CHAPTER VI.

OF THE ENACTMENT OF LAWS.

When the supreme power of a country is wielded by a single man, or by a single body of men, any discussion, in the courts, of the rules which should be observed in the enactment of laws must generally be without practical value, and in fact impertinent; for, whenever the unfettered sovereign power of any country expresses its will in the promulgation of a rule of law, the expression must be conclusive, though proper and suitable forms may have been wholly omitted in declaring it. It is a necessary attribute of sovereignty that the expressed will of the sovereign is law; and while we may question and cross-question the words employed, to make certain of the real meaning, and may hesitate and doubt concerning it, yet, when the intent is made out, it must govern, and it is idle to talk of forms that should have surrounded the expression, but do not. But when the legislative power of a State is to be exercised by a department composed of two branches, or, as in most of the American States, of three branches, and these branches have their several duties marked out and prescribed by the law to which they owe their origin, and which provides for the exercise of their powers in certain modes and under certain forms, there are other questions to arise than those of the mere intent of the law-makers, and sometimes forms become of the last importance. For in such case not only is it important that the will of the law-makers be clearly expressed, but it is also essential that it be expressed in due form of law; since nothing becomes law simply and solely because men who possess the legislative power will that it shall be, unless they express their determination to that effect, in the mode pointed out by the instrument which invests them with the power, and under all the forms which that instrument has rendered essential.\(^1\) And if, when the constitution was adopted,

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\(^1\) A bill becomes a law only when it has gone through all the forms made necessary by the constitution to give it validity. James v. Hutchinson, 43 Ala. 721; State v. Platt, 2 S. C. 150, 16 Am. Rep. 647; People v. Commissioners of Highways, 54 N. Y. 276; Moody v. State, 48 Ala. 115, 17 Am. Rep. 28; Legg v. Annapolis, 42 Md. 203; Walnut v. Wade, 163 U. S. 683. [And where the constitution prescribes an interval of time to elapse after the adjournment of the legislature, the full period of time must intervene between the date of adjourn-
there were known and settled rules and usages, forming a part of the law of the country, in reference to which the constitution has evidently been framed, and these rules and usages required the observance of particular forms, the constitution itself must also be understood as requiring them, because in assuming their existence, and being framed with reference to them, it has in effect adopted them as a part of itself, as much as if they were expressly incorporated in its provisions. Where, for an instance, the legislative power is to be exercised by two houses, and by settled and well-understood parliamentary law these two houses are to hold separate sessions for their deliberations, and the determination of the one upon a proposed law is to be submitted to the separate determination of the other, the constitution, in providing for two houses, has evidently spoken in reference to this settled custom, incorporating it as a rule of constitutional interpretation; so that it would require no prohibitory clause to forbid the two houses from combining in one, and jointly enacting laws by the vote of a majority of all. All those rules which are of the essentials of law-making must be observed and followed; and it is only the customary rules of order and routine, such as in every deliberative body are always understood to be under its control, and subject to constant change at its will, that the constitution can be understood to have left as matters of discretion, to be established, modified, or abolished by the bodies for whose government in non-essential matters they exist.

Of the two Houses of the Legislature.  

In the enactment of laws the two houses of the legislature are of equal importance, dignity, and power, and the steps which

1 The wisdom of a division of the legislative department has been demonstrated by the leading writers on constitutional law, as well as by general experience. See De Lolme, Const. of England, b. 2, c. 3; Federalist, No. 23; 1 Kent, 208; Story on Const. §§ 545-570. The early experiments in Pennsylvania and Georgia, based on Franklin's views, for which see his Works, Vol. V. p. 105, were the only ones made by any of the original States with a single house. The first Constitution of Vermont also provided for a single legislative body.
result in laws may originate indifferently in either. This is
the general rule; but as one body is more numerous than the
other, and more directly represents the people, and in many of
the States is renewed by more frequent elections, the power to
originate all money bills, or bills for the raising of revenue, is
left exclusively, by the constitutions of some of the States, with
this body, in accordance with the custom in England, which
does not permit bills of this character to originate with the
House of Lords. \(^1\) To these bills, however, the other house may
propose alterations, and they require the assent of that house
to their passage, the same as other bills. The time for the
meeting of the legislature will be such time as is fixed by the
constitution or by statute; but it may be called together by
the executive in special session as the constitution may pre-
scribe, and the two houses may also adjourn any general session
to a time fixed by them for the holding of a special session, if
any agreement to that effect can be arrived at; and if not,
power is conferred by a majority of the constitutions upon the
executive to prorogue and adjourn them. And if the executive
in any case undertake to exercise this power to prorogue and
adjourn, on the assumption that a disagreement exists between
the two houses which warrants his interference, and his action
is acquiesced in by those bodies, who thereupon cease to hold
their regular sessions, the legislature must be held in law to
have adjourned, and no inquiry can be entered upon as to the
rightfulness of the governor’s assumption that such a disagree-
ment existed. \(^2\)

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\(^1\) There are provisions in the Constitutions of Massachusetts, Delaware, Min-
nesota, Mississippi, New Hampshire, New Jersey, Pennsylvania, South Carolina,
Vermont, Indiana, Oregon, Kentucky, Louisiana, Alabama, Arkansas, Georgia,
Virginia, Maine, and Colorado, requiring revenue bills to originate in the more
popular branch of the legislature, but allowing the Senate the power of amend-
ment usual in other cases. A bill to license saloons is a police regulation, not
a revenue law. State v. Wright, 14 Oreg. 365, 12 Pac. 708. Money cannot
be appropriated by joint resolution in Indiana. May v. Rice, 91 Ind. 516. Dur-
ing the second session of the forty-first Congress, the House of Representatives
by their vote denied the right of the Senate under the Constitution to origi-
nate a bill repealing a law imposing taxes; but the Senate did not assent to
this conclusion. In England the Lords are not allowed to amend money bills,
and by resolutions of 5th and 6th July, 1809, the Commons deny their right even
to reject them. [Law directing pay-
ment of bounties by county treasurer, such payments to be credited to him by
state treasurer, is void under constitu-
tional provision that “no money shall be
paid out of the treasury except upon ap-
propriations made by law and on warrant
drawn by the proper officer.” Institution
for Edu. Mute & Blind v. Henderson, 18
Col. 98, 31 Pac. 714, 18 L. R. A. 398.]

\(^2\) This question became important, and
was passed upon in People v. Hatch, 33
III. 9. The Senate had passed a resolution
for an adjournment of the session sine die
on a day named, which was amended by
the House by fixing a different day. The
There are certain matters which each house determines for itself, and in respect to which its decision is conclusive. It chooses its own officers, except where, by constitution or statute, other provision is made; it determines its own rules of proceeding; it decides upon the election and qualification of its own members. These powers it is obviously proper should rest with

L. R. A. upon power as to adjournment of legislature.]

1 In People v. Mahaney, 13 Mich. 481, it was held that the correctness of a decision by one of the houses, that certain persons had been chosen members, could not be inquired into by the courts. In that case a law was assailed as void, on the ground that a portion of the members who voted for it, and without whose votes it would not have had the requisite majority, had been given their seats in the house in defiance of law, and to the exclusion of others who had a majority of legal votes. See the same principle in State v. Jarrett, 17 Md. 309. See also Lamb v. Lynd, 44 Pa. St. 530; Opinion of Justices. 56 N. Y. 570. [The persons who are to constitute the prima facie house, and to organize and examine into the qualifications of the members, to determine contests, &c., are those who bring certificates of election from the proper officers. Re Gunn, 50 Kan. 155, 22 Pac. 413, 948, 19 L. R. A. 519, a case where two rival bodies each claimed to be the true house of representatives.] In Kansas a question having some resemblance was disposed of differently. The legislature gave seats to several persons as representatives of districts not entitled to representation at all. By the concurrent vote of four of these a certain bill was passed. Held, that it was illegally passed, and did not become a law. State v. Francis, 20 Kan. 724. The legislature cannot transfer its power to judge of the election of its members, to the courts. State v. Gilman, 20 Kan. 551, 27 Am. Rep. 159. See Dalton v. State, 43 Ohio St. 652. But courts may procure and present evidence to the legislature. In re McNeill, 111 Pa. St. 255, 2 Atl. 941. The legislative power to judge of the election of members is not possessed by municipal bodies: People v. Hall, 49 N. Y. 117; nor by boards of supervisors: Robinson v. Cheboygan Supervisors, 49 Mich. 321, 13 N. W. 622; except when conferred by
the body immediately interested, as essential to enable it to enter upon and proceed with its legislative functions without liability to interruption and confusion. In determining questions concerning contested seats, the house will exercise judicial power, but generally in accordance with a course of practice which has sprung from precedents in similar cases, and no other authority is at liberty to interfere.

Each house has also the power to punish members for disorderly behavior, and other contempts of its authority, as well as to expel a member for any cause which seems to the body to render it unfit that he continue to occupy one of its seats. This power is generally enumerated in the constitution among those which the two houses may exercise, but it need not be specified in that instrument, since it would exist whether expressly conferred or not. It is "a necessary and incidental power, to enable the house to perform its high functions, and is necessary to the safety of the State. It is a power of protection. A member may be physically, mentally, or morally wholly unfit; he may be affected with a contagious disease, or insane, or noisy, violent, and disorderly, or in the habit of using profane, obscene, and abusive language." And, "independently of parliamentary customs and usages, our legislative houses have the power to protect themselves by the punishment and expulsion of a member;" and the courts cannot inquire into the justice of the decision, or even so much as examine the proceedings to see whether or not the proper opportunity for defence was furnished.¹

¹ Law, Mayor v. Morgan, 7 Mart. n. s. 1, 18 Am. Dec. 252; Peabody v. School Committee, 115 Mass. 382; Coolcy v. Fitzgerald, 41 Mich. 2, 2 N. W. 179. See Commonwealth v. Leech, 44 Pa. St. 332; Doran v. De Long, 49 Mich. 552, 12 N. W. 818. To exclude the jurisdiction of the courts, the council's power must be unequivocal. State v. Kempf, 69 Wis. 470, 31 N. W. 226; State v. Gates, 35 Minn. 385, 28 N. W. 927. The power of the court to call a new election to elect a member of a general assembly is not precluded by the power of the house to pass upon the election of its members, even though the calling the election is a passing upon the validity of a prior election. State v. South Kingstown, 18 R. I. 258, 27 Atl. 599, 22 L. R. A. 65. While each house judges of the election and qualifications of its members, and while the duties of canvassing boards are purely ministerial, yet the court will not aid a clearly ineligible candidate by issuing mandamus to the board of canvassers to give the candidate a certificate of election, even though it is admitted that he received the plurality vote. People v. State Bd. of Canvassers, 129 N. Y. 360, 29 N. E. 345, 14 L. R. A. 646. But it will correct a fraud through which the candidate rightfully entitled is deprived of his certificate, as that makes him prima facie a member. Elysson v. Barnes, 23 Utah, 182, 63 Pac. 590. House, by a majority vote of all members elected, may retire its speaker and elect another. Re Speakership, 15 Col. 520, 25 Pac. 707, 11 L. R. A. 241.
Each house may also punish contempts of its authority by other persons, where they are committed in its presence, or where they tend directly to embarrass or obstruct its legislative proceedings; and it requires for the purpose no express provision of the constitution conferring the authority. It is not very well settled what are the limits to this power; and in the leading case in this country the speaker's warrant for the arrest of the person adjudged guilty of contempt was sustained, though it did not show in what the alleged contempt consisted. In the leading English case a libellous publication concerning the house was treated as a contempt; and punishment has sometimes been inflicted for assaults upon members of the house, not committed in or near the place of sitting, and for the arrest of members in disregard of their constitutional privilege.

But in America the authority of legislative bodies in this regard is much less extensive than in England, and we are in danger, perhaps, of being misled by English precedents. The Parliament, before its separation into two bodies, was a high court of judicature, possessed of the general power, incident to such a court, of punishing contempts, and after the separation the power remained with each body, because each was considered to be a court of judicature and exercised the functions of such a court. American legislative bodies have not been clothed with the judicial function, and they do not therefore possess the general power to punish for contempt; but, as incidental to their legislative authority, they have the power to punish as contempts those acts of members or others which tend to obstruct the performance of legislative duty, or to defeat, impede, or embarrass the exercise of legislative power.

When imprisonment is imposed as a punishment, it must terminate with the final adjournment of the house, and if the prisoner be not then discharged by its order, he may be released on habeas corpus.

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1 Anderson v. Dunn, 6 Wheat. 201; Burdett v. Abbott, 14 East, 1; Burnham v. Morrissey, 14 Gray, 296; State v. Matthews, 37 N. H. 450. See post, p. 651, note.

2 Anderson v. Dunn, 6 Wheat. 201; questioned and rejected as to some of its reasoning in Kilbourn v. Thompson, 103 U. S. 108. And see Gossen v. Howard, 10 Q. B. 451; Stewart v. Blaine, 1 McArthur, 433.

3 Burdett v. Abbott, 14 East, 1.

4 Mr. Potter discusses such a case in his edition of Dwaris on Statutes, c. 18, and Mr. Robinson deals with the case of an arrest for a criminal act, not committed in the presence of the house, in the preface to the sixth volume of his Practice. As to the general right of Parliament to punish for contempt, see Gossen v. Howard, 10 Q. B. 411.

