CHAPTER XIV.

THE POWER OF TAXATION.

The power to impose taxes is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of the authority which exercises it. It reaches to every trade or occupation; to every object of industry, use, or enjoyment; to every species of possession; and it imposes a burden which, in case of failure to discharge it, may be followed by seizure and sale or confiscation of property. No attribute of sovereignty is more pervading, and at no point does the power of the government affect more constantly and intimately all the relations of life than through the exactions made under it.

Taxes are defined to be burdens or charges imposed by the legislative power upon persons or property, to raise money for public purposes. The power to tax rests upon necessity, and is inherent in every sovereignty. The legislature of every free State will possess it under the general grant of legislative power, whether particularly specified in the constitution among the powers to be exercised by it or not. No constitutional government can exist without it, and no arbitrary government without regular and steady taxation could be anything but an oppressive and vexatious despotism, since the only alternative to taxation would be a forced extortion for the needs of government from such persons or objects as the men in power might select as victims. Chief Justice Marshall has said of this power: "The power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to

1 Blackwell on Tax Titles, 1. A tax is a contribution imposed by government on individuals for the service of the State. It is distinguished from a subsidy as being certain and orderly, which is shown in its derivation from Greek, τέλος, ordo, order or arrangement. Jacob, Law Die.; Bouvier, Law Die. "The revenues of a State are a portion that each subject gives of his property in order to secure, or to have, the agreeable enjoyment of the remainder." Montesquieu, Spirit of the Laws, b. 12, c. 30. In its most enlarged sense the word "taxes" embraces all the regular impositions made by government upon the person, property, privileges, occupations, and enjoyments of the people for the purpose of raising public revenue. See Perry v. Washburn, 20 Cal. 318, 350; Loan Association v. Topeka, 20 Wall. 655, 664; Van Horn v. People, 46 Mich. 183, 9 N. W. 246; [Re Page, 60 Kan. 842, 58 Pac. 478, 47 L. R. A. 68. See also note to 13 L. R. A. 533.]
which it is applicable to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation. The people of a State, therefore, give to their government a right of taxing themselves and their property; and as the exigencies of the government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituents over their representative, to guard them against its abuse."

The same eminent judge has said in another case: "The power of legislation, and consequently of taxation, operates on all persons and property belonging to the body politic. This is an original principle, which has its foundation in society itself. It is granted by all for the benefit of all. It resides in the government as part of itself, and need not be reserved where property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the legislature. This vital power may be abused; but the interest, wisdom, and justice of the representative body, and its relations with its constituents, furnish the only security where there is no express contract against unjust and excessive taxation, as well as against unwise legislation generally." And again, the same judge says, it is "unfit for the judicial department to inquire what degree of taxation is the legitimate use, and what degree may amount to the abuse, of the power."

The Constitution of the United States declares that "the Congress shall have power to levy and collect taxes, duties, imposts, and excises to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, 

1 McCulloch v. Maryland, 4 Wheat. 316, 428.
3 McCulloch v. Maryland, 4 Wheat. 316, 429. See Kirtland v. Hotohiss, 100 U. S. 491; Board of Education v. McLandishborough, 36 Ohio St. 237; State v. Board of Education, 38 Ohio St. 3.
and excises shall be uniform throughout the United States." 1 The
duties, imposts, and excises here specified are merely different
kinds of taxes; the first two terms being commonly applied to
the levies made by governments on the importation and exporta-
tion of commodities, while the term "excises" is applied to the
taxes laid upon the manufacture, sale, or consumption of commodi-
ties within the country, upon licenses to pursue certain occupations,
and upon corporate privileges. "No tax or duty shall be laid on
articles exported from any State;" 2 but this provision of the
Constitution is not violated by a requirement that an article in-
tended for exportation shall be stamped, as a protection against
fraud. 3 Direct taxes, when laid by Congress, must be ap-
portioned among the several States according to the representative
population. 4 The term "direct taxes," as employed in the Constitu-
tion, has a technical meaning, and embraces capitation and land
taxes only. 5 These are express limitations, imposed by the Con-
stitution upon the federal power to tax; but there are some others
which are implied, (a) and which under the complex system of
American government have the effect to exempt some subjects
otherwise taxable from the scope and reach, according to circum-
stances, of either the federal power to tax or the power of the
several States. One of the implied limitations is that which pre-
cludes the States from taxing the agencies whereby the general
government performs its functions. The reason is that, if they

4 Const. U. S. Art. 1, § 2; Art. 1, § 9, seem to modify the statement of the text
cl. 4. by declaring capitation taxes and those
5 Hylton v. United States, 3 Dall. 171; levied upon general property, whether
Pacific Ins. Co. v. Soule, 7 Wall. 433; real or personal or both, and the income
Vezzie Bank v. Fenno, 8 Wall. 533; derived therefrom, direct taxes.]

(a) [It is held that the States are restricted from taxing patent rights. People
v. Brooklyn Bd. of Assessors, 150 N. Y. 417, 51 N. E. 269, 42 L. R. A. 280; Com. v.
1111, 1113. See other cases upon State taxation of patent rights in note to 44 L. ed.
U. S. 374. A State under a general law taxing legacies may tax a bequest to the
United States, since the tax is levied on the bequest before it reaches the United
N. Y. 470, 36 N. E. 505. And the fact that a corporation possesses a franchise from
the federal government, and is engaged in inter-state commerce, will not prevent the
State's taxing it upon a franchise from the State. Central Pac. R. Co. v. California,
taxable by States, People v. Roberts, 159 N. Y. 70, 53 N. E. 685, 45 L. R. A. 129.
As to what lands of tribal Indians cannot be taxed by State, see Allen County
Cont'r's v. Simons, 128 Ind. 193, 28 N. E. 429, 13 L. R. A. 512.]
possessed this authority, it would be within their power to impose taxation to an extent that might cripple, if not wholly defeat, the operations of the national authority within its proper and constitutional sphere of action. "That the power to tax," says Chief Justice Marshall, "involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control,—are propositions not to be denied." And referring to the argument that confidence in the good faith of the State governments must forbid our indulging the anticipation of such consequences, he adds: "But all inconsistencies are to be reconciled by the magic of the word,—confidence. Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess of destruction would be an abuse, to presume which would banish that confidence which is essential to all government. But is this a case of confidence? Would the people of any one State trust those of another with a power to control the most insignificant operations of their State government? We know they would not. Why then should we suppose that the people of any one State should be willing to trust those of another with a power to control the operations of a government to which they have confided their most important and most valuable interests? In the legislature of the Union alone are all represented. The legislature of the Union alone, therefore, can be trusted by the people with the power of controlling measures which concern all, in the confidence that it will not be abused. This, then, is not a case of confidence." 1

1 McCulloch v. Maryland, 4 Wheat. 316, 431. The case involved the right of the State of Maryland to impose taxes upon the operations, within its limits, of the Bank of the United States, created by authority of Congress. "If," says the Chief Justice, "we apply the principle for which the State of Maryland contends to the Constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the States. The American people have declared their Constitution, and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy in fact to the States. If the States may tax one instrument employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States." In Vehzie Bank v. Ferno, 8 Wall. 593, followed and approved in National Bank v. United States, 101 U. S. 1, it was held competent for Congress, in aid of the circulation of the national banks, to impose restraints upon the cir-
It follows as a logical result from this doctrine that if the Congress of the Union may constitutionally create a Bank of the United States, as an agency of the national government in the accomplishment of its constitutional purposes, any power of the States to tax such bank, or its property, or the means of performing its functions, unless with the consent of the United States, is precluded by necessary implication. For the like reasons a State is prohibited from taxing an officer of the general government for his office or its emoluments; since such a tax, having the effect to reduce the compensation for the services provided by the act of Congress, would to that extent conflict with such act, and tend to neutralize its purpose. So the States may not impose taxes upon the obligations or evidences of debt issued by the general government upon the loans made to it, unless such taxation is permitted by law of Congress, and then only in the manner such law shall prescribe,—any such tax being an impediment to the operations of the government in negotiating loans, and, in greater or less degree in proportion to its magnitude, tending to cripple and embarrass the national power. The tax upon

culation of the State banks in the form of taxation. Perhaps no other case goes so far as this, in holding that taxation may be imposed for other purposes than the raising of revenue, though the levy of duties upon imports with a view to incidental protection to domestic manufactures is upon a similar principle. [The Federal tax system is not subject to State registration laws, nor to State statutes of limitation. United States v. Snyder, 149 U. S. 210, 13 Sup. Ct. Rep. 846.]


3 Weston v. Charleston, 2 Pet. 449;
the national securities is a tax upon the exercise of the power of Congress "to borrow money on the credit of the United States."
The exercise of this power is interfered with to the extent of the tax imposed under State authority; and the liability of the certificates of stock or other securities to taxation by a State, in the hands of individuals, would necessarily affect their value in market, and therefore affect the free and unrestrained exercise of the power. "If the right to impose a tax exists, it is a right which, in its nature, acknowledges no limits. It may be carried to any extent within the jurisdiction of the State or corporation which imposes it, which the will of each State or corporation may prescribe." 1

If the States cannot tax the means by which the national government performs its functions, neither, on the other hand and for the same reasons, can the latter tax the agencies of the State governments. "The same supreme power which established the departments of the general government determined that the local governments should also exist for their own purposes, and made

Bank of Commerce v. New York City, 2 Black, 620; Bank Tax Case, 2 Wall. 209; Van Allen v. Assessors, 3 Wall. 573; People v. Commissioners, 4 Wall. 244; Bradley v. People, 4 Wall. 459; The Banks v. The Mayor, 7 Wall. 10; Bank v. Supervisors, 7 Wall. 20; State v. Rogers, 79 Mo. 283. For a kindred doctrine, see State v. Jackson, 32 N. J. 450.

it impossible to protect the people in their common interests without them. Each of these several agencies is confined to its own sphere, and all are strictly subordinate to the constitution which limits them, and independent of other agencies, except as thereby made dependent. There is nothing in the Constitution [of the United States] which can be made to admit of any interference by Congress with the secure existence of any State authority within its lawful bounds. And any such interference by the indirect means of taxation is quite as much beyond the power of the national legislature as if the interference were direct and extreme." 1 It has therefore been held that the law of Congress requiring judicial process to be stamped could not constitutionally be applied to the process of the State courts; since otherwise Congress might impose such restrictions upon the State courts as would put an end to their effective action, and be equivalent practically to abolishing them altogether. 2 And a similar ruling has been made in other analogous cases.

