, 94 NW 438.

Any real estate of a debtor, including his homestead, is liable to be sold on execution for the payment of any debt incurred to any laborer or servant for labor or services and such liability extends to a debt incurred by a copartnership of which the debtor is a member for such labor or services. Lindberg v Johnson, 93 M 267; 101 NW 74.

The provision that a homestead shall be subject to seizure and sale for the payment of debts incurred for labor and material in its construction, improvement, or repair, does not of itself create a lien upon the property which may be enforced in an action for foreclosure. A specific lien for the debts enumerated in the constitution may be acquired in one of three ways: (1) By proceeding under the mechanic's lien statute; (2) by attachment in an action at law to recover the debt; or (3) by reducing the claim to judgment. Hasel v McMullen, 109 M 332, 123 NW 1078.

An action by a creditor of a decedent pursuant to G. S. 1913, ss. 8182 to 8192, to recover of defendants, heirs of deceased, to the extent of the value of the real property inherited by them, may be maintained though his claim was not presented to the probate court, the sole property of the deceased and that inherited being a homestead, the debt of the creditor being for the labor performed by a servant and excepted from the operation of the homestead exemption law, no order limiting the time for filing claims having been entered by the probate court, because of a statute providing that when the only property of the deceased is a homestead no such order need be made. Ramstadt v Thunem, 136 M 222, 161 NW 413.

The provision subjecting homesteads to liability for any debt incurred to any laborer or servant for labor or service performed does not include a claim by an automobile salesman for unpaid wages and commission earned while an employee of the owner of the homestead. Fletcher v Scott, 201 M 609, 277 NW 270.

An action may now be maintained in the district court against the representatives and heirs of a deceased person to enforce a lien or charge for work and

materials furnished for the improvement of a homestead at the request of the deceased, without presenting the claim therefor to the probate court for allowance, it appearing that deceased left no property other than the homestead. Anderson v Johnson, 208 M 152, 293 NW 131. See 25 MLR 385, Creditor's claim against homestead.

Section 13. PRIVATE PROPERTY FOR PUBLIC USE.

1. Taking
2. Public use
3. Damage or destruction
4. Just compensation
5. Police power

1. Taking

The state has not the right, without making compensation, to take or destroy the property of riparian owners in making a water course navigable when it is not so by nature, or in appropriating such water course to the public use by artificial erections or improvements. Weaver v Mississippi & Rum River Boom Co. 28 M 534, 11 NW 113; McKenzie v Mississippi & R. R. Boom Co. 29 M 288, 13 NW 123; In re Minnetonka Lake Imp. 56 M 513, 58 NW 295; Hueston v Mississippi & R. R. Boom Co. 76 M 251, 79 NW 92; Casey v Mississippi & R. R. Boom Co. 108 M 497, 122 NW 376.

The removal, by excavating, by a railroad company in constructing its road, of the lateral support to the soil adjoining its right of way, is a taking and the right to remove it can be acquired only by purchase or condemnation. McCullough v St. P. M. & M. Ry. Co. 52 M 12, 53 NW 802.

Certain trespasses upon real property occurring at intervals of a year or two are a taking of the property for public use. McKenzie v Mississippi & R. R. Boom Co. 29 M 288, 13 NW 123.

G. S. 1866, c. 31, relating to dams and mills, is constitutional, the taking thereunder being for a public use. Miller v Troost, 14 M 365 (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 M 108 (78).

Where defendant's charter gives it the right to take land before making compensation, the latter provision should be stricken out, leaving defendant the right to take, after first making compensation. Weaver v Mississippi & R. R. Boom Co. 30 M 477, 16 NW 269.

A statute authorizing a taking before compensation made is void. Hursh v First Div. St. P. & P. R. Co. 17 M 439 (417); Warren v First Div. St. P. & P. R. Co. 18 M 384, 396 (358, 370); State v C. M. & St. P. Ry. Co. 36 M 402, 31 NW 365.

The charter of defendant authorized it to enter upon lands and construct and operate its road over them, in advance of making compensation for the land taken. Some years before instituting proceedings to obtain the right of way over lands of plaintiff, it entered upon a strip of land belonging to plaintiff, constructing its road over it, and has been in possession of and operating its road over the same ever since. In proceedings to ascertain the compensation to be paid the owner for right of way across the land such owner is not entitled to have included, as a part of such compensation, the value added to the land by the road-bed, ties, rails, etc., placed on it by defendant. Greve v First Div. St. P. & P. R. Co. 26 M 66, 1 NW 816.

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 land to appear. Langford v County Board, 16 M 375 (333); Weir v St. P. S. & T. F. Ry. Co. 18 M 171 (153); Banse v Town of Clark, 69 M 53, 71 NW 819; In re Improvement of Third Street, St. Paul, 177 M 146, 152, 225 NW 86.

It is not essential to the validity of statutory provisions for the condemnation of property for public use, or for the assessment of damages and benefits from public improvements, that the landowners have notice of the action of the proper authorities in determining what property shall be taken, or what property may be

benefited by such improvements; but, in respect to the proceedings to ascertain the amount of compensation or damages to be paid to the landowner for property taken for public use, he is entitled to have the same determined by an impartial tribunal, and to notice and opportunity to be heard upon the matter before such tribunal. City of St. Paul v Nickl, 42 M 262, 44 NW 59.

L. 1885, c. 129, providing for taking land for a state park, is constitutional, against objection that damages are estimated at one period and actual appropriation is at a later period. Commissioners of State Park v Henry, 38 M 266, 36 NW 874; State ex rel v Otis, 53 M 318, 55 NW 143.

When proceedings are initiated to acquire land for a county road and the road is established and damages awarded to a landowner pursuant to section 162.21 and no appeal is taken, the right of the county to appropriate the land and the right of the landowner to receive the compensation awarded are fixed and payment of the award may be compelled, although the land is not physically appropriated or the road constructed or opened for travel. After the proceeding has reached this stage it can no longer be abandoned for the public has acquired a right to the land. State ex rel v Erskine, 165 M 303, 206 NW 447.

Condemnation proceedings for acquiring a right of way for highway purposes may be abandoned and discontinued by the state, in the exercise of its legislative function, at any time prior to the making of an award where the state has not entered into possession of the property included in the petition or appropriated it to its purposes. State, by Ervin v Appleton, 208 M 436, 294 NW 418.

L. 1887, c. 43, providing for laying out a road by petitioners, does not authorize taking land before payment, and is not unconstitutional. State v Rapp, 39 M 65, 38 NW 926.

The highway commissioner's order designating the permanent re-routing of a trunk highway does not in itself constitute a taking of the property within the designated route. State, by Benson v Erickson, 185 M 60, 239 NW 908.

An act for taking parks in a city and providing a special fund is unconstitutional on the ground that the fund was insufficient and no liability, except from the fund, was imposed on the city. In re Lincoln Park, 44 M 299, 46 NW 355.

The commencement and pendency of proceedings according to statute for the appropriation of private property to public use does not deprive the owner of the right of alienation and does not constitute a taking of property for which, under the constitution, compensation must be first paid or secured. Duluth Transfer R. Co. v N. P. Ry. Co. 51 M 218, 53 NW 366.

Several miles above plaintiff's land defendant corporation built two dams across the Cloquet river and one of its tributaries, each 20 feet high, and thereby restrained and collected large quantities of water and, by means of sluices, flood gates, and locks, discharged this water in large volumes into the channel of the river below the dams, causing the water to suddenly rise above its usual, natural, and ordinary high-water mark and overflowing plaintiff's land, greatly injuring and damaging same. This was a taking of plaintiff's land, within the meaning of the constitution, which defendant had no right to do without plaintiff's consent or without first paying compensation therefor. Carlson v St. Louis River D. & I. Co. 73 M 128, 75 NW 1044; Gravel v Little Falls I. & N. Co. 74 M 416, 419, 77 NW 217.

G. S. 1894, ss. 1883 to 1893, as amended by L. 1895, c. 47, providing for roads in more than one county, the notices of the presentation of the petition to be posted only in the judicial district where the petition was presented to the court, where the road runs in two judicial districts, are not so inadequate as to bring the law within the constitutional prohibition preventing the taking of property without just compensation. Forester v County Board, 84 M 308, 87 NW 921.

The charging of property with a lien for an improvement is a taking for public use and, if private property is assessed for public improvement a sum greatly in excess of the benefits conferred, it is a taking without just compensation and invalid. In re Assessment for paving Concord Street, St. Paul, 148 M 329, 181 NW 859; In re Assessment for paving Mississippi River Blvd, 169 M 231, 211 NW 9.

L. 1893, c. 64, providing for erection of public grain warehouses and grain elevators on or near the right of way of railways and for condemnation proceedings in connection therewith, is constitutional. It authorizes one who has erected a public elevator and is operating it on the site sought to be condemned under a

license from the railway company which has been revoked to take effect in the near future, to acquire the right and easement, to continue for a fixed term, to maintain and operate a public elevator on such site. Stewart v G. N. Ry. Co. 65 M 515, 68 NW 208; Simmons v N. P. R. Co. 147 M 313, 180 NW 114; N. P. Ry. Co. v Pioneer Fuel Co. 148 M 214, 181 NW 341.

The taking of land upon which to lay a side track from appellant's main line to a stone quarry and crushing plant would be for a public use. State v C. M. & St. P. Ry. Co. 115 M 51, 131 NW 859.

The fact that a proposed public cartway is solely to furnish ingress and egress for the premises of a single landowner and is to be located entirely over and upon the premises of another is not so conclusive of the private and against the public character of such way as necessarily to render the taking of the property necessary for such way a taking of private property for private use. Mueller v Town Board of Courtland, 117 M 290, 135 NW 996.

Private property cannot be taken for ditch purposes unless the ditch will serve some public purpose. Webb v Lucas, 125 M 403, 147 NW 273.

The power of eminent domain cannot be exercised to take private property for a private purpose. State ex rel v District Court, 133 M 221, 158 NW 240.

The citizen's charter of St. Paul, adopted May 1, 1900, lawfully conferred upon the council the right to take private property for public use upon just compensation being first made or secured. State ex rel v District Court, 87 M 146, 91 NW 300.

The site of a schoolhouse may be changed at a special meeting of the voters. In condemnation the question of necessity is a legislative one and when a school district selects a site in the manner authorized by statute its action is final and the question of the necessity of its taking is not open to judicial review. School District v Bolstad, 121 M 376, 141 NW 801. See 1924 OAG 171.

2. Public Use

Under a constitutional provision that private property shall not be taken, destroyed, or damaged for public use without just compensation therefor first paid or secured, a property owner may recover for special pecuniary damage to private property through the construction and operation of a railroad, though the damage is consequential and results from structures or operations that do not invade his land. Stuhl v G. N. Ry. Co. 136 M 158, 161 NW 501; McCarthy v City of Minneapolis, 203 M 427, 429, 281 NW 759; In re Town Ditch No. 1, 208 M 566, 576, 295 NW 47. See 1 MLR 452, 7 MLR 596, 9 MLR 290, 21 MLR 755.

Under this section, providing that property shall not be damaged for public use without compensation therefor, the compensation paid for acquiring a highway for public use does not include damage that may be later caused by the necessary improvement of the way. A remedy exists for such damage even though the improvement is necessary and the work is done in the only practicable manner. Dynes v Town of Kilkenny, 153 M 11, 189 NW 439.

Where land outside the state is taken for the construction of a project within the state and where the foreign landowner has submitted himself to the jurisdiction of the court within the state, compensation should not be denied because the land is located outside the state. Such denial would be a violation of this section. State, by Peterson, v Bentley, 216 M 146, 12 NW (2d) 347.

The state cannot avoid its duty to compensate for lands taken, on the ground that the funds provided for the project are exhausted, since compensation is sufficiently secured, within the meaning of this section, if the amount when determined is made a charge upon the public treasury of the state or of some subdivision thereof. Courts will assume that the legislature will respect constitutional mandates. State, by Peterson, v Bentley, 216 M 146, 12 NW (2d) 347.

The provisions of this section against taking or damaging property without first making just compensation, places the right to compensation for damages sustained by vacating a road upon the same basis as those sustained by establishing or altering any road. Underwood v Town Board of Empire, 217 M 385, 390, 14 NW (2d) 459.

A petition in condemnation proceedings in which petitioner sought to take private property (1) to create a water power and to construct, create, and main-

tain a water power plant to (a) supply water power from the wheels thereof, (b) generate and distribute electricity for heat, light, and power purposes, and (2) to construct and maintain canals and waterways on which to operate canal barges and be otherwise used for navigation purposes, was properly dismissed because the power of eminent domain can be exercised by a private individual or corporation only by express legislative authority. When the purposes stated in the petition are part public and part private the right to proceed must be denied. A use is not public unless, under proper regulations, the public has the right to resort to the property for the use for which it was acquired independently of the will or caprice of the corporation in which the title of the property vests upon condemnation. Minnesota Canal & Power Co. v Koochiching Co. 97 M 429, 107 NW 405. See 19 MLR 706.

R. L. 1905, s. 2841, authorizes certain corporations to condemn such private property as may be necessary or convenient for the transaction of the public business for which they may be formed under such statute. The term "public business" so used includes the construction of works for supplying the public with water, light, heat, and power. Minnesota Canal & Power Co. v Pratt, 101 M 197, 213, 112 NW 395.

Since the decision in the Koochiching Company case (97 M 429, 107 NW 405) the legislature has adopted a revision of the laws of the state which materially changes the provisions of the statutes which were there considered. The former statutes contained certain restrictions, and the doubt as to statutory authority was properly resolved against the petitioner. The present statutes authorize the condemnation of private property in aid of an enterprise such as that described in this petition, unless the necessary effect thereof involved the doing of some act which is forbidden by some other state or federal law. The statutes now authorize the exercise of the power of eminent domain in aid of the construction of canals and reservoirs to be used for the purpose of creating and distributing electric power for the use of the general public. Minnesota Canal & Power Co. v Pratt, 101 M 197, 216, 112 NW 395.

A legislative act which takes, or undertakes to authorize the taking of, private property for a private object, either by taxation, by the exercise of the power of eminent domain, or by any other means, is not a law but an arbitrary decree whereby the property of one citizen may be transferred to another. Such an act is beyond the limits of the powers granted to the legislatures of the states and is without legal force or effect. Laws 1907, c. 191, provided for the construction of a ditch over lands adjoining those of the owner seeking to drain his own wet lands, "where the construction of such ditch or drain is of benefit to the lands of adjoining owner or owners", and permitted the supervisors to decide upon the application for such a ditch "as they deem proper". Subsequent proceedings followed the analogy of local improvement assessments. The law is unconstitutional because in effect it authorized the condemnation and assessment of the property of individuals for a purely private purpose only, and deprived the landowner of his property without due process of law. State ex rel v Town Board of Rockford, 102 M 442, 444, 114 NW 244; Webb v Lucas, 125 M 403, 405, 147 NW 273.

Private property can be condemned only when it can be made to subserve some public use. If the purpose for which it is sought to take private property cannot be accomplished, such taking will not subserve public purposes, is not necessary within the meaning of the statute, and is unauthorized. Minnesota Canal & Power Co. v Fall Lake Boom Co. 127 M 23, 148 NW 561.

The furnishing of electric light and power to the public is a public service and land or water taken to forward such an enterprise is taken for a public use. A public service corporation authorized to condemn property cannot interfere with the navigable capacity of any navigable stream unless authorized by statute, but it may take private rights of property of the riparian owner upon compliance with the constitution and laws of the state and upon making just compensation, whether the stream be navigable or not. Otter Tail Power Co. v Brastad, 128 M 415, 151 NW 198.

The scheme of the drainage law is that no liability shall be incurred in the establishment and construction of a ditch beyond the assessed benefits, and any attempt to exceed this amount must be considered as futile under the constitu-

tional provision forbidding the taking of private property for public use without compensation. Alden v County of Todd, 140 M 175, 167 NW 548.

L. 1915, c. 128, provided for restricted residence districts in cities of the first class in which certain classes of buildings shall not be erected. Such restricted districts are established by the exercise of the power of eminent domain, and apartment houses, among other classes of buildings, are prohibited therein. The constitution permits the taking or destruction or damage of private property for public uses alone. The restriction, as applied to an apartment house, is based upon a public use and the statute providing for condemnation is constitutional. State ex rel v Houghton, 144 M 1, 174 NW 885, 176 NW 159; State ex rel v Houghton, 182 M 77, 233 NW 831. See 1934 OAG 493.

Municipalities authorized to take private property for certain designated purposes can take such property for no purposes other than those designated. They can no more take it for some other public purpose than for some private purpose. Minneapolis has power to condemn land for streets and alleys but not for a railroad right of way. The undisputed facts show that, under the guise of laying out an alley, the city is attempting to take relator's land for a railroad right of way. It may not thus pervert its power. State ex rel v District Court, 133 M 221, 158 NW 240.

The legislature is the exclusive judge of the quantity of land and of the estate therein which the public use requires. Fairchild v City of St. Paul, 46 M 540, 49 NW 325.

In 1883, plaintiffs were owners in fee of certain lots in St. Paul and conveyed to the city a "perpetual easement for the purpose of a public levee over and upon" the same, but the city never constructed a levee thereon and the lots have never been used for levee purposes. In 1891, the city, acting pursuant to Sp. L. 1891, c. 34, leased the property to defendant for private purposes. Defendant took possession thereof, erected buildings thereon, and now occupies same, carrying on a manufacturing business. The city acquired an easement only by the deed from plaintiffs, the latter retaining the fee to the land, together with such right of possession and beneficial use as would not be inconsistent with an exercise of the rights granted the city. The legal rights of the parties are fixed by the deed of conveyance. The lease of the property by the city conferred no right of possession in defendant as against plaintiffs. The act of the legislature under which the lease was made is unconstitutional, as attempting to divert property acquired by the city for a public use to an inconsistent and private use. Sanborn v Van Dyne, 90 M 215, 96 NW 41.

The city of Minneapolis attempted to vacate certain streets adjacent to plaintiff's property for the benefit of defendant railway company. Plaintiff sought to restrain and enjoin the company from taking possession of the vacated streets and to restrain and enjoin the city from enforcing the resolution vacating same. Plaintiff had no such cause of action. Conceding that plaintiff is entitled to damages for the vacation of these streets, he has an adequate remedy at law by an action to recover the same and is not entitled to an injunction restraining the city from carrying out the resolution. Heilscher v City of Minneapolis, 46 M 529, 49 NW 287; Vanderburgh v City of Minneapolis, 93 M 81, 100 NW 668.

Laws 1907, c. 104, authorized the county board to appropriate amounts for erecting and maintaining dams and embankments upon or along the shores of a lake, to keep and maintain the water in the lake at its natural and usual height and level. A permanent dam was erected across the natural outlet of the lake. Plaintiff owned land abutting the lake and sought to enjoin the board from proceeding with the construction of the dam because thereby her land would be permanently injured and a large part of it destroyed for agricultural purposes. The effect of the dam would be to restore the water in the lake to its original height and the damage which plaintiff would sustain would be merely incidental to an authorized act. In re Lake Minnetonka Improvement, 56 M 513, 58 NW 295; Stenberg v County of Blue Earth, 112 M 117, 127 NW 496.

3. Damage or destruction

Originally the constitutional prohibition extended only to the taking of property. The words "destroyed or damaged" were inserted in 1896.

Prior to the amendment of 1896 it was held that the municipal corporation was not liable for consequential damages suffered because of the establishment of a street grade. Lee v City of Minneapolis, 22 M 13; Alden v City of Minneapolis, 24 M 254; Yanish v City of St. Paul, 50 M 518, 52 NW 925; Willis v Winona City, 59 M 27, 60 NW 814.

Changes in grade were treated in the same manner as original grades in this respect. Henderson v City of Mpls., 32 M 319, 20 NW 322; Rakowsky v City of Duluth, 44 M 188, 46 NW 338; Abel v City of Mpls., 68 M 99, 70 NW 851.

Since the amendment of 1896 damages suffered by a property owner from the establishment of a street grade have been compensable. Sallden v City of Little Falls, 102 M 458, 113 NW 884; Wallenberg v City of Mpls., 111 M 471, 127 NW 422, 856; Hirsch v City of St. Paul, 117 M 476, 136 NW 269.

The rule has been applied to a change in the original established grade. Dickerman v City of Duluth, 88 M 288, 92 NW 1119; Maguire v Village of Crosby, 178 M 144, 226 NW 398; Foss v City of Montevideo, 178 M 430, 227 NW 357; Sallden v City of Little Falls, 102 M 458, 113 NW 884; Alden v Village of Tonka Bay, 130 M 359, 153 NW 738.

Recoverable damages include damages for lowering the grade, lateral support rendered necessary by excavations in the street, injury to a driveway leading from the street, and for other acts which result in substantially changing conditions to the injury of the property owner. Morgan v City of Albert Lea, 129 M 59, 151 NW 532.

The damages from a change of grade accrue when the physical change of grade is made and not before. Sather v City of Duluth, 123 M 300, 143 NW 906.

The amended constitutional provision applies to damages resulting from the vacation of a street. Vanderburgh v City of Mpls., 98 M 329, 103 NW 515, 108 NW 480.

When none of the property is taken the right of the owner to go into court and compel payment of the damage to his property by the invasion of his constitutional right satisfied the requirement that payment should first be made or secured. Austin v Village of Tonka Bay, 130 M 359, 153 NW 738.

Municipalities are liable for removing the lateral support of abutting land. Dyer v City of St. Paul, 27 M 457, 8 NW 272; Nichols v City of Duluth, 40 M 380, 42 NW 84; Munger v City of St. Paul, 57 M 9, 58 NW 601.

Municipalities are liable for gathering surface waters in artificial channels and casting them on private lands. O'Brien v City of St. Paul, 25 M 331; McClure v City of Red Wing, 28 M 186, 9 NW 767; Simonson v Town of Alden, 181 M 200, 231 NW 921.

Towns and counties have been held liable in damages to property owners when the owners' property rights are invaded. Peters v Town of Fergus Falls, 35 M 549, 29 NW 586; Gunnerus v Town of Spring Prairie, 91 M 473, 98 NW 340, 974; Lindstrom v County of Ramsey, 136 M 46, 161 NW 222; Kiefer v County of Ramsey, 140 M 143, 167 NW 362; Westerson v State, 207 M 412, 291 NW 900.

The compensation paid for acquiring a highway for public use does not include damage that may be later caused by the necessary improvement of the way. A remedy exists for such damage. Dynes v Town of Kilkenny, 153 M 11, 189 NW 439.

4. Just compensation

The right of the owner to compensation for property taken for a public use is absolute, precedent to the constitution itself, inherent without recognition therein. State ex rel v District Court, 87 M 146, 91 NW 300.

"Eminent domain" is an inherent and essential attribute or prerogative of sovereignty, not conferred by the constitution, since private property is held subject to the control of the sovereign power of the state, exercised through the legislature, for public uses; but such right of eminent domain is restricted by this section, providing that private property shall not be taken, destroyed, or damaged for public use without just compensation therefor first paid or secured. State, by Burnquist, v Flach, 213 M 353, 6 NW(2d) 805.

It is for the courts to determine whether just compensation has been paid or secured. State ex rel v Van Reed, 125 M 194, 145 NW 967.

Judicial power comes into play only to the extent that the constitution guarantees the owner of the property right to compensation. State by Peterson v Severson, 194 M 644, 261 NW 469.

The just compensation to which owner of property taken for a public purpose is constitutionally entitled is the market value thereof at the time of taking contemporaneously paid in money. This sum is to be arrived at upon just consideration of all the uses for which it is suitable; and the highest and most profitable use for which the property is adaptable and needed, or likely to be needed, in the reasonably near future, is to be considered to the extent that the prospects of demand for such use affect the market value while the property is privately held; but that value does not include any elements resulting subsequently to or because of the taking. Mpls-St. Paul Sanitary Dist. v Fitzpatrick, 201 M 442, 277 NW 394.

In determining compensation benefits should be set off against the damages received. Winona & St. Peter R. Co. v Waldron, 11 M 515 (392).

General benefits are not to be deducted from the damages. Minnesota Central Ry. Co. v McNamara, 13 M 508 (468); Winona & St. Peter R. Co. v Waldron, 11 M 515 (392); Arbrush v Town of Oakdale, 28 M 61, 9 NW 30; Whiely v Mississippi Water Power & Boom Co. 38 M 523, 38 NW 753; State ex rel v C. M. & St. P. Ry. Co. v Shardlow, 43 M 524, 46 NW 74.

Special benefits may be deducted from the damages. Mantorville Ry. & T. Co. v Slingerland, 101 M 488, 112 NW 1033.

In condemnation proceedings where a part of a parcel of land is taken for public use special benefits may be considered because the issue is as to the extent of the damages. McKusick v City of Stillwater, 44 M 372, 46 NW 769.

In proceeding to widen and grade a street, under a city charter, it is proper to offset damages for land appropriated against the special benefits to the land not taken of the same tract. C R I & P Ry. Co. v City of Mpls, 164 M 226, 204 NW 934, 205 NW 640.

The profits arising from the sale of wood by a landowner are general rather than special. Minnesota Valley Ry. Co. v Doran, 17 M 188 (162), 15 M 230 (179).

The increased value which the railroad gave to stone quarries otherwise inaccessible and valueless is general rather than special. Mantorville Ry. & T Co. v Slingerland, 101 M 488, 112 NW 1033.

The increased traffic which a railroad may get from a new roadway across its tracks is not such a benefit as may be charged against the damages due for the land taken. State ex rel v C M & St. P Ry Co v Shardlow, 43 M 524, 46 NW 74.

The special benefits found may be set off either against the value of the part taken, or damages to the remainder, or both. Mantorville Ry & T Co v Slingerland, 101 M 488, 112 NW 1033.

In a street grade case the proper measure of damages is the difference in the value of the property alleged to have been injured before and after the acts complained of, unless the cost of restoring the property to its natural condition is shown to be less than the difference in value, in which case the cost of restoration is the measure of relief to which the property owner is entitled. Sallden v City of Little Falls, 102 M 358, 113 NW 884.

To justify the taking of private property, without the consent of the owner, for the use of a railroad company, compensation must first be made or secured, and the making or securing of such compensation, is a matter of defense to an action brought by the owner for damages arising from the taking and use of his land for such purposes. Gray v First Division of St. P & P R Co. 13 M 315.

In proceedings to condemn a right of way for a public canal across a railroad right of way, through an embankment, the company is not entitled to be awarded, as damages, the necessary expense of building a bridge to carry its tracks over the canal. C M & St. P Ry C v City of Mpls, 115 M 460, 133 NW 169.

Payment by the city of the gross award to the fee owner did not deprive relator, as lessee, of his constitutional right of security of compensation for the

taking of his property; for, while his right of recovery against the fee owner does not fulfil the constitutional guaranty, the fund must be deemed as still in the hands of the city, subject to be brought into court for apportionment at the instance of relator, of whose claim the city had notice before paying the fee owner. State ex rel v District Court, 128 M 432, 151 NW 144.

Land taken under power of eminent domain is taken at date of filing of award of damages. If the damages are reassessed on appeal, such reassessment is to be made with respect to the value and condition of the property at the time of the original award, and the landowner is entitled to interest from date of original award on amount of award as finally fixed, less the value of the beneficial use he may have made of the land after the filing of the original award. Warren v First Division St. P & P R Co. 21 M 424; Whitacre v St. P & S C R Co. 24 M 311; Leber v M & NW Ry Co. 29 M 256, 13 NW 31; City of Mpls v Wilkin, 30 M 145, 15 NW 668; Commrs. of State Park v Henry, 38 M 266, 36 NW 874; Weide v City of St. Paul, 62 M 67, 64 NW 65; Ford Motor Co v City of Mpls, 143 M 392, 394, 173 NW 713.

Riparian rights are valuable property rights, of which the owner may not be deprived without just compensation in the manner provided by law. Petraborg v Zontelli, 217 M 536, 15 NW(2d) 174.

5. Police power

The state, as a sovereign state, possesses the eminent domain as an attribute of sovereignty. The eminent domain is the superior right to apply private property to public uses. There is nothing in the term "eminent domain" which implies any restriction upon the manner in which the power thus designated is to be exercised. Neither does the constitution contain any restriction as to the manner of exercising the eminent domain, except as to the matter of compensation. Weir v St. Paul, Stillwater & Taylor's Falls R. Co, 18 M 155.

The state may, in the exercise of its police power, impose upon railroad companies whose lines intersect public highways laid out after the construction of the railroad the uncompensated duty of constructing and maintaining at such crossings all such safety devices as are reasonably necessary for the protection of the traveling public. Such a requirement is not a taking of private property for public use in violation of the constitution. Neither the state, nor a municipal division thereof to which that power is delegated, can by affirmative action or by inaction permanently divest itself of the authority and power to exercise it. State ex rel v St. Paul, M. & M. Ry Co. 98 M 380, 108 NW 261.

Section 14. MILITARY POWER SUBORDINATE.

The national guard is not a standing army within the meaning of this section. The men comprising it come from the body of the militia of the state, and when not engaged at stated periods in drilling or training for military duty, they return to their usual vocations, subject to call when public exigencies require it, but may not be kept in service, like standing armies, in times of peace. State ex rel v Wagener, 74 M 518, 77 NW 424.

This section does not require that the military be subject at all times to judicial control. When the governor, in carrying out his duty faithfully to execute the law, employs a military agency, the immunity of the governor from judicial process is to be extended to his proper agent, the military. State ex rel v District Court, 141 M 1, 168 NW 634.

Section 15. LANDS DECLARED ALLODIAL; LEASES, WHEN VOID.

A deed which conveys certain land with one mill-power of water and reserves to the grantor a definite sum payable annually forever, does not create a feudal tenure. The distinguishing feature of feudal tenure is fealty. Minneapolis Mill Co. v Tiffany, 22 M 463.

The remedy of distress for rent is not so inseparably connected with feudal tenure as to be abolished by this section. Although an incident of feudal tenure only, this remedy was extended by legislation to every species of rent so as to

become an incident of the relation of landlord and tenant, rather than of feudal tenure. Dutcher v Culver, 24 M 584.

A statute authorizing the leasing of state lands for a 50-year period for prospecting and mining does not violate this section, for such a law has no application to agricultural lands. State v Evans, 99 M 220, 108 NW 958.

Section 16. FREEDOM OF CONSCIENCE; NO PREFERENCE TO BE GIVEN TO ANY RELIGIOUS ESTABLISHMENT OR MODE OF WORSHIP.

These guarantees are not infringed by a city ordinance which prohibits the sale of liquor on Sunday. All the authorities agree that the first day of the week may be established as a day of rest, with prohibitions against any kind of business or labor, except works of necessity or charity. State v Ludwig, 21 M 202.

An act which prohibits the keeping open of barber shops on Sunday is valid. Such legislation proceeds upon the theory, entertained by most of those who have investigated the subject, that the physical, intellectual, and moral welfare of mankind requires a periodical day of rest from labor and, as some particular day must be fixed, the one most naturally selected is that which is regarded as sacred by the greatest number of citizens, and which by custom is generally devoted to religious worship, or rest or recreation, as this causes the least interference with business or existing customs. State v Petit, 74 M 376, 77 NW 225.

The owner of a freehold cannot, without his consent, be removed therefrom to his legal settlement for poor relief purposes in another municipality, notwithstanding general statutory language authorizing the removal of paupers to their places of settlement. Thiede v Town of Scandia Valley, 217 M 218, 226, 14 NW(2d) 400.

Section 17. NO RELIGIOUS TESTS.

The guarantee that no property test shall ever be imposed as a qualification for public office is not violated by an act which requires candidates in primary elections to pay certain prescribed fees at the time of filing the affidavits of candidacy. State ex rel v Scott, 99 M 145, 108 NW 828.

A person may be a competent witness even though he is dissatisfied with our government, its administration of justice, and does not believe in God. State v Peterson, 167 M 216, 208 NW 761.

Section 18. NO LICENSE TO PEDDLE.

An act to tax the occupation of and to license hawkers, peddlers, and transient merchants, and defining said occupations, (1909, c. 248) is unconstitutional as a police regulation, being class legislation. State ex rel v Parr, 109 M 147, 123 NW 408.

A provision exempting from a wheelage tax vehicles used for the purpose of selling or peddling the products of farm or garden is unconstitutional. Fairly v City of Duluth, 150 M 374, 185 NW 390.

By this section recognition is given to the fact that tillers of the soil stand in a peculiar position in reference to the marketing of their products and prohibits the imposition of a license to sell or peddle the same. Minn. Wheat Growers Coop. Mar. Assn. v Huggins, 162 M 471, 480, 203 NW 420.

This section shows that the people of the state have by fundamental law recognized a classification in favor of the farmer in licensing vendors of farm products. State v Marcus, 210 M 576, 299 NW 241.

ARTICLE II

ON NAME AND BOUNDARIES

2. Jurisdiction on bordering rivers

Minnesota courts have jurisdiction over an offense which is committed on the Wisconsin side of a bridge spanning the Mississippi river. One of the reasons for establishing this concurrent jurisdiction was to prevent the escape of criminals on account of the uncertainty that so frequently arises as to whether the act was committed on one side of the middle of the main channel or the other side of it. This uncertainty exists just as well when the act is committed on a bridge as when committed on a water craft. State v George, 60 M 503, 63 NW 100.

This section is cited, along with the Northwest Ordinance, and territorial act, to show that the state could not authorize an interference with its navigable waters. Minnesota Canal & Power Co. v Koochiching County, 97 M 429, 107 NW 405.

A statute which authorizes a boom company to make a charge for sorting logs is valid. Such a charge is not for the use of the river, but for the sorting of the logs. Osborne v Knife Falls Boom Corporation, 32 M 412, 21 NW 704.

3. Acceptance of Enabling Act

Where the United States has not parted with its title to the land, no state court has jurisdiction over such land for the purpose of registering a Torrens title. Before such right can exist in the court, it must be shown as a fact that the United States has parted with its original title. Shevlin-Mathieu Lbr. Co. v Fogarty, 130 M 456, 153 NW 871.

The legislature cannot make a homestead subject to debts incurred prior to the issuance of the patent, where there is an act of Congress to the contrary. Russell v Lowth, 21 M 167.

When the sale is completed and the title is secured to the purchaser, the land becomes a part of the general property of the state and is relieved from all federal control except such as arises out of the general relation of the state and national governments. State v Bachelder, 5 M 223 (178), 7 M 121 (79).

It is not unconstitutional to erect a new capitol out of other public funds without first exhausting or applying the lands granted by Congress for erecting public buildings at the seat of government. The lands were granted for public buildings, not solely for a state capitol. The legislature can apply the proceeds of these lands to other public buildings to be erected at the seat of government. Fleckten v Lamberton, 69 M 187, 191, 72 NW 65.

Title to lands granted to the state for the use of its schools by the United States cannot be acquired by adverse possession, as against the state. Murtaugh v C M & St. P Ry Co. 102 M 52, 112 NW 860.

An act providing for a lower assessed valuation on the first $4,000 of the actual value of a homestead than on other real estate is constitutional as against the contention that it contravenes the state constitution, art. 2, s. 3, which provides that in no case shall non-resident proprietors be taxed higher than residents. The discrimination is not against citizens of another state as such, but against owners of non-homestead property, whether they reside within or without the state. Logan v Young, 191 M 371, 254 NW 446.

ARTICLE III

DIVISION OF POWERS

1. Division of powers

The distribution of the powers of government among three departments results from the application of a conventional rather than a natural rule. No attempt is made at an abstract division of governmental functions. Instead, the constitution merely assigns powers of a recognized character to the departments which have been created for their convenient exercise. State ex rel v Bates, 96 M 110, 104 NW 709.

1. Generally

Some governmental acts are not assigned by the constitution to any particular department. These may be assigned by the legislature to any department without a violation of this section. State ex rel v Bates, 96 M 110, 104 NW 709.

This section has no application to municipal governments and is not violated by a statute authorizing the commission form of government for cities. State ex rel v City of Mankato, 117 M 458, 136 NW 264.

The whole matter of the administration of the University of Minnesota is removed from the field covered by the provision of this article dividing the powers of government into legislative, executive, and judicial departments. State ex rel v Quinlivan, 198 M 65, 77, 268 NW 858.

2. Legislative power

By this section a general power of legislation is recognized as one of the attributes and functions of the state government and the exercise of this general power is committed to the senate and the house of representatives as the legislature. Davidson v County Board, 18 M 482, 485, (432).

In enacting a law the legislature must determine for itself the expedience of the legislation and whether it has authority to pass the act in question. An attempt to delegate either of these functions to another body is an unwarranted delegation of legislative power. State ex rel v Young, 29 M 474, 9 NW 737.

A statute containing a provision to the effect that if the courts should regard a stated line of action to be valid, certain sections of the law were to go into effect; otherwise, the law was to be submitted to the people for their approval attempts to delegate legislative power to the courts. State ex rel v Young, 29 M 474, 9 NW 737.

An act allowing the district court to incorporate villages if such incorporation, in the court's opinion, would promote the public interests attempts to delegate legislative power to the courts. State ex rel v Simons, 32 M 540, 21 NW 550.

A statute which permits the detachment of agricultural lands from villages in the discretion of the court is an attempt to delegate legislative power to the courts. Brenke v Borough of Belle Plaine, 105 M 84, 117 NW 157.

L. 1907, c. 221, providing for the separation of unplatted agricultural land from the corporate limits of cities of the fourth class, is not unconstitutional as against the claim that it delegates legislative powers to the courts. Hunter v City of Tracy, 104 M 378, 116 NW 922.

A statute which provided for the preparation by the insurance commissioner, and the adoption, of the Minnesota standard policy is unconstitutional for the reason that it attempted to delegate legislative power to the insurance commissioner. Anderson v Manchester Fire Assn. Co. 59 M 182, 63 NW 241.

A statute which permits the Railroad and Warehouse Commission to grant an increase in the capital stock of certain companies and to prescribe the manner in which and the terms upon which the same shall be made is a delegation of legislative power contrary to this section. State v G. N. Ry. Co. 100 M 445, 111 NW 289.

The claim that legislative power had been delegated to the courts was not sustained as against an act which permitted the district court to fix the salary of the county attorney. Though the courts cannot fix salaries of public officers generally, they may of such quasi-officers of the court as the county attorney. Rockwell v County of Fillmore, 47 M 219, 49 NW 690.

The claim of invalidity is not sustained by an act which provides that the court shall direct the manner in which notice may be given to common carriers proceeded against under a certain act or which permits the court in granting mandamus to direct the manner of serving the same. State ex rel v Adams Express Co. 66 M 271, 68 NW 1085.

An act which permits the county commissioners to establish a uniform lake level for Lake Minnetonka, and provides that if after the commissioners have so acted the district court shall be satisfied that the public interests will be advanced by the establishment and maintenance of such water in such lake at such height it shall proceed further is not violative of this section. All that the court does is to decide a judicial question, that is, whether the project creates a public use so as to justify the taking of private property. McGee v County Board, 84 M 472, 88 NW 6.

Legislative power is not granted to the courts in an act which permits the district court, on application made, to open a tax judgment and have the valuation of land reduced. In Matter of Proceedings to Enforce Payment of Taxes in Koochiching County, 146 M 87, 177 NW 940.

The legislature did not assume judicial functions in determining that a particular bridge, part of a public highway, should be constructed in a prescribed manner and within a fixed expense by towns and counties within whose territorial limits it will lie when completed, and in determining in what proportions those towns and counties should contribute toward the cost. The authority of the commissioners provided in the act to examine and accept the bridge is ministerial rather than judicial. Guilder v Town of Dayton, 22 M 366.

Statutes relating to the establishment of judicial roads have consistently been held not to contain any delegation of legislative power. Such acts have been upheld in State ex rel v MacDonald, 26 M 445, 4 NW 1107, and in Alexander v McInnis, 129 M 165, 151 NW 899.

An act authorizing the district courts to establish and provide for the construction of ditches to drain wet and overflowed land where the same extends into two or more counties does not confer legislative powers and functions upon the courts. State ex rel v Crosby, 92 M 176, 99 NW 636.

A statute which confers jurisdiction upon the court in drainage proceedings, though the proposed ditch is wholly within one county and will not result in benefits or damages to lands in an adjoining county, does not confer upon the courts legislative and administrative powers. State ex rel v District Court, 131 M 43, 154 NW 617.

In carrying out and applying the drainage statutes the district courts exercise judicial functions. The legislature has no power to grant a new trial or a rehearing of a cause after it has been heard and determined on the merits. A statute directing the district court to revive a drainage proceeding in which the petition for the establishment of the ditch had been denied on the merits and to hear and determine the matter de novo is unconstitutional. In re Judicial Ditch No. 2, Freeborn and Waseca Counties, 148 M 347, 182 NW 168.

The Minnesota Valley Drainage and Flood Control Act of 1917 (1917, c. 442) authorizing the courts to organize drainage and flood control districts in river basins abutting upon boundary waters and to appoint a board of directors to carry out the purposes of the act is not unconstitutional because of an unwarranted delegation of legislative functions and powers to the judiciary. State ex rel v Flaherty, 140 M 19, 167 NW 122.

The establishment of judicial ditches is so far an exercise of a judicial function that a legislative attempt to grant a rehearing in the case of petitions already denied, amount in effect to granting a new trial. As such, it invades the province of the courts. In re Judicial Ditch No. 2, Freeborn and Waseca Counties, 148 M 347, 182 NW 168.

Delegating to the Railroad and Warehouse Commission the power to regulate rates is not an invalid delegation of legislative power. The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and the conferring an authority or discretion to be exercised under and in pursuance of the law. State ex rel v C. M. & St.P Ry. Co. 38 M 281, 37 NW 782.

The power to unite communities into common rate points is incident to the rate-making power and may be delegated to the Railroad and Warehouse Commission. St. Paul Assn of Commerce v C.,B. & Q. R. Co. 134 M 217, 158 NW 982.

The Railroad and Warehouse Commission may be authorized to fix the amount of the bond to be required merchants, who are compelled to be bonded by a certain statute. State ex rel v Wagener, 77 M 483, 80 NW 633.

To the board of county commissioners may be delegated the authority to license liquor houses of a certain type. State ex rel v Bates, 96 M 110, 104 NW 709; State v Braun, 96 M 521, 105 NW 975.

To the county board may be delegated the authority to license voters of the county as auctioneers. Wright v May, 127 M 150, 149 NW 9.

The county auditor may be authorized to license voters of the county as auctioneers. Wright v May, 127 M 150, 149 NW 9.

Mason's Statutes 1927, Section 2160, requiring the county auditor to apportion a tax judgment so that the owner of a specific part of a parcel taxed as a whole can redeem pursuant to Section 2158, does not impose judicial functions upon an administrative officer in violation of this section, since taxation is primarily a legislative function, and the steps taken under authority of the legislature are administrative in character, in which judicial assistance may be invoked as a matter of convenience, because, with its assistance, the rights of parties and the interests of the public can be best protected and conserved. State ex rel v Erickson, 212 M 218, 3 NW(2d) 231.

The board of commissioners for the erection of a new capitol building may be authorized to draw upon a special fund for designated purposes. Fleckten v Lamberton, 69 M 187, 72 NW 65.

The board of dental examiners may be given power to waive an examination in the case of applicants for a license who had practiced for five years or more in a state having standards equal to those of Minnesota. State v Crombie, 107 M 166, 171, 119 NW 658.

The Minimum Wage Commission may be given the authority to establish a minimum wage in the industries investigated provided one-sixth or over of those employed in such industry got less than a minimum wage. This is not an improper delegation of legislative power. The legislature may delegate to a commission the power to do some things which it might properly but cannot advantageously, do itself. It may delegate power to determine some fact or state of things upon which the law makes its own action or operation depend and may declare its law shall be operative or applicable only upon the subsequent establishment of some fact. Williams v Evans, 139 M 32, 165 NW 495, 166 NW 504.

The power delegated to the voting machine commission created by statute to determine the efficiency of the voting machine thereby authorized to be used at elections in this state is neither legislative nor judicial, but administrative, in character. The legislature may delegate the power to determine some fact upon which a statute makes its own action depend. Elwell v Comstock, 99 M 261, 109 NW 113, 698.

A statute which provides that an independent school district shall be dissolved whenever two-thirds of the legal voters voting at a special election called for the purpose shall so desire, is not invalid as delegating legislative power to the voters. State ex rel v Cooley, 65 M 406, 68 NW 66.

A statute is not invalid as delegating legislative power to the voters which establishes municipal courts in cities of a certain size, provided that the provisions of

the act be adopted by a four-fifths vote of the city council. State ex rel v Sullivan, 67 M 379, 69 NW 1094.

A statute relating to incorporation of a village by petition does not confer legislative powers upon the petitioners since the legislature has already indicated in a general way what property may be included within the village limits. St. Paul Gaslight Co. v Village of Sandstone, 73 M 225, 75 NW 1050.

A legislative direction to the courts as to how an act is to be construed clearly invades the functions of the courts, which alone have the power to construe the laws. Meyer v Berlandi, 39 M 438, 40 NW 513.

When an action or other judicial proceeding has been tried and a decision rendered the legislature cannot, by an act subsequently passed, grant a new trial or a trial de novo. State ex rel v Flint, 61 M 539, 63 NW 1113.

The legislature did not assume judicial functions in apportioning the indebtedness of a certain town between the town and a village. Rumsey v Sauk Centre Town, 59 M 316, 61 NW 330.

Judicial functions are not assumed by the legislature in providing for the taxation of property undervalued or unlawfully omitted from assessment, for this does not amount to granting a new trial, previous assessments not being attacked. State v Weyerhauser, 68 M 353, 71 NW 1118.

Judicial functions are not assumed by the legislature in an act declaring that liquor containing one-half of one per cent alcohol is intoxicating. State v Brothers, 144 M 337, 175 NW 685.

A state senator on becoming lieutenant governor by succession to that office may retain his senatorial right of voting without a violation of Article 3. State ex rel v Stearns, 72 M 200, 75 NW 210.

A statute authorizing reassessment of undervalued property does not violate this section in the powers conferred on the special assessor provided for by the act. State v Minnesota & Ontario Power Co. 121 M 421, 141 NW 839.

The operation of a statute properly may be made to depend upon the existence of an act of Congress of a certain nature. This is not a delegation of legislative power to Congress. State v Brothers, 144 M 337, 175 NW 685.

The power of eminent domain, or the right to take private property for public purposes, inheres in the state as an attribute of its sovereignty and is vested in the legislature, but it can take private property against the will of the owner only for public use and after just compensation to the owner has been paid or secured. Except as restricted and controlled by these two requirements, the power of the legislature to take private property is unlimited and its determination to do so conclusive. All questions involved in the taking of private property, except whether the use be public and whether proper compensation has been made, are of a legislative nature; and the determination of such questions by the legislature, or by an agency established by and acting under the authority of the legislature, is final and cannot be reviewed by the courts. School District v Bolstad, 121 M 376, 141 NW 801; Langford v County Board, 16 M 375 (333); Weir v St. P. S. & T. F. R. Co. 18 M 155 (139); In re St. P. & N. P. Ry. Co. 37 M 164, 33 NW 701; Commissioners of State Park v Henry, 38 M 266, 36 NW 874; State v Rapp, 39 M 65, 38 NW 926; Fairchild v City of St. Paul, 46 M 540, 49 NW 325; Knoblach v City of Minneapolis, 56 M 321, 57 NW 928; Fohl v Village of Sleepy Eye Lake, 80 M 67, 82 NW 1097; M & St. L. R. Co. v Village of Hartland, 85 M 76, 88 NW 423; State v District Court, 87 M 146, 91 NW 300; State v County Board, 87 M 325, 92 NW 216; State ex rel v Van Reed, 125 M 194, 196, 145 NW 967.

The Railroad and Warehouse Commission has power to determine whether a depot provided by a railroad company is suitable for the purpose and, if not, to require the construction of a suitable depot. The making of such a regulation is a legislative or administrative function. State v G. N. Ry. Co. 135 M 19, 159 NW 1089.

The question of the propriety and necessity of the proposed change in the boundaries of a school district is a legislative and not a judicial question. Farrell v County of Sibley, 135 M 439, 161 NW 152.

In authorizing the district court to vacate plats and adjudge the title to streets, alleys, and public grounds to be in the persons entitled thereto, the legislature did not contravene this section by delegating legislative powers to the judicial branch of

the government. In re Application of Hull for Vacation of Plat of Town of Hibbing, 163 M 439, 204 NW 534, 205 NW 613.

A statute prescribing the conditions upon which certain persons shall be admitted to practice law contravenes this section. In re Application of Humphrey to Practice Law, 178 M 331, 227 NW 179.

A statute providing for the attachment by the county auditor of rents received from real estate upon which taxes have become delinquent is not a legislative delegation of powers in violation of this section. Johnson v Richardson, 197 M 266, 266 NW 867.

3. Executive power

Insofar as a statute assumes to empower the governor to designate a judge of another district to discharge the duties of a district judge it is in contravention of this article. A writ of prohibition issues to prevent a judge of the fourth judicial district from acting in a matter pending before the regularly elected, qualified, and acting judge of the tenth judicial district. State ex rel v Day, 200 M 77, 273 NW 684.

The court may be given authority to appoint subordinate officers and assistants to aid in conducting its judicial business. A statute which permits the district court to appoint an examiner of titles for Torrens proceedings is valid. State ex rel v Westfall, 85 M 437, 89 NW 175.

The appointing power is executive in its nature. A statute requiring the judges of the second judicial district to appoint the members of the board of control of Ramsey county is invalid, as delegating executive power to the courts. State ex rel v Brill, 100 M 499, 111 NW 294, 639.

4. Judicial power

The judicial power will not be exercised where there is no case before the court. State v Dike, 20 M 363 (314).

A statute authorizing either branch of the legislature to call for the opinion of the supreme court, or any judge thereof, upon any subject is unconstitutional. In the Matter of the Application of the Senate, 10 M 78 (56).

The courts have not followed a consistent policy in dealing with the question of their relationship with the executive. In an early case the governor was held to be subject to the writ of mandamus. From this stand the court then drifted to an extreme view of non-interference with executive officers, only to resume in later years substantially the viewpoint first held.

The first use of mandamus against the executive was in Minnesota & Pacific R. Co. v Sibley, where the writ was issued to the governor. There was no discussion as to the relation of the three departments. Minnesota & Pacific R. Co. v Sibley, 2 M 13 (1).

When some official act, not necessarily pertaining to the duties of the executive of the state, and which might be performed as well by one officer as another, is directed by law to be done, then any person who clearly shows himself entitled to its performance and has no other adequate remedy, may have a writ of mandamus against such officer, even though the law may have designated the chief executive of the state as a convenient officer to perform the duty. In such cases there is not any ground for distinguishing the chief executive from any other officer who may be designated to do a merely ministerial act. When the governor is directly empowered or required to do an act, not by statute simply, but by the constitution of the state, it pertains to the office of the chief executive and the courts cannot compel the performance of this or any other executive duty prescribed by the organic law. Chamberlain v Sibley, 4 M 309 (228).

The judicial and executive departments of our state government having been made distinct and independent by this section neither can enforce the performance of its duties by the other. The court declined to comply with a request by the governor for its opinion upon the proper construction of an act of the legislature. Rice v Austin, 19 M 103 (74).

The courts have no jurisdiction to control the officers of the executive department of the government in the performance of their official duties and cannot acquire jurisdiction by consent of such officers. In mandamus against the secretary of state, the court, having no jurisdiction of the proceeding, declines to comply with the joint request of the relator and the respondent for its opinion upon the true construction of an act of the legislature. State ex rel v Dike, 20 M 363 (314).

The governor is not subject to the control of the judiciary in the performance of duties belonging to him as executive of the state and not as an individual, and no action or proceeding before any court will lie against him to compel such performance. Nor can a joint resolution of the legislature bring him under such control. The independence of each of the three departments of the government—the executive, legislative, and judicial—rests upon this section and cannot be affected by any legislative act, although it may be approved by the governor at the time it passes. St. Paul & Chicago Ry. Co. v Brown, 24 M 517.

Every act done, or threatened to be done, by any member of the executive department of the state government in his official, but not in his individual, capacity is shielded from all judicial interference or control, either by mandamus or injunction, even though such act may be founded on an error of judgment or an entire misapprehension of official duty under the law. Western R. Co. v DeGraff, 27 M 1, 6 NW 341.

It is the settled law of this state, if anything can be settled by repeated adjudications, that an executive officer of the state is not subject to the control or interference of the judiciary in the performance of duties belonging to him as an executive officer, and that no act done, or threatened to be done, by him in his official capacity can be brought under judicial control or interference by mandamus or injunction; that this is the rule even when the act is purely ministerial. Secombe v Kittelson, 29 M 555, 561, 12 NW 519.

An executive officer of the state is not subject to the control or interference of the judiciary in the performance of duties belonging to him as an executive officer. That the duty is merely ministerial or that it might have been cast on some other officer or person does not affect this rule. State ex rel v Whitcomb, 28 M 50, 8 NW 902; State ex rel v Braden, 40 M 174, 41 NW 817.

The exemption from control by the judiciary does not extend to mere administrative agents who are created, and their powers and duties defined, by the legislature. The courts may entertain suits against them as against any merely ministerial officers. St. Paul & Chicago Ry. Co. v Brown, 24 M 517.

The propriety of the executive's action is not free from judicial investigation when necessary to the determination of cases before the court. State ex rel v Fidelity & Casualty Ins. Co. 39 M 538, 41 NW 108.

The exemption cannot be claimed where only private rights are involved and the state has no claim, as in the case of private funds wrongfully withheld by the state auditor. Hayne v Metropolitan Trust Co. 67 M 245, 69 NW 916.

Courts cannot by injunction, mandamus, or other process control or direct the head of the executive department of the state in the discharge of any executive duty involving the exercise of his discretion; but where duties purely ministerial in character are conferred upon the chief executive, or any member of the executive department, as defined by our constitution, and he refuses to act, or when he assumes to act in violation of the constitution and laws of the state, he may be compelled to act, or restrained from acting, as the case may be, by the courts at the suit of one who is injured thereby in his person or property, for which he has no other adequate remedy. Cooke v Iverson, 108 M 388, 122 NW 251; State ex rel v Eberhart, 116 M 313, 133 NW 857.

The courts have no power to review the action of the governor in refusing a warrant, and when he has obeyed the demand of a requistion valid on its face, there is no right on habeas corpus to try the question of good faith or ulterior motives. State ex rel v Langum, 126 M 38, 42, 147 NW 708.

The courts have no control over officers authorized by the legislature to take evidence in election contests. Since each house is the judge of the election of its own members any interference by the courts in such a case would infringe on the independence of the legislature. State ex rel v Peers, 33 M 81, 21 NW 860.

The courts have no authority to enjoin the officials of the executive department from holding an election called by the governor to fill a vacancy in the state representation in the U. S. Senate. The power to call such an election is conferred upon the governor by the Federal constitution and, in so doing, he exercises a governmental and political power over which the courts have no control. State ex rel v District Court, 156 M 270, 194 NW 630.

The courts have judicial control over the acts of an executive state officer where such acts are ministerial in their nature and do not necessarily pertain to the functions of the office as granted by the constitution. State ex rel v Montague, 195 M 278, 262 NW 684.

Granting to the county attorney power to make an investigation into the financial affairs of certain insurance companies and certify his findings to the state treasurer does not constitute a delegation of judicial power. Home Ins. Co. v Flint, 13 M 244 (228).

Power granted to a state commission to pass on claims which are to be paid out of the proceeds of a land grant is not a delegation of judicial power. Western R. Co. v De Graff, 27 M 1, 6 NW 341.

Judicial power is not granted to the board of medical examiners by giving it authority to revoke the medical certificates of persons guilty of unprofessional or dishonorable conduct. State ex rel v State Board of Medical Examiners, 34 M 387, 26 NW 123.