5 See the subject considered fully and learnedly in Kilbourn v. Thompson, 103 U. S. 108.

6 Jefferson's Manual, § 18; Prichard's
By common parliamentary law, the members of the legislature are privileged from arrest on civil process during the session of that body, and for a reasonable time before and after, to enable them to go to and return from the same. By the constitutions of some of the States this privilege has been enlarged, so as to exempt the persons of legislators from any service of civil process, and in others their estates are exempt from attachment for some prescribed period. For any arrest contrary to the parliamentary law or to these provisions, the house of which the person arrested is a member may give summary relief by ordering his discharge, and if the order is not complied with, by punishing the persons concerned in the arrest as for a contempt of its authority. The remedy of the member, however, is not confined to this mode of relief. His privilege is not the privilege of the house merely, but of the people, and is conferred to enable him to discharge the trust confided to him by his constituents; and if the house neglect to interfere, the court from which the process issued should set it aside on the facts being represented, and any court or officer having authority to issue writs of habeas corpus may also inquire into the case, and release the party from the unlawful imprisonment.

Case, 1 Lev. 165; 1 Sid. 245, T. Raym. 120.

1 "Senators and representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest. They shall not be subject to any civil process during the session of the legislature, or for fifteen days next before the commencement and after the termination of each session." Const. of Mich. art. 4, § 7. A like exemption from civil process is found in the Constitutions of Kansas, Nebraska, Alabama, Arkansas, California, Missouri, Mississippi, Wisconsin, Indiana, Oregon, and Colorado. Exemption from arrest is not violated by the service of citations or declarations in civil cases. Gentry v. Griffith, 27 Tex. 461; Case v. Rorabacher, 15 Mich. 537. So, of a member of Congress during the session. Merrick v. Giddings, MacA. & Mack. 55; [Worth v. Norton, 56 S. C. 56, 479, 33 S. E. 792, 35 S. E. 135, 45 L. R. A. 563; 76 Am. St. 524.] But in Miner v. Markham, 24 Fed. Rep. 367, a California member en route to Washington was held exempt from service of summons in Wisconsin.

2 The Constitution of Rhode Island provides that "the person of every member of the General Assembly shall be exempt from arrest, and his estate from attachment, in any civil action, during the session of the General Assembly, and two days before the commencement and two days after the termination thereof, and all process served contrary hereto shall be void." Art. 4, § 5.


4 Courts do not, however, ex officio notice the privileges of members; they must be brought to their attention by some proper motion. Prents v. Commonwealth, 5 Rand. 607, 16 Am. Dec. 782, and note.

5 On this subject, Cushing on Law and Practice of Parliamentary Assemblies, §§ 516-527, will be consulted with profit. It is not a trespass to arrest a person privileged from arrest, even though the officer may be aware of the fact. The arrest is only voidable; and in general the party will waive the privilege unless he applies for discharge by motion or on habeas corpus. Tarlton v. Fisher, Doug. 671; Fletcher v. Baxter, 2 Ark. 224; Fox v. Wood, 1 Rawle, 143; Sperry v. Willard,
Each house must also be allowed to proceed in its own way in the collection of such information as may seem important to a proper discharge of its functions, and whenever it is deemed desirable that witnesses should be examined, the power and authority to do so is very properly referred to a committee, with any such powers short of final legislative or judicial action as may seem necessary or expedient in the particular case. Such a committee has no authority to sit during a recess of the house which has appointed it, without its permission to that effect; but the house is at liberty to confer such authority if it see fit. A refusal to appear or to testify before such committee, or to produce books or papers, would be a contempt of the house; but the committee cannot punish for contempt; it can only report the conduct of the offending party to the house for its action. The power of the committee will terminate with the final dissolution of the house appointing it.

Each house keeps a journal of its proceedings, which is a public record, and of which the courts are at liberty to take judicial notice. If it should appear from these journals that

1 Wend. 32; Wilmouth v. Burt, 7 Met. 257; Aldrich v. Aldrich, 8 Met. 102; Chase v. Fish, 16 Me. 182. But where the privilege is given on public grounds, or for the benefit of others, discharge may be obtained on the motion of any party concerned, or made by the court sua sponte.

2 Branham v. Lange, 10 Ind. 497; Marshall v. Harwood, 7 Md. 406. See also parliamentary cases, 6 Grey, 374; 9 Grey, 350; 1 Chandler, 59.

3 In re Falvey, 7 Wis. 590; Burnham v. Morrissey, 11 Gray, 226; People v. Keeler, 93 N. Y. 463. In the last case a statute expressly permitted the house to punish for such contempt. But the privilege of a witness to be exempt from a compulsory disclosure of his own criminal conduct is the same when examined by a legislative body or committee as when sworn in court. Emery’s Case, 107 Mass. 172. In the Matter of Kilbourn (May, 1876), Chief Justice Carter, of the Supreme Court of the District of Columbia, discharged on habeas corpus a person committed by the House of Representatives for a contempt in refusing to testify; holding that as the refusal was an indictable offence by statute, a trial therefor

must be in the courts, and not elsewhere. If this is correct, the necessities of legislation will require a repeal of the statute; for if, in political cases, the question of punishment for failure to give information must be left to a jury, few convictions are to be expected, and no wholesome fear of the consequences of a refusal. The legality of the same arrest was considered afterwards by the Federal Supreme Court, and was not sustained, the court holding that the house exceeded its authority in the attempted investigation. Kilbourn v. Thompson, 103 U. S. 103. On questions of conflict between the legislature and the courts in matters of contempt, the great case of Stockdale v. Hansard, 9 Ad. & El. 1; s. c. 5 Per. & Dav. 339, is of the highest interest. See May, Const. Hist. c. 7.

any act did not receive the requisite majority, or that in respect to it the legislature did not follow any requirement of the constitution, or that in any other respect the act was not constitutionally adopted, the courts may act upon this evidence, and

v. State, 48 Ala. 115; Houston, &c, R. R. Co. v. Odum, 53 Tex. 348; Gardner v. The Collector, 6 Wall. 499; South Ottawa v. Perkins, 94 U. S. 260. The presumption always is, when the act, as signed and enrolled, does not show the contrary, that it has gone through all necessary formalities; State v. McConnect, 3 Lawn, 341; Blessing v. Galveston, 42 Tex. 641; State v. Francis, 20 Kan. 721; and some cases hold that the enrolled is conclusive evidence of its due passage and validity. See Sherman v. Story, 30 Cal. 253; People v. Burt, 43 Cal. 560; Louisiana Lottery Co. v. Richoux, 23 La. Ann. 743, 8 Am. Rep. 602; Greer v. Weller, 32 Miss. 650; Swan v. Buck, 40 Miss. 298; Ex parte Wren, 63 Miss. 612; Pacific R. R. Co. v. Governor, 23 Mo. 553; State v. Swift, 10 Nev. 176; Pangborn v. Young, 32 N. J. 20; Evans v. Brown, 30 Ind. 614; Duncombe v. Trindle, 12 Iowa, 1; Terr. v. O'Connor, 5 Dak. 397, 41 N. W. 740; [Re Tipton, 28 Tex. App. 438, 13 S. W. 610, 8 La. R. A. 320, and note; Narregar v. Brown County, 14 S. D. 397, 55 N. W. 302; State v. Bacon, 14 S. D. 394, 55 N. W. 605; Yolo County v. Colgan, 192 Cal. 265, 64 Pac. 403.] Others hold that the \textit{prima facie} case may be overthrown by the journals: Spangler v. Jacoby, 14 Ill. 297; Houston, &c. R. R. Co. v. Odum, 53 Tex. 348; Burr v. Ross, 19 Ark. 250; Smithie v. Campbell, 41 Ark. 471; Jones v. Hutchinson, 43 Ala. 721; Moog v. Randolph, 77 Ala. 597; Berry v. Baltimore, &c. R. R. Co., 41 Md. 446, 20 Am. Rep. 69; Green v. Weller, 32 Miss. 650; People v. McElroy, 72 Mich. 440, 40 N. W. 750; Brewer v. Mayor, &c., 86 Tenn. 732, 9 S. W. 165; [State v. Frank, 60 Neb. 327, 61 Neb. 679, 83 N. W. 74, 85 N. W. 950; Lambert v. Smith, 98 Va. 268, 38 S. E. 938; State v. Burlington & M. R. Co., 60 Neb. 741, 84 N. W. 254:] so, if an act is passed over a veto, differing from an ordinary enrolled act. State v. Denny, 118 Ind. 449, 12 N. E. 274. The journal entry, if in compliance with a constitutional requirement, is the best evidence of a resolution, and cannot be contradicted. Koehler v. Hill, 60 Iowa, 543, 15 N. W. 609. So, as to the entry of the number voting. Wise v. Bigger, 79 Va. 200. [And as to which bill was voted on. State v. Wendler, 94 Wis. 309, 68 N. W. 759.] The journal cannot be contradicted by parol to show that a mere title or skeleton was introduced as a bill. Attorney-General v. Rice, 64 Mich. 385, 31 N. W. 203. If a journal shows an act passed, it cannot be attacked on the ground that some members voting for it were improperly seated. State v. Smith, 44 Ohio St. 518, 7 N. E. 447, 12 N. E. 820. And see Opinions of Justices, 52 N. H. 622; Hensoldt v. Petersburg, 63 Ill. 157; Larrison v. Peoria, &c. R. R. Co., 77 Ill. 11; People v. Commissioners of Highways, 64 N. Y. 276; English v. Oliver, 23 Ark. 877; Inre Wellman, 20 Vt. 635; Oakburn v. State, 5 W. Va. 85; Moody v. State, 48 Ala. 115, 17 Am. Rep. 25; State v. Platt, 2 S. C. 150, 10 Am. Rep. 417; Worthen v. Badget, 32 Ark. 406; Southwark Bank v. Commonwealth, 29 Pa. St. 416; Ford v. Godman, 20 Ohio St. 1; People v. Starne, 35 Ill. 121; Supervisors v. Keenan, 2 Minn. 221; People v. Mahaney, 18 Mich. 491; Berry v. Doane Point R. R. Co., 41 Md. 446. Compare Brodnax v. Groom, 64 N. C. 244; Annapolis v. Harvard, 52 Md. 471. It has been held that where the constitution requires previous notice of an application for a private act, the courts cannot go behind the act to inquire whether the notice was given. Brodnax v. Groom, 61 N. C. 244. See People v. Hurlbut, 24 Mich. 44; Day v. Stetson, 8 Me. 305; M'Clinch v. Sturgis, 72 Me. 268; Davis v. Gaines, 48 Ark. 370, 3 S. W. 164; [Speer v. Athens, 85 Ga. 49, 11 S. E. 692, 0 L. R. A. 462. As to what papers constitute the journal and what changes may be made in them and when, see Montgomery B. B. Works v. Gaston, 120 Ala. 425, 28 So. 497, 51 L. R. A. 306, 85 Am. St. 42. As to use to be made of the journals in determining the true contents of a bill, see Milwaukee County v. Isenring, 109 Wis. 9, 85 N. W. 131.]
adjudge the statute void. But whenever it is acting in the apparent performance of legal functions, every reasonable presumption is to be made in favor of the action of a legislative body; it will not be presumed in any case, from the mere silence of the journals, that either house has exceeded its authority, or disregarded a constitutional requirement in the passage of legislative acts, unless where the constitution has expressly required the journals to show the action taken, as, for instance, where it requires the yeas and nays to be entered.

1 See cases cited in preceding note; also Prescott v. Trustees, &c., 19 Ill. 324; Kochler v. Hill, 60 Iowa, 543, 549, 14 N. W. 738, 15 N. W. 609.

2 Miller v. State, 3 Ohio St. 475; McCullough v. State, 11 Ind. 424; Supervisors v. People, 25 Ill. 181; Hall v. Steele, 52 Ala. 563; Glidewell v. Martin, 11 S. W. 382; People v. Dunn, 12 Pac. 110; State v. Brown, 20 Fla. 407; Matter of Vanderberg, 28 Kan. 243; State v. Peterson, 38 Minn. 143, 39 N. W. 443; State v. Algood, 87 Tenn. 163, 10 S. W. 310; Hunt v. State, 22 Tex. App. 396, 3 S. W. 233. But where a statute can only be enacted by a certain majority, e. g. two-thirds, it must affirmatively appear by the printed statute or the act on file that such a vote was had. People v. Commissioners of Highways, 64 N. Y. 276. It seems that, in Illinois, if one claims that a supposed law was never passed, and relies upon the records to show it, he must prove them. Illinois Cent. R. R. Co. v. Wren, 48 Ill. 77; Grob v. Cushman, 45 Ill. 119; Bedard v. Hall, 44 Ill. 91. The court will not act upon the admission of parties that an act was not passed in the constitutional manner. Happel v. Brethauer, 70 Ill. 196; Attorney-General v. Rice, 64 Mich. 385, 31 N. W. 263.