1 Fifield v. Close, 15 Mich. 506. "In respect to the reserved powers, the State is as sovereign and independent as the general government. And if the means and instrumentalities employed by that government to carry into operation the powers granted to it are necessarily, and for the sake of self-preservation, exempt from taxation by the States, why are not those of the States depending upon their reserved powers, for like reasons, equally exempt from federal taxation? Their unimpaired existence in the one case is as essential as in the other. It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can only exist at the mercy of that government. Of what avail are these means if another power may tax them at discretion?" Per Nelson, J., in Collector v. Day, 11 Wall. 113, 121. See also Ward v. Maryland, 12 Wall. 418, 427; Railroad Co. v. Peniston, 18 Wall. 5; Freedman v. Sigel, 10 Blatch. 327. [A tax levied by the United States upon legacies and distributive shares of personal property is a tax upon the transmission or receipt of property and not upon the right of the State to regulate the devolution of property upon death of owner. Knowlton v. Moore, 178 U. S. 41, 20 Sup. Ct. Rep. 747; Mar-dock v. Ward, 178 U. S. 180, 20 Sup. Ct. Rep. 775; Orr v. Gilman, 183 U. S. 278, 22 Sup. Ct. Rep. 213; Magoun v. Illinois Trust Co., 170 U. S. 288, 18 Sup. Ct. Rep. 594. See United States v. Owens, 100 Fed. Rep. 70, upon right of Federal government to tax bonds of saloon-keepers. Held that act purporting to authorize such tax is void for violation of the principle against taxation of the agencies of the State.

The taxation of the capital stock of a corporation owning patents is a taxation of such patents and invalid. So held in People v. Board of Assessors, 150 N. Y. 417, 51 N. E. 269. Not so as to tax levied on the shares of stock as property of the individual. Crown Cork & Seal Co. v. State, 87 Md. 637, 40 Atl. 1074, 67 Am. St. 371.]


It has been repeatedly decided that the act of Congress which provided that
Strong as is the language employed to characterize the taxing power in some of the cases which have considered this subject, subsequent events have demonstrated that it was by no means extravagant. An enormous national debt has not only made imposts necessary which in some cases reach several hundred per cent of the original cost of the articles upon which they are imposed, but the systems of State banking which were in force when the necessity for contracting that debt first arose, have been literally taxed out of existence by burdens avowedly imposed for that very purpose.¹ If taxation is thus unlimited in its operation upon the objects within its reach, it cannot be extravagant to say that the agencies of government are necessarily excepted from it, since otherwise its exercise might altogether destroy the government through the destruction of its agencies. That which was predicted as a possible event has been demonstrated by actual facts to be within the compass of the power; and if considerations of
certain papers not stamped should not be received in evidence must be limited in its operation to the federal courts. Carpenter v. Snelling, 97 Mass. 452; Green v. Holway, 101 Mass. 243, 3 Am. Rep. 339; Clemens v. Conrad, 19 Mich. 170; Haight v. Grisly, 64 N. C. 739; Griffin v. Ranney, 35 Conn. 239; People v. Gates, 43 N. Y. 49; Bowen v. Byrne, 55 Ill. 467; Hale v. Wilkinson, 21 Grat. 75; Atkins v. Plympton, 41 Vt. 21; Bumpass v. Taggart, 26 Ark. 358, 7 Am. Rep. 623; Sammons v. Holloway, 21 Mich. 162, 4 Am. Rep. 405; Duffy v. Holbon, 40 Cal. 210; Sporrer v. Eider, 1 Heisk. 633; McElvain v. Mudd, 41 Ala. 48, 4 Am. Rep. 105; Burson v. Huntington, 21 Mich. 415, 4 Am. Rep. 497; Davis v. Richardson, 45 Miss. 499, 7 Am. Rep. 732; Hunter v. Cobb, 1 Bush, 299; Craig v. Dimock, 47 Ill. 308; Moore v. Moore, 47 N. Y. 467, 7 Am. Rep. 466. [Knox v. Rossi, 25 Nev. 96, 57 Pac. 179, 48 L. R. A. 305. Upon effect of omission to stamp an instrument or cancel the stamp thereon, see note to this case in L. R. A. A check may be forged and the forger punished criminally, even though the instrument was not stamped in compliance with the law of Congress relating to checks, and was therefore invalid. Thomas v. State, 40 Tex. Crim. App. 502, 51 S. W. 242, 46 L. R. A. 464, and see note to this case in L. R. A. upon omission of stamp as affecting criminal prosecution.] Several of these cases have gone still farther, and declared that Congress cannot preclude parties from entering into contracts permitted by the State laws, and that to declare them void was not a proper penalty for the enforcement of tax laws. Congress cannot make void a tax deed issued by a State. Sayles v. Davis, 22 Wis. 225. Nor require a stamp upon the official bonds of State officers. State v. Garton, 52 Ind. 1. Nor tax the salary of a State officer. Collector v. Day, 11 Wall. 113; Freeeman v. Sigel, 10 Blatch. 327. Nor forbid the recording of an unstamped instrument under the State laws. Moore v. Quirk, 105 Mass. 49, 7 Am. Rep. 499. “Power to tax for State purposes is as much an exclusive power in the States, as the power to lay and collect taxes to pay the debts and provide for the common defence and general welfare of the United States is an exclusive power in Congress.” Clifford, J., Ward v. Maryland, 12 Wall. 418, 427. In United States v. Railroad Co., 17 Wall. 322, it was decided that a municipal corporation of a State, being a portion of the sovereign power, was not subject to taxation by Congress upon its shares of stock in a railroad company. [Nor can the United States tax the income derived from bonds issued by the municipal corporations of the States. Pollock v. Farmers’ L. & T. Co., 157 U. S. 429, 15 Sup. Ct. Rep. 373.]¹

¹ The constitutionality of this taxation was sustained by a divided court in Vezie Bank v. Fenno, 8 Wall. 533.
policy were important, it might be added that, if the States possessed the authority to tax the agencies of the national government, they would hold within their hands a constitutional weapon which factious and disappointed parties would be able to wield with terrible effect when the policy of the national government did not accord with their views; while, on the other hand, if the national government possessed a corresponding power over the agencies of the State governments, there would not be wanting men who, in times of strong party excitement, would be willing and eager to resort to this power as a means of coercing the States in their legislation upon the subjects remaining under their control.

There are other subjects which are or may be removed from the sphere of State taxation by force of the Constitution of the United States, or of the legislation of Congress under it. That instrument declares that "no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." This prohibition has led to some difficulty in its practical application. Imports, as such, are not to be taxed generally; but it was not the purpose of the Constitution to exclude permanently from the sphere of State taxation all property brought into the country from abroad; and the difficulty encountered has been met with in endeavoring to indicate with sufficient accuracy for practical purposes the point of time at which articles imported cease to be regarded as imports within the meaning of the prohibition. In general terms it has been said that when the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has perhaps lost its distinctive character as an import, and has become subject to the taxing power of the State; but that while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution. And in the application of this rule


it was declared that a State law which, for revenue purposes, required an importer to take a license and pay fifty dollars before he should be permitted to sell a package of imported goods, was equivalent to laying a duty upon imports. It has also been held in another case, that a stamp duty imposed by the legislature of California upon bills of lading for gold or silver, transported from that State to any port or place out of the State, was in effect a tax upon exports, and the law was consequently void.  

Congress is also vested with power to regulate commerce. (a) This power is not so far exclusive as to preclude State legislation on matters either local in their nature or operation, or intended


1 Almy v. California, 24 How. 190. See what is said of this case in Woodruff v. Parham, 8 Wall. 123, 137. And compare Jackson Iron Co. v. Auditor-General, 32 Mich. 488. See also Brumagim v. Tillinghast, 18 Cal. 265; Garrison v. Tillinghast, 18 Cal. 404; Ex parte Martin, 7 Nev. 140; Turner v. State, 56 Md. 290; Turner v. Maryland, 107 U. S. 33, 2 Sup. Ct. Rep. 44. In the last two cases a law requiring an inspection of tobacco going out of the State is sustained. The States cannot discriminate in taxation between the productions of different States. Welton v. Missouri, 91 U. S. 275; Tierman v. Rinker, 102 U. S. 123.

to be mere aids to commerce, for which special regulations can more effectually provide; such as harbor pilotage, beacons, buoys, the improvement of navigable waters within the State, and the examination as to their fitness of railroad employees, provided such legislation does not conflict with the regulations made by federal law. ¹ Except as to such matters the power of Congress over commerce with foreign nations and among the several States is exclusive. If Congress has made no express regulations with regard to such commerce, its inaction is equivalent to a declaration that it shall be free. ² The States, therefore, can enforce no regulations which make foreign or inter-state commerce subject to the payment of tribute to them. ³ Duties of tonnage the States

are also forbidden to lay.\(^1\) The meaning of this seems to be that


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\(^1\) Const. of U. S. art. 1, § 10, cl. 2.
vessels must not be taxed as vehicles of commerce, according
to any other State there to secure such commerce to his principal, and the State
to capacity; but it is admitted they may be taxed like other property.  