Authorizing the state auditor and the county board to refund money paid in under certain void tax sales is not a grant of judicial power. State ex rel v Dressel, 38 M 90, 35 NW 580.

Authorizing the insurance commissioner to issue licenses to foreign corporations to do busines in the state is not a grant of judicial power. State ex rel v Fidelity & Casualty Ins. Co. 39 M 538, 41 NW 108.

It is not a grant of judicial power to authorize the board of dental examiners to exempt from the regular examination applicants who have practiced for five years or more in a state having standards equal to those of Minnesota. State v Crombie, 107 M 166, 171, 119 NW 658.

An act authorizing the board of control to transfer prisoners from the state reformatory to the state prison, and vice versa, does not violate this section. State ex rel v Wolfer, 119 M 368, 138 NW 315.

The powers granted to the Railroad & Warehouse Commission in connection with the control of telephone companies are not judicial powers. State ex rel v Four Lakes Tel. Co. 141 M 124, 169 NW 480.

Where there has been an assessment so excessive that it evidences either a demonstrable mistake of fact or an intentional perversion of justice, the courts may correct the wrong, and modify the assessments, even after the assessments have passed the board of equalization. State v London & Northwest American Mtge. Co. 80 M 277, 83 NW 339.

The courts may entertain a suit between a private citizen and a legislator. This is not a suit between two departments of the government. Rhodes v Walsh, 55 M 542, 58 M 196, 57 NW 212.

The power to fix rates of railway transportation is not judicial in its nature and it could not validly be granted to the courts. Steenerson v G. N. Ry. Co. 69 M 353, 72 NW 713; State v G. N. Ry. Co. 130 M 57, 153 NW 247.

The courts may determine whether a rate fixed by another body is or is not reasonable. This is strictly a judicial function and necessary in a determination of whether the rate as fixed deprives the carrier of its property without due process of law. Steenerson v G. N. Ry. Co. 69 M 353, 72 NW 713.

The judiciary cannot be deprived of the power to determine whether the rate as fixed deprives the carrier of its property without due process of law by restrictions laid upon a recourse to the courts, as by fines or penalties so drastic as to deter or prevent an application to the courts. State v C. M. & St. P. Ry. Co. 130 M 144, 153 NW 320.

In determining upon the reasonableness of the commission's orders the court is not to try the case de novo, to put itself in the place of the commission, since it cannot make rates; but is to adopt much the same attitude as a higher court does

on a case appealed from a lower court. Steenerson v G. N. Ry. Co. 69 M 353, 72 NW 713.

The order of the commission may be vacated as unreasonable if it is contrary to some provision of the federal or state constitution or laws, or if it is beyond the power granted to the commission, or if it is based on some mistake of law, or if there is no evidence to support it, or if, having regard to the interests of both the public and the carrier, it is so arbitrary as to be beyond the exercise of a reasonable discretion and judgment. State v G. N. Ry. Co. 130 M 57, 153 NW 247.

Whether the purpose for which private property is to be taken be a public purpose is a judicial question which the owner has a right, at some time and in some manner, to present to and have determined by the courts before his property is actually appropriated. State v Town Board, 102 M 442, 114 NW 244; Stewart v G. N. Ry. Co. 54 M 515, 68 NW 208; Minnesota Canal & Power Co. v Koochiching County, 97 M 429, 107 NW 405; State v Van Reed, 125 M 194, 145 NW 967; State ex rel v District Court, 133 M 221, 158 NW 240.

The fixing of the amount of damages in condemnation proceedings delegated to the city council, subject to appeal, is not a delegation of judicial power in violation of this section. In re Improvement of Third Street, St. Paul, 177 M 146, 225 NW 86.

The jurisdiction conferred upon a district court on appeal from the decision of the county board is necessarily confined to questions affecting the legality of the proceedings, the jurisdiction of the board or officer whose decision is sought to be reviewed and, as to the merits of the controversy, whether the order or determination in a particular case was fraudulent, arbitrary, or oppressive, or an unreasonable disregard of the best interests of the territory affected. Farrell v County of Sibley, 135 M 439, 161 NW 152; Sweigert v Abbott, 122 M 383, 142 NW 723.

On appeal from an order of the Railroad & Warehouse Commission the court may not fix the rate of fare; it only hears and determines, upon its own judgment and upon orginal evidence, controversies as to existing facts which bear upon the final question of whether the future rate fixed by the commission is confiscatory or fair. City of Duluth v Railroad & Warehouse Comm., 167 M 311, 209 NW 10.

In a proper action the reasonableness of an established rate may be the subject of judicial investigation and adjudication, courts are without authority to fix rates for public service corporations. St. Paul Book & Stationery Co. v St. Paul Gaslight Co. 130 M 71, 153 NW 262.

A statute gives a right of appeal to the district court from an order of a town board of health denying an application for a permit to operate a rendering plant within the town. The action of the town board in such a case is not judicial. Hunstiger v Killian, 130 M 474, 153 NW 869, 1095.

The exercise of the discretion of the mayor with respect to the revocation of licenses is not subject to judicial control. The court will merely inquire whether a fair legal discretion was exercised. Banbridge v City of Minneapolis, 131 M 195, 154 NW 964.

A statute which subjects persons who are irresponsible for their conduct in sexual matters, and thereby dangerous to others, to the jurisdiction of the probate court is not violative of constitutional limitations on the jurisdiction of that court. State ex rel v Probate Court, 205 M 545, 287 NW 297.

Under the provision of this section, dividing the powers of government into three separate departments—legislative, executive, and judicial—the power to make the necessary rules and regulations governing the bar was intended to be vested exclusively in the supreme court, free from the dangers of encroachment either by the legislative or executive branches, to the end that the court's primary functions of administering justice and protecting constitutional rights might be effectively performed; and the supreme court has jurisdiction to hear a petition for integration of the bar and the inherent power to issue such an order if it will aid the court in performing these functions. In re Petition for Integration of the Bar, 216 M 195, 12 NW(2d) 515.

ARTICLE IV

LEGISLATIVE DEPARTMENT

Section 1. BICAMERAL; SESSIONS.

The power of taxation may lawfully be exercised for the purpose of raising money to pay bonds given to a railroad corporation to aid in the construction of a railroad. Davidson v County Board, 18 M 482 (432).

The president pro tempore of the state senate does not cease to be a senator when he becomes lieutenant governor by reason of a vacancy in the office of governor and a corresponding vacancy in the office of lieutenant governor. State ex rel v Stearns, 72 M 200, 75 NW 210.

The ordinary meaning of the word "legislature" is that it refers to the senate and house of representatives, which our state constitution, art. 4 s. 1, says constitutes the "legislature." Within this meaning it indicates the representative body which makes the laws of the state and of which the chief executive is not a part, although he has a limited restraint upon the enactment of state laws. State ex rel v Holm, 184 M 228, 235, 238 NW 494.

Section 2. MEMBERSHIP; REPRESENTATION.

The constitution, art. 4 s. 2, providing that senatorial and represenative districts shall be apportioned equally throughout the state, according to the population thereof, does not require that each district contain the same number of inhabitants. The legislature is vested with wide discretion in forming such districts, with which the courts will not interfere, except when there has been a clear and arbitrary departure from the requirement of equality. A mere variance in the population of such districts is not alone sufficient to justify declaring the apportionment unconstitutional. State ex rel v Weatherill, 125 M 336, 147 NW 105.

The constitution, art. 4 s. 2, which reads "The representation in both houses shall be apportioned equally throughout the different sections of the state, in proportion to the population thereof, exclusive of Indians not taxable under the provisions of law," denies an intention to confer the right of suffrage upon tribal Indians. Tribal Indians on reservations are not taxable. When care is taken to exclude certain persons from the count when a district's representation in the legislature is to be determined, it is not intended that the persons so excluded should participate in the election of the representation so fixed. It is an indication that the persons excluded from being counted as a part of the population of the district are also to be excluded from participating either as voters or as candidates at elections. Opsahl v Johnson, 138 M 42, 49, 163 NW 988.

Section 3. ELECTION; QUORUM.

L. 1893, c. 4, s. 188, providing for the appointment of three persons to examine and inspect the ballots cast at a general election, applies to contests for legislative offices. This section is not in conflict with the constitution, art. 4 s. 3, providing that each house shall be the judge of the election of its own members. State ex rel v Searle, 59 M 489, 61 NW 553.

The supreme court is not authorized by section 205.78 to determine the eligibility of a candidate for the state senate who holds a certificate of nomination for that office issued by the canvassing board of a primary election duly held and canvassed and may not order the county auditor to desist or refrain from placing the candidate's name upon the official general election ballots. State ex rel v Erickson, 203 M 390, 281 NW 366.

Section 4. RULES.

Previous to the adoption of the constitution, each house made its own rules and could alter them at pleasure by such vote as they should by rule provide. The power to determine the rules of proceedings in the separate houses is continued by art. 4 s. 4, of the constitution. Supervisors Ramsey County v Heenan, 2 M 330 (281, 285).

Where the constitution requires the yeas and nays to be entered upon the journal of either branch of the legislature upon the passage of a bill, such requirement is mandatory. In other cases it is sufficient if the journal show the state of the vote, in order that it may appear that the bill was passed by a majority vote. The practice is subject to be regulated by the rules of either house. Lincoln v Haugan, 45 M 451, 48 NW 196.

Section 5. OFFICERS; JOURNAL.

An enrolled bill, properly authenticated in compliance with the state constitution, art. 4, s. 21, is presumed to have passed in accordance with the requirements of the constitution. This presumption is not overthrown by the failure of the journals to show any fact which is not specially required by the constitution to be entered therein. State ex rel v City of Hastings, 24 M 78, 81.

A bill which is duly enrolled, authenticated, and approved is presumed to have been passed by the legislature in conformity with the requirements of the constitution, unless the contrary be made affirmatively to appear; and the proof furnished by the journals, in matters of procedure, must be clear, in order to overcome this presumption. It is not overthrown by the failure of the journals to show any fact which is not specially required by the constitution to be entered therein. Following State v. Hastings, 24 M 78. State v Peterson, 38 M 143, 36 NW 443.

The printed journals of the legislature are competent evidence of their contents; and their effect as evidence will not be destroyed by clerical errors or omissions shown to have occurred in writing up the record to complete the written journals. Lincoln v Haugan, 45 M 451, 48 NW 196.

Section 6. ADJOURNMENTS.

The prevailing rule is that a temporary adjournment of the legislature, or of the house in which a bill originated, does not prevent the return of the bill. The constitution contemplated temporary legislative adjournments. In art. 4 s. 6, it expressly provides that neither house shall adjourn for more than three days without the consent of the other. State ex rel v Holm, 172 M 162, 169, 215 NW 200.

Section 7. COMPENSATION.

Under the constitution, art. 4 s. 7, the legislature may, at any session, increase the compensation of its members, to take effect at the next ensuing term. The passage of L. 1907, c. 229, increasing the salary of the members, does not disqualify members of the house of representatives of that session from being eligible as candidates to succeed themselves for the term commencing January 1, 1909. State ex rel v Scott, 105 M 513, 117 NW 845, 1044.

Secretary of state properly refused to receive relator's filing for office of lieutenant governor at primary election to be held July 10, 1944, on ground that relator was not eligible under the Constitution, Article 4, Section 9, in that he was a senator of 1943 session of state legislature, which increased the salary of its members effective the first Tuesday after the first Monday in January, 1945, which automatically, under the Constitution, Article 5, Section 6, increased compensation of lieutenant governor to double that of a state senator, thus disqualifying relator from filing, although he had resigned as state senator May 10, 1943, and became lieutenant governor when the duly elected lieutenant governor became governor to fill the vacancy created by the resignation of the then governor. Miller v Holm, 217 M 166, 14 NW(2d) 99.

Section 8. PRIVILEGES.

Under the constitution, art. 4 s. 8, a member of the legislature is not privileged from the service upon him of a summons in a civil action during a session of the legislature. Rhodes v Walsh, 55 M 542, 57 NW 212.

See article on "The Constitutional Privileges of Legislators" in 9 MLR 442.

Section 9. MEMBERS NOT TO HOLD CERTAIN OFFICES.

The constitution, art. 4 s. 9, which provides that no senator or representative shall, during the time for which he is elected, hold any office under the authority of the United States or the state of Minnesota, except that of postmaster, construed to hold that the disability of a member of the legislature to hold office does not cease until the expiration of the full period of time for which he was elected. State ex rel v Sutton, 63 M 147, 65 NW 262; 20 MLR 731.

The words "an office under the state," refer to other than the legislative office of senator or representative. State ex rel v Scott, 105 M 513, 117 NW 845, 1044; 26 MLR 281.

Members of the legislature which enacted L. 1913, c. 400, are not prohibited by the constitution, art. 4 s. 9 from becoming candidates for state auditor at the ensuing primary election, there being no increase in the emoluments received by the incumbent of that office at the time of its enactment or at the time of its taking effect. State ex rel v Schmahl, 125 M 104, 145 NW 794.

See 23 MLR 376.

See Miller v Holm, 217 M 166, 14 NW(2d) 99, under art. 4, s. 7.

The office of county commissioner is within the prohibition that no senator or representative shall hold "an office under the state" which has been created or the emoluments of which has been increased during the session of the legislature of which he was a member until one year after the expiration of his term of office. State ex rel v Erickson, 180 M 246, 230 NW 637.

Section 10. REVENUE BILLS TO ORIGINATE IN HOUSE.

An act which merely makes an appropriation of public money is not a bill for raising a revenue, within the meaning of the constitution, art. 4 s. 10, though it may lead to the necessity of taxation. Curryer v Merrill, 25 M 1, 8.

The penalty exacted by L. 1913, c. 562, the abatement act, is not a tax within the constitution, art. 4 s. 10, providing that all bills for raising revenue shall originate in the House. State ex rel v Wheeler, 131 M 308, 155 NW 90.

Section 11. GOVERNOR TO APPROVE OR VETO BILLS.

The constitution, art. 4 s. 11, which declares that "every bill which shall have passed the senate and house of representatives, in conformity to the rules of each house, and the joint rules of the two houses, shall, before it becomes a law, be presented to the governor," is intended to be absolute, and the validity of legislation depends upon compliance. Supervisors of Ramsey County v Heenan, 2 M 330 (281, 286).

An act of the legislature, passed on the 7th, was presented to the governor on the 8th, on which day the legislature adjourned sine die, and signed by him on the 12th, one of the intervening days being Sunday, was signed within the time prescribed by the constitution. Stinson v Smith, 8 M 366 (326).

The constitution, art. 4 s. 11, requires that upon passage of bills by a two-thirds vote over the veto of the governor, "the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house." This provision is peremptory. Lincoln v Haugan, 45 M 451, 453, 48 NW 196.

Under the constitution, art. 4 s. 11, authorizing the governor to sign certain bills within three days after the adjournment of the legislature, bills, though finally voted upon more than three days before the day of adjournment, if enrolled within the last three days, are to be deemed passed within that time, and may be signed by the governor. Burns v Sewell, 48 M 425, 51 NW 224.

The fact that a bill contains an enacting clause at the time it passes the legislature is immaterial for the reason that a bill, although it passes the legislature, never becomes a law, unless it be presented to the governor pursuant to art. 4 s. 11, of the constitution. If the bill contained an enacting clause when it passed the legislature, it was never presented to the governor, but in place of it a bill was presented to and approved by him containing no enacting clause. Sjoberg v Security Savings & Loan Assn. 73 M 203, 214, 75 NW 1116.

In construing the state constitution, art. 4 s. 11, in reference to the time and manner in which the governor may return a bill with his objections thereto, effectually veto a measure, in computing the three-day period in which a bill is to be returned, Sunday, not holidays, is the only day to be excluded; and the requirement that the bill shall be returned to the house in which it shall have originated does not mean that it must be returned while such house is in session, but the return may be made to the presiding officer, secretary, or clerk, or to any member of such house. State ex rel v Holm, 172 M 162, 215 NW 200.

The bill presented to the governor for approval under Minn. Const., art. 4 s. 11, must be the same in substance and legal effect as the bill passed by the legislature, but immaterial errors will be disregarded. Where there is a discrepancy between the bill passed by the legislature and the bill approved by the governor, construction may be resorted to for the purpose of determining whether or not the latter differs from the former in substance and legal effect. An erroneous reference included in an amendatory act identifying the statute to be amended may be eliminated as surplusage and the statute read as corrected where the legislative intention is clear.

The rule of construction that an amendatory act providing that the amended act shall read as follows and then setting forth the amendment repeals all of the amended act not reenacted is no obstacle to the application of the rule that erroneous references in the amendatory act identifying the amended statute may be corrected or eliminated by construction to conform to the legislative intent. Bull v King, 205 M 427, 286 NW 311.

In this state the courts are committed to the so-called "journal entry rule," under which the regularity of the enactment of a statute may be inquired into by examining the legislative journals to ascertain whether there has been a compliance with constitutional requirements.

The bill presented to the governor for his approval must be the same bill which was passed by the legislature. This requirement is mandatory. If there be a material variance between the bill passed by the legislature and that approved by the governor the entire enactment falls. Upon the present record it is apparent that the bill passed by the legislature has never been presented to the governor nor approved by him. The variance being a material one, the entire enactment is thereby invalidated. Freeman v Goff, 206 M 49, 287 NW 238.

Section 12. MONEY APPROPRIATIONS, HOW MADE.

The legislative determination in the act imposing gasoline taxes, that the whole tax imposed on the distributors of gasoline should be computed on a basis of 97 per cent of the gross gallonage, allowing a three per cent deduction for evaporation and loss, is not violative of Minn. Const. art. 4 s. 12, prohibiting legislative appropriation except by appropriate bill. Arneson v W. H. Barber Co. 210 M 42, 297 NW 335.

The state may consent to the bringing of an action against it by joint resolution of the two branches of the legislature passed and approved in the manner prescribed in Minn. Const. art. 4 s. 12, and need not be by bill. St. Paul & Chicago Ry. Co. v Brown, 24 M 517, 574.

See 21 MLR 458.

Section 13. ENACTING CLAUSE; PASSAGE OF LAWS.

The provisions of Minn. Const. art. 4 s. 13, prescribing the manner of passing bills in the legislature are imperative and must be strictly followed. Whether these provisions have been complied with may be tried as a question of law by the

court, not by a jury. Board of Supervisors of Ramsey County v Heenan, 2 M 330 (281).

Minn. Const. art. 4 s. 13, provides that "no law shall be passed unless voted for by a majority of all the members elected to each branch of the legislature, and the vote entered upon the journal of each house." This provision is to insure a public record of the fact that laws are constitutionally passed by a majority vote, but does not require the yeas and nays to be entered. Lincoln v Haugan, 45 M 451, 453, 48 NW 196.

The file number is no legal or constitutional part of the title of a bill. It is merely designed for the convenience of the legislative members and clerks, and may therefore be rejected as surplusage. Miesen v Canfield, 64 M 513, 517, 67 NW 632. See Kelley v Gallup, 67 M 169, 170, 69 NW 812.

Minn. Const. art. 4 s. 13, which provides that the style of all laws of this state shall be, "Be it enacted by the legislature of the state of Minnesota," is mandatory and a statute without any enacting clause is void. It is not competent, for the purpose of sustaining the validity of a statute which had no enacting clause when it was sent to and was approved by the governor, to show that it contained an enacting clause when it passed the legislature. Sjoberg v Security Savings & Loan Assn. 73 M 203, 75 NW 1116.

Section 15. CONVICTS EXCLUDED FROM.

Minn. Const. art. 4 s. 15, does expressly or impliedly forbid the legislature from passing a "Corrupt Practices Act" and has no application to election contests. Saari v Gleason, 126 M 378, 383, 148 NW 293.

Section 20. READING OF BILLS.

The provisions of Minn. Const. art. 4 s. 20, prescribing the manner of passing bills in the legislature are imperative and must be strictly followed. Whether these provisions have been complied with is a question which must be tried by the court, and never as a fact by the jury. The court may inspect the original bills on file with the secretary of state, and have recourse to the journals of the houses of the legislature to ascertain whether or not the law has received all the constitutional sanctions to its validity. Supervisors of Ramsey County v Heenan, 2 M 330 (281, 288).

An enrolled bill, properly authenticated in compliance with Minn. Const. art. 4, s. 21, is presumed to have passed in accordance with the requirements of the constitution. This presumption is not conclusive, but may be overthrown by a reference to the legislative journals. This presumption is not overthrown by the failure of the journals to show any fact which is not specially required by the constitution to be entered therein. Of this character are the facts with regard to the reading of a bill, under Minn. Const. art. 4 s. 20. State v City of Hastings, 24 M 78, 82.

Where the record, as appearing upon the journal of the house, showed that an act "was read the first time, and, on motion, the bill was read the second time, and placed on file for third reading," the vote upon which the bill was ordered to a second reading not appearing, it will be presumed, in support of the action of the house, that the motion was adopted, and rule dispensed with, by the requisite two-thirds vote. State v Peterson, 38 M 143, 145, 36 NW 443. See In re Ellis' Estate, 55 M 401, 407, 56 NW 1056; Meisen v Canfield, 64 M 513, 516, 67 NW 632.

Minn. Const. art. 4 s. 20, provides that every bill should be read on three different days in each house, unless two-thirds of the house where the bill is pending "shall deem it expedient to dispense with this rule." This constitutional provision is mandatory and must be followed unless dispensed with as therein provided. "Two-thirds of the house," as used in that section, means two-thirds of the whole membership of the house. The printed journal of daily proceedings which the statute requires of each house of the legislature, and the permanent journal of all proceedings of the session compiled therefrom, are both made evidence by statute. In this case, the daily printed journal and the permanent journal are in conflict. The daily printed journal is silent upon the subject whether the constitutional rule was dispensed with, and, if that be taken as the authorized journal

of the house, then, by invoking the presumption in favor of the regularity of proceedings, the courts are obliged to presume that the rule was properly dispensed with. The permanent journal shows an adverse vote on a combined motion to suspend this rule and also certain rules of the house made before necessity had arisen for suspension of the constitutional rule. This is not affirmative proof that the house did not dispense with the constitutional rule when the occasion arose for such action. No particular formality is necessary to dispense with this rule. Action of the house, the necessary effect of which was to order a third reading of the bill and to place it on its final passage, and the passage of the bill by a vote of more than two-thirds of all the members of the house, operated to dispense with the rule.

On the sixty-eighth legislative day the house approved "the journal of the sixty-seventh day as printed." This action made the daily printed journal of the sixty-seventh day the only authorized journal of that day's proceedings. State ex rel v Wagener, 130 M 424, 135 NW 749.

As to requirement of this section that no bill shall be passed by either house of the legislature until it shall have been previously read twice at length, held that legislative practice of reading a bill by its title is construed as reading it "at length," since as a practical matter it is admitted that all bills passed cannot well be read twice at length in the form passed and enrolled.
Minnesota Mutual L. Ins. Co. v Johnson, 212 M 571, 576, 4 NW(2d) 625.

Section 21. BILLS, HOW ENROLLED AND SIGNED.

An enrolled bill, properly authenticated in compliance with Minn. Const. art. 4, s. 21, is to be presumed to have passed in accordance with the requirements of the constitution. This presumption is not conclusive but may be overthrown by a reference to the legislative journals. State ex rel v City of Hastings, 24 M 78, 81.

When an enrolled bill is signed by the presiding officer of each house and approved by the governor, if the subject-matter of the bill is within the constitutional power of the legislature, it is prima facie a valid law. Burt v Winona & St. P. R. Co. 31 M 472, 478, 18 NW 285, 289.

Minn. Const. art. 4 s. 21, provides "every bill having passed both houses shall be carefully enrolled and shall be signed by the presiding officer of each house." When that is done the bill is in condition to be sent to the governor for his action upon it. It is then to be deemed as passed for that purpose. Burns v Sewell, 48 M 425, 430, 51 NW 224.

The fact that a bill was duly enrolled, authenticated by the presiding officers of each house, signed by the governor, and filed with the secretary of state, is not conclusive that it was passed in the constitutional manner, but the courts may look to the legislative journals to ascertain that fact. The presumption in favor of a bill so authenticated, signed, and filed is a strong one. Evidence to overcome the presumption must be clear and strong and must show some violation of the constitution beyond a reasonable doubt. The presumption is not overcome by mere silence of the legislative journals. The act stands as a law unless it affirmatively appears on the face of the journal that some constitutional requirement was not followed. State ex rel v Wagener, 130 M 424, 153 NW 749.

Section 22. BILLS, NOT TO BE PASSED ON LAST DAY OF SESSION.

The word "passed," as used in the constitution, may sometimes include the enrollment and signature by the presiding officers and sending to the governor, is apparent from Minn. Const. art. 4, s. 22, which provides that no bills shall be passed on the day of adjournment, and continues "but this section shall not be so construed as to preclude the enrollment of a bill, or the signature and passage from one house to the other, or the reports thereon from the committees, or its transmission to the executive for his signature," provisions wholly unnecessary if the word could not include those things. Burns v Sewell, 48 M 425, 430, 51 NW 224.

Section 23. CENSUS; APPORTIONMENT.

Minn. Const. art. 4 s. 23, which provides that the legislature shall have power to reapportion the legislative districts at its first session after a state or federal

census, construed as imposing a duty upon the legislature to make such reapportionment and, if not made at the first session after such census, that it is competent for the legislature to do so at some subsequent session. State ex rel v Weatherill, 125 M 336, 147 NW 105.

Section 24. DISTRICTS OF SENATORS AND REPRESENTATIVES; TERM OF OFFICE.

Minn. Const. art. 4 s. 24, indicates that little attention has been paid to forms of expression. It provides that representatives shall hold office for a term of two years and that senators shall be chosen for four years. To say that because representatives hold office for a fixed term, while senators are chosen for a fixed term the framers of the section had different things in mind is to draw too fine a distinction. State ex rel v Houdersheldt, 151 M 167, 171, 186 NW 234.

Section 25. QUALIFICATIONS OF MEMBERS.

A candidate for the office of representative must be a qualified resident of the district which he seeks to represent. State ex rel v Scott, 93 M 205, 100 NW 1125.

One not a qualified resident of the district which he seeks to represent as a representative is ineligible to the office and has no right to have his name placed upon the official ballot as a candidate for the office. State ex rel v Erickson, 175 M 393, 221 NW 245.

Section 27. SUBJECT AND TITLE OF LAWS.

1. Object of section
2. Construction and application of section
3. Laws embracing more than one subject
4. Laws held not to embrace more than one subject
5. Subject-matter to be expressed in title
6. Reference to title in interpretation of act
7. Title held sufficient
(a) Title broader than body of act
(b) Purpose of act not expressed
(c) Provision for fees not expressed
(d) Provision for penalties not expressed
(e) State and county affairs
(f) Town and city affairs
(g) Court and judicial matters
(h) Mortgage foreclosure, execution, and tax sales
(i) Exemption laws
(j) Miscellaneous
(k) No discussion of terms
8. Amendatory acts
(a) Titles sufficient
(b) Titles held insufficient

1. Object of section

Preceding the formation of a state constitution, a vicious system prevailed of inserting matter in acts which was entirely foreign to that expressed in the title, and by this means securing the passage of laws which would never have received the sanction of the legislature had the members known the contents of the act. It was to prevent frauds of this nature that this section was passed, and it has, and was intended to have, the effect of defeating the action of the legislature, even if the members are so inattentive as to overlook such extraneous matter after the bill has been read twice at length under section 20. Supervisors v Heenan, 2 M 330 (281, 288).

The well-known object of this section was to secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits, by prohibiting the fraudulent insertion therein of matters wholly foreign and in no way related to or connected with its subject, and by preventing the combination of different measures, dissimilar in character, purposes, and objects but united with the sole view, by this means, of compelling the requisite support to secure their passage. It was not intended to embarrass legislation by making laws unnecessarily restrictive in their scope and operation and multiplying their number, nor should it be so construed by the courts. State v Cassidy, 22 M 312, 322.

An excellent example of the type of legislation which this section sought to avoid is L. 1854, c. 42, entitled "An act relative to sheep and swine", which, after regulating the running at large of these animals, provides further that "no person shall be eligible to hold any office under the laws of this territory who has not been a resident of this territory for six months preceding his election or appointment". State ex rel v Erickson, 125 M 238, 146 NW 364.

This section has two objects, one is to prevent a fraud upon the public and the legislature by permitting the passage of acts, the nature of which their titles do not disclose, the other is to prevent the passage of unrelated measures by a combination of interests each particularly concerned with some one or more, and careless of the others. State v McGraw, 163 M 154, 158, 203 NW 771.

2. Construction and application of section

This section is to be liberally construed, for a strict construction frequently would nullify laws not repugnant to the spirit of its provisions. State v Gut, 13 M 341 (315).

Laws 1929, Chapter 228, the title of which deals with one subject, i. e., the regulation of practices arising out of and in connection with personal injury cases, is not violative of this section, which provides that no law shall embrace more than one subject, which shall be expressed in its title, since the term "subject" as used in the constitution is to be given a broad and extended meaning so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. Blanton v N. P. Ry. Co. 215 M 442, 10 NW(2d) 382.

This section has no application to the action of the legislature proposing an amendment to the constitution. Julius v Callahan, 63 M 154, 65 NW 267.

3. Laws embracing more than one subject

GENERALLY. The term "subject" as used in this section is to be given a broad and extended meaning so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. To constitute duplicity of subject an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other. All that is necessary is that the act should embrace some one general subject; and by this is meant that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of or germane to one general subject. Johnson v Harrison, 47 M 575, 50 NW 923.

An act permitting the consolidation of two railroad companies, authorizing them to bridge the Mississippi River, requiring the fencing of the right of way wherever it went through enclosed lands, and making certain provisions as to the taxation of railroad lands, embraces more than one subject. Winona & St. P. R. Co. v Waldron, 11 M 515 (392).

A statute which provided additional compensation to the county auditor and assessor for clerk hire, changed the date for the election of certain city officers, and changed the salary of the city jailor and the city market master, embraces more than one subject. State ex rel v Murray, 41 M 123, 42 NW 858.

An act which prohibits any political party from using the name or any part of the name of a previously existing political party, and further that no candidate should be designated as the candidate of more than one party, embraces more

than one subject. The first part deals with party name protection, the latter with antifusion. State ex rel v Hanson, 93 M 178, 100 NW 1124.

A statute which deals with the two subjects of homeless and abandoned children, and maternity hospitals, is void because it embraces more than one subject. State v Women's & Children's Hospital, 143 M 137, 173 NW 402.

4. Laws held not to embrace more than one subject

A statute dealing with township and county affairs. Supervisors v Heenan, 2 M 330 (281).

A statute relating both to homestead and personal property exemption. Tuttle v Strout, 7 M 465 (374).

A statute dealing with various matters relative to the government and management of the city of St. Paul. City of St. Paul v Colter, 12 M 41 (16).

A statute dealing with court procedure, and with the levying of taxes in unorganized counties, not only for jurors' expenses but for all the expense of the county. State v Gut, 13 M 341 (315).

A statute requiring a license fee from all persons engaged in the sale of intoxicating liquors, and providing for the creation of a fund from such fees for the foundation and maintenance of an asylum for inebriates. State v Cassidy, 22 M 312, 322.

A statute disorganizing a county and attaching it to an adjoining county, and providing for taxation of property in the former county and the settling of its indebtedness. State ex rel v McFadden, 23 M 40.

A statute relating to the adulteration of various articles of food and drink. Stolz v Thompson, 44 M 271, 46 NW 410.

An act to incorporate the city of Lakeside, to provide for its future annexation to the city of Duluth and to the independent school district of Duluth. State ex rel v La Vaque, 47 M 106, 49 NW 525.

A probate code. Johnson v Harrison, 47 M 106, 49 NW 525.

A statute providing for the inspection in railroad tanks of illuminating oils, and forbidding removal until such inspection has been made. Willis v Standard Oil Co. 50 M 290, 52 NW 652.

An act to authorize reassessments for local improvements by cities and to legalize certain of such assessments. In re Piedmont Avenue East in the City of Duluth, 59 M 522, 61 NW 678.

A statute providing for a new state capitol building. Fleckten v Lamberton, 69 M 187, 72 NW 65.

An act to provide for fixing and establishing boundary lines of land by civil action, and providing that the court shall try any adverse claims to any portion of the land involved when necessary for a complete settlement of the boundary lines being established. Benz v City of St. Paul, 77 M 375, 79 NW 1024, 82 NW 1118.

An act to prohibit the practice of blacklisting and the coercing and influencing of employees by their employers. State ex rel v Justus, 85 M 279, 88 NW 759.

An act to change the names of certain persons herein named, and to fix and establish their adoption and heirship. Atwell v Parker, 93 M 462, 101 NW 946.

A statute relating to primary elections. State ex rel v Erickson, 125 M 238, 146 NW 364.

An act establishing a state wild life preserve and hunting ground in Beltrami, Lake of the Woods, and Koochiching counties, authorizing the acquisition thereof of unredeemed delinquent lands assessed for benefits in drainage districts within the preserve, and providing by state certificates of indebtedness to reimburse the counties for the amounts of the benefits assessed against the lands so acquired, in order to enable the counties to meet drainage bonds issued in compliance with drainage laws, does not embrace more than one subject within the provision of this section. Lyman v Chase, 178 M 244, 226 NW 633, 842.

An act having to do with the hairdressing of women and beautification of the skin, face, and upper part of their bodies seeks to regulate but one occupation,

and does not embrace more than one subject. Luzier Laboratories v State Board, 189 M 151, 248 NW 664.

An act which provides an appropriation for direct relief, work relief, and employment to needy, destitute, and disabled persons. Moses v Olson, 192 M 173, 255 NW 617.

The first ordinance was entitled "An ordinance providing for and relating to the appointment and duties of weighers of fuel, and to license and regulate the sale, advertisement for sale and delivery of fuel within the city of Minneapolis, and to provide penalties for violations". The amendment read "An ordinance amending an ordinance entitled [herein was inserted the title of the original ordinance] passed January 27, 1933, as subsequently amended". This amendment made the assailed provisions, relating to insurance, part of the ordinance. The title indicates the purpose is to regulate delivery of fuel. The requirement of insurance is not without the pale of regulation of delivery and is within the title of the ordinance. Sverkerson v City of Minneapolis, 204 M 388, 392, 283 NW 555.

"An act relating to persons having a psychopathic personality", providing for the care and commitment of sexually irresponsible persons dangerous to other persons. State ex rel v Probate Court, 205 M 545, 287 NW 297.

A curative act does not have a duplicity of subject matter solely because it embraces means of financing a utility as well as the processes of acquiring it in the first instance. Such matters are properly considered so much a unit as to allow their coverage by one act. Vorbeck v City of Glencoe, 206 M 180, 288 NW 4.

Where the title declares that the act is one to tax chain stores and mail order establishments, and repeals a prior statute taxing chain stores, and the body of the act contains provisions for such taxation, the repeal of the former law, and a saving clause relating to taxes levied and assessed under the former law. C. Thomas Sales Store System v Spaeth, 209 M 504, 297 NW 9.

Title of Ex. Session Laws 1937, Chapter 50, reading: "An act to amend Mason's Minnesota Statutes of 1927, Section 2292, as amended by Laws 1935, Chapter 334, and Section 2293, subsections 2b and 2c(2), relating to inheritance, bequests, gifts and transfer taxes", does not violate this section. DeCoster v Commissioner of Taxation, 216 M 1, 11 NW(2d) 489.

Requirement of Section 98.12 as to the keeping of books and records by fur dealers, which shall be open to inspection by the director of game and fish, comes directly within the title of the original act, and does not violate this section, which provides that no law shall embrace more than one subject, which shall be expressed in its title. State v Stein, 215 M 308, 9 NW(2d) 763.

5. Subject-matter to be expressed in title

The following are the tests as to the sufficiency of a title: first, whether the several parts of the act relate to one general subject; second, whether the title is sufficiently suggestive of the subject; and, third, whether there is any fraud in the inclusion of the act of some of the provisions there found. State v Gut, 13 M 341 (315).

The generality of the title of an act is no objection, provided only it is sufficient to give notice of the general subject of the proposed legislation and of the interests likely to be affected. The title was never intended to be an index of the law. Johnson v Harrison, 47 M 575, 50 NW 923.

A statute abolishing standing appropriations, except where there is a provision for a tax levy or fees or receipts for any purpose set apart as a special fund, is not open to the objection that the subject-matter of the act is not expressed in its title. State ex rel v Iverson, 126 M 110, 147 NW 946.

It is not necessary that the title be an index to the act. It is sufficient if the act embraces some one general subject and the matters treated be so connected, each with the other, as to be germane to one general subject. State v McGraw, 163 M 154, 158, 203 NW 771.

Since the title is not an index to the law a fair suggestion of the subject matter is all that is necessary. Sverkerson v City of Minneapolis, 204 M 388, 392, 283 NW 555.

6. Reference to title in interpretation of act

When seeking the legislative intent in an ambiguous statute, it is proper to refer to the title and history of the act in question. Loper v State, 82 M 71, 84 NW 650.

Where there is doubt as to whether words have been used in the title in their usual or in a restricted sense, the title and enacting clause should be read and construed together. Winters v City of Duluth, 82 M 127, 84 NW 788.

7. Title held sufficient

(a) Title broader than body of act

It is no valid objection to the sufficiency of a title that the act is not as broad as it might have been under the title used. An act to prohibit unfair discrimination between different sections, communities, or localities, unfair competition, and providing penalties therefor is not contrary to this section merely because the body of the act deals only with petroleum and its by-products. State ex rel v Standard Oil Co. 111 M 85, 94, 126 NW 527.

A statute prohibiting the soliciting of orders for the sale of intoxicating liquors within certain territory, is not unconstitutional for the reason that the title is broader than the body of the act. State v Droppo, 126 M 68, 147 NW 829.

An act to punish the making or use of false statements to obtain credit, which applies only to cases in which the statements are made to banks, savings banks, or trust companies. State v Elliott, 135 M 89, 160 NW 204.

An act defining the liability of employers to their employees for personal injury or death, applicable only to steam railroads. Seamer v G. N. Ry. Co. 142 M 376, 172 NW 765.

(b) Purpose of act not expressed

It is not essential to the sufficiency of a title that it express the purposes or objects of the act. Lien v County Board, 80 M 58, 82 NW 1094.

(c) Provision for fees not expressed

The exaction of a license fee need not be expressed in the title. An act to establish a fund for the foundation and maintenance of an asylum for inebriates properly includes a provision for the collection of a license fee from every person engaged in the sale of intoxicating liquors. State v Cassidy, 22 M 312, 322.

A provision for the payment of clerical fees in an act regulating the collection, indexing, presentation, and use as evidence of vital statistics was held to be embraced by the title. Gard v Otter Tail County, 124 M 136, 144 NW 748.

(d) Provision for penalties not expressed

A provision imposing a penalty for a violation of the act need not be expressed in the title.

The following penalties were held to be permissible under the titles cited:

In an act giving labor a first lien, and material furnished a second lien, on all property, a section making it a criminal offense for a contractor to receive full payment under his contract and then neglect to discharge his obligations to materialmen and laborers, so that the latter impose a lien on the property, State v Brachvogel, 38 M 265, 36 NW 641;

In an act to declare certain weeds common nuisances and to provide for their destruction, a provision making it a criminal offense to fail to cut weeds as ordered, State v Boehm, 92 M 374, 375, 376, 100 NW 95;

In an act regulating state lands and the product of the same, and to repeal certain acts and parts of acts, a provision making it a felony to trespass on state lands in cutting timber, State v Shevlin-Carpenter Co. 99 M 158, 108 NW 935, 218 U. S. 57, 54 L. Ed. 930, 30 S. C. 603; 102 M 470, 113 NW 634; 114 NW 738;

In an act for the preservation, propagation, protection, taking, use, and transportation of game, fish, and certain harmless birds and animals, a section making it a misdemeanor to interfere with the game and fish commission in the gathering of fish spawn, State v Tower Lbr. Co. 100 M 38, 41, 110 NW 254;

In an act to create and establish a department of banks, defining the powers of the superintendent of banks, and to provide for a system of examination, audit, and control of state banks, a provision making it a felony to withhold certain information when called for by the superintendent of banks, State v Sharp, 121 M 381, 141 NW 526;

Penalties to be collected in a civil action were held to be permissible in the following instances:

In an act providing for the foreclosure of mortgages on real estate by advertisement, a provision for a treble penalty collectable by a mortgagor from a mortgagee who has misappropriated funds belonging to the former, Lynott v Dickerman, 65 M 471, 67 NW 1143;

In an act regulating state lands and the product of the same, and to repeal certain acts and parts of acts, a provision for treble damages for wilful trespass on state lands in cutting timber; and double damages where the trespass is innocent, State v Shevlin-Carpenter Co. 99 M 158, 108 NW 935, 218 U. S. 57, 54 L. Ed. 930, 30 S. C. 603, 102 M 470, 113 NW 634, 114 NW 738.

(e) State and county affairs

In the following cases, relating to state and county affairs, the titles were broad enough, to include the sections challenged:

In an act to provide for township organization, various provisions relating to county government, Supervisors v Heenan, 2 M 330 (281, 288);

In an act to change the titles of and regulate the holding of courts for counties unorganized for judicial purposes, and to regulate the manner in which the counties to which they are attached for such purposes are to provide for the transaction of the business of counties which have no board of county commissioners, provisions for the levying of taxes for such counties for county purposes, State v Gut, 13 M 341 (315);

In an act in relation to the county of Cass, and to attach the same to the county of Crow Wing, some provisions as to taxation of property in the former county, and the setting of its indebtedness, State ex rel v McFadden, 23 M 40;

In an act to amend section 114, chapter 8, G. S. 1878, relating to the powers of county commissioners, a provision authorizing the county commissioners to apportion the township funds on the division of a township, State ex rel v Browne, 56 M 269, 57 NW 659;

In an act to change the boundaries of Otter Tail County, a change in the lines of a county adjoining the one named in the title, State v Honerud, 66 M 32, 68 NW 323;

In an act to provide for the creation and organization of new counties and government of the same, several sections dealing with changes in the boundaries of organized counties, the temporary location of the county seats of new counties, the organization of the towns and school districts in new counties, and the apportionment among the new and old counties of the debt of the old counties, State ex rel v County Board, 67 M 352, 69 NW 1083;

In an act to appropriate money to aid in building bridges and draining lands in certain counties of the state, provisions for the building of such bridges and imposing the duty of maintaining the same, State ex rel v County Board, 83 M 65, 85 NW 830;

In an act to create a state board of control, and to provide for the management and control of the charitable, reformatory and penal institutions of the state, and to make an appropriation therefor, and to abolish the state board of corrections and charities, provisions dealing with the financial affairs of normal schools, State ex rel v Board of Control, 85 M 165, 175, 88 NW 533;

In an act to create a board of state drainage commissioners and prescribe its duties, the imposition of a duty upon the county board of the proper county to repair a state ditch, Gaare v County Board, 90 M 530, 531, 97 NW 422;

In an act to authorize county commissioners to issue certificates of indebtedness in certain cases, a provision legalizing certain charges against the county, State ex rel v Gunn, 92 M 436, 439, 100 NW 97.

(f) Town and city affairs

In the cases which follow, dealing with town and city affairs, the titles were held broad enough to include the sections contested:

In an act to provide for township organization, some sections dealing with county government. Supervisors v Heenan, 2 M 330 (281);

In an act to amend the charter of the city of St. Paul, a provision for the payment over of moneys by the collector of taxes to the city treasurer, City of St. Paul v Colter, 12 M 41, 50 (16);

In an act to authorize the village of Lake City to aid in the construction of the St. Paul and Chicago Railway, authority to the town of Lake City to issue bonds (the word "village" being used inadvertently for the word "town"), State ex rel City of Lake City and Town of Lake, 25 M 404;

In an act to amend chapter 2 of the Special Laws of 1887 entitled "An act to define the boundaries of, and establish a municipal government for, the city of Duluth", a provision removing the exception made in the earlier act of certain territory, and thus bringing that territory within the city limits, State ex rel v Gallagher, 42 M 449, 451, 44 NW 529;

In an act amending section 2 of chapter 8 of the charter of the city of Minneapolis, provisions with respect to damages and assessments for benefits in the change of street grades, Kelly v City of Minneapolis, 57 M 294, 59 NW 304;

In an act to amend and consolidate the charter of the city of Minneapolis, a provision that the municipal court shall have jurisdiction over the offense of keeping saloons open on Sunday, State v Anderson, 63 M 208, 65 NW 265;

In an act to abolish the board of education of the city of St. Paul and providing that the City of St. Paul shall constitute a single independent school district and exercise all the powers heretofore vested in the board of education of the City of St. Paul, a provision authorizing the city council to fix the amount of money to be expended during the ensuing year for teachers' salaries, Putnam v City of St. Paul, 75 M 514, 78 NW 90;

In an act to amend and consolidate the charter of the city of Crookston, sections giving to the city the penalties and interest collected on taxes levied for city purposes, and also all interest received from the banks in which the county has deposited the funds, City of Crookston v County Board, 79 M 283, 82 NW 586;

In an act to amend the charter of the city of St. Paul in relation to the duties and powers of the board of public works of said city, the imposition of certain clerical duties upon the city treasurer in connection with the work of the board, Ek v St. Paul Permanent Loan Co. 84 M 245, 87 NW 844;

In an act relating to public improvements heretofore or hereafter made in all villages and in cities of ten thousand or less inhabitants, to the levying of assessments to defray the expenses thereof, and to the issuance of evidences of indebtedness in anticipation of their collection, a provision validating improvements previously made, and authorizing payment therefor, Merchants National Bank of St. Paul v City of East Grand Forks, 94 M 246, 102 NW 703;

In an act to provide in certain cases for the separation from cities, containing 10,000 inhabitants or less, of unplatted agricultural lands included within the corporate limits of such cities, a provision excepting home rule cities, Hunter v City of Tracy, 104 M 378, 116 NW 922;

In an act to amend the charter of the City of Minneapolis, the inclusion of the board of education in a prohibition against the hiring of associate counsel by any of the various departments and boards of the municipal government, Jackson v Board of Education, 112 M 167, 127 NW 569;

In an act authorizing cities of Minnesota of over 50,000 inhabitants to issue and sell municipal bonds for certain public purposes, the inclusion of the city of Minneapolis although such inclusion alters certain provisions in the city charter, Minneapolis Real Estate Board v City of Minneapolis, 145 M 379, 381, 177 NW 494;

"An act relating to separation of unplatted agricultural or horticultural lands included in the corporate limits of cities containing 10,000 inhabitants or less and from school districts contained in such cities and attaching the same to adjoining towns or townships and school district or school districts in the same county and defining the duties of county commissioners in such cases and repealing Section 1722, General Statutes 1923," in both its parts relates to the one general subject of the detachment of land from cities of the fourth class. In re Detachment of Agricultural Lands, 188 M 237, 246 NW 905.

(g) Court and judicial matters

The following subjects were held to be broad enough to include the contested sections:

In an act to amend chapter 84 of the General Statutes, relating to forcible entries and unlawful detainers, the making of a special rule for Ramsey county so as to permit trial at special term, Hoffman v Parsons, 27 M 236, 6 NW 797;

In an act to establish a probate code, a regulation of the laws of descent, Johnson v Harrison, 47 M 575, 50 NW 923;

In an act to provide for fixing and establishing boundary lines of land by civil action, a provision that "the court shall try and determine any adverse claims in respect to any portion of the land involved which it may be necessary to determine for a complete settlement of the boundary lines involved," Benz v City of St. Paul, 77 M 375, 79 NW 1024, 82 NW 1118;

In an act to amend an earlier act for the establishment of drainage ditches, several sections relating to the establishment of judicial ditches, while the earlier act had dealt only with county ditches, State ex rel v Crosby, 92 M 176, 180, 99 NW 636.

(h) Mortgage foreclosure, execution, and tax sales

In the following cases it was held that the matters contested might properly be included under the titles:

In an act to regulate the foreclosure of real estate, a provision to the effect that the right of redemption may be waived, Atkinson v Duffy, 16 M 45 (30, 36);

In an act to regulate the foreclosure of real estate, the regulation of redemption from execution sales as well as from sales under mortgages, Gillitt v McCarthy, 34 M 318, 319, 25 NW 637;

In an act to amend section 37 of ch. 6, General Laws of 1877, relating to notice of redemption from tax sales, an extension of the requirement of notice so as to include purchasers from the state of property which had been bid in by the state at tax sales, State ex rel v Bigelow, 52 M 307, 311, 54 NW 95;

In an act providing for the foreclosure of mortgages on real estate by advertisement, a provision for a treble penalty where the mortgagee improperly appropriates to his own use money which should have been turned over to the mortgagor, Lynott v Dickerman, 65 M 471, 67 NW 1143;

In an act to legalize filing of affidavits in certain cases, and making the same, and the records thereof evidence, a provision legalizing affidavits not filed within the time allowed by a former statute, Farnsworth L. & R. Co. v Commonwealth Title Ins. Co. 84 M 62, 65, 86 NW 877.

(i) Exemption laws

In the following cases, dealing with exemptions, the sufficiency of the title, as to the contested matter, was upheld:

In an act for a homestead exemption, sections dealing with exemptions of personal property, Tuttle v Strout, 7 M 465 (374, 377);

In an act for a homestead exemption, a regulation of the manner in which homesteads may be acquired and enjoyed, Barton v Drake, 21 M 299;

In an act to fix the amount of wages of laborers exempt from process of attachments, garnishments, or execution, the inclusion of employees other than manual laborers, Boyle v Vanderhoof, 45 M 31, 47 NW 396.

(j) Miscellaneous

In the following cases, relating to various subjects, the titles were held to cover sufficiently the portions contested:

In an act to prohibit and prevent the sale or manufacture of unhealthy or adulterated dairy products, a prohibition against the manufacture or sale of butter or cheese substitutes, Butler v Chambers, 36 M 69, 74, 30 NW 308;

In an act to authorize the organization and incorporation of annuity, safe deposit, and trust companies, a provision authorizing such companies to act as guardian for the estates of insane persons, minors, etc., Minnesota Loan & Trust Co. v Beebe, 40 M 7, 41 NW 232;

In an act to regulate the practice of pharmacy, the licensing of persons to carry on such practice, and the sale of poisons in the State of Minnesota, a regulation of the sale of non-poisonous drugs and medicines, State v Donaldson, 41 M 74, 42 NW 781;

In an act to provide for incorporation and regulation of co-operative or assessment life, endowment and casualty insurance associations and societies, an exemption from execution of the funds secured to a beneficiary from insurance in these companies, First National Bank of Shakopee v How, 65 M 187, 67 NW 1150;

In an act to amend an act entitled, "an act to organize the St. Croix Boom Corporation, passed and approved February 27, 1856," a provision as to who shall scale the logs going through the boom, and the price to be paid for such services, O'Brien v St. Croix Boom Corp. 75 M 343, 77 NW 991;

In an act to prohibit the practice of blacklisting and the coercing and influencing of employees by their employers, a prohibition against the combination of two or more employers for the purpose of preventing any person from getting employment, State ex rel v Justus, 85 M 279, 88 NW 759;

In an act to amend section 467 of the Penal Code of the state of Minnesota, relating to receiving deposits in insolvent banks, a prohibition against the receiving of deposits by an insolvent bank, person, company, etc., "engaged in whole or in part in banking, brokerage, exchange or deposit business in any way," State v Leland, 91 M 321, 98 NW 92;

In an ordinance entitled "Sale of Intoxicating Liquors," a prohibition against keeping a saloon open on Sunday, City of Duluth v Abrahamson, 96 M 39, 104 NW 682;

In an act to authorize the use of voting machines at elections, and to authorize cities, villages and towns to issue bonds to defray the cost of the purchase thereof, and to repeal existing laws relating to voting machines, a provision for the creation of a commission to determine whether a certain voting machine could be effectively used to express the voter's will, Elwell v Comstock, 99 M 261, 264, 109 NW 113, 698;

In an act providing for the mode of inflicting the punishment of death, the manner in which the same shall be carried into effect, and declaring a violation of any of the provisions of this act to be a misdemeanor, a prohibition against printing any details of the execution, State v Pioneer Press Co. 100 M 173, 110 NW 867;

In an act to license and define the road regulations of motor and other vehicles and appropriating money therefor, a regulation of horse-drawn vehicles, State v Bussian, 111 M 488, 127 NW 495;

An act to prevent unlawful discrimination in the sale of milk, cream, butter fat and to provide a punishment for the same, which really relates to buying instead of selling the articles mentioned, State v Bridgeman & Russel Co. 117 M 186, 134 NW 496;

In an act creating a department of weights and measures, to be under the jurisdiction of the Railroad and Warehouse Commission, defining its duties and powers and providing penalties for interference therewith, a provision making short weight a misdemeanor, State v Armour & Co. 118 M 128, 136 NW 565; State v People's Ice Co. 124 M 307, 144 NW 962;

In an act relating to the sale of timber on state lands, defining trespass thereon and prescribing penalties therefor, a provision that the statute of limitations

should not apply to actions brought under that act, State v Brooks-Scanlon Lbr. Co. 128 M 300, 303, 150 NW 912;

In an act authorizing cities of the first class to designate and establish restricted residence districts and to prohibit the erection, alteration and repair of buildings thereon for certain prohibited purposes, a provision for the establishment of such restricted districts by condemnation, State ex rel v Houghton, 144 M 1, 174 NW 885, 176 NW 159;

In a state prohibition act a section to the effect that one of the purposes of the act is to provide for the enforcement of the federal war time prohibition act, State v Andrews Brothers, 144 M 337, 175 NW 685;

In an act providing for the protection of employees, though the provisions of the act are broad enough to include firemen of a public department, yet, under the title of the act, it must be deemed one exclusively for the protection of employees, Hamilton v Minneapolis Desk Mfg. Co. 78 M 3, 80 NW 693;

An act to prevent fraud in the sale and disposition of stocks, bonds, or other securities is broad enough to cover legislation affecting investment contracts, State v Evans, 154 M 95, 191 NW 425;

An amendatory act imposing upon the possessors of raw skins of fur-bearing animals "legally killed within or without the state" the burden of proof "that the hides were so taken" is not unconstitutional because its subject-matter is beyond the scope of the title of the original act. The reference in that title to the wild life of "both this and other states" embraces the provisions concerning imported skins, Cohen v Gould, 177 M 398, 225 NW 435.

(k) No discussion of terms

In the following cases it was held with but slight, or no, discussion that statutes of the nature indicated conformed to the requirements of this section:

A statute relating to the limitation of damages in libel suits against newspapers, Allen v Pioneer Press, 40 M 117, 41 NW 936;

A statute dealing with the formation of cooperative societies, Finnegan v Noerenberg, 52 M 239, 245, 53 NW 1150;

A statute for the preservation, propagation, and protection of the game and fish of the state, State v Rodman, 58 M 393, 401, 59 NW 1098; State v N. P. Express Co. 58 M 403, 59 NW 1100;

A statute dealing with the state reform school, State ex rel v Phillips, 73 M 77, 75 NW 1029;

A statute authorizing loans to farmers for seed grain, Deering & Co. v Peterson, 75 M 118, 77 NW 568;

A statute which makes the giving of notice within 30 days of injury a condition precedent to an action against cities, etc., for personal injuries, Winters v City of Duluth, 82 M 127, 84 NW 788;

An act providing for the reorganization of the State Agricultural Society, Berman v Cosgrove, 95 M 353, 104 NW 534;

A statute providing for the separation of unplatted agricultural lands from cities, Hunter v City of Tracy, 104 M 378, 116 NW 922;

A state sedition act, State v Kaercher, 141 M 186, 169 NW 699;

An act defining and regulating maternity hospitals, State v Women's & Children's Hospital Assn. 150 M 247, 184 NW 1022;

A statute entitled "an act to revise the laws relating to banks of discount and deposit," Anderson v Seymour, 70 M 358, 73 NW 171.