The Constitution of Alabama, art. 4, s 27, requires the presiding officer of each house, in the presence of the house, to sign acts “after the titles have been publicly read immediately before signing, and the fact of signing shall be entered on the journal.” This seems a very imperative requirement. But in Colorado a like provision is held directory; and the presumption in case of silence of journal is in favor of the act. In re Roberts, 5 Col. 525. “That requirement to enter yeas and nays is mandatory, see Comrs of Stanly Co. v. Snuggs, 121 N. C. 304, 58 S. E. 539, 39 L. R. A. 439. That journals must affirmatively show full compliance with constitutional requirements, see Cohn v. Kingsley, — Idaho —, 49 Pac. 985, 38 L. R. A. 74, an instructive case; contra, Lafferty v. Huffman, 99 Ky. 50, 35 S. W. 123, 32 L. R. A. 203; McKinnon v. Cotner, 39 Oreg. 588, 49 Pac. 956. For other cases holding constitutional requirements mandatory, see Union Bank v. Comm’s of Oxford, 119 N. C. 214, 25 S. E. 966, 34 L. R. A. 487; Mullan v. State, 114 Cal. 578, 46 Pac. 670, 34 L. R. A. 262. The court will not declare a statute void because of fraud in procuring its enrollment and the signatures of the proper officers thereto. Such fraud must be corrected by the legislature. Carr v. Coke, 110 N. C. 223, 22 S. E. 18, 28 L. R. A. 737, 47 Am. St. 501. Duly enrolled bill properly filed is conclusive. State v. Jones, 6 Wash. 452, 34 Pac. 291, 23 L. R. A. 940, and see note in L. R. A. giving cases pro and con: contra, Normon v. Kentucky Bd. of Managers, 93 Ky. 557, 20 S. W. 901, 18 L. R. A. 566. Parol testimony is inadmissible to impeach legislative records. White v. Hinton, 3 Wyo. 733, 30 Pac. 953, 17 L. R. A. 46. Upon conclusiveness of legislative records, see Detroit v. Rentz, 91 Mich. 78, 51 N. W. 787, 16 L. R. A. 55. And upon records of Secretary of State in regard to passage of bills and submission to governor, see Lankford v. Somerset Co., 72 Md. 105, 20 Atl. 1017, 22 Atl. 412, 11 L. R. A. 491. Matters of detail will be presumed properly performed where journal records the doing of the main act and is silent as to the subsidiary matters. Barber Asphalt Co. v. Hunt, 100 Mo. 22, 13 S. W. 98, 8 L. R. A. 110, 18 Am. St. 530.]
The law also seeks to cast its protection around legislative sessions, and to shield them against corrupt and improper influences, by making void all contracts which have for their object to influence legislation in any other manner than by such open and public presentation of facts, arguments, and appeals to reason as are recognized as proper and legitimate with all public bodies. While counsel may be properly employed to present the reasons in favor of any public measure to the body authorized to pass upon it, or to any of its committees empowered to collect facts and hear arguments, and parties interested may lawfully contract to pay for this service,\(^1\) yet to secretly approach the members of such a body with a view to influence their action at a time and in a manner that do not allow the presentation of opposite views, is improper and unfair to the opposing interest; and a contract to pay for this irregular and improper service would not be enforced by the law.\(^2\)

\(^1\) See Willey v. Collier, 7 Md. 273; Bryan v. Reynolds, 5 Wis. 200; Brown v. Brown, 34 Barb. 533; Russell v. Burton, 60 Barb. 539; [Houlton v. Nichol, 93 Wis. 393; 67 N. W. 715; 33 L. R. A. 166.]

\(^2\) This whole subject was very fully considered in the case of Frost v. Inhabitants of Belmont, 6 Allen, 152, which was a bill filed to restrain the payment by the town of demands to the amount of nearly $9,000, which the town had voted to pay as expenses in obtaining their act of incorporation. By the court, Chapman, J.: "It is to be regretted that any persons should have attempted to procure an act of legislation in this Commonwealth, by such means as some of these items indicate. By the regular course of legislation, organs are provided through which any parties may fairly and openly approach the legislature, and be heard with proofs and arguments respecting any legislative acts which they may be interested in, whether public or private. These organs are the various committees appointed to consider and report upon the matters to be acted upon by the whole body. When private interests are to be affected, notice is given of the hearings before these committees; and thus opportunity is given to adverse parties to meet face to face and obtain a fair and open hearing. And though these committees properly dispense with many of the rules which regulate hearings before judicial tribunals, yet common fairness requires that neither party shall be permitted to have secret consultations, and exercise secret influences that are kept from the knowledge of the other party. The business of 'lobby members' is not to go fairly and openly before the committees, and present statements, proofs, and arguments that the other side has an opportunity to meet and refute if they are wrong, but to go secretly to the members and ply them with statements and arguments that the other side cannot openly meet, however erroneous they may be, and to bring illegitimate influence to bear upon them. If the 'lobby member' is selected because of his political or personal influence, it aggravates the wrong. If his business is to unite various interests by means of projects that are called 'leg-rolling', it is still worse. The practice of procuring members of the legislature to act under the influence of what they have eaten and drank at houses of entertainment, tends to render those of them who yield to such influences wholly unfit to act in such cases. They are disqualified from acting fairly towards interested parties or towards the public. The tendency and object of these influences are to obtain by corruption what it is supposed cannot be obtained fairly.

"It is a well-established principle, that all contracts which are opposed to public policy, and to open, upright, and fair dealing, are illegal and void. The prin-
The Introduction and Passage of Bills. (a)

Any member may introduce a bill in the house to which he belongs, in accordance with its rules; and this he may do at any

ciple was fully discussed in Fuller v. Dame, 18 Pick. 472. In several other
States it has been applied to cases quite analogous to the present case.

"In Pingrey v. Washburn, 1 Aik. 204, it was held in Vermont that an agree-
ment, on the part of a corporation, to
grant to individuals certain privileges in
consideration that they would withdraw
their opposition to the passage of a legis-
lative act touching the interests of the
corporation, is against sound policy, pre-
judicial to correct and just legislation,
and void. In Galick v. Ward, 5 Halst. 87,
it was decided in New Jersey that a con-
tract which contravenes an act of Con-
gress, and tends to defraud the United
States, is void. A. had agreed to give B.
$100, on condition that B. would forbear
to propose or offer himself to the Post-
master-General to carry the mail on a
certain mail route, and it was held that
the contract was against public policy
and void. The general principle is to
contracts contravening public policy was
discussed in that case at much length. In
Wood v. McCann, 5 Dana, 306, the de-
cendant had employed the plaintiff to
assist him in obtaining a legislative act in
Kentucky, legalizing his divorce from a
former wife, and his marriage with his
present wife. The court says: "A lawyer
may be entitled to compensation for writ-
ing a petition, or even for making a pub-
lic argument before the legislature or a
committee thereof; but the law should
not help him or any other person to a
recompense for exercising any personal
influence in any way in any act of legis-
lation. It is certainly important to just
and wise legislation, and therefore to the
most essential interests of the public, that
the legislature should be perfectly free
from any extraneous influence which may
either corrupt or deceive the members, or
any of them."

"In Chippering v. Hepbaugh, 5 Watts
and S. 315, it was decided in Pennsyl-
vania that a contract to procure or en-
deavor to procure the passage of an act

of the legislature by using personal influ-
ence with the members, or by any sinister
means, was void, as being inconsistent
with public policy and the integrity of
our political institutions. And an agree-
ment for a contingent fee to be paid on
the passage of a legislative act was held
to be illegal and void, because it would
be a strong incentive to the exercise of
personal and sinister influences to effect
the object.

"The subject has been twice adjudicat-
ed upon in New York. In Harris v.
Roof, 10 Harb. 489, the Supreme Court
held that one could not recover for ser-
VICES performed in going to see individ-
ual members of the house, to get them to
aid in voting for a private claim, the ser-
VICES not being performed before the
house as a body nor before its authorized
committees. In Sedgwick v. Stanton, 4
Kernan, 289, the Court of Appeals held
the same doctrine, and stated its proper
limits. Scheib. J., makes the following
comments on the case of Harris v. Roof:
'Now, the court did not mean by this de-
cision to hold that one who has a claim
against the State may not employ com-
petent persons to aid him in properly
presenting such claim to the legislature,
and in supporting it with the necessary
proofs and arguments. Mr. Justice
Hand, who delivered the opinion of the
court, very justly distinguishes between
services of the nature of those rendered
in that case, and the procuring and pre-
paring the necessary documents in sup-
port of a claim, or acting as counsel
before the legislature or some committee
appointed by that body. Persons may,
no doubt, be employed to conduct an ap-
lication to the legislature, as well as to
conduct a suit at law; and may contract
for and receive pay for their services in
preparing documents, collecting evidence,
making statements of facts, or preparing
and making oral or written arguments,
provided all these are used or designed to
be used before the legislature or some
committee thereof as a body; but they

(a) [Upon this subject, see note to 11 L. R. A. 491.]
time when the house is in session, unless the constitution, the law, or the rules of the house forbid. The constitution of cannot, with propriety, be employed to exert their personal influence with individual members, or to labor in any form privately with such members out of the legislative halls. Whatever is laid before the legislature in writing, or spoken openly or publicly in its presence or that of a committee, if false in fact, may be disproved; or if wrong in argument may be refuted; but that which is whispered into the private ear of individual members is frequently beyond the reach of correction. The point of objection in this class of cases, then, is, the personal and private nature of the services to be rendered.'

"In Fuller v. Dame, cited above, Shaw, Ch. J., recognizes the well-established right to contract and pay for professional services when the promise is to act as attorney and counsel, but remarks that "the fact appearing that persons do so act prevents any injurious effects from such proceeding. Such counsel is considered as standing in the place of his principal, and his arguments and representations are weighed and considered accordingly.' He also admits the right of disinterested persons to volunteer advice; as when a person is about to make a will, one may represent to him the propriety and expediency of making a bequest to a particular person; and so may one volunteer advice to another to marry another person; but a promise to pay for such service is void.

"Applying the principles stated in these cases to the bills which the town voted to pay, it is manifest that some of the money was expended for objects that are contrary to public policy, and of a most reprehensible character, and which could not, therefore, form a legal consideration for a contract." See, further, a full discussion of the same subject, and reaching the same conclusion, by Mr. Justice Gove, in Marshall v. Baltimore & Ohio R. R. Co., 16 How. 314. [In Richardson v. Scott's Bluff Co., 59 Neb. 408, 81 N. W. 398, 80 Am. St. 682. A contract to render services in securing the passage of an appropriation for a specified compensation in case the bill should be passed, no compensation to be paid if bill not passed, is against public policy and void.] A sale of a town office, though by the town itself, cannot be the consideration for a contract. Meredith v. Ladd, 2 N. H. 517. See Carleton v. Whittemer, 5 N. H. 196; Edly v. Capron, 4 R. I. 394. A town cannot incur expenses in opposing before a legislative committee a division of the territorial limits: Westbrook v. Deering, 63 Me. 231; or to pay the expenses of a committee to procure the annexation of the town to another. Minot v. West Roxbury, 112 Mass. 1, 17 Am. Rep. 52. That contracts for lobby services in procuring or preventing legislation are void, see Cusher v. McBratney, 3 Dill. 385; Trist v. Child, 21 Wall. 441; McKee v. Cheney, 52 How. (N. Y.) 144; Weed v. Black, 2 MacArthur, 258; Sweeney v. Meloul, 15 Ore. 330, 15 Pac. 275; Cary v. Western U. Tel. Co., 47 Hun. 610. Or for influence in procuring contracts. Tool Co. v. Norris, 2 Wall. 45. And any contract the purpose of which is to influence a public officer or body to favor persons in the performance of his public duty is void, on grounds of public policy. Ordinance v. Barry, 24 Miss. 9. The same general principle will be found applied in the following cases: Swayne v. Hult, 8 N. J. 54, 14 Am. Dec. 399; Wood v. McAneny, 6 Dana, 303; Hatfield v. Gulden, 7 Watts, 152; Gill v. Davis, 12 La. Ann. 219; Powers v. Skinner, 34 Vt. 274; Frankfort v. Winterport, 34 Me. 250; Rose v. Truax, 21 Barb. 361; Devlin v. Brady, 32 Barb. 518; Oseanyan v. Arms Company, 103 U. S. 261; Meguire v. Corwin, 3 MacArtuth, 81. See further, post, 924, note. [Contract of employment in which employee is assured of only a nominal salary and a large addition thereto is made contingent upon the adoption by a city council of a certain ordinance is void. Crichfield v. Bermudez Asphalt Paving Co., 174 Ill. 408, 51 N. E. 552, 42 L. A. 317. But the fact that the manager of a corporation was a member of the legislature which authorized the letting of a certain contract will not prevent the corporation's bidding for it if the manager is not a stockholder, and his pay is in no way
Michigan provides that no new bill shall be introduced into either house of the legislature after the first fifty days of the session shall have expired; and the Constitution of Maryland provides that no bill shall originate in either house within the last ten days of the session. The purpose of these clauses is to prevent hasty and improvident legislation, and to compel, so far as any previous law can accomplish that result, the careful examination of proposed laws, or at least the affording of opportunity for that purpose; which will not always be done when bills may be introduced up to the very hour of adjournment, and, with the concurrence of the proper majority, put immediately upon their passage.

For the same reason it is required by the constitutions of several of the States, that no bill shall have the force of law until on three several days it be read in each house, and free discussion allowed thereon; unless, in case of urgency, four-fifths or some other specified majority of the house shall deem it

affected by the success or failure of the bill. State v. Richards, 16 Mont. 145, 40 Pac. 210, 28 L. R. A. 298, 50 Am. St. 476.

An agreement upon a pecuniary consideration to withdraw opposition to granting of a pardon and to give assistance by solicitation and personal influence in procuring the same is against public policy and void. Deering & Co. v. Cunningham, 63 Kan. 174, 65 Pac. 293, 54 L. R. A. 410.]