It is also believed that that provision in the Constitution of the United States, which declares that "the citizens of each State

Rep. 889; Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 11 Sup. Ct. Rep. 576, 3 Int. St. Com. R. 595; Western U. Tel. Co. v. Massachusetts, 125 U. S. 590, 8 Sup. Ct. Rep. 961; Henderson Bridge Co. v. Kentucky, 160 U. S. 150, 17 Sup. Ct. Rep. 532; Adams Express Co. v. Kentucky, 160 U. S. 171, 17 Sup. Ct. Rep. 527; and in particular, see Adams Express Co. v. Ohio State Auditor, 160 U. S. 165, 17 Sup. Ct. Rep. 694, in which Mr. Justice Brewer, in delivering the opinion of the court denying a petition for a rehearing of 165 U. S. 194, lays down the very sensible proposition that "it is a cardinal rule which should never be forgotten, that whatever property is worth for the purposes of income and sale, it is worth for the purposes of taxation." See also State, Guilbert v. Halliday, 58 Ohio St. 728, 61 N. E. 1102, 49 L. R. A. 427. The principle regulating the relation between the taxing power of the States and the commerce power of Congress, is stated by Mr. Chief Justice Fuller in Postal Telegraph Co. v. Adams, 155 U. S. 688, 15 Sup. Ct. Rep. 208, 209; aff. 71 Miss. 555, 14 So. 36, 4 Int. Com. R. 416, 42 Am. St. 476, as follows: "Property in a State belonging to a corporation, whether foreign or domestic, engaged in foreign or inter-state commerce, may be taxed, or a tax imposed on the corporation on account of its property within a State, and may take the form of a tax for the privilege of exercising its franchises within the State, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the State (the exaction therefor not being susceptible of exceeding the sum which might be leviable directly thereon), and if payment be not made a condition precedent to the right to carry on the business, but its enforcement left to the ordinary means devised for the collection of taxes." This is reaffirmed in New York, L. E. & W. R. Co. v. Pennsylvania, 158 U. S. 431, 15 Sup. Ct. Rep. 806, which sustained a tax upon tolls received by a lessee of a railroad from a lessee engaged in inter-state commerce. See note upon State tax laws and inter-state commerce, in 33 L. ed. U. S. 311, and another to 38 L. ed. U. S. 1041. Two other very important cases upon the "unit rule" in taxation of properties lying in two or more States, are Pittsburgh, C., C. & St. L. R. Co. v. Backus, 164 U. S. 421, 14 Sup. Ct. Rep. 1114, and Cleveland, C. & St. L. R. Co. v. Backus, 164 U. S. 439, 1041, 14 Sup. Ct. Rep. 1122. The intangible property taxable within the State may be apportioned by the State, for purposes of county taxation, among the counties into or through which the railway extends. Columbus S. R. Co. v. Wright, 151 U. S. 470, 14 Sup. Ct. Rep. 396, aff. 80 Ga. 574, 15 S. E. 293. See also Pullman's P. C. Co. v. Hayward, 141 U. S. 36, 11 Sup. Ct. Rep. 883. Where the tangible property in the State consists entirely of railway coaches running into or through the State, the property in the State may be valued by taking such fraction of the total capital stock of the company as the miles of road over which it runs its coaches in the State are of the total number of miles of road over which it runs his coaches. Pullman's P. C. Co. v. Pennsylvania, 141 U. S. 18, 11 Sup. Ct. Rep. 876. And a State may levy an excise tax upon a railroad operating within its borders, and such excise may be proportioned upon a graduated scale to the gross receipts of such road derived within the State, such gross receipts being determined from the total gross receipts for the entire system, within and without the State, from local, inter-state, and foreign commerce, by the application of a track mileage ratio. Maine v. Grand Trunk R. Co. of Canada, 142 U. S. 217, 12 Sup. Ct. Rep. 121, 163; Cumberland & P. R. Co. v. State, 92 Md. 688, 48 Atl. 503. And the State may enforce the payment of all such taxes by the imposition of whatever penalties it may see fit to prescribe by general law. A penalty of 50% and attorneys' fees was sustained in Western U. T. & I. Co. v. Indiana, 165 U. S. 301, 17 Sup. Ct. Rep. 546, aff. 146 Ind. 51, 41 N. E. 793. State cannot require a foreign corporation to pay a license before engaging in inter-state commerce within its borders. Crutcher v. Kentucky, 141 U. S. 47, 11 Sup. Ct. Rep. 851. Nor can it make mandatory and conclusive any arithmetical rule for
shall be entitled to all the privileges and immunities of the citizens of the several States," 1 will preclude any State from imposing upon the property which citizens of other States may own, or the business which they may carry on within its limits, any higher burdens by way of taxation than are imposed upon corresponding property or business of its own citizens. This is the express decision of the Supreme Court of Alabama, 2 following in this particular the dictum of an eminent federal judge at an early day, 3 and the same doctrine has been recently affirmed by the federal Supreme Court. 4

As the States are forbidden to pass any laws

the determination of that portion of the intangible property of an inter-state business to be assessed as being within the State. Such rule is to be considered merely directory and presumptive. Wells, F. & Co.'s Express v. Crawford County, 63 Ark. 576, 40 S. W. 710, 37 L. R. A. 371. Business of a foreign railroad company having only terminal facilities in the State cannot be taxed by the State. People v. Wemple, 138 N. Y. 1, 33 N. E. 720, 19 L. R. A. 694. The intangible capital of steamship companies may be distributed among the States in proportion to their tangible property. Beaufort Co. v. Old Dominion S. S. Co., 128 N. C. 553, 50 S. E. 18. Cost of construction, cost of replacement, connections with other roads, and other commercial advantages, rental value, net earnings, and market value of stocks and bonds should all be considered in assessing railroad property. Oregon & C. R. Co. v. Jackson County, 38 Oreg. 593, 64 Pac. 397, 65 Pac. 509. For other cases upon assessment of railroad property, see State v. Virginia & T. R. Co., 23 Nev. 283, 46 Pac. 723, 35 L. R. A. 759; Detroit City St. R. Co. v. Common Council, 125 Mich. 673, 85 N. W. 90, 86 N. W. 809.] 3

1 Art. 4, § 2. A license tax may not be imposed upon one who contracts with or induces laborers to leave a State. Joseph v. Randolphi, 71 Ala. 409. [Contra, Williams v. Fears, 179 U. S. 270, 21 Sup. Ct. Rep. 128, aff. 110 Ga. 829, 55 S. E. 609. A license tax upon buyers who come into a certain county to buy produce therein for shipment to markets outside the county is not repugnant to the equal privileges clause. Rothermel v. Meyerle, 136 Pa. 250, 20 Atl. 583, 9 L. R. A. 366.] 4

2 Wiley v. Parmer, 14 Ala. 627. 


venders may be bad as against non-residents, is no reason for holding it void as to residents. Brownback v. North Wales, 194 Pa. 609, 45 Atl. 600, 49 L. R. A. 440.] Nor charge vessels loaded with the products of other States larger fees for the use of the public wharves than are charged vessels loaded with products of the same State. Guy v. Baltimore, 100 U. S. 434. See further Woodruff v. Parham, 8 Wall. 123; Cook v. Pennsylvania, 97 U. S. 596. "The negotiation of sales of goods which are in another State for the purpose of introducing them into the State in which the negotiation is made is inter-state commerce," and a statute imposing a privilege license upon all persons selling by sample within a Tennessee taxing district is void as applied to the drummer for an Ohio house, as interfering with such commerce, and this although Tennessee and foreign drummers are put on the same footing. Robbins v. Shelby Taxing District, 129 U. S. 494; Sup. Ct. Rep. 562; Corson v. Maryland...129 U. S. 602, 7 Sup. Ct. Rep. 653; Asher v. Texas, 128 U. S. 129, 9 Sup. Ct. Rep. 1; State v. Agee, 83 Ala. 110, 3 So. 566; State v. Bracco, 103 N. C. 340, 5 S. E. 404; Simmons Hardware Co. v. McGuire, 39 La. Ann. 848, 2 So. 592; Fort Scott v. Pelton, 39 Kan. 764, 18 Pac. 654; Ex parte Rosenblatt, 19 Nev. 439, 14 Pac. 298. [Brennan v. Titusville, 163 U. S. 289, 14 Sup. Ct. Rep. 829; Atkins v. Richmond, 98 Va. 91, 84 S. E. 607, 47 L. R. A. 583; Lauren v. Elmore, 55 S. C. 477, 33 S. E. 600, 45 L. R. A. 240.] A license tax can be demanded only in respect of the business of an express company carried on entirely within the State. Crutcher v. Kentucky, 141 U. S. 47, 11 Sup. Ct. Rep. 861 rev. Crutcher v. Com., 89 Ky. 6, 19 S. W. 141.] See also State v. Richards, 82 W. Va. 348, 9 S. E. 245. [And a State may tax resi-
dent commission merchants upon their commissions, even though those commissions are earned entirely upon inter-state commerce. Ficklen v. Shelby Taxing District, 145 U. S. 1, 12 Sup. Ct. Rep. 810. And it may tax sellers of alcoholic liquors, and may exempt from such tax manufacturers who sell at the place of manufacture in quantities above a given amount. Such exemption does not discriminate against non-resident manufacturers. Reymann Brewing Co. v. Bristor, 179 U. S. 445, 21 Sup. Ct. Rep. 201.] 1

1 See ante, p. 396, and cases cited in note.

Having thus indicated the extent of the taxing power, it is necessary to add that certain elements are essential in all taxation, and that it will not follow as of course, because the power is so vast, that everything which may be done under pretence of its exercise will leave the citizen without redress, even though there be no conflict with express constitutional inhibitions. Everything that may be done under the name of taxation is not necessarily a tax; and it may happen that an oppressive burden imposed by the government, when it comes to be carefully scrutinized, will prove, instead of a tax, to be an unlawful confiscation of property, unwarranted by any principle of constitutional government.

Re Sims, 118 Fed. Rep. 366. But where monies are loaned by a creditor residing in one State to a debtor residing in another, the loan being effected through the intervention of an agent resident in the latter, the creditor is taxable in the latter State in respect of monies so loaned, particularly if the monies, as they fall due and are paid, are released in that State. Bristol v. Washington Co., 177 U. S. 133, 20 Sup. Ct. Rep. 585. To substantially the same effect is New Orleans v. Stempel, 176 U. S. 300, 20 Sup. Ct. Rep. 110, although here the notes and other evidences of debt were left in the hands of the agent in Louisiana. See many cases cited in a note on "Situs for taxation of debts evidenced by notes or mortgages held by agent residing in different State from principal" appended to the Stempel Case in 44 L. ed. U. S. 174. These cases, taken in connection with King v. Cross, 170 U. S. 396, 20 Sup. Ct. Rep. 131, and Chicago, R. I. & P. R. Co. v. Sturm, 174 U. S. 710, 19 Sup. Ct. Rep. 797, show a decided tendency to disregard the rule mobilia persona sequuntur, so far at least as taxation and attachment are concerned. And see in this connection Savings and Loan Society v. Multnomah County, 109 U. S. 421, 18 Sup. Ct. Rep. 392, where the right of a State to tax the interest of a non-resident mortgagee in lands within its boundaries is upheld, and the case of State Tax on Foreign Held Bonds, 15 Wall. 300, distinguished, and sundry dicta in it disapproved.