8. Amendatory acts

(a) Titles sufficient

The title of an act amending a prior statute may be sufficient even though it refers only to the chapter and section of the revised or session laws to be amended, with no reference to the general subject of the act. State ex rel v Erickson, 125 M 238, 146 NW 364.

The title "an act amending section 2 of chapter 8 of the charter of the city of Minneapolis" held sufficient. Kelly v City of Minneapolis, 57 M 294, 59 NW 304.

It is proper to refer in the title to a compilation, such as that of 1878, which has not been adopted officially by the legislature, since the public as well as the legislature has often treated the compilation as an original enactment. Hall v Leland, 64 M 71, 74, 66 NW 202.

A sufficient reference to the former act may be made by repeating verbatim the title of the original act, without adding the chapter or year when the earlier act was adopted. Willis v Mabon, 48 M 140, 50 NW 1110.

"An act to amend and consolidate the charter of the city of Minneapolis," which relates to certain offenses and provides that the municipal court shall have jurisdiction over them, is proper, even though such court was established by an act separate from the charter. The municipal court appears to be affected only incidentally. State v Anderson, 63 M 208, 65 NW 265.

The inclusion of regulations for the disposal of liquor license money was held to be proper in a statute entitled "an act to amend an act entitled an act to incorporate the city of East Grand Forks in Polk County." State ex rel v Madson, 43 M 438, 45 NW 856.

A provision in the text of the amendment, attaching such amendment to a chapter in the city charter to which it has no relation, is immaterial so long as the subject falls within the titles of the amending and original acts. State ex rel v Madson, 43 M 438, 45 NW 856.

In a statute where the repeal is by implication merely, because of inconsistency with the statute passed, the repeal need not be mentioned in the title. City of Winona v School District, 40 M 13, 41 NW 539.

The title to an amendatory act which refers alone, by chapter and section, to the act to be amended, is sufficient. State v McGraw, 163 M 154, 203 NW 771.

The subject of an act amending the General Statutes is sufficiently expressed by a title which designates by number the sections amended. State v Helmer, 169 M 221, 211 NW 3.

Both the amended act and the amendatory act related to testing for bovine tuberculosis. The new law made it mandatory for county boards to proceed upon conditions which, under the old law, merely authorized them to do so. That was not entirely new matter and was within the scope of the title of the old law and germane to the subject matter, and within the title of the later law. State ex rel v County Board, 186 M 524, 243 NW 851.

(b) Title held insufficient

A number of statutes have been held to be invalid, in part, notwithstanding a liberal construction of the requirement of title. These statutes, with the portions not permissible under the titles, are as follows:

In an act to incorporate the village of High Forest, in the county of Olmstead, Minnesota, some provisions for the division of the town of Lake Forest and the organization of a new town, State ex rel v Kinsella, 14 M 524 (395);

In an act relating to the Mississippi Boom Corporation, a section dealing with the duties of the Mississippi and Rum River Boom Company, Mississippi and Rum River Boom Co. v Prince, 34 M 79, 84, 24 NW 361;

In an act to provide additional compensation to the auditor and assessor of Ramsey County, for clerk hire during the years 1887 and 1888 in transcribing the books of their respective offices, rendered necessary by reason of the extension of the city limits, and for other purposes, sections dealing with the time of election of various city officers, and with the salary of the city jailer and city market master, State ex rel v Murray, 41 M 123, 42 NW 858.

The provisions of amending acts must come within the original title, or they are to be deemed invalid as contrary to the requirements of this section. An amendment to "an act for a township drainage act, authorizing the supervisors of townships in Kittson, Marshall, Polk, Norman, Cass and Wilkin to issue bonds for certain purposes," which attempts to extend the provisions of the earlier act to 21 additional counties, is void. Kedsie v Town of Ewington, 54 M 116, 55 NW 864.

A statute which, in amending a section relating to municipalities taking property in trust, attempts to authorize the creation of trusts for nearly every purpose, is void. Watkins v Bigelow, 93 M 210, 100 NW 1104.

Not only must the subject-matter of the amendment be such as could have been included under the original title, but it must also be actually amendatory to the original act. It was held that "an act to amend and consolidate the charter of the city of Mankato, state of Minnesota," could not regulate the municipal court of that city, since the court had been provided for by a statute separate from that granting the charter. State ex rel v Porter, 53 M 279, 55 NW 134.

In "an act to amend an act for the preservation, propagation, and protection of the game and fish of the state of Minnesota, approved April 20, 1891," a provision that no one shall have in his possession at any time any bird, animal, or fish killed outside the state in a manner forbidden by the law of the state where killed, or shipped out of such other state in violation of its laws, (since such an act, during the open season in Minnesota, tends toward the destruction rather than towards the preservation of the state's game, etc.). State ex rel v Chapel, 63 M 535, 537, 65 NW 940;

In an act authorizing and directing the county commissioners of certain counties to reduce the compensation and number of officers and other employees of such counties and regulating the same and conferring certain duties upon certain officers in such counties in connection therewith, and prescribing a penalty for violation thereof, and repealing all acts and parts of acts inconsistent therewith, a provision authorizing an increase in the salary of certain officers, Simard v Sullivan, 71 M 517, 74 NW 280; State ex rel v Sullivan, 72 M 126, 75 NW 8; State ex rel v Sullivan, 73 M 378, 76 NW 223;

In an act to reduce the compensation and fees paid officers and employees of the county of Ramsey, Minnesota, and to regulate the duties of certain of said officers, a change in the compensation of the abstract clerk from a salary to a fee basis (since such a change might work an increase in income), State ex rel v Sullivan, 73 M 378, 76 NW 223.

The title, "an act to provide for the extension of the term of corporations," was held not to be broad enough to cover a provision to the effect that "any corporation * * * may amend its articles of incorporation in any respect which might have been made a part of said original articles." Palmer v Bank of Zumbrota, 72 M 266, 275, 75 NW 380;

A statute entitled "an act ratifying and confirming the election of trustees of the Norwegian-Danish Evangelical Lutheran Augsburg Seminary," cannot properly include a section to the effect that "the trustees aforesaid shall be elected by the conference of the Norwegian-Danish Evangelical Lutheran Church of America," State ex rel v Oftedal, 72 M 498, 75 NW 692;

In a statute attempting a direct repeal of a former statute, the repeal must be mentioned in the title to satisfy the requirements of this section. State ex rel v Smith, 35 M 257, 28 NW 241;

A statute which has violated the requirement that its subject-matter be expressed in the title is not necessarily wholly void. Hjelm v Patterson, 105 M 256, 117 NW 610; Reimer v Newel, 47 M 237, 49 NW 865; State ex rel v Sullivan, 72 M 126, 75 NW 8; Winona & St.P. R. Co. v Waldron, 11 M 515 (392);

An act which amends a section which defines the crime of taking indecent liberties with females and fixes the age of consent at 14 years by fixing the age at 16 years and including males within its provisions. The subject of the amendatory act, as expressed in the title, is "to enlarge the definition of indecent assault to include male persons." The provision of the act which refers to the change of the age of consent is not expressed in the title. State v Palmquist, 173 M 221, 217 NW 108; State v Phillips, 176 M 249, 223 NW 98.

An amended act, both as to title and subject matter, concerned only the weight of bread sold to the public. An amendatory act, attempting to regulate also the "sanitary wrapping of bread", violates the provisions of this section. Egevist Bakeries v Benson, 186 M 520, 243 NW 853.

Section 31. LOTTERIES.

Generally speaking the courts have reached the conclusion in civil proceedings that bank nights and schemes akin thereto are lotteries. In criminal prosecutions the weight of authority is to the effect that bank nights and similar plans to distribute prizes by chance are not lotteries in that one of the three essential elements is absent, namely, a consideration given or paid by the participants in the chance. State v Stern, 201 M 139, 141, 275 NW 626.

Section 32a. RAILROADS GROSS EARNINGS TAX LAWS SUBMITTED TO VOTE

1. Generally

2. Exemption granted in territorial days

3. Property subject to general taxation

4. Effect of amendment of 1906 to Article 9, Section 1

1. Generally

The form in which a proposed gross earnings tax law is to be submitted to the people is not prescribed by the constitution, but has been left to the legislature. The courts can only declare the submission void when the question is so framed as to be a palpable evasion of the constitution. State v Duluth & N. M. Ry. Co. 102 M 26, 112 NW 897.

The form was held to be sufficient where the law had been submitted on the ballot in the words "For taxation of railroad lands. Yes.... No....". State ex rel v Stearns, 72 M 200, 75 NW 210.

The form has been held sufficient where submitted in the words, "For increasing the gross earnings tax of railroad companies from three to four per cent. Yes.... No....". State v Duluth & N. M. Ry. Co. 102 M 26, 112 NW 897; State v Minnesota & N. W. Ry. Co. 102 M 506, 112 NW 899.

One who fails to vote on the proposed law has his vote counted in the negative. Farrell v Hicken, 125 M 407, 147 NW 815; State ex rel v Hugo, 84 M 81, 86 NW 784; Eikmeier v Steffen, 131 M 287, 155 NW 92.

The proposed law need not be submitted at a general election. State ex rel v Kiewel, 86 M 136, 90 NW 160.

The gross earnings tax imposed upon a railroad by section 295.02, under authority of this section, is a property tax upon all railroad property owned or operated for railroad purposes, including its franchise to exist as a corporation and to transact railroad business in this state. The tax imposed upon corporations by section 290.02 is a property tax upon the right or franchise of the corporation to exist and to transact business in this state, measured by the corporations "net taxable income". Insofar as the act assumes to impose a franchise tax, measured by income, upon a railroad based upon its ownership or operation for railroad purposes, its provisions are invalid, since the act was not approved by a vote of the people, as required by this section. That part of its corporate franchise exercised by a railroad company outside of the scope of railroad ownership or operations becomes subject to the tax imposed by section 290.02, measured by the net taxable income from such non-operating activity. State v Duluth, M. & N. Ry. Co. 207 M 618, 292 NW 401.

Debit balances accruing in the adjustment of per diem charges on the exchange of freight car equipment are not deductible from gross earnings tax returns by a railroad company. State v Minneapolis & St. L. R. Co. 204 M 250, 283 NW 244.

This section, providing that before any law shall take effect for the repeal or amendment of any law imposing a gross earnings tax upon the property of railroad companies used in the transportation as common carriers of passengers and freight it shall be submitted to the vote of the people of the state and adopted and ratified by a majority of the electors of the state voting at the election, is applicable only to legislation affecting or changing the taxation of common carrier railroads owning or operating lines of railroads within or

through the state, and does not apply to freight line companies or to the freight cars furnished or leased by them to railroads. Almen Ry. Equipment Co. v Commissioner of Taxation, 213 M 62, 5 NW(2d) 637.

2. Exemption granted in territorial days

Such laws were confirmed by the adoption of this section. County of Stevens v St. Paul, M. & M. Ry. Co. 36 M 467, 31 NW 942.

If such laws were to be deemed invalid, the effect of this section would have been to validate them. County of Traverse v St. Paul, M. & M. Ry. Co. 73 M 417, 76 NW 217.

The statutes of this state, enacted after the adoption of the constitution, providing for a commuted system of taxation of the property of railroad companies by permitting them to pay an annual gross earnings tax in lieu of the taxation of their property on the basis of a cash valuation, were unconstitutional until validated by the amendment of 1871 to the constitution (this section). Such validation was a qualified one, the right to repeal or amend the statutes being reserved. State ex rel v Stearns, 72 M 200, 75 NW 210; State ex rel v Luther, 56 M 156, 57 NW 464; State v G. N. Ry. Co. 106 M 303, 119 NW 202.

3. Property subject to general taxation

Stocks and bonds of another railroad company held by a railroad for railway purposes are not subject to general taxation. Taxes on property of this character are paid when the company pays its gross earnings tax. In re Payment Personal Property Taxes, 139 M 473, 167 NW 294.

Where a large tract of land owned by a railroad company is used only in small part for tracks, etc., it is not held for railway purposes, and is subject to assessments for local improvements. State ex rel v District Court, 68 M 242, 71 NW 27.

An act which exempts from taxation for five years the lands granted to a railroad company to aid in the construction of its road violates this section. State v Duluth & Iron Range R. Co., 77 M 433, 80 NW 626.

Corporate stocks and bonds and other corporate indebtedness owned and used by a railroad company for railway purposes are not subject to an ad valorem tax. State v N. P. Ry. Co. 139 M 46, 167 NW 294.

A special assessment on railroad property is valid only as to the improvements made after the amendment to the constitution which provided that the exemption from special assessments should cease. Minnesota Transfer Ry. Co. v City of St. Paul, 165 M 8, 205 NW 609, 207 NW 320.

In the absence of a statute to the contrary a railroad roadbed or right of way is subject to assessment for local improvements when benefited thereby, and is not liable in the absence of such benefit. In re Improvement of Superior Street, Duluth, 172 M 554, 562, 566, 216 NW 318.

4. Effect of amendment of 1906 to Article 9, Section 1

In the amendment of 1906 to Article 9, Section 1, gross earnings taxes on railroads are specially mentioned. The object of this is to preserve the requirement of section 32a, that any proposed change in taxes on the gross earnings of railroads must be submitted to the people. State v Wells, Fargo & Co. 146 M 444, 179 NW 221.

A statute of this state imposing a gross earnings tax of eight per cent upon express companies is a good faith exercise of the taxing power. State v Wells, Fargo & Co. 146 M 444, 179 NW 221.

Since inclusion in express company's gross earnings for purposes of taxation of receipts derived from "transfer" and "pick-up and delivery" services rendered to railroads under contract does not result in double taxation, there is no basis for holding that such inclusion violates uniformity clause of state constitution and denies taxpayer equal protection of laws in violation of equal protection clauses of state and federal constitutions. State v Railway Express Agency, Inc. 210 M 556, 299 NW 657.

Section 32b. INTERNAL IMPROVEMENT LANDS.

In 1872, section 32b, was adopted, providing for the sale of all lands donated to the state under the act of congress approved September 4, 1841, to be applied "to objects of internal improvement * * * namely: Roads, railways, bridges, canals and improvement of water courses, and drainage of swamps," and that the money arising from such sale should constitute the internal improvement land fund which should not be appropriated for any purpose without the approval of the electors of the state. An act purporting to appropriate money out of the general revenue fund for building and repairing of roads and bridges, is unconstitutional. Cooke v Iverson, 108 M 388, 394, 122 NW 251.

An act creating a department of conservation and transferring to the conservation commissioner all functions of the state auditor in respect to state lands, as land commissioner or otherwise, is constitutional. State v Finnegan, 188 M 54, 246 NW 521.

Section 33. SPECIAL LEGISLATION PROHIBITED.

1. Before amendment of 1892
2. Distinction between general and special legislation
3. Generally
4. Arbitrary classification
5. Population classification, valid
6. Population classification, invalid
7. Population classification; effect of Article 4, Section 36
8. Restrictive time limitation
9. City or county finances
10. Other city or county measures
11. Police measures, valid
12. Police measures, invalid
13. Temporary needs
14. Remedial acts
15. Amending, extending, or modifying special or local acts
16. Repeal of special or local laws

1. Before amendment of 1892

Subjects of legislation may be classified under the constitution, but such classification must not be arbitrarily made. A statute must treat alike all of the class to which it applies and bring within its classification all who are similarly situated or under the same conditions. The classification attempted to be made by a special law, declaring the emission of dense smoke within the city of St. Paul a nuisance, under certain conditions, is arbitrary and unauthorized. State ex rel v. Sheriff of Ramsey County, 48 M 236, 51 NW 112.

An act providing for the dissolution of independent school districts is not obnoxious as being special legislation, as it was passed prior to the enactment of the amendment of 1892. State ex rel v Cooley, 65 M 406, 409, 68 NW 66.

The amendment to the constitution proposed by L. 1881, c. 3, prohibiting special and private legislation on certain subjects, did not take effect, as a part of the constitution, before the official canvass of the vote. City of Duluth v Duluth Street Ry. Co. 60 M 178, 62 NW 267.

This section in its operation is prospective merely and does not apply to special laws in existence at the time the section was adopted. Green v Knife Falls Boom Corporation, 35 M 155, 27 NW 924.

An arbitrary classification of the persons or things subject to the act renders it special. The true practical limitation of the legislative power to classify is that the classification shall be upon some apparent natural reason, some reason suggested by necessity, by such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them. Nichols v Walter, 37 M 264, 33 NW 800.

An act which provides a mode for removing county seats, which requires a different percentage of the votes for removal when the question previously

has been voted on, is based on an arbitrary classification and is void. Nichols v Walter, 37 M 264, 33 NW 800.

Statutes which, on a proper basis, divide municipal corporations into classes according to population, and legislation adapted to the different classes, are general and not special. The fact that, at the time of the passage of the act, there is but one, or a limited number of municipalities, having the population specified, does not render it unconstitutional. State ex rel v District Court, 61 M 542, 64 NW 190.

A curative act to validate proceedings under a former invalid act under which many villages had attempted to incorporate is valid. A law reaching all villages in the same predicament is based on a proper classification. State ex rel v Spaude, 37 M 322, 34 NW 164.

A special act authorizing the city of Minneapolis to cause to be vacated for highway purposes a portion of a cemetery, violates the prohibition contained in this section against special laws for laying out, opening, or altering highways. Sacks v City of Minneapolis, 75 M 30, 32, 34, 77 NW 563.

The prohibition against "granting corporate powers or privileges except to cities" is to be construed as meaning the "granting of corporate charters". Brady v Moulton, 61 M 185, 63 NW 489.

This section is not violated by a special law which provides that a certain percentage of the money collected from liquor licenses in a village named shall go to a certain school district. State ex rel v Beck, 50 M 47, 52 NW 380.

This section is not violated by a special law requiring the council of a certain village to cause its proceedings to be published in some weekly newspaper in the village. State ex rel v Council of Village of Cloquet, 52 M 9, 53 NW 1016.

This section is not violated by a special law authorizing a village to issue bonds for waterworks. Brady v Moulton, 61 M 185, 63 NW 489.

This section is not violated by a special act for the formation and to fix the boundaries of the independent school district of the city of Duluth. State v West Duluth Land Co. 75 M 456, 78 NW 115.

The prohibition against granting corporate charters except to cities applies only to acts of incorporation thereafter to be granted. It does not prevent the amendment of a charter which was granted to a village before 1881. An amendment which changes the territorial limits of such a village is valid. State v Wiswell, 61 M 465, 63 NW 1103.

A special privilege is not conferred by a special law which provides that a certain percentage of the money collected from liquor licenses in a village embraced within a certain school district should go to such school district. State ex rel v Beck, 50 M 47, 52 NW 380.

A special privilege is not conferred by a general law authorizing the incorporation of annuity, safe deposit, and trust companies and giving them certain powers. Minnesota Loan & Trust Co. v Beebe, 40 M 7, 10, 41 NW 232.

The term "municipal corporations", as used in connection with these special privileges, is used in the sense of "political or public corporations" and includes counties and towns as well as cities. Dowlan v County of Sibley, 36 M 430, 432, 31 NW 517.

A municipal court act, relating to villages of over 3,000 inhabitants, does not violate this section. McCormick v Village of West Duluth, 47 M 272, 50 NW 128.

2. Distinction between general and special legislation

A constitutional prohibition against special legislation on a subject does not prevent the legislature from dividing it into classes and applying different rules to the different classes. This classification must be based upon substantial distinctions, which make one class so different from another as to suggest the necessity of different legislation with respect to them. The characteristics which form the basis of the classification must be germane to the purpose of the law; that is, the legislation must be confined to matters peculiar to the

class. It must be complete, so that the law will apply to every member of the class or every subject under the same conditions. State ex rel v Cooley, 56 M 540, 58 NW 150.

The legislature has considerable discretion in classification and the courts will not interfere to declare the statute invalid unless the classification is manifestly arbitrary. State v Bridgeman & Russell Co., 117 M 186, 134 NW 496.

Whether a law is to be regarded as general or special depends on its substance and not on its form. State ex rel v Cooley, 56 M 540, 58 NW 150.

A law is general if the class to which it applies requires or justifies legislation peculiar to itself in the matters covered by the law. State ex rel v Cooley, 56 M 540, 58 NW 150; State ex rel v Ind. School Dist. of Granite Falls, 143 M 433, 174 NW 414.

A law is special if the classification is manifestly arbitrary. It is only when the classification is so manifestly arbitrary as to evince legislative purpose of evading the constitution that the courts will interfere and declare the legislation special and void. State v Westfall, 85 M 437, 89 NW 175; State ex rel v Ind. School Dist. of Granite Falls, 143 M 433, 174 NW 414.

If the classification is a proper one and the statute is so framed as to apply automatically to other cities and villages as they may acquire the characteristics of the class, then the statute is general and not special. State ex rel v Ind. School Dist. of Granite Falls, 143 M 433, 174 NW 414.

If the basis of classification is valid, it is immaterial how many or how few members there are in the class,—how many or how few objects there are to which the law can apply. State ex rel v Cooley, 56 M 540, 58 NW 150.

The fact that there is only one member in the class established is immaterial, if the basis of classification is a proper one. State ex rel v Sullivan, 72 M 126, 75 NW 8; Marwin v Board of Auditorium Comrs. 140 M 346, 168 NW 17; State ex rel v Ind. School Dist. of Granite Falls, 143 M 433, 174 NW 414.

An act fixing the boundaries of school districts in certain cases, applicable only to existing school districts which are made a class into which other districts cannot enter afterwards, is a local or special law in the guise of a general one. State ex rel v Ind. School District, 164 M 66, 204 NW 572; State ex rel v Erickson, 160 M 510, 200 NW 813; Consolidated School Dist. v Christison, 167 M 45, 46, 208 NW 409.

A proviso authorizing the county board to attach the territory of an adjoining school district to a school district having a borough, village, or city of not more than 7,000 inhabitants wholly or partly within its boundaries, on the petition of a majority of the voters of the latter district, if it deems such annexation conducive to the good of the inhabitants of the territory affected is a general law, within the provisions of this section. Kramer v County of Renville, 144 M 195, 175 NW 101.

3. Generally

This section has no application to the power to establish courts inferior to the supreme court, which is granted to the legislature by article 6, section 1. Hence laws relating to municipal courts are not invalid, as regulating the affairs of cities. State ex rel v Sullivan, 67 M 379, 69 NW 1094; Dahlsten v Anderson, 99 M 340, 109 NW 697.

The state has the power and authority to protect its own interests and to treat every subject of its sovereignty as within a class by itself. Berman v Minnesota State Agricultural Society, 93 M 125, 100 NW 732.

The amendments of 1881 and 1892 to the constitution, being article 4, sections 33, 34, completely abrogate all that part of article 11, section 1, requiring laws for changing the lines of any organized county to be submitted to the electors thereof before taking effect. L. 1895, c. 298, is not unconstitutional because it contravenes these provisions. State ex rel v County Board, 66 M 519, 68 NW 767, 69 NW 925, 73 NW 631.

In the constitutional sense a law is general if it applies to and operates uniformly upon all members of any class of persons, places, or things requiring

legislation peculiar to such class; and the mere fact that the members of such class are limited, or that the class consists of only a single member, object, or thing, is unimportant. Board of Education of City of Duluth v Borgen, 192 M 367, 256 NW 894.

A law is "general" in the constitutional sense, which applies and operates uniformly upon all members of any class of persons, places, or things requiring legislation peculiar to itself in matters covered by the law. Tested by the rules stated, Laws 1943, Chapter 15, authorizing county boards in all counties containing not less than 46 nor more than 49 full and fractional congressional townships and having a population of not less than 20,000 nor more than 27,500 to fix salaries, violates this section and section 34, so far as it is applicable to Pine county, in that it is but another way of naming Pine county under the guise of a general law, since its requirements do not form the basis of a classification germane to the purpose of the law. Hamlin v Ladd, 217 M 249, 14 NW(2d) 396.

Where the authority granted by a statute is permissive and not mandatory, it grants exactly the same power to all municipalities within the class and the law goes into effect as to all of them upon its passage. It operates uniformly and grants equal power to all within that class. There is no constitutional provision requiring that all laws affecting municipalities must be mandatory. State ex rel v Peterson, 180 M 366, 369, 230 NW 830.

Article 4, section 36, permits the classification of cities for legislative purposes into four classes on a basis of population.

The power to fix a test by which population is to be determined carries with it the power to change the test.

The constitutional power of the legislature to pass a law fixing a test by which population is to be determined is not taken away or suspended by the fact that its exercise may result in immediately shifting some city from one class into another. No city has a constitutional or vested right to any particular set of regulatory laws. The legislature can change or repeal them. It may do so by acting directly upon the laws themselves or by changing the test of classification by the adoption of any other test which it might have adopted in the first instance. State ex rel v County Board, 124 M 126, 130, 144 NW 756.

Where several distinct propositions to create new counties are submitted at the same election to the electors of the same county, no elector can vote for or against more than one of the propositions; if he does, his ballot cannot be counted for or against any of such propositions. An act authorizing the submission of several such propositions, as so construed, is not unconstitutional. State ex rel v Pioneer Press Co. 66 M 536, 68 NW 769.

An act to revise the laws relating to banks of discount and deposit does not violate the provisions of this section. Anderson v Seymour, 70 M 358, 73 NW 171.

An act providing for the Torrens system of registering land titles is not special legislation. State ex rel v Westfall, 85 M 437, 89 NW 175.

Authorizing cities of the first class to issue bonds to construct a bridge over a navigable canal within its limits is not special legislation. The act applies to all cities of the first class and the presence of a navigable canal is not an element of the classification. Le Tourneau v Hugo, 90 M 420, 97 NW 115.

L. 1901, c. 31, is not special legislation. It is not open to the objection that the act is limited in its operation to urban property only and that this attempted classification is not a proper one. Stees v Bergmeier, 91 M 513, 98 NW 648.

An act to authorize county commissioners to issue certificates of indebtedness in certain cases, purporting to legalize certain county orders issued under the provisions of L. 1895, c. 302, which had been declared unconstitutional, and to authorize the county commissioners to provide for their payment is constitutional. State ex rel v Gunn, 92 M 436, 100 NW 97.

A section which is merely an incidental feature of a general law designed to assist in the effective execution of the Torrens plan is constitutional because the law is constitutional. National Bond & Security Co. v Hopkins, 96 M 119, 104 NW 678, 680, 816.

An act to define the boundary between the counties of St. Louis and Lake, does not contravene this section. State ex rel v County of St. Louis, 117 M 42, 45, 134 NW 299.

An act authorizing the court, in an action to foreclose a mechanic's lien, to allow costs and disbursements, including an attorney's fee, to a prevailing lienholder, does not contravene this section. Lindquist v Young, 119 M 219, 138 NW 28; Behrens v Kruse, 121 M 90, 95, 140 NW 339.

The prohibition against special legislation does not apply to an act concerning the state university, since that institution is not named in this section. State ex rel v Van Reed, 125 M 194, 145 NW 967.

An act amending certain sections of R. L. 1905, as amended, and repealing certain session laws, the subject matter of all such laws being primary elections, which refers in its title to the sections amended by number only, without stating in connection therewith the general subject of the statutes amended and without reciting in its own title the general subject of the legislation, is not special legislation. State ex rel v Erickson, 125 M 238, 146 NW 364.

Sections 54.31 to 54.33 are not open to the objection that they are special or class legislation. Peters & Co. v Viegel, 167 M 286, 209 NW 9.

An act providing for the detachment of certain lands from a city and a school district is special legislation. Millett v City of Hastings, 179 M 358, 229 NW 346.

An act permitting the electors of a school district to reimburse its treasurer for moneys paid by him to it on account of loss of school funds in an insolvent bank is not special or class legislation. State ex rel v Kaml, 181 M 523, 233 NW 802.

L. 1923, c. 129, c. 142, insofar as it relates to highways to be established connecting public roads with navigable streams, is not unconstitutional as special legislation. County of Becker v Shevlin Land Co. 186 M 401, 243 NW 433.

The classification of unorganized territorities based upon area and assessed valuation does not contravene this section. County Board of Education v Borgen, 193 M 525, 259 NW 67.

The statute subjecting to garnishment money owned by the state to employees in the highway department is not special legislation. Franke v Allen, 199 M 450, 272 NW 165.

An act which permits industrial loan and thrift companies organized thereunder to charge 8% interest in advance on loans not to exceed one year is not special legislation. Mesaba Loan Co. v Sher, 203 M 589, 282 NW 823.

Laws 1939, Chapter 306, making coronary sclerosis an "occupational disease" of firemen, is not unconstitutional as "special" or "class legislation". Kellerman v City of St. Paul, 211 M 351, 1 NW(2d) 378.

Laws 1943, Chapter 662, providing for the determination and payment of certain claims against the state arising out of the location, construction, reconstruction, improvement, and maintenance of the trunk highway system and appropriating funds to pay such claims, is not violative of this section, as a grant of a privilege. White v State, 215 M 609, 11 NW(2d) 151.

Legislative appropriations in settlement of state's moral obligations is not subject to limitations provided in this section, since under the provisions thereof, if such construction were to be placed upon them, legislature never could appropriate money to pay a particular claim without passing a general law providing for the payment of all other claims. White v State, 215 M 609, 11 NW(2d) 151.

4. Arbitrary classification

A classification must be based on substantial distinctions which makes one class so different from another as to suggest the necessity for different legislation with respect to them. The characteristics which form the basis of the classification must be germane to the purpose of the law. There must be an evident connection between the distinctive features. The classification must be based upon some apparent natural reason. Otherwise, it is purely arbitrary.

Millett v City of Hastings, 179 M 358, 361, 229 NW 346; Hunter v City of Tracy, 104 M 378, 116 NW 922; Hjelm v Patterson, 105 M 256, 117 NW 610; Driscoll v County Board, 161 M 494, 201 NW 945; Jensen v Ind. School District, 163 M 412, 204 NW 49; State ex rel v School Board, 167 M 421, 209 NW 531; State ex rel v County of Mower, 185 M 390, 393, 241 NW 60.

An act which provides for the election of a county assessor in certain counties is special legislation regulating the affairs of counties, the attempted classification by population, as applied to the subject of the act, being incomplete, arbitrary, and evasive of the provisions of this section. State ex rel v Ritt, 76 M 531, 79 NW 535.

An act to license and regulate hawkers and peddlers throughout the state provides that it shall not be construed to prevent any manufacturer, mechanic, nurseryman, farmer, or butcher selling his manufactured articles, or products of his nursery or farm, or his wares, either by himself or employee. The classification so attempted is founded on no proper basis or natural distinction, but is arbitrary. State ex rel v Wagener, 69 M 206, 72 NW 67.

An act to provide for the treatment of inebriates by counties and prescribing rules governing the same, applicable only to counties of over 50,000 inhabitants, which allows the treatment of one inebriate only to every 10,000 inhabitants, is special legislation as to the affairs of counties and not uniform in its operation throughout the state. Murray v County Board, 81 M 359, 84 NW 103.

An act for the enforcement of the collection of delinquent taxes in counties in which certain conditions existed at the time therein specified, is special legislation as to the affairs of counties, and does not operate uniformly throughout the state. Duluth Banking Co. v Koon, 81 M 486, 84 NW 6.

An act which excepts the counties thereby organized from the operation of the general laws of the state relating to taxation by counties, and authorizes limitations as to taxation which are applicable to such counties only, is special legislation. State v Walker, 83 M 295, 86 NW 104.

An act authorizing the county boards of certain counties to issue bonds for constructing a courthouse, is special legislation. The classification therein adopted, by which the operation of the act is limited to such counties as had, at the time of its passage, expended at least $7,000 for court house purposes, is arbitrary and improper. Hetland v County Board, 89 M 492, 95 NW 305.

An act requiring journeyman plumbers to take an examination and procure a certificate of competency is unconstitutional. The classification adopted, restricting the application of the act to cities of 10,000 inhabitants or more which have a system of sewer or waterworks, is arbitrary; and an arbitrary and unjustifiable distinction is made between master plumbers and journeyman plumbers. State ex rel v Justus, 90 M 474, 97 NW 124.

An act which authorizes the issue of bonds for the repurchase of waterworks by cities of the fourth class which, having owned and sold the system, have reserved the right to repurchase the same, is unconstitutional for the reason that the classification adopted is arbitrary. Thomas v City of St. Cloud, 90 M 477, 97 NW 125.

The provision in an act that no bonds shall be issued under the provisions of the act by any city which heretofore has issued bonds to provide for the purchase of such site and the construction of such armory pursuant to the provisions of L. 1902, c. 33, does not establish an arbitrary classification. A substantial distinction exists between cities of the class mentioned which have or have not issued such bonds. State ex rel v Rogers, 93 M 55, 100 NW 659.

An act providing for a county superintendent of highways in all counties of less than 200,000 inhabitants, is special legislation as to the affairs of counties, there being no reasonable relation between the subject matter of the act and the population limits adopted. Hjelm v Patterson, 105 M 256, 117 NW 610.

An act permitting the appointment of a county examiner of towns, villages, cities, and school districts in counties with a population of more than 100,000 and an area of over 5,000 square miles is class legislation, being an arbitrary classification. State ex rel v Wasgatt, 114 M 78, 130 NW 76.

The legislature cannot use a means of determining population which is arbitrary and designed as a mere evasion of the constitution. State ex rel v County Board, 124 M 126, 130, 144 NW 756.

An act which provides that every city of the first class not governed by a home rule charter should have a specified number of school directors to be elected, one at large, and one from each senatorial district in the city, is special legislation upon a subject prohibited by the constitution. State ex rel v Erickson, 140 M 509, 167 NW 734.

An act providing for the funding by certain counties of the road and bridge indebtedness and the issuance of bonds is not unconstitutional as based upon an arbitrary and fanciful difference because based in part upon the area and assessed valuation of the counties to which it applies. Thorpe Bros. Inc. v County of Itasca, 171 M 312, 213 NW 914.

L. 1925, c. 38, is not class or special legislation because it applies only to state banking corporations. Such corporations are properly placed in a class by themselves for the purpose of legislation. Hoff v First State Bank of Watson, 174 M 36, 218 NW 238.

An act providing that the voters of the school district at the annual town meeting may fix the salaries of their school officers in ten-town school districts having less than 30 schools and a high school is constitutional. Gunderson v Williams, 175 M 316, 221 NW 231.

An act prescribing the conditions upon which certain persons shall be admitted to practice law is special legislation. In re Application of Humphrey to Practice Law, 178 M 331, 334, 227 NW 179.

L. 1929, c. 15, relating to the dissolution of certain school districts, is special legislation, based on an arbitrary classification, having no relation to the subject of the act. State ex rel v Common School Dist. 180 M 44, 230 NW 115.

An act requiring those licensed to practice the healing art to obtain certificates of having passed an examination in the basic sciences is not unconstitutional on the ground that the classified exceptions therein are unreasonable, arbitrary, or discriminating. State v Broden, 181 M 341, 232 NW 517.

An act which provides that no city of the second class shall be in more than two commissioner districts does not adopt an arbitrary and capricious classification and is not discriminatory as against inhabitants of cities of the second class. State ex rel v Cooke, 195 M 101, 262 NW 163.

L. 1935, c. 212, s. 2, violates this section for the reason that the classification of corporations therein is arbitrary and without any reasonable basis. Warnock Co. v Hudson Mfg. Co. 200 M 196, 273 NW 710.

An act requiring a lien on all the real property of a recipient of old age assistance is not an improper classification. Dimke v Finke, 209 M 29, 295 NW 75.

Operators of chain stores are not denied the equal protection of the law by exception from a chain store tax retailers selling products of their own production, manufacture, and preparation.

Classification must not be arbitrary. The distinction must rest upon some difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike. Where the classification rests upon some reasonable difference there is no denial of equal protection of the law. Inequalities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitations. C. Thomas Stores Sales System, Inc. v Spaeth, 209 M 504, 514, 297 NW 9.

5. Population classification, valid

Population may be made on the basis of classification in some cases. The legislature is to be given a large discretion in the matter and its acts are not to be declared invalid unless the classification made is purely arbitrary. State ex rel v Ritt, 76 M 531, 79 NW 535.

The basis of classification of counties by population is not repugnant to the constitutional prohibition of special legislation. State ex rel v Sullivan, 72 M 126, 75 NW 8.

An act providing for an extra levy of one and one-half mills on the dollar in school districts having 50,000 inhabitants is not special legislation. State ex rel v Minor, 79 M 201, 81 NW 912.

In determining what population a county has under statutes based on population, it is for the legislature to determine whether the state or federal census is to be followed. State ex rel v Rogers, 97 M 322, 106 NW 345; State ex rel v Krahmer, 98 M 530, 106 NW 1133.

An act which provides that when the council of any city having at the last preceding state census more than 50,000 inhabitants considers it necessary to procure grounds for a public market it shall appoint a committee is not special legislation. State ex rel v District Court, 84 M 377, 87 NW 942; State ex rel v County Board, 124 M 126, 130, 144 NW 756.

An act which excludes from the operation of a section thereof all counties having a population of 100,000, does not thereby adopt an arbitrary and unreasonable classification. Gard v County of Otter Tail, 124 M 136, 144 NW 748.

In the general highway law (L. 1921, c. 323), county highway engineers are appointed in all counties by the county board, except in counties having a population of over 225,000, in which counties these duties are placed upon the county surveyors. This exception is not special legislation. Malmberg v County of Hennepin, 156 M 389, 194 NW 765.

The police civil service commission law, (L. 1929, c. 299) is not unconstitutional as special legislation or that it lacks uniformity of operation. Naeseth v Village of Hibbing, 185 M 526, 242 NW 6.

The provisions of L. 1923, c. 179, which permit volunteer fire departments to determine for themselves whether that law shall become operative as to them contravenes the provisions of this section. Stevens v Village of Nashwauk, 161 M 20, 200 NW 927.

In L. 1935, c. 170, providing for a police retirement fund in cities of the fourth class having an assessed valuation of over $8,000,000, the classification is germane to the subject matter of the act, and is valid as against the charge that it is based upon present population and assessed valuation or because it keeps permanently within its provisions a city which has elected to come under them, regardless of its subsequent change of status. Nichols v City of Eveleth, 204 M 352, 283 NW 539.

6. Population classification, invalid

An act providing a county assessor for counties with a population between 100,000 and 185,000 was held an arbitrary classification because the upper limit was not reasonable since larger counties would have as much need for a county assessor as the counties covered by the act. State ex rel v Ritt, 76 M 531, 79 NW 535.

A local option law granting charter powers to all cities of a certain class, to take effect in each city only upon the adoption of the same by such city contravenes this section and section 34. A special law relating to cities cannot be partially repealed by another special law and the same result cannot be accomplished by a local option law which has merely the same effect. State ex rel v Copeland, 66 M 315, 69 NW 27.

An act for the treatment of inebriates applicable to counties with a population of over 50,000 and allowing the treatment of one inebriate only to every 10,000 inhabitants. Murray v County Board, 81 M 359, 84 NW 103.

An act requiring journeyman plumbers to take an examination and procure a certificate of competency, adopted an arbitrary basis of classification in restricting the application of the act to cities of 10,000 inhabitants or more which have a system of sewer or waterworks. State ex rel v Justus, 90 M 474, 97 NW 124.

An act permitting the appointment of a county superintendent of highways in counties having less than 200,000 inhabitants. Hjelm v Patterson, 105 M 256, 117 NW 610.

An act authorizing the appointment of an auditor's county examiner in counties having over 100,000 people and over 5,000 square miles of territory. State ex rel v Wasgatt, 114 M 78, 130 NW 76.

An act creating an auditorium commission in cities of the first class not operating under a home rule charter, the members of which were to qualify within 90 days after the approval of the act, is limited to cities existing at the time and not to include those subsequently coming into the class. Marwin v Board of Auditorium Commsrs. 140 M 346, 168 NW 17.

L. 1923, c. 231, is so framed that no county in the state, other than Hennepin, could ever come within its operation. State ex rel v Erickson, 160 M 510, 200 NW 813.

An act providing that independent school districts in counties having not less than 400,000 inhabitants may change the site of a school house by a majority vote of those voting at the election is special legislation, for the population of the county bears no legitimate relation to the subject matter of the act and furnishes no proper basis for a classification of school districts for such purposes. Jensen v Ind. School District, 163 M 412, 204 NW 49, 26 MLR 225.

An act relating to school districts in counties having a population of not less than 28,300, nor more than 28,500, is special legislation. State ex rel v School Board, 167 M 421, 209 NW 531.

An act which limited its application to any county having a population of not less than 28,000, nor more than 28,500, according to the last preceding state or federal census. State ex rel v County of Mower, 185 M 390, 241 NW 60.

L. 1933, c. 181, does not operate uniformly throughout the state and is special in its regulation of the affairs of cities of less than 3,500 inhabitants operating under L. 1895, chapter 8. Hiler v City of East Grand Forks, 189 M 618, 250 NW 579.

7. Population classification; effect of Article 4, Section 36.

So much of article 4, section 36, as relates to the classification of cities on the basis of population authorizes the legislature to classify, for the purposes of general legislation, cities on the basis of population, although such basis would not otherwise be germane to the purpose or subject matter of the proposed law; but, other than this, the provisions of article 4, sections 33, 34, relating to special legislation, are not affected thereby. As a general rule classification with a view to the enactment of general laws cannot be based upon existing circumstances only or those of limited jurisdiction, yet a distinctive class may be based upon existing conditions when the purpose of the law is temporary only. Alexander v City of Duluth, 77 M 445, 80 NW 623; Le Tourneau v Hugo, 90 M 420, 97 NW 115; Gould c City of St. Paul, 110 M 324, 125 NW 273; State ex rel v County Board, 124 M 126, 130, 144 NW 756; Lodoen v City of Warren, 146 M 181, 178 NW 741.

8. Restrictive time limitation

An act provided that when the council in any city having at the last preceding state census more than 50,000 inhabitants considered it necessary to procure grounds for a public market it should appoint a committee was so construed as not to create a time limitation. State ex rel v District Court, 84 M 377, 87 NW 942.

An act which provides that no sale can be made of personal property stored with the warehouseman to satisfy his lien except by a person who has obtained the license within 30 days after passage of the act is invalid. Webb v Downes, 93 M 457, 101 NW 966.

An act authorizing an auditorium commission in cities of the first class, the commissioners to qualify within 90 days after the passage of the act is invalid. A statute to avoid being special must be so framed as to include new

members as they come into existence and must not be limited to the members of the class at the time of its enactment. Marwin v Board of Auditorium Commsrs., 140 M 346, 348, 168 NW 17.

9. City or county finances

L. 1893, c. 243, "an act to provide additional means for completing and furnishing the court house and city hall building now in process of erection in the city of Minneapolis, and to authorize the issue and sale of bonds therefor," although special in form, is general in fact. State ex rel v Cooley, 56 M 540, 58 NW 150.

The financial condition of counties as shown by the relation between bonded indebtedness and the assessed valuation of property is a proper basis for classification for the purpose of legislation with reference to the increase of indebtedness by the issue of bonds without a popular vote. Wall v County of St. Louis, 105 M 403, 117 NW 611.

An act purporting to authorize the issuance of bonds for a contagious hospital by the city council so framed that no other city than those included when the act became effective can come within its operation violates the constitutional provision against special legislation. Roe v City of Duluth, 153 M 68, 189 NW 429.

L. 1923, c. 305, creating the office commissioner of registration in home rule charter cities of the first class, and requiring registration at all general, special, school, or primary elections, both state and municipal, applies to school elections in Duluth upon the question of the issuance of bonds. State ex rel v Board of Education, 158 M 459, 197 NW 964.

L. 1921, c. 357, providing for county school tax levies in certain counties, the classification being based on area and assessed valuation, the proceeds of the levies to be distributed among the districts producing less than a stated per pupil revenue, is not unconstitutional as special legislation. State v Cloudy & Traverse, 159 M 200, 198 NW 457; State v Delaware Iron Co. 160 M 382, 386, 200 NW 475; 16 MLR 660, 661.

An act which provides that any county and any city within such county, which furnish funds in proportionate parts for the maintenance of a hospital, may issue bonds for enlarging the hospital, is not violative of the provision of this section prohibiting special legislation. Kempien v County Board, 160 M 69, 199 NW 442.

10. Other city or county measures

Prior to the 1892 amendment, the selecting, drawing, impaneling of grand and petit jurors of the Ramsey county district court were regulated by a special law. L. 1895, c. 304, the practical effect of which is to modify the special law, is a general law. State ex rel v Sullivan, 62 M 283, 64 NW 813.

An act requiring notice to cities and villages of the injury for which damages are claimed does not contravene this section. Bauscher v City of St. Paul, 72 M 539, 75 NW 745.

An act giving cities of the fourth class situated in two or more counties exclusive power to expend all moneys arising from taxation for roads, bridges, and streets upon the real and personal property within their corporate limits is not invalid as special legislation. State ex rel v Dakota County. 142 M 223, 171 NW 801.

An act relating to the consolidation of schools in any village or city of the fourth class which contains two or more school districts situated wholly or partly within its limits when only one of such districts maintains a high school is not unconstitutional as special legislation. State ex rel v Ind. School Dist. 143 M 433, 174 NW 414.

An act authorizing certain counties to acquire land and equip same for recreation purposes, is unconstitutional. Assessed valuation alone is not a proper basis for classification of counties for such a purpose; the classification is not germane to the subject of the law. Driscoll v County of Ramsey, 161 M 494, 201 NW 945.

L. 1927, c. 122, providing for the detachment of agricultural lands from cities of the fourth class and school districts therein does not contravene the provisions

of this section as to class or special legislation. In re Detachment of Unplatted Lands from City of Owatonna, 183 M 164, 236 NW 195.

That part of L. 1921, c. 362, which provides that the municipal court of the city of St. Paul shall have exclusive jurisdiction of misdemeanors and to conduct preliminary examinations in criminal cases in Ramsey county is special legislaton and violates that part of this section which prohibits the legislature from passing a local or special law regulating the powers, duties, and practice of justices of the peace, magistrates, and constables. State ex rel v Gibbons, 202 M 421, 278 NW 578.

11. Police measures, valid

An act which forbids the sale of intoxicating liquors to any Indian is not in conflict with this section. State v Wise, 70 M 99, 72 NW 843.

An act which prohibits the keeping open of butcher shops for the sale of meats and other business places on any portion of Sunday, while authorizing confectionery and tobacco to be sold in an orderly manner on that day, is not such an unreasonable discrimination as to invalidate the law for violation of this section. State ex rel v Justus, 91 M 447, 98 NW 325.

The provisions of R. L. 1905, ss. 2180, 2181, with reference to the classification, qualification, and licensing of engineers, are not self-contradictory and unconstitutional. Hyvonen v Hector Iron Co, 103 M 331, 115 NW 167.

In L. 1907, c. 269, forbidding discriminations in the prices charged for petroleum or any of its products, as relied upon in an action charging defendant with discriminating in the selling price of kerosene oil, is a police regulation and not unconstitutional. The classification was neither fanciful nor arbitrary, but proper and necessary to meet the peculiar conditions surrounding the distribution of these primary products of petroleum. Willis v Standard Oil Co. 50 M 290, 52 NW 652; State ex rel v Standard Oil Co. 111 M 85, 100, 126 NW 527.

A statute forbidding a minor to be and remain in a dance house is a proper exercise of the police power and is not class legislation. State v Rosenfield, 111 M 301, 126 NW 1068.

Where there is a substantial difference in the condition or situation of individuals or objects with reference to the subject embraced in a law, an appropriate limitation, based on such difference, in the application of the law does not make such legislation partial. The fact that a prohibition of the use of soft coal in locomotives does not apply to stationary engines does not make such prohibition partial legislation, there being obvious differences between the two classes of engines in respect to the tendency that burning soft coal has to cause a smoke nuisance, and other appropriate legislation having been enacted by the city to prevent the emission of dense smoke by stationary plants. State v C. M. & St. P. Ry. Co. 114 M 122, 130 NW 545.

A statute which provides that any sale of liquor in or from any public drinking place by any clerk, barkeeper, or other employee authorized to sell liquor in such place shall be deemed the act of the employer as well as that of the person actually making the sale, and that such employer shall be liable to all the penalties provided by law for such sale equally with the person making the same, is a general law and does not violate the prohibition of this section. State v Lundgren, 124 M 162, 168, 144 NW 752.

An act to punish the making or use of false statements to obtain credit, is not class legislation, although the act is aimed at those only who make or use false statements to obtain credit from banks, savings banks, and trust companies. State v Elliott, 135 M 89, 160 NW 204; Blaisdell v Home B. & L. Assn. 189 M 422, 249 NW 334.

An act adopting the "area plan" for suppressing tuberculosis among cattle does not violate the provisions of this section forbidding special legislation. Schulte v Fitch, 162 M 184, 202 NW 719.

12. Police measures, invalid

An act purporting to license and regulate hawkers and peddlers throughout the state provides that it shall not be construed to prevent any manufacturer,

mechanic, nurseryman, farmer, butcher selling his manufactured articles or products of his nursery or farm or his wares either by himself or employee. The distinctions attempted to be made constitute no proper basis for classification, but is arbitrary. State ex rel v Wagener, 69 M 206, 72 NW 67.

L. 1909, c. 248, taxing the occupation of and licensing hawkers, peddlers, and transient merchants, and defining said occupations, is unconstitutional as a police regulation, being class legislation. State ex rel v Parr, 109 M 147, 123 NW 408.

The last sentence of section 154.04 is unconstitutional insofar as applied to licensed beauty culturists in that it deprives them of the right to pursue their calling in respect to trimming and dressing women's hair. Johnson v Ervin, 205 M 84, 285 NW 77.

An ordinance which requires transient merchants selling or displaying for sale natural products of the farm, including such commodities as cattle, hogs, sheep, veal, poultry, eggs, butter, and fresh or frozen fish, to be licensed and to file a bond, exempting from its provisions persons selling produce raised on farms occupied and cultivated by them, and persons selling milk, cream, fruit, vegetables, grain, or straw, violates the prohibition of this section against class legislation. State v Pehrson, 205 M 573, 287 NW 313.

13. Temporary needs

A distinctive class may be based upon existing conditions when the purpose of the law is temporary only. Alexander v City of Duluth, 77 M 445, 80 NW 623; Kaiser v Campbell, 90 M 375, 96 NW 916; Farwell v City of Minneapolis, 105 M 178, 117 NW 422; Marwin v Board of Auditorium Commissioners, 140 M 346, 168 NW 17.

L. 1927, c. 147, providing for the funding by certain counties of the road and bridge indebtedness and the issuance of bonds, does not contravene the provisions of this section because designating a present class into which others thereafter similarly situated may not enter, for the reason that the act is remedial in character and intended to provide temporary relief for an unusual condition. Thorpe Bros. Inc. v County of Itasca, 171 M 312, 213 NW 914.

14. Remedial acts

An act legalizing the incorporation of cities of the class therein designated is a general law. State ex rel v City of Thief River Falls, 76 M 15, 78 NW 867.

A statute providing for the election of a separate board of education in cities of less than 10,000 population in which the city council acts as the board is remedial. State ex rel v Henderson, 97 M 369, 106 NW 348.

An act, curative in form, applicable to cities of the first class and so worded as to apply to the cause of action claimed by a certain plaintiff and assuming to give a cause of action for a past injury notwithstanding the failure to give notice thereof to such city, is, in form and in substance, special and class legislation. Szroka v N. W. Bell Tel. Co. 171 M 57, 213 NW 557.

L. 1929, c. 208, is constitutional. The classification therein is reasonable and germane to the purpose of the act; it is remedial and temporary and is uniform and not optional, applying to all members of the classification. Giffin v Village of Hibbing, 178 M 337, 227 NW 41.

L. 1929, c. 303, is constitutional; following Giffin v Village of Hibbing, 178 M 337, 227 NW 41. Tetzlaff v Village of Chisholm, 178 M 342, 227 NW 202.

15. Amending, extending, or modifying special or local acts

A general law, of uniform application throughout the state, does not contravene any of the provisions of this section merely because it incidentally modifies a special law. State ex rel v Sullivan, 62 M 283, 64 NW 813.

L. 1893, c. 210, which authorizes the construction of tunnels by cities in certain cases, adopts, and applies to the subject, existing special legislation contained in the charters of the various cities. Any act which adopts and extends existing special legislation is as obnoxious of this section as if it created the special legis-

lation which it thus attempts to extend and perpetuate. Alexander v City of Duluth, 57 M 47, 58 NW 866.

L. 1895, c. 242, as applied to the office of second city attorney of St. Paul, is special legislation. It is void because based partly on special legislation, so as to render it special in its operation and effect. Bowe v City of St. Paul, 70 M 341, 73 NW 184.

An act which attempts to adopt as a part thereof the provisions of a number of diverse and special laws relating to the management of public schools in three cities, Minneapolis, St. Paul, and Duluth, is special legislation. State ex rel v Johnson, 77 M 453, 80 NW 620.

An act providing for an extra levy of 1½ mills on the dollar in school districts having 50,000 inhabitants recognizes and adopts school districts as organized under special laws, but this recognition does not render the act repugnant to the prohibition against amending, extending, or modifying special laws. State ex rel v Minor, 79 M 201, 81 NW 912.

A statute granting temporary compensation for temporary work to an officer whose pay is fixed by special act does not extend the special law. Gard v County of Otter Tail, 124 M 136, 144 NW 748.

Sp. L. 1891, c. 423, fixing the salary of the county officers of Otter Tail county, took effect prior to the 1892 amendment. L. 1903, c. 294, was not a modification of this special law within the meaning of this section. The word "modify" as used in this section, must be construed as synonymous with "enlarge" and "extend" and an act which removes or takes from a special statute a distinct and severable part thereof is not a modification of the special statute. State ex rel v Lincoln, 133 M 178, 158 NW 50; State ex rel v Erickson, 157 M 200, 205, 195 NW 919.

16. Repeal of special or local laws

This section does not impart to general laws, touching any of the subjects as to which special legislation is prohibited, a repealing effect they would not have without it, or change existing rules of statutory construction as to repeals by implication, or render such general laws invalid unless they repeal all prior special laws relating to the same subject. Whether such special laws shall be repealed and, if so, when and how, are matters left by the amendment of 1892 to the discretion of the legislature. State ex rel v Egan, 64 M 331, 67 NW 77.

Sp. L. 1891, c. 423, fixing the salary of the county officers of Otter Tail county, became a law prior to the 1892 amendment. L. 1903, c. 294, was a repeal in part of the special act. State ex rel v Lincoln, 133 M 178, 158 NW 50.

Section 34. GENERAL LAWS.

See cases under section 33.

See 7 MLR 192, Uniformity of operation.

Laws to be uniform in operation.

The requirement that general laws be uniform in their operation throughout the state does not mean that the passage of a general law must repeal by necessary implication all prior special legislation on the subject. This section must be read in connection with the last sentence of section 33, as to the repeal of existing special or local laws. In reading them together, it appears that the repeal of prior laws is left to the legislature. Whether such repeal has been made is to be determined by the ordinary rules of statutory construction. State ex rel v Egan, 64 M 331, 67 NW 77.

Uniformity is not required in such local matters of city government as are ordinarily dealt with in by-laws and ordinances. Power to legislate on these subjects may be delegated to the municipality; or the legislature may frame a law and leave it to the locality to decide whether the law is to go into effect in that particular locality. State ex rel v Copeland, 66 M 315, 69 NW 27. See 16 MLR 668.

An act for the creation of municipal courts may be made to depend for its operation in any city upon a favorable vote of four-fifths of the city council. State ex rel v Sullivan, 67 M 379, 69 NW 1094.