1 Art. 4, § 28.
2 Art. 3, § 20. In Arkansas there is a similar provision, limiting the time to three days. Art. 6, § 24.
3 A practice has sprung up of evading these constitutional provisions by introducing a new bill after the time has expired when it may constitutionally be done, as an amendment to some pending bill, the whole of which, except the enacting clause, is struck out to make way for it. Thus, the member who thinks he may possibly have occasion for the introduction of a new bill after the constitutional period has expired, takes care to introduce sham bills in due season which he can use as stocks to graft upon, and which he uses irrespective of their character or contents. The sham bill is perhaps a bill to incorporate the city of Siam. One of the member's constituents applies to him for legislative permission to construct a dam across the Wild Cat River. Forthwith, by amendment, the bill entitled a bill to incorporate the city of Siam has all after the enacting clause stricken out, and it is made to provide, as its sole object, that John Doe may construct a dam across the Wild Cat. With this title and in this form it is passed; but the house then considerately amends the title to correspond with the purpose of the bill, and the law is passed, and the constitution at the same time saved! This trick is so transparent, and so clearly in violation of the constitution, and the evidence at the same time is so fully spread upon the record, that it is a matter of surprise to find it so often resorted to. A bill to create a township may be amended after fifty days so as to make the same territory a county. Pack v. Burton, 47 Mich. 520, 11 N. W. 367. For a bill to create a township from certain territory may be substituted one to incorporate a city in the same county. People v. McIntosh, 72 Mich. 446, 40 N. W. 750. But a bill to create the County of L. out of the County of W. cannot be amended so as to make M. County out of X. County. Re Creation of New Counties, 9 Col. 624, 21 Pac. 472. See, also, Bell v. Steele, 82 Ala. 562, 2 So. 650. [If bill is amended in second house, it must be returned to first to be acted upon. It must finally pass both houses in same form. State v. Laiche, 105 La. 84, 29 So. 700.]
expedient to dispense with this rule. The journals which each house keeps of its proceedings ought to show whether this rule is complied with or not; but in case they do not, the passage in the manner provided by the constitution must be presumed, in accordance with the general rule which presumes the proper discharge of official duty.\(^1\) In the reading of a bill, it seems to be sufficient to read the written document that is adopted by the two houses; even though something else becomes law in consequence of its passage, and by reason of being referred to in it.\(^2\) Thus, a statute which incorporated a military company by reference to its constitution and by-laws, was held valid notwithstanding the constitution and by-laws, which would acquire the force of law by its passage, were not read in the two houses as a part of it.\(^3\) But there cannot be many cases, we should suppose, to which this ruling would be applicable.

\(^1\) Supervisors of Schuyler Co. v. People, 23 Ill. 181; Miller v. State, 3 Ohio St. 475. In People v. Starne, 35 Ill. 121, it is said the courts should not enforce a legislative act unless there is record evidence, from the journals of the two houses, that every material requirement of the constitution has been satisfied. And see Ryan v. Lynch, 63 Ill. 159. Contr.; State v. McConnell, 3 Len., 341; Blesing v. Galveston, 42 Tex. 641. The clause in the Constitution of Ohio is: “Every bill shall be fully and distinctly read on three different days, unless, in case of urgency, three-fourths of the house in which it shall be pending shall dispense with this rule;” and in Miller v. State, 3 Ohio St. 475, and Pin v. Nicholson, 6 Ohio St. 176, this provision was held to be merely directory. The distinctness with which any bill must be read cannot possibly be defined by any law; and it must always, from the necessity of the case, rest with the house to determine finally whether in this particular the constitution has been complied with or not; but the rule respecting three several readings on different days is specific, and capable of being precisely complied with, and we do not see how, even under the rules applied to statutes, it can be regarded as directory merely, provided it has a purpose beyond the mere regular and orderly transaction of business. That it has such a purpose, that it is designed to prevent hasty and improvident legislation, and is therefore not a mere rule of order, but one of protection to the public interests and to the citizens at large, is very clear; and independent of the question whether definite constitutional principles can be dispensed with in any case on the ground of their being merely directory, we cannot see how this can be treated as anything but mandatory. See People v. Campbell, 8 Ill. 466; McCulloch v. State, 11 Ind. 424; Weil v. Kenfield, 54 Cal. 111; Chicot Co. v. Davies, 40 Ark. 200; Stockton v. Powell, 29 Fla. 1, 10 So. 688, 15 L. R. A. 42. Reading twice by title and once at length is sufficient. People v. McElroy, 72 Mich. 490, 49 N. W. 750. One reading may be in committee of the whole. Re Reading of Bills, 9 Col. 411, 21 Pac. 477. [After bill is amended and passed as amended in the second house, it need not be read three times in first house before amendments are concurred in by that house. State v. Dillon, — Fla. —, 28 So. 781 (June 5, 1900).]


\(^3\) Bibb County Loan Association v. Richards, 21 Ga. 592. And see Pulford v. Fire Department, 41 Mich. 458. Where the laws of the State have been codified, and certain new provisions introduced, the code may be enacted as a whole by a
It is also provided in the constitutions of some of the States that, on the final passage of every bill, the yeas and nays shall be entered on the journal. Such a provision is designed to serve an important purpose in compelling each member present to assume as well as to feel his due share of responsibility in legislation; and also in furnishing definite and conclusive evidence whether the bill has been passed by the requisite majority or not. "The constitution prescribes this as the test by which to determine whether the requisite number of members vote in the affirmative. The office of the journal is to record the proceedings of the house, and authenticate and preserve the same. It must appear on the face of the journal that the bill passed by a constitutional majority. These directions are all clearly imperative. They are expressly enjoined by the fundamental law as matters of substance, and cannot be dispensed with by the legislature." 1

For the vote required in the passage of any particular law the reader is referred to the constitution of his State. A simple majority of a quorum is sufficient, unless the constitution establishes some other rule; and where, by the constitution, a two-thirds or three-fourths vote is made essential to the passage of any particular class of bills, two-thirds or three-fourths of a quorum will be understood, unless the terms employed clearly indicate that this proportion of all the members, or of all those elected, is intended. 2

single statute, and when so done it is sufficient to read the enacting statute. The code need not be read at length. Central of Georgia R. Co. v. State, 104 Ga. 581, 31 S. E. 531, 42 L. R. A. 518.)

1 Spangler v. Jacoby, 14 Ill. 297; Supervisors of Schnyder Co. v. People, 25 Ill. 183; Ryan v. Lynch, 68 Ill. 109; Steckert v. East Saginaw, 22 Mich. 101; People v. Commissioners of Highways, 51 N. Y. 276; Post v. Supervisors, 105 U. S. 607. For a peculiar case, see Division of Howard County, 15 Kan. 194. As to what is sufficient evidence in a journal of such vote, In re Roberts, 5 Col. 525. An act which is invalid because not passed by the requisite number of votes may be validated indirectly by subsequent legislative action recognizing it as valid. Attorney-General v. Joy, 55 Mich. 94, 20 N. W. 595. There have been cases, as we happen to know, in which several bills have been put on their passage together, the yeas and nays being once called for them all, though the journal is made to state falsely a separate vote on each. We need hardly say that this is a manifest violation of the constitution, which requires separate action in every case; and that, when resorted to, it is usually for the purpose of avoiding another provision of the constitution, which seeks to preclude "log-rolling legislation," by forbidding the incorporation of distinct measures in one and the same statute.

2 Southworth v. Palmrya & Jacksonburg R. R. Co., 2 Mich. 287; State v. McBride, 4 Mo. 303; 29 Am. Dec. 656. By most of the constitutions either all the laws, or laws on some particular subjects, are required to be adopted by a majority vote, or some other proportion of "all the members elected," or of "the whole representation." These and similar phrases require all the members to be taken into account whether present or not. Where a majority of all the members elected is required in the passage of
The Title of a Statute.

The title of an act was formerly considered no part of it; and although it might be looked to as a guide to the intent of the law-makers when the body of the statute appeared to be in any respect ambiguous or doubtful, yet it could not enlarge or restrain the provisions of the act itself, and the latter might therefore be good when it and the title were in conflict. The reason for this was that anciently titles were not prefixed at all, and when afterwards they came to be introduced, they were usually prepared by the clerk of the house in which the bill first passed, and attracted but little attention from the members. They indicated the clerk’s understanding of the contents or purpose of the bills, rather than that of the house; and they therefore were justly regarded as furnishing very little insight into the legislative intention. Titles to legislative acts, however, have recently, in some States, come to possess very great importance, by reason of constitutional provisions, which not only require that they shall correctly indicate the purpose of the law, but which absolutely make the title to control, and exclude everything from effect and operation as law which is incorporated in the body of the act, but is not within the purpose indicated by the title. These provisions are given in the note, and it will readily be perceived that they make a very great change in the law.

a law, an ineligible person is not on that account to be excluded in the court. Satterlee v. San Francisco, 22 Cal. 314. [Where a proposition to incur bonded indebtedness is voted on at a general election, and to be approved must be voted for by “two-thirds of the voters... voting at an election to be held for that purpose,” this means two-thirds of those voting on the particular proposition. Montgomery Co. Fiscal Ct. v. Trimble, 20 Ky., Law Rep. 827, 47 S. W. 773, 42 L. R. A. 738. But see State v. Ferdaker, 40 Ohio St. 677, 23 N. E. 491, 6 L. R. A. 422; Re Denny, 156 Ind. 104, 59 N. E. 353, 51 L. R. A. 722; State v. Clark, 59 Neb. 702, 82 N. W. 8. Where a specified time must elapse after the passage of a bill before the law becomes operative, the time runs from the time of adoption by the final house and not from that of approval by the governor. State v. Mounts, 36 W. Va. 179, 14 S. E. 407, 15 L. R. A. 243, and note. When a quorum is present, a majority of those voting on the proposition is sufficient to carry it. Rushville Gas Co. v. Rushville, 121 Ind. 206, 23 N. E. 72, 6 L. R. A. 315, 16 Am. St. 388; contra, a majority of those present necessary: Lawrence v. Ingersoll, 88 Tenn. 52, 12 S. W. 422, 6 L. R. A. 308, 17 Am. St. 870, and note.]  


3 The Constitutions of Minnesota, Kansas, Maryland, Kentucky, Nebraska, and Ohio provide that “no law shall embrace
In considering these provisions it is important to regard,—

1. The evils designed to be remedied. The Constitution of New Jersey refers to these as "the improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other." In the language of the Supreme Court of Louisiana, speaking of the former practice: "The title of an act often afforded no clue to its contents. Important general principles were found placed in acts private or local in their operation; provisions concerning matters of practice or judicial proceedings were sometimes included in the same

more than one subject, which shall be expressed in its title." Those of Michigan, New Jersey, and Louisiana are similar, substituting the word object for subject. The Constitutions of South Carolina, Alabama, Tennessee, Arkansas, and California contain similar provisions. The Constitution of New Jersey provides that, "to avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title." The Constitution of Missouri contains the following provision: "No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated, and except bills passed under the third subdivision of section 44 of this article) shall contain more than one subject, which shall be clearly expressed in its title." The exception secondly referred to is to bills for free public-school purposes. The Constitutions of Indiana, Oregon, and Iowa provide that "every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title." The Constitution of Nevada provides that "every law enacted by the legislature shall embrace but one subject, and matters properly connected therewith, which subject shall be briefly expressed in the title." The Constitutions of New York and Wisconsin provide that "no private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title." The Constitution of Illinois is similar to that of Ohio, with the addition of the saving clause found in the Constitution of Indiana. The provision in the Constitution of Colorado is similar to that of Missouri. In Pennsylvania the provision is that "no bill except general appropriation bills shall be passed containing more than one subject, which shall be clearly expressed in its title." Const. of 1853. Whether the word object is to have any different construction from the word subject, as used in these provisions, is a question which may some time require discussion; but as it is evidently employed for precisely the same purpose, it would seem that it ought not to have. Compare Hingle v. State, 24 Ind. 28, and People v. Lawrence, 36 Barb. 177. The present Texas Constitution substitutes subject for object, which was in the earlier one, and it is held that the word is less restrictive, and that an act whose subject is the regulation of the liquor traffic is good though several distinct objects are covered, for instance, regulation of liquor shops, collection of revenue, &c. Fahey v. State, 27 Tex. App. 146, 11 S. W. 103.

In Michigan this provision does not apply to city ordinances. People v. Happman, 75 Mich. 611, 42 N. W. 1124. [The Michigan Constitution requires an enacting clause; when this is omitted from the bill as it comes from the first house, the clerk of the next cannot insert it, but the bill must be sent back for the first house, to correct it. People v. Dettenharter, 118 Mich. 506, 77 N. W. 450, 44 L. R. A. 261. Any material change in title of an act after passing legislature and before presentation to the governor, renders the act void. Weis v. Ashley, 59 Neb. 494, 81 N. W. 318, 80 Am. St. 704.]
statute with matters entirely foreign to them, the result of which was that on many important subjects the statute law had become almost unintelligible, as they whose duty it has been to examine or act under it can well testify. To prevent any further accumulation to this chaotic mass was the object of the constitutional provision under consideration." 1 The Supreme Court of Michigan say: "The history and purpose of this constitutional provision are too well understood to require any elucidation at our hands. The practice of bringing together into one bill subjects diverse in their nature and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits, was one both corruptive of the legislator and dangerous to the State. It was scarcely more so, however, than another practice, also intended to be remedied by this provision, by which, through dexterous management, clauses were inserted in bills of which the titles gave no intimation, and their passage secured through legislative bodies whose members were not generally aware of their intention and effect. There was no design by this clause to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, and thus multiplying their number; but the framers of the constitution meant to put an end to legislation of the vicious character referred to, which was little less than a fraud upon the public, and to require that in every case the proposed measure should stand upon its own merits, and that the legislature should be fairly satisfied of its design when required to pass upon it." 2 The Court of Appeals of New York declare the object of this provision to be "that neither the members of the legislature nor the people should be misled by the title." 3 The Supreme Court


2 People v. Mahaney, 13 Mich. 481. And see Board of Supervisors v. Heenan, 2 Mich. 330; Davis v. Bank of Fulton, 31 Ga. 63; St. Louis v. Tiegel, 42 Mo. 578; State v. Losantow, 9 Baxt. 584. The Constitution of Georgia provided that "no law or ordinance shall pass containing any matter different from what is expressed in the title thereof." In Mayor, &c. of Savannah v. State, 4 Ga. 38, Lumpkin, J., says: "I would observe that the traditionary history of this clause is that it was inserted in the Constitution of 1798 at the instance of General James Jackson, and that its necessity was suggested by the Yazoo act. That memorable measure of the 17th of January, 1795, as is well known, was smuggled through the legislature under the caption of an act "for the payment of the late State troops," and a declaration in its title of the right of the State to the unappropriated territory thereof "for the protection and support of the frontier settlements." The Yazoo act made a large grant of lands to a company of speculators. It constituted a prominent subject of controversy in State politics for many years.