1 A State may, if it see fit, tax the property owned, held, and used by itself or its municipalities for public purposes; but this would so obviously be unwise and impolitic that the intent to do so is never assumed, but public property is always, by implication of law, exempt from the operation of the general terms of tax laws. People v. Salomon, 51 Ill. 37; Trustees of Industrial University v. Champaign Co., 70 Ill. 184; Directors of Poor v. School Directors, 42 Pa. St. 21; People v. Austin, 47 Cal. 353; People v. Doe, 36 Cal. 220; Wayland v. County Com'rs, 4 Gray, 500; Worcester Co. v. Worcester, 116 Mass. 193; State v. Gaffney, 31 N. J. 183; Camden v. Camden Village Corp., 77 Me. 590, 1 Atl. 689; Erie Co. v. Erie, 113 Pa. St. 260, 6 Atl. 260. But city water-works may be taxed for county purposes. Erie Co. v. Com'rs Water-Works, 113 Pa. St. 308, 6 Atl. 138. The same rule applies to special city assessments. Green v. Hotaling, 44 N. J. L. 317; Polk Co. Savings Bank v. State, 69 Iowa, 24, 28 N. W. 416; Harris Co. v. Boyd, 70 Tex. 237, 7 S. W. 713. But see contra, Adams Co. v. Quincy, 130 Ill. 566, 22 N. E. 624. And the exemption extends to lands acquired by a city outside its limits to supply itself with water. West Hartford v. Water Com'rs, 44 Conn. 380; Rochester v. Rush, 80 N. Y. 302. So of a ferry landing in Brooklyn owned by New York City, to which the ferry privilege belongs. People v. Assessors, 111 N. Y. 505, 19 N. E. 90. See Black v. Sherwood, 64 Va. 900, 6 S. E. 484. But not so of land taken by a city in payment of the defealcation of an officer. People v. Chicago, 124 Ill. 636, 17 N. E. 56. [Public property is in Louisiana liable to special assessments for public improvements. New Orleans v. Warner, 175 U. S. 120, 20 Sup. Ct. Rep. 44. Upon liability of public property to assessment for public improvements, see many cases cited and discussed in note to 44 L. ed. U. S. 96.]
In the first place, taxation having for its only legitimate object the raising of money for public purposes (a) and the proper needs

of government, the exaction of moneys from the citizens for other purposes is not a proper exercise of this power, and must therefore be unauthorized. In this place, however, we do not use the word public in any narrow and restricted sense, nor do we mean to be understood that whenever the legislature shall overstep the legitimate bounds of their authority, the case will be such that the courts can interfere to arrest their action. There are many cases of unconstitutional action by the representatives of the people which can be reached only through the ballot-box; and there are other cases where the line of distinction between that which is allowable and that which is not is so faint and shadowy that the decision of the legislature must be accepted as final, even though the judicial opinion might be different. But there are still other cases where it is entirely possible for the legislature so clearly to exceed the bounds of due authority that we cannot doubt the right of the courts to interfere and check what can only be looked upon as ruthless extortion, provided the nature of the case is such that judicial process can afford relief. An unlimited power to make any and every thing lawful which the legislature might see fit to call taxation, would be, when plainly stated, an unlimited power to plunder the citizen.1

It must always be conceded that the proper authority to determine what should and what should not constitute a public burden is the legislative department of the State. This is not only true for the State at large, but it is true also in respect to each municipality or political division of the State; these inferior corporate existences having only such authority in this regard as the legislature shall confer upon them.\(^1\) And in determining this question, the legislature cannot be held to any narrow or technical rule. Not only are certain expenditures absolutely essential to the continued existence of the government and the performance of its ordinary functions, but as a matter of policy it may sometimes be proper and wise to assume other burdens which rest entirely on considerations of honor, gratitude, or charity. The officers of government must be paid, the laws printed, roads constructed, and public buildings erected; but with a view to the general well-being of society, it may also be important that the children of the State should be educated, the poor kept from starvation,\(^2\) losses in the public service indemnified, and incentives held out to faithful and fearless discharge of duty in the future, by the payment of pensions to those who have been faithful public servants in the past. There will therefore be necessary expenditures, and expenditures which rest upon considerations of policy only, and, in regard to the one as much as to the other, the decision of that department to which alone questions of State policy are addressed must be accepted as conclusive.

\(^1\) Litchfield v. Vermont, 41 N. Y. 123.

\(^2\) Taxes cannot be levied to donate to benevolent and charitable societies, which are controlled by private individuals, and over which the public authorities have no supervision or control. So held in an able opinion in St. Mary's Industrial School v. Brown, 46 Md. 310. But a city may be allowed to pay a part of the expense of an orphanage to which its magistrates may commit poor children. Shepherd's Field v. Mayor, &c. New York, 93 N. Y. 137.
Very strong language has been used by the courts in some of the cases on this subject. In a case where was questioned the validity of the State law confirming township action which granted gratuities to persons enlisting in the military service of the United States, the Supreme Court of Connecticut assigned the following reasons in its support:

"In the first place, if it be conceded that it is not competent for the legislative power to make a gift of the common property, or of a sum of money to be raised by taxation, where no possible public benefit, direct or indirect, can be derived therefrom, such exercise of the legislative power must be of an extraordinary character to justify the interference of the judiciary; and this is not that case.

"Second. If there be the least possibility that making the gift will be promotive in any degree of the public welfare, it becomes a question of policy, and not of natural justice, and the determination of the legislature is conclusive. And such is this case. Such gifts to unfortunate classes of society, as the indigent blind, the deaf and dumb, or insane, or grants to particular colleges or schools, or grants of pensions, swords, or other mementos for past services, involving the general good indirectly and in slight degree, are frequently made and never questioned.

"Third. The government of the United States was constituted by the people of the State, although acting in concert with the people of other States, and the general good of the people of this State is involved in the maintenance of that general government. In many conceivable ways the action of the town might not only mitigate the burdens imposed upon a class, but render the service of that class more efficient to the general government, and therefore it must be presumed that the legislature found that the public good was in fact thereby promoted.

"And fourth. It is obviously possible, and therefore to be intended, that the General Assembly found a clear equity to justify their action." 1

And the Supreme Court of Wisconsin has said: "To justify

the court in arresting the proceedings and declaring the tax void, the absence of all possible public interest in the purposes for which the funds are raised must be clear and palpable; so clear and palpable as to be perceptible by every mind at the first blush. ... It is not denied that claims founded in equity and justice, in the largest sense of those terms, or in gratitude or charity, will support a tax. Such is the language of the authorities."

But we think it is plain, as has been said by the Supreme Court of Wisconsin, that "the legislature cannot ... in the form of a tax, take the money of the citizens and give it to an individual, the public interest or welfare being in no way connected with the transaction. The objects for which money is raised by taxation must be public, and such as subserve the common interest and well-being of the community required to contribute." Or, as stated by the Supreme Court of Pennsylvania, "the legislature has no constitutional right to ... lay a tax, or to authorize any municipal corporation to do it, in order to raise funds for a mere private purpose. No such authority passed to the assembly by the general grant of the legislative power. This would not be legislation. Taxation is a mode of raising revenue for public purposes. When it is prostituted to objects in no way connected with the public interest or welfare, it ceases to be taxation and becomes plunder. Transferring money from the owners of it into the possession of those who have no title to it, though it be done under the name and form of a tax, is unconstitutional for


2 Per Dixon, Ch. J., in Brodhead v. Milwaukee, 19 Wis. 624, 652. See also Lunslen v. Cross, 10 Wis. 282; Opinions of Judges, 56 Me. 590; Moulton v. Raymond, 60 Me. 121; post, p. 704, and note.
all the reasons which forbid the legislature to usurp any other power not granted to them." 1 And by the same court, in a still later case, where the question was whether the legislature could lawfully require a municipality to refund to a bounty association the sums which they had advanced to relieve themselves from an impending military conscription, "such an enactment would not be legislation at all. It would be in the nature of judicial action, it is true, but wanting the justice of notice to parties to be affected by the hearing, trial, and all that gives sanction and force to regular judicial proceedings; it would much more resemble an imperial rescript than constitutional legislation: first, in declaring an obligation where none was created or previously existed; and next, in decreeing payment, by directing the money or property of the people to be sequestered to make the payment. The legislature can exercise no such despotic functions." 2


2 Tyson v. School Directors of Halifax, 51 Pa. St. 922. See also Grim v. Weisenburg School District, 57 Pa. St. 433. The decisions in Miller v. Grandy, 13 Mich. 540; Crowell v. Hopkins, 45 N. H. 7; and Shackleford v. Newington, 40 N. H. 416, so far as they hold that a bounty law is not to be held to cover moneys before advanced by an individual without any pledge of the public credit, must be held referable, we think, to the same principle. And see cases, ante, p. 282, note 3. Compensation for money voluntarily contributed for levee purposes by allowing such sums as a credit on future levee taxes is not allowable. Those incidentally benefited cannot be compelled to refund money thus spent. Davis v. Gaines, 48 Ark. 370, 3 S. W. 184. We are aware that there are some cases the doctrine of which seems opposed to those we have cited, but perhaps a careful examination will enable us to harmonize them all. One of these is Guilford v. Supervisors of Chenango, 18 Barb. 615, and 13 N. Y. 143. The facts in that case were as follows: Cornell and Clark were formerly commissioners of highways of the town of Guilford, and as such, by direction of the voters of the town, had sued the Butternut and Oxford Turnpike Road Company. They were unsuccessful in the action, and were, after a long litigation, obliged to pay costs. The town then refused to reimburse them these costs. Cornell and Clark sued the town, and, after prosecuting the action to the court of last resort, ascertained that they had no legal remedy. They then applied to the legislature, and procured an act authorizing the question of payment or not by the town to be submitted to the voters at the succeeding town meeting. The voters decided that they would not tax themselves for any such purpose. Another application was then made to the legislature, which resulted in a law authorizing the county judge of Chenango County to appoint three commissioners, whose duty it should be to hear and determine the amount of costs and expenses incurred by Cornell and Clark in the prosecution and defense of the suits mentioned. It authorized the commissioners to make an award, which was to be filed with the county clerk, and the board of supervisors were then required, at their next annual meeting, to appportion the amount of the award upon the taxable property of the town of Guilford, and provide for its collection in the same manner as other taxes are collected. The validity of this act was affirmed. It was regarded as one of those of which Denio, J., says, "The statute book is full, perhaps too full, of laws awarding damages and compensation of various kinds to be paid by the public to individuals who had failed to obtain what they considered equitably due to them by the decision of administrative officers acting under the provi.
A like doctrine has been asserted by the Supreme Court of Michigan in a recent case. That State is forbidden by its consti-

municipality to assume a burden, on the

ground of local benefit or local obligation, against the will of the citizens, is the ex-

ercise of an arbitrary power little in har-

mony with the general features of our

republican system, and only to be justi-

fied, if at all, in extreme cases. The gen-

eral idea of our tax system is, that those

shall vote the burdens who are to pay

them; and it would be intolerable that

a central authority should have power,

not only to tax localities, for local pur-

poses of a public character which they did

not approve, but also, if it so pleased, to

compel them to assume and discharge

private claims not equitably chargeable

upon them. See the New York cases

above referred to criticised in State v.