A statute providing for the creation of a board of education whenever the voters of the city so signify is valid. State ex rel v Henderson, 97 M 369, 106 NW 348.

The legislature cannot make optional with the city the operation of a law which deals with matters formerly covered by charter provisions. If such general laws were to be adopted in some cities and not in others the act would not be uniform in operation. An act providing for a department of public works, which act is to take effect in any city only on a majority vote of the city council, is void. State ex rel v Copeland, 66M 315, 69 NW 27.

An act relating to street improvements, effective only where adopted by a vote of the city council, is void. Lodoen v City of Warren, 146 M 181, 178 NW 741.

A possible variation in the salaries of the county officers under an act permitting the county board to fix the salaries does not violate the requirement of uniformity. It may be true that in each county in the class the salaries will not be exactly the same, but that will not be because the law is not uniform in its operation, but merely because, in the exercise of the discretion given by it to the county board, different results are produced. The fact that this discretion is given to meet the different conditions in different counties belonging to the same class does not render the act repugnant to the requirement of uniformity of operation. State ex rel v Sullivan, 72 M 126, 75 NW 8.

An act which permits several propositions for the formation of new counties to be submitted at a single election, but which restricts each voter to a vote on only one of the propositions submitted does not violate the requirement of uniformity. State ex rel v Pioneer Press Co. 66 M 536, 68 NW 769.

This section does not prevent the legislature from putting a state institution, such as the university, into a class by itself. State ex rel v Van Reed, 125 M 194, 145 NW 967.

An act which permitted cities of the first class to raise, in addition to other sums for school purposes, an amount not exceeding 1½ mills per dollar for assessed valuation, was held invalid as not uniform in its result in State ex rel v Johnson, 77 M 453, 80 NW 620; but this decision was later overruled. State ex rel v Minor, 79 M 201, 81 NW 912.

Uniform operation of law cannot rest on a future contingency such as the possible acceptance by all the fire departments eligible to come within the purview of the act. Stevens v Village of Nashwauk, 161 M 20, 25, 200 NW 927.

An act giving keepers of boarding and lodging houses a lien upon the baggage and other personal effects of boarders and lodgers does not contravene the provisions of this section. Halsey v Svitak, 163 M 253, 203 NW 968.

An act applicable to any consolidated school district which has been heretofore formed limits the statute to a particular existing class. Such districts to be organized in the future cannot come within its application. The classification must be prospective and calculated to embrace others which may in the future come within the same class. State ex rel v Ind. School Dist. 164 M 66, 204 NW 572; Consolidated School Dist. v Christian, 167 M 45, 46 208 NW 409.

Laws are not special or class legislation because of the fact that they apply only to state banking corporations. These corporations are in a class by themselves and justify laws applying only to that class. State v Elliott, 135 M 89, 160 NW 204; State ex rel v Ind. School Dist. 143 M 433, 174 NW 414; State ex rel v State Securities Comm. 145 M 221, 176 NW 759; Petters & Co. v Veigel, 167 M 286, 209 NW 9; Hoff v First State Bank of Watson, 174 M 36, 40, 218 NW 238.

No other private railroads possess all the peculiar characteristics of the logging railroads, which, under the conditions considered by the legislature, adequately support their individual classification. Town of Kinghurst v International Lbr. Co. 174 M 305, 313, 219 NW 172.

A law is general and uniform in its operation if it operates uniformly upon all subjects within a proper class; but the classification cannot be arbitrary or illusive, and must be founded upon a substantial distinction, having reference to the subject matter of the legislation, between the objects or places excluded and those included. The distinction made must suggest the necessity or propriety of different legislation for each of the classes in reference to the subject of the legislation. The classification must be germane or related to the purpose of the law.

Nichols v Walter, 37 M 264, 33 NW 800; State ex rel v Sheriff of Ramsey County, 48 M 236, 51 NW 112; State ex rel v Ritt, 76 M 531, 79 NW 535; Murray v County Board, 81 M 359, 84 NW 103; Duluth Banking Co. v Koon, 81 M 486, 84 NW 335; Hetland v County Board, 89 M 492, 95 NW 305; Hjelm v Patterson, 105 M 256, 117 NW 610; State ex rel v Parr, 109 M 147, 123 NW 408; Lowry v Scott, 110 M 98, 124 NW 635; State ex rel v Erickson, 159 M 287, 198 NW 1000; State v Pocock, 161 M 376, 201 NW 610; Driscoll v County Board, 161 M 494, 201 NW 945; State ex rel v Common School Dist. 180 M 44, 47, 230 NW 115.

An act establishing a firemen's civil service commission in certain cities and villages is a general law and has a uniform application to all cities and villages within the class covered. State ex rel v Peterson, 180 M 366, 230 NW 830.

There is no reason why a county with a population of not less than 28,000 and not more than 28,500 should be compelled to build and maintain bridges costing not less than $300.00, while counties not within these population limits should not be required so to do. This population limitation classification has no natural relation to the subject matter and is in no way germane thereto. State ex rel v County of Mower, 185 M 390, 393, 241 NW 60.

That part of section 268.04 which provides for the exception of employers with less than eight employees from the definition of "employment" does not violate the provisions of this section. Eldred v Division of Employment and Security, Department of Social Security, 209 M 58, 295 NW 412.

See, Hamlin v Ladd, 217 M 249, 14 NW(2d) 396, cited under section 33.

Section 35. CURTAILMENT OF MARKETS FOR FOOD PRODUCTS A CRIMINAL CONSPIRACY.

The Duluth Board of Trade, as constituted under its charter and rules, is not a conspiracy or combination in restraint of trade, or which restrains, limits, or interferes with free competition in the production of grain, or in the purchase and sale of grain at Duluth. State v Duluth Board of Trade, 107 M 506, 121 NW 395.

L. 1923, c. 120, (s. 32.11), forbidding one engaged in the business of buying milk, cream, or butterfat for manufacture or for sale from discriminating between different localities by purchasing at a higher price in one locality than he pays in another, due allowance being made for the cost of transportation to the place of manufacture or of sale, does not violate the equality provision of the Federal or State constitution. State v Fairmont Cry. Co. 162 M 146, 202 NW 714.

Sections 22.01 to 22.35 (Cooperative Marketing Act), does not contravene this section. The classification in this act is within the power of the legislature. Minnesota Wheat Growers Cooperative Marketing Assn. v Huggins, 162 M 471, 203 NW 420.

Section 36. CITY CHARTERS: CITIES CLASSIFIED BY POPULATION FOR LEGISLATIVE PURPOSES (Adopted November 3, 1895; amended November 8, 1898; amended November 3, 1942).

1. Generally
2. Board of freeholders
3. Scope and contents of charters
4. Force and effect of charters
5. Submission and ratification of charters or amendments
6. Amendments
7. Classification of cities by population
8. Crimes or misdemeanors

1. Generally

This section is commonly known as the "municipal home rule provision" of the constitution. For the history of its adoption, and for general discussions of it, see State ex rel v O'Connor, 81 M 79, 83 NW 498; 7 MLR 306-331; McBain, The Law and the Practice of Municipal Home Rule, 1916, pp. 457-497; Anderson, City Charter Making in Minnesota, 1922.

This section provides that any city may frame a charter for its own government as a city, with and subject to the laws of this state. A charter so adopted has all the force of a charter granted directly by legislative act and, in all matters pertaining to municipal government, the provisions of the home rule charter override general laws with respect to the same subject. Grant v Berrisford, 94 M 45, 101 NW 940; 1113; Hjelm v City of St. Cloud, 129 M 240, 152 NW 408; Markley v City of St. Paul, 142 M 356, 172 NW 215; N. P. Ry. Co. v City of Duluth, 153 M 122, 125, 189 NW 937.

This section, as amended in 1898, applies to incorporated cities in existence at the time of its adoption and not to cities to be thereafter incorporated. State ex rel v O'Connor, 81 M 79, 83 NW 498.

This section, so far as it provides for the submission of new charters or amendments to the voters of the localities interested for amendment, does not violate the U. S. Const., art. 4 s. 4. Hopkins v City of Duluth, 81 M 189, 83 NW 536.

A village may not adopt a charter pursuant to this section and still remain a village. OAG, Oct. 14, 1932.

Right of city of fourth class operating under a home rule charter to abandon the same and thereafter be governed by general law is an open question in this state. OAG, Oct. 2, 1933.

The county option law (L. 1915, c. 23) does not infringe the rights granted by this section to cities operating under home rule charters. State ex rel v City of International Falls, 132 M 298, 156 NW 249.

Where a county, pursuant to the county option law, votes to prohibit the sale of intoxicating liquors therein, the power to issue licenses for the sale of such liquors is withdrawn from every municipality within the county, including those cities therein operating under home rule charters. State ex rel v City of International Falls, 132 M 298, 156 NW 249.

Laws 1925, Chapter 185, Section 18, as amended by Laws 1929, Chapter 154, providing that nothing in the act shall authorize the use by any transportation company of any public highway in any city of the first class, whether organized under Article 4, Section 36, or otherwise, in violation of any charter provision or ordinance of such city in effect Jan. 1, 1925, unless and except as such charter provisions or ordinance may be repealed after said date; nor shall act be construed as in any manner taking from or curtailing the right of any city or village to regulate and control the routing, parking, speed, or safety of operation of a motor vehicle operated by any transportation company under the terms of the act, or the general police power of any such city or village over its highways; nor shall act be construed as abrogating any provision of the charter of any such city now organized and operating under said Article 4, Section 36, requiring certain conditions to be complied with before such transportation company can use the highways of such city; and reserving and granting to such city such rights and powers, is germane to the subject expressed in the title of the act, which subjects the supervision and regulation of transportation of persons and property for hire on the public highways of the state by motor vehicles as common carriers to jurisdiction and control of railroad and warehouse commission.

State v Palmer, 212 M 388, 3 NW(2d) 666.

L. 1929, c. 57, creating in certain cities and villages a firemen's civil service commission, does not violate any provision of this section. State ex rel v Peterson, 180 M 366, 230 NW 830.

2. Board of freeholders

A freeholder is one having title to real estate, however small its value. State v City of Fraser, 191 M 427, 254 NW 776.

This section does not require, as a condition precedent to the incorporation or reincorporation of a municipality, the existence therein of a freehold population. State ex rel v City of Fraser, 191 M 427, 254 NW 776.

The board of freeholders is required to return a draft of a proposed charter within six months after its appointment. In determining the date from which to compute the six months within which a proposed charter shall be submitted to the mayor, a date earlier than the date of the appointment of the last member of the

charter commission will not be taken. State ex rel v Barlow, 129 M 181, 151 NW 970.

3. Scope and contents of charters

The provision of this section which requires the legislature to prescribe limits within which cities may frame their own charters is sufficiently complied with when the legislature prescribes and imposes in that behalf such restrictions and limitations as are deemed by that body expedient and proper. It is not necessary that the legislature prescribe a general framework for the city charter. State ex rel v O'Connor, 81 M 79, 83 NW 498.

This section confers upon the people of a city the power to frame and adopt its own charter. The adoption of such a charter is legislation. The authority which it furnishes to city officers is legislative authority. The people of the city, in adopting the charter, have not power to legislate upon all subjects; but, as to matters of municipal concern, they have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld. American Elec. Co. v City of Waseca, 102 M 329, 113 NW 899; St. Paul Book & Stationery Co. v St. Paul Gaslight Co. 130 M 71, 153 NW 262; State v City of International Falls, 132 M 298, 156 NW 249; Park v City of Duluth, 134 M 296, 298, 159 NW 627.

There is no constitutional bar to amalgamation of legislative and executive power in a city, as is provided by the commission form of government in the city of St. Paul. State v Goodrich, 195 M 644, 264 NW 234.

The amendment of 1898 to this section, to the effect that a legislative body shall be a feature of home rule charters, was not intended to prevent the board of public works, an appointive body, from exercising the duties imposed by the city charter in respect to reassessment. State ex rel v District Court, 97 M 147, 106 NW 306.

The provision of this section, that it shall be a feature of all such charters that there shall be provided for, a mayor or chief magistrate and a legislative body of either one or two houses; if of two houses, at least one of them to be elected by a general vote of the electors, is not violated by conferring the power of the initiative and referendum upon the electors of the city after establishing such legislative body. State ex rel v City of Duluth, 134 M 355, 362, 159 NW 792. See 1 MLR 160.

Neither the expressed intent nor the spirit of the Const. art. 3, can be read into this section so as to extend the limitation thereby imposed on the form of municipal government, and thereby make it coextensive with the limitation imposed by the former upon the form of state government. State ex rel v City of Mankato, 117 M 458, 136 NW 264.

A city, adopting a charter for its own government under this section, is not authorized to extend its power and jurisdiction to territory and residents outside the boundaries of the city. City of Duluth v Orr, 115 M 267, 132 NW 265.

A special municipal judge of a municipal court established by statute is a state officer and cannot be legislated out of office nor his term of office shortened, by the adoption of a home rule charter by a vote of the electors of the municipality under the section. State ex rel v Fleming, 112 M 136, 127 NW 473; Gordon v Freeman, 112 M 482, 128 NW 834, 1118; Brown v Smallwood, 130 M 492, 153 NW 953.

Legislative policy respecting education cannot be disturbed except by legislative enactment. State v Erickson, 190 M 216, 251 NW 519.

Minneapolis home rule charter, c. 13, s. 4, held not to apply to a school building and hence the board of education is not required to submit the location and design of the building to the planning commission for approval. Board of Education v Houghton, 181 M 576, 233 NW 834.

A department of health properly belongs and is incident to the government of municipalities. Such department may be provided for in a home rule charter, and may be authorized to require vaccination as a condition precedent to the admission of children to schools. State ex rel v Zimmerman, 86 M 353, 90 NW 783.

By and under a home rule charter a city may claim and exercise the power of eminent domain, the right to levy special assessments for local improvements, and

to confer certain powers and impose certain duties upon the local district court in connection with condemnation proceedings. State ex rel v District Court, 87 M 146, 91 NW 300.

The subject of the presentation of claims against the city is appropriate to a home rule charter, and in this connection the charter may confer jurisdiction on the district court. State ex rel v District Court, 90 M 457, 97 NW 132; Peterson v City of Red Wing, 101 M 62, 111 NW 840.

City contracts for public improvements, and bonds to secure performance of them and the payment of laborers and materialmen, and the conditions and limitations of the enforcement of such bonds, are all subjects appropriate to be dealt with in home rule charters. Grant v Berrisford, 94 M 45, 101 NW 940, 1113; Standard Salt & Cement Co. v National Surety Co. 134 M 120, 158 NW 802.

Under a home rule charter, if so provided, special assessments may be levied without a preliminary petition by property owners. Wolfe v City of Moorhead, 98 M 113, 107 NW 728.

A home rule charter may have as much police power over woodyards as any other city. City of St. Paul v Schleh, 101 M 425, 112 NW 532.

Home rule charters may make regulations governing the conduct of municipal elections to the extent of regulating even the election of municipal judges. Farrell v Hicken, 123 M 407, 147 NW 815; McEwen v Prince, 125 M 417, 147 NW 275; Brown v Smallwood, 130 M 492, 153 NW 953.

Special assessments may be levied according to the frontage rule. State ex rel v City of Ely, 129 M 40, 151 NW 545.

A home rule charter may confer upon the city the power to regulate local public utilities as to rates and service. City of St. Paul v Robinson, 129 M 383, 152 NW 777; St. Paul Book & Stationery Co. v St. Paul Gaslight Co. 130 M 71, 153 NW 262.

It is within the power of the city of St. Paul under a home rule charter to provide a building code. State ex rel v Nash, 134 M 73, 158 NW 730.

The home rule charter is ample "legislative authority for a wheelage tax ordinance, which was not authorized by any general state law. Park v City of Duluth, 134 M 296, 159 NW 627.

The charter may authorize the creation of sewer districts in the city, and the levying of special taxes therein for relief sewers. In re Delinquent Taxes in Polk County, 147 M 344, 180 NW 240.

While a home rule charter may provide that the contracts of the city shall be void or voidable under certain conditions, it cannot as to contracts merely irregular, because of unintentional failure to comply with charter provisions, abrogate established equitable doctrines, which in certain cases permit a recovery of the reasonable value of goods delivered in good faith thereunder to the municipality, and by it used for authorized and legitimate purposes. Laird Norton Yards v City of Rochester, 117 M 114, 134 NW 644.

Where the state law expressly provided that actions involving the title to real estate shall be tried in the county where the property is located, held that a city cannot in its home rule charter make a contrary regulation. Hjelm v City of St. Cloud, 129 M 240, 152 NW 408.

Preferential voting, as provided in the Duluth charter of 1912, was held unconstitutional. Brown v Smallwood, 130 M 492, 153 NW 953.

It is not a municipal function to gather evidence as to illegal combinations in restraint of trade. The public policy of the state does not permit city councils or other bodies to punish witnesses for contempt where they refuse to produce books, papers, etc., demanded by the council. There must be a resort to the courts in such cases. State ex rel v Fitzgerald, 131 M 116, 154 NW 750.

Provision in the Worthington home rule charter requiring the city assessor to be a freeholder contravenes the Const., art. 1 s. 17. OAG, (12a) Apr. 28, 1937.

A provision in a home rule charter recognizing the validity of a municipal contract in which a city officer is interested is unconstitutional. OAG, Feb. 10, 1930.

A city cannot, by a home rule charter, abrogate such general rules of equity as those of laches and estoppel to deny liabilities under contracts. City of Staples v Minnesota Power & Light Co. 196 M 303, 265 NW 58.

4. Force and effect of charters

The provisions of a home rule charter have all the force and effect of legislative enactments. State ex rel v Zimmerman, 86 M 353, 90 NW 783.

A home rule charter is of equal force with a charter granted by a direct act of the legislature. Grant v Berrisford, 94 M 45, 101 NW 940, 1113; Park v City of Duluth, 134 M 296, 159 NW 627.

The rule which requires a statute to be construed as not to infringe constitutional inhibitions, if reasonably susceptible of such construction, is equally applicable to home rule charters. State ex rel v City of Ely, 129 M 40, 151 NW 545.

Where the subject dealt with in the charter is appropriate to the orderly conduct of municipal affairs the charter provision on that subject may provide a rule different from, and exclusive of, that which is contained in general laws of the state upon the same subject. Grant v Berrisford, 94 M 45, 101 NW 940, 1113.

In cases where the subject is one of municipal concern and where the charter covers the entire subject matter, the intention to supersede all general laws on the subject will be presumed, unless otherwise expressed. Turner v Snyder, 101 M 481, 112 NW 868.

The provisions of home rule charters upon all subjects proper for municipal regulation prevail over the general statutes relating to the same subject matter, except in those cases where the charter contravenes the public policy of the state, as declared by the general laws and in those instances where the legislature expressly declares that a general law shall prevail, or a purpose that it shall so prevail appears by fair implication, taking into consideration the subject and the general nature of the charter and general statutory provisions. American Electric Co. v City of Waseca, 102 M 329, 113 NW 899.

Where the purpose that the enactment of the legislature upon a municipal matter is intended to overrule home rule charter provisions upon the same subject is either expressed or clearly implied, there can be no question that the legislation is paramount while in force to the provisions relating to the same matter included in the local charter. State ex rel v City of International Falls, 132 M 298, 156 NW 249; Park v City of Duluth, 134 M 296, 159 NW 627; Johnson v City of Duluth, 133 M 495, 158 NW 616.

The legislature by express legislation may supersede or change the provisions of home rule charters. Guaranteed Concrete Co. v Garrick Bros., 185 M 454, 241 NW 588.

City of International Falls, by adoption of home rule charter without providing for election of justice of the peace abolished that office. OAG, (306a) Apr. 9, 1936.

5. Submission and ratification of charters or amendments

This section authorizes any city or village to frame a charter for its own government, to be submitted to the qualified voters of such municipality at the next election thereafter; that is, after it is returned by the board appointed to it to the chief magistrate of the municipality. An act providing for the submission of a proposed new charter of a municipality to the voters thereof for ratification at a general or special election is constitutional. State ex rel v Kiewel, 86 M 136, 90 NW 160.

In determining the date from which to compute the six months within which a proposed home rule charter shall be submitted to the mayor under this section, a date earlier than the date of the appointment of the last member of the charter commission will not be taken. State ex rel v Barlow, 129 M 181, 151 NW 970.

This section, allowing cities to frame their own charters, requires for the adoption of amendments thereto three-fifths of the total vote cast for any purpose at the election at which the amendments are submitted. A majoriy of three-fifths of the vote cast upon the proposition of the amendments is not sufficient. State ex rel v Hugo, 84 M 81, 86 NW 784.

Fraudulent ballots, ballots with unintelligible marks, expressing no effective vote upon any subject of choice, as well as ballots upon which no markings have been made by the voter, should be excluded from the aggregate number upon which the requisite four-sevenths required by this section is to be estimated, in determining the ratification of a proposed charter. Hopkins v City of Duluth, 81 M 189, 83 NW 536.

In the Duluth home rule election of 1900, 6,707 ballots were deposited in the boxes, the entire election being on one ballot. Of these, five were marked with initials or otherwise identified and therefor fraudulent; 15 others were entirely unintelligible; and six were entirely blank. There being a contest, the court excluded these 26 ballots for all purposes, reducing the total number of voters actually and effectively voting to 6,681. Upon this basis the court declared the charter carried. The supreme court sustained this view. A voter must actually vote to be counted. Hopkins v City of Duluth, 81 M 189, 83 NW 536.

An election on a proposed amendment to city charter is a special election, though voted on same date as general election, and only those voting on amendment are to be counted in determining the result of the election, and blank ballots are not to be considered as votes against the amendment. OAG, (59a-11) Feb. 4, 1938.

Blank ballots at a special election were properly rejected by the trial court in computing the total number of voters at special election on a charter amendment. Godward v City of Minneapolis, 190 M 51, 250 NW 719.

Where a charter has been prepared and submitted under the provisions of this section and actually ratified by the requisite number of qualified voters, it takes effect and become the charter of the city or village, as a city, in which it has been submitted, at the end of 30 days after the day of election. It is immaterial that such ratification is not judicially determined, on appeal from the decision of the canvassing board, until after the 30-day period has expired. Davis v Hugo, 81 M 220, 83 NW 984; Standard Salt & Cement Co. v National Surety Co. 134 M 120, 158 NW 802.

The Commission Charter of the City of St. Paul, adopted in 1912, is sustained as against the contention that, by reason of the educational features, its adoption, solely by the male voters or otherwise, was not authorized by this section. State ex rel v City of St. Paul, 128 M 82, 150 NW 389.

The court will allow a writ of mandamus to compel the city or village council to submit a home rule charter regardless of whether an intervening election was one at which the charter might properly have been submitted. The language of this section is "shall be submitted." The local authorities have no option in the matter. State ex rel v Barlow, 129 M 181, 151 NW 970.

Submission of Charter Amendment No. 8 to voters of Minneapolis on Nov. 8, 1932, was a special election notwithstanding it was not so designated by the city council. Godward v City of Minneapolis, 190 M 51, 250 NW 719.

Adoption of a home rule charter does not preclude the court from determining whether territory included in the city is lawfully included. State v City of Chisholm, 199 M 403, 273 NW 235.

6. Amendments

The legislature may not authorize the council of a home rule city to amend the charter in fact by authorizing it to adopt the provisions of a permissive state law upon a charter matter. The provision of this section reads that such charters may be amended in a certain method "and not otherwise." Lodoen v City of Warren, 146 M 181, 178 NW 741.

The courts will take judicial notice of charter amendments as well as of the original charter. White Townsite Co. v City of Moorhead, 120 M 1, 138 NW 939.

To be effective, amendments must be accepted by three-fifths of the qualified voters of such city or village voting at the next election. This does not mean three-fifths of those voting on the proposition, but three-fifths of the total vote cast for any purpose at the election at which the proposed amendments to city charters are submitted. State ex rel v Hugo, 84 M 81, 86 NW 784.

Neither the charter commission or the city council have authority to revise or supervise charter amendments presented to commission by petition, and courts have no jurisdiction to determine constitutionality until electors have acted. OAG Aug. 25, 1933.

Where an amendment had been published in 27 issues of one daily newspaper, covering 31 days, and in five issues each of two weekly newspapers, covering 29 days, but the election did not occur until 32 days after the first insertions in the two weeklies, held that the provision as to publication had been fully complied with. The constitutional provision does not require 30 different publications, but only publication in three newspapers through a period of 30 days. Wolfe v City of Moorhead, 98 M 113, 107 NW 728.

Implied repeals are no more favored in charter amendments than in statutory amendments. Tante v Eddy, 205 M 303, 285 NW 720.

Electors of city of Minneapolis may not amend its charter so that it would conflict with any general legislation concerning pension systems for employees. OAG, (335d) Aug. 22, 1934.

Electors may adopt amendment providing for oiling of streets upon resolution of council without filing of petition by benefitted property owners. OAG, (59a-11) July 29, 1936.

Where two sets of amendments are filed, it is mandatory on part of council to submit both amendments in the form proposed, even though they are inconsistent. OAG, (59a-11) Feb. 4, 1938.

7. Classification of cities by population

So much of this section as relates to the classification of cities on the basis of population authorizes the legislature to classify, for the purposes of general legislation, cities on the basis of population, although such basis would not otherwise be germane to the purpose or the subject matter of the proposed law. Alexander v City of Duluth, 77 M 445, 80 NW 623.

This section permits the classification of cities for legislative purposes into four classes on a basis of population. The legislature, by act, divided the cities of the state, for legislative purposes, into four classes. It is within the constitutional power of the legislature to provide that, for the purpose of classification of cities, population shall be determined according to the state census alone. State v District Court, 84 M 377, 87 NW 942; State ex rel v County Board, 124 M 126, 130, 144 NW 756.

This section, which authorizes the arbitrary classification of cities, does not apply to counties; and the rule still is, as to counties, that when population is the basis of classification the subject matter must be such as suggests a necessity for the legislation arising out of the fact of population. State v Brown, 97 M 402, 408, 106 NW 477; Hjelm v Patterson, 105 M 256, 117 NW 610.

This section provides for the classification of cities for legislative purposes on the basis of population, but does not authorize classification on that basis in the case of counties. State ex rel v School Board, 167 M 421, 423, 209 NW 531.

The state census of 1905 went into legal effect upon its compilation and publication by the superintendent, not before. Wolfe v City of Moorhead, 98 M 113, 107 NW 728.

In addition to the four population classes, this section creates two divisions of each class, namely cities which have, and cities which do not have, home rule charters. A statute enacted for cities of a particular population group, but exempting home rule cities in that group from its operation, is constitutional. Hunter v City of Tracy, 104 M 378, 116 NW 922.

The mere fact that this section places cities having a population of 10,000 or less into a class designated as cities of the fourth class in no way debars the legislature from making a classification of school districts wholly or partly within cities, boroughs, or villages of 7,000 or less inhabitants, other conditions being such as to justify so doing. Ind. School Dist. No. 36 v Ind. School Dist. No. 68, 165 M 384, 389, 206 NW 719.

The terms of an act, which prohibit the creation of an indebtedness in excess of the five per cent limit in all cities having over 8,000 inhabitants, so far as

it relates to municipalities having more than 10,000 people, are valid and not in contravention of the provisions of this section authorizing classification of cities on the basis of population. Beck v City of St. Paul, 87 M 381, 386, 92 NW 328.

An act, limiting the number of licenses to be issued for the sale of malt or spirituous liquors in places bordering on the patrol limits in cities of the first class, is unconstitutional, as it violates this section, in that it does not apply equally to all the cities of that class. State v Schraps, 97 M 62, 106 NW 106.

An act, providing that all assessments levied by any city of the first class should be a paramount lien of equal rank with a lien of the state for taxes, and that a sale or perfecting title under either shall not pay or extinguish the other, is constitutional so far as classification by population is concerned. Gould v City of St. Paul, 110 M 324, 125 NW 273.

An act, which provides that any county and any city within such county, which furnish funds in proportionate parts for the maintenance of a hospital, may issue bonds for enlarging the hospital, does not violate the provision of this section permitting cities to be classified on the basis of population. Kempien v County Board, 160 M 69, 199 NW 442.

8. Crimes or misdemeanors

The provisions of this section to the effect that no charter thereby authorized to be formed, or ordinance enacted thereunder, shall supersede any general law defining or punishing crimes or misdemeanors, apply only to cities having home rule charters. State v Collins, 107 M 500, 120 NW 1081.

An ordinance of the city of St. Paul providing for the punishment of a person convicted of driving an automobile while under the influence of intoxicating liquor is valid. State v Hughes, 182 M 144, 233 NW 874.

That part of L. 1921, c. 362, which provides that the municipal court of the city of St. Paul shall have exclusive jurisdiction of misdemeanors and to conduct preliminary examinations in criminal cases in Ramsey county is special legislation and violates this section. State ex rel v Gibbons, 202 M 421, 278 NW 578.

ARTICLE V

EXECUTIVE DEPARTMENT

Section 1. OFFICERS IN EXECUTIVE DEPARTMENT.

Under the constitution the courts have no jurisdiction to control the officers of the executive department in the performance of their official duties and cannot acquire jurisdiction by consent of such officers.

The duties imposed upon the secretary of state by L. 1868, c. 46, s. 15, are his official duties as an executive officer, notwithstanding that the legislature might have imposed them on some other person.

In mandamus against the secretary of state, the court, having no jurisdiction of the proceeding, declines to comply with the joint request of the relator and the respondent for its opinion upon the true construction of an act of the legislature. State ex rel v Dike, 20 M 363, (314).

An executive officer of the state is not subject to the control or interference of the judiciary in the performance of duties belonging to him as an executive officer, and no act done or threatened to be done by him in his official capacity can be brought under judicial control or interference by mandamus or injunction; and this is the rule even when the act is purely ministerial. Secombe v Kittelson, 29 M 555, 561, 12 NW 512.

An act which places a limited amount of public funds in the state treasury to the credit of a certain board for a designated public purpose does not violate this section. Fleckten v Lamberton, 69 M 187, 191, 72 NW 65.

Courts cannot, by injunction, mandamus, or other process, control or direct the head of the executive department of the state in the discharge of any executive duty involving the exercise of his discretion; but where duties purely ministerial in character are conferred upon the chief executive, or any member of the executive department as defined by the Constitution, and he refuses to act, or when he assumes to act in violation of the constitution and laws of the state, he may be compelled to act, or restrained from acting, as the case may be, by the courts at the suit of one who is injured thereby in his person or property, for which he has no other adequate remedy. Cooke v Iverson, 108 M 388, 393, 122 NW 251.

Costs and disbursements are not taxable in the supreme court against the secretary of state when his conduct, involved in the litigation, pertains to his governmental duties in the interest of the state. State ex rel v Holm, 186 M 331, 243 NW 133.

The attorney general is a constitutional officer and as such the head of the state's legal department. His discretion as to what litigation shall or shall not be instituted by him is beyond the control of any other officer or department of the state. State ex rel v City of Fraser, 191 M 427, 432, 254 NW 776.

The remedy of mandamus cannot be invoked against the attorney general as an executive officer to compel the performance of duties involving his judgment and discretion. State ex rel v Youngquist, 178 M 442, 227 NW 891. See 14 MLR 303.

The state auditor is a constitutional officer and member of the executive department. He is by law charged with many important duties. Many provisions of the statutes place upon him duties in the performance of which he must exercise his judgment as to the legality of his own acts. State v Finnegan, 198 M 54, 240 NW 521; State ex rel v District Court, 196 M 44, 47, 264 NW 227.

Section 4. GOVERNOR'S POWERS AND DUTIES.

A statute which requires the governor to appoint members of the state board of pharmacy from among a certain number of pharmacists elected by the state pharmaceutical association, is opposed to the provisions of this section.

The constitution imposes certain duties and powers upon the governor, while the duties of the other members of the executive department are left for legislative enactment; but additional duties to those prescribed by this section may be imposed on the governor by the legislature. In either case immunity from judicial direction depends upon the nature of the act to be performed. The distinction is marked between the nature of those duties which necessarily pertain to the office of the chief executive, as defined by the constitution, and those additional duties which are imposed by law upon the governor, but which might have been delegated to some other official. Although the chief executive was selected as the official to cause removals from office, that duty might have been delegated to some other proper official such as the attorney general. State ex rel v Griffin, 69 M 311, 72 NW 117.

R. L. 1905, s. 2668, authorizes the governor to remove any county attorney from office whenever it appears to him by competent evidence that he has been guilty of malfeasance or nonfeasance in the performance of his official duties, first giving to such officer a copy of the charges against him and an opportunity to be heard. The discretion exercised in this instance was not in the performance of an official duty as defined by the constitution; but it does not follow that every act of the chief executive which involves the exercise of discretion is final and not subject to review by the courts. The general test to determine whether such facts are final or subject to review is whether they are judicial or quasi judicial in their nature. Proceedings for the removal of a public official by the governor are clearly of a judicial character. State ex rel v Eberhart, 116 M 313, 319, 321, 133 NW 857.

By this section it is provided that the governor shall "fill any vacancy that may occur in the office of secretary of state, treasurer, auditor, attorney general, and such other state and district offices as may be hereafter created by law, until the next annual election, and until their successors are chosen and qualified." Under this provision the governor has authority to appoint upon the occurrence of a vacancy in the office of municipal judge. State ex rel v Windom, 131 M 401, 419, 155 NW 628.

This section makes the governor commander-in-chief of the military forces and provides that he may call out such forces to execute the laws, and enjoins upon him the duty to "take care that the laws be faithfully executed." To relator Burnquist as governor, L. 1917, c. 261, appeared a duly enacted law; the commission therein created, by orders duly adopted and promulgated, was attempting to perform the work demanded of it by the act. It was the governor's constitutional duty to take care that this law was faithfully executed in the manner contemplated by the legislature. To enforce these orders of the commission the governor did the act for the doing of which the respondent now threatens to punish him. When the liquor dealers of Blooming Prairie disobeyed the orders of the commission, the governor was confronted with the proposition whether or not the execution of chapter 261 was being defied, and, if he reached the conclusion that it was, the constitution required him to exercise his judgment in upholding and enforcing the law by the means at his command. State ex rel v District Court, 141 M 1, 16, 168 NW 634.

G. S. 1913, s. 9273, provides that convicts while on parole shall remain in the legal custody and under the control of the state board of parole, subject at any time to be returned to the state prison or state reformatory, and the written order of the board, certified by the warden or superintendent of the state reformatory, shall be a sufficient warrant to any officer to retake and return to actual custody any such convict. This section creates a board of pardons whose powers and duties shall be defined and regulated by law, and this provision permits the legislation forming G. S. 1913, s. 9273. State ex rel v Crepeau, 150 M 80, 82, 184 NW 567.

Under this section, state board of pardons may grant a conditional pardon, and this carries with it the power to grant conditional commutations, which to be binding must be accepted by the prisoner.

A commutation of sentence conditioned that prisoner will lead a law-abiding life and that pardon board reserves the right to revoke the commutation upon a breach of such condition is valid.

Under such a reservation, pardon board has authority to revoke such a commutation without notice and hearing, and in so doing board does not violate prisoner's rights under due process clause nor the organic guarantees of trial by jury, to which a prisoner is entitled as a matter of right only on the question of identity. Guy v Utecht, 216 M 255, 12 NW(2d) 753.

The executive order issued by the governor on February 24, 1933, directing sheriffs to refrain from conducting mortgage foreclosure sales until May 1, 1933, or until further order, was an attempt to exercise legislative power and not within his power. The governor can enforce the laws but he cannot change or suspend them. As commander-in-chief of the military and naval forces of the state, he may call them out to execute the laws, when necessity exists. This power is limited by the const. art 5 s. 4 to calling out such forces "to execute the laws." State ex rel v Moeller, 189 M 412, 420, 249 NW 330.

When the presiding judge has made an order designating a qualified judge of his district to hold a term of court within a county of such district in conformity with Minn. St. 1941, s. 484.34, the governor may not designate an outside judge to preside thereat, it appearing that the regular and properly disignated judge is competent to act, that there is no accumulation of business before the court, and that delay of trial is not probable.

The courts have judicial control over the acts of an executive state officer where such acts are ministerial in their nature and do not necessarily pertain to the functions of the office as granted by the constitution. State ex rel v Montague, 195 M 278, 262 NW 684.

L. 1923, c. 429, attempting to make three state officers ex officio regents of the University of Minnesota and to vest in the governor power to appoint the others, is unconstitutional. State ex rel v Quinlivan, 198 M 65, 268 NW 858.

The provision of const. art. 5, s. 4, vesting in the governor the appointment of state and district officers, does not include county officers. State ex rel v Erickson, 208 M 402, 294 NW 373.

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

See 22 MLR 451. The governor's constitutional powers of appointment and removal.

Section 5. TERM OF OTHER EXECUTIVE OFFICERS.

L. 1913, c. 458, fixing the terms of certain county officers at four years, and operating prospectively, is constitutional. The constitution does not expressly nor by implication fix the terms of county officers enumerated in L. 1913, c. 458. State ex rel v Berg, 133 M 65, 68, 157 NW 907.

L. 1931, c. 186, creating a department of conservation and transferring to the conservation commissioner all functions of the state auditor in respect to state lands, as land commissioner or otherwise, is constitutional. State v Finnegan, 188 M 54, 246 NW 521.

Section 6. LIEUTENANT GOVERNOR'S DUTIES; PRESIDENT PRO TEMPORE OF SENATE.

A vacancy in the office of lieutenant governor may be permanent or temporary, depending on the character, cause, and duration of the vacancy in the office of governor. Such being the case, the president pro tempore, when he becomes lieutenant governor for the time being during such vacancy, is still a senator. The character of the duties of lieutenant governor and of the president pro tempore are identical. Neither of them has any power or duty properly

belonging to the executive department. The lieutenant governor is not authorized to exercise a single power or to perform a single duty, as lieutenant governor, properly belonging to the executive department. His sole constitutional duties are to preside over the senate (he is not a member thereof and has no vote, even in cases where the senators are evenly divided), and to authenticate by his signature the bills passed by the senate. These duties and powers belong strictly and properly to the legislative department. They are the precise duties imposed by the constitution on the presiding officer of the house of representatives. There is just as much reason for claiming that the speaker of the house, when elected, ceases to be a member thereof, as there is to claim that a senator who is president pro tempore ceases to be a senator when he becomes lieutenant governor. It was not intended by the constitution to confer executive powers upon the lieutenant governor, as such. He cannot be impeached, although all the other officers of the executive department may be. A senator, when he becomes lieutenant governor because he happens to be president pro tempore of the senate, is not called to the discharge of any execltive duties. All his new duties properly belong to the legislative department. There is just as much warrant in the constitution for claiming that a senator ceases to be such when he is elected president pro tempore as there is to claim that such results follow when he becomes lieutenant governor. State ex rel v Stearns, 72 M 200, 213, 75 NW 210.

See Miller v Holm, 217 M 166, 14 NW(2d) 99, under Article 4, Section 7.

Section 8. OATH OF OFFICE OF EXECUTIVE OFFICIALS.

An oath of office in the language of this section, taken by a person who has been elected to public office, with reference to the duties of the same and for the purpose of qualifying the person so elected to enter upon the discharge thereof filed in the proper office, is valid and sufficient, even though the particular office be not specially designated therein. State ex rel v Ladeen, 104 M 252, 116 NW 486.

A director of an independent school district who has taken an oath of office need not take a second oath when chosen as treasurer by the members of the school board. Ind. Sch. Dist. No. 21 v Integrity Mutual Casualty Co. 171 M 376, 214 NW 258.

ARTICLE VI

Section 1. JUDICIAL POWERS.

1. Generally
2. Municipal courts
3. Establishment of new courts

1. Generally

The statute authorizing the trial by referees is constitutional. A referee, under our statute, is a person appointed by the court to perform certain offices in the progress of a cause pending in the court of his appointment, and it may be to try the whole issue. This is not a diversion of the judicial power from its legitimate channels and a location of it in unauthorized hands. No referee can be created until there is a cause pending in one of the constitutional courts. His appointment does not take the case out of the court, but merely calls him into the court to act in strict subordination to the court. Every act done by the referee is in law the act of the judge. Nothing can originate before a referee nor terminate with or by the decision of a referee. Carson v Smith, 5 M 78 (58, 61) 12 M 546 (458).

If an integrated bar would raise the standards of the profession; eliminate the unfit, the dishonest, and the unethical; result in a fair standardization of minimum fees; eliminate encroachments on legal profession by those not permitted to practice; and afford protection and recourse to those who might otherwise by reason of destitute circumstances be unable to protect their legal or constitutional rights, the granting of a petition to integrate the bar falls directly within the power and province of the supreme court. In re Petition for Integration of the Bar, 216 M 195, 12 NW(2d) 515.

A statute which authorizes compulsory references in actions of law where the trial of an issue of fact requires the examination of a long account on either side. In this respect it is repugnant to the constitution. St. Paul & Sioux City R. Co. v Gardner, 19 M 132 (99).

Section 142 of the Compiled Statutes, so far as it authorizes the clerks of district courts to allow warrants of attachment, conflicts with this section. The allowance of the warrant is a judicial act; it involves the examination of proofs and a decision thereon, and is final until set aside by the court. It is not done subject to the approval of the court, and requires no confirmation to perfect it. Morrison v Lovejoy, 6 M 163 (117).

The authority given the clerk by G. S. c. 66, s. 192, Sbd. 1, to enter judgment by default, is not in conflict with this section. Skillman v Greenwood, 15 M 102 (77).

A special law, increasing the compensation of the judges of the district court of Ramsey county, is constitutional. Steiner v Sullivan, 74 M 498, 77 NW 286.

A special law, insofar as it requires the judges of the district court of Ramsey county to appoint the members of the board of control of such county is unconstitutional because imposing on the judiciary duties belonging to another department of the government. State ex rel v Brill, 100 M 499, 111 NW 639.

2. Municipal courts

The creation of municipal courts is authorized by this section. Burke v St. Paul, M. & M. R. Co. 35 M 172, 28 NW 190; State ex rel v Sullivan, 67 M 379, 69 NW 1094.

There is no limitation to the jurisdiction which these courts may be given, except that such courts must be inferior to the supreme court. A municipal

court whose judge is selected by the voters of a city may have jurisdiction extending beyond the city limits. State ex rel v Dreger, 97 M 221, 106 NW 904.

A municipal court established by statute is a state court within the meaning of this section, which requires that all inferior courts not therein specified shall be established by the legislature by a two-thirds vote. State ex rel v Fleming, 112 M 136, 127 NW 473.

A bill for an act to establish a municipal court is required, by this section, to have a favorable two-thirds vote of the legislature. Where it had less in either house, it is a nullity. State ex rel v Welter, 209 M 499, 296 NW 582.

The requirement of two-thirds vote applies only to the creation of the court. After its establishment a majority vote, as in the case of ordinary legislation, is sufficient to make changes in the practice and procedure of such court. Dahlsten v Anderson, 99 M 340, 109 NW 697.

A majority vote of the legislature is sufficient to make changes in the number of judges and the time of their election. Brown v Smallwood, 130 M 492, 153 NW 953.

The voters of a city, in adopting a home rule charter, cannot abolish the former municipal court and create a new one, for this is not an establishment in the manner required by the constitution. State ex rel v Fleming, 112 M 136, 127 NW 473.

The provisions of G. S. 1878, c. 64 s. 98, giving to the clerk of the municipal court of St. Paul the power to receive complaints and issue warrants in criminal cases, is constitutional. City of St. Paul v Umstetter, 37 M 15, 33 NW 115.

3. Establishment of new courts

The const. art. 4 s. 33, prohibiting special legislation upon certain enumerated subjects, has no application to the power of the legislature to create new courts under this section, nor to an amendment of an act creating and establishing a court thereunder. Dahlsten v Anderson, 99 M 340, 109 NW 697; Brown v Smallwood, 130 M 492, 495, 153 NW 953.

The two-thirds vote by which our constitution authorizes the legislature to establish new courts is a vote in each house of two-thirds of all the members thereof. State ex rel v Gould, 31 M 189, 17 NW 276.

Section 2. SUPREME COURT; REPORTER; CLERK.

1. Jurisdiction, generally

The term "jurisdiction", when confined to the judicial department of the government, means the legal authority to administer justice. Holmes v Campbell, 12 M 221, 227.

The jurisdiction of the supreme court is fixed and prescribed by the constitution and cannot be enlarged, extended, or abridged by legislation. Lading v City of Duluth, 153 M 464, 190 NW 981.

A court has inherent power to render its jurisdiction effective, and when a litigant disobeys a proper order or commits a fraud on the court or on the opposing party, so as to render jurisdiction ineffective, he may be subjected to coercive measures. Lipman v Bachhoefer, 141 M 131, 132, 169 NW 536.

Where the verdict was of murder in the second degree but the evidence sustained conviction only in the third degree, the supreme court has the power to direct the entry of judgment accordingly. State v Jackson, 198 M 111, 268 NW 924.

The words "probate court of competent jurisdiction" signify "the probate court whose jurisdiction it is proper to invoke in the particular case in hand". Montour v Purdy, 11 M 384 (278).

2. Original jurisdiction

The supreme court is one of review and, except in a few remedial cases, is vested by the constitution with appellate jurisdiction only, the nature of which confines it to such questions as, originating in inferior court, have been actually or presumptively considered and determined in the first instance. It has no authority to consider on appeal questions of fact not passed upon by the trial court. State ex rel v Germania Bank of St. Paul, 103 M 129, 114 NW 651.

The writ of mandamus has become a writ of review of orders made by the trial court granting or denying a motion for a change of the place of trial. It may be invoked when the change of the place of trial is a matter of right or when the court grants or denies a motion for a change on the ground of the convenience of witnesses, and in determining the motion exercises its judgment and discretion. State ex rel v District Court, 150 M 498, 185 NW 1019.

The jurisdiction of the supreme court to issue writ of mandamus is not affected by L. 1862, c. 18. Crowell v Lambert, 10 M 369 (295); State ex rel v City of Lake City and town of Lake, 25 M 404; State ex rel v Burr, 28 M 40, 8 NW 903; State ex rel v Town of Lake, 28 M 362, 10 NW 21.

The supreme court has no authority to issue an alternative writ of mandamus. Harkins v County Board, 2 M 342 (294).

Proceedings upon information in the nature of quo warranto belong to the class designated "remedial cases" in this section, and are not in the class denominated "cases at law" in the const. art. 1, s. 4, in which trial by jury is demandable as of right. State ex rel v Minnesota Thresher Mfg. Co. 40 M 213, 41 NW 1020.

To authorize the issuance of a writ of prohibition by the supreme court it should be clearly made to appear that the inferior court is about to proceed in some matter over which it possesses no jurisdiction. This may be made to appear by setting out any acts or declarations of the court or the officer which indicate an intention to pursue such a course. Prignitz v Fisher, 4 M 366 (275).

A writ of prohibition was issued without any objection being raised to the jurisdiction of the supreme court. State ex rel v Gould, 31 M 189, 17 NW 276.

A writ of prohibition may issue where the court is exceeding its legitimate powers in a matter over which it has jurisdiction if no other speedy and adequate remedy is available. State ex rel v Johnson, 173 M 271, 217 NW 351.

A writ of prohibition will be granted against a justice of the peace in Golden Valley because he has not jurisdiction to try a criminal case for an offense committed in the city of Minneapolis. State ex rel v Stanway, 174 M 608, 219 NW 452.

The statute conferring on judges of the supreme court power to allow writs of habeas corpus is constitutional. State v Grant, 10 M 39 (22).

R. L. 1905, s. 203, insofar as it attempts to confer upon the supreme court original jurisdiction in election contests, is unconstitutional. The "remedial cases" in which the legislature is authorized to confer original jurisdiction upon the supreme court include only those cases in which the remedy is afforded summarily through certain extraordinary writs, such as mandamus, quo warranto, and habeas corpus. Lauritsen v Seward, 99 M 313, 109 NW 404.

Under G. S. 1913, s. 357, a proceeding may be maintained to compel a city canvassing board to correct a palpable mistake of fact or of law in canvassing returns. That portion of such section which confers original jusisdiction upon the supreme court in such a case is constitutional. The relief asked in this case is not broader than the relief granted in mandamus proceedings, for mandamus will lie to compel a canvassing board to issue a certificate of election to the party entitled to it on the face of the returns, though the board has decided in favor of another. This proceeding is one of the "remedial cases" in which original jurisdiction may be conferred upon the supreme court. Hunt v Hoffman, 125 M 249, 146 NW 733.

3. Appellate juridiction

The supreme court will not entertain questions which have not received the actual decision of the tribunal from which they come, unless it is quite evident that substantial error has been committed, and adequate relief cannot be had from the court below. Babcock v Sanborn, 3 M 141 (86, 89).

A statute is not invalid because it provides no appeal to the supreme court in proceedings for the condemnation of land for a public park, at least where the right of review on certiorari exists. City of Minneapolis v Wilkin, 30 M 140, 14 NW 581.

A statute, defining the jurisdiction of the supreme court in proceedings before it on certiorari in review of a judgment of the State Industrial Commission, rendered in proceedings under the Workmen's Compensation Act, was not intended to confer upon the supreme court original jurisdiction to determine the rights of the parties from the viewpoint of the evidence and on the merits of the controversy. Lading v City of Duluth, 153 M 464, 190 NW 981.

A provision in a city charter that no appeal shall be allowed from the judgment of the city justice in cases of assault where the judgment or fine imposed, exclusive of costs, is less than $25.00, prevails over the general statute allowing appeals in all cases of conviction before justices of the peace, and does not conflict with this section, giving the supreme court appellate jurisdiction in all cases, for it does not attempt to take away review by certiorari. Tierney v Dodge, 9 M 166 (153).

The violation of a city ordinance is not an offense against the state, but only against the municipality enacting the ordinance, and the right of appeal may be denied. State ex rel v Anderson, 165 M 150, 206 NW 51; City of Red Wing v Hibbe, 160 M 274, 199 NW 918; State ex rel v City of Red Wing, 175 M 222, 225, 220 NW 611.

An order made upon an application for relief from a judgment under Comp. Stat. s. 94, is not appealable, unless there is abuse of discretion. Jorgenson v Boehmer, 9 M 181 (166).

The supreme court has jurisdiction to remand a case and the record thereof to the trial court to enable the appellant to renew a motion for a new trial on the ground of newly discovered evidence arising since the filing of the return in the supreme court. Kroning v St. Paul City Ry. Co. 96 M 128, 104 NW 888.

The supreme court will not correct errors made by the clerk of a lower court unless application has first been made to such lower court for a correction of these errors. Babcock v Sanborn, 3 M 141 (86).

The supreme court will not assume to decide a case appellate in form, but original in fact, as where by agreement between the parties a pro forma order is entered in a lower court. Johnson v Howard, 25 M 558.

An order for the inspection of books and papers is an intermediate order and so is not reviewable by certiorari. Asplund v Brown, 203 M 572, 282 NW 473.

The review which the supreme court can make of a finding of the state securities commission is limited. It cannot disturb the commission's determination because it does not agree with it. It can only interfere when it appears that the commission has not kept within its jurisdiction, or has proceeded upon an erroneous theory of the law, or unless its action is arbitrary and oppressive and unreasonable so that it represents its will and not its judgment, or is without evidence to support it. This principle of review is applied when it is sought to review by mandamus or on statutory appeal the exercise of the various functions committed by the legislature to different boards and commissions. State ex rel v State Securities Comm. 145 M 221, 225, 176 NW 759; State ex rel v Eklund, 196 M 216, 219, 264 NW 682.

4. No trial by jury

The prohibition of a jury in the supreme court led that court to say that it could not issue an alternative writ of mandamus, for if an issue of fact was joined a jury could be summoned to try it. Harkins v County Board, 2 M 342 (294).

The supreme court will so interpret the constitution and statutes as to permit it to issue an order to show cause, by which method the merits could be litigated and justice done. Prignitz v Fischer, 4 M 366 (275).

The guaranty of jury trial in article 1, section 4, must be construed in connection with the prohibition in this section as to negative the claim that there was any right to a jury trial in those remedial cases which the supreme court was authorized to try. State ex rel v City of Lake City and Town of Lake, 25 M 404; Crowell v Lambert, 10 M 369 (295); State ex rel v Burr, 28 M 40, 8 NW 903; State ex rel v Town of Lake, 28 M 362, 10 NW 21.

5. Clerk

This section makes the clerk of the supreme court one of the elective state offices, but to the judges of the supreme court is given the power to fill any vacancy in that office until an election can be legally held. State ex rel v Quinlaven, 198 M 65, 77, 268 NW 858.

Section 4. JUDICIAL DISTRICTS; JUDGES, ELECTION, TERM.

An order setting aside a stilpulation between the parties for the dismissal of an action is within the exclusive jurisdiction of the court and when signed by the judge of the proper court, although the hearing was at the judge's chambers, will, under our statutes, in the absence of special circumstances creating an exception, be regarded as an order of the court. Rogers v Greenwood, 14 M 447 (333).

The entire judicial powers having been vested in the judges thereof, it was not competent for the legislature to vest any part of them in any other officer, except court commissioners, with powers authorized by the constitution, art. 6, s. 15. City of St. Paul v Umstetter, 37 M 15, 33 NW 115.

This section provides that the legislature shall divide the state into judicial districts and that one or more judges shall be elected in each district who shall have and exercise the powers of the court under such limitations as may be prescribed by law. This authorizes the legislature to impose limitations upon the manner in which district judges shall exercise their judicial powers. State ex rel v Johnson, 173 M 271, 217 NW 351.

When the term of office is fixed by statute and there is no provision in the constitution or statute for holding over, the term is definite and a vacancy exists upon the termination of the period. Crowell v Lambert, 10 M 369 (295); State v Sherwood, 15 M 221 (172); State v Prizzell, 31 M 460, 18 NW 316; State ex rel v Windom, 131 M 401, 405, 155 NW 629.

When the statute creating an office provides that the incumbent shall continue in office until his successor is elected and qualified, such hold-over provision, if not in contravention to the constitution, is valid, and a vacancy does not exist upon a failure to elect. State ex rel v Windom, 131 M 401, 406, 155 NW 629.

Filing of a candidate's nomination by petition under section 202.19, to fill a vacancy in office caused by death of an incumbent district judge whose official term would not expire, had he lived, until January 1947, and whose death occurred October 1, 1942, after the primaries but more than 30 days before the next general election to be held November 3, 1942, falls within provisions of section 202.27, providing that certificates of nomination shall be filed with the county auditor, to be placed upon the india tint ballots, on or before the third Tuesday preceding the day of election. Flakne v Erickson, 213 M 146, 6 NW(2d) 40.

Section 5. JURISDICTION OF DISTRICT COURTS.

The term "jurisdiction" when confined to the judicial department of the government means the legal authority to administer justice. Holmes v Campbell, 12 M 221, 227 (141).

The term "jurisdiction" is used, not infrequently, as signifying "authority to hear and determine". The term is evidently used in this sense in this section. Montour v Purdy, 11 M 384 (278, 297).

The district court has original jurisdiction in every case where the constitution does not clearly confer it on some other court; and this jurisdiction extends to all causes where the legislature may authorize other courts to take cognizance of, because the discretion may never be exercised, or not to the extent authorized, and it is necessary, in the meantime, for some court to have jurisdiction; and the authority possessed by the legislature to confer on other courts a portion of the jurisdiction vested by the constitution in the district court, does not imply the right to deprive the latter of such jurisdiction, but simply to authorize other courts to exercise it concurrently with the district court in such cases. Agin v Heyward, 6 M 110 (53, 62).