3 Sun Mutual Insurance Co. v. Mayor, &c. of New York, 8 N. Y. 230.
of Iowa say: "The intent of this provision of the constitution was, to prevent the union, in the same act, of incongruous matters, and of objects having no connection, no relation. And with this it was designed to prevent surprise in legislation, by having matter of one nature embraced in a bill whose title expressed another." 1 And similar expressions will be found in many other reported cases. 2 It may therefore be assumed as settled that the purpose of these provisions was: first, to prevent hodge-podge or "log-rolling" legislation; second, to prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and, third, to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon, by petition or otherwise, if they shall so desire.

2. The particularity required in stating the object. The general purpose of these provisions is accomplished when a law has but one general object, which is fairly indicated by its title. To require every end and means necessary or convenient for the

2 See Conner v. Mayor, &c. of New York, 5 N. Y. 233; Davis v. State, 7 Md. 151. The Supreme Court of Indiana also understand the provision in the Constitution of that State to be designed, among other things, to assist in the codification of the laws. Indiana Central Railroad Co. v. Potts, 7 Ind. 681; Hingle v. State, 24 Ind. 28. See People v. Institution, &c., 71 Ill. 229; State v. Ah Sam, 15 Nev. 27, 37 Am. Rep. 454; Harrison v. Supervisors, 51 Wis. 645, 8 N. W. 731; Albrecht v. State, 8 Tex. App. 216, 34 Am. Rep. 737; Hope v. Mayor, &c., 72 Ga. 246; State v. Ranson, 73 Mo. 78; Dunsted v. Govern, 47 N. J. L. 308, 1 Atl. 135.


These provisions do not apply to a revision of the statutes required by the constitution: State v. McDaniel, 10 S. C. 114; nor to an act antedating the constitution and appearing in a later compila-

1 12 N. W. 30. [And see also Parks v. State, 110 Ga. 706, 36 S. E. 73, that defect in title is cured by later inclusion of the regulation in the code.] It is enough if the title of the chapter in an authorized compilation is referred to in an amendatory act. People v. Howard, 73 Mich. 10, 40 N. W. 789; State v. Berks, 29 Neb. 375, 30 N. W. 267; but see Feibleman v. State, 98 Ind. 516. If the title of an original act is good, whether that of an amendatory act is itself sufficient is unimportant. State v. Ranson, 73 Mo. 78; State v. Algood, 87 Tenn. 163, 10 S. W. 310. An amendment of an amended act may be upheld if the intention is plain, though there is confusion in the numbering of sections. Fenton v. Yule, 27 Neb. 708, 43 N. W. 1140. Under an amendatory title nothing can be enacted but what amends the old law. Matter which might have come under the original title, but did not, cannot be intro-

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accomplishment of this general object to be provided for by a separate act relating to that alone, would not only be unreasonable, but would actually render legislation impossible. It has accordingly been held that the title of "an act to establish a police government for the city of Detroit," was not objectionable for its generality, and that all matters properly connected with the establishment and efficiency of such a government, including taxation for its support, and courts for the examination and trial of offenders, might constitutionally be included in the bill under this general title. Under any different ruling it was said, "the police government of a city could not be organized without a distinct act for each specific duty to be devolved upon it, and these could not be passed until a multitude of other statutes had taken the same duties from other officers before performing them. And these several statutes, fragmentary as they must necessarily be, would often fail of the intended object, from the inherent difficulty in expressing the legislative will when restricted to such narrow bounds." 1 The generality of a title is therefore no objection to it, so long as it is not made a cover to legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection. 2 The legislature must determine for itself how broad and comprehensive shall be the object of a statute, and how much particularity shall be employed in the title in defining it. 3 One thing, how-

1 People v. Mahaney, 13 Mich. 481, 495. See also Powell v. Jackson Com. Council, 61 Mich. 129, 10 N. W. 399; Morford v. Unger, 5 Iowa, 82; Whiting v. Mount Pleasant, 11 Iowa, 482; Bright v. McCulloch, 27 Ind. 225; Mayor, &c. of Annapolis v. State, 30 Md. 112; State v. Union, 33 N. J. 350; Humboldt County v. Churchill Co. Commissioners, 6 Nev. 30; State v. Silver, 9 Nev. 227; State v. Ranson, 73 Mo. 78.


3 Woolson v. Murdock, 22 Wall. 351. In State v. Bowers, 14 Ind. 195, an act came under consideration, the title to which was, "An act to amend the first section of an act entitled 'An act concerning licenses to vend foreign merchandise, to exhibit any caravan, mummeries, circus, rope and wire dancing puppet shows, and likeudemain,' approved June 15, 1852, and for the encouragement of agriculture, and concerning the licensing of stock and exchange brokers." It was held that the subject of the act was licenses, and that it was not unconstitutional as containing more than one subject. But it was held also that, as the licenses which it authorized and required were specified in the title, the act could embrace no others, and consequently a provision in the act requiring concerts
ever, is very plain; that the use of the words "other purposes," which has heretofore been so common in the title to acts, with a view to cover any and everything, whether connected with the main purpose indicated by the title or not, can no longer be of any avail where these provisions exist. As was said by the Supreme Court of New York in a case where these words had been made use of in the title to a local bill: "The words 'for other purposes' must be laid out of consideration. They express nothing, and amount to nothing as a compliance with this constitutional requirement. Nothing which the act could not embrace without them can be brought in by their aid." 1

to be licensed was void. In State v. County Judge of Davis County, 2 Iowa, 280, 284, the act in question was entitled "An act in relation to certain State roads therein named." It contained sixty-six sections, in which it established some forty-six roads, vacated some, and provided for the re-location of others. The court sustained the act. "The object of an act may be broader or narrower, more or less extensive; and the broader it is, the more particular will it embrace... There is undoubtedly great objection to uniting so many particulars in one act, but so long as they are of the same nature, and come legitimately under one general determination or object, we cannot say that the act is unconstitutional." Upon this subject see Indiana Central Railroad Co. v. Potts, 7 Ind. 681, where it is considered at length. Also Brewer v. Syresca, 19 N. Y. 116; Hall v. Bunte, 20 Ind. 301; People v. McCallum, 1 Neb. 182; Mauch Chnck v. McGee, 51 Pa. St. 433. But a title and act covering four separate objects is bad. State v. Heywood, 38 La. Ann. 689. An act entitled "An act fixing the time and mode of electing State printer, defining his duties, fixing compensation, and repealing all laws coming in conflict with this act," was sustained in Walker v. Dunham, 17 Ind. 488. In State v. Young, 47 Ind. 460, the somewhat strict ruling was made, that provisions punishing intoxication could not be embraced in an act entitled "To regulate the sale of intoxicating liquors." In Kurr v. People, 53 Mich. 270, the constitutional provision is said to be "a very wise and wholesome provision, intended to prevent legislators from being entrapped into the careless passage of bills on matters foreign to the

1 Town of Fishkill v. Fishkill & Beck- man Plank Road Co., 22 Barb. 634. See, to the same effect, Johnson v. Spicer, 107 N. Y. 185; Ryerson v. Utley, 16 Mich. 269; St. Louis v. Tiefel, 42 Mo. 578. In a title to punish keepers of games of faro, etc., "etc." does not mean "other purposes," but "and other games." Gar- vin v. State, 13 Lea, 163. An act entitled "An act to repeal certain acts therein named," is void. People v. Mellen, 32 Ill. 181. An act, having for its sole ob- ject to legalize certain proceedings of the Common Council of Jonesville, but enti- tled merely "An act to legalize and authorize the assessment of street improve- ments and assessments," was held not to express the subject, because fail-
3. **What is embraced by the title.** The repeal of a statute on a given subject, it is held, is properly connected with the subject-matter of a new statute on the same subject; and therefore a repealing section in the new statute is valid, notwithstanding the title is silent on that subject.\(^1\) So an act to incorporate a railroad company, it has been held, may authorize counties to subscribe to its stock, or otherwise aid the construction of the road.\(^2\) So an act to incorporate the Firemen’s Benevolent Association may lawfully include under this title provisions for levying a tax upon the income of foreign insurance companies at the place of its location, for the benefit of the corporation.\(^3\) So an act to provide a homestead for widows and children was held valid, though what it provided for was the pecuniary means sufficient to purchase a homestead.\(^4\) So an act “to regulate proceedings in the county court” was held to properly embrace a provision giving an appeal to the District Court, and regulating the proceedings therein on the appeal.\(^5\) So an act entitled “An act for the more uniform doing of township business” may properly provide for the organization of townships.\(^6\) So it is held that the changing of the boundaries of existing counties is a matter properly connected with the subject of forming new counties out of those existing.\(^7\) So a provision for the organization and sitting of courts in new counties is properly connected with the subject of the formation of such counties, and may be included in “an act to authorize the formation of new counties,

\(^1\) Gabbert *v.* Railroad Co., 11 Ind. 365; Timm *v.* Harrison, 109 Ill. 693. The constitution under which this decision was made required the law to contain but one subject, and matters properly connected therewith; but the same decision was made under the New York Constitution, which omits the words here italicized; and it may well be doubted whether the legal effect of the provision is varied by the addition of those words. See Guilford *v.* Cornell, 18 Barb. 615; People *v.* Father Matthew Society, 41 Mich. 67, 1 N. W. 931.


\(^3\) Firemen’s Association *v.* Lounsbury, 21 Ill. 611. Power to tax for school purposes may be given under an act “to regulate public instruction.” Smith *v.* Bohler, 72 Ga. 546.


\(^5\) Murphey *v.* Menard, 11 Tex. 673. See State *v.* Al Sam, 15 Nev. 27, 37 Am. 454.

\(^6\) Clinton *v.* Draper, 14 Ind. 295. An act to consolidate the acts as to a city and to define the duty of the mayor will not allow conferring judicial power on him. Brown *v.* State, 79 Ga. 324, 4 S. E. 861.

\(^7\) Haggard *v.* Hawkins, 14 Ind. 290. And see Duncombe *v.* Prindle, 12 Iowa, 1; State *v.* Hoagland, 51 N. J. L. 62, 16 Atl. 190.
and to change county boundaries." ¹ Many other cases are referred to in the note, which will further illustrate the views of the courts upon this subject. There has been a general disposition to construe the constitutional provision liberally, rather than to embarrass legislation by a construction whose strictness is unnecessary to the accomplishment of the beneficial purposes for which it has been adopted. ²

¹ Brandon v. State, 16 Ind. 197. In this case, and also in State v. Bowers, 14 Ind. 195, it was held that if the title to an original act is sufficient to embrace the matters covered by the provisions of an act amendatory thereof, it is unnecessary to inquire whether the title of an amendatory act would, of itself, be sufficient. And see Morford v. Unger, 8 Iowa, 82.

CONSTITUTIONAL LIMITATIONS. [CH. VI.

4. The effect if the title embrace more than one object. Perhaps in those States where this constitutional provision is limited in


In Davis v. Woolnough, 9 Iowa, 104, an act entitled "An act for revising and consolidating the laws incorporating the city of Dubuque, and to establish a city court therein," was held to express by its title but one object, which was, the revising and consolidating the laws incorporating the city; and the city court, not being an unusual tribunal in such a municipality, might be provided for by the act, whether mentioned in the title or not.

"An act to enable the supervisors of the city and county of New York to raise money by tax," provided for raising money to pay judgments then existing, and also any thereafter to be recovered; and it also contained the further provision, that whenever the comptroller of the city should have reason to believe that any judgment then of record or thereafter obtained had been obtained by collusion, or was founded in fraud, he should take the proper and necessary means to open and reverse the same, &c. This provision was held constitutional, as properly connected with the subject indicated by the title, and necessary to confine the payments of the tax to the objects for which the money was intended to be raised. Sharp v. Mayor, &c. of New York, 31 Barb. 572. In O'Leary v. Cook Co., 28 Ill. 564, it was held that a clause in an act incorporating a college, prohibiting the sale of ardent spirits within a distance of four miles, was so germane to the primary object of the charter as to be properly included within it. By the first section of "an act for the relief of the creditors of the Lockport and Niagara Falls Railroad Company," it was made the duty of the president of the corporation, or one of the directors to be appointed by the president, to advertise and sell the real and personal estate, including the franchise of the company, at public auction, to the highest bidder. It was then declared that the sale should be absolute, and that it should vest in the purchaser or purchasers of the property, real or personal, of the company, all the franchise, rights, and privileges of the corporation, as fully and as absolutely as the same were then possessed by the company. The money arising from the sale, after paying costs, was to be applied, first, to the payment of a certain judgment, and then to other liens according to priority; and the surplus, if any, was to be divided ratably among the other creditors, and then, if there should be an overplus, it was to be divided ratably among the then stockholders. By the second section of the act, it was declared that the purchaser or purchasers should have the right to sell and distribute stock to the full amount which was authorized by the act of incorporation, and the several amendments thereto; and to appoint an election, choose directors, and organize a corporation anew, with the same powers as the existing company. There was then a proviso, that nothing in the act should impair or affect the subscriptions for new stock, or the obligations or liabilities of the company, which had been made or incurred in the extension of the road from Lockport to Rochester, &c. The whole act was held to be constitutional. Mosier v. Hiltun, 15 Barb. 657.


its operation to private and local bills, it might be held that an act was not void for embracing two or more objects which were indicated by its title, provided one of them only was of a private and local nature. It has been held in New York that a local bill was not void because embracing general provisions also; and if they may constitutionally be embraced in the act, it is presumed they may also be constitutionally embraced in the title. But if the title to the act actually indicates, and the act itself actually embraces, two distinct objects, when the constitution says it shall embrace but one, the whole act must be treated as void, from the manifest impossibility in the court choosing between the two, and holding the act valid as to the one and void as to the other.  