622. The legislature may require a county
to pay for a road: Wilcox v. Deer Lodge
Co., 2 Mont. 574; and may apportion
to a township such part of the cost as

the length of it in the township bears to

its total length. Mahoney v. Comry,

103 Pa. St. 302. See also Shaw v. Den-
nis, 10 Ill. 405. The cases of Cheeney

v. Hooser, 9 B. Monr. 380; Sharp's Ex. v.

Dennan, 17 B. Monr. 223; Maltus v.

Shields: 2 Met. (Ky.) 553, will throw some

light on this general subject. The case of

Cypress Pond Draining Co. v. Hooper, 2

Met. (Ky.) 553, is also instructive. The

Cypress Pond Draining Company was in-

corporated to drain and keep drained the

lands within a specified boundary, at the

cost of the owners, and was authorized

by the act to collect a tax on each acre,

not exceeding twenty-five cents per acre,

for that purpose, for ten years, to be col-

lected by the sheriff. With the money

thus collected, the board of managers,
six in number, named in the act, was re-

quired to drain certain creeks and ponds

within said boundary. The members of

the board owned in the aggregate 3,840

acres, the larger portion of which was low

land, subject to inundation, and of little or

no value in its then condition, but which

would be rendered very valuable by the

contemplated draining. The corporate

boundary contained 14,621 acres, owned

by sixty-eight persons. Thirty-four of

these, owning 5,975 acres, had no agency
tion to engage in works of public improvement, except in the expenditure of grants of land or other property made to it for this purpose. The State, with this prohibition in force, entered into a contract with a private party for the construction by such party of an improvement in the Muskegon River, for which the State was to pay the contractor fifty thousand dollars, from the Internal Improvement Fund. The improvement was made, but the State officers declined to draw warrants for the amount, on the ground that the fund from which payment was to have been made was exhausted. The State then passed an act for the levying of tolls upon the property passing through the improvement sufficient to pay the contract price within five years. The court held this act void. As the State had no power to construct or pay for such a work from its general fund, and could not constitutionally have agreed to pay the contractors from tolls, there was no theory on which the act could be supported, except it was that the State had misappropriated the Internal Improvement Fund, and therefore ought to provide payment from some other source. But if the State had misappropriated the fund, the burden of reimbursement would fall upon the State at large; it could not lawfully be imposed upon a single town or district, or upon the commerce of a single town or district. The burden must be borne by those upon whom it justly rests, and to recognize in the State a power to compel some single district to assume and discharge a State debt would be to recognize its power to make an obnoxious district or an obnoxious class bear the whole burden of the State government. An act to that effect would not be taxation, nor would it be the exercise of any legitimate legislative authority.\(^1\) And it

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\(^1\) Ryerson v. Utley, 16 Mich. 200. See also People v. Springwells, 25 Mich. 153; Anderson v. Hill, 54 Mich. 477, 20 N. W. 549. "Uniformity in taxation implies equality in the burden of taxation." Bank v. Hines, 3 Ohio St. 1, 15. "This equality in the burden constitutes the very substance designed to be secured by the rule." Weeks v. City of Milwauk ee, 10 Wis. 242, 255. See also Sanborn v. Rice, 9 Minn. 278; State v. Haben, 22 Wis. 609. The reasoning of these cases seems not to have been satisfactory to the New York Court of Appeals. See Gordon v. Cornes, 47 N. Y. 608, in which an act was sustained which authorized "and required" the village of Brockport to levy a tax for the erection of a State Normal School building at that place. No recent case, we think, has gone so far as this. Compare State v. Tappan, 29 Wis. 664, 9 Am. Rep. 622; Mayor of
may be said of such an act, that, so far as it would operate to make those who would pay the tolls pay more than their proportion of the State obligation, it was in effect taking their property for the private benefit of other citizens of the State, and was obnoxious to all the objections against the appropriation of private property for private purposes which could exist in any other case.

And the Supreme Court of Iowa has said: "If there be such a flagrant and palpable departure from equity in the burden imposed; if it be imposed for the benefit of others, or for purposes in which those objecting have no interest, and are therefore not bound to contribute, it is no matter in what form the power is exercised, — whether in the unequal levy of the tax, or in the regulation of the boundaries of the local government, which results in subjecting the party unjustly to local taxes, — it must be regarded as coming within the prohibition of the constitution designed to protect private rights against aggression however made, and whether under color of recognized power or not."¹

When, therefore, the legislature assumes to impose a pecuniary burden upon the citizen in the form of a tax, two questions may always be raised: First, whether the purpose of such burden may properly be considered public on any of the grounds above indicated;² and second, if public, then whether the burden is

Mobile v. Dargan, 45 Ala. 310; Livingston County v. Weible, 64 Ill. 427; Burr v. Carbondale, 76 Ill. 455. "There can be no doubt that, as a general rule, where an expenditure is to be made for a public object, the execution of which will be substantially beneficial to every portion of the Commonwealth alike, and in the benefits and advantages of which all the people will equally participate, if the money is to be raised by taxation, the assessment would be deemed to come within that class which is laid to defray one of the general charges of government, and ought therefore to be imposed as nearly as possible with equality upon all persons resident and estates lying within the Commonwealth... An assessment for such a purpose, if laid in any other manner, could not in any just or proper sense be regarded as "proportional" within the meaning of the Constitution." Merrick v. Inhabitants of Amherst, 12 Allen, 500, 504, per Bigelow, Ch. J. This case holds that local taxation for a State purpose may be permitted in consideration of local benefits, and only differs in principle from Gordon v. Cornes, in that the one permitted what the other required. The case of Marks v. Trustees of Purdue University, 37 Ind. 155, follows Merrick v. Amherst, and Burr v. Carbondale, 76 Ill. 455; Hensley Township v. People, 84 Ill. 544, and Livingston County v. Darlington, 101 U. S. 407, are to the same effect. Taxation not levied according to the principles upon which the right to tax is based is an unlawful appropriation of private property to public uses. City of Covington v. Southgate, 15 B. Monr. 491; People v. Township Board of Salem, 20 Mich. 452; Tide Water Co. v. Costar, 18 N. J. Eq. 518; Hammert v. Philadelphia, 65 Pa. St. 146, 3 Am. Rep. 615.

¹ Morford v. Unger, 8 Iowa, 82, 92. See Durant v. Kaufman, 31 Iowa, 104.

² Though the legislature first decides that the use is public, the decision is not conclusive. They cannot make that a public purpose which is not so in fact. Gove v. Epping, 41 N. H. 539; Crowell v. Hopkins, 45 N. H. 9; Freeland v. Hastings, 10 Allen, 570; Hooper v. Emery, 14
one which should properly be borne by the district upon which it is imposed. If either of these questions is answered in the negative, the legislature must be held to have assumed an authority not conferred in the general grant of legislative power, and which is therefore unconstitutional and void. "The power of taxation," says an eminent writer, "is a great governmental attribute, with which the courts have very wisely shown extreme unwillingness to interfere; but if abused, the abuse should share the fate of all other usurpations." 1 In the case of burdens thus assumed by the legislature on behalf of the State, it is not always that a speedy and safe remedy can properly be afforded in the courts. It would certainly be a very dangerous exercise of power for a court to attempt to stay the collection of State taxes because an illegal demand was included in the levy; and indeed, as State taxes are not usually levied for the purpose of satisfying specific demands, but a gross sum is raised which it is calculated will be sufficient for the wants of the year, the question is not usually one of the unconstitutionality of taxation, but of the misappropriation of moneys which have been raised by taxation. But if the State should order a city, township, or village to raise money by taxation to establish one of its citizens in business, or for any other object equally removed from the proper sphere of government, or should undertake to impose the whole burden of the government upon a fraction of the State, the usurpation of authority would not only be plain and palpable, but the proper remedy would also be plain, and no court of competent jurisdiction could feel at liberty to decline to enforce the paramount law. 2

In the second place, it is of the very essence of taxation that it be levied with equality and uniformity, and to this end, that there should be some system of apportionment. 3 Where the burden is

1 Sedgwick on Const. and Stat. Law, 411.

2 Loan Association v. Topeka, 20 Wall. 655. [See also Chicago & G. T. R. Co. v. Chappell, 124 Mich. 72, S2 N. W. 803.]

3 In State v. Traveller's Ins. Co., 73 Conn. 255, 47 Atl. 290, 57 L. R. A. 481, it is held that, in the absence of any provision to that effect in the federal or State constitution, the taxing power of the legislature is not restricted by any implied rule of fundamental law that taxes must be equal and uniform. The court is unanimous upon three propositions as expressed by Baldwin, J., (1) "There is nothing in the constitution of Connecticut, nor in the 14th amendment to that of the United States, which, either expressly or by implication, requires that all taxation by this State shall be uniform or equal; (2) there is no fundamental principal of free government or natural justice that all taxation shall be uniform or equal; (3) a citizen of another State
common, there should be common contribution to discharge it. 1