L. 1933, c. 416, (ss. 185.07 to 185.19), attempts, without equivocation, to curtail, to the extent indicated, the jurisdiction of the district court to issue injunctions. Reid v Ind. Union of All Workers, 200 M 599, 275 NW 300.

In an action by a creditor whose claim was less than $100.00 to enforce the execution of trusts under an assignment, and where it appeared from the complaint that plaintiff sued on his own behalf, as well as on behalf of the other creditors of the assignor, who represented claims amounting to over $3,500, and that the property assigned and in the hands of the trustees was of sufficient value to pay all these debts, the amount in controversy was sufficient to give the district court jurisdiction under this section. Goncelier v Foret, 4 M 13 (1).

Plaintiff sued to recover money held by defendant bank as representative of the estate of R, founding its cause upon an assignment by M, a beneficiary under the will of R, of all his right, title, and interest as a residuary legatee. M. later died testate, defendant executrix being appointed to administer his estate. The district court is, under this section, vested with "original jurisdiction in all civil cases, both in law and equity, where the amount in controversy exceeds $100.00". The probate court, while having jurisdiction of the estates of deceased persons, possesses only powers granted to it by the constitution, to take charge of, preserve, and distribute according to law the property of decedents, but not to determine as between the representative of an estate and third person the right to such property claimed by each. The district court has plenary jurisdiction of the suit. Marquette National Bank v Mullin, 205 M 562, 287 NW 233.

The constitution and the statutes recognize that writs of quo warranto should ordinarily be brought in the district court. State ex rel v Atwood, 202 M 50, 52, 277 NW 357.

The authority granted by this section that "the legislature may provide by law that the judge of one district may discharge the duties of the judge of any other district not his own, when convenience or the public interest may require it", and section 484.05, putting such authority into effect by granting such authority to the governor and to "any judge of any judicial district" when "the convenience or interest of the public or the interest of any litigant shall require" such substitution, has for its basis a determination of facts, and such duty is judicial or at least quasi-judicial. State ex rel v Montague, 195 M 278, 262 NW 684.

Insofar as section 484.05 or section 542.13 assume to empower the governor to designate a judge of another district to discharge the duties of a district judge, it is beyond the authority of this section. State ex rel v Day, 200 M 77, 273 NW 684.

If the judges of the district court in the district where an injunction of the court has been disobeyed are disqualified from acting, proceedings to punish for such contempt may be had in an adjoining judicial district. State ex rel v District court, First Judicial District, 52 M 283, 53 NW 1157.

If an action commenced in one county is removable to another under the statute, the service by the defendant of his affidavit of residence and demand for a change of the place of trial to the latter county, the place of his residence, and the filing with the clerk of the court where the action was commenced of proof of such service, ipso facto change the place of trial to the latter county and no order of the court is necessary. The mere denial of an application therefor made to the judge of the court of the former county to change the place of trial to the latter county and to order the clerk of the former county to transmit the files accordingly does not have the effect of retaining the case in the former county, or changing the place of trial back to that county. Flowers v Bartlett, 66 M 213, 68 NW 976.

A notice of appeal from the probate court to the district court is not "process", and service of the notice on election day is not prohibited by section 645.44, subdivision 4, which prohibits service of process on that day. In re Estate of Dahmen, 200 M 55, 273 NW 364.

Both the constitution and the statute authorize the district court to try indictments for selling liquor without license. Agin v Heyward, 6 M 110 (53); State v Kobe, 26 M 148; State v Bach, 36 M 234, 30 NW 764.

The home rule charter of the city of Red Wing provides that: "No appeal shall be allowed from any judgment or ruling of any justice of the peace of said city, rendered or made in any action or prosecution for any violation of this act, or of any ordinance, by-laws, or regulation of said city, or any police or health regulation of said city. Nor shall any writ of certiorari issue in any such case". This provision does not violate this section, relating to the jurisdiction of the district courts. State ex rel v Anderson, 165 M 150, 206 NW 51; City of Red Wing v Nibbe, 160 M 274, 199 NW 918; State ex rel v City of Red Wing, 175 M 222, 225, 220 NW 611.

In a criminal prosecution a trial by a jury of six men in a justice's court, against the objection of the accused, is in violation of constitutional rights. This is so notwithstanding the accused has the right of appeal to the district court upon entering into recognizance with surety. State v Everett, 14 M 439 (330).

Section 6. QUALIFICATIONS OF SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES.

Under this section a person not an attorney at law is ineligible as a candidate for supreme court justice or district court judge. State ex rel v Schmahl, 125 M 533, 147 NW 425.

A special law which provides that Ramsey county shall pay to each of the judges of the district court of the county annually the sum of $1,500 does not violate the provisions of this section, that justices of the supreme court and judges of the district court shall receive such compensation, at stated times, as may be prescribed by the legislature, which shall not be diminished during their continuance in office, but they shall receive no other fee or reward for their services. Steiner v Sullivan, 74 M 498, 503, 77 NW 286.

Section 7. PROBATE COURTS, JUDGES, JURISDICTION.

1. Terms
2. Jurisdiction, generally
3. Jurisdiction over estates of deceased persons
4. Jurisdiction over persons under guardianship
5. Powers of district court

1. Terms

A person elected judge of probate, upon a vacancy happening, holds for the full constitutional term of two years and not merely for the unexpired portion of his predecessor's term. Crowell v Lambert, 9 M 283 (267).

This section does not create absolute or fixed terms of office for two years each, following each other in regular series or succession, but that whenever a judge of probate is elected it is for the term of two years, although his term may commence before that of his predecessor would, in the natural course, have expired. Crowell v Lambert, 9 M 283 (67); State ex rel v Black, 22 M 336, 338.

The appointment of the judge of probate by the board of county commissioners of a newly organized county violates the provisions of this section. State ex rel v Falk, 89 M 269, 274, 94 NW 879.

Construing the amendment to this section of the constitution extending the term of office of probate judges, it is held that the amendment enlarged the term of judges chosen at the general election in 1920 and that they took office in January, 1921, for a term of four years. State ex rel v Houdersheldt, 151 M 167, 186 NW 234.

2. Jurisdiction, generally

The jurisdiction of the probate court over the estates of deceased persons and persons under guardianship is entire, exclusive, plenary, and where the jurisdiction has attached the court has full equity powers necessary to the settlement and distribution of the estate. It may apply the law to the facts whether the law be statuory, common law, or the principles of equity. State ex rel v Probate Court, 133 M 124, 155 NW 906, 158 NW 234; State ex rel v Probate Court, 204 M 5, 283 NW 545. See 23 MLR 677.

Under this section probate court is vested with exclusive original jurisdiction of estates of deceased persons and persons under guardianship, but it has no other jurisdiction except as thereby prescribed. Jewell v Jewell, 215 M 190, 9 NW(2d) 513.

The jurisdiction constitutionally invested in the probate court is general. It is exclusive. The supreme court has frequently said it is plenary. If the power is plenary, it is entire, complete, and unqualified in relation to both legal and equitable principles. The power so delegated as to a particular subject must be liberally construed. The probate court has a broad power and is authorized to add any incidental thing which is reasonably necessary in the administration of an estate and the conduct of executors and administrators. In re Estate of Drew, 183 M 374, 376, 236 NW 701.

The words "probate court of competent jurisdiction" signify "the probate court whose jurisdiction it is proper to invoke in the particular case in hand". Montour v Purdy, 11 M 384 (278).

The jurisdiction given by the constitution is what is sometimes called general jurisdiction, or jurisdiction in the abstract, and may be termed capacity in the court to acquire jurisdiction over particular cases of the class mentioned. Culver v Hardenbergh, 37 M 225, 234, 33 NW 792.

This section does not endow the probate court with the general equity powers of courts of general jurisdiction. State ex rel v Probate Court, 103 M 325, 115 NW 173.

The jurisdiction of the probate court of Minnesota is granted by the constitution. Its exercise may be regulated but its scope cannot be limited by statute. In re Estate of Davidson, 168 M 147, 210 NW 40. See 11 MLR 260, 282.

In their sphere our probate courts have all the powers which any court has. Their power to hear and determine a probate matter is conferred by the constitution in the same manner and to the same extent that it gives to the district court jurisdiction over civil cases on law and equity arising out of other matters of contract or tort. Probate jurisdiction would not be complete were it lacking power to determine every issue incidental to decision of the ultimate one of which it is the only court with original jurisdiction. In re Estate of O'Connor, 191 M 34, 253 NW 18.

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 ex rel v Wilcox, 24 M 143.

Where the probate court of the county of a resident decedent's domicle has first acquired jurisdiction over the estate, the probate court of the county wherein was the temporary abode at the time of death is not thereafter entitled to take jurisdiction of the same estate. State ex rel v Probate Court, 130 M 269, 153 NW 520.

A conflict between the probate courts of two counties as to which shall exercise jurisdiction over the estate of a person deceased is a question of venue rather than jurisdiction. The jurisdiction of a probate court over an estate, once properly invoked, precludes the subsequent exercise of jurisdiction over the same matter by another probate court, unless and until the first proceeding is dismissed or discontinued. In re Estate of Martin, 188 M 408, 247 NW 515.

When a probate court legally probates a will, or appoints a first administrator, it thereby acquires jurisdiction to direct and control the administration, which continues over the administration, as one proceeding, until its close; and all the court does in the course and for the purpose of the administration, including the removal or discharge of administrators and the appointment of others,

is sustained by the jurisdiction thus acquired. Culver v Hardenbergh, 37 M 225, 33 NW 792.

With the probate court lies exclusive jurisdiction to construe and determine the validity of wills and the provisions thereof for the purposes of administration and to determine the amount of the distributive shares thereunder. In re Estate of Pereson, 202 M 31, 277 NW 529.

Jurisdiction to determine heirship or who are entitled to take as beneficiaries under a will lies wholly with the probate court. Fehland v City of St. Paul, 215 M 94, 9 NW(2d) 349.

A child, unrelated to intestate by blood, was taken into the latter's home under an agreement by her and her husband to make such child their child and heir. Upon the child's death, leaving lawful issue, the latter inherited through her a share in the estate of the deceased "adopting" parent as if she, the "adopted" child, had been a daughter by blood. Intestate's estate was reduced to personalty and the probate court had power to adjudge to whom the same should be apportioned and, as an incident thereto, to determine the rights of appellant, the daughter of the "adopted" child, under the contract and, by its final decree, to award to appellant the share of the estate to which she was equitably entitled under the contract whereby her mother was "adopted". Fiske v Lawton, 124 M 85, 144 NW 455.

A decree of heirship upon the petition of an heir to an estate where the same has not been administered for five years after the death of an intestate is within the authority delegated to probate courts by this section. Fitzpatrick v Simonson Bros. Mfg. Co. 86 M 140, 90 NW 378.

If the probate court appoints an administrator when there is already one whose authority has not been extinguished, it is only error and is valid unless corrected on appeal. Culver v Herdenbergh, 37 M 225, 33 NW 792.

No petition was presented to the probate court for the appointment of a special administrator. Such petition is jurisdictional. Without it the probate court has no jurisdiction to appoint such administrator, to approve his bond, or to issue letters of administration. Such orders are nullities. A settlement made by the special administrator so attempted to be appointed in no way binds the next of kin of deceased dependent upon him for support. Bombolis v M. & St. L. R. Co. 128 M 112, 150 NW 385.

Those claims which rest on a will or the law of descent are within the jurisdiction of the probate court. O'Brien v Lien, 160 M 276, 199 NW 914.

The probate court does not have jurisdiction to determine the issue of fraud, where fraud was claimed in inducing a party not to file a claim against the estate of a deceased person. Bulau v Bulau, 208 M 529, 294 NW 845.

The probate court, like the district court, may within one year after notice thereof correct its records and decrees and relieve a party from his mistake, inadvertence, surprise, or excusable neglect. In the absence of fraud or mistake of fact, the powers of the probate court to amend, modify, or vacate an order or decree is exhausted when the time to appeal therefrom has expired. In re Estate of Simon, 187 M 399, 246 NW 31.

Jurisdiction over the general subject of guardianship, as well of insane persons as of minors or others, including appointment of guardians, is vested by the constitution in the probate courts. The acts of the legislature authorizing judges of probate to examine and commit insane persons to the hospital for the insane merely regulate the exercise of the jurisdiction. State ex rel v Wilcox, 24 M 143.

The jurisdiction of the probate court includes the power to construe a will whenever such construction is involved in the settlement or distribution of the testator's estate pending before it. Under the provisions of the will if there be a case for an election by the widow whether she will take under the will or against it and, by reason of insanity, she be incompetent to make such election in person, the probate court which appointed a guardian over her estate has the power and the right to make such election for her or to direct or guardian to make it under the instructions of the court. State ex rel v Ueland, 30 M 277 15 NW 245.

The probate court had jurisdiction to allow and order paid out of the estate of an insane person the witness fees and attorney fees incurred upon a hearing

had upon the petition of such insane person to have his restoration to capacity judicially determined. Kelly v Kelly, 72 M 19, 74 NW 899.

L. 1939, c. 369, which subjects persons who are irresponsible for their conduct in sexual matters and thereby dangerous to others to the jurisdiction of the probate court is not violative of constitutional limitations on the jurisdiction of that court. State ex rel v Probate Court, 205 M 545, 287 NW 297.

3. Jurisdiction over estates of deceased persons

The probate court acquires jurisdiction of an estate on the filing of a proper petition for administration and such jurisdiction continues until the estate is fully administered. Publishing the prescribed notice in a newspaper not qualified to publish such notices is an irregularity which does not invalidate the orders or decrees of the court. In re Estate of Barlow, 152 M 249, 188 NW 282.

The administration of a decedent's estate is a proceeding in rem. When the person alleged to be deceased is dead and left an estate within the territorial jurisdiction of the probate court, such court has jurisdiction over the subject matter of administering such estate. When the power of a particular probate court to administer a particular estate is invoked by a petition proper in form, and the court has jurisdiction of the subject matter, its jurisdiction attaches to such particular estate when it takes control of the estate by the appointment of an executor or administrator, or in such other manner as the law prescribes. In such a case, if the letters of administration be issued to a person not entitled thereto, they are voidable and may be revoked, but are not void ab initio. They are effective to the extent necessary to protect those who, in good faith, have acted in reliance thereon. Fridley v Farmers & Mechanics Savings Bank, 136 M 333, 162 NW 454.

The probate court is vested with complete jurisdiction over the estates of deceased persons and persons under guardianship. While the original jurisdiction of the administration proceeding and of matters necessarily incident thereto is exclusive and complete in the probate court, it possesses no independent jurisdiction in equity or at law over controversies between the representatives of the estate, or those claiming under it, with strangers claiming adversely, nor of collateral actions. This rule applies in respect of fees of attorney for services rendered. The estate is not liable to an attorney for his services at the instance of an executor or administrator, but the latter is himself liable in a suit by the attorney. State ex rel v Probate Court, 204 M 5, 283 NW 545. See 23 MLR 677.

The probate court has power to determine every preliminary issue conditioning that of admission of a will to probate. It has power to try the validity of trust instruments incidentally involved in an issue of admission to probate. Where the alleged revocation of a will is by change in estate, the extent, character, and effect of the change must be ascertained in order to come at the result upon the will. If the validity of living trusts is challenged by a properly framed issues, it is the duty originally of the probate court, and on appeal of the district court, to decide it. In re Estate of O'Connor, 191 M 34, 40, 283 NW 18.

The probate code makes no provision for the formal discharge of an administrator but the necessary legal effect of an order of the probate court allowing the final account of the administrator and its final decree of distribution, assigning the whole of the estate to the heirs and distributees, is to remove the estate of the deceased from the jurisdiction of the court and to render the office of administrator functus officio. While the final decree of distribution remains unreversed and unmodified, the probate court has no jurisdiction to entertain a petition to issue a citation to the administrator requiring him to further account for the property belonging to the estate which is in his possession. State ex rel v Probate Court, 84 M 289, 87 NW 783.

The original jurisdiction of administration proceedings and matters necessarily incident thereto is exclusively and completely vested in the probate court under the provisions of this section. State ex rel v Probate Court, 199 M 297, 271 NW 879.

A testator, up to the time of his death, was engaged in business in partnership with one of the executors named in the will. After testator's decease such executor continued the business as surviving partner. He then entered into an

agreement with his co-executor whereby he purchased the interest of the estate, but no money was paid to the co-executor and no account was made to the probate court by either executor. Both were discharged without having rendered an accounting, leaving the estate unadministered. From time to time money was paid by such surviving partner to the sole heirs of testator. In an action against such surviving partner by a subsequently appointed administrator de bonis non, to compel an accounting, it was held that such surviving partner was not a debtor of the estate at the death of the testator and that his relation to the estate still remained that of executor and the jurisdiction of the probate court to compel an accounting was exclusive, and such jurisdiction was not lost because the administrator was discharged, leaving the estate unadministered. Betcher v Betcher, 83 M 215, 86 NW 1.

Plaintiff and decedent made an antenuptial contract in which decedent agreed in case of his death to have $50,000 of his estate set aside and invested in interest-bearing securities and the incomes paid to plaintiff during her life. Decedent then, after the marriage, made a will in which he directed his executors to carry out the contract. Upon the death of the husband the will was admitted to probate. There being no dispute as to plaintiffs legal rights and there being nothing to litigate to establish her rights, the probate court has exclusive jurisdiction to direct the executors to do that which is necessary to comply with the demands of the contract, as an incident to the distribution of the estate. O'Brien v Lien, 160 M 276, 199 NW 914.

The duties imposed upon probate courts by L. 1905, c. 288, (an inheritance tax law), do not conflict with the provisions of the constitution defining the jurisdiction of probate courts. State ex rel v Probate Court, 112 M 279, 128 NW 18. See 21 MLR 212.

The probate court has exclusive jurisdiction of the matter of settling the account of an administratrix and to correct any errors in its orders or to set it aside for mistake or fraud. Pierce v Maetzold, 126 M 445, 449, 148 NW 302.

In case of a person, bound by a contract in writing to convey real estate, dying before making a conveyance, the proper probate court, on the application of any person interested in causing the conveyance to be made, may direct the administrator or executor to make it; but if the court be not satisfied that the conveyance should be made, the court cannot decide against the applicant on the merits but must dismiss the petition, leaving the petitioner to his ordinary remedy by action. Mousseau v Mousseau, 40 M 236, 41 NW 277. See MLR 212.

L. 1889, c. 46, (the Probate Code), only authorizes the presentation to the probate court of claims against the estates of deceased persons arising on contract. When the claim arises on tort, claimant may bring his action against the personal representative in the district or other court of competent original jurisdiction, and does not contravene this section. Comstock v Matthews, 65 M 111, 56 NW 583. See 21 MLR 212.

Sections of the probate code which deprive the probate court of jurisdiction over claims against the homestead and which confer such jurisdiction upon the district court are not in violation of the constitutional provision which gives the probate court exclusive jurisdiction of estates of deceased persons. In re Estate of Peterson, 198 M 45, 268 NW 707.

The probate court, by virtue of the broad grant of power bestowed by the constitution and in conformity with statutory enactment directing its exercise may appoint an administrator de bonis non with or without notice, when a proper petition, made by one authorized by statute so to do, is presented to it, provided the authority of the prior representative has been extinguished and there remains property theretofore unadministered. In re Estate of Gilroy, 193 M 349, 258 NW 584.

The execution and approval by the secretary of the interior of a deed to an allotment given to one purporting to be the heir of an allottee terminates the jurisdiction of the Federal government over the land and it is from that time on under the jurisdiction of the state courts and the proper probate court may probate the estate of the allottee to determine heirship. Horn v Ne-gon-ah-e-quaince, 155 M 77, 192 NW 363.

The probate court of Becker county had jurisdiction to administer the estate and determine the heirs of a mixed-blood adult Indian to whom land in the White Earth Reservation had been allotted and in whose name a trust patent was issued, the probate proceedings having been begun after the enactment of the Clapp amendment of June 21, 1906. Baker v McCarthy, 145 M 167, 176 NW 643; Sanders v Morrison, 155 M 82, 192 NW 344.

Probate courts have no jurisdiction to determine heirship and descent of land allotted to a Chippewa Indian upon the White Earth Reservation, under the acts of Congress of February 8, 1887, and January 14, 1889, where the allottee dies before the approval of his allotment. Holmes v Praun, 130 M 487, 153 NW 951.

If a will has been revoked it is not entitled to probate. Where that issue is presented the probate court has power and is under the duty to determine it. In re Estate of O'Connor, 191 M 34, 253 NW 18.

The probate court has no general equitable or common law jurisdiction in the exercise of which it may determine contested claims or title to real property asserted by those claiming by will or descent against strangers to the estate or asserted by strangers against those claiming through the estate; but in the exercise of its jurisdiction to ascertain and impose an inheritance tax upon real property belonging to the estate, but not inventoried therein, there being no adjudication or proceeding looking to an adjudication of ownership in a court of competent general jurisdiction, it may determine the fact of ownership in the decedent at the time of his death, upon which fact the right to impose a tax rests. State ex rel v Probate Court, 140 M 342, 168 NW 14.

After a probate court has made an order for the sale of real property of an estate and it has been accordingly sold, the sale confirmed by the court, and a deed executed to the purchaser as directed by the order of confirmation, and the administrator has been discharged, the matter is out of the jurisdiction of the probate court and it cannot entertain an application to review and set aside the sale proceedings. State ex rel v Probate Court, 33 M 94, 22 NW 10.

The probate court has no jurisdiction when there is a conflict between the representative and his attorney in respect to services rendered and the fees to be paid therefor. Parties cannot confer jurisdiction by consent upon a court of any subject matter which is denied to it by law. State ex rel v Probate Court, 204 M 5, 283 NW 545.

Mason's Minn. St. 1927, s. 8815, withholds from the probate court jurisdiction to receive or allow, against an estate under administration, claims which remain contingent for more than five years after the death of the decedent. In re Estate of Borlaug, 201 M 407, 276 NW 732.

4. Jurisdiction over persons under guardianship

The jurisdiction of the probate court over persons under guardianship embraces jurisdiction over their affairs in general, including the management and disposition of their property. Probate courts are invested with a general jurisdiction over the subject of guardianship, and possess authority to put persons under guardianship, jurisdiction over persons already under guardianship, and, so far as matters of guardianship are concerned, jurisdiction over persons who have been under guardianship; and probate courts have jurisdiction to settle the accounts of the guardian of a minor ward after the ward becomes of age. Jacobs v Fouse, 23 M 51.

The jurisdiction of probate courts over persons under guardianship includes the power to hear and determine applications for restoration to capacity by patients in insane hospitals. Mandamus will lie to direct the district court to finish a trial commenced therein where, upon appeal from probate court, it erroneously declines jurisdiction of an application for restoration to capacity by a patient in an insane hospital upon the ground that the probate court had no inherent jurisdiction of such application. State ex rel v District Court, 186 M 432, 243 NW 434.

In this case the person alleged to be incompetent was found by the probate court to be competent. On appeal the district court reversed; and the supreme court determined that finding sustained by the evidence. Inasmuch as the probate court never passed upon or decided the question of who should be the guardian of

such incompetent person, the district court should have remanded the case to the probate court for the appointment of a guardian. The matter of determining a guardian's compensation and necessary expenses in the discharge of his official duties is primarily for the probate court. In re Guardianship of Strom, 205 M 399, 286 NW 245.

Dependent, neglected, or delinquent children are proper subjects to be placed under guardianship by the probate court. State ex rel v Patterson, 188 M 492, 249 NW 187.

An act to provide for the treatment of inebriates by counties is invalid, for the reason that it assigns to the probate judge powers and duties beyond the jurisdiction authorized by the constitution. The proceedings authorized by the act do not amount to a commitment of an inebriate to the guardianship of any one, therefor do not come within the general jurisdiction of the probate court. Foreman v County Board, 64 M 371, 67 NW 207.

The petition for the placing of a person not a minor under guardianship should show the person to be one coming within the provisions of Mason's Minn. St. 1927, s. 8924. Where the petition failed so to show and the order appointing the guardian contained no finding or adjudication of incompetency, in a direct proceeding to vacate and set aside the order appointing a guardian for the person and estate of the assumed incompetent, appellant was entitled to the relief asked. In re Guardianship of Carpenter, 203 M 477, 281 NW 867.

Under this section, jurisdiction given to probate court over persons under guardianship, includes the care, protection, and disposition of property of incompetent wards; and the power to care for and protect the ward's property comprehends the exercise of any right of the ward with respect to his property interests which he might exercise if competent. In re Guardianship of Overpeck, 211 M 576, 582, 2 NW(2d) 140.

5. Powers of district court

Jurisdiction of district court is limited to appeals seasonably taken in accordance with statutory directions. The jurisdiction so given is statutory only and not founded upon constitutional grant. It is appellate, nor original. In re Estate of Peterson, 202 M 31, 277 NW 529.

Parties by consent cannot give jurisdiction to an appellate court to try a matter not submitted to and determined by the probate court. In re Estate of Peterson, 202 M 31, 277 NW 529.

In this case the person alleged to be incompetent was found by the probate court to be competent. On appeal the district court found the person incompetent. The supreme court determined that finding sustained by the evidence. The probate court never passed upon or decided the question of who should be the guardian of such incompetent person, and the district court should have remanded the case to the probate court for the appointment of a guardian, as its jurisdiction is appellate only, not original. The district court has jurisdiction only upon appropriate appeal to review the propriety and validity of the items composing a guardian's compensation and necessary expenses in the discharge of his official duties. It has no original jurisdiction with respect to such. In re Guardianship of Strom, 205 M 399, 286 NW 245.

If a contract is one which may be specifically enforced an action to enforce comes within the jurisdiction of the district court. O'Brien v Lien, 160 M 276, 199 NW 914.

A. was killed by the alleged negligence of defendant. J. was appointed administrator of his estate and made an alleged fraudulent settlement with defendant of the cause of action against it, given by statute for the benefit of deceased widow and children, and delivered to it a release thereof. Two days afterward the probate court made an order, not set aside, approving and confirming the settlement and release. The widow, for herself and children, commenced action against J. and defendant, which was dismissed without a trial on the merits, to recover damages claimed to have been sustained by them by reason of such fraudulent release. The widow, as administratrix de bonis non of A.'s estate, afterwards brought this action to recover damages from defendant for the death of her intestate, on the ground that it was caused by its negligence. If the re-

lease was fraudulent, neither it nor the commencement of the prior action by the widow is a bar to this action. Aho v Republic Iron & Steel Co. 104 M 322, 116 NW 590.

A guardian of an infant having purchased real estate chiefly with the money of his ward, he contributing a portion, and having taken the title in his own name, a trust results in respect to the property in favor of the infant, who may claim afterwards, not merely a lien as security for the money, but a proportionate share of the estate. In such a case, the guardian having died, the district court has jurisdiction to declare and enforce the trust by a transfer of the legal title. Bitzer v Bobo, 39 M 18, 38 NW 609.

An executor has the right to bring a bill in equity in the district court against a co-executor for the purpose of having the amount determined, and to enforce a claim held by the estate against such co-executor arising on a contract entered into with the testator in his lifetime and due at the time of his decease, when the co-executor disputes the amount and refuses to pay until such amount is ascertained. Peterson v Vanderberg, 77 M 218, 221, 79 NW 828.

The district court, not the probate court, has jurisdiction of an action for damages for fraud in inducing a party not to file a claim against the estate of a deceased person. Bulau v Bulau, 208 M 529, 294 NW 845.

The representative of an estate in the performance of his official duties is authorized to retain the services of attorneys and to incur reasonable expenses in that regard, but the allowance is to the representative as such and not to the attorney. When there is a conflict between the representative and his attorney in respect to services rendered and the fees to be paid therefor, the issues thus presented should be determined by a court of general jurisdiction. State ex rel v Probate Court, 204 M 5, 283 NW 545.

In the matter of settling the account of an administrator and to correct any errors in the order of the probate court or to set such order aside for mistake or fraud, the district court has no jurisdiction, except upon appeal. Pierce v Maetzold, 126 M 445, 148 NW 302.

When a last will and testament has been duly proved and allowed in the proper probate court and proceedings involving its interpretation and legal effect are therein pending, a district court cannot be allowed to construe the instrument upon a disclosure made by the executor as garnishee. The proper practice in such a case is for the court taking the disclosure to stay all proceedings pending a construction of the will and a determination of its legal effect in the probate court. Duxbury v Shanahan, 84 M 353, 87 NW 944.

Section 8. JUSTICES OF THE PEACE, JURISDICTION.

1. Generally
2. Civil cases
3. Criminal cases
4. Title to real estate involved

1. Generally

The provisions of the statute, providing for an appeal to a jury, summoned by a justice of the peace, from the determination of town supervisors laying out, or refusing to lay out, a highway, are not in conflict with this section. State ex rel v Rapp, 39 M 65, 38 NW 926.

A special law, providing for the election of justices of the peace within the city of Minneapolis and that justices of the peace outside of the city should not issue process to be served within the city is not unconstitutional. Burke v St. P. M. & M. Ry. Co. 35 M 172, 28 NW 190; Smith v Victorin, 54 M 338, 340, 56 NW 47.

Where statutory proceedings are instituted to prevent the commission of crimes and it appears, upon examination by the justice, that there is just cause to fear that the offense threatened will be committed by the party complained of, and such party refuses or neglects to enter into a recognizance with sufficient sureties in such sum as the magistrate directs, to keep the peace towards all the people of this state and especially towards the person requiring such security,

for such terms as the magistrate orders, not exceeding six months, then the magistrate may commit him to the county jail during the period for which he was required to give security or until he so recognizes. This section has no application to proceedings of this kind. State ex rel v Sargent, 74 M 242, 76 NW 1129.

A justice of the peace in Golden Valley does not have jurisdiction to try a criminal case for an offense committed in the city of Minneapolis. State ex rel v Stanway, 174 M 608, 219 NW 452.

Statutes which confer upon justices of the peace power to commit infants, in consequence of incorrigibly vicious conduct, to the care and guardianship of the board of managers of the state reform school for terms exceeding a period of three months are not repugnant to this section relating to the jurisdiction of justices of the peace. State ex rel v Brown, 50 M 353, 52 NW 935.

Under this section the legislature has power to determine how many justices of the peace there shall be in any county and to define and limit the jurisdiction of those provided. State ex rel v Gibbons, 202 M 421, 278 NW 578.

2. Civil cases

The "amount in controversy" does not include the costs of litigation. Watson v Ward, 27 M 29, 6 NW 407.

The provisions of a special act conferring upon the municipal court of Minneapolis exclusive jurisdiction of all civil actions and proceedings heretofore cognizable before a justice of the peace, the defendant or garnishee in which resides within the limits of the city of Minneapolis, and that no justice of the peace shall have jurisdiction to issue any summons or process within said city of Minneapolis and that any service of any such summons or process from a justice of the peace made within said city shall be void, are not unconstitutional. Burke v St. P. M. & M. Ry. Co. 35 M 172, 28 NW 190.

Where the affidavit and complaint in replevin in justice court state the value of the property at $100.00 or less, the justice acquires jurisdiction to proceed and dispose of the case on the merits though the value is in fact more than $100.00, unless the defendant pleads and proves, in bar to the jurisdiction, the fact that the value exceeds the jurisdictional limit. Pleading the fact alone does not oust the justice of jurisdiction. The fact must be proven and determined in favor of the defendant; and not before this is done does the jurisdiction of the justice cease for all purposes except the entry of the statutory judgment of dismissal in replevin cases. Parker v Bradford, 68 M 437, 71 NW 619.

3. Criminal cases

It is not competent for the legislature to confer on justices of the peace jurisdiction over offenses punishable by imprisonment in the state prison. State v Charles, 16 M 474 (426).

A prosecution before a justice of the peace for obstructing a public highway is a criminal action. State v Cotton, 29 M 187, 12 NW 529.

Violations of municipal ordinances, punishable by fine or imprisonment, are criminal offenses within the meaning of this section. Where the punishment may exceed three months' imprisonment or $100.00 fine, (the limits of the jurisdiction of justices of the peace) a person can be held to answer for them only on indictment or information of a grand jury. The municipal court of Minneapolis does not have jurisdiction to try any case for the violation of a city ordinance where the prescribed punishment may exceed those limits. In such a case, its judgment is void and the imprisonment of a defendant under it is without authority of law, and he may be discharged therefrom on habeas corpus. State ex rel v West, 42 M 147, 43 NW 845; State ex rel v Bates, 105 M 440, 117 NW 844.

A municipal court organized under the general law, (ss. 488.03 to 488.16) has no jurisdiction of gross misdemeanors punishable by a fine in excess of $100.00 or by imprisonment in excess of three months. State ex rel v Morical, 182 M 368, 234 NW 453.

The municipal court of the city of Minneapolis has jurisdiction to try and determine all offenses committed within the county of Hennepin which, under the general laws of the state, are within the jurisdiction of a justice court. State ex rel v Dreger, 97 M 221, 106 NW 904.

The municipal court of the city of Minneapolis has jurisdiction to hear and determine all criminal cases arising in or triable within the city where the punishment cannot exceed a fine of $100.00 or 90 days' imprisonment. State v Marciniak, 97 M 355, 105 NW 965.

The costs of prosecution which follow conviction in some criminal causes are no part of the fine mentioned in this section, which prescribes the jurisdiction of justices of the peace. They are not deprived of the power to hear and finally determine criminal cases arising under the various laws of the state regulating the sale of intoxicating liquors, (if otherwise possessing jurisdiction) by the fact that a person convicted of such violation is by statute unable to procure a license for the sale of such liquors for at least 12 months thereafter. State v Larson, 40 M 63, 41 NW 363.

A justice of the peace who punishes an offense by imprisonment, and imposes costs, may coerce the payment of costs by imprisonment until paid, when the penalty of imprisonment imposed for the offense and the imprisonment for failure to pay the costs together exceed three months' imprisonment. Such a sentence is not void altogether; and one imprisoned is not entitled to his liberty until he has served the valid portion of his sentence. State ex rel v Maher, 164 M 289, 204 NW 955.

Defendant was charged, in justice court, with keeping an unlicensed drinking place. A warrant for his arrest was issued, together with a search warrant for a search of the premises and seizure of all intoxicating liquors and all other property and things used in keeping such place, found therein. He was convicted and sentenced to pay a fine of $100.00 and, in default thereof, to be confined in the county jail for 90 days. He appealed to the district court on questions of law alone and the conviction was affirmed. The sheriff was ordered to destroy the liquors and sell the other property so seized by him by virtue of the search warrant. The justice had jurisdiction of the offense and defendant was legally convicted, although no maximum penalty was fixed by statute and the value of the property seized was $600.00. State v Stoeffels, 89 M 205, 94 NW 675; State v Kight, 106 M 371, 119 NW 56; State v Hanson, 114 M 136, 130 NW 79.

A justice of peace in Golden Valley does not have jurisdiction to try a criminal case for an offense committed in the city of Minneapolis. State ex rel v Stanway, 174 M 608, 219 NW 452.

In an action brought before a justice of the peace in Golden Valley for an offense committed in the city of Minneapolis, relator entered his plea and asked for a continuance and a jury trial. He thereby no doubt waived any question as to the jurisdiction of such justice over his person; but he could not confer jurisdiction upon the justice to hear or try a case the subject matter of which was excluded from the jurisdiction of such justice. State ex rel v Stanway, 174 M 608, 219 NW 452.

4. Title to real estate involved

A justice of the peace cannot certify a cause to the district court until the title to real estate comes in question on the evidence. Goenen v Schroeder, 8 M 387 (344).

In a prosecution before a justice of the peace for obstructing a public highway, where defendant is the owner of the soil and disputes the legal existence of the public easement, the question of title to real estate is involved; but the plea of "not guilty" does not show the question of title to be involved. It must be made to appear by the evidence given or offered. Neither a justice of the peace nor the municipal court of the city of Minneapolis has jurisdiction to try a criminal case where the title to real estate is involved; but should, as soon as it appears that such title is involved, transfer the case to the district court. State v Cotton, 29 M 187, 12 NW 529.

Section 9. OTHER COURTS, JUDGES ELECTED.

The municipal court of Duluth was created by the legislature under the authority of this section. This provision does not call for interpretation. Its meaning is plain. The municipal judge is elective. He cannot be elected for a longer term than seven years. State ex rel v Windom, 131 M 401, 409, 155 NW 629.

The municipal court of the city of Minneapolis has jurisdiction to try and determine all offenses committed within the county of Hennepin which, under the general laws of the state, are within the jurisdiction of a justice court. State ex rel v Dreger, 97 M 221, 106 NW 904.

Section 10. VACANCIES FILLED BY APPOINTMENT.

A person elected judge of probate, upon a vacancy happening, holds for the full constitutional term of two years and not merely for the unexpired portion of his predecessor's term. Crowell v Lambert, 9 M 283 (267).

The election of a judge provided for by the last clause of this section is one which becomes necessary by reason of the happening of a vacancy. The clause does not refer to nor control elections of judges which come on in the ordinary course of electing judges and which would have been held had no vacancy occurred. State ex rel v Black, 22 M 336.

Neither the day on which the vacancy happens, nor the day on which the election occurs, can be counted as part of the 30 days prescribed by this section. State ex rel v Brown, 22 M 482.

Where, after expiration of the time for filing nominations, a third vacancy was created by the resignation of a district court judge, the county auditor, in proceedings under G. S. 1913, s. 398, was directed to indicate on the official ballots for the primary and the general election that three vacancies were to be filled. Fish v Erickson, 126 M 525, 147 NW 426.

The const. art. 5 s. 4, provides that the governor shall "fill any vacancy that may occur in the office of secretary of state, treasurer, auditor, attorney general, and such other state and district offices as may be hereafter created by law, until the next annual election, and until their successors are chosen and qualified". Under this provision there is no question of the authority of the governor to appoint upon the occurrence of a vacancy in the office of municipal judge. State ex rel v Windom, 131 M 401, 419, 155 NW 629.

This section of the constitution furnishes the only guide in determining when and under what circumstances the governor may appoint a judge to fill a vacancy. The power to fill a vacancy does not include the power to declare one. There must be a vacancy before an election to fill it can be ordered and an election to fill an anticipated vacancy may not be validly held unless there be constitutional authority for it. State ex rel v Holm, 202 M 500, 279 NW 218.

Section 11. PROHIBITIONS AGAINST HOLDING OTHER OFFICES.

A vote cast for a judge of the district court or a justice of the supreme court by the people or the legislature for any office except a judicial one is absolutely void; but this prohibition as to votes for them applies only during their continuance in office. When their terms cease the disability no longer exists and they stand upon equal footing with other citizens so far as concerns their right to hold office. State ex rel v Sutton, 63 M 147, 151, 65 NW 262.

Section 13. CLERK OF COURT.

The term of office of the clerk of the district court is limited by this section of the constitution to four years. He is not empowered to thereafter hold the office until his successor is elected and qualified. The effect of L. 1891, c. 39, ss. 1, 2, (G. S. 1894, ss. 866, 867) was to create vacancies in the office of clerk of the district court in all of the counties affected by the act on the first Monday in January, 1896, which were to be filled by appointments in accordance with the provisions of G. S. 1894, s. 865. State ex rel v O'Leary, 64 M 207, 66 NW 264; State ex rel v Windom, 131 M 401, 405, 155 NW 629.

The term of office of such clerks of the district court as, commencing in January, 1884, would terminate in January, 1888, were not affected by the amendments of the constitution adopted in 1883, but they continued to January, 1888, and the succeeding terms commenced at that time. O'Leary v Steward, 46 M 126, 48 NW 603.

Upon mandamus the holder of the certificate of election is entitled to the possession of the office and of the books, papers, etc., and the court will not try the question of his eligibility. A prima facie title to an office gives a right to the possession of the insignia and furniture thereof and the records and other books and papers appertaining thereto. State ex rel v Sherwood, 15 M 172, 176, (221).

The general rule is that a prospective appointment to fill a vacancy sure to occur in a public office, made by the officer who, or the body which, as then constituted, is empowered to fill the vacancy when it arises, is, in the absence of a law forbidding it, a valid appointment and vests title to the office in the appointee. State ex rel v O'Leary, 64 M 207, 66 NW 264; State ex rel v Windom, 131 M 401, 405, 155 NW 629.

The appointment of the Clerk of court by the county board of a newly organized county is in violation of this section of the constitution. State ex rel v Falk, 89 M 269, 274, 94 NW 879.

The term of office of the clerk of the district court cannot be extended by the legislature. L. 1915, c. 168, which provides that there shall be no election in 1916 of successors to clerks, who were elected in 1912 for terms commencing on the first Monday in January, 1913, and terminating on the first Monday in January, 1917, but that such clerks shall continue in office until the first Monday in January, 1919, and that their successors shall be elected in November, 1918, constitutes an extension of the four-year term of the clerks and is unconstitutional as respects the office of clerk. State ex rel v Berg, 132 M 426, 157 NW 652.

Section 14. LEGAL PLEADINGS AND PROCEEDINGS.

By this section of the constitution, "the style of all process shall be, The State of Minnesota". As so used, the word "process" means all such writs, whether original, mesne, or final, by which the authority of the state is exerted in obtaining jurisdiction over the person or property of the citizen, and which requires the exercise of the sovereign power for their enforcement. A garnishee summons falls within this definition and should run in the name of the state. The garnishee, previous to the service of this process, upon him, is a stranger to the whole case and it is only by such service that the sovereign power of the state can reach his person or his property. Hinckley v St. Anthony Falls Water Power Co. 9 M 44, 49 (55).

A summons which, after the address to the defendant, proceeds, "You are hereby summoned and required, in the name of the State of Minnesota, to answer," etc., is a substantial compliance with this section of the constitution. Cleland v Tavernier, 11 M 194 (126).

A summons in a civil action is not "process" within the meaning of this section of the constitution. Hanna v Russell, 12 M 80, 85 (43); Lowry v Harris, 12 M 255 (166).

An execution is not void for want of the style prescribed by the constitution. This is a defect in a matter of form and is susceptible of amendment, and can only be taken advantage of by a defendant within the time and in the manner prescribed by law. Thompson v Bickford, 19 M 17 (1).

The constitution makes no provision with reference to the time of service of a summons or the commencement of an action and the entire matter of legal pleadings and proceedings is left to the legislature. The legislature may provide that the court may acquire jurisdiction in any manner by which the defendant may be notified that proceedings have been instituted against him. A summons in the civil action may be amended, upon proper application, to make the time, as therein stated, for answering the complaint conform to the statute. Lockway v M. W. of A. 116 M 115, 117, 133 NW 398.

Under a statute providing that the word "holiday" shall include "Lincoln's birthday, February 12", and providing that "no public business shall be transacted on those days except in cases of necessity, nor shall any civil process be served thereon", the words "civil process" include the original summons in a civil action. The service of a summons on Lincoln's birthday does not confer jurisdiction. The word "process", as used in this section of the constitution, prescribing the style of process has been held not to include summons. This holding was upon a ground not controlling in the construction of the statute. Farmers Implement Co. of Hallock v Sandberg, 132 M 389, 157 NW 642.

This section of the constitution confers upon the legislature the power to direct the proceedings in the courts of the state. Pursuant thereto it enacted section 484.33 requiring the district judges to assemble annually to revise the general rules of practice of that court and authorized them to "revise and amend such rules as they deem expedient, conformably to law, and the same shall take effect from and after the publication thereof. Such rules, as the same shall be so revised and amended from time to time, shall govern all the district courts of the state." Jovaag v O'Donnell, 189 M 315, 249 NW 676.

By virtue of the power granted to the legislature by this section of the constitution, it enacted section 484.04, which defines and provides the means and directions for the issuance of writs and process. A summons is not a process but is a mere notice given by the plaintiff or his attorney to the defendant that proceedings have been instituted and judgment will be taken against him if he fails to defend. Schulz v Oldenburg, 202 M 237, 277 NW 918.

Where inadvertently the name of a defendant is omitted from the title of the action in the summons, but appears in the title of the action in the complaint attached to and personally served with the summons on such defendant, the complaint stating a cause of action against him by name, the court properly amended the summons so as to conform to the complaint on plaintiff's motion made and heard simultaneously with defendant's special appearance to vacate the service of summons on the ground that he was not named as a defendant therein. Griffin v Faribault Fair & A. Assn. 203 M 97, 280 NW 7.

An action is deemed begun when the summons is served upon defendant or is delivered to the proper officer for service. An attorney at law, although an officer of the court, stands in no better position in respect of authority to make service of summons than any other private citizen. He is not a statutory "officer" for the service of summons. Melin v Aronson, 205 M 353, 285 NW 830.

Section 15.- COURT COMMISSIONER.

Under the act of August 4, 1858, the court commissioner has, in addition to those specially enumerated, the powers of a judge at chambers, but not those of the district court in vacation. The latter powers comprehend a great many questions, which require, in their determination, a full exercise of the judicial functions and can only be entertained by the court, and not by a judge at chambers; the former are confined to such preliminary and intermediate matters as the granting of orders to show cause, extending time to plead, letting to bail, granting injunctions, and many other matters of a similar nature which are usually ex parte, go of course on a prima facie showing, and may be allowed by a judge of a court when out of term and when acting as judge merely and not as the court. Gere v Weed, 3 M 352 (249).

The supreme could will not review the acts of a court commissioner until they have been passed on by the court below. Gere v Weed, 3 M 352 (249).

Court commissioners, by virtue of G. S. 1894, s. 7132, have power to issue a warrant of arrest and apprehend, examine, commit, or bail all persons charged with a crime. Hoskins v Baxter, 64 M 226, 66 NW 969.

L. 1897, c. 46, construed; held that the justification of the sureties on an appeal bond, as therein provided, may be had before the court commissioner of the proper county. Betts v Newman, 91 M 5, 97 NW 371.

A court commissioner is without power to vacate a judgment rendered by the district court. An order made by him purporting to do so is a nullity. No appeal lies to the supreme court from an order made by a court commissioner. Sacramento Suburban Fruit Lands Co. v Niles, 131 M 129, 154 NW 748.

ARTICLE VII

THE ELECTIVE FRANCHISE

Section 1. PERSONS ENTITLED TO VOTE.

1. Generally
2. Right to vote
3. Citizens of the United States
4. Tribal Indians.

1. Generally

During the territorial existence of Minnesota a residence of six months in the territory was necessary to the eligibility of any officer under its laws. When a constitution was formed, preparatory to becoming a state, a different rule was adopted, which cut down the necessary period of residence to four, instead of six, months; but the constitution was not operative until after its adoption by the people and did not change any rights, duties, requirements, or obligations that were created by, or dependent upon, any territorial act, until it had received such sanction. All elections of officers, and every innovation upon the territorial form of government made by the constitution were necessarily dependent and conditioned upon its adoption by the people. Territory of Minnesota v Smith, 3 M 240 (164, 166).

Primary elections do not come within the provisions of this section. State ex rel v Johnson, 87 M 221, 91 NW 604, 840; State ex rel v Erickson, 119 M 152, 137 NW 385.

Regulations which would be invalid if applied to regular elections are not necessarily void as applied to primary elections. State ex rel v Erickson, 119 M 152, 137 NW 385.

If the regulations for primaries are so obstructive, onerous, and unfair as practically to defeat the right of the voter to be elected to office, they may be held invalid. State ex rel v Erickson, 119 M 152, 137 NW 385.

2. Right to vote

The right to vote is not an unqualified one. The legislature may prescribe certain days and hours for its exercise, may require registration in advance, may prescribe the character of the ballot and the method of indicating the voter's choice, and may require the use of a voting machine, without violating this section. Farrell v Hicken, 125 M 407, 147 NW 815; McEwen v Prince, 125 M 417, 147 NW 275.

Our constitution guarantees the right of a qualified elector to vote at any election, defines the qualifications of an elector, and the conditions of eligibility to office, which cannot be changed or added to by statute. State ex rel v Erickson, 119 M 152, 137 NW 385.

The legislature may make and impose such reasonable regulations as it deems necessary to secure a pure and orderly election and to guard against unfair combinations, undue influence, and coercion, although they may incidentally affect the right of an elector to vote or his opportunities for securing an election to office; but they must be reasonable, uniform, and impartial and must not be such as to defeat indirectly the constitutional rights of an elector or unnecessarily obstruct the exercise thereof. State ex rel v Erickson, 119 M 152, 137 NW 385.

The right to vote for all officers is not denied by a provision in the Duluth charter to the effect that unless a voter exercises all his choices for officers to be elected, his vote is void. No citizen has any constitutional right to perform

half his public duty by voting for only half the number of candidates to be elected to any office. Farrell v Hicken, 125 M 407, 147 NW 815.

Reasonable requirements of registration are constitutional. The provision of a statute that a qualified voter cannot vote unless registered, though he cannot register within the 15 days immediately preceding an election, are constitutional. State ex rel v Board of Education, 158 M 459, 467, 197 NW 964.

The fact that the registration act requires registration 15 days before an election, while the special school district act makes residence in the voting district for ten days a sufficient qualification for voting, does not make the registration act inapplicable. The registration act, under a proper construction, applies to school elections in Duluth and is constitutional. State ex rel v Board of Education, 158 M 459, 467, 197 NW 964.

Under the Duluth charter unregistered voters may vote at the municipal election upon presenting corroborated affidavits showing that they are qualified voters. Where a duly qalified voter presented such an affidavit and was permitted to vote, and no taint of fraud or bad faith appears, his vote is not invalid because one of his corroborating witnesses, who believed and testified that he was a freeholder, in point of law was not such, nor because the judge of election, who in fact administered the oath and received and retained the affidavit, neglected to sign the jurat therein. McEwen v Prince, 125 M 417, 147 NW 275.

The right to vote is impaired by a system under which second choice and additional choice votes are counted in the event of no candidate receiving a majority. A qualified voter has the constitutional right to record one vote for the candidate of his choice and have it counted one. This right is not infringed by giving the same right to another qualified voter opposed to him. It is infringed if such other voter is permitted to vote for three opposing candidates. Brown v Smallwood, 130 M 492, 153 NW 953. See 11 MLR 212.

A statute which takes away from the people of a certain territory the right to vote in a certain election district without providing for the exercise of the right elsewhere is void. State ex rel v Fitzgerald, 37 M 26, 32 NW 788.

A statute which made no provision for blank spaces for the writing in of names on an election ballot would be invalid. State ex rel v Johnson, 87 M 221, 91 NW 604, 840.

The right to vote, and eligibility for office at the election at which the constitution was adopted are to be determined by the territorial laws then in force, and not according to the constitution. Territory of Minnesota ex rel v Smith, 3 M 240 (164).

The right to vote taxes for local purposes cannot be exercised by taxpayers merely, but only by qualified electors, or officers duly chosen by such electors. Harrington v Town of Plainview, 27 M 224, 6 NW 777.

At a time when first paper men could vote it was held that one who had taken out his first papers when a minor had subsequently ratified them on reaching his majority by holding various public offices. State ex rel v Streukens, 60 M 325, 62 NW 259. See Article 1, section 17.

If a voter, without making oath that he is unable to mark his ballot himself, procures another to mark it for him, such ballot is void. McEwen v Prince, 125 M 417, 147 NW 275.

Section 413.12, subd. 2, provides that "five or more of the legal voters residing within such territory may petition to the governing body of such city or village to call an election for the determination of such proposed annexation". The words "legal voters residing within such territory" mean citizens who would have been entitled to vote in the territory proposed to be annexed on the date they signed the petition. State ex rel v Village of McKinley, 132 M 48, 50, 155 NW 1064.

When bonds are submitted to the voters the submission is to the qualified legal voters, and qualification is determined by the constitution. State ex rel v Board of Education, 158 M 459, 197 NW 964.

3. Citizens of the United States

Persons born in this country of alien parents are United States citizens by virtue of the 14th amendment to the constitution. Stadtler v School District, 71 M 311, 61 M 259, 73 NW 956.

The requirement of three months' citizenship as a qualification for voters does not violate the 14th amendment, since that amendment does not confer the right of suffrage. That right arises under the constitution and laws of the state. Taylor v Grand Lodge A. O. U. W. of Minnesota, 96 M 422, 105 NW 490.

The constitution, making persons of foreign birth who have not declared their intention to become citizens of the United States ineligible to any elective office, disqualified such persons from being legally elected. They are not entitled to hold office even though, after being elected, they declare their intention to become citizens. Taylor v Sullivan, 45 M 309, 47 NW 802.

4. Tribal Indians

Indians living on the reservation, and wards of the federal government are not entitled to vote. Tribal Indians have not adopted the customs and habits of civilization, within the purview of the elective franchise provisions of our constitution, until they have adopted that custom and habit which all other inhabitants must needs adopt when they come into the state, namely, that of yielding obedience and submission to its laws. Opsahl v Johnson, 138 M 42, 163 NW 988.

See Article 4, section 2.

Indians of the Red Lake band of Chippewas, inhabitating the Red Lake Indian Reservation as wards of the government, are residents of the state within the meaning of the constitution, article 7. Opsahl v Johnson, 138 M 43, 163 NW 988.

Section 2. PERSONS NOT ENTITLED TO VOTE.

The constitution, making persons of foreign birth, who have not declared their intention to become citizens of the United States, ineligible to an elective office, disqualifies such persons from being legally elected. They are not entitled to hold office even though, after being elected, they declare their intention to become citizens. Taylor v Sullivan, 45 M 309, 47 NW 802.

Neither this section nor article 4 sec. 15 expressly or impliedly forbids the legislature from passing a "corrupt practices act". Saari v Gleason, 126 M 378, 383, 148 NW 293.

Section 6. ELECTIONS, BY BALLOT.

As applied to elections of public officers, voting by ballot signifies a mode of designating an elector's choice of a person for an office by the deposit of a ticket bearing the name of such person in a receptacle provided for the purpose, in such a way as to secure to the elector the privilege of complete and inviolable secrecy in regard to the person voted for. Brisbin v Cleary, 26 M 107, 1 NW 825.

An act which provides for the numbering of tickets to correspond with the number of the voter upon the poll list violates the provisions of this section declaring that all electing shall be by ballot. Brisbin v Cleary, 26 M 107, 1 NW 825.

This section is intended to secure to the elector the privilege of exercising his right of franchise secretly and effectively. Any method of conducting elections sanctioned by legislative authority which will secure and effect that right is a substantial compliance with the constitutional mandate. Elwell v Comstock, 99 M 261, 109 NW 113, 698.

An act which provides for and authorizes, under certain conditions and restrictions, the use of voting machines at elections does not contravene the provisions of this section that all elections shall be by ballot. Elwell v Comstock, 99 M 261, 109 NW 113, 698.

Section 7. WHO MAY HOLD OFFICE.

1. Generally

2. Eligibility to office

3. Other than constitutional qualifications

1. Generally

This section of the constitution applies to statutory (including municipal) as well as constitutional offices. State ex rel v Holman, 58 M 219, 59 NW 1006.

Members of the legislature which enacted L. 1913, c. 400, are not prohibited by the constitution, art. 4 s. 9, from becoming candidates for state auditor at the ensuing primary election, there being no increase made by that law in the emoluments received by the incumbent of that office at the time of its enactment or at the time of its taking effect. State ex rel v Schmahl, 125 M 104, 145 NW 794.

2. Eligibility to office

Under L. 1854, c. 42, p. 104, prescribing six months' residence in the territory as a qualification for election to office, the person must have resided in the territory six months at the time of the election. It was not enough that he would have been a resident six months when his term of office would commence. Territory of Minnesota ex rel v Smith, 3 M 240 (164).

This section of the constitution provides that "every person who, by the provisions of this article, shall be entitled to vote at any election, shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district where he shall have resided thirty days previous to such election, except as otherwise provided in this constitution, or in the constitution and laws of the United States". The only offices which, by the constitution, require additional qualifications are those of justices of the supreme court and judges of the district courts. State ex rel v Clough, 23 M 17.