5. The effect where the act is broader than the title. But if the act is broader than the title, it may happen that one part of it can stand because indicated by the title, while as to the object not indicated by the title it must fail. Some of the State constitutions, it will be perceived, have declared that this shall be the rule; but the declaration was unnecessary; as the general rule, that so much of the act as is not in conflict with the constitution must be sustained, would have required the same declaration from the courts. If, by striking from the act all that relates to the object not indicated by the title, that which is left is complete in itself, sensible, capable of being executed, and wholly independent of that which is rejected, it must be sustained as constitutional. The principal questions in each case will therefore be, whether the act is in truth broader than to Facilitate the Carriage of Passengers and Property by Railroad Companies" is insufficient to cover a restriction upon the powers of eminent domain possessed by certain railroad companies. Thomas v. Wabash, St. L. & P. R. Co., 40 Fed. Rep. 126, 7 L. R. A. 145. And an amendment to "An Act for the Incorporation of Manufacturing Companies," which makes it include mercantile companies without changing the title, is void. Eaton v. Walker, 76 Mich. 579, 43 N. W. 638, 6 L. R. A. 102. Word "purchase" does not include expropriation by eminent domain. Enterprise v. Smith, 62 Kan. 815, 62 Pac. 324.  

1 People v. McCann, 10 N. Y. 58. An act as to paving Eighth Avenue cannot provide for changing the grade of intersecting streets. In re Blodgett, 80 N. Y. 392.  

2 Antonio v. Gould, 34 Tex. 49; State v. McCracken, 42 Tex. 393. All the cases recognize this doctrine. [State v. Ferguson, 104 La. 249, 32 So. 317, 81 Am. St. 123, furnishes a recent instance. For a valuable discussion and collection of cases upon questions growing out of titles to enactments, see 79 Am. St. 450-456.]
the title; and if so, then whether the other objects in the act are so intimately connected with the one indicated by the title that the portion of the act relating to them cannot be rejected, and leave a complete and sensible enactment which is capable of being executed.

As the legislature may make the title to an act as restrictive as they please, it is obvious that they may sometimes so frame it as to preclude many matters being included in the act which might with entire propriety have been embraced in one enactment with the matters indicated by the title, but which must now be excluded because the title has been made unnecessarily restrictive. The courts cannot enlarge the scope of the title; they are vested with no dispensing power; the constitution has made the title the conclusive index to the legislative intent as to what shall have operation; it is no answer to say that the title might have been made more comprehensive, if in fact the legislature have not seen fit to make it so. Thus, "an act concerning promissory notes and bills of exchange" provided that all promissory notes, bills of exchange, or other instruments in writing, for the payment of money, or for the delivery of specific articles, or to convey property, or to perform any other

stipulation therein mentioned, should be negotiate, and assignees of the same might sue thereon in their own names. It was held that this act was void, as to all the instruments mentioned therein except promissory notes and bills of exchange; though it is obvious that it would have been easy to frame a title to the act which would have embraced them all, and which would have been unobjectionable. It has also been held that an act for the preservation of the Muskegon River Improvement could not lawfully provide for the levy and collection of tolls for the payment of the expense of constructing the improvement, as the operation of the act was carefully limited by its title to the future. So also it has been held that "an act to limit the numbers of grand jurors, and to point out the mode of their selection, defining their jurisdiction, and repealing all laws inconsistent therewith," could not constitutionally contain provisions which should authorize a defendant in a criminal case, on a trial for any offence, to be found guilty of any lesser offence necessarily included therein. These cases must suffice upon this point; though the cases before referred to will furnish many similar illustrations.

In all we have said upon this subject we have assumed the constitutional provision to be mandatory. Such has been the view of the courts almost without exception. In California, however, a different view has been taken, the court saying: "We regard this section of the constitution as merely directory;

1 Mewherter v. Price, 11 Ind. 199. See also State v. Young, 47 Ind. 150; Jones v. Thompson, 12 Bush, 304; Rushing v. Schree, 12 Bush, 198; State v. Kinsella, 14 Minn. 524; Grover v. Trustees Ocean Grove, 45 N. J. L. 399.

2 Ryerson v. Utley, 16 Mich. 260. See further Weaver v. Lapsley, 43 Ala. 224; Tuscola Co. Bridge Co. v. Olmstead, 41 Ala. 9; Stuart v. Kinsella, 14 Minn. 524; Rogers v. Manuf. Imp. Co., 109 Pa. St. 109. In Cutlip v. Sheriff, 3 W. Va. 588, it was held that if an act embraces two objects, only one of which is specified in the title, the whole is void; but this is opposed to the authorities generally.

2 Foley v. State, 9 Ind. 203; Gillespie v. State, 9 Ind. 380. See also Indiana Cont. Railroad Co. v. Potts, 7 Ind. 681; State v. Squires, 26 Iowa, 340; State v. Lafayette Co. Court, 41 Mo. 39; People v. Denahy, 20 Mich. 319.


and, if we were inclined to a different opinion, would be careful how we lent ourselves to a construction which must in effect obliterate almost every law from the statute-book, unhinge the business and destroy the labor of the last three years. The first legislature that met under the constitution seems to have considered this section as directory; and almost every act of that and the subsequent sessions would be obnoxious to this objection. The contemporaneous exposition of the first legislature, adopted or acquiesced in by every subsequent legislature, and tacitly assented to by the courts, taken in connection with the fact that rights have grown up under it, so that it has become a rule of property, must govern our decision."¹ Similar views have also been expressed in the State of Ohio.² These cases, and especially what is said by the California court, bring forcibly before our minds a fact, which cannot be kept out of view in considering this subject, and which has a very important bearing upon the precise point which these decisions cover. The fact is this: that whatever constitutional provision can be looked upon as directory merely is very likely to be treated by the legislature as if it was devoid even of moral obligation, and to be therefore habitually disregarded. To say that a provision is directory, seems, with many persons, to be equivalent to saying that it is not law at all. That this ought not to be so must be conceded; that it is so we have abundant reason and good authority for saying. If therefore, a constitutional provision is to be enforced at all, it must be treated as mandatory. And if the legislature habitually disregard it, it seems to us that there is all the more urgent necessity that the courts should enforce it. And it also seems to us that there are few evils which can be inflicted by a strict adherence to the law, so great as that which is done by the habitual disregard, by any department of the government, of a plain requirement of that instrument from which it derives its authority, and which ought, therefore, to be scrupulously observed and obeyed. Upon this subject we need only refer here to what we have said concerning it in another place.³

**Amendatory Statutes.**

It has also been deemed important, in some of the States, to provide by their constitutions, that "no act shall ever be revised

² Miller v. State, 3 Ohio St. 475; Pim v. Nicholson, 6 Ohio St. 177; State v. Covington, 29 Ohio St. 102.
³ Ante, p. 105 et seq. See State v. Tufly, 10 Nev. 301.
or amended by mere reference to its title; but the act revised or section amended shall be set forth and published at full length." ¹ Upon this provision an important query arises. Does it mean that the act or section revised or amended shall be set forth and published at full length as it stood before, or does it mean only that it shall be set forth and published at full length as amended or revised? Upon this question perhaps a consideration of the purpose of the provision may throw some light. "The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effects, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws. An amendatory act which purported only to insert certain words, or to substitute one phrase for another in an act or section which was only referred to, but not published, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for the express purpose.

¹ This is the provision as it is found in the Constitutions of Indiana, Nevada, Oregon, Texas, and Virginia. In Kansas, New Jersey, Ohio, Michigan, Louisiana, Wisconsin, [Utah], Missouri, and Maryland there are provisions of similar import. In Tennessee the provision is:

"All acts which revive, repeal, or amend former laws, shall recite, in their caption or otherwise, the title or substance of the law repealed, revived, or amended."

Art. 1, § 17. See State v. Gaines, 1 Lea, 731; McGhee v. State, 2 Lea, 622. The provision in Nebraska (Const. of 1875) is peculiar. "No law shall be amended unless the new act contains the section or sections so amended, and the section or sections so amended shall be repealed."

Art. 3, § 11. Under a like provision that any section amended is thereby repealed, it is held in Alabama that an amendment to an amended statute is valid. State v. Warford, 84 Ala. 16, 3 So. 911. So where the amendment impliedly repealed the original act, an amendment to the amended act was held valid, as the mistake in referring to a repealed statute should not defeat the intention of the legislature. Com. v. Kenmose, 143 Mass. 418, 9 N. E. 501. Under provisions forbidding enactments by reference a law complete in itself may provide for carrying out its purposes by reference to procedure established by other acts. Campbell v. Board, &c., 47 N. J. L. 347; De Camp v. Hibben R. R. Co., id. 43. But the act must be complete in all essentials. Christie v. Bayonne, 48 N. J. L. 497, 5 Atl. 865; Donaugh v. Roberts, 15 Phila. 144.

In Texas it appears to beheld that the legislature may repeal a definite portion of a section without the reenactment of the section with such portion omitted. Chambers v. State, 25 Tex. 307. But quere of this. Any portion of a section amended which is not contained in the amendatory section as set forth and published is repealed. State v. Ingersoll, 17 Wis. 631. [But where the provisions of an act applying to a certain city are made to apply to another, this is not an amendment of the original act. Phoenix Fire Assurance Co. v. Montgomery Fire Dept., 117 Ala. 631, 23 So. 843, 42 L. R. A. 468.] Further on this subject see Blakemore v. Dolan, 50 Ind. 104; People v. Wright, 70 Ill. 398; Jones v. Davis, 6 Neb. 33; Sovereign v. State, 7 Neb. 409; Gordon v. People, 44 Mich. 485, 7 N. W. 69; State v. Gerger, 65 Mo. 300; Van Riper v. Parsons, 40 N. J. 123; 29 Am. Rep. 210; Fleishner v. Chadwick, 5 Oreg. 152; State v. Cain, 8 W. Va. 720; State v. Henderson, 22 La. Ann. 779; Colwell v. Chamberlin, 43 N. J. 387; [State v. Beddoe, 22 Utah, 432, 59 Pac. 95.]
Endless confusion was thus introduced into the law, and the constitution wisely prohibited such legislation." If this is a correct view of the purpose of the provision, it does not seem to be at all important to its accomplishment that the old law should be republished, if the law as amended is given in full, with such reference to the old law as will show for what the new law is substituted. Nevertheless, it has been decided in Louisiana that the constitution requires the old law to be set forth and published; and the courts of Indiana, assuming the provision in their own constitution to be taken from that of Louisiana after the decisions referred to had been made, at one time adopted and followed them as precedents. It is believed, however, that the general understanding of the provision in question is different, and that it is fully complied with in letter and spirit, if the act or section revised or amended is set forth and published as revised or amended, and that anything more only tends to render the statute unnecessarily cumbrous. It should be observed that statutes which amend others by implication are not within this provision; and it is not essential that they even refer to the acts or sections which by implication they amend. But repeals by implication are not favored; and the repugnancy between two statutes should be very clear to warrant a court in holding that the later in time repeals the other, when


3 Langdon v. Applegate, 5 Ind. 927; Rogers v. State, 6 Ind. 31. These cases were overruled in Greencastle, &c. Co. v. State, 28 Ind. 382.

4 See Tuscaloosa Bridge Co. v. Osmstead, 41 Ala. 9; People v. Pritchard, 21 Mich. 295; People v. McCallum, 1 Neb. 182; State v. Draper, 47 Mo. 29; Bournville v. Trigg, 46 Mo. 288; State v. Powder Mfg. Co., 50 N. J. L. 75; 11 Atl. 127. A whole act need be set out only when all its sections are amended. State v. Thurston, 92 Mo. 925, 4 S. W. 930. Under such a constitutional provision where a statute simply repeals others it is not necessary to set them out. Falconer v. Robinson, 46 Ala. 340. Compare Bird v. Wasco County, 3 Ore. 282. [In Lewis, Adm’x of Lewis, v. Dunne, 134 Cal. 291, 66 Pac. 478, 55 L. R. A. 833, 86 Am. St. 257, an act for the revision of the code of Civil Procedure of the State was held unconstitutional which did not provide for republication where the act amended over 400 sections, repealed nearly 100, and added many new ones. There is a valuable note to this case upon the power of the legislature to enact a code or compilation of laws or make extended amendments to a system of laws by a single statute. 53 L. R. A. 893.]

it does not in terms purport to do so. This rule has peculiar force in the case of laws of special and local application, which were not to be deemed repealed by general legislation except upon the most unequivocal manifestation of intent to that effect.

It was a parliamentary rule that a statute should not be repealed at the same session of its enactment, unless a clause permitting it was inserted in the statute itself; but this rule did not apply to repeals by implication, and it is possibly not recognized in this country at all, except where it is incorporated in the State constitution.