who participates as a shareholder in a corporation in the enjoyment of a special franchise granted by this State with a reservation of the power of amendment or repeal at pleasure, is not deprived of any privilege or immunity coming within the meaning of § 2, Art. 4, of the Constitution of the United States, by a statute imposing a State tax of 1 percent on the market value of his shares without any provision for deduction of capital invested in real estate, though such deduction is provided for in taxation of market value of shares of resident stockholders. The majority opinion seems to assert that the judicial power would be incompetent to declare a statute to be no law, though there were a fundamental principle of free government and natural justice, that all taxation should be uniform and equal which was violated by the statute. The judgment in this case was affirmed in the Supreme Court of the United States in Traveller's Ins. Co., v. Connecticut, 185 U. S. 364, 22 Sup. Ct. Rep. 673, upon the peculiar provisions of the Connecticut tax laws.] The legislature cannot itself make an assessment directly or by placing a value on certain property. In re House Bill, 9 Col. 633, 21 Pac. 470; Slaughter v. Louisville, 80 Ky. 112, 8 S. W. 917; Ex parte Low, 24 W. Va. 620. [Nor can it classify the counties, and arbitrarily value the lands in each class. Hawkins v. Mangum, 78 Miss. 97, 28 So. 872.] That it is not essential to provide for the taxation of all property, see Mississippi Mills v. Cook, 65 Miss. 40; that it is competent to provide for taxing railroad corporations in a different way from individuals: State Railroad Tax Cases, 92 U. S. 575; State Board v. Central R. R. Co., 48 N. J. L. 146, 4 Atl. 578; Cincinnati, N. O. & T. Ry. Co. v. Com., 81 Ky. 492; Franklin Co. v. Railroad, 12 Lea, 621; Central Ia. Ry. Co. v. Board, 67 Iowa, 199, 25 N. W. 128. [McHenry v. Alford, 103 U. S. 651, 25 Sup. Ct. Rep. 242. Upon taxation of railroads, see Cass County v. Chicago, B. & Q. R. Co., 25 Neb. 348, 41 N. W. 246; 2 L. R. A. 188, and note. A tax against a railway company whose lines are partly without the State levied under a statute providing for an assessment upon gross receipts in such proportion as its mileage within the State bears to its total mileage, is valid. State Treas. v. Auditor General, 46 Mich. 224, 9 N. W. 258. Cumberland & P. Ry. Co. v. State, 92 Md. 608, 48 Atl. 503, 52 L. R. A. 704.] But some railroads may not be taxed on gross receipts, while others are taxed on capital. Worth v. Wilmington, &c. R. R. Co., 80 N. C. 291; nor may they alone be taxed to raise a fund to pay railroad commissioners: Atchison, T. & S. F. R. R. Co. v. Howe, 32 Kan. 787, 5 Pac. 397; nor may the assessed value of other real property be made the standard of value of railroad property. Williams v. State Board, 51 N. J. L. 512, 18 Atl. 750. See California v. Central Pac. R. R. Co., 127 U. S. 1, 8 Sup. Ct. Rep. 1073; Santa Clara Co. v. South. Pac. R. R. Co., 118 U. S. 394, 6 Sup. Ct. Rep. 1132. [Nor may telegraph and telephone lines be taxed at a rate determined by taking the average rate of taxes, general, municipal, and local, levied throughout the State during the previous year, and applying it to the entire property of the company in the State for the present year, Pingree v. Dix, 120 Mich. 96, 78 N. W. 1025, 44 L. R. A. 679.] That property may be classified for taxation, Coal Run Co. v. Finlen, 124 Ill. 100, 17 N. E. 11; People v. Henderson, 12 Col. 369, 21 Pac. 144; Fahey v. State, 27 Tex. App. 140, 11 S. W. 108. Corporate and individual obligations may be put in different classes. Com. v. Del. Div. Canal Co., 123 Pa. St. 594, 16 Atl. 584. That the rule of uniformity must be applied to all subjects of taxation within the district and class: Marsh v. Supervisors, 42 Wis. 502; Philipso v. Hiles, 42 Wis. 527; Bureau

1 2 Kent, 231; Sanborn v. Rice, 9 Minn. 273; Ryerson v. Utley, 16 Mich. 269; Oliver v. Washington Mills, 11 Allen, 268; Tidewater Co. v. Costar, 18 N. J. Eq. 518. [A poll tax cannot be levied in such wise that those actually voting shall be exempt therefrom. Kansas City v. Whipple, 130 Mo. 475, 38 S. W. 295, 35 L. R. A. 747, 58 Am. St. 657.]
Taxation is the equivalent for the protection which the government affords to the persons and property of its citizens; and as

Co. v. Railroad Co., 44 Ill. 229; Cummings v. National Bank, 101 U. S. 153; that it is not competent to add a percentage to the list for refusal or neglect to make oath to the tax list: McCormick v. Fitch, 14 Minn. 252; but see Ex parte Lynch, 16 S. C. 52; that it is competent to permit a deduction for debts from the assessment: Wetmore v. Multnomah Co., 6 Oreg. 463; contra, Exchange Bank v. Hines, 3 Ohio St. 1; that where property is required to be taxed by value, it is not competent to tax a corporation on its property and also on its capital stock: State v. Cumberland, &c. R. R. Co., 40 Md. 22; that a statute making a portion only of a certain kind of property taxable is unconstitutional: Pike v. State, 6 Ark. 204; that occupation taxes are no violation of the rule of uniformity: Youngblood v. Sexton, 32 Mich. 409; Ex parte Robinson, 12 Nev. 263; Gattlin v. Tarboro, 78 N. C. 119; [Fleetwood v. Read, 21 Wash. 517, 68 Pac. 665, 47 L. R. A. 205.] that foreign insurance companies may be required to pay different taxes from others: State v. Latham, 10 La. Ann. 398; Commonwealth v. Germania L. I. Co., 11 Phila. 553; Ex parte Cohn, 13 Nev. 424; see San Francisco v. Liverpool, &c. Co., 74 Cal. 118, 15 Pac. 380. They may be required to pay such taxes as companies of the taxing State are made to pay in the home States of such companies: Home Ins. Co. v. Swigert, 104 Ill. 653; Phoenix Ins. Co. v. Welch, 29 Kan. 672; People v. Fire Ass., 92 N. Y. 311; State v. Ins. Co., 115 Ind. 257, 17 N. E. 574. But holders of contracts made with companies not doing business within this State cannot be subjected to higher taxation thereupon. Re Page, 60 Kan. 842, 58 Pac. 478, 47 L. R. A. 68.] Taxation for roads upon the citizens only of a township is unequal: Marion, &c. Ry. Co. v. Champlin, 37 Kan. 682, 16 Pac. 222. So is the exemption from such taxes of all property in incorporated villages: Com'r's v. Owen, 7 Col. 467, 4 Pac. 795. But uniformity provisions do not apply to the distribution of a road fund: Holton v. Com'r's Mecklenburg Co., 93 N. C. 480. And see Weber v. Reinhard, 73 Pa. St. 370, 13 Am. Rep. 747; Louisville, &c. R. R. Co. v. State, 35 Ind. 177; Whitney v. Bagdale, 33 Ind. 107; Francis v. Railroad Co., 19 Kan. 303; Primm v. Belleville, 59 Ill. 142; Wis. Cent. R. R. Co. v. Taylor Co., 52 Wis. 37, 5 N. W. 833; State v. Estabrook, 8 Neb. 173; Murray v. Lehman, 61 Miss. 253; Graham v. Com'r's Chautauqua Co., 31 Kan. 473, 2 Pac. 549; Dunham v. Cox, 44 N. J. Eq. 273, 14 Atl. 123.

all are alike protected, so all alike should bear the burden, in proportion to the interests secured. Taxes by the poll are justly regarded as odious and are seldom resorted to for the collection of revenue; and when taxes are levied upon property there must be an apportionment with reference to a uniform standard, or they degenerate into mere arbitrary exactions.\(^1\) In this particular the State constitutions have been very specific, though in providing for equality and uniformity they have done little more than to state in concise language a principle of constitutional law which, whether declared or not, would inhere in the power to tax.

Taxes may assume the form of duties, imposts, and excises; (a)


and those collected by the national government are very largely of this character. They may also assume the form of license fees, for permission to carry on particular occupations, or to enjoy special franchises. They may be specific; such as are often

1 As to taxes on business and franchises, see Cooley on Taxation, c. 18. Offices, posts of profit, and occupations are proper subjects of taxation. Brown's App., 111 Pa. St. 72, 2 Atl. 77. That all occupations may be taxed when no restraints are imposed by the Constitution, see State v. Hayne, 4 Rich. 403; Ouid v. Richmond, 23 Gratt. 464, 14 Am. Rep. 139; Commonwealth v. Moore, 25 Gratt. 551; Cousins v. State, 60 Ala. 113, 20 Am. Rep. 200; Stewart v. Potts, 49 Miss. 740; Morrill v. State, 35 Wis. 428, 20 Am. Rep. 12; Albrecht v. State, 8 Tex. App. 216, 31 Am. Rep. 737; Young v. Thomas, 17 Fla. 169, 55 Am. Rep. 93; Richmond & D. R. R. Co. v. Reidsville, 101 N. C. 404, 8 S. E. 124. Such a tax may be based on the average amount of a merchant's stock. Newton v. Atchison, 31 Kan. 161, 1 Pac. 285. See Danville v. Shelton, 76 Va. 323. A city may be empowered to impose a license upon the business of a foreign insurance company, as well as a tax upon its net income: St. Joseph v. Ernst, 96 Mo. 390, 8 S. W. 558; or an occupation tax upon saloons, in addition to the license to sell. State v. Mccart, 19 Neb. 191, 20 N. W. 714. A privilege tax on private carriages in addition to an ad valorem tax is invalid. Livingston v. Paduch, 80 Ky. 656. An occupation tax must not be so unreasonable as to be prohibitory. Caldwell v. Lincoln, 19 Neb. 600, 27 N. W. 617. See Mankato v. Fowler, 32 Minn. 564, 20 N. W. 361; Western U. Tel. Co. v. Philadelphia, 12 Atl. 144; Jackson v. Newman, 55 Miss. 356; People v. Russell, 40 Mich. 617, 14 N. W. 568; Ex parte Gregory, 20 Tex. App. 210; Kneeland v. Pittsburgh, — Pa. St. —, 11 Atl. 657, as to what is a reasonable license, tax, or fee. But revenue cannot be raised in the form of license fees under an authority to require licenses to be taken out for mere police purposes. Ante, 283, and note; Burlington v. Bumgardner, 42 Iowa, 678, and cases cited. As to when a power to license can be made use of as a means of raising revenue, see Ex parte Frank, 62 Cal. 606, 28 Am. Rep. 402; Poulter v. State, 11 Neb. 547, 10 N. W. 481; U. S. Dist. Co. v. Chicago, 112 Ill. 19; In re Guerrero, 69 Cal. 88, 10 Pac. 261; Flanagan v. Plainfield, 44 N. J. L. 118. [Where the business licensed is not one of common right, but one which may be entirely prohibited, there is no limit to the license fee which may be imposed. State v. Bixman, 162 Mo. 1, 62 S. W. 828.] It is no valid objection to a tax on business that its operation will not be uniform. Youngblood v. Sexton, 32 Mich. 400; Adler v. Whitbeck, 44 Ohio St. 599, 9 N. E. 672. But see Pullman P. C Co. v. State, 64 Tex. 274; Banger's
levied upon corporations, in reference to the amount of capital stock, or to the business done, or profits earned by them. Or they may be direct; upon property, in proportion to its value, (a) or upon some other basis of apportionment which the legislature shall regard as just, and which shall keep in view the general idea of uniformity. The taxes collected by the States are mostly of the latter class, and it is to them that the constitutional principles we shall have occasion to discuss will more particularly apply.