The constitution, making persons of foreign birth who have not declared their intention to become citizens of the United States ineligible to any elective office, disqualified such persons from being legally elected. They are not entitled to hold office even though, after being elected, they declare their intention to become citizens. Taylor v Sullivan, 45 M 309, 47 NW 802.

Under this section and article 7 s. 1 Frederick Westerman was eligible to be elected to the office of county auditor without being a naturalized citizen of the United States if, before election, he had duly declared his intention to become a citizen. State ex rel v Streukens, 60 M 325, 62 NW 259.

The legislature has the power under the constitution, to pass an act prohibiting corrupt practices in elections and prohibiting any candidate from employing corrupt means to obtain an office, and providing that the practice of corruption by a candidate in securing an office shall bar him from entering into possession thereof. Saari v Gleason, 126 M 378, 148 NW 293.

The office of United States senator is a federal office created by the federal constitution. The qualifications of those aspiring to or holding the position are prescribed by the federal constitution, which the state is without authority to modify or enlarge in any way; and the provisions of the state constitution imposing restrictions upon the right of suffrage and upon the right to hold public office can have no application to the office of United States senator. The method of election to such office is prescribed by the federal law and the mere fact that the state election machinery is adopted for that purpose does not render applicable to a particular candidate the general disqualifications for public office found in the state constitution. State ex rel v Schmahl, 140 M 219, 167 NW 481.

The constitutional provision prescribing the qualifications for eligibility to office applies to all elective offices, to those created by statute as well as to those created by the constitution. State v Holman, 58 M 219, 59 NW 1006; Hoffman v Downs, 145 M 465, 467, 177 NW 669.

Article 4 s. 9 of the constitution, which provides that no senator or representative shall hold an office under the state which has been created or the emoluments of which have been increased during the session of the legislature of which he was a member until one year after the expiration of his term of office, does not contravene the provisions of this section of the constitution, but simply creates an exception from the general rule. State ex rel v Erickson, 180 M 246, 230 NW 637.

3. Other than constitutional qualifications

To be eligible to the office of county attorney a person need not be an attorney and counsellor at law nor admitted to practice as such in any of the courts of the state. State ex rel v Clough, 23 M 17.

Where the constitution prescribes the qualifications for eligibility to office it is not in the power of the legislature to add any additional qualifications or to impose any limitations upon the terms of eligibility fixed by the constitution. State ex rel v Holman, 58 M 219, 59 NW 1006.

That portion of an act which prohibits a contestant for a party nomination at the primary election from having his name placed on the official ballot is not obnoxious to this section of the constitution. State ex rel v Moore, 87 M 308, 92 NW 4.

The provisions of the primary election statutes of 1912, as to classifying of candidates, are not repugnant to the guaranties of the constitution as to the right to vote and eligibility to office, and the statute, in this respect, is not unconstitutional. State ex rel v Erickson, 119 M 152, 137 NW 385.

The qualifications for eligibility to an elective office are prescribed by the constitution and the legislature has not the power either to restrict or enlarge the right given and defined by the constitution. State v Clough, 23 M 17; State v Holman, 58 M 219, 59 NW 106; Hoffman v Downs, 145 M 465, 467, 177 NW 669.

G.S. 1913, s. 811, insofar as it attempts to render a county commissioner ineligible to the office of county auditor, impairs the right secured to every elector by the constitutional provision referred to and cannot be sustained. Hoffman v Downs, 145 M 465, 177 NW 669.

To be eligible to the office of court commissioner a person need not be an attorney at law. That part of section 489.02 requiring court commissioners to be learned in the law is unconstitutional. State ex rel v Ries, 168 M 11, 209 NW 327.

To be eligible to the office of municipal judge of the village of Perham a person need not be an attorney at law. That part of Ex. L. 1933-34, c. 35, s. 3, requiring the municipal judge to be a person learned in the law and duly admitted to practice as an attorney in this state, violates the provisions of this section of the constitution. State ex rel v Welter, 208 M 338, 293 NW 914.

Section 8. WOMEN MAY VOTE (Obsolete).

The section is neither self-executory nor mandatory. It is permissive merely. It is left for the legislature to determine to what extent women shall be allowed to vote for, and hold, school offices. Trautmann v McLeod, 74 M 110, 76 NW 964.

In determining whether a majority of legal voters residing within a school district have petitioned for an enlargement of the district it is not necessary to include the women in counting the number of voters. The ordinary meaning of the term is not altered by the fact that women may be authorized to vote under this section of the constitution. Oppegaard v County Board, 120 M 443, 139 NW 949.

The removal of a school house is a measure relating to schools within the meaning of this section. Stadtler v School District, 71 M 311, 61 M 259, 73 NW 956.

Women have no right to vote on the adoption of a charter merely because a portion of such charter deals with schools, nor to vote for the mayor because he has power to appoint the commissioner of education, nor for council members because they have the general control of the schools. State ex rel v City of St. Paul, 128 M 82, 150 NW 389.

Section 9. OFFICIAL YEAR; END OF TERMS OF OFFICE; TIME OF GENERAL ELECTIONS.

The official year commences on the first Monday of January, at which time all terms of office terminate. State v Frizzell, 31 M 460, 18 NW 316; State v O'Leary, 64 M 207, 66 NW 264; State ex rel v McIntosh, 109 M 18, 122 NW 462.

The law does not recognize fractions of a day and the official year begins with the beginning of the day, twelve o'clock midnight. State ex rel v McIntosh, 109 M 18, 122 NW 462.

The change in office is not expected to be made at midnight. The new officers are to be allowed to take office at a reasonable hour. State ex rel v McIntosh, 109 M 18, 122 NW 462, 126 NW 1135.

Pending the qualification of the new officers after the year has commenced, the former officers may act, but must confine their action to closing up pending matters or to dealing with matters of necessity. An attempt, by a county board, during such a period to appoint a sheriff is void. State ex rel v McIntosh, 109 M 18, 122 NW 462, 126 NW 1135.

Where a county superintendent of schools is ousted from office because of corrupt practices, the former incumbent of the office does not recover it, but the office is to be considered vacant. State ex rel v Billberg, 131 M 1, 154 NW 442.

An act which provides that a judge of the municipal court shall hold office for three years and until his successor shall be elected and qualified is not affected by this section as to its holdover positions. Such provisions do not violate the requirement that the official year commences on the first Monday in January. State ex rel v Windom, 131 M 401, 155 NW 629.

The legislature cannot provide for passing over enough elections to extend the office of a judge beyond the seven years permitted by this section. State ex rel v Windom, 131 M 401, 155 NW 629.

The legislature cannot provide for the passing over of a general election for a clerk of the district court; thereby increasing the term from four years to six years. State ex rel v Berg, 132 M 426, 157 NW 652.

This section does not require the county treasurer to have a two-year term. The claim that the term of office is two years in the case of those officers whose term is not fixed otherwise by the constitution, cannot be sustained. Whether the term of such office shall be two or four years is for the legislature. State ex rel v Berg, 133 M 65, 157 NW 907.

Under a statute creating an office, fixing the term, and making no provision for holding over until a successor is elected and qualified, the term is definite and a vacancy exists upon its expiration. State ex rel v Windom, 131 M 401, 155 NW 629.

L. 1913 c. 458 fixing the terms of certain county officers at four years and operating prospectively, is constitutional and there will be no election of such officers in 1916. State ex rel v Berg, 133 M 65, 157 NW 907.

No lawful ballots can be cast for the office of sheriff at a general election unless the term of the incumbent, whether elected or appointed, expires on the first Monday of January following such election. State ex rel v Borgen, 189 M 216, 248 NW 744, 249 NW 183.

This section of the constitution does not embrace the tenure of offices of judges of "such other courts, inferior to the supreme court, as the legislature may from time to time establish by a two-thirds vote" (const. art. 6 s. 1). State ex rel v Bensel, 194 M 55, 57, 259 NW 389.

ARTICLE VIII

SCHOOL FUNDS, EDUCATION, AND SCIENCE

Section 1. PUBLIC SCHOOL SYSTEM.

The maintenance of public schools is a matter, not of local, but of state concern. These constitutional provisions are not a grant of power, but a mandate to the legislature, prescribing as a duty the exercise of an inherent power. Associated Schools v School District, 122 M 254, 142 NW 325; Board of Education v Houghton, 181 M 576, 233 NW 834; State ex rel v Erickson, 190 M 216, 251 NW 519.

The duties of school districts are defined by the statutes to provide a general and uniform system of public schools and to make such provision as will secure a thorough and efficient system of public schools in each township of the state. State ex rel v School District, 204 M 279, 283 NW 397.

The power of the legislature to impose a system of public school education upon local communities is not limited to the common branches. If the legislature sees fit to require public education of boys in that which pertains to successful agriculture, and of girls in that which pertains to successful housekeeping, it has the power to do so. Such legislation does not violate the requirement of a uniform system of public schools. Associated Schools v School District, 122 M 254, 142 NW 325.

The legislature may require a school district to furnish public school facilities and it may provide that if such district does not supply the required facilities it shall pay tuition to another district furnishing such facilities to its pupils. Associated Schools v School District, 122 M 254, 142 NW 325.

An act providing that one or more rural districts may become associated with a high school for the purpose of affording education in agriculture, manual training, and home economics, including cooking and sewing, and that such associated schools may charge nonresident pupils a tuition which shall be a charge against the school district in which such nonresident pupils reside is within the legislative power. Associated Schools v School District, 122 M 254, 142 NW 325.

A special law for the support and better regulation of common schools in the town of Sauk Centre does not conflict with the provisions of this section. Board of Education v Moore, 17 M 412 (391).

An act to provide uniform and cheap text books for the public schools is constitutional. Curryer v Merrill, 25 M 1.

School districts and independent school districts are, by statute, made part of the educational system of the state. They are corporations with limited powers organized for public purposes and the duties of the trustees or boards of education, intrusted with the management and care of the property of such districts, are public and administrative only; and they are not liable to persons for mere neglect or nonfeasance in failing to make repairs. Bank v Brainerd School District, 49 M 106, 51 NW 814.

The charter of the city of St. Paul, adopted in 1912, sustained as against the contention that, by reason of its educational features, its adoption solely by the male voters or otherwise was not authorized by the Constitution art. 4 s. 36 relating to home rule charters, and that such provisions contravene the Constitution art. 8 ss. 1, 3, relating to the establishment and maintenance of public schools, and, both in themselves and in the manner of their adoption, violate the Constitution art. 7 s. 8 enfranchising women in educational matters. State ex rel v City of St. Paul, 128 M 82, 150 NW 389.

The home rule charter of the city of Minneapolis, c. 13, conferring certain powers upon the city planning commission, does not make it necessary that the approval of the commission be had as to the location and design of school buildings before they are erected by the board of education. The portions of home rule charters having to do with school matters must be in harmony with and not contrary to

the state constitution and statutory provisions relative thereto. Board of Education v. Houghton, 181 M 576, 233 NW 834.

The home rule charter of the city of Minneapolis, c. 15, conferring certain powers upon the board of estimate and taxation, does not deprive the board of education of its power to levy taxes to carry out its duty to maintain a thorough and efficient system of public education. State ex rel v Erickson, 190 M 216, 251 NW 519.

The legislative policy of the state with respect to education as set forth in the constitution, legislative acts, and judicial decisions fixes the duty of the board of education of the city of Minneapolis with respect to public education. This duty cannot be effectively discharged without the concomitant power to levy taxes to provide funds with which to discharge that express duty. The legislative policy respecting education cannot be disturbed except by legislative enactment. State ex rel v Erickson, 190 M 216, 251 NW 519.

The teachers tenure act (ss. 130.22 to 130.32), is based upon the public policy of protecting the educational interests of the state and not upon a policy of granting special privileges to teachers as a class or as individuals. McSherry v City of St. Paul, 202 M 102, 277 NW 541.

Section 125.06, subd. 14, confers on school officers discretionary power to furnish free transportation of pupils to and from school. State ex rel v School District, 204 M 279, 283 NW 397.

Section 132.01 uses the word "resides" in the broad sense of being an inhabitant, as distinguished from the more restricted sense of domicil, and children of proper age inhabiting an orphan home in a school district are entitled to free education therein. State ex rel v School Board, 206 M 63, 287 NW 625.

No emergency power resides in the board of education of the city of Minneapolis whereby the levy limit imposed by charter may be exceeded. A charter limitation upon the taxing power of a board of education is effective to restrict efforts to exceed it. Board of Education v Erickson, 209 M 39, 295 NW 302.

Section 2. SCHOOL LANDS; SWAMP LANDS; FUNDS; REVOLVING FUND.

1. Public sale; eminent domain
2. Mineral lease
3. Adverse possession

1. Public sale; eminent domain

An act providing for the acquisition by railroads of a right of way across school lands of the state, is not in conflict with this section, which requires school lands to be sold only at public sale. A railroad company, taking possession of a right of way across school lands held by the state, acquires no right or interest therein against the state until performance of the required conditions. Lawver v G. N. Ry. Co., 112 M 46, 127 NW 431.

State lands are not subject to appropriation in condemnation proceedings except when the right to so acquire them is expressly or by necessary implication granted by the legislature. Under L. 1913, c. 258, a duly organized school district of the state may thus acquire an interest in and to a tract of state school land for the experimentation and instruction in agriculture provided for by that statute. Rights acquired in such condemnation proceedings are equivalent to and answer every purpose of a public sale, and the statutes which impliedly grant the right of condemnation do not violate this section. Independent School District v State, 124 M 271, 144 NW 960.

The state land commissioner is authorized to sell school lands only in the manner directed by law and is without power to insert reservation or exceptions not authorized by law in the patents issued pursuant to such sales. Hughes v Thornton 155 M 432, 193 NW 723.

The permanent school funds must remain inviolate. The income must be devoted solely to educational purposes. No part of the principal or income of such funds can be arbitrarily diverted from the state constitutional purpose and used to defray a part of the cost maintaining the offices of the governor, the legislature, and the courts. Cory v King, 209 M 431, 435, 296 NW 506.

2. Mineral leases

By appropriate legislation the state has authorized the leasing of school lands containing iron ore. The lease of public lands for the benefit of public schools is the exercise of a function strictly governmental in character. Burnet v Coronado Oil & Gas Co., 285 US 393, 52 SC 443, 445, 76 L. ed 815.

The mineral lease act (L. 1889, c. 22) does not authorize a sale of any of the school or swamp lands of the state, within the meaning of the constitutional prohibition, and is constitutional. State v Evans, 99 M 220, 229, 108 NW 958.

The mineral lease statute (L. 1889 c. 22) does not purport to deal with agricultural lands, hence the constitutional provision (art. 1 s. 15) declaring void all leases of agricultural land for a longer period than 21 years, has no application. Minneapolis Mill Co. v Tiffany, 22 M 463; State v Evans, 99 M 220, 223, 108 NW 958.

The mineral lease act (L. 1889 c. 22) authorized the land commissioner to issue leases for the mining of iron ore on lands belonging to the state. Section 9 provided: "Whenever state lands situated in the counties of St. Louis, Lake and Cook are sold, for which contracts or patents are issued, it shall be proper for the land commissioner of the state land office to indorse across the face of such contracts or patents the following words: 'All mineral rights reserved to the state.' The effect of such indorsement shall be to reserve to the state all mineral rights". This section is the only statutory provision authorizing the reservation of mineral rights in the sale of state lands enacted prior to the patenting of the lands in controversy, and this provision did not apply. Statutes subsequently enacted reserve to the state all valuable minerals in state lands and provide that certificates of sale and patents shall state that all minerals are reserved by the state for its own use are not retroactive and have no bearing in the present case. This land was sold, paid for in full, and patented to the purchaser before the legislature had authorized the reservation of mineral rights in any lands lying outside of St. Louis, Lake or Cook counties. Hughes v Thornton, 155 M 432, 435, 193 NW 949.

3. Adverse possession

Title to lands granted to the state for the use of its schools by the United States cannot be acquired by adverse possession, as against the state. Murtaugh v C. M. & St. P. Ry. Co., 102 M 52, 112 NW 860.

Since the adoption, in 1881, to this section, title or the right to occupy swamp lands acquired by the state from the United States cannot be acquired by adverse possession against the state. Schofield v Schaeffer, 104 M 123, 116 NW 210.

Section 3. PUBLIC SCHOOLS IN TOWNSHIPS; SECTARIAN SCHOOLS NOT AIDED.

The classification made in L. 1919, c. 271, imposing a county school tax upon certain counties, is within the power of the legislature to make. State v Delaware Iron Co., 160 M 382, 200 NW 475.

This section of the constitution is not infringed by the practice adopted by the school board of a public school whereby each room is provided with a copy of the King James version of the Bible from which the teacher is required to read, without note or comment, extracts from the Old Testament, selected by the superintendent; pupils who do not desire to listen thereto being permitted to retire while such extracts are read. Kaplan v Independent School District, 171 M 142, 214 NW 18.

A provision of the Minneapolis home rule charter, investing city's civil service commission with power over entire service of the city, does not conflict with legislative policy or with this section, providing that the legislature shall make such provisions, by taxation or otherwise, as, with income arising from school fund, will secure a thorough and efficient system of public schools in each township in the state. Tanner v Civil Service Comm. of Minneapolis, 211 M 450, 1 NW(2d) 602.

For other cases, see annotations under section 1.

Section 4. UNIVERSITY OF MINNESOTA

This section does not change the character of the university, nor make it a private or independent corporation; but perpetuated it as a public institution and

took from the legislature the power to discontinue or abolish it or to convert it into a private corporation. The university has been reorganized from time to time and its scope and activities much extended, but it has always been recognized as a public institution, forming a part of the educational system of the state and no attempt has ever been made to give it any other or different character. State ex rel v Van Reed, 125 M 194, 198, 145 NW 967.

The title to all lands reserved by congress for the "use and support of a state university", and of all property acquired by the regents, with the fund placed at their disposal, is in the state. Regents of State University v Hart, 7 M 61 (45).

The board of regents of the University of Minnesota cannot make promissory notes in the commercial sense, but may make contracts for erecting a university building and give written evidence of debt incurred therein, payable at a future date, out of the fund provided by the legislature. Suits may be brought against them on such debts, but judgments thereon bind only the fund, on the faith of which the credit was given. Regents of State University v Hart, 7 M 61 (45).

The Board of Regents of the University of Minnesota was incorporated by the territorial assembly (L. 1851 c. 3) with the right to "govern" the university. By this section of the constitution all the "rights, immunities, franchises and endowments" so granted were "perpetuated unto" the university. The board of regents, in the management of the university, is constitutionally independent of all other executive authority; and insofar as L. 1925, c. 426, attempts to subject the control of university finances to the supervision of the commission of administration and finance it is unconstitutional. State ex rel v Chase, 175 M 259, 220 NW 951.

The board of regents is constituted a body corporate under the name of the University of Minnesota, and is by law exclusively vested with the management of all the educational affairs of the institution and the courts of the state have no jurisdiction to control its discretion; but, if the board refuses to perform any of the duties imposed upon it by law, mandamus will lie to compel it to act. Gleason v University of Minnesota, 104 M 359, 116 NW 650.

The University of Minnesota is a public institution maintained and conducted by the state in the exercise of its governmental functions and the taking of private property for the purposes of the university is a taking for a public use. An act authorizing the construction of a railway connecting the university farm with the street car system of the city of Minneapolis and with the belt-line railway operated by the Minnesota Transfer Railway Company is constitutional. State ex rel v Van Reed, 125 M 194, 145 NW 967.

All the executive power over university affairs having been put in the regents by the constitution, none of it may lawfully be exercised or placed elsewhere by the legislature. State ex rel v Chase, 175 M 259, 220 NW 951.

In the exercise of its power of government the board of regents may construct a dormitory upon the university campus without legislative authority. The proceeds of rentals from buildings on the campus, not used for university purposes, assigned in a proviso of an appropriation bill to the maintenance and improvement of the campus, may be used in the construction of a dormitory. Such rentals belong to the university without any appropriation by the legislature and are subject to such use or for other purposes, as may be determined by the board. In the construction of a dormitory the board may use earnings from the university press for work done outside of that done for the university, the earnings being incidental to its use for university purposes. Fanning v University of Minnesota, 183 M 222, 236 NW 217.

If it be assumed that under the supposed law of its being (L. 1851 c. 3), the organization of the University of Minnesota was defective, or even invalid, and there was no corporation even de facto, it became a corporation de jure by the constitutional confirmation of the "existing laws" under which it was organized and functioning when the state constitution was adopted. That provision perpetuated the "rights, immunities, franchises and endowments" held by the University under the territorial laws confirmed by the constitution. Included the rights and franchises so perpetuated was administration by a body of twelve regents, who themselves were the "body corporate", to be elected by the two houses of the legislature in joint convention. State ex rel v Quinlivan, 198 M 65, 268 NW 858.

Assuming regents of the University to be "officers" within the provision of the Constitution art. 5 s. 4, vesting the power of appointment in the governor, they have

been removed from the scope of that general rule by the special constitutional provision confirming and perpetuating the original franchises, which included the election by the legislature of the regents, to hold the franchise and insure the intended succession. State ex rel v Quinlivan, 198 M 65, 268 NW 858.

Section 5. LOANING SCHOOL FUNDS.

Section 41.14 provides that "all bonds" issued by the rural credit bureau "shall be sold upon competitive bids after proper notice unless they are sold to the state's trust funds". The bonds were not being sold to the state trust fund. The intention was first to exchange them for the old bonds and then immediately to sell them not to any state trust fund but to a private party without any public notice or competitive bids. That is a violation of the statute and the sale was properly enjoined. Rockne v Olson, 191 M 310, 314, 254 NW 5.

Section 6. INVESTING SCHOOL FUNDS.

Where the resolution for the issuance of school district bonds to the state violated the provisions of this section in that it provided that the first of the series should mature in less than five years, but the due date of all the bonds was changed by subsequent resolution so as to conform to the constitutional requirement, and the results of the change were inconsequential the irregularity in the original resolution was not ground for injunction against the issuance of the bonds accordingly. Sorenson v School District, 122 M 60, 141 NW 1105.

ARTICLE IX

FINANCES OF STATE; BANKS AND BANKING

Section 1. POWER OF TAXATION.

Prior to amendment of 1906

1. Generally
2. Special assessments
3. Inheritance taxes
4. Equality and uniformity

Subsequent to amendment of 1906

5. Classification; uniformity
a. Generally
b. Classification
c. Uniformity
d. Local improvements
e. Gross earnings
f. Motor vehicles
g. Money and credits
h. Mortgage registry tax
i. Occupation tax
j. Wheelage tax
k. Royalty tax
l. Exemptions

Prior to amendment of 1906

1. Generally

Assessments of expenses for grading streets is an exercise of the taxing power and must be apportioned upon the basis of valuation of the property assessed. An act authorizing such assessment on the basis of benefits conferred on the property, and not on values, is contrary to this section. Stinson v Smith, 8 M 366 (326).

Under the constitution art. 14 s. 1 an amendment to this section, proposed for ratification by the people is ratified if it receives a majority of the votes upon it, although the votes in its favor be not a majority of all the votes cast at any election for other purposes held at the same time and place at which the amendment is submitted. Dayton v City of St. Paul, 22 M 400.

Under the amended charter of defendant corporation (Sp. L. 1864 c. 1), granting an exemption from all taxation and from all assessments in respect to its railroad, appurtenances, appendages, other property, estate, and effects, also its capital and stock, and declaring that payment by it of the per cent of gross earnings therein provided, annually should be in full of all taxation and assessment, no special assessment for any local improvement can be imposed upon any portion of its railroad or any of its real estate used in connection therewith. In regranting the franchises, the legislature could alter the contract contained in the original charter in respect to taxation, notwithstanding the constitutional provisions of this article. City of St. Paul v St. Paul & S. C. Ry. Co. 23 M 469.

The provisions of the constitution do not prevent the legislature from modifying the terms of a provision for the payment of a percentage of gross earnings in lieu of other taxation in a case where that method of taxation had been established

prior to the adoption of the constitution. County of Stevens v St. Paul, M. & M. Ry. Co. 36 M 467, 472, 31 NW 942.

The statutes of this state, enacted subsequently to the adoption of the constitution, providing for a commuted system of taxation of the property of railroad companies by permitting them to pay an annual gross earnings tax in lieu of the taxation of their property on the basis of a cash valuation, were unconstitutional until validated by the constitutional amendment of 1871 (art. 4 s. 32a). Such validation was a qualified one, the right to repeal or amend the statutes being reserved. State ex rel v Stearns, 72 M 200, 221, 75 NW 210.

Where immunity from taxation is granted by the Territory of Minnesota which reverts to the state at a foreclosure sale, it does not merge in the state, but can again be granted by the state in connection with the lands to which it had been attached, notwithstanding the constitutional provision regarding uniformity of taxation. Whether this is good law or not, it has become a rule of property and, as such, must be respected. County of Traverse v St. Paul, M. & M. Ry. Co., 73 M 417, 428, 76 NW 217. See, also, State v Duluth & Iron Range R. Co. 77 M 433, 80 NW 626.

A statute, providing a commuted system of taxation of mining property and products, by the payment of a fixed sum per ton for all ore mined and shipped or disposed of, is invalid, because in conflict with this section. State v Lakeside Land Co. 71 M 283, 73 NW 970.

An act, which provides for the taxation of the tangible and the intangible property of telegraph companies situated within this state as a system and not merely for the taxation of items of tangible property only, is constitutional. State v Western Union Tel. Co. 96 M 13, 104 NW 567.

Under L. 1874, c. 1, the banking office and lot, lawfully owned and occupied as its place of business by a national bank, is not liable to assessment and taxation as real estate eo nominee against the bank. Commissioners of Rice County v Citizens National Bank, 23 M 280, 286.

The constitution renders it imperative that all property, of which exemption is not permitted, shall be taxed and precludes any other exemptions than those specified in section 3 of this article. An exemption not permitted by the constitution cannot be effected by indirection, by releasing or refunding the taxes after they have been levied. Le Duc v City of Hastings, 39 M 110, 38 NW 803.

A municipal corporation cannot legally contract with private parties to refund the amount of taxes for which their property is assessed and taxed, yet, if all property is assessed its just proportion, such contract does not render the taxation invalid, even if the agreement to refund is void. State v Thayer, 69 M 170, 71 NW 931.

A city made a contract with an Electric & Water company by which, in consideration of the company's furnishings a certain supply of water for city purposes, it agreed to pay all taxes on the company's waterworks assessed for city purposes. This contract violates the constitutional provisions that all taxes shall be as nearly equal as may be, that all property on which taxes are to be levied shall have a cash valuation, and that laws shall be passed taxing all real and personal property according to its true value in money. Little Falls Electric & Water Co. v City of Little Falls, 74 M 197, 77 NW 40.

A statute which provides for the taxation of property undervalued or unlawfully omitted from assessment, and for reassessment where there has been a gross undervaluation of such property is constitutional. State v Weyerhauser, 68 M 353, 71 NW 265.

That part of a statute which authorizes a person liable to taxation, when making up the amount of credits which he is required to list, to deduct from the gross amount thereof the amount of all his bona fide indebtedness, is constitutional. State v Moffett, 64 M 292, 67 NW 68.

The provisions of a statute, which require claims for deductions for indebtedness to be made in the first instance to the assessor, are not in violation of this section. State v Willard, 77 M 190, 79 NW 829; State v London & Northwest American Mtge. Co. 80 M 277, 83 NW 339.

An act establishing a fund for the foundation and maintenance of an asylum for inebriates is not prohibited by this section. State v Cassidy, 22 M 312; State v Klein, 22 M 328.

A special law, providing for the building of a bridge across Crow river at the contributory expense, in specified proportions, of Hennepin and Wright counties, and the towns of Dayton and Ostego, does not violate the provisions of the constitution which require equality of taxation upon a cash valuation of property. Guilder v Town of Otsego, 20 M 74 (59).

Statutes which exempt from taxation a substantial portion of the personal property of building and loan associations doing business within and without the state are unconstitutional. Whatever the method adopted, the legislature cannot exempt any property from taxation which the constitution does not so exempt. State v Pioneer Savings & Loan Co. 63 M 80, 87, 65 NW 138.

An ordinance of the city of Winona provides for licensing the conductors of "gift, fire, and bankrupt sales" and for taxing them two per cent of the amount of the gross receipts of their sales. The provisions of the ordinance relating to taxation violate the provisions of this section, but their invalidity does not affect the validity of the provision for licensing, the two being severable and independent. State ex rel v Schoenig, 72 M 528, 75 NW 711.

A block of land was assessed as one tract, $1,800 for the land and $800 for the improvements, which were nearly all on one-third of the block. The owner of that third paid 9-26ths of the tax, and the tax on that third was canceled. The other two-thirds was returned delinquent and sold for the remainder of the tax. This was a violation of the provisions of the constitution requiring taxes to be equal and to be levied on a cash valuation. Bidwell v Coleman, 11 M 78 (45).

An examination of the authorities shows that the term "local improvements", or terms synonymous, are more commonly applied to the grading, curbing, and paving, of streets than to any other class of improvements. The constitution is to be presumed to have employed this term in the sense that is thus attributed to it by common usage. Rogers v City of St. Paul, 22 M 494, 506; Carpenter v City of St. Paul, 23 M 232.

2. Special assessments

The constitutional requirement of equality in taxation applies to legislation authorizing assessments for local improvements and limits the power of the legislature; but the legislature may exercise its discretion, within prescribed limitations, in framing enactments as to the manner in which assessments shall be levied so as to secure equality of apportionment. An act is not to be declared invalid merely because inequality may result from its operation; it should at least be apparent that the act was not framed with regard to the constitutional requirement or that it will produce gross inequality. State v District Court, 33 M 235, 22 NW 625.

The constitutional amendment empowering the legislature to authorize municipal corporations to levy assessments for local improvements, without regard to a cash valuation of the property assessed, authorizes such legislation with respect to counties. Dowlan v County of Sibley, 36 M 430, 31 NW 517.

The amendment to this section, so far as it applies to making assessments for local improvements, and the manner by which the same is to be prescribed by the legislature, construed in connection with the home-rule amendment of 1898, is not in conflict therewith. State ex rel v District Court, 87 M 146, 91 NW 300. See 7 MLR 326.

A statutory provision for assessments upon shore lots for the purpose of paying local improvements is authorized by this section, as amended in 1881, which provides special assessments for such purposes without reference to the cash valuation of the property upon which the burden is imposed. McGee v County Board, 84 M 472, 88 NW 6.

A municipal corporation has power to order and levy a local assessment without a preliminary petition by property owners affected by such improvement. Wolfe v City of Moorhead, 98 M 113, 107 NW 728.

Widening and straightening a street in a city is a local improvement, within the meaning of this section. Cook v Slocum, 27 M 509, 8 NW 755.

Street sprinkling is a local improvement, within the meaning of this section, for which an assessment may be levied upon the property fronting on the street in proportion to its lineal feet frontage, without regard to its cash valuation. State ex rel v Reis, 38 M 371, 38 NW 97.

A city charter provided that the expense of constructing sidewalks, where the owners of the adjoining property had failed to build after due notice, was to be assessed against the "lots and parcels of land adjoining said sidewalks". This is equivalent to the language used in this section. Scott County v Hinds, 50 M 204, 52 NW 523.

The constitutional rule requiring uniformity of taxation is not violated by that portion of an act which authorizes and requires a partial assessment based on the estimated cost. State ex rel v District Court, 61 M 542, 64 NW 190.

Institutions organized for purposes of public charity are not exempt from paying special assessments for local improvements on their property used for such purposes, although such property is exempt from general taxation. Washburn Memorial Orphan Asylum v State, 73 M 343, 76 NW 204.

The water-frontage tax or assessment law (Sp. L. 1885 c. 110) is not unconstitutional on the ground that it applies a uniform rate of assessment as to all lands within the city limits. State v Lewis Co. 72 M 87, 75 NW 108.

An act which authorizes reassessments for local improvements by cities and legalizes certain of such assessments does not contravene this section. In re Piedmont Avenue East, 59 M 522, 61 NW 678.

Assessments of expenses for grading streets is an exercise of the taxing power and must be apportioned upon the basis of valuation of the property assessed. An act authorizing such assessment on the basis, not of valuation, but of benefits conferred on the property, is contrary to the provisions of this section. Stinson v Smith, 8 M 366 (326).

Where authority is conferred upon a city by its charter "to provide for the apportionment and assessment of taxes for expenses incurred in works" of public improvement, the power of the city to tax for such improvement is limited, as to the amount of the tax, and no power to tax for an amount materially greater than the expenses incurred in the work, is conferred by the charter. A tax double the amount of the actual cost of such work or improvement is void. Minnesota Linseed Oil Co. v. Palmer, 20 M 468 (424).

An act providing for the location of section and quarter section corners by the county surveyor on application of resident owners of the section is not an exercise of the taxing power of the state. Davis v County Board, 65 M 310, 67 NW 997.

A special act, insofar as it provides for assessing adjacent property for the benefits which had been deducted from the value of the land taken, under another provision of the act, is unconstitutional, as being unequal taxation. State ex rel v District Court, 66 M 161, 68 NW 860.

Under the guise of paying the cost of constructing a pavement, a municipal corporation cannot collect a fund in advance, to be used at some indefinite time, for the repair and maintenance of such pavement. State ex rel v. District Court, 80 M 293, 83 NW 183.

A rural highway, laid out and established according to statute, is not a local improvement within the meaning of this section of the constitution. Sperry v Flygare, 80 M 325, 83 NW 180.

Where a city charter provides a manner and method for assessing and apportioning taxes upon abutting property where a sewer has been constructed in the street which wholly ignores the basis which must govern in such cases, that the abutting property is peculiarly and specially benefited by the improvement and therefor benefits must be considered, it is repugnant to this section of the constitution. State v Pillsbury, 82 M 359, 85 NW 175.

A special law which provides: "In addition to all other powers conferred upon said board, they are authorized to and shall assess upon each and every lot * * *, in front of which water pipes are laid, an annual tax or assessment of ten cents per lineal foot of the frontage * * * which shall be a lien * * * and * * * collected as hereinafter provided; * * * whereupon * * * the duty of the county auditor to extend the same on his rolls against the property * * * for collection, and, if not paid * * * shall become a lien on said real estate, * * * subject to all the penalties and charges as property delinquent for taxes for county and state purposes. All moneys collected * * * shall be paid over to the city * * *"; is invalid, being a taking of private property under the guise of taxation without

just compensation and without due process of law. State v Lewis Co. 82 M 390, 85 NW 207, 86 NW 611. See 10 MLR 426.

Under a city charter which required the cost of sewer improvements to be assessed upon the real estate benefited in proportion to the benefits, the board of public works adopted an arbitrary and illegal principle in assessing the lots involved according to the cost of the improvement in front of them, respectively, when according to the evidence all the lots were equally benefited. City of Duluth v Davidson, 97 M 378, 107 NW 151.

An act which delegates to cities of the fourth class power to establish sewer districts is not unconstitutional because it requires that each lot or tract of land within the district shall be assessed for the cost of the improvements in the ratio of area in square feet to the total assessable area of the district. In establishing sewer districts and sewers therein the council is required to exercise its judgment, so as to include within the district such real estate as will be benefited by the improvement and to apportion the cost thereof on all the property according to the benefits. Mayer v City of Shakopee, 114 M 80, 130 NW 77.

3. Inheritance taxes

The mandate of equality of taxation, as near as may be, applies to inheritance taxes exactly as it does to taxes on property, except as otherwise expressly provided in the last proviso to the section, relating to an inheritance tax law. L. 1897, c. 293, is unconstitutional for three reasons: (a) It excludes from its operation real property and lays the tax upon inheritance of personal property alone; (b) it exempts from its operation persons and corporations whose property is exempt by law from taxation; (c) it allows a larger exemption to lineal heirs than to collaterals and does not lay the tax on the excess of the value of the property received above a uniform exempted sum. Drew v Tifft, 79 M 175, 81 NW 839.

L. 1901, c. 255, (Inheritance Tax Law) is unconstitutional because it operates unequally as between collateral, and also as between collateral and lineal, descendents. Drew v Tifft, 79 M 175, 81 NW 839; State ex rel v. Bazille, 87 M 500, 92 NW 415.

L. 1902, c. 3, relating to the taxation of inheritances, is unconstitutional because it purports to make the rate of taxation ten per cent, or double the constitutional limitation, in the case of collateral heirs and other parties. State ex rel v Harvey, 90 M 180, 95 NW 764.

L. 1905 c. 288, imposing a tax upon certain devises, bequests, inheritances, and gifts, is constitutional. The classified and progressive features of the statute are in accordance with the general principles of law on the subject of inheritance taxation, and are authorized by the amended constitution. State ex rel v Bazille, 97 M 11, 106 NW 93.

4. Equality and uniformity

The provisions of this section that "all taxes to be raised in this state shall be as nearly equal as may be" does not require absolute and perfect equality and does not forbid taxation by the poll as it has always been practiced under general laws and municipal charters, although these laws and charters provide for the exemption of certain classes of the population from the payment of poll taxes. City of Faribault v Misener, 20 M 396 (347).

While a tax law must aim at equality in taxation, approximation to equality in the actual result of its practical operation is all that can be had. That absolute equality is not obtained is no defense to a proceeding by the state to collect a tax at admittedly less than the actual valuation of the taxable property of the resisting owner. State v Cudahy Packing Co., 103 M 419, 115 NW 645, 1039.

If the taxes imposed are distributed on just principles applicable alike to all for whose benefit the appropriation is made or intended, substantial equality is obtained, and no constitutional right is invaded. Sanborn v Commissioners of Rice County, 9 M 273, 276 (258); Comer v Folsom, 13 M 219, 222 (205).

Where, in the judgment of the legislature, certain territory is specially interested in the construction of a highway, but some localities in that territory are more interested than others, it is competent to divide the territory into differ-

in the performance of his official duties embraces officers who collect, receive, or have the custody of money belonging to the state or to a county, but not those who have custody only of money belonging to a city. State ex rel v Essling, 157 M 15, 195 NW 539.

This section does not limit the power of the legislature to create offices to be filled by appointment, the occupants to serve at the pleasure of the appointing power. State ex rel v Poirier, 189 M 200, 204, 248 NW 747.

Justices of the peace are state officers. Their courts are state courts. By constitutional authority, the legislature has placed the power to remove justices of the peace in the governor. That power is exclusive as against the attempt by a home rule charter to give a similar power to the city council. State ex rel v Hutchinson, 206 M 446, 288 NW 845.

ent taxing districts and apportion the burden of the improvement among them according to their respective interests. The provision of the constitution as to equality of taxation does not require in such case that the rate of taxation in the different taxing districts shall be the same; nor is it essential that the boundaries of the taxing districts shall conform to those of political divisions of the state. Maltby v Tautges, 50 M 248, 52 NW 858.

The constitutional requirement of equality in taxation applies to legislation which authorizes assessments for local improvements and limits the power of the legislature; which may exercise its discretion, within prescribed limitations, in framing enactments as to the manner in which assessments shall be levied so as to secure equality of apportionment. An act is not to be declared invalid merely because inequality may result from its operation; but it should at least be apparent that the act was not framed with regard to the constitutional requirement or that it will produce gross inequality. State v District Court, 33 M 235, 22 NW 625.

A statute requiring the payment of fees upon filing for nomination at the primary election does not violate the provisions of this section. State ex rel v Scott, 99 M 145, 108 NW 828.

A special law, which increases the compensation of the judges of the district court of Ramsey county, does not contravene the provisions of the constitution requiring that all taxes shall be as nearly equal as may be. Steiner v. Sullivan, 74 M 498, 503, 77 NW 286.

An act, to authorize county commissioners to issue certificates of indebtedness in certain cases, purporting to legalize certain county orders issued under the provisions of L. 1895, c. 302, declared unconstitutional, and to authorize the county commissioners to provide for their payment, is not an attempt to impose unjust and unequal taxation and is constitutional. Every free public highway in a county to some extent benefits all the people of the county. The extent of such benefits accruing from the establishment and construction of public highways pursuant to the supposed authority of L. 1895, c. 302, and the taxing district which should bear the burden of paying for the construction of such highways are legislative questions, with which the courts cannot interfere. State ex rel v Gunn, 92 M 436, 442, 100 NW 97.

L. 1903, c. 253, approved at the general election of 1904 as provided by the Constitution art. 4 s. 32a, increasing the rate of the gross earnings tax of railroad companies doing business in this state, is valid as to the defendant and all its lines of road and branches thereof. The statute impairs no contractual or other vested rights of defendant, and is not repugnant to either the state or the federal constitution. First Division St. Paul & P. P. Co. v Parcher, 14 M 297 (224), and other similar cases, distinguished. State v. G. N. Ry. Co., 106 M 303, 119 NW 202.

Statutes providing for the taxation of all shares of stocks in foreign corporations owned by residents of this state, are constitutional. The mandate of our constiution as to uniformity and equality of taxation is not violated in that such stock is taxed but stock of a domestic corporation is not. This provision of the constitution refers only to property within the state, and neither the statutes of another state nor the action of its taxing officers can affect the question. State v Nelson, 107 M 319, 323, 119 NW 1058.

A statute which provides that in all cases where any tax sale is declared void the money paid by the purchaser at the sale shall, with 12 per cent interest thereon, be returned out of the county treasury on the order of the county auditor does not violate the constitutional provision that all taxes to be raised in this state shall be as nearly equal as may be. State ex rel v Cronkhite, 28 M 197, 9 NW 681.

A statute requiring as a condition precedent to probate proceedings for the settlement of estates, the payment to the county treasurer of specified sums arbitrarily prescribed with reference to the value of the estate in question, is unconstitutional, being contrary to the clause requiring equality of taxation. State ex rel v. Gorman, 40 M 232, 41 NW 948.

Where an act, authorizing and providing for a tax upon the property of corporations engaged in interstate commerce, imposed a rate of taxation which was not uniform within the rate imposed by law upon other property similarly taxed,

violates the provisions of this section, as unequal taxation. State v Canada Cattle Car Co. 85 M 457, 89 NW 66.

Subsequent to amendment of 1906

5. Classification; uniformity

a. Generally

The legislature may impose a system of public school education upon local communities which is not limited to the common branches. It may require public education of boys in that which pertains to successful agriculture, and of girls in that which pertains to successful housekeeping; and such legislation does not violate the constitutional requirement of equality of taxation so long as the law operates alike on all persons and property similarly situated. Associated Schools v School District, 122 M 254, 142 NW 325.

The state legislature may exercise wide discretion in selecting the subjects of taxation so long as it refrains from clear and hostile discrimination against particular persons or classes. Lake Superior Mines v Lord, 271 U S 577, 582, 70 L. Ed. 100, 46 S C 627.

Whether a particular classification does or does not deny equal protection of the laws depends upon the peculiar situation presented in each case. Montgomery Ward & Co. v Commissioner of Taxation, 216 M 307, 12 NW (2d) 625.

A membership in the Duluth Board of Trade is property which may be taxed by appropriate laws, and such taxation does not violate any provision of the state or federal constitution. State v McPhail, 124 M 398, 145 NW 108.

The establishment of a municipal coal and wood yard is a public purpose; and a home rule charter authorizing it does not violate the constitutional provision that taxes shall be levied and collected only for public purposes. Central Lbr. Co. v City of Waseca, 152 M 201, 188 NW 275. See 7 MLR 63.

Neither "assessed value" nor "assessed valuation", as used in the statutes defining net bonded indebtedness, mean "true and full value". They are phrases of contrast and not identity. In determining the net indebtedness of Minneapolis the ten per cent rate is to be figured on the assessed valuation of the property in the city as finally equalized. Phelps v City of Minneapolis, 174 M 509, 219 NW 872.

The amendment proposed by L. 1931, c. 420, has for its object and purpose extending the scope of taxation covered by the "wide open" tax amendment of 1906 (art. 9 s. 1) and the provisions in the proposed amendment for the taxation of national banks and the taxation of incomes are two related and dependent propositions germane to the purpose of widening the field of taxation. Winget v Holm, 187 M 78, 244 NW 331.

An act, which provides an appropriation for direct relief, work relief, and employment to needy, destitute, and disabled persons, is valid as against the objection that it appropriates taxes for a private, as distinguished from a public, purpose. Moses v Olson, 192 M 173, 255 NW 617.

As the tax, levied by Laws (Minn.) 1923, c 226, is laid upon land, neither the owner's residence nor the place fixed for payment of the royalty is important. Lake Superior Mines v Lord, 271 US 577, 582, 70 L. Ed. 1100, 46 SC 627.

b. Classification

Classification for the purposes of taxation is permissible under this section, which provides that "taxes shall be uniform upon the same class of subjects". Fraser v Vermillion Mining Co., 175 M 305, 308, 221 NW 13.

The power to classify subjects for taxation is primarily with the legislature, whose classification must not be unreasonable, arbitrary, or discriminatory but must operate equally and uniformly upon all persons in similar circumstances. The graduated feature of the income tax law is a legitimate exercise of this power to classify and operate equally and uniformly upon all in like circumstances and does not contravene the uniformity provisions of our constitution. Where a

classification is justified under the state and national constitutions courts cannot interfere unless it brings a result clearly fanciful or arbitrary. Reed v Bjornson, 191 M 254, 253 NW 102.

Classification as to subject matter of taxation is permissible and is not violative of equal protection clause of federal constitution and uniformity clause of state constitution if there is a reasonable ground for making a distinction between the subjects, and providing also the classification made bears a reasonable relation to a permitted end of governmental action. Montgomery Ward & Co. v Commissioner of Taxation, 216 M 307, 12 NW (2d) 625.

The difference between the subjects taxed need not be great; and if any reasonable distinction can be found, the court should sustain the classification embodied in the law. Montgomery Ward & Co. v Commissioner of Taxation, 216 M 307, 12 NW (2d) 625.

The legislature has wide discretion in classifying property for purposes of taxation, but the classification must be based on differences which furnish a reasonable ground for making a distinction. Ordinarily the amount of compensation paid by different companies to any one officer furnishes no proper basis for classifying such companies for the purpose of taxation. State v Minnesota Farmers Mut. Ins. Co., 145 M 231, 176 NW 756.

Any classification is permissible which has a reasonable relation to some permitted end of governmental action. State ex rel v Hubbard, 203 M 111, 280 NW 9.

The power of the state to classify for taxation is of wide range and flexibility, provided that the classification be reasonable, not arbitrary. The attempted classification must rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made arbitrarily and without any such basis. National Tea Co. v State, 205 M 443, 286 NW 360.

The selection and classification of subjects for taxation and exemption is an inherent legislative power, subject only to constitutional restraints. It is for the legislature to fix the classification and if it falls within the field where men or reason may reasonably differ, the legislature must have its way. Arneson v W. H. Barber Co., 210 M 42, 297 NW 335.

To declare a statute unconstitutional on the question of the classification attempted the court must be able to say that the legislature could not reasonably and intelligently make the classification it did. Eldred v Division of Employment and Security, Department of Social Security, 209 M 58, 295 NW 412.

A plan for apportioning credit on corporate income tax according to the ratio of property and payroll located within the state to the property and payroll outside the state, pursuant to statute, does not unconstitutionally discriminate against corporations having property and payroll outside the state, since the classification made rests on a distinction which bears a reasonable relation to the object of taxation. Montgomery Ward & Co. v Commissioner of Taxation, 216 M 307, 12 NW (2d) 625.

Under L. 1913, c. 483, classifying property for purposes of taxation, relator's street railway lines, overhead feed and trolley wires, trolley poles and underground conduits and cables are assessable under class 4, this class including property not enumerated in the first three. Such property does not come within "tools, implements, and machinery whether fixtures or otherwise" included in class 3. Under the constitution the classification for taxation purposes must be reasonable and such as is based on essential differences. The differences between relator's property and that included in class 3 are such as to justify the legislature in making the classification and it is not unconstitutional. State ex rel v Minnesota Tax Commission, 128 M 384, 150 NW 1087.

The classification of platted and unplatted land is divided into homestead and nonhomestead lands, the former being assessed at a lesser percentage of true value. The distinction is predicated upon the use made of the property. The other change is based upon value and gives a preference to homesteads of value of $4,000 or less. Such classifications are within the purview of this section. Apartment Operators Ass'n. v City of Minneapolis, 191 M 365, 368, 254 NW 443.

The limitation of power to tax shares in national banks does not deprive the state of its power to tax corporations created under its own laws. The power to

classify property for purposes of taxation rests primarily with the legislature and laws passed by it should not be declared invalid by the courts unless it is made to appear clearly that they transgress the constitution. Cherokee State Bank of St. Paul v Wallace, 202 M 582, 279 NW 410.

L. 1939, c. 315, requiring a lien on all the real property of a recipient of old age assistance, is not an improper classification. Dimke v Finke, 209 M 29, 295 NW 75.

A classification for purposes of taxation which taxes mail order establishments separately from chain stores is not unconstitutional. C. Thomas Stores Sales System, Inc. v Spaeth, 209 M 504, 297 NW 9.

It is settled law in this state that where it clearly appears that the tax imposed in no way pertains to the district taxed and that it was imposed and apportioned without any reference to any special interest on the part of such district in the purpose to be accomplished, the tax so imposed is unconstitutional as in violation of the uniformity clause, Article 9, Section 1. Village of Robbinsdale v County of Hennepin, 199 M 203, 271 NW 491; City of Jackson v County of Jackson, 214 M 244, 7 NW(2d) 753.

L. 1933, c. 414, violates this section, insofar as it provides that taxes which are current or merely delinquent may be satisfied in full by the payment of a fraction of the amount originally assessed. State ex rel v Luecke, 194 M 247, 252, 260 NW 206.

c. Uniformity

The rule of uniformity established by the constitution requires that all similarly situated shall be treated alike. State v Minnesota Farmers Mut. Ins. Co., 145 M 231, 176 NW 756.

The standards of uniformity of taxation under this section are the same as the standard of equality required by the equal protection clause of the federal constitution in the 14th amendment. Dimke v Finke, 209 M 29, 295 NW 75.

Laws (Minn.) 1923, c. 226, directing levy and collection of a tax on royalties received for permission to explore, mine, take out, and remove ore from land in the state, may be reasonably interpreted as laying a tax upon interests in mineral lands from which permission has been given to extract ores upon payment of royalty, the amount of the exaction being determined by reference to the sums actually received for the use of such interests, and does not violate the provision of the state constitution that "taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes". Lake Superior Mines v Lord, 271 US 577, 581, 70 L. Ed. 1100, 46 SC 627.

A rule of assessment which causes discrimination in assessments in favor of undivided lots and against those which happen to be divided, a lot divided in ownership taking an assessment much larger than an equal undivided lot receiving the same benefits from the improvement, violates the provision of this section that taxation shall be uniform on the same class of subjects. In re Improvement of Third Street, St. Paul, 185 M 170, 240 NW 355.

An order of the tax commission granting an application for abatement of taxes does not abate special assessments. It was not necessary for the tax commission to secure the approval of the standing committee on taxes in Minneapolis, the city in which the property is located; and the order granting the application did not violate the uniformity clause of the state constitution. In re Application of Calhoun Beach Holding Co., 205 M 582, 287 NW 317.

An act, which provides that lessees of iron ore lands are bound to pay to lessors the tax on royalties, does not violate the constitutional provision that "taxes shall be uniform upon the same class of subjects". Fraser v Vermillion Mining Co., 175 M 305, 221 NW 13.

Section 280.38, providing for the attachment by the county auditor of rents received from real estate upon which taxes have become delinquent, does not violate the uniformity provision of our state constitution. Johnson v Richardson, 197 M 266, 266 NW 867.

That part of an act reducing the rates at which homesteads shall be valued for taxation but preserving former and higher rates for the purpose of figuring

"tax limitations" does not violate the constitutional demand for uniformity of taxation. 510 Groveland Avenue, Inc. v Erickson, 201 M 381, 276 NW 287.

An act requiring a lien on all the real property of a recipient of old age assistance does not violate the uniformity clause of the constitution. Dimke v Finke, 209 M 29, 295 NW 75.

L. 1913, c. 183, as amended by L. 1925, c. 300, violates the provision of the constitution that taxes shall be uniform upon the same class of subjects. State ex rel v County of Scott, 195 M 111, 261 NW 863. See 20 MLR 234.

d. Local improvements

"Local improvements", as the term is used in this section, comprehends the acquisition of land for a public park, fitting it for open air recreation, and setting out trees and shrubbery. In re Improvement of Lake of the Isles Park, 152 M 29, 188 NW 54.

The sprinkling of a street is a local improvement within the meaning of this section. State ex rel v Reis, 38 M 371, 38 NW 97; McLeod v City of Duluth, 174 M 184, 186, 218 NW 892.

The only limitation upon the power to levy special assessments are: That they be uniform upon the same class of property, be confined to property specially benefited, and do not exceed such special benefits. A charter provision requiring that the cost of constructing sewers and street improvements be assessed upon the abutting property according to the frontage rule, does not infringe such limitations. The legislative judgment that such property is benefited to the extent of the assessment and in proportion to frontage is presumed to be correct until the contrary appears. State ex rel v City of Ely, 129 M 40, 151 NW 545.

An act, which provides for the establishment and maintenance of highways outside of cities and villages and for the assessment of one-fourth the cost thereof on land specially benefited, is valid, under the provisions of this section, which require taxes to be uniform upon the same class of subjects, but permits the legislature to authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation. Murray v Smith, 117 M 490, 136 NW 5.

A statute, exempting public cemetery associations from assessments for local improvements, does not contravene any constitutional provision. City of St. Paul v Oakland Cemetery Assn. 134 M 441, 159 NW 962.

An amendment to a city charter, providing for the enforcement of local assessments, is not unconstitutional because, in the form of judgment therein prescribed, the land on which an instalment is adjudged a lien becomes the property of the city at the end of a year without a sale, the owner having a right to redeem. Williams v City of St. Paul, 123 M 1, 142 NW 886.

The tax commission has power to abate an assessment of benefits levied in proceedings to construct a county ditch. Such an assessment is an assessment levied for local improvements. Such abatement or reduction may be after the ditch is established and the assessment confirmed. State ex rel v Minnesota Tax Commission, 137 M 37, 162 NW 686.

Public school property may be subjected to assessment for local city improvements. As a general rule tax and assessment laws apply to private, and not to public, property, and do not apply to public property unless the intent to so apply them affirmatively appears. Under the Duluth charter the only remedy provided for the enforcement of payment of the assessment is one not applicable to public property and no other remedy can be implied. This fact strongly indicates that it was intended that such property should not be subject to the assessment, and under the charter public school property is not subject to assessment. State v Board of Education, 133 M 386, 158 NW 635.

Where improvement warrants were issued by a city pursuant to its home rule charter, the authority granted thereby being limited to the special fund created to pay for such improvements, the city cannot be held generally liable as it has faithfully done everything required of it in the way of ascertaining the costs and providing for payment by levying assessments against benefited property. Leslie v City of White Bear Lake, 186 M 543, 243 NW 786; Judd v City of St. Cloud, 198 M 590, 272 NW 577.

A municipality may not exact more from one charged with an assessment for the extension of its gas and water mains than is permissible under the terms of the ordinance under which the extension was made. Sloan v City of Duluth, 194 M 48, 259 NW 393.

There is no personal liability on the part of a landowner under an invalid assessment for a local improvement upon the grounds that the landowner had received the benefits of the improvement, and used it, where the statute authorizing the assessment provides an exclusive remedy in rem against the land only without personal liability on the part of the owner. Independent School District v City of White Bear Lake, 208 M 29, 292 NW 777.