1 See cases cited in last note; also Towl v. Marrett, 5 Me. 22, 14 Am. Dec. 206; Naylor v. Field, 29 N. J. 287; State v. Berry, 12 Iowa 58; Attorney-General v. Brown, 1 Wis. 513; Dodge v. Gridley, 10 Ohio, 173; Him v. State, 1 Ohio St. 20; Saur v. Creditors, 65 Mart. x. s. 503, 16 Am. Dec. 212; New Orleans v. Southern Bank, 16 La. Ann. 89; Blain v. Bailey, 25 Ind. 105; Water Works Co. v. Burkhart, 41 Ind. 364; Swann v. Buck, 40 Miss. 269; Davis v. State, 7 Md. 161; State v. The Treasurer, 41 Mo. 10; Somerset & Stoughtown Road, 74 Pa. St. 61; Kilgore v. Commonwealth, 94 Pa. St. 495; McCool v. Smith, 1 Black, 450; State v. Cain, 8 W. Va. 720; Fleischner v. Chadwick, 5 Oreg. 152; Covington v. East St. Louis, 78 Ill. 548; East St. Louis v. Maxwell, 90 Ill. 439; In re Ryan, 48 Mich. 173, 7 N. W. 819; Connors v. Carp River Iron Co., 54 Mich. 108, 10 N. W. 338; Parker v. Hubbard, 64 Ala. 203; Iverson v. State, 52 Ala. 170; Gohcn v. Texas Pacific R. R. Co., 2 Woods, 346; State v. Commissioners, 37 N. J. 240; Attorney-General v. Railroad Companies, 35 Wis. 425; Rounds v. Waymart, 81 Pa. St. 395; Gooch v. Jacksonvllle, 17 Fla. 174; State v. Smith, 41 Tex. 449; Henderson's Tobacco, 11 Wall. 652; Cape Girardeau Co. v. Hill, 118 U. S. 68, 6 Sup. Ct. Rep. 951. If the two are repugnant in part, the earlier is pro tanto repealed. Hearn v. Brogan, 64 Miss. 231; Jeffersonville, &c. v. R. R. Co. v. Dunlap, 112 Ind. 93, 13 N. E. 403. A law which merely reenacts a former one does not repeal an intermediate act qualifying such former act. The new is qualified like the old. Gaston v. Merriam, 33 Minn. 271, 22 N. W. 614. It is a familiar rule, however, that when a new statute is evidently intended to cover the whole subject to which it relates, it will by implication repeal all prior statutes on that subject. See United States v. Barr, 4 Sawyer, 251; United States v. Caffin, 97 U. S. 340; Red Rock v. Henry, 106 U. S. 506, 1 Sup. Ct. Rep. 434; Dowdell v. State, 68 Ind. 333; State v. Rogers, 10 Nev. 319; Tafaya v. Garcia, 1 New Mex. 490; Campbell's Case, 1 Dak. 17, 40 N. W. 604; Andrews v. People, 75 Ill. 605; Clay Co. v. Chickasaw Co., 64 Miss. 634, 1 So. 763; Lyddy v. Long Island City, 104 N. Y. 218; Stingle v. Nevel, 9 Oreg. 62; State v. Studt, 31 Kan. 245, 1 Pac. 635. But a local option law merely suspends, does not repeal a former liquor law, and after its adoption offences against the latter while in force may be prosecuted. Winterton v. State, 65 Miss. 238, 3 So. 735. A statute cannot be repealed by non-user. Homer v. Com., 106 Pa. St. 221; Pearson v. Int. Distill. Co., 72 Iowa, 348, 34 N. W. 1.


4 Ibid. And see Spencer v. State, 5 Ind. 41.

5 Spencer v. State, 5 Ind. 41; Attorney-General v. Brown, 1 Wis. 513; Smith
CONSTITUTIONAL LIMITATIONS. [CH. VI.

Signing of Bills.

When a bill has passed the two houses, it is engrossed for the signatures of the presiding officers. This is a constitutional requirement in most of the States, and therefore cannot be dispensed with; though, in the absence of any such requirement, it would seem not to be essential. And if, by the constitution of the State, the governor is a component part of the legislature, the bill is then presented to him for his approval. (a)

Approval of Laws.

The qualified veto power (b) of the governor is regulated by the constitutions of those States which allow it, and little need on Stat. and Const. Construction, 908; Mobile & Ohio Railroad Co. v. State, 29 Ala. 673; Strauss v. Heiss, 48 Md. 292. The latter of two acts passed at the same session controls when they are inconsistent. Thomas v. Collins, 58 Mich. 64, 24 N. W. 553; Watson v. Kent, 78 Ala. 602. But the fact of later publication when action is taken at the same time will not work a repeal. In re Hall, 39 Kan. 670, 17 Pac. 649. Where acts passed on different days are approved on the same day, the presumption is that the one passed last was signed last. State v. Dayis, 70 Md. 237, 16 Atl. 529.

1 Moody v. State, 48 Ala. 116, 17 Am. Rep. 28; State v. Mead, 71 Mo. 260; Burritt v. Corn's, 129 Ill. 322, 11 N. E. 180; State v. Kiesewetter, 45 Ohio St. 254, 12 N. E. 807; Hunt v. State, 22 Tex. App. 306, 3 S. W. 233. Signature by presiding officers and assistant secretary is enough. State v. Glenn, 18 Nev. 34, 1 Pac. 186. But if the journal shows the passage of an act and the governor signs it, absence of signature of the president of the Senate will not invalidate it. Taylor v. Wilson, 17 Neb. 88, 22 N. W. 119. After an act has been passed over a veto, it need not be again certified. State v. Denny, 116 Ind. 449, 21 N. E. 274. The bill as signed must be the same as it passed the two houses. People v. Platt, 2 S. C. x. s. 150; Legg v. Annapolis, 42 Md. 203; Brady v. West 50 Miss. 68. But a clerical error that would not mislead is to be overlooked. People v. Supervisor of Unclaimed, 16 Mich. 254. Compare Smith v. Hoyt, 14 Wis. 252, where the error was in publication. And so should accidental and immaterial changes in the transmission of the bill from one house to the other. Larrison v. Railroad Co., 77 Ill. 11; Walnut v. Wade, 163 U. S. 683. See Wener v. Thornton, 58 Ill. 156. When a mistake in enrolment made an approval void, signatures and approval on a correct roll after the adjournment were held to make the act valid. Dow v. Beidelberg, 49 Ark. 325, 5 S. W. 297. In Maryland the governor may refuse to consider any bill sent him not authenticated by the Great Seal. Hamilton v. State, 61 Md. 14. [In Nevada where the governor vetoes an act after the adjournment of the legislature, the next legislature may pass it over his veto. Upon such passage, the presiding officers of the two houses must thereupon sign it. State v. Howell, - Nev. - 64 Pac. 406 (April 8, 1901).]


(a) [Upon power to withdraw the bill from the governor before he has acted on it and before the expiration of the time given him in which to act upon it, see McKenzie v. Moore, 92 Ky. 216, 17 S. W. 485, 14 L. R. A. 251, and note. The bill presented must be that which passed the legislature. Any change after passage and before signature by the governor prevents the bill's becoming a law. State v. Wendler, 94 Wis. 300, 98 N. W. 769.]

(b) [Where the statute provides that the mayor "shall have a negative upon the action of the aldermen in laying out highways and in all other matters," such pro-
be said here beyond referring to the constitutional provisions for information concerning them. It has been held that if the governor, by statute, was entitled to one day, previous to the adjournment of the legislature, for the examination and approval of laws, this is to be understood as a full day of twenty-four hours, before the hour of the final adjournment. It has also been held that, in the approval of laws, the governor is a component part of the legislature, and that unless the constitution allows further time for the purpose, he must exercise his power of approval before the two houses adjourn, or his act will be void. But under a provision of the Constitution of Minnesota, that the governor may approve and sign "within three days of

1 Hyde v. White, 24 Tex. 137. The five days allowed in New Hampshire for the governor to return bills which have not received his assent, include days on which the legislature is not in session, if it has not finally adjourned. Opinions of Judges, 45 N. H. 607. But the day of presenting the bill to the governor should be excluded. Opinions of Judges, 46 N. H. 607; Iron Mountain Co. v. Haight, 39 Cal. 640; In re Senate Resolution, 9 Col. 632, 21 Pac. 476. And if the last day falls on Sunday he may return the bill on Monday, id. As to the power of the governor, derived from long usage, to approve and sign bills after the adjournment of the legislature, see Solomon v. Cartersville, 41 Ga. 137.

Neither house can, without the consent of the other, recall a bill after its transmission to the governor. People v. Devlin, 85 N. Y. 263. In Colorado the legislature may request the return of a bill in the governor's hands, but he may respond or not as he likes. If he sends back the bill, it may be reconsidered and amended. Re Recalling Bills, 9 Col. 630, 21 Pac. 474. But in Virginia no such recall is authorized. Wolfe v. McCaul, 76 Va. 876.

The delivery of a bill passed by the two houses to the secretary of the commonwealth according to custom, is not a presentation to the governor for his approval, within the meaning of the constitutional clause which limits him to a certain number of days after the presentation of the bill to veto it. Opinions of the Justices, 99 Mass. 636.

2 Fowler v. Peirce, 2 Cal. 165. The court also held in this case that, notwithstanding an act purported to have been approved before the actual adjournment, it was competent to show by parol evidence that the actual approval was not until the next day. In support of this ruling, People v. Purdy, 2 Ill, 31, was cited, where it was held that the court might go behind the statute-book and inquire whether an act to which a two-thirds vote was essential had constitutionally passed. That, however, would not be in direct contradiction of the record, but it would be inquiring into a fact concerning which the statute was silent, and other records supplied the needed information. In Indiana it is held that the courts cannot look beyond the enrolled act to ascertain whether there has been compliance with the requirement of the constitution that no bill shall be presented to the governor within two days next previous to the final adjournment. Bender v. State, 53 Ind. 254. [In Maryland a bill may be signed within six days after it is submitted, although the legislature may have adjourned. The bill may even be presented after the adjournment. Lunkford v. Somerset Co., 73 Md. 105, 20 Atl. 1017, 22 Atl. 412, 11 L. R. A. 491. See upon this question, paper of E. D. Renick and cases cited in it, 32 Am. Law Rev. 208.]

vision applies only to the legislative action of the aldermen. It does not apply to their determination of a contest as to membership. Cate v. Martin, 70 N. H. 136, 46 Atl. 54, 48 L. R. A. 613.}
the adjournment of the legislature any act passed during the last three days of the session," it has been held that Sundays were not to be included as a part of the prescribed time; 1 and under the Constitution of New York, which provided that, "if any bill shall not be returned by the governor within ten days, Sundays excepted, after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not be a law," 2 it was held that the governor might sign a bill after the adjournment, at any time within the ten days. 3 The governor's approval is not complete until the bill has passed beyond his control by the constitutional and customary mode of legislation; and at any time prior to that he may reconsider and retract any approval previously made. 4 His

1 Stinson v. Smith, 8 Minn. 366. See also Corwin v. Comptroller, 6 Rich. 390. In South Carolina a bill sent to the governor on the last day of the first session may be signed by him on the first day of the next regular session, notwithstanding an adjourned session has intervened. Arnold v. McKellar, 9 S. C. 336. In Mississippi if a bill is presented within ten days of the adjournment, it may be approved at any time before the third day of the next session. State v. Coahoma Co., 61 Miss. 358, 11 So. 501. [The Constitution of Michigan contains a provision similar to that of Minnesota above quoted, except that it provides five days instead of three. Held, that such provision makes a signature good that is attached within the required ten days after passage of bill and not later than five days after adjournment. The question arose in regard to a bill passed less than ten days and more than five days before adjournment, and signed after adjournment, but within ten days after passage of bill. Detroit v. Chapin, 108 Mich. 136, 66 N. W. 587, 37 L. R. A. 391; and upon right of executive to sign bills after adjournment of legislature, see note to this case in L. R. A. In Nevada, upon bills sent to him during last five days of session, governor may act within ten days after adjournment. State v. Howell, — Nev. —, 64 Pac. 466 (April 8, 1901).]

2 See McNeil v. Commonwealth, 12 Bush, 727. In computing the ten days, the first day should be excluded. Beauchene v. Cape Girardeau, 71 Mo. 392.

3 People v. Bowen, 30 Barb. 24, and 21 N. Y. 517. See also State v. Fagan, 22 La. Ann. 545; Solomon v. Commissioners, 41 Ga. 167; Darling v. Boesch, 67 Iowa, 702, 25 N. W. 887; Seven Hickory v. Ellery, 103 U. S. 423. It seems that in Nebraska, in a similar provision, by "adjournment" is meant the final adjournment; and if the same session is adjourned for a time — in this case two months — the governor must act upon the bill within the specified number of days. Miller v. Hurford, 11 Neb. 377, 9 N. W. 477. Where on the tenth day the governor sent a bill with his objections to the house with which it originated, but the messenger, finding the house had adjourned for the day, returned it to the governor, who retained it, it was held that to prevent the bill becoming a law it should have been left with the proper officer of the house instead of being retained by the governor. Harpending v. Haight, 39 Cal. 180. In response to an unauthorized request, the governor returned a bill without objections. The constitution provided that a bill, if not returned in five days, became law without his signature. Held, that his return was not covered by the provision, and that the bill became a law notwithstanding. Wolfe v. McCaull, 76 Va. 870.