As to all taxation apportioned upon property, there must be


The fee exacted in granting a ferry license is not a tax, but is paid for the franchise. Chilvers v. People, 11 Mich. 43. See Wiggins Ferry Co. v. East St. Louis, 102 Ill. 560.


taxing districts, (a) and within those districts the rule of absolute uniformity must be applicable. 1 A State tax is to be apportioned through the State, a county tax through the county, a city tax through the city; 2 while in the case of local improvements, benefiting in a special and peculiar manner some portion of the State or of a county or city, it is competent to arrange a special taxing district, within which the expense shall be apportioned. School districts and road districts are also taxing districts for the peculiar purposes for which they exist, and villages may have special powers of taxation distinct from the townships of which they form a part. Whenever it is made a requirement of the State constitution that taxation shall be upon property according to value, such a requirement implies an assessment of valuation by public officers at such regular periods as shall be provided by law, and a taxation upon the basis of such assessment until the period arrives for making it anew. 3 Thus, the Constitutions of Maine

1 If the proper rule of uniformity is established by the legislature, but the taxing officers purposely evade it and assess unequal taxes, the collection will be enjoined. Merrill v. Humphrey, 24 Mich. 170; Lefferts v. Supervisors, 21 Wis. 688; Mason v. Lancaster, 4 Bush, 306; Fuller v. Gould, 20 Vt. 643; Cummings v. National Bank, 101 U. S. 153, and cases cited.

The constitutional requirement that property shall be assessed for taxation by uniform rules, and according to true value, does not make it necessary to tax all property, and it is satisfied by such regulations as impose the same percentage of actual value upon such property as is made taxable, in the township for township purposes, in the county for county purposes, &c. Stratton v. Collins, 43 N. J. 563


3 Where a tax is to be assessed by the value of property, or in proportion to benefits, the right of the owner to be
and Massachusetts require that there shall be a valuation of estates within the Commonwealth to be made at least every ten years;\(^1\) the Constitution of Michigan requires the annual assessments which are made by township officers to be equalized by a State board, which reviews them for that purpose every five years;\(^2\) and the Constitution of Rhode Island requires the legislature "from time to time" to provide for new valuations of property for the assessment of taxes in such manner as they may deem best.\(^3\) Some other constitutions contain no provisions upon this subject; but the necessity for valuation is nevertheless implied, though the mode of making it, and the periods at which it shall be made, are left to the legislative discretion.

There are some kinds of taxes, however, that are not usually assessed according to the value of property, and some which could not be thus assessed. And there is probably no State which does not levy other taxes than those which are imposed upon property.\(^4\)

Every burden which the State imposes upon its citizens with a view to a revenue, either for itself or for any of the municipal governments, or for the support of the governmental machinery in any of the political divisions, is levied under the power of taxation, whether imposed under the name of tax, or under some other designation. The license fees which are sometimes required to be paid by those who follow particular employments are, when imposed for purposes of revenue, taxes;¹ the tolls upon persons or property, for making use of the works of public improvement owned and controlled by the State, are a species of tax; stamp duties when imposed are taxes; and it is not uncommon, as we have already stated, to require that corporations shall pay a certain sum annually, assessed according to the amount or value of their capital stock, or some other standard; this mode being regarded by the State as most convenient and suitable for the taxation of such organizations. It is evident, therefore, that the express provisions, which are usual in State constitutions, that taxation upon property shall be according to value, do not include every species of taxation; and that all special cases like those we have here referred to are, by implication, excepted.

But in addition to these cases, there are others where taxes are levied directly upon property, which are nevertheless held not to be within the constitutional provisions. Assessments for the opening, making, improving, or repairing of streets, the draining of swamps, and the like local works, (a) have been generally


(a) As to what are public improvements, see Re Kingman, 133 Mass. 506, 27 N. E. 778, 12 L. R. A. 417, and note. Cost of maintenance of sewers may be met by special assessments, although cost of construction has already been levied and paid by parties assessed for maintenance. Carson v. Brockton Sewer Comm'rs, 182 U. S. 288, 21 Sup. Ct. Rep. 801, aff. 175 Mass. 212, 56 N. E. 1, 48 L. R. A. 277. That the construction of irrigation works in an arid region which will become fertile under irrigation is a public improvement, see Fallbrook Irrigation District v. Bradley, 164 U. S. 112, 17 Sup. Ct. Rep. 56. Country highways are not "local improvements," and their cost cannot be levied upon adjacent lands alone. Sperry v. Flygare, 80 Minn. 325, 89 N. W. 177, 40 L. R. A. 757. Where the duty to repair rests upon the city, and it, in contracting for the paving of a street, incorporates in the contract a clause requiring the contractor to keep the street in repair for a stated period, the parties assessed to pay for paving can have the total cost abated by a reasonable sum for probable repairs. They are liable only for cost of construction. Roberts v. Omaha, 53 Neb. 718, 76 N. W. 412, 41 L. R. A. 551; State v. Trenton, 61 N. J. L. 590, 40 Atl. 575, 41 L. R. A. 510. Upon power of city to bind contractor to repair pavement which he makes, see Portland v. Portland Bit. Paving & I. Co.,
made upon property, with some reference to the supposed benefits which the property would receive therefrom. Instead, therefore, of making the assessment include all the property of the municipal organization in which the improvement is made, a new and special taxing district is created, whose bounds are confined to the limits within which property receives a special and peculiar benefit, in consequence of the improvement. Even within this district the assessment is sometimes made by some other standard than that of value; (a) and it is evident that if it be just to create the taxing district with reference to special benefits, it would

be equally just and proper to make the taxation within the district have reference to the benefit each parcel of property receives, rather than to its relative value. The opening or paving of a street may increase the value of all property upon or near it; and it may be just that all such property should contribute to the expense of the improvement; but it by no means follows that each parcel of the property will receive from the improvement a benefit in proportion to the previous value. One lot upon the street may be greatly increased in value, another at a little distance may be but slightly benefited; and if no constitutional provision interferes, there is consequently abundant reason why the tax levied within the taxing district should have reference, not to value, but to benefit. (a)

It has been objected, however, to taxation upon this basis, that inasmuch as the district upon which the burden is imposed is compelled to make the improvement for the benefit of the general public, it is, to the extent of the tax levied, an appropriation of private property for the public use; and as the persons taxed, as a part of the public, would be entitled of right to the enjoyment of the improvement when made, such right of enjoyment could not be treated as compensation for the exaction which is made of them exclusively, and such exaction would therefore be opposed to those constitutional principles which declare the inviolability of private property. But those principles have no reference to the taking of property under legitimate taxation. When the Constitution provides that private property shall not be taken for public use without just compensation made therefor, it has reference to an appropriation thereof under the right of eminent domain. Taxation and eminent domain indeed rest substantially on the same foundation, as each implies the taking of private property for the public use on compensation made; but the compensation is different in the two cases. When taxation takes money for the public use, the taxpayer receives, or is supposed

(a) [That an elevated railway operating above a street and having stairways leading from the street to its stations may be benefited by paving the street, see Lake St. El. R. Co. v. Chicago, 183 Ill. 75, 55 N. E. 721, 47 L. R. A. 624. But a right of way of a surface railroad cannot. Detroit G. H. & M. R. Co. v. Grand Rapids, 100 Mich. 13, 63 N. W. 1007, 29 L. R. A. 793, 38 Am. St. 407; Chicago, M. & S. P. R. Co. v. Milwaukee, 29 Wis. 500, 63 N. W. 417, 28 L. R. A. 249, and see note pro and con in L. R. A.; Chicago, R. I. & P. R. Co. v. Ottumwa, 112 Iowa, 300, 83 N. W. 1074, 51 L. R. A. 763; contra, Kuehner v. Freeport, 143 Ill. 92, 32 N. E. 372, 17 L. R. A. 774. But in California it was held that local improvement districts for the construction of irrigation works might be created at will by the legislature, that assessments to pay for such works might be levied upon property according to its value, and that the question of benefit was immaterial. Re Bonds Madeira Irrigation Dist. 92 Cal. 296, 341, 28 Pac. 273, 675, 11 L. R. A. 755, and note.]
to receive, his just compensation in the protection which government affords to life, liberty, and property, in the public conveniences which it provides, and in the increase in the value of possessions which comes from the use to which the government applies the money raised by the tax;¹ and these benefits amply support the individual burden.

But if these special local levies are taxation, do they come under the general provisions on the subject of taxation to be found in our State constitutions? The Constitution of Michigan directs that "the legislature shall provide an uniform rule of taxation, except on property paying specific taxes; and taxes shall be levied upon such property as shall be prescribed by law;"² and again: "All assessments hereafter authorized shall be on property at its cash value."³ In the construction of these provisions the first has been regarded as confiding to the discretion of the legislature the establishment of the rule of uniformity by which taxation was to be imposed; and the second as having reference to the annual valuation of property for the purposes of taxation, which it is customary to make in that State, and not to the actual levy of a tax. A local tax, therefore, levied in the city of Detroit, to meet the expense of paving a public street, and which was levied, not in proportion to the value of property, but according to an arbitrary scale of supposed benefit, has been held not invalid under the constitutional provision.⁴

So the Constitution of Illinois declares that "the General Assembly shall provide for levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his or her property; such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise,"⁵ &c. The charter of the city of Peoria provided that, when a public street was opened or improved, commissioners should be appointed by the county court to assess upon the property benefited the expense of the improvement in proportion to the benefit. This provision was held to be constitutional, on the ground that assessments of this character were not such taxation as was contemplated by

¹ People v. Mayor, &c. of Brooklyn.
² N. Y. 419; Williams v. Mayor, &c. of Detroit, 2 Mich. 500; Seovill v. Cleveland, 1 Ohio St. 126; Northern Indiana R. R. Co. v. Connelly, 10 Ohio St. 159; Washington Avenue, 69 Pa. St. 352.
³ Art. 14, § 12.
⁵ Art. 9, § 2.
⁶ Art. 14, § 12.
the general terms which the constitution employed.\(^1\) Like decisions have been made in other States in regard to similar assessments.\(^2\)

1 City of Peoria v. Kidder, 20 Ill. 361. See also Canal Trustees v. Chicago, 12 Ill. 403. In Chicago v. Larned, 34 Ill. 203, it was decided that, while taxation for these local assessments might constitutionally be made in proportion and to the extent of the benefits received, it could not under the Constitution of 1848 be made on the basis of frontage. This case was followed in Wrigg v. Chicago, 46 Ill. 44. The contrary is held under the Constitution of 1870. White v. People, 91 Ill. 601; Craw v. Tolono, 96 Ill. 255, 36 Am. Rep. 143.