The Minnesota Transfer Railway Company, prior to December 1, 1920, was exempt from special assessments against its railroad property. On that date the exemption ceased because of the adoption of a referendum amendment authorized by L. 1919, c. 533. In 1916 a street improvement was ordered. Part of the work was done in 1917, the balance was done in 1921. The assessment was made in 1922. The law in force at the time of making the assessment controls, but it cannot include improvements made to the abutting property during the period of exemption, such property may be assessed only for that portion of the improvement made after the exemption ceased. Minnesota Transfer Ry. Co. v City of St. Paul, 165 M 8, 205 NW 609, 207 NW 320.

e. Gross earnings

A gross earnings tax is not required to be an exact equivalent of the ad valorem tax imposed on other property. State v Wells Fargo & Co., 146 M 444, 179 NW 221. See 12 MLR 685.

The system of gross earnings taxation, as applied to transportation companies, violates no provision of the state or the federal constitution. State v Wells Fargo & Co., 146 M 444, 179 NW 221. See 12 MLR 685.

Where certain corporate stocks and bonds and other corporate indebtedness were owned and used by the company for railway purposes within the meaning of the gross earnings statute, a tax upon such property is paid in the gross earnings tax and an ad valorem tax cannot be imposed on such property. State v N. P. Ry. Co. 139 M 473, 167 NW 294.

An act, which authorized the imposition of a gross earnings tax upon the refrigerator cars of defendant operated by it over the lines of different railroads; such operation of cars consisting in directing and controlling the loads, movements, routes, and destination of the cars, the railroads furnishing the motive power, and receiving the same freight rates as if the shipments were carried in like cars of the railroads, but paying defendant one cent for each mile a car is hauled, does not violate the provisions of this section. State v Cudahy Packing Co., 129 M 30, 151 NW 410.

The legislature has the power, since the constitutional amendment of 1906, as well as before, to impose the gross earnings form of taxation upon express companies. State v Wells Fargo & Co., 146 M 444, 179 NW 221. See 12 MLR 685.

A state may tax property engaged in interstate commerce. It may not tax the commerce itself. A statute of this state imposing a gross earnings tax upon express companies is a good faith exercise of the taxing power. State v Wells Fargo & Co., 146 M 444, 179 NW 221. See 12 MLR 685.

Motor vehicles, owned and used by corporations paying a gross earnings tax in the operation of their business, are not subject to the tax imposed by G. S. 1923, ss. 2672 to 2720. American Ry. Express Co. v Holm, 169 M 323, 211 NW 467.

L. 1929, c. 361, subjecting motor vehicles using the public highways of this state owned by companies whose property in this state is taxed on the basis of gross earnings to a registration tax, and providing that the tax on the basis of gross earnings paid by any such company shall be in lieu of all other taxes upon its property "except motor vehicles using the public highways of this state", is unconstitutional. Railway Express Agency, Inc. v Holm, 180 M 268, 230 NW 815.

A gross sales tax which classifies chain stores for the imposition of a varying rate of taxation solely by reference to the volume of their transactions violates this section. National Tea Co. v State, 205 M 443, 286 NW 360.

Relators' freight cars, furnished and leased to railroads owning or operating railroad lines within and through the state, are taxable under the provisions of Mason's Statutes 1927, Sections 2270 to 2276-1, as amended. The gross earnings method therein authorized for taxation of relators' business does not offend the uniformity required by this section, or any other constitutional provision of this state. Nor does the classification of relators as freight line companies, under and subject to Mason's Statutes 1927, Sections 2270 to 2276-1, as amended, offend any provisions of United States Constitution, Amendment XIV. Almer Ry. Equipment Co. v Commissioner of Taxation, 213 M 62, 5 NW(2d) 637.

The tax commission has no power to abate any part of the percentage of gross earnings tax fixed by statute. State v Wells Fargo & Co., 146 M 444, 179 NW 221. See 12 MLR 685.

f. Motor vehicles

The uniformity clause of the constitution is not contravened by the provision which divides motor vehicles into three classes, those used for three years, those four and five years, and those more than five years, and directs that those in the first class shall be taxed on the basis of their list price at the factory when new, those in the second class at 75 per cent of such price, and those in the third class at 50 per cent thereof. Dohs v Holm, 152 M 529, 189 NW 418.

The constitutional requirement of uniformity is not disregarded by a provision in a statute which exempts certain vehicles which are still subject to taxation as is other personal property. The separation of motor vehicles into these two classes was within the scope of the broad power of the legislature with respect to classification for the purpose of taxation. Dohs v Holm, 152 M 529, 189 NW 418.

Placing trucks engaged in commercial freighting on regular time or route schedules in one class and all other trucks using the public highways in another, amounts to a legislative finding that there was sufficient difference in the use of the public highways to justify the difference in classification, and the courts cannot say that there is no basis of fact for the finding. Raymond v Holm, 165 M 215, 206 NW 166.

Section 168,07, subd. 7, relating to the taxation of automobiles of dealers in new and unused motor vehicles, does not offend any constitutional provision. City of Minneapolis v Armson, 188 M 167, 246 NW 660.

An enactment which requires the owner of a motor vehicle to pay a tax for the entire calendar year if he become the owner prior to July 31, is not in excess of the powers of the legislature. Dohs v Holm, 152 M 529, 189 NW 418.

An act, which provides that, if a motor vehicle first becomes subject to the tax imposed between July 31 and October 1, the tax for the remainder of the year should be one-half of the tax for the whole year, and if first subject thereto after September 30, it should be one-fourth of that for the whole year, does not contravene the provision of this section requiring taxes to be uniform upon the same class of subjects. Dohs v Holm, 152 M 529, 189 NW 418.

The uniformity clause is not contravened by a provision in an act which requires manufacturers of motor vehicles to file annually with the registrar a statement showing the retail list price of each model as of November 1, and a like statement upon each change in price thereafter made, the price thus shown to be the basis upon which the tax is to be computed. Dohs v Holm, 152 M 529, 189 NW 418.

The tax upon motor vehicles using the public highways is fixed with reference to the use made of such highways. Although primarily a property tax, it is made to operate as a privilege tax, for such vehicles are prohibited from using the public highways until the tax is paid. Raymond v Holm, 165 M 215, 206 NW 166.

g. Money and credits

The classification of money and credits for the purposes of taxation is not a violation of the constitution. L. 1911, c. 285, which provides for the taxation of money and credits, is a complete revision of prior statutes upon the subject and was designed as the exclusive guide upon that subject, save as provisions of the

general tax laws are therein referred to and called to the aid of the new law, and to repeal by implication R. L. 1905, s. 836, which provides for the deduction of debts from credits listed for taxation. State ex rel v Minnesota Tax Commission, 117 M 159, 134 NW 643.

Credits include every claim and demand for money and every sum of money receivable at stated periods, due or to become due; they are personal property and include only such demands as are classed as personalty, and the term does not include unaccrued rents to arise out of land. State v Royal Mineral Ass'n. 132 M 232, 156 NW 128.

That a mining company was taxed for money and credits on account of moneys received on royalties does not invalidate Laws (Minn.) 1923, c. 226, imposing a royalty tax on mining. Royal Mineral Ass'n. v Lord, 13 F(2d) 277.

h. Mortgage registry tax

The subject of taxation under the mortgage registry tax law (L. 1907 c. 328) is the security and not the debt secured. A foreign insurance company which has paid the two per cent tax required by R. L. 1905, s. 1625, is not exempt from the payment of the registry tax, upon the filing for record of a real estate mortgage owned by it. Mutual Benefit Ins. Co. v County of Martin, 104 M 179, 116 NW 572.

The mortgage registry tax law (L. 1907, c. 328) which requires savings banks to pay a registry mortgage tax upon mortgages owned by them, without exempting such mortgages from taxation otherwise, is not in conflict with this section. State v Farmers & Mechanics Savings Bank, 114 M 95, 130 NW 445, 851.

i. Occupation tax

L. 1909, c. 248, taxing the occupation of and licensing hawkers, peddlers and transient merchants, and defining these occupations, is unconstitutional as a tax measure, in that the tax imposed does not fall equally and apply uniformly on all members of the class. State ex rel v Parr, 109 M 147, 123 NW 408.

The tax imposed by Laws (Minn.) 1921, c. 223, on mining within the state, based on the value of the ore mined, is an occupational tax, collectible by suit against the person from whom it is due, as other demands are enforcible. Royal Mineral Ass'n. v Lord, 13 F(2d) 277.

The tax imposed by Laws (Minn.) 1921, c. 223, on the business of mining iron ore, measured by a percentage of the value of the ore mined or produced, is an occupation tax. Oliver Iron Mining Co. v Lord, 262 US 172, 176, 67 L. Ed. 930, 43 SC 528.

j. Wheelage tax

The legislature has power to impose a wheelage tax upon vehicles, and to provide that the proceeds shall be used for the maintenance and repair of highways. Park v City of Duluth, 134 M 296, 159 NW 627.

The council of a city may impose a wheelage tax upon vehicles maintained in the city and provide that the proceeds shall be used for the maintenance and repair of streets and highways in the city, if it have legislative authority therefor. The authority furnished to city officers by a city charter is legislative authority. Where a prior city charter expressly confers such power and a later charter has a provision that the city shall have all power possessed prior to its adoption, subject to the restrictions contained in the later charter, this continues all power not inconsistent with the terms of the new charter and continued the power to impose a wheelage tax. Park v City of Duluth, 134 M 296, 159 NW 627.

k. Royalty tax

A mining lease required the lessee to pay the royalty tax imposed by L. 1923, c. 226, levied during the term of the lease, which was canceled under a provision therein and thereby terminated on November 24, 1929. The royalty tax relating to the year 1929, accruing prior to the termination of the lease, was not levied

by the statute, but by the administrative acts of the state officials in the year 1930, when the amount of such tax was determined and extended upon the official records for collection; therefor, the tax was not levied during the term of the lease. Day v Inland Steel Co. 185 M 53, 239 NW 776.

1. Exemptions

R. L. s. 797, which provides that "personal property shall be construed to include" and naming 11 classes of property, does not exempt from taxation or render not subject to taxation personal property not included within any of the classes named. State v McPhail, 124 M 398, 145 NW 108.

In construing this section and the word "public", as it appears therein in connection with the various classes of exempted property, it is clear that it was not intended by this provision to confine exemptions from taxation only to property owned by the public, nor was it intended that mere access to, use of, or patronage by, the public was to be made the sole and only test of exemption. State v Browning, 192 M 25, 255 NW 254.

The uniformity clause of this section applies to the distribution of taxes levied and collected as well as to the levy. Section 263.09, providing for reimbursement to cities, towns, or villages of the third and fourth class for part of the expense of administering their local relief under the town system, is unconstitutional because a violation of the uniformity clause. Village of Robbinsdale v County of Hennepin, 199 M 203, 271 NW 491.

The board of park commissioners of the city of Minneapolis has authority, under a special act, to exempt from special assessment for park improvements specific lands in consideration for lands conveyed to it and to the city for park purposes to the extent of the land so conveyed; and also acquired the right to grant an exemption for any kind of an assessment that it could legally impose. Such an exemption inures to the specific land and not to the owner of the land and the benefit passed with the land and is not destroyed by a division of the tract into several parcels and later conveyed to other parties. In re Improvement of Minnehaha Parkway, 167 M 253, 208 NW 998, 208 NW 939.

The city of St. Paul owns land in Anoka county on which it built and has maintained a municipal waterworks, but same has not been actively used since 1924, but was never abandoned, and is maintained as a reserve plant. Anoka county brought suit to collect taxes for 1926 on the land, the city claiming exemption under this section. The portion of this land which the city leases to private parties, the rentals therefrom going into the fund used to operate the waterworks, is not exempt from taxation, as such portion is not used for a public purpose; but the rest of this property is exempt. County of Anoka v City of St. Paul, 194 M 554, 261 NW 588. See 26 MLR 95.

The exemptions provided for in the income tax law are a legitimate exercise of the legislature's power to classify and its inherent power to exempt when exercised equally and uniformly. Reed v Bjornson, 191 M 255, 253 NW 102.

Real estate owned by a college, devoted to and reasonably necessary for the accomplishment of its educational purposes, is free from taxation. State v Carleton College, 154 M 280, 191 NW 400. See 18 MLR 60.

College dormitories are not subject to taxation if situate upon land detached from the campus, provided they are devoted to like use as if upon the campus. State v Carleton College, 154 M 280, 191 NW 400. See 18 MLR 60.

Residences acquired for the president and professors of the college are not subject to taxation if situate upon land detached from the campus, there being a reasonable necessity for their use in connection with the institution. State v Carleton College, 154 M 280, 191 NW 400. See 18 MLR 60.

The farm land acquired by a college, adjoining its campus and being all used and devoted to its needs and purposes, should be held exempt from taxes. Mere incidental profit derived from some items thereon produced will not subject such farm to taxation. State v Carleton College, 154 M 280, 191 NW 400. See 18 MLR 60.

An 80-acre tract, nearly two miles distant from the campus farm, not devoted to or reasonably necessary for the accomplishment of the purposes of an insti-

tution of learning, is not exempt from taxation. State v Carleton College, 154 M 280, 191 NW 400. See 18 MLR 60.

The real estate owned by the defendant has, since 1928, been continuously occupied and used by it as a seminary of learning, and is exempt from taxation. State v Northwestern College of Speech Arts, Inc., 193 M 123, 258 NW 1.

Minnesota Central University was not continued in existence by Sp. L. 1878 c. 69; and the attempt thereby to grant to the new corporation an immunity from taxation of all its property was unconstitutional under this section, as it then stood. Trustees of Pillsbury Academy v State, 204 M 365, 283 NW 727. For a discussion of this case, see 23 MLR 703.

Under this section, as amended in 1906, a parsonage owned and maintained by a church organization as a residence for its pastor free of charge, is exempt from taxation. State v Church of Incarnation, 158 M 48, 196 NW 802. See 11 MLR 542.

The term "church property", as used in this section, has reference to the use of the property and its relation to the purposes and activities of the church organization and does not exempt real property not used by it for any purpose except to derive income therefrom. State v Union Congregational Church, 173 M 40, 216 NW 326. See 12 MLR 191.

A lot and dwelling house owned by a church corporation and not used as a residence for its minister or in connection with its religious or charitable work or activities, but rented to others for dwelling purposes and the rental used by the church in support of its religious exercises, are not exempt from taxation. State v Union Congregational Church, 173 M 40, 216 NW 326. See 12 MLR 191.

Where a church has present need for a site for new church buildings, purchases property for that purpose, intends to build a church plant on the property within a reasonable time, commences and continues to raise funds for that purpose, employs an architect to prepare plans for the buildings, and thereafter, within a reasonable time, commences to build and completes one unit of the buildings, the property is exempt from general taxes, at least from the time the architect is so employed. The fact that a small incidental revenue is derived from the property before building is commenced is not sufficient ground for denying the exemption. State v Second Church of Christ, Scientist, 185 M 242, 240 NW 532.

A hospital owned by an individual and operated with an intent to make a private profit is not exempt from taxation under this section and the statute, which exempt "public hospitals". To be a "public hospital" an institution (1) must be open to the public generally, and (2) must be operated for the benefit of the public in contradistinction to be operated for the benefit of an individual, and thus must be operated without a private profit. A hospital is not exempt for a particular year even though there was no profit for that year, if it is built, organized, or maintained with an intent to make a profit. State v Browning, 192 M 25, 255 NW 254.

This section exempts public burying grounds from general taxes, although owned and operated by an association for pecuniary profit. Exemption from special assessments for local improvements is not granted by the constitution and must be found in the statutes, if at all. State v Crystal Lake Cemetery, 155 M 187, 193 NW 170.

Exemption of property from taxation does not comprehend exemption from the payment of excise and impost taxes by the owner of the exempted property, especially those which are not imposed in lieu of property taxes. Christgau v Woodlawn Cemetery Assn., 208 M 263, 293 NW 619.

Defendant's corporate articles clearly establish that it is a non-profit and purely charitable institution. All the property sought to be taxed was necessarily and exclusively used by defendant in the performance of its corporate powers. State v H. Longstreet Taylor Foundation, 198 M 263, 269 NW 469.

Property owned by a corporation organized as a public charity is not exempt as property of an institution of purely public charity under this section, where it is subject to private control and is devoted to substantial use for private profit. State v Willmar Hospital, Inc., 212 M 38, 2 NW(2d) 564.

Property owned by a corporation organized as a public charity is not exempt as property of an institution of purely public charity under this section, where it is subject to private control and is devoted to substantial use for private profit, the word "purely" meaning "wholly", "solely", and "exclusively" in such exemption provisions; the right to exemption depends upon the concurrence of the institution's ownership and use of the property for the purposes for which it was organized. State v Willmar Hospital, Inc. 212 M 38, 2 NW(2d) 564.

Board of tax appeals was justified in finding that a hospital, which is otherwise a public one and as such exempt from taxation under this section was a "public hospital" entitled to exemption from taxation notwithstanding fact that owner charged $50.00 per month for services of each sister who served in hospital without compensation, which was paid into a fund for the support, care, and training of sisters in order to maintain system under which their services were made available, where outlay for uncompensated services of sisters was less than cost of similar service by lay persons. Village of Hibbing v Commissioner of Taxation, 217 M 528, 14 NW(2d) 923.

An act, exempting from the tax therein imposed on chain stores "any person who within this state produces, manufactures, prepares, distributes, and sells at retail only, food products which he himself produces, manufactures, or prepares, where such retail sales are made only from stores owned, operated, and controlled exclusively by any such person" includes only those who are engaged exclusively in the business of producing, manufacturing, and preparing the products which they sell. C. Thomas Stores Sales System, Inc., v Spaeth, 209 M 504, 297 NW 9.

Section 2. ANNUAL TAX FOR ORDINARY EXPENSES. (Superseded by amendment of 1906)

The amendment to this section, adopted November 6, 1860, providing that "no law levying tax or making other provisions for the payment of interest or principal of the bonds denominated 'Minnesota State Railroad Bonds' shall take effect or be in force until such law shall have been submitted to a vote of the people of the state, and adopted by a majority of the electors of the state voting upon the same", impairs the obligation of the contracts therein referred to, and is repugnant to the clause in the constitution of the United States that no state shall pass any law impairing the obligation of contracts. State ex rel v Young, 29 M 474.

Sections 2, 5, 6, 7, and 8, of this article, do not prohibit the legislature from appropriating the surplus revenues in the state treasury, or a part of the revenues collected each year, for the erection of a state capitol, so long as sufficient public funds applicable thereto are left to defray the current ordinary expenses of the state government. L. 1893, c. 2, does not contravene these sections. Fleckten v Lamberton, 69 M 187, 72 NW 65.

L. 1909, c. 27, providing for the construction of a new state prison at Stillwater, is a valid enactment. Brown v Ringdal, 109 M 6, 122 NW 469.

Section 3. PROPERTY SUBJECT TO TAXATION. (Superseded by the amendment of 1906)

The provision of this section that "laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, and also all real and personal property, according to its true value in money" authorizes the legislature to levy a tax even upon the personal property, or upon the moneys and credits, of nonresidents. City of St. Paul v Merritt, 7 M 258 (198, 201).

Under the provisions of the compiled statutes no tax can be assessed upon the personal property of nonresidents, except upon goods, wares, and merchandise kept for sale, stock employed in mechanic arts, and capital and machinery employed in any branch of manufactures or other business. City of St. Paul v Merritt, 7 M 258 (198, 201).

The provisions of a city charter that "all property, real or personal, within the city, except such as may be exempt by the laws of this state, shall be subject

to taxation for the support of the city government", does not change the rule that no tax can be assessed upon the personal property of nonresidents, 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 M 258 (198, 201).

This section provides that "laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, and also all real and personal property according to its true value in money" with certain exemptions. This enumeration includes shares of stock in national banks; and this section confers upon the legislature the authority necessary to reach the shares of stock of national banks. Smith v Webb, 11 M 500 (378, 381, 383, 384).

It was competent for the legislature, in regranting, in 1864, the franchises pertaining to defendant's line of railroad, to alter the contract contained in the original charter of 1857, in respect to taxation, in the manner it did, notwithstanding this section of the constitution. City of St. Paul v St. Paul & S. C. R. Co., 23 M 469, 474.

A statute, providing for the taxation of all shares of stocks in foreign corporations owned by residents of this state, does not violate this section. State v Nelson, 107 M 319, 119 NW 1058.

The use of a house or building as a residence or place of abode is an ordinary and secular use and the fact that it is occupied for that purpose by a rector, pastor, or priest, does not in law change its nature or sanctify its use. Such a house is not used by the church or society to which it belongs exclusively for public worship, and the grounds attached thereto cannot be necessary for the proper occupancy, use, and enjoyment of a house used exclusively for such worship; and these premises and the house so used are not exempt from taxation. St. Peter's Church, Shakopee v County Board, 12 M 395 (280). See, also, In re Grace, 27 M 503, 8 NW 761.

Lots used by a hospital, adjoining the land occupied by its building, as a vegetable garden, wood yard, etc., no part being used with a view to profit, are exempt from taxation as a part of the hospital, which is classified as an institution of purely public charity. In re Application for Judgment Against Certain Lots, 27 M 460, 8 NW 595.

The words "church property used for religious purposes", if they refer to land and buildings, do not intend any except those where primary use is for religious purposes. A rectory or parsonage belonging to the church, its primary use being for a secular purpose, the residence of the priest or minister, is not exempt because some part of it is being also used for religious services. County of Ramsey v Church of the Good Shepherd, 45 M 229, 47 NW 783.

A college owns 40 acres of land on which the college buildings are situated. On part of the tract the college has erected several houses as places of residence for the professors or faculty, being used for no other purpose. Such premises are within the statutory exemption from taxation. About 20 acres of the land are in a state of nature, never having been improved or used. It is contemplated that it will be improved and devoted to the uses of the colleges at some indefinite future time. This property is not now exempt from taxation. Ramsey County v Macalester College, 51 M 437, 53 NW 704.

An act, which exempts from taxation all seminaries of learning, with the books and furniture therein, and grounds attached and not leased or otherwise used with a view of profit, includes seminaries for young ladies, erected by private persons, and supported by their patrons, and such exemption includes necessary furniture and apparatus. Ramsey County v Stryker, 52 M 144, 53 NW 1133.

The language of this section that "public property used exclusively for any public purpose" does not authorize legislation which will exempt from taxation real property owned and leased by a private party who receives and retains all revenues derived from such leasing, although, under a contract with the owners, the municipality in which the property is located have made such property a public market, which shall be exempt from taxation, and it is thereafter exclusively used for such purpose, the municipality regulating the business to the extent necessary for the public welfare. State ex rel v Cooley, 62 M 183, 64 NW 379.

Macalester College is not entitled to the benefit of exemptions, as an educational institution, from burdens imposed to pay for water mains laid on three sides of the college grounds. State v Trustees of Macalester College, 87 M 165, 91 NW 484.

Adoption of state constitution could not change right to tax immunity granted to university by territorial legislature, for such rights were contractural obligations, and university was functioning in full compliance with its charter obligations at time constitution was adopted in 1857. Trustees of Hamline University v Peacock, 217 M 399, 14 NW(2d) 773.

A corporation, which is a "seminary of learning" within the meaning of this section, has certain endowments which are invested in farm mortgages, the income from which is devoted exclusively to its maintenance and support. This endowment fund is exempt from taxation. State v Bishop Seabury Mission, 90 M 92, 95 NW 882.

A portion of a tract of land purchased by a cemetery association is exempt from taxation when its acquisition is necessary for use in the near future as a burial place for the dead and the association intends to plat the same as a part of its cemetery and place it upon the market for sale as soon as the entire tract can be acquired under condemnation proceedings pending. Conducting a greenhouse thereon for the purpose of growing flowers and plants to be used in beautifying the grounds is not a use of such tract for other than cemetery purposes, notwithstanding the fact that a small surplus thereof has been sold for the benefit of the association. State v Lakewood Cemetery Assn., 93 M 191, 101 NW 161.

A charitable corporation, maintaining a hospital, owns a farm from which it derives an annual income applied to the relief of charity patients, but such farm is not a part of the curtilage of the hospital or essential or necessary to operate the same. This farm is not exempt from taxation as real estate under this section. State v Bishop Seabury Mission, 90 M 92, 96, 95 NW 882, distinguished. State v St. Barnabas Hospital, 95 M 489, 104 NW 551.

Prior to the amendment of 1906, a house owned by a church and furnished without charge to its pastor for a residence was not within the exemption relating to church property; but a house owned by a college or seminary of learning and furnished without charge to a professor for a residence was within the exemption relating to institutions of learning. State v Church of Incarnation, 158 M 48, 51, 196 NW 802.

Section 4. TAXATION OF PROPERTY EMPLOYED IN BANKING. (Superseded by amendment of 1906)

The National Bank Act, as part of the supreme law of the land, withdraws the national banks from the operation of this section, lays down a special, definite, and exclusive rule for the guidance of our legislature in subjecting to taxation all property employed in banking by "all banks and all bankers". This section is rendered inoperative as to national banks by the 41st section of the National Bank Act. Smith v Webb, 11 M 500 (378).

This section makes it the special duty of the legislature to provide by law for the taxation of all property, of every description, of all banks and of all bankers, "so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals". The mode and manner of accomplishing the purpose of this section are matters left entirely to legislative discretion. County Board v Citizens National Bank, 23 M 280, 287.

Section 1A. OCCUPATION TAX.

Article 9 s. 1, is the main constitutional limitation upon the otherwise unlimited power of taxation vested in the legislature except art. 4, s. 32a (relating to repeal of gross earnings tax statutes applicable to railways); art. 9, s. 1A (occupation tax); art. 9, s. 5 (gasoline tax); and art. 16, s. 3 (motor vehicle tax). When art. 9, s. 1 was adopted in 1906, not only was section 1, as it previously read, altered as to several separate provisions, but a separate amendment au-

thorizing the inheritance or succession tax was dropped out, and sections 2, 3, 4 and 17 of the same article were repealed.

In all subsequent litigation regarding taxation no question has been raised that the amendment of 1905—the now existing article 9, s. 1—contained two or more separate amendments or alterations. The people have apparently acquiesced in its being a part of the constitution, taking the place of several distinct propositions therein regarding the subject of taxation. The object and purpose of the amendment of 1906 was to remove the limitations in regard to taxation which bound the legislature by the provisions of article 9, as it stood prior thereto. Winget v Holm, 187 M 78, 86, 244 NW 334.

Section 5. STATE DEBT LIMITED; HOW CONTRACTED; GASOLINE TAX.

1. Extraordinary expenditures

2. Internal improvements

3. Excise tax on gasoline

1. Extraordinary expenditures

The restrictions on incurring debts for extraordinary expenditures do not apply to a soldiers bonus law. Such legislation, without a limit as to the amount which may be expended, is authorized by section 7 of this article. Gustafson v Rhinow, 144 M 415, 175 NW 903.

The restrictions on incurring debts for extraordinary expenditures do not apply to a statute which provides for the erection of a new capitol building. Fleckten v Lamberton, 69 M 187, 72 NW 65; nor to a new state prison, Brown v Ringdal, 109 M 6, 122 NW 469.

For a further discussion as to the meaning of these restrictions, see Article 9, section 2.

2. Internal improvements

The provision that "the state shall never contract any debts for works of internal improvement or be a party in carrying on such works" is to be confined in its application to the state, and does not extend to subordinate political divisions, such as municipal corporations. Davidson v County Board, 18 M 482 (432).

The words "works of internal improvement", as used in this section, mean, not merely the construction or improvement of channels of trade and commerce, but any kind of public works, except those used by and for the state in the performance of its governmental functions, such as a state capitol, state university, penitentiaries, reformatories, asylums, quarantine buildings, and the like, for the purposes of education, the prevention of crime, charity, the preservation of public health, furnishing accommodations for the transaction of public business by state officers, and other like recognized functions of state government. Rippe v Becker, 56 M 100, 57 NW 331.

The term "works of internal improvement" includes public highways, and the prohibition prevents the state from appropriating moneys from the general revenue fund to aid in the construction and repair of highways and bridges. Cooke v Iverson, 108 M 388, 122 NW 251; State ex rel v Babcock, 161 M 80, 200 NW 843.

"Works of internal improvement", within the meaning of the constitution, do not include "works" constructed for and used by the state itself in the performance of its governmental functions. Rippe v Becker, 56 M 100, 57 NW 331; State ex rel v Van Reed, 125 M 194, 145 NW 967; Lipinski v Gould, 172 M 559, 561, 218 NW 123, 730.

Prior to the adoption of article 16 the constitution prohibited the state from being a party in the carrying on of "works of internal improvements". The building, improving, and maintaining of public highways are works of internal improvement. Cooke v Iverson, 108 M 388, 396, 122 NW 251; State v White, 176 M 183, 186, 222 NW 918.

A statute providing for the lease of state mineral lands does not violate this section as to the engaging in works of internal improvement. State v Evans, 99 M 220, 108 NW 958.

L. 1919, c. 341, authorizing certain fishing operations to be conducted by the game and fish commissioner, does not contravene the provisions of this section. Lipinski v Gould, 172 M 559, 218 NW 123, 730.

L. 1929, c. 258, establishing a state wild life preserve and hunting ground in three counties of the state, authorizing the acquisition therefor of unredeemed delinquent lands assessed for benefits in drainage districts within the preserve, and providing by state certificates of indebtedness to reimburse the counties for the amounts of the benefits assessed against the lands so acquired, in order to enable such counties to meet drainage bonds issued in compliance with drainage laws, does not contravene the provisions of the constitution, art. 9, ss. 1, 5, 6, or 10. Lyman v Chase, 178 M 244, 226 NW 633, 842.

The Board of regents of the University of Minnesota may appropriate the net earnings of the dormitory and pledge rentals and earnings of the character noted to the payment of money advanced for dormitory construction and undertake that they shall be so applied. It may evidence its pledge and undertaking by writings called bonds, which exempt the state and the university and the regents and officers from personal liability, as well as all the property of the state, the university, and the board, including the dormitory itself, from any charge. Thereby a debt of the state or a pledge of its credit is not contracted within this section or section 9 of this article. Fanning v University of Minnesota, 183 M 222, 236 NW 217.

An act, which provides an appropriation for direct relief, work relief, and employment to needy, destitute, and disabled persons, is valid as against the objection that it carries on works of public improvement or creates a public debt in violation of this section. Moses v Olson, 192 M 173, 255 NW 617. See 23 MLR 392.

The state may not engage in or lend aid to a state grain elevator. Rippe v Becker, 56 M 100, 57 NW 331.

This section has no application to works used by or for the state in the performance of its governmental functions. Rippe v Becker, 56 M 100, 57 NW 331; State ex rel v Van Reed, 125 M 194, 199, 145 NW 967.

An act, providing for the payment of certain bounties to manufacturers of sugar from beets grown in this state, violates the provisions of this section and of section 10. Minnesota Sugar Co. v Iverson, 91 M 30, 97 NW 454.

Acts purporting to appropriate money out of the general revenue fund of the state for the building and repairing of roads and bridges are violative of the provision of this section forbidding the state to be a party to the carrying on of works of internal improvement. Cooke v Iverson, 108 M 388, 122 NW 251.

An act authorizing county boards, on the petition of third persons, to enter upon privately-owned farms and clear designated tracts for agricultural uses, defraying the expense of the work by the issuance of county bonds, proportionately assessing the improved lands in reimbursement of the county for the bond issue, attempts a loaning of public credit and an engaging in an internal improvement, both forbidden by the constitution. Sundquist v Fraser, 154 M 371, 191 NW 931.

3. Excise tax on gasoline

This section, authorizing the levy of excise taxes on gasoline, provides (as amended in 1928) that the state "shall place two-thirds of the proceeds of such tax in the trunk highway fund". That part of L. 1939, c. 431, art. 2, s. 20, imposing upon that fund a charge to be used to defray the general costs of government, violates this section. Cory v King, 209 M 431, 296 NW 506.

Laws 1925, Chapter 297, as amended by Laws 1937, Chapter 376, providing for an excise tax on gasoline used in producing or generating power for propelling motor or other vehicles used on public highways of state, does not impose a tax on gasoline used in machinery for processing gravel in gravel pits even though gravel is used in road construction or maintenance. Hallett Construction Co. v Spaeth, 212 M 531, 4 NW(2d) 337.

Gasoline taxes levied and collected pursuant to L. 1925, c. 297, s. 3, as amended, are a direct charge upon the "distributor" of gasoline, as therein de-

fined, and the act does not contravene this section. Arneson v W. H. Barber Co. 210 M 42, 297 NW 335.

Section 6. BONDS FOR CREATED DEBT.

See annotations to section 5.

Section 7. WHEN DEBT MAY BE CONTRACTED; INVASION; INSURRECTION.

See annotations to section 5.

Section 8. FUNDS FROM BONDS, HOW APPLIED.

A statute providing that when a school district is divided and a part of the territory thereof set off and formed into a new district the funds in the treasury thereof shall be divided equitably between the old and the new district vests in the new district a legal right to a proportionate share of such funds and applies to all money in the treasury at the time of the organization of the new district, including a building fund raised by the sale of bonds for the construction of a new school house in the old district. State ex rel v County Board, 126 M 209, 148 NW 52.

See annotations to section 5.

Section 9. PAYMENTS PAID OUT OF TREASURY.

This section, prohibiting the payment of money out of the state treasury except in pursuance of an appropriation by law, has no application to the issuance by the state auditor of a warrant on the state treasury for the distribution of the gross earnings tax imposed upon and collected from suburban railroad companies. State ex rel v Iverson, 125 M 67, 145 NW 607.

No money can be drawn from the state treasury on a state auditor's warrant, or otherwise, except as authorized by legislative appropriation, this section of the constitution, and section 6.03. State ex rel v Preus, 147 M 125, 179 NW 725.

A statute creating a liability on the part of the state is not, in itself standing alone an appropriation act. An act, under which the state assumes a portion of the expenditures therein authorized by and imposed upon the counties, and directing the state auditor to issue a warrant therefor and the state treasurer to pay the same, is not an appropriation act within the meaning of the constitution. State ex rel v Preus, 147 M 125, 179 NW 725.

Where state intervenes and joins plaintiffs in suits by taxpayers to cancel contracts for paving of state trunk highways, entered into by commissioner of highways, and for injunctions to restrain the contractors and commissioner from proceeding to carry out such contracts, and for the purpose of recovering for the state moneys illegally paid out, or to be paid out, under such contracts, it subjects itself to the court's jurisdiction and the court may require it to pay to plaintiffs, the taxpayers, out of the funds recovered and saved to the state, the reasonable and necessary expenditures and attorney fees incurred by the plaintiffs. While moneys cannot be paid out of the state treasury "except in pursuance of an appropriation by law", we find in section 161.03 such an appropriation, where the moneys recovered and saved become a part of the trunk highway funds. Regan v Babcock, 196 M 243, 264 NW 803.

See annotations to section 5.

Section 10. STATE CREDIT NOT TO BE LOANED.

Under this section, as amended April 15, 1858, the deed of trust, to secure the bonds to be deposited with the state treasurer, by the several companies, as security for the state bonds to be issued to them, need not give the state a priority of lien. Minnesota & Pacific Ry. Co. v Sibley, 2 M 13 (1).

The amendment to this section, adopted April 15, 1858, under the authority of which "the Minnesota state railroad bonds" were issued, was valid as a part of the constitution. Secombe v Kittelson, 29 M 555, 12 NW 519.

This section provides: "The credit of the state shall never be given or loaned in aid of any individual, association, or corporation". If the state cannot loan its credit, it cannot borrow the money on its bonds and then loan the money. It cannot do indirectly what it cannot do directly. Taxation cannot be imposed for a private purpose and, if the state can appropriate for a private purpose the money in its treasury and then replace it by taxation, it can do indirectly what it cannot do directly. Deering & Co. v Peterson, 75 M 118, 123, 77 NW 568.

An unconstitutional statute is simply a statute in form, is not a law, and under every circumstance or condition lacks the force of law. It is of no more saving effect to justify legislative action taken under it than as though it had never been enacted. No moral obligation on the part of the state can be predicated upon an unconstitutional statute. Minnesota Sugar Co. v Iverson, 91 M 30, 97 NW 454.

All that remains of a statute after it has been declared unconstitutional is the lifeless form of what purported to be a statute. It is void and ineffectual without any repeal; but its lack of vitality interposes no insuperable obstacle to a repeal. An unconstitutional statute can be repealed. The repeal of an unconstitutional statute at least serves the purpose of purging the laws of what purports to be, but is not, a statute. City of Jackson v Jackson County, 214 M 244, 7 NW(2d) 753, 756.

An act providing for payment of a gratuity, by way of added interest, to the holder of certain tax certificates is invalid, as authorizing the payment of public funds for other than a public purpose. State v Foley, 30 M 350, 15 NW 375.

An act is invalid which authorizes a bond issue by a village to aid in the construction of a dam for the purpose of improving a private water power, notwithstanding the fact that the power was used, in part, to furnish water to the inhabitants of the village. Coates v Campbell, 37 M 498, 35 NW 366.

The act of a village in appropriating money to a manufacturing company within its limits in invalid, as not being for a public purpose. City of Chaska v Hedman, 53 M 525, 55 NW 737.

The principle is settled in this state that the legislature has not the power to bestow a private gratuity out of public funds, where no public purpose is sought to be attained thereby, or where there is no moral obligation to render the aid. State ex rel v George, 123 M 59, 64, 142 NW 945.

Until there is effective law to the contrary the rights or interests of the state on land are not subject to the provisions of the laws for the assessment and collection of taxes. The courts cannot, in tax proceedings, acquire jurisdiction over the titles, rights, or interests of the state. Without its effective consent, the state cannot be subjected to the jurisdiction of the courts, nor be compelled to defend in them. Sanborn v City of Minneapolis, 35 M 314, 318, 29 NW 126; Foster v City of Duluth, 120 M 484, 140 NW 129; In re Delinquent Real Estate Taxes, Polk County, 182 M 437, 439, 441, 234 NW 691.

An act, which provides an appropriation for direct relief, work relief, and employment to needy, destitute, and disabled persons, is valid as against the objection that it lends the state's credit in violation of this section. Moses v Olson, 192 M 173, 255 NW 617.

There is no unconstitutional appropriation to any individual or for any private purpose when the legislature recognizes a just demand, as for money had and received, against the state and appropriates money wherewith to discharge the debt and directs its payment out of the money so appropriated. There is nothing in the constitution forbidding the state to recognize and pay its just debts. In re Estate of Monfort, 193 M 594, 597, 259 NW 554.

See annotations to section 5.

Section 11. PUBLICATION OF RECEIPTS AND EXPENDITURES.

This section, as to the publication of the treasurer's annual statement with the general laws, has fallen into disuse. 5 MLR 432.

This section, requiring the publication of a detailed report of the treasurer "in the next volume of the acts of the legislature", is practically obsolete because ignored in practice. 11 MLR 199.

Section 12. STATE AND SCHOOL FUNDS.

Before amendment of 1873

This section defines an offense and its grade, without any act of the legislature. It was inserted in the constitution for the purpose of putting it beyond the power of the legislature to make the acts specified any other than the crime of embezzlement, and a felony; but it does not take away the power of the legislature to provide that other acts shall be criminal. State v Munch, 22 M 67, 71.

After amendment of 1873

The term "state funds", as used in this section, does not include funds which the county is collecting, or has already collected, for distribution to the municipalities entitled to them. First National Bank of Stillwater v Shepard, 22 M 196.

A surety on a bond of a bank which has received deposits of state funds is not relieved of his liability because the deposit is made in a form contrary to this section. This section is intended as a means of giving additional protection to state funds, not as a means of depriving them of protection. State v Farmers & Merchants State Bank, 66 M 301, 69 NW 3.

Where a city treasurer made deposits in a duly designated depository bank in excess of the collateral securities given by the bank in lieu of a depository bond and the bank thereafter became insolvent, the city may not claim such overdeposit as a preferred claim, for it was not forbidden or criminal, since no other depository bank had been designated where the treasurer might deposit such funds, or that the bank was not considered solvent when such deposits were made. City of Cloquet v Northwestern State Bank, 172 M 324, 215 NW 174.

This section is not self-executing. The suitable laws passed by the legislature do not restrict the deposit of school funds in banks until a depository has been selected therefor as required by statute. Farmers & Merchants State Bank of Ogilvie v Consolidated School District, 174 M 286, 219 NW 163.

An act, permitting the electors of a school district to reimburse its treasurer for moneys paid by him to it on account of the loss of school funds in an insolvent bank, is not prohibited by this section. This section is not self-executing, but requires legislation to carry it into effect. Farmers & Merchants State Bank v Consolidated School District, 174 M 286, 219 NW 163; State ex rel v Kaml, 181 M 523, 525, 233 NW 802.

Section 13. BANKING LAW.

This section is not a grant of power; and is not to be considered as a restraint on the legislative power to any great extent than is necessary to give full effect to the provisions of the section. Allen v Walsh, 25 M 543.

The unused power to issue bank notes might be withdrawn by the state without impairing any of the bank's constitutional rights. Seymour v Bank of Minnesota, 79 M 211, 81 NW 1059.

The two-thirds vote here required means two-thirds of all the members of each house. State ex rel v Gould, 31 M 189, 17 NW 276.

The requirement of a two-thirds vote applies to amendments as well as to the original laws. Palmer v Bank of Zumbrota, 72 M 266, 65 NW 90, 75 NW 380.

A corporation "embracing banking privileges", within the meaning of the constitution, refers only to banks of issue or circulation provided for in this section. International Trust Co. v American Loan & Trust Co. 62 M 501, 65 NW 78, 632.

A bona fide transferor of stock is not liable for the debts of the bank incurred after the transfer. He is liable for those existing at the time of the transfer and not afterwards paid. Bank of Dassel v March, 183 M 127, 235 NW 914.

A claim arising from the double liability imposed by this section upon stockholders in a state bank is a contingent claim and so remains until, in a proceeding to liquidate the bank, it becomes necessary to enforce such liability by an assessment. In re Estate of Simons, 192 M 43, 45, 255 NW 241.

Section 14b. MUNICIPAL DEBTS IN AID OF RAILROADS.

The amendment to the constitution which resulted in placing this section therein is purely prospective, imposing a limitation on the legislature for the future. It does not repeal laws already existing, which authorize an expenditure of more than ten per cent for these purposes. State ex rel v Town of Clark, 23 M 422.

The city of Minneapolis has no power, in the absence of legislative authority, to appropriate money in aid of railroad building; and it has no power to aid a railroad company in the performance of the duties and obligations which the construction and maintenance of its road imposes. A contract by the city to do so is both ultra vires and without consideration. The officers of the city cannot barter away these rights of the public. Such a contract is void. Minneapolis, St. P., R. & D. E. T. Co. v City of Minneapolis, 124 M 351, 354, 145 NW 609.

Section 16. STATE ROAD AND BRIDGE FUND.

It is manifest on the face of this section that its purpose was to authorize the state to aid in the construction of highways and bridges by a tax levy upon all the taxable property of the state to the extent of one-twentieth of one mill, which was increased by the amendment of 1906, to one-fourth of a mill. This determines the manner in which the state may aid in the work of construction and improvement of public highways and fixes the limit of general taxation for such purpose. The manner cannot be changed nor the limitation enlarged by construction. Cooke v Iverson, 108 M 388, 394, 398, 122 NW 251.

Under this section the county of Hennepin is entitled to a yearly allotment of not less than one-half of one per cent of the state road fund. An order establishing a state rural highway and charging the state with one-half of the cost amounts merely to an appropriation by the county board, under constitutional and statutory authority, of such amount out of the state fund as it may be entitled to for its own reimbursement to the amount of its primary liability therefor. *Benton v County of Hennepin*, 125 M 325, 331, 146 NW 1110.

Until the amendment of the constitution in 1898 by the adoption of this section the state was prohibited from expending money for or taking any part in the construction or maintenance of highways. This section, as amended in 1912, created a road and bridge fund out of income derived from investments in the internal improvement land fund and out of a general tax, not to exceed one mill per year, on all taxable property, the fund to be used for the purpose of lending aid in the construction and improvement of public highways and bridges. Under this section our system of state aid highways was established. State ex rel v Babcock, 181 M 409, 232 NW 718. See 20 MLR 64.

Section 17. SPECIAL METHODS OF TAXING CERTAIN CORPORATIONS.

(Superseded by amendment of 1906)

The ownership of real property on May 1 determines the liability of real property to taxation for that year and, if it is taxable at that time, the statutory tax lien then attaches, and such lien is not divested by a sale after that day to a corporation which has commuted to the state by a payment of a percentage on its gross earnings in lieu of all other taxes. The case of Martin v Drake, 40 M 137, 41 NW 942, overrules the earlier case of County of Hennepin v St. Paul, M. & M. Ry. Co. 33 M 534, and the rule in the later decision is followed in this case. State v N. W. Tel. Exc. Co. 80 M 17, 82 NW 1090.

In the 1896 amendment to Article 9, providing for gross earnings tax upon the property of certain companies, it was intended to exclude from the operation of the gross earnings plan of taxation all property owned by the companies which does not in a direct manner promote the purposes for which the main business was organized and is carried on. State v N. W. Tel. Exc. Co. 84 M 459, 87 NW 1131.

Real property which is not necessarily used in the conduct of a telephone company's business is not exempt from taxation as other real estate, because the company pays a gross earnings tax in lieu of all other taxes. State v N. W. Tel.

Exc. Co. 96 M 389, 104 NW 1086. See also State v Twin City Tel. Co. 104 M 270, 116 NW 835.

The amount required to be paid under the gross earnings tax laws remains a tax upon the property and not against the corporation. The gross earnings tax is a system by which the amount of tax upon the property is determined. City of St. Paul v St. Paul & S. C. R. Co. 23 M 469; County of Ramsey v C. M. & St. P. Ry. Co. 33 M 537, 24 NW 313; County of Todd v St. Paul, M. & M. Ry. Co. 38 M 163, 36 NW 109; County of Traverse v St. Paul M. & M. Ry. Co. 73 M 417, 76 NW 217; M. & St. L. R. Co. v Koerner, 85 M 149, 88 NW 430; State v Canda Cattle Car Co. 85 M 457, 89 NW 66; State v N. W. Tel. Exc. Co. 107 M 390, 120 NW 534; State v U. S. Exp. Co. 114 M 346, 351, 131 NW 489.

The taxing power is not conferred by the constitution, but is only limited by it. The power to tax property in the gross earnings form is inherent in the state, unless some constitutional provision deprives the state of that power. The amendment of 1906, providing that "taxes shall be uniform upon the same class of subjects", is broad enough to permit the taxation of express companies in a class by themselves and by this form of taxation. Section 17 was omitted because no longer necessary. State v Wells Fargo & Co. 146 M 444, 454, 179 NW 221.

The express reservation, in the 1906 amendment, of existing laws for taxation of railroads was not necessary to preserve the right to tax railroads on the gross earnings plan, but was doubtless inserted to preserve the features of the provision for taxation of railroads which requires submission to the people of any proposed change in the laws enacted for that purpose. State v Wells Fargo & Co. 146 M 444, 454, 179 NW 221.

ARTICLE X

ON CORPORATIONS HAVING NO BANKING PRIVILEGES

Section 1. CORPORATIONS DEFINED; RIGHT TO SUE; LIABILITY TO BE SUED

The term "corporation" as used in this article does not include an individual who has been granted an exclusive ferry franchise. McRoberts v Washburne, 10 M 23 (8, 10).

The term "corporations" as used in this article does not include the corporate body which constitutes an independent school district. Board of Education v Moore, 17 M 412, 417 (391).

The exemption from the operation of this article which is granted to associations and joint stock companies enjoying banking privileges extends only to the banks of issue covered by Article 9, section 13, and does not include every company doing a banking business. The use of the term "privilege" instead of "power" is significant, and refers to the "privilege" of issuing bank notes. International Trust Co. v American Loan & Trust Co. 62 M 501, 65 NW 78, 632; Northwestern Trust Co. v Bradbury, 112 M 76, 127 NW 386; Bank of Dassel v March, 182 M 127, 129, 235 NW 914.

Section 2. NOT TO BE CREATED BY SPECIAL ACT

Municipal corporation was excepted from the prohibition contained in this section because their needs differ with locality, and with the number of inhabitants. These needs can best be met by special legislation. Tierney v Dodge, 9 M 166 (153).

The prohibition against forming corporations by special act is not violated by the grant of an exclusive ferry franchise to an individual, for such individual is not a corporation within the meaning of this article. McRoberts v Washburne, 10 M 23 (8).

A special act creating an independent school district does not violate the prohibition against forming corporations by special act. Board of Education v Moore, 17 M 412 (391).

The prohibition against forming corporations by special act was not violated by an act which names certain persons and confers upon them certain corporate franchises which the state had previously granted to another corporation but had later purchased on foreclosure proceedings being taken. Such franchises were held by the state without merger or extinguishment. The act did not create new franchises but merely related to the agency by which those previously created should be enjoyed. First Division St. Paul & P. R. Co. v Parcher, 14 M 297(224).

A franchise to build a railroad from Lake Superior westerly via Cheyenne City to the Missouri river was amended so as to provide for a line from Lake Superior to the Mississippi river. This amendment did not change the business essentially and does not violate this section. Ames v Lake Superior & Mississippi River R. Co. 21 M 241.

A franchise to a boom company for a 15-year period was amended by striking out the 15 year limitation and by changes in condemnation methods. Such amendments do not violate this section. Cotton v Mississippi & Rum River Boom Co., 22 M 372.

A franchise for a mutual insurance company with authority to issue stock policies to persons desiring such was amended so as to make the company exclusively a stock company; and such an amendment does not violate this section. St. Paul Fire & Marine Ins. Co. v Allis, 24 M 75.

A corporation formed under a general act may be given by statute the exclusive right to drive logs in a certain section, charge boomage, etc., and such an

act does not contravene this section. Green v Knife Falls Boom Corporation, 35 M 155, 27 NW 924.

This section establishes beyond all doubt the power of the legislature to create municipal corporations. City of St. Paul v Coulter, 12 M 41 (16).

Section 3. LIABILITY OF STOCKHOLDERS

1. Prior to amendment of 1872
2. After 1872 amendment and prior to 1930 amendment
   a. Generally
   b. Nature of liability
   c. Enforcement of liability
   d. Manufacturing enterprises
   e. Mechanical enterprises
3. After 1930 amendment

1. Prior to amendment of 1872

This added liability is not joint so as to become merged in a judgment obtained against the corporation in an action in which the shareholders were not joined. Instead, if the judgment so obtained is not satisfied, an action may be brought against the shareholders to enforce their constitutional liability. Dodge v Minnesota Plastic Slate Roofing Co. 16 M 368 (327).

The liability may be increased if the legislature sees fit. There is no restraint placed upon legislative action beyond what is necessary to prevent lessening the liability imposed by this section, or doing away with it altogether. A statute providing added double liability for banks not of issue is valid. Allen v. Walsh, 25 M 543.

2. After 1872 amendment and prior to 1930 amendment

a. Generally

Manufacturing enterprises were exempted in order to promote their growth. Such business is less subject to risk than is trade generally, and there is less need of added liability in order to protect creditors of the concern. State ex rel v Minnesota Threshing Mfg. Co. 40 M 213, 41 NW 1020. See 7 MLR 99.

Assuming that the insolvency law (L. 1881, c. 148) includes and applies to corporations, a release of a debt due from a corporation by its creditor, and a judgment of a court thereon discharging the debtor pursuant to the provisions of that law, releases and discharges the stockholders in the corporation from their personal liability imposed by this section. Mohr v Minnesota Elevator Co. 40 M 343, 41 NW 1074. See 7 MLR 100.

Since the general rule is added liability, the exception made in the case of manufacturing and mechanical enterprises is to be strictly construed. Arthur v Willius, 44 M 409, 46 NW 851.

This section is self-executing and creates an individual liability on the part of the stockholder for corporate debts to an amount equal to the amount of stock held or owned by him. Willis v Mabon, 48 M 140, 50 NW 1110. See 14 MLR 67. See also McKusick v Seymour, Sabin & Co. 48 M 158, 50 NW 1114.

The liability of stockholders to creditors, though created by the constitution, is based on contract. Webster v U. S. I. Realty Co., 170 M 360, 212 NW 806.

The charter of a corporation evidences the contract by which the stockholders, by becoming such, consent to be bound, and their rights and liabilities are measured and determined thereby. State ex rel v Mortgage Security Co. 154 M 453, 192 NW 348.

The articles of incorporation, together with applicable laws at the time of the incorporation, constitute the contract entered into by the stockholders and establish their rights, obligations, and liabilities, and the corporation's powers.

Acts in excess of these are ultra vires. West Duluth Land Co. v Northwestern Textile Co. 176 M 588, 224 NW 245.

A creditor who has not reduced his claim to judgment and procured the return of an execution unsatisfied, as required by statute, may, in equity, procure the appointment of a receiver of an insolvent corporation to enforce the constitutional liablity of stockholders. O'Brien Merc. Co. v Bay Lake Fruit Growers Assn. 173 M 493, 217 NW 940.

The liability of the estate of a deceased stockholder for corporate debts under this section is not a claim which can be presented to the probate court for allowance. The only remedy is by action under the statute. In re Martin's Estate, 56 M 420, 57 NW 1065.

Where a new company is formed by consolidation under a Minnesota statute of two Iowa and two Minnesota companies, all the shareholders of the new company have the constitutional liability, notwithstanding the fact that formerly the shareholders of the Iowa companies had had no added liability. Gardner v M. & St. L. Ry. Co. 73 M 517, 76 NW 282.

The discharge of a corporation under the Federal Bankruptcy Act does not discharge or extinguish the constitutional liability of its stockholders for the payment of its debts. This section is not a violation of the equality clause of the federal constitution. If it is impossible to enforce the liability under the statutory procedure, the court will, in the exercise of its general equity powers, give to creditors an adequate remedy in an action in equity to enforce the liability, and may appoint a receiver and authorize him to enforce the liability. Way v Barney, 116 M 285, 133 NW 801. See 7 MLR 103, 106.

When a corporation is insolvent, its directors who are among its creditors cannot, by taking advantage of their fiduciary relation, secure to themselves a preference over other creditors. A mortgage on the corporate property made by these directors to themselves as individuals to secure their debt is fraudulent as to creditors and should be canceled. Taylor v Mitchell, 80 M 492, 83 NW 418.

The provision in section 308.07 for forfeiting and retiring the stock of an offending stockholder does not free him from the double liability imposed by this section. Zander v Peterson, 174 M 427, 219 NW 466. See 13 MLR 61.

A defendant is estopped to deny that he was a stockholder of a corporation of which for some years he was an active director. Johnson v Burmeister, 182 M 385, 234 NW 590.

b. Nature of liability

The liability imposed by this section is not penal in its nature, but contractual, being voluntarily assumed on becoming a stockholder. It could thus be enforced in a sister state if the comity of that state would permit it. Hanson v Davison, 73 M 454, 76 NW 254.

The additional liability is not an asset of the corporation. Minneapolis Baseball Co. v City Bank, 66 M 441, 69 NW 331.

A statute regulating the liability after transfer of stock for corporate debts incurred prior to such transfer is valid. Gunison v United States Investment Co. 70 M 292, 73 NW 149.

The constitutional liability of stockholders for corporate debts extends to debts due creditors who are also stockholders as well as to debts due those who are not members of the corporation. Oswald v Minneapolis Times Co. 65 M 249, 68 NW 15.

In an action to enforce the double liability of the stockholders of an insolvent corporation, the creditors are entitled to a judgment against each stockholder for the full amount of his statutory liability, even though the amount of this judgment exceeds the aggregate amount of all the corporate indebtedness and costs and expenses of the action to be satisfied by such judgment. Clarke v Opera House Co. 58 M 16, 59 NW 632, distinguished. Harper v Carroll, 66 M 487, 69 NW 1069. See 7 MLR 104, 105.