4 People v. Hatch, 19 Ill. 253. An act appointing the representatives was passed by the legislature and transmitted to the governor, who signed his approval thereon by mistake, supposing at the time that he was subscribing one of sev-
disapproval of a bill is communicated to the house in which it originated, with his reasons; and it is there reconsidered, and may be again passed over the veto by such vote as the constitution prescribes. 1

eral other bills then lying before him, and claiming his official attention; his private secretary thereupon reported the bill to the legislature as approved, not by the special direction of the governor, nor with his knowledge or special assent, but merely in his usual routine of customary duty, the governor not being conscious that he had placed his signature to the bill until after information was brought to him of its having been reported approved; whereupon he sent a message to the speaker of the house to which it was reported, stating that it had been inadvertently signed and not approved, and on the same day completed a veto message of the bill, which was partially written at the time of signing his approval, and transmitted it to the house where the bill originated, having first erased his signature and approval. It was held that the bill had not become a law. It had never passed out of the governor’s possession after it was received by him until after he had erased his signature and approval; and the court was of opinion that it did not pass from his control until it had become a law by the lapse of ten days under the constitution, or by his depositing it with his approval in the office of the secretary of state. It had long been the practice of the governor to report, formerly through the secretary of state, but recently through his private secretary, to the house where bills originated, his approval of them; but this was only a matter of formal courtesy, and not a proceeding necessary to the making or imparting vitality to the law. By it no act could become a law which without it would not be a law. Had the governor returned the bill itself to the house, with his message of approval, it would have passed beyond his control, and the approval could not have been retracted, unless the bill had been withdrawn by consent of the house; and the same result would have followed his filing the bill with the secretary of state with his approval subscribed.

The Constitution of Indiana provides (art. 5, § 14) that, “if any bill shall not be returned by the governor within three days, Sundays excepted, after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return; in which case it shall be a law unless the governor, within five days next after the adjournment, shall file such bill, with his objections thereto, in the office of the secretary of state,” &c. Under this provision it was held that where the governor, on the day of the final adjournment of the legislature, and after the adjournment, filed a bill received that day, in the office of the secretary of state, without approval or objections thereto, it thereby became a law, and he could not file objections afterwards. Tarlton v. Peggs, 18 Ind. 24. See State v. Whisner, 35 Kan. 271, 10 Pac. 852. If in approving a bill the governor signs in the wrong place, he may sign again after adjournment. Nat. Land and Loan Co. v. Mead, 60 Vt. 257, 14 Atl. 689.

An act of the legislature takes effect when the governor signs it, unless the constitution contains some different provision. Hill v. State, 5 Loa, 725.

1 A bill which, as approved and signed, differs in important particulars from the one signed, is no law. Jones v. Hutchinson, 43 Ala. 731.

If the governor sends back a bill which has been submitted to him, stating that he cannot act upon it because of some supposed informality in its passage, this is in effect an objection to the bill, and it can only become a law by further action of the legislature, even though the governor may have been mistaken as to the supposed informality. Birdsall v. Carrick, 3 Nev. 151. If an act passed over a veto is duly authenticated otherwise, the absence of the governor’s signature will not vitiate it. Horsey v. State, 119 Ind. 395, 21 N. E. 21.

In practice the veto power, although very great and exceedingly important in this country, is obsolete in Great Britain, and no king now ventures to resort to it. As the Ministry must at all times be in accord with the House of Commons.
Other Powers of the Governor.

The power of the governor as a branch of the legislative department is almost exclusively confined to the approval of bills. As executive, he communicates to the two houses information concerning the condition of the State, and may recommend measures to their consideration, but he cannot originate or introduce bills. He may convene the legislature in extra session whenever extraordinary occasion seems to have arisen; but their powers when convened are not confined to a consideration of the subjects to which their attention is called by his proclamation or his message, and they may legislate on any subject as at the regular sessions. An exception to this statement exists in those States where, by the express terms of the constitution, it is provided that when convened in extra session the legislature shall consider no subject except that for which they were specially called together, or which may have been submitted to them by special message of the governor.

When Acts are to take Effect.

The old rule was that statutes, unless otherwise ordered, took effect from the first day of the session on which they were passed; except where the responsibility is taken of dissolving the Parliament and appealing to the people,—it must follow that any bill which the two houses have passed must be approved by the monarch. The approval has become a matter of course, and the governing power in Great Britain is substantially in the House of Commons. 1 Bl. Com. 184–186, and notes. [After the bill has been vetoed it is dead unless repassed by the constitutional majorities, even though it received those majorities on its first passage. State v. Crouse, 33 Neb. 855, 55 N. W. 246, 20 L. R. A. 265.]

1 The Constitution of Iowa, art. 4, § 11, provides that the governor "may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they have been convened." It was held in Morford v. Unger, S Iowa, 82, that the General Assembly, when thus convened, were not confined in their legislation to the purposes specified in the message. "When lawfully convened, whether in virtue of the provision in the constitution or the governor's proclamation, it is the 'General Assembly' of the State, in which the full and exclusive legislative authority of the State is vested. Where its business at such session is not restricted by some constitutional provision, the General Assembly may enact any law at a special or extra session that it might at a regular session. Its powers, not being derived from the governor's proclamation, are not confined to the special purpose for which it may have been convened by him."

2 Provisions to this effect will be found in the Constitutions of Illinois, Michigan, Missouri, and Nevada; perhaps in some others. As to what matters are held embraced in such call, see State v. Shores, 31 W. Va. 491, 7 S. E. 413; Baldwin v. State, 21 Tex. App. 591, 3 S. W. 109; Wells v. Mo. Pac. R. Co., 110 Mo 290, 19 S. W. 590, 15 L. R. A. 47; Chicago, B. & Q. R. Co. v. Wolfe, 61 Neb. 502, 86 N. W. 441; People v. Curry, 130 Cal. 82, 62 Pac. 516.] Confirmation of appointment by the Senate may be made. The limitation is upon legislation. People v. Blanding, 63 Cal. 323.

3 1 Lev. 91; Laties v. Holmes, 4 T. R. 600; Smith v. Smith, Mar. (N. C.) 26;
but this rule was purely arbitrary, based upon no good reason, and frequently working very serious injustice. The present rule is that an act takes effect from the time when the formalities of enactment are actually complete under the constitution, unless it is otherwise ordered, or unless there is some constitutional or statutory rule on the subject which prescribes otherwise. 1 By the Constitution of Mississippi, 2 "no law of a general nature, unless otherwise provided, shall be enforced until sixty days after the passage thereof." By the Constitution of Illinois, 3 no act of the General Assembly shall take effect until the first day of July next after its passage, unless in case of emergency (which emergency shall be expressed in the preamble or body of the act) the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct. By the Constitution of Michigan, 4 no public act shall take effect, or be in force, until the expiration of ninety days from the end of the session at which the same is passed, unless the legislature shall otherwise direct by a two-thirds vote of the members elected to each house. These and similar provisions are designed to secure, as far as possible, the public promulgation of the law before parties are bound to take notice of and act under it, and to obviate the injustice of a rule which should compel parties at their peril to know and obey a law of which, in the nature of things, they could not possibly have heard; they give to all parties the full constitutional period in which to become ac-

Hamlet v. Taylor, 5 Jones L. 36. This is changed by 33 Geo. Ill. c. 13, by which statutes since passed take effect from the day when they receive the royal assent, unless otherwise ordered therein.

1 Matthews v. Zane, 7 Wheat. 164; Rathbone v. Bradford, 1 Ala. 312; Branch Bank of Mobile v. Murphy, 8 Ala. 119; Heard v. Heard, 8 Ga. 390; Goodsell v. Boynton, 2 Ill. 555; Dyer v. State, Meigs, 237; Parkinson v. State, 14 Md. 154; Freeman v. Gaither, 75 Ga. 741. An early Virginia case decides that "from and after the passing of this act" would exclude the day on which it was passed.

King v. Moore, Jefferson, 9. Same ruling in Parkinson v. Brandenberg, 38 Minn. 294, 28 N. W. 919. On the other hand, it is held in some cases that a statute which takes effect from and after its passage, has relation to the first moment of that day. In re Welman, 20 Vt. 553; Mallory v. Hiles, 4 Met. (Ky.) 53; Wood v. Fort, 42 Ala. 641; Hill v. State, 5 Lea.

725. Others hold that it has effect from the moment of its approval by the governor. People v. Clark, 1 Cal. 406. See In re Wynne, Chase Dec. 227.


3 Art. 3, § 23. The intention that an act shall take effect sooner must be expressed clearly and unequivocally; it is not to be gathered by intendment and inference. Wheeler v. Chadbuck, 10 Ill. 301. See Hendrickson v. Hendrickson, 7 Ind. 13.

Where an act is by its express terms to take effect after publication in a specified newspaper, every one is bound to take notice of this fact: and if before such publication negotiable paper is issued under it, the purchasers of such paper can acquire no rights thereby. McClure v. Oxford, 91 U. S. 429; following George v. Oxford, 10 Kan. 72.

4 Art. 4, § 29.
quainted with the terms of the statutes which are passed, except when the legislature has otherwise directed; and no one is bound to govern his conduct by the new law until that period has elapsed.¹ And the fact that, by the terms of the statute, something is to be done under it before the expiration of the constitutional period for it to take effect, will not amount to a legislative direction that the act shall take effect at that time, if the act itself is silent as to the period when it shall go into operation.²

The Constitution of Indiana provides³ that “no act shall take effect until the same shall have been published and circulated in the several counties of this State, by authority, except in case of emergency; which emergency shall be declared in the preamble, or in the body of the law.” Unless the emergency is thus declared, it is plain that the act cannot take earlier effect.⁴ But the courts will not inquire too nicely into the mode of publication. If the laws are distributed in bound volumes, in a manner and shape not substantially contrary to the statute on that subject, and by the proper authority, it will be held sufficient, notwithstanding a failure to comply with some of the directory provisions of the statute on the subject of publication.⁵

The Constitution of Wisconsin, on the other hand, provides⁶ that “no general law shall be in force until published;” thus


² Supervisors of Iroquois Co. v. Keady, 34 Ill. 293. An act for the removal of a county seat provided for taking the vote of the electors of the county upon it on the 17th of March, 1863, at which time the legislature had not adjourned. It was not expressly declared in the act at what time it should take effect, and it was therefore held that it would not take effect until sixty days from the end of the session, and a vote of the electors taken on the 17th of March was void. See also Rice v. Ruddiman, 10 Mich. 125; Rogers v. Vass, 6 Iowa, 405. And it was also held in the case first named, and in Wheeler v. Chubbuck, 16 Ill. 301, that “the direction must be made in a clear, distinct, and unequivocal provision, and could not be helped out by any sort of intention or implication,” and that the act must all take effect at once, and not by piecemeal.

³ Art. 4, § 28.

⁴ Carpenter v. Montgomery, 7 Blackf. 415; Hendrickson v. Hendrickson, 7 Ind. 13; Mark v. State, 15 Ind. 98. The legislature must necessarily in these cases be judge of the existence of the emergency. Carpenter v. Montgomery, supra. The Constitution of Tennessee provides that “No law of a general nature shall take effect until forty days after its passage, unless the same, or the caption, shall state that the public welfare requires that it should take effect sooner.” Art. 1, § 20.

⁵ State v. Bailey, 16 Ind. 46. See further, as to this constitutional provision, Jones v. Cavins, 4 Ind. 305.

⁶ Art. 7, § 21.
leaving the time when it should take effect to depend, not alone upon the legislative direction, but upon the further fact of publication. But what shall be the mode of publication seems to be left to the legislative determination. It has been held, however, that a general law was to be regarded as published although printed in the volume of private laws, instead of the volume of public laws, as the statute of the State would require. But an unauthorized publication—as, for example, of an act for the incorporation of a city, in two local papers instead of the State paper—is no publication in the constitutional sense. The Constitution of Louisiana provides that “No law passed by the General Assembly, except the general appropriation act, or act appropriating money for the expenses of the General Assembly, shall take effect until promulgated. A law shall be considered promulgated at the place where the State journal is published, the day after the publication of such law in the State journal, and in all other parts of the State twenty days after such publication.” Under similar provisions in the Civil Code, before the adoption of this constitution, it was held that “the promulgation of laws is an executive function. The mode of promulgation may be prescribed by the legislature, and differs in different countries and at different times. . . . Promulgation is the extrinsic act which gives a law, perfect in itself, executory force. Unless the law prescribes that it shall be executory from its passage, or from a certain date, it is presumed to be executory only from its promulgation.” But it is competent for the legislature to provide in an act that it shall take effect from and after its passage; and the act will have operation accordingly, though not published in the official gazette. In Pennsylvania, whose constitution then in force also failed to require publication of laws, the publication was nevertheless held to be necessary before the act could come into operation; but as the doings of the legislature were public, and the journals published regularly, it was held that every enactment must be

1 Matter of Boyle, 0 Wis. 234. Under this provision it has been decided that a law establishing a municipal court in a city is a general law. Matter of Boyle, supra. See Eitel v. State, 63 Ind. 201. Also a statute for the removal of a county seat. State v. Lean, 9 Wis. 279. Also a statute incorporating a municipality, or authorizing it to issue bonds in aid of a railroad. Clark v. Janesville, 10 Wis. 130. And see Scott v. Clark, 1 Iowa, 70. An inaccuracy in the publication of a statute, which does not change its substance or legal effect, will not invalidate the publication. Smith v. Hoyt, 14 Wis. 262.

2 Clark v. Janesville, 10 Wis. 130. See, further, Mills v. Jefferson, 20 Wis. 50.


deemed to be published in the sense necessary, and the neglect to publish one in the pamphlet edition of the laws would not destroy its validity.¹

The Constitution of Iowa provides that "no law of the General Assembly, passed at a regular session, of a public nature, shall take effect until the fourth day of July next after the passage thereof. Laws passed at a special session shall take effect ninety days after the adjournment of the General Assembly by which they were passed. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the State."² Under this section it is not competent for the legislature to confer upon the governor the discretionary power which the constitution gives to that body, to fix an earlier day for the law to take effect.³

³ Scott v. Clark, 1 Iowa, 70; Pilkey v. other law. State v. School Board Fund, Gleason, 1 Iowa, 522.
⁴ Kan. 201.