2 People v. Mayor, &c. of Brooklyn, 4 N. Y. 410; Matter of Mayor, &c. of New York, 11 Johns. 77; Sharp v. Spier, 5 Hill, 76; Livingston v. Mayor, &c. of New York, 8 Wend. 85; Matter of Furman St., 17 Wend. 619; Louisville v. Hynn, 2 B. Monr. 177, 36 Am. Dec. 594; Nichols v. Bridgeport, 23 Conn. 189; Schenley v. City of Alleghany, 25 Pa. St. 128; Wray v. Pittsburg, 46 Pa. St. 305; Hammett v. Philadelphia, 65 Pa. St. 146, 3 Am. Rep. 615; Washington Avenue, 60 Pa. S. 353, 8 Am. Rep. 265; McBride v. Chicago, 22 Ill. 571; Chicago v. Larned, 34 Ill. 203; Murphy v. People, 120 Ill. 234; 11 N. E. 2d., Springfield v. Green, 120 Ill. 269, 11 N. E. 261; City of Lexington v. McQuillan’s Heirs, 9 Dana, 613; Burns v. Atchison, 2 Kan. 454; Hines v. Leavenworth, 3 Kan. 196; St. Joseph v. O’Donoghue, 31 Mo. 346; Egyptian Levee Co. v. Hardin, 27 Mo. 495; St. Joseph v. Anthony, 30 Mo. 537; Farrar v. St. Louis, 60 Mo. 379; Burnet v. Sacramento, 12 Cal. 76; Yeatman v. Candall, 11 La. Ann. 229; Wallace v. Shelton, 14 La. Ann. 498; Richardson v. Morgan, 10 La. Ann. 439; Hill v. Higdon, 5 Ohio St. 248; Marren v. Spier, 5 Ohio St. 250; Reeves v. Treasurer of Wood Co., 8 Ohio St. 233; Northern Ind. R. R. Co. v. Connelly, 10 Ohio St. 159; Baker v. Cincinnati, 11 Ohio St. 554; Maloy v. Marietta, 11 Ohio St. 650; State v. Dean, 23 N. J. 395; State v. Mayor, &c. of Jersey City, 21 N. J. 662; Bon v. Kenosha, 17 Wis. 284; City of Fairfield v. Ratcliff, 20 Iowa, 392; Municipality No. 2 v. White, 9 La. Ann. 447; Cumming v. Police Jury, 9 La. Ann. 503; Northern Liberties v. St. John’s Church, 13 Pa. St. 103; McGee v. Mathis, 21 Ark. 49; Goodrich v. Winchester, &c. Turnpike Co., 20 Ind. 119; Emery v. Gas Co., 28 Cal. 246; Palmer v. Stumph, 29 Ind. 329; Dorgan v. Boston, 12 Allen, 223; Anderson v. Kerns Draining Co., 14 Ind. 199; Macon v. Patty, 57 Miss. 378, 51 Am. Rep. 461; Cain v. Commissioners, 86 N. C. 8; Norfolk v. Ellis, 26 Gratt. 224; Wilkins v. Detroit, 46 Mich. 120, 8 N. W. 701, 9 N. W. 427; Yasser v. George, 47 Miss. 713; Roundtree v. Galveston, 42 Tex. 612; Richardson & R. R. Co. v. Lynchburg, 81 Va. 473. For a special case, see Cincinnati Gas, &c. Co. v. State, 18 Ohio St. 237. In Alabama a decision has been made the other way. The constitution provides that “all taxes levied on property in this State shall be assessed in exact proportion to the value of such property; provided, however, that the General Assembly may levy a poll-tax not to exceed one dollar and fifty cents on each poll, which shall be applied exclusively in aid of the public school fund.” This, it was decided, would preclude the levy of a local assessment for the improvement of a street by the foot front. Mayor of Mobile v. Dargan, 45 Ala. 310. In Colorado only improvements within the domain of the police power can be paid for by special assessment. Expense of sewers may be, but not that of gutters and curbs. Pueblo v. Robinson, 12 Col. 593, 21 Pac. 899; Wilson v. Chilcott, 12 Col. 609, 21 Pac. 901.

\[\text{[New sidewalks and drains necessitated by a change in the established grade are for a public or municipal purpose, and the cost must be paid out of the general fund. It cannot be assessed upon owners of abutting property. Mauldin v. Greenville, 53 S. C. 285, 31 S. L. 252, 43 L. R. A. 101, mod. s. c. 42 S. C. 290, 20 S. E. 842, 27 L. R. A. 284. But the cost of waterings a street may be. Sears v. Board of Aldermen, 173 Mass. 71, 53 N. E. 138, 48 L. R. A. 831.]\] The cases of Weeks v. Milwaukee, 10 Wis. 242, and Laidley v. Cross, 10 Wis. 282, recognize the fact that these local burdens are generally imposed under the name of assessments instead of
CONSTITUTIONAL LIMITATIONS. [CH. XIV.

But whatever may be the basis of the taxation, the requirement that it shall be uniform is universal. It applies as much to these local assessments as to any other species of taxes. The difference is only in the character of the uniformity, and in the basis on which it is established.¹ But to render taxation uniform in any case, two things are essential. The first of these

¹Tax upon real estate is secured by lien, and collection may safely be deferred longer than in case of personal property. Rodé v. Siebe, 119 Cal. 618, 61 Pac. 869, 39 L. R. A. 342. Uniformity clause does not apply to license taxes. State v. French, 17 Mont. 54, 41 Pac. 1078, 39 L. R. A. 415; Denver City R. Co. v. Denver, 21 Col. 350, 41 Pac. 826, 29 L. R. A. 608. Nor does it require that the mode of assessment be uniform. Commonwealth v. Brown, 61 Vt. 762, 21 S. E. 357, 28 L. R. A. 110. But where property is to be assessed at its “cash value,” and property taxes are required to be uniform and equal, an ordinance levying an ad valorem tax upon reality and a license tax upon personality is bad in respect to the license tax. Levi v. Louisville, 97 Ky. 394, 30 S. W. 973, 28 L. R. A. 480. Uniformity is not violated by a statute allowing deduction of debts from credits. Fleror v. Sheridan, 137 Ind. 28, 36 N. E. 365, 29 L. R. A. 278, and note. But it is violated by a statute giving a State revenue agent power to assess at discretion and without notice, property which has escaped assessment in prior years, the owner being permitted to be heard only in defence of suit to collect taxes upon such assessment. Adams v. Tonella, 70 Miss. 701, 14 So. 17, 22 L. R. A. 346. That lack of uniformity may arise from administration in a partial and oppressive way, see Hoftling v. San Antonio, 85 Tex. 228, 20 S. W. 85, 16 L. R. A. 608. An arbitrary tax of $1 per mile upon railroads is bad. Pittsburgh, C. & St. L. R. Co. v. State, 49 Ohio St. 189, 40 N. E. 435, 16 L. R. A. 389. Where taxation is required to be “ad valorem on all property subject to be taxed,” the rate must be uniform. Savannah v. Weed, 81 Ga. 683, 11 S. E. 235, 5 S. L. R. A. 270, and note. For other cases on question of uniformity, see Wasson v. Wayne Co. Com'r's, 49 Ohio St. 622, 32 N. E. 472, 17 L. R. A. 795.
is that each taxing district should confine itself to the objects of taxation within its limits. Otherwise there is, or may be, duplicate taxation, and of course inequality. Assessments upon real estate not lying within the taxing districts would be void, and assessments for personal property made against persons not residing in the district would also be void, unless made with reference to the actual presence of the property in such district.

1 But sometimes when a parcel of real estate lies partly in two districts, authority is given by law to assess the whole in one of these districts, and the whole parcel may then be considered as having been embraced within the district where taxed, by an enlargement of the district bounds to include it. Saunders v. Springstein, 4 Wend. 429. It is as competent to provide for the repairing of a street by special assessment on adjoining land, as for the original paving. See Willard v. Presbury, 14 Wall. 676; Guerne v. Chicago, 40 Ill. 165; Bradley v. McAttee, 7 Bush, 667; Shelley v. Detroit, 45 Mich. 431, 8 N. W. 53; Blount v. Janesville, 31 Wis. 648; Municipality v. Dunn, 10 La. Ann. 67; Jeliff v. Newar-k, 49 N. J. L. 230, 12 Atl. 770; Estes v. Owen, 90 Mo. 113, 2 S. W. 133. *Contra, Hammett v. Philadelphia, 65 Pa. St. 149; Orphan Asylum’s Appeal, 111 Pa. St. 135, 3 Atl. 217; Williamsport v. Beck, 128 Pa. St. 147, 18 Atl. 329. The expense of sewer repairs properly payable by a city cannot be imposed on adjoining owners by calling the work street improvement. Clay v. Grand Rapids, 60 Mich. 451, 27 N. W. 560. *Power to impose licenses upon occupations authorizes a license tax upon a non-resident who carries on his occupation in the city. Petersburg v. Cocke, 94 Va. 244, 26 S. E. 576, 28 L. R. A. 432. Real estate mortgages may be made taxable at the situs of the realty covered by them. Detroit Com. Comm. v. Rentz, 91 Mich. 78, 51 N. W. 787, 16 L. R. A. 69, and note upon taxation of mortgages. Assessment is wholly void if it covers property partly within and partly without the district, unless the parts can be distinguished. Sioux City B. Co. v. Dakota County, 61 Neb. 75, 84 N. W. 607.*

2 People v. Supervisors of Chenango, 11 N. Y. 563; Mygatt v. Washburn, 15 N. Y. 816; Brown v. Smith, 24 Barb. 419; Hartland v. Church, 47 Mo. 165; Lessee of Hughley v. Horrell, 2 Ohio, 231. *