Creditors of a corporation, who are also directors, are not barred from enforcing the constitutional liability of its stockholders for the payment of their debts, but they are held to strict proof of their debts and of their own good faith

in the premises. If their debts were the result of their own wrong or negligence, they cannot be permitted to impose a liability therefor upon innocent stockholders. Janney v Minneapolis Industrial Exposition, 79 M 488, 82 NW 984.

The stockholder's liability created by this section constitutes a reserve or trust fund for the benefit of creditors. Northwestern Trust Co. v Bradbury, 117 M 83, 134 NW 513.

The constitutional provision for a superadded stockholders' liability creates a substantive right, enforcible in any court of competent jurisdiction as an incident of the receivership. The remedy provided by statute is not exclusive. The superadded liability is contractual in its nature and is assumed by one's becoming a stockholder. Crowley v Goudy, 173 M 603, 218 NW 121.

In suit to enforce stockholders' liability for debts incurred by domestic corporation prior to 1930 amendment of Constitution, Article 10, Section 3, held:

(1) Liability of stockholder, which attaches as soon as his relationship is assumed, is fixed by constitution and stands as surety for corporate debts.

(2) When such corporation is declared insolvent and goes into hands of receiver, all corporate debts mature; hence stockholders' liability as surety becomes fixed as of that date.

(3) Order for stockholders' assessment does not create or give rise to a new cause of action, since it is but a step in enforcement of remedy, and cause "accrues", so as to set statute of limitations running, when corporation is declared insolvent and a receiver has been appointed to wind up its affairs. Knipple v Lipke, 211 M 238, 300 NW 620.

In proceeding by creditor against insolvent corporation, if plaintiff bring in as defendants only a part of the stockholders, to enforce their statutory liability, the court may limit their liability to the proportion of plaintiff's claim which the stock held by each bears to the whole stock outstanding, unless some reason appears, such as insolvency, death, or inability to reach with process other stockholders, for charging them more. Clarke v Cold Spring Opera House Co. 58 M 16, 59 NW 632.

The fact that one of the appellants purchased his stock after a part of the corporate indebtedness had been incurred is no defense. All those who are stockholders at the time the action is commenced are liable. Gebhard v Eastman, 7 M 56 (40); First National Bank v Winona Plow Co. 58 M 167, 173, 59 NW 997.

L. 1895, c. 145, did not reduce the liability of stockholders upon any obligation created between the passage of the act and the time when, by its terms, it was to take effect. As to such obligations, the double liability under the previous law applied. Seymour v Bank of Minnesota, 79 M 211, 81 NW 1059.

The charter provision limiting the amount of indebtedness which the corporation is permitted to incur protects the stockholders, and they cannot be held personally liable for debts of the corporation beyond that amount. State ex rel v Mortgage Security Co. 154 M 453, 192 NW 348.

Any liability that may exist against officers or stockholders individually on account of the part they took in contracting prohibited debts, is outside and distinct from their liability as stockholders. State ex rel v Mortgage Security Co. 154 M 453, 192 NW 348.

A purchaser of stock in a corporation which has failed to comply with the blue sky law cannot successfully defend in a suit brought by the receiver of such insolvent corporation to enforce the stockholders' constitutional liability on the ground that there had been a violation of the blue sky law. The issuance of the certificate of stock to defendant was not necessary to establish his liability. Marin v Olson, 181 M 327, 232 NW 523.

c. Enforcement of liability

The rule which formerly permitted a creditor to sue a single stockholder has now been displaced and the liability imposed by this section can be enforced only in an action instituted in behalf of all creditors of the corporation. This remedy is exclusive. Northwestern Trust Co. v Bradbury, 117 M 83, 134 NW 513.

The court cannot add to the constitutional liability of stockholders, by construction, the additional limitation that a stockholder is liable only ratably when

some of the stockholders are insolvent or beyond the jurisdiction of the court. First National Bank v Winona Plow Co. 58 M 167, 173, 59 NW 997.

A holder of shares at the time the debts are incurred cannot avoid his constitutional liability by a bona fide transfer to a solvent party before suit is brought on the debts. Gunnison v United States Investment Co. 70 M 292, 73 NW 149; Tiffany v Giesen, 96 M 488, 105 NW 901.

A person who is not eligible to membership by the articles but who is shown by the records to be a shareholder is liable for debts incurred subsequent to his appearance on the records. Creditors are presumed to have relied on the credit of those persons who appeared by the records to be shareholders. Such persons are estopped to deny shareholder's liability. It is otherwise with ineligible persons who have subscribed for stock, but whose names have not appeared on the records. Blien v Rand, 77 M 110, 79 NW 606.

The stockholder's liability created by this section is enforcible only in sequestration or insolvency proceedings, in which all creditors are afforded an opportunity to be heard. Northwestern Trust Co. v Bradbury, 117 M 83, 134 NW 513.

In an action to enforce the constitutional liability of a stockholder, the order for assessment made in the sequestration proceeding is conclusive as to the amount and the necessity therefor, but the stockholder may in this action litigate the claim that the facts are insufficient to constitute a cause of action against him. The liability of such transferor being secondary, proportional, and the funds to be distributed ratable among the creditors, the stockholder must look to the sequestration court to guide the proper application of the money which he pays and for the protection of his equities. Crowley v Potts, 180 M 234, 230 NW 645.

The stockholder's liability is not discharged by the payment of an assessment upon the stock levied pursuant to orders given by the public examiner; the assessment having been ordered on account of an impairment of the bank's funds and to enable it to reopen its doors and continue its banking business. Northwestern Trust Co. v Bradbury, 117 M 83, 134 NW 513.

The voluntary payment by a stockholder of the full quota of his liability to a particular creditor of the corporation will not relieve him from the payment of an assessment duly made in liquidation proceedings. Northwestern Trust Co. v Bradbury, 117 M 83, 134 NW 513.

Defendant, a former stockholder, transferred his stock before any time at which it appears that any indebtedness had been incurred by the corporation or it had become insolvent; but it was alleged in the complaint that the transfer was made to avoid the stockholders' liability, was not bona fide, no consideration was paid therefor, and that he is still the beneficial owner and holder of the stock. As against demurrer, the complaint states a cause of action against such defendant. Palmer v Bank of Zumbrota, 65 M 90, 67 NW 893.

Where creditor of insolvent bank brings action against it, secures the appointment of a receiver, but fails to take any steps to bring in the stockholders of the bank into the action, any other creditor may, upon ex parte application to the court, showing the necessity for enforcing the statutory liability of the stockholders, obtain an order allowing him to intervene, in behalf of all creditors, and file a complaint making the stockholders defendants, to ascertain and determine their statutory liability in the same proceeding. Palmer v Bank of Zumbrota, 65 M 90, 67 NW 893.

Where records of corporation failed to show that stock held by defendant was issued to and held by him as collateral security for an advance made by a third party and such failure was not due to the negligence or fraud of the corporation but to his own negligence, he was estopped, as against creditors, to deny his liability as a stockholder. Way v Barney, 127 M 346, 149 NW 462, 646.

The assessment levied by the court against a stockholder does not preclude the defense that he was not a stockholder at all, or was not the holder of so large an amount of stock as was alleged in the complaint in an action brought to enforce his constitutional liability. Harrison v Carman, 149 M 365, 183 NW 826.

In making an order for the assessment of stockholders the court must determine that the corporation is not in the excepted class mentioned in this section and this determination is conclusive as to all the stockholders. Phelps v Consolidated Vermillion & Ext. Co. 157 M 209, 195 NW 923.

In an assessment proceeding under the statute the court determines whether the corporation is one of the corporations excepted by this section from liability. Its determination of the character of the corporation is binding in subsequent action. Farwell, Osmun, Kirk & Co. v Goodhue County Coop. Co. 160 M 64, 199 NW 436. See also Boyd v Bruce, 163 M 83, 203 NW 456.

Enforcement of the constitutional liability of a decedent stockholder in an insolvent domestic corporation is properly made in the probate court, whenever an order of assessment has been made before the final settlement and distribution of decedent's estate. The order of assessment is a final and conclusive adjudication that the corporation is one in which its stockholders are subject to the liability prescribed in this section. Hoidale v Vogtel, 158 M 106, 196 NW 939.

d. Manufacturing enterprises

A manufacturer is one who by labor, art, or skill transforms raw material into some kind of a finished product or article of trade. Graff v Minnesota Flint Rock Co. 147 M 58, 179 NW 562.

Whether the business is to be deemed a manufacturing one or not is to be determined by an examination of the articles. If it does not appear to be such by the articles, its character is not changed by the fact that incorporation was had under a statute relating to manufacturing and mechanical companies. Mohr v Minnesota Elevator Co. 40 M 343, 41 NW 1074.

If the articles provide for manufacturing and other enterprises, it is immaterial that the other enterprises were never in fact engaged in. Stockholders in such companies have added liability. Arthur v Willius, 44 M 409, 46 NW 851; Densmore v Shepard, 46 M 54, 48 NW 528, 681.

Evidence cannot be introduced to show that an institution is purely a charitable one where by the articles it appears to be a regular business corporation. Craig v Benedictine Sisters Hospital Assn. 88 M 535, 93 NW 669.

If the articles show the association to be purely a manufacturing concern no added liability is incurred by reason of the fact that other enterprises are engaged in. Nicollet National Bank v Frisk-Turner, 71 M 413, 74 NW 160.

A corporation can lawfully engage in no business not included in the purpose of the organization as disclosed by its articles, which individuals are bound to know, and if it does so, as a matter of fact, it is an exercise of power not possessed, of which the state alone can complain. As to all others the corporation is just what its articles make it, and nothing more. No added liability is incurred by reason of the fact that other enterprises are engaged in. This is so even though the organizers of the corporation intended to engage in such other business, but left it out of the articles in order to avoid added liability. Senour Mfg. Co. v Church Paint & Mfg. Co. 81 M 294, 84 NW 109.

The articles of incorporation are the sole criterion to ascertain the purposes for which the corporation was formed. Cuyler v City Power Co. 74 M 22, 25, 76 NW 948.

The powers of a corporation and the purposes for which it is organized must be determined by the articles of incorporation, and it can exercise no powers other than those therein specified and such as may be incidental thereto. Gould v Fuller, 79 M 414, 82 NW 673.

Its articles of incorporation are the sole criterion as to such intention and the purposes for which the corporation was organized; and, unless it fairly appears therefrom that it was organized for the exclusive purpose of engaging in manufacturing and such incidental business as may be reasonably necessary for effectuating the purpose of its organization, its stockholders are not within the exception to the general rule of constitutional liability. Merchants National Bank v Minnesota Thresher Mfg. Co. 90 M 144, 95 NW 767.

The purpose for which a corporation was organized must be ascertained by examining its articles of incorporation. Proof of the customary manner of conducting mining operations is not admissible to explain or limit the declared purpose set forth in its articles. Phelps v Consolidated Vermillion & Ext. Co. 157 M 209, 195 NW 923.

The test as to whether a Minnesota corporation is authorized to do an exclusively manufacturing business so that its stockholders are not subject to a double liability is whether, under its articles of incorporation, it can maintain the right to conduct other than a manufacturing business against the objection of the state or dissenting stockholders. Sibley County Bank v Crescent Milling Co. 172 M 394, 215 NW 521.

Its articles of incorporation permit defendant to engage in other than a manufacturing business or a mechanical business incidental thereto, and its stockholders are subject to the double liability imposed by this section. Ebert-Hicken Co. v Scott-Bevier Iron Mining Co. 173 M 1, 216 NW 325.

Double liability was taken for granted in the case of a railway company. Gardner v M. & St. L. Ry. Co. 73 M 517, 76 NW 282.

A company organized for the manufacture or brewing of lager beer and other malt liquor, and to sell or dispose of the same, together with such other business as may be incidental thereto. Hastings Malting Co. v Iron Range Brewing Co. 65 M 28, 67 NW 652.

A company for the production of water or steam power and the doing of things, such as the purchase and sale of property, necessarily incidental to those ends. Cuyler v City Power Co. 74 M 22, 76 NW 948.

A company organized to manufacture painters' materials and supplies, and the acquiring, holding, and using of letters patent pertaining to the manufacture of such articles, and the selling of such manufactured articles, and the doing of anything that is properly incident to or necessarily connected with such manufacturing business. Senour Mfg. Co. v Church Paint & Mfg. Co. 81 M 294, 84 NW 109.

A company for the production and distribution of electric power. Vencedor Investment Co. v Highland Canal & Power Co. 125 M 20, 145 NW 611.

A company organized to manufacture all kinds of flour, cereal products, feed and milling stuffs, and to acquire and own, sell, lease, mortgage, convey, improve, and operate such real estate, factories, elevators, buildings, and manufactories for the production and storage of all kinds of goods that may be produced from or in conjunction with grain or cereals of any kind, and such machinery, grain, and other personal property as may be necessary to carry on the business held to be limited to that of manufacturing, including such business as is properly incidental thereto. Carnegie Dock & Fuel Co. v Kensington Mills, Inc. 152 M 258, 188 NW 270.

A company organized for the manufacture and sale of lime, the digging and sale of sand, and the purchase and sale of lime, hair, and other building materials. Densmore v Shepard, 46 M 54, 48 NW 528, 681.

A company organized for the manufacture, purchase, sale, and repair of plows, etc. First National Bank v Winona Plow Co. 58 M 167, 59 NW 997.

The business of publishing an ordinary daily or weekly newspaper is at most only partly a manufacturing business, and that part is merely incidental to the main or principal part of the business, which is collecting and selling news, preparing and selling literary work, and other editorial work. Oswald v St. Paul Globe Pub. Co. 60 M 82, 61 NW 902.

A company for the buying of grain and the manufacturing and distilling of the same into liquor, and the manufacturing, distilling, buying and selling and dealing in liquor, and the conducting of one or more distilleries for that purpose. St. Paul Barrel Co. v Minneapolis Distilling Co. 62 M 448, 64 NW 1143.

A trust company authorized, among other things, to take money on deposit. International Trust Co. v American Loan & Trust Co. 62 M 501, 65 NW 78.

A company organized for mining, smelting, reducing, refining, and working iron, copper, and other minerals, working stone quarries, and marketing the materials from all the same; also buying, selling, leasing, and dealing in mineral lands for the above purposes. Anderson v Anderson Iron Co. 65 M 281, 68 NW 49.

A company to manufacture and deal in azotine and other fertilizing materials, grease, and stearin. Commercial Bank v Azotine Mfg. Co. 66 M 413, 69 NW 232, 69 NW 217.

A company organized to manufacture, sell, use, and lease machinery and manufactured articles. Minnesota Title Ins. & T. Co. v Regan, 72 M 431, 75 NW 722.

A company organized to operate a laundry or launderies, and to conduct a general laundry business. Gould v Fuller, 79 M 414, 82 NW 673.

A company organized for the purchase of the stock of a certain company and for the manufacture and sale of steam engines of all kinds, and farm implements and machinery of all kinds. Merchants National Bank v Minnesota Thresher Mfg. Co. 90 M 144, 95 NW 767.

A company created for the purpose of buying, manufacturing, and dealing in dairy products. Meen v Pioneer Pasteurizing Co. 90 M 501, 97 NW 140.

A corporation formed as a state bank. Northwestern Trust Co. v Bradbury, 112 M 76, 127 NW 386.

A company organized for the conduct of a general mercantile business, among other things. Finch, Van Slyck & McConville v Vanasek, 132 M 9, 134 M 376, 155 NW 754.

A company formed to conduct a general manufacturing business, and to generate and to furnish electric current, light, heat, power, and other electric forces of any and all kinds, and to furnish or supply electrical articles, appliances, devices, and apparatus of any and all kinds. Goddard v Jost, 136 M 28, 161 NW 233.

A company organized for the mining, quarrying, crushing, and marketing of any kind of stone, ore, or other mineral substances, and the manufacturing or in any other manner utilizing any of said articles or minerals, and generally the doing of all acts necessary for carrying on such business, including the buying and selling or leasing of real estate. Graff v Minnesota Flint Rock Co. 147 M 58, 179 NW 562.

Operating a stone quarry is not manufacturing within the rule, except when coupled with the additional work of shaping the blasted material into form for use as building material, street curbing, or other finished product. Graff v Minnesota Flint Rock Co. 147 M 58, 179 NW 562.

The mining of mineral is not manufacturing unless so connected with or the mineral be used in some allied manufacturing enterprise as to make it a necessary part of the one industry. Graff v Minnesota Flint Rock Co. 147 M 58, 179 NW 562.

A corporation organized for the manufacture of butter, cheese, and other products of milk and cream, and to sell and dispose of said products when manufactured; and to carry on all the business essential thereto, which shall include the buying of dairy stock and the selling of it to farmers for the purpose of encouraging the dairy industry is not organized exclusively for the purpose of carrying on a manufacturing or mechanical business. Kremer v Tellin, 154 M 267, 191 NW 735. See also Nortmann-Duffke Co. v Federal Crushed Stone Co. 167 M 333, 209 NW 17.

HELD NOT TO BE A MANUFACTURING ENTERPRISE.

Exploring for iron ore and buying, leasing, or selling mineral lands as an incident thereto is not a manufacturing business or so closely related to manufacturing as to be incidental thereto. Ebert-Hicken Co. v Scott-Bevier Iron Mining Co. 173 M 1, 216 NW 325.

e. Mechanical enterprises

In determining whether the concern is purely a mechanical enterprise the articles of incorporation are followed as in the case of manufacturing companies.

It was the intention of the makers of the constitution to exempt from liability the stockholders of corporations organized to carry on any such kind of mechanical business as is incidental to or closely allied with some kind of manufacturing business. Cowling v Zenith Iron Co. 65 M 263, 68 NW 48.

HELD TO BE A MECHANICAL ENTERPRISE.

A company organized for the mining, smelting, reducing, refining, and working of iron ores and other minerals, and the manufacture of iron, steel, copper, and other metals was held to be so closely allied to manufacturing enterprises as to come within the exception stated in this section. The mining of iron ore and the manufacturing of iron are allied industries; the prosecution of the former tends to promote the latter. Cowling v Zenith Iron Co. 65 M 263, 68 NW 48.

A laundry business is not a mechanical enterprise within the meaning of this section, nor is it incidental to some kind of manufacturing business within the meaning of the definition given above. Gould v Fuller, 79 M 414, 82 NW 673.

A company organized to operate a stone quarry and to use the excavated or blasted material either in some allied manufacturing industry conducted by it, or in any other manner, is not a mechanical corporation because not connected or associated in the use of the material with any form of manufacturing industry. Graff v Minnesota Flint Rock Co. 147 M 58, 179 NW 562.

3. After 1930 amendment

This section imposes liability upon the holders of stock but not upon transferors. Prior to the 1930 amendment thereto, which now determines the liability of stockholders and those who transfer their stock, the transferor's liability was fixed by G. S. 1923, s. 7669; and the liability of the stockholder transferring stock was continued for one year after the entry of such transfer. Bank of Dassel v March, 183 M 127, 235 NW 914.

A constitutional amendment authorizing the legislature to limit the liability of corporation stockholders does not preclude the assessment of stockholders whose liability accrued before the adoption of the amendment, in view of the enforcement statute preserving existing contractual liabilities. Saetre v Chandler, 57 F(2d) 951.

If a constitutional amendment covers the same subject as the original constitutional provision, indicating an intent to substitute it in lieu of the original, the doctrine of implied repeal will be applied, and the original provision will be superseded even though the amendment contained no repealing clause. Badger v Hoidale, 88 F(2d) 208.

The legislation of Minnesota with respect to the liability of stockholders has been reviewed and its constitutional validity has been sustained by the United States Supreme Court. Bernheimer v Converse, 206 US 516, 27 SC 755, 51 L. Ed. 1163; Converse v Hamilton, 224 US 243, 32 SC 415, 56 L. Ed. 749, Ann. Cas. 1913D, 1292; Selig v Hamilton, 234 US 652, 660, 34 SC 926, 58 L. Ed. 1518, Ann. Cas. 1917A, 104; Marin v Augedahl, 247 US 142, 38 SC 452, 62 L. Ed. 1038; Chandler v Peketz, 297 US 609, 56 SC 602, 80 L. Ed. 882.

The assessment of stockholders of a state bank, authorized by G. S. 1923, s. 7684, et seq., is made to rehabilitate the bank. If the assessment is paid, the proceeds constitute a bank asset, which cannot be applied in discharge of the constitutional double liability of stockholders imposed by this section, upon subsequent insolvency and the enforcement of this double liability, which is for the benefit of creditors. The bank has no authority over the fund created by such enforcement. Minnesota State Bank v Tabbett, 184 M 179, 238 NW 53.

In an action by a receiver of an insolvent corporation to enforce an assessment ordered by the court against the stockholders, the complaint is not demurrable because of the absence of an allegation that the complaint in the action which resulted in the sequestration of the assets of the corporation and the appointment of this receiver alleged that the debt plaintiff herein sought to enforce accrued prior to the repeal of this section, abolishing the so-called stockholders' double liability. Miller v Ryan, 188 M 35, 246 NW 465.

Actions to enforce assessments against stockholders must be brought within two years after the order for payment is made, but this does not apply to an action brought to enforce the statutory liability of a stockholder in a foreign corporation. Johnson v Johnson, 194 M 617, 261 NW 450.

Where the petition and notice of hearing for an order of assessment against stockholders on the liability imposed by this section contained the statements required by statute, they are not vitiated by inadvertent errors therein. Mutual Trust Life Ins. Co. v Alamoe Realty Co. 196 M 226, 265 NW 48.

No substantial right of a stockholder in an insolvent domestic corporation was adversely affected by the failure to file the order of assessment of the shares of stock therein until after the commencement of the action to enforce payment, the order being on file before the trial began and there being ample time to commence another action had the present one been dismissed. Hatlestad v Anderson, 196 M 230, 265 NW 50.

In a suit to enforce stockholders' liability, the liability of the stockholder is fixed by the constitution and stands as surety for corporate debts. The stockholders' liability as surety becomes fixed as of the date when the corporation is declared insolvent and goes into the hands of a receiver. An order for stockholders' assessment does not create or give rise to a new cause of action, as it is but a step in the enforcement of the remedy. The statute of limitations is set running when the corporation is declared insolvent and a receiver has been appointed to wind up its affairs. Knipple v Lipke, 211 M 238, 300 NW 620.

A receiver appointed by a Federal District Court to enforce the constitutional liability of stockholders under this section may be vested with the same rights and powers in enforcing the remedy as though the proceedings were in a state court. Grover v Merritt Development Co. 7 F(2d) 917.

Under this section of the constitution and G. S. 1913, ss. 6645-6651, the right of creditors to enforce liability of stockholders is substantive. Under these sections, the remedy for the enforcement of constitutional liability of stockholders under this section is exclusive. Grover v Merritt Development Co. 7 F(2d) 917.

Its articles stated that the corporation's purpose was to manufacture and sell automotive parts, acquire property of manufacturing company and manufacture such parts in latter's plant, and did not so limit the corporation business to manufacturing as required to exempt stockholders from liability for its debts. Saetre v Chandler, 57 F(2d) 951.

Extrinsic evidence is inadmissible to show that corporation, authorized by its articles to do other business than manufacturing, actually confined its business to manufacturing; and stockholder's immunity from liability for corporation's debts depends on whether it was authorized by charter to do a manufacturing business, not what it actually does. Saetre v Chandler, 57 F(2d) 951.

A corporation whose object and the nature of its business was the canning of vegetables is engaged exclusively in manufacturing, as respecting stockholders' liability. Henry v Markesan State Bank, 68 F(2d) 554.

A corporation authorized to quarry stone and market the rough product, without use of mechanical or manufacturing process other than that required to excavate the rock is not organized exclusively to carry on any kind of manufacturing or mechanical business within the exception of this section. Veigel v Minneapolis Stone Co. 186 M 182, 242 NW 621.

A corporation organized for buying, selling, manufacturing, and dealing in milk, cream, ice cream, cheese, and butter, handling, managing, owning, operating, and controlling a creamery or creameries in the usual course of such business, and to do and perform all acts and things usual, requisite, and necessary on the premises is not an exclusively manufacturing corporation. In re Dissolution of Olivia Creamery & Produce Assn. 188 M 52, 246 NW 480.

Section 4. LANDS MAY BE TAKEN FOR PUBLIC USE.

This section does not confine the exercise of the power of eminent domain to the taking of lands for right of way, but permits land to be taken for a log boom on the Mississippi river. Cotton v Mississippi & Rum River Boom Co. 22 M 372.

The power of eminent domain need not be exercised directly by the legislature. The legislature could not determine in advance exactly what land would be needed. Warren v First Division St. Paul & P. R. Co. 18 M 384 (345).

A statute which provides for the taking of lands by a boom company is not invalid by reason of the fact that no tribunal is named to determine what lands are necessary. The company's determination of this fact is prima facie good, and the legislature has not tried to make it conclusive. Cotton v Mississippi & Rum River Boom Co. 22 M 372.

A statute is not invalid because it provides for the taking of a fee rather than an easement in the land condemned. Scott v St. Paul & C. R. Co. 21 M 322; Cotton v Mississippi & Rum River Boom Co. 22 M 372.

The term "compensation", as used in this section, means "something given or obtained as an equivalent". Winona & St. Peter R. Co. v Denman, 10 M 267 (208).

The damage done to a farm as a whole by taking a strip through it may properly be considered in determining the compensation to be paid for the taking. Winona & St. Peter R. Co. v Denman, 10 M 267 (208).

In arriving at the compensation to be paid, benefits are to be set off against damages. General benefits are not to be measured; "the benefits to be deducted must be those resulting directly to the land, a part of which is taken, from the construction of the road, not through the vicinity, but through the land". Winona & St. Peter R. Co. v Waldron, 11 M 515 (392).

The opening up of a stone quarry otherwise inaccessible on land crossed by a railroad is not a benefit which can be set off against damages. Mantorville Ry. & T. Co. v Slingerland, 101 M 488, 112 NW 1033.

For a more extended discussion of damages and benefits, see annotations under Article 1, section 13.

The constitutional provision that no school land held by the state shall be disposed of otherwise than at public sale does not preclude the right of condemnation, for the reason that such a proceeding does not amount to a public sale. Independent School District v State, 124 M 271, 277, 144 NW 960.

Where a sidetrack becomes a part of the trackage of a railroad to be operated as a part of its railway system, the taking of property therefor is a taking for a public purpose. Ochs v C. & N. W. Ry. Co. 135 M 323, 160 NW 866.

ARTICLE XI

COUNTIES AND TOWNSHIPS

Section 1. COUNTIES, ORGANIZATION.

1. Established and organized counties
2. Removal of county seat
3. Change of county lines

1. Established and organized counties

The distinction between established and organized counties is that an established county is one in which territory has been set apart to be organized later as a political community, while in an organized county the people have been vested with the corporate rights and powers of such a community. State ex rel v McFadden, 23 M 40; State ex rel v Parker, 25 M 215; First Natl. Bank v Co. Board, 77 M 43, 79 NW 591.

To be organized within the meaning of this section the county must be organized in fact as well as in law. An "organized county" means a county which is organized in fact and has its lawful officers, legal machinery, and means of carrying out the powers and performing the duties pertaining to it as a quasi-municipal corporation. State v Honerud, 66 M 32, 68 NW 323.

A county organized in early years and later depopulated in the Indian outbreaks is not such an organized county as to prevent the legislature from changing its laws without reference to the people. State v Honerud, 66 M 32, 68 NW 323.

To disorganize a county organized in fact and in law is not contrary to this section. State ex rel v McFadden, 23 M 40.

The establishment and organization of counties, with some restrictions as to boundaries, is left wholly to the legislature. Without legislative authority, the people of a district cannot organize a county government. State ex rel v Parker, 25 M 215.

An organized county has no power to create an indebtedness against an unorganized county, attached to it for judicial and other purposes, which will be a valid obligation or indebtedness against the latter county as a municipality when it thereafter comes into being by organization. First National Bank v County Board, 77 M 43, 79 NW 591.

2. Removal of county seat

The majority vote which is required does not mean a majority of those voting merely on the question of removal, but a majority of all those who vote at the general election at which the proposition is submitted. It is assumed that those voting at the election constitute the entire electorate, for the law presumes that every citizen does his duty, and in the eyes of the law those present and voting at such election constitute the electors of the county. Taylor v Taylor, 10 M 78 (56). See also Bayard v Klinge, 16 M 249 (221), and Everett v Smith, 22 M 53. See Eikmeier v Steffen, 131 M 287, 155 NW 92.

To require more than a majority voting on the question requires a clearly expressed intention, but such intention is to be found in this section. Dayton v City of St. Paul, 22 M 400; Smith v County Board, 64 M 16, 65 NW 956.

The provisions relating to the removal of county seats are abrogated by Article 4 ss. 33 and 34, adopted originally in 1881. These later sections prohibit the passage of special acts for county seat removals and, by implication, repeal the earlier provisions. Nichols v Walter, 37 M 264, 33 NW 800; Smith v County

Board, 64 M 16, 65 NW 956; some doubt was cast on this view in State ex rel v Clough, 64 M 378, 67 NW 202; but the doctrine of the earlier cases was reaffirmed in State ex rel v County Board, 66 M 519, 68 NW 767, 69 NW 925, 73 NW 631.

It is no longer necessary to submit the matter to the people. Nichols v Walter, 37 M 264, 33 NW 800; State ex rel v County Board, 66 M 519, 68 NW 767, 69 NW 925, 73 NW 631.

The legislature may provide that, when a change in any county is asked for, the county commissioners shall submit the proposition to the electors of the county and prescribe whether it must, to effect a removal, be adopted either by a bare majority or by more than a majority, but the provision must operate uniformly throughout the state. Nichols v Walter, 37 M 264, 270, 33 NW 800.

L. 1885, c. 272, divides the counties into two classes, the classification being based upon an event in the past, so that no county in one class can ever pass into the other class; and to those in one class is applied what may be called the majority rule, and to those in the other the three-fifths rule. This legislation is special and not general and uniform in its operation throughout the state. There is nothing in the event which is the basis of classification which suggests any necessity or propriety for a different rule to be applied to the counties thus placed in the two classes. The act is unconstitutional and void. Nichols v Walter, 37 M 264, 272, 33 NW 800.

The authority conferred by the amendment to the constitution requiring that the legislature shall make provision for changing county seats gives the legislature full control over the subject. Nichols v Walter, 37 M 264, 33 NW 800; Todd v Rustad, 43 M 500, 502, 46 NW 73.

L. 1889, c. 174, appears to have been so drawn as to meet the objections to L. 1885, c. 272, which were considered in Nichols v Walter, 37 M 264, 33 NW 800, and it is constitutional. Todd v Rustad, 43 M 500, 46 NW 73.

For the purpose of determining the number of "votes cast" at an election held under the county seat removal act (1889, c. 174) all of the ballots cast, unintelligible as well as intelligible, must be considered; and, to effect a removal, it must appear that at least 55 per cent of all votes or ballots cast were in favor thereof. Smith v County Board, 64 M 16, 65 NW 956.

Where two inconsistent statutes, relating to the same subject matter, are incorporated into a general revision the court will, in construing them, inquire as to the date of the enactments and give effect to the latest expression of the legislature. R. L. 1905, ss. 336, 339, both provide for the contest of elections upon a "question submitted to popular vote", but under entirely different procedure. Section 336 embodies the latest expression of the legislature upon the subject of such contests and prevails over section 339, insofar as involves contests of that character. The question whether a new county shall or shall not be created and established, submitted to the voters under the statutes of the state, is independent and distinct from a proposition changing county lines, and not contestable under section 339, authorizing boundary line contests. State ex rel v District Court, 113 M 298, 129 NW 514.

3. Change of county lines

As in the change of county seat removals, the earlier provisions for the change of county lines have been abrogated by the later sections. State ex rel v Pioneer Press Co. 66 M 536, 68 NW 769; State ex rel v District Court, 113 M 298, 129 NW 514.

Changes need no longer be referred to the people. If they are given a vote it is a matter of favor and may be given under such terms and conditions as the legislature sees fit to prescribe. State ex rel v Pioneer Press Co. 66 M 536, 68 NW 769; State ex rel v District Court, 113 M 298, 129 NW 514.

Under the section as it formerly stood, the legislature was required to pass a special act with reference to each removal. The act was to be complete, except that it was to be subject to the happening of a contingency, a majority vote in favor of the change. This duty could not be delegated to the people by a

general statute permitting the question to be presented by popular petition. Roos v State, 6 M 428 (291).

Section 2. CERTAIN CITIES, ORGANIZATION INTO COUNTIES.

This section requires only a majority of those voting on the particular question submitted. Section 1 requires a majority of those voting at the general election at which the particular question is submitted. Taylor v Taylor, 10 M 107 (81, 98).

If diversity of interests really exists between cities of the second class and the rural population of the county in which such cities are located, this situation can be remedied under the provisions of this section. State ex rel v Cooke, 195 M 101, 106, 262 NW 163.

Section 3. ORGANIZED TOWNSHIPS.

The word "town" is used to denote "what is quite commonly spoken of as the New England town; that is, as a portion of the state, bounded by geographical lines, to which, to a greater or less extent, the power of local self-government is committed". State ex rel v Sharp, 27 M 38, 6 NW 408.

This section is not self-executing; consequently, the county board cannot validly organize a township without legislative authority. Town of Farley v Town of Boxville, 113 M 203, 129 NW 381.

The legislature is not limited to the organization of single townships but may provide for the organization of any number and may provide for the organization of an independent school district of 12 townships. State ex rel v Sharp, 27 M 38, 6 NW 408.

The township organization provided for by this section constitutes a political division of the state and its power, authority, and the manner of the exercise thereof are under legislative control. The town can exercise no power not conferred by statute, or which is not incidental to that expressly granted, and the authority of the officers thereof is equally so limited. Great Northern Bridge Co. v Town of Finlayson, 133 M 270, 158 NW 392; Storti v Town of Fayal, 194 M 628, 261 NW 463.

Section 4. OFFICERS, ELECTION.

The effect of this section is to make county officers elective. Spencer v Griffith, 74 M 55, 76 NW 1018; State ex rel v Berg, 133 M 65, 157 NW 907.

It is not necessary that county officers be elected in all cases. The constitutional requirements are satisfied if provision is made for election at stated periods; and where a vacancy has occurred in a regular term, the legislature may authorize the county board to appoint some one to complete the unexpired term. State ex rel v Benedict, 15 M 198 (153).

An examiner of titles under the Torrens system of registration is not a county officer within the meaning of this section. He is a subordinate officer or assistant of the court to aid in discharging the duties imposed on the court by this act. His appointment lies within the judicial power, and he is not to be considered an elective officer. State ex rel v Westfall, 85 M 437, 89 NW 175.

A special tax assessor, appointed by the State Tax Commission, for revaluation work is not a county officer within the meaning of this section to be elected by the people. State v Minnesota & Ontario Power Co. 121 M 421, 141 NW 839.

In the formation of a new county the first county board may be appointed, and for a term extending through the formation period, even though that exceed in length the ordinary term of such officers. The sparse population and slow organization give a substantial reason for giving such a length of term, and passing over a general election. Spencer v Griffith, 74 M 55, 76 NW 1018.

The term of office of a county officer appointed when a new county is created continues until the first Monday in January following the next general election at which county officers are elected in all the counties of the state. Imsdahl v Weeks, 158 M 512, 197 NW 973.

Section 5. LOCAL TAXATION, POWERS.

The effect of this section is simply to authorize the legislature to delegate to county and township organizations the power of taxing themselves. The power of local taxation meant is the power of taxing property within the geographical limits of the county or township as the case may be. Davidson v County Board, 18 M 482 (432).

The extent to which towns shall be given the power of local taxation is a matter committed by the constitution to the discretion of the legislature. State ex rel v Peltier, 103 M 32, 114 NW 90.

A statute which authorizes a municipal corporation to vote bonds in aid of a railroad is not contrary to this section. The taxes to be levied to meet such bonds are local taxes. Davidson v County Board, 18 M 482 (432).

This section is not violated by a statute which provides for the construction of a bridge between two towns in different counties and apportions the cost in a certain ratio among the towns and counties concerned. Guilder v Town of Otsego, 20 M 74 (59); Guilder v Town of Dayton, 22 M 366.

Although the state may not engage in road and bridge building, it does not follow that the legislature may not authorize towns and counties to levy taxes for such purposes. Cooke v Iverson, 108 M 388, 122 NW 251.

The legislature has no authority to grant the right to vote bonds to a majority of the taxpayers in the town. The power must be granted to the electors, or to officers selected by the electors, and cannot be given to those who are mere residents, or taxpayers. Harrington v Town of Plainview, 27 M 224, 6 NW 777.

ARTICLE XII

OF THE MILITIA

Section 1. MILITIA, ORGANIZATION.

A captain of a company of the National Guard of this state, when it is not acting as a military force, is not authorized to punish summarily by imprisonment a member of his company for a refusal to obey his orders. Nixon v Reeves, 65 M 159, 67 NW 989.

The rules and regulations of the Military Code are merely disciplinary in their nature, designed to secure higher efficiency in the military service, and a violation of them does not constitute a "criminal offense" within the meaning of section 7 of the bill of rights. The provisions of the Code authorizing the trial, in times of peace, of members of the National Guard by a court martial, for a violation of these rules and regulations, and their punishment, if found guilty, by a limited fine, or a limited imprisonment in case the fine is not paid, are not unconstitutional. Section 7 of the bill of rights should be read and construed in connection with this article. State ex rel v Wagener, 74 M 518, 523, 77 NW 424.

The importance of maintaining, instructing, and disciplining a state militia and providing adequate and sufficient means for transporting its members over the railways of the state is such that the legislature may properly place them in a class when traveling under orders in the discharge of their duties; and regulate the railway companies as to the mode of furnishing transportation; and hence L. 1909, c. 493, is not an unlawful interference with defendant's management of its own business. State ex rel v C. M. & St. P. Ry. Co. 118 M 380, 137 NW 2.

ARTICLE XIII

IMPEACHMENT

Section 1. PUNISHMENT AFTER IMPEACHMENT.

This section provides for the impeachment and removal of the state officers mentioned therein. Martin v County of Dodge, 146 M 129, 178 NW 167; State ex rel v Essling, 157 M 15, 195 NW 539.

This section provides for the removal of state officers. In enumerated cases impeachment is the method. State ex rel v Hutchinson, 206 M 446, 288 NW 845.

Section 2. REMOVAL OF INFERIOR OFFICERS.

The power to remove the officers who come within this section and the right to determine whether cause for removal exists may be given by the legislature to whatever department, officer, or board it deems most expedient. State ex rel v Peterson, 50 M 239, 52 NW 655.

The judge of probate is clearly included among the officers referred to in this section. Martin v County of Dodge, 146 M 129, 178 NW 167.

All elective municipal officers are included among the officers referred to in this section. Sykes v City of Minneapolis, 124 M 73, 144 NW 453.

This section is not to be so construed as to include the president of the city council of Minneapolis who is selected by the council members. He is not a state officer, but the presiding officer of a legislative body. A legislative body always has the right to remove its presiding officer unless prohibited by express constitutional or statutory provisions. State ex rel v Kiichli, 53 M 147, 54 NW 1069.

The supervisor of the city water works of Minneapolis, selected by the council for a two-year term but subject to removal at the council's pleasure, is not included in this section. Sykes v City of Minneapolis, 124 M 73, 144 NW 453.

The inferior officers referred to in this section cannot be removed except for malfeasance or nonfeasance in office. Sykes v City of Minneapolis, 124 M 73, 144 NW 453; State ex rel v Burnquist, 141 M 308, 170 NW 201, 609.

"Malfeasance in office" has a well-defined and well-understood meaning and refers to and includes only such misdeeds of a public officer as affect the performance of his official duties, to the exclusion of acts affecting his personal character as a private individual; the character of the man must be separated from the character of the office. Misconduct does not include acts and conduct, though amounting to a violation of the criminal laws of the state, which have no connection with the discharge of official duties. State ex rel v Burnquist, 141 M 308, 170 NW 201, 609.

A judge of probate cannot be removed merely for remarks derogatory to the president, etc., in time of war. State ex rel v Burnquist, 141 M 308, 170 NW 201, 609.

A statute which provides for suspension during investigation is valid. The power of removal carries with it by implication such powers as are necessarily incidental to the proper exercises of power given. The power of temporary suspension during investigation is such a one. State ex rel v Peterson, 50 M 239, 52 NW 655.

Where a statute has provided for removal but is silent as to suspension, the power to suspend is to be inferred. State ex rel v Megaarden, 85 M 41, 88 NW 412; Martin v County of Dodge, 146 M 129, 178 NW 167.

A statute which authorizes the governor to remove from office any collector, receiver, or custodian of public moneys for malfeasance or nonfeasance

in the performance of his official duties embraces officers who collect, receive, or have the custody of money belonging to the state or to a county, but not those who have custody only of money belonging to a city. State ex rel v Essling, 157 M 15, 195 NW 539.

This section does not limit the power of the legislature to create offices to be filled by appointment, the occupants to serve at the pleasure of the appointing power. State ex rel v Poirier, 189 M 200, 204, 248 NW 747.

Justices of the peace are state officers. Their courts are state courts. By constitutional authority, the legislature has placed the power to remove justices of the peace in the governor. That power is exclusive as against the attempt by a home rule charter to give a similar power to the city council. State ex rel v Hutchinson, 206 M 446, 288 NW 845.

ARTICLE XIV

AMENDMENT TO THE CONSTITUTION

Section 1. WHEN AMENDMENT BECOMES VALID.

(Prior to amendment of 1898)

A large number of amendments have been proposed to the people without the proposed amendment being printed in full on the ballot, or there referred to by its full title; yet it has never been suggested that such amendments are void. State ex rel v Stearns, 72 M 200, 75 NW 210.

An amendment which has been adopted does not take effect immediately upon receiving a favorable vote. It is inoperative until its adoption shall be made to appear in a manner provided by law. That is a matter of statute. City of Duluth v Duluth Street Ry. Co. 60 M 178, 62 NW 267.

Before the change in this section in 1898, proposed amendments did not need to be submitted at a general election. State ex rel v Kiewel, 86 M 136, 90 NW 160.

The words "majority of voters present and voting" means a majority of those voting upon the proposition are to be counted. A clearly expressed intention is necessary to take the case out of this general rule. This is not such a case. Dayton v City of St. Paul, 22 M 400.

(After amendment of 1898)

After the change of 1898 one who votes at a general election but who fails to vote on an amendment then submitted has his vote counted against the measure. Farrell v Hicken, 125 M 407, 147 NW 815.

Whether a constitutional amendment has been properly adopted according to the requirements of an existing constitution is a judicial question, and not a political one. It may be considered the absolute duty of the judiciary to determine whether the constitution has been amended in the manner required by the constitution unless a special tribunal has been created to determine the question. The constitution has created no such tribunal. The state board of canvassers is not such a body. McConaughy v Secretary of State, 106 M 392, 409, 410, 119 NW 408.

When the decision of the board of canvassers that an amendment was adopted is contested, the controlling presumption must be in favor of its findings and certificate. The burden of proof is upon the contestant. The recounting of only a part of the entire vote, although enough votes were recounted to change the result, was held insufficient, since the votes not recounted might show other errors sufficient to counterbalance errors in the tally of the votes recounted. McConaughy v Secretary of State, 106 M 392, 119 NW 408.

The supreme court is authorized under G. S. 1923, s. 347 (s. 205.78) to direct the secretary of state to refrain from preparing, printing, and distributing ballots containing a proposed amendment to the constitution forbidden by the provisions of this section of the constitution. Whether a proposed amendment violates this provision is a judicial question; and when it appears that it does, the court should prevent its submission to voters. Winget v Holm, 187 M 78, 244 NW 331; In re Detachment of Agricultural Lands, 188 M 237, 240, 246 NW 905.

Section 2. CONSTITUTIONAL CONVENTION.

The two-thirds vote which is necessary to recommend to the voters the calling of a constitutional convention means two-thirds of all the members elected to each branch of the legislature. State ex rel v Gould, 31 M 189, 17 NW 276.

Before the passage of a measure can require more than a majority voting thereon there must be a clearly stated intention to that effect. Such an intention is to be found here. Dayton v City of St. Paul, 22 M 400.

ARTICLE XV

MISCELLANEOUS SUBJECTS

Section 1. SEAT OF GOVERNMENT.

This section makes St. Paul the permanent seat of government until removed to Kandiyohi county by the legislature, or to some other place by the legislature and a vote of the people. Fleckton v Lamberton, 69 M 187, 72 NW 65.

ARTICLE XVI

TRUNK HIGHWAY SYSTEM

Section 1. CREATION OF SYSTEM.

Under this article the state may pay for the construction of the normal width of trunk highways where they run through villages and cities. State ex rel v Babcock, 151 M 321, 323, 186 NW 688.

This article determines that the taking of the right of way necessary for the trunk highway system is for public use. State v Voll, 155 M 72, 192 NW 188.

"Connecting", as used in this section, authorizing the legislature to add to the trunk highway system additional routes connecting newly constituted county seats and points in the state, means directly connecting and requires the additional highway to be a link in the chain uniting county seats by beginning or ending at, or passing through, new county seat. State ex rel v Babcock, 161 M 81, 200 NW 843.

A private party may not place stop-and-go signals in or upon a trunk highway without a permit from the commissioner of highways. Cities and villages may regulate traffic upon trunk highways by ordinance not in conflict with the state law, but that power cannot be extended so as to encroach upon the authority given the commissioner of highways. Automatic Signal Adv. Co. v Babcock, 166 M 416, 208 NW 132.

This article clearly provides that trunk highways shall not extend within the limits of cities of the first class. State ex rel v Babcock, 175 M 103, 220 NW 408.

Where a trunk highway and a railroad track intersect, the railroad and warehouse commission may require the construction of an overhead or underground crossing and divide the cost between the railroad company and the highway department, whether the highway is about to be opened across the tracks or is already opened across them at grade. Where a highway is carried over railroad tracks by a bridge, the railroad company may be required to construct the bridge and approaches, but not a part of the highway outside both the bridge and approaches. State v N. P. Ry. Co. 176 M 501, 223 NW 915.

If the commissioner of highways locates a trunk highway upon a village street of a greater width than the street, the cost of the additional ground is imposed on the state. Likewise is the paving of the roadway and its maintenance or the injury caused by the change of a street grade to abutting property. Maguire v Village of Crosby, 178 M 145, 226 NW 398.

This article is not contravened by the appropriation of moneys derived from the motor vehicle tax to defray the expenses of the motor vehicle division of the secretary of state's office. State ex rel v King, 184 M 252, 238 NW 334.

The order of the commissioner of highways designating the permanent rerouting of a trunk highway is not a taking of the property within the designated route; it is the exercise of a legislative function delegated to the commissioner of highways by the legislature and is conclusive on the courts as to the necessity of the taking. State v Erickson, 185 M 60, 239 NW 908.

An enlargement by the court, against objection, of condemnation proceedings to include easements over lands not sought in the state's petition is an unwarranted interference with properly delegated legislative functions. State v Erickson, 185 M 60, 239 NW 908.

The phrase "permanently improving", used in this section and in section 2, refers to permanent improvements as distinguished from ordinary repairs. The term "improving" has reference to a betterment of an established highway and does not include the acquisition of a right of way for a highway. State ex rel v Babcock, 186 M 132, 242 NW 474.

The owner of land permanently flooded by diversion of water in the construction of a highway is entitled to have such land included in highway condemnation proceedings for assessment of damages. The fact that the owner may not sue the state and may petition the legislature for compensation does not preclude the inclusion of such land in highway condemnation proceedings for assessment of damages. So far as the case of Erickson, 185 M 60, 239 NW 908, conflicts with this case it is overruled. State v Stanley, 188 M 390, 247 NW 509, 511.

A railroad company which constructs an overhead bridge in accordance with the statute, with a center pier, which is approved by the commissioner of highways, does not have the duty of caring for a reflector placed upon the pier to warn travelers on the highway. Murphy v G. N. Ry. Co. 189 M 109, 248 NW 715.

Neither this article nor the statutes relieve railroads from the burden of constructing and maintaining their roadbeds and approaches crossing a trunk highway on grade. Engstrom v Duluth, M. & N. Ry. Co. 190 M 208, 251 NW 134.

The supervision and control over the trunk highways by the commissioner of highways extends to the entire right of way. Otten v Big Lake Ice Co. 198 M 359, 270 NW 133.

The State of Minnesota does not have the power, without the consent of the Secretary of the Interior, to condemn and take the allotted Indian lands held by the United States in trust for the Indians and to open up a highway right of way across the Indian reservation. United States v State of Minnesota, 95 F(2d) 468.

Sustained in 305 U. S. 382, 59 SC 292, 83 L. Ed. 235; but the court sustained on an entirely different theory that the district court had specifically declined to consider "whether, as a matter of substantive law, the lack of assent by the Secretary of the Interior precluded maintenance of the condemnation proceeding."

Overruled, in United States v State of Minnesota, 113 F(2d) 770, 775.

Section 2. TRUNK HIGHWAY SAVINGS FUND.

The state legislature may require a county to reimburse a city or village for expenditures made by it after February 1, 1919, in carrying out the road building program outlined by this article and may reimburse the county for the amount so paid. State ex rel v Babcock, 151 M 321, 186 NW 688.

The limitation contained in this section upon the use of the trunk highway fund prevents the legislature from appropriating money out of that fund to pay damages to persons injured or suffering property loss through the negligence of the highway department or its employees in the maintenance of trunk highways. State ex rel v Babcock, 181 M 409, 232 NW 718.

Laws 1941, Chapter 548, Section 13, 14, 19, and 22, appropriating moneys from the trunk highway fund to the offices of auditor, treasurer, civil service commission, and commissioner of administration respectively to defray expenses reasonably attributable to highway matters, is not violative of Article 16. The test whether an appropriation is toward a highway purpose within the meaning of Article 16 is not whether each dollar appropriated is earmarked for each particular item of highway expense, but rather whether the charge upon the highway fund accurately reflects highway expenses, as borne by the four offices and departments, and does not exceed the amount of expense properly attributable to highway matters. Cory v King, 214 M 535, 8 NW(2d) 614.

The commissioner of highways has no power to purchase private property which is near the right of way of a trunk highway, but not a part thereof. State v Werder, 200 M 148, 273 NW 714.

This section requires that the highway fund be used solely for highway purposes. Hence, an act (1939 c. 431 art. 2 s. 20) imposing upon that fund a charge to be used to defray the general costs of government, is by that much unconstitutional. Cory v King, 209 M 431, 296 NW 506.

Section 3. TAXATION OF MOTOR VEHICLES.

(Prior to amendment of 1932)

This section is not contravened by an act providing for the taxation of motor vehicles, once used on the public streets and highways, on a more onerous basis than other personal property. State v Peterson, 159 M 269, 198 NW 1011.

An act which classifies motor trucks for purposes of taxation is not invalid under this section. McReavy v Holm, 166 M 23, 206 NW 942.

The registration statute and the gross earnings statute are in conflict. The former must yield to the latter for the reason that the constitutional authority to pass the registration tax exists only where the tax so provided is in lieu of all other taxes; and also for the reason that this distinction as between appellant's motor vehicles and those owned by others who do not pay a gross earnings tax is not real, but subjects appellant's property, its motor vehicles, to double taxation which, under the circumstances destroys the constitutional uniformity set forth in Article 9 s. 1. American Ry. Exp. Co. v. Holm, 169 M 323, 211 NW 467. See also American Ry. Exp. Co. v Holm, 173 M 72, 216 NW 542. See Railway Exp. Co. v Holm, 180 M 268, 230 NW 815.

New and unused motor vehicles in the hands of the dealer for sale on May first, which are not sold during the year nor become users of public highways, are not subject to the motor vehicle tax, but are taxable as personal property. Such motor vehicles, when sold after May first for use on the public highways of this state, become subject to the motor vehicle tax, but the dealer, by paying the motor vehicle tax thereon and adding the amount to the price exacted from the purchaser, does not become entitled to a reduction or abatement of its assessed ad valorem tax. State ex rel v Minnesota Tax Commission, 178 M 302, 227 NW 43.

L. 1931, c 58, relating to the taxation of automobiles of dealers in new and unused motor vehicles, does not offend any constitutional provision. City of Minneapolis v Armson, 188 M 168, 246 NW 660.

(After amendment of 1932)

Exacting a motor vehicle tax from an express company in addition to a gross earnings tax (which is in lieu of all other taxes except those on motor vehicles) is not a denial of equal protection or due process of law. State ex rel v Holm, 209 M 9, 295 NW 297.

The registration tax on motor vehicles, as applied to an army officer, claiming to be a nonresident of the state, who resides on a federal military reservation in Minnesota and has registered his car and acquired a license and license plates therefor under and pursuant to the regulations enforced on the reservation by its commandant, does not violate the equal protection clause either (a) because the statute exempts residents from payment of property taxes on their cars or (b) because it allows residents of other states or countries, whose cars have been registered at home and bear the home license plates, to operate them on Minnesota highways for a time without paying the tax. Storaasli v Minnesota, 283 US 57, 62, 51 SC 354, 75 L. Ed. 841.

Section 4. STATE HIGHWAY BONDS.

An appropriation of moneys to defray the expenses for issuing motor vehicle licenses and collecting the money therefor from the moneys collected in the motor vehicle division by the secretary of state's office, does not contravene this article. State ex rel v Holm, 184 M 250, 238 NW 334.

SCHEDULE

Adoption of state constitution could not change right to tax immunity granted to university by territorial legislature, for such rights were contractual obligations, and university was functioning in full compliance with its charter obligations at time constitution was adopted in 1857. Trustees of Hamline University v Peacock, 217 M 399, 14 NW(2d) 773.

Section 2. TERRITORIAL LAWS CONTINUED.

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

If a provision of the laws of the Territory of Minnesota was not consistent with the constitution of the United States, it was void at the time of the adoption of the constitution of Minnesota. This section, by necessary implication, excludes such a provision from those laws which are to remain in force until altered or repealed. St. Paul & S. C. R. Co. v Gardner, 19 M 132, 140 (99).

A territorial act exempted public burying grounds from taxes and assessments and was, unless repugnant to the constitution of 1857, continued in force and effect by this section. Since the constitution provided for an exemption of public burying grounds from general taxes, it is not easy to find a statute repugnant thereto when it grants a like exemption from local assessments. City of St. Paul v Oakland Cemetery Assn. 134 M 441, 443, 159 NW 962.

By virtue of this section all laws in force in the territory of Minnesota, not repugnant to the constitution, remained in force until they expired by their own limitation or were altered or repealed by the legislature. State ex rel v Essling, 157 M 15, 195 NW 539. See also State ex rel v Quinlivan, 198 M 65, 76, 268 NW 858.

Since territorial days public policy has favored the exemption of public burying grounds from taxes and assessments. A statute to that effect was in force at the adoption of the constitution, and not being repugnant to that document, is continued in force by this section. City of St. Paul v Oakland Cemetery Assn. 134 M 441, 159 NW 962.

See also, Trustees of Hamline University v Peacock, 217 M 399, 14 NW(2d) 773.

Section 5. TERRITORIAL OFFICERS CONTINUE UNTIL SUPERSEDED.

Section 5 of the constitutional schedule declares that "all territorial officers, civil and military, now holding their offices under the authority of the United States, or of the territory of Minnesota shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the state." State ex rel v Quinlivan, 198 M 65, 69, 268 NW 858.

Section 16. FIRST ELECTION; WHEN HELD.

Such words as "one thousand eight hundred and seventy-one", immediately following the month and day of the month, ordinarily mean the year, though the word "year" is not used. The year is expressed in the same way in section 16 of the schedule to the constitution. State v Munch, 22 M 67, 71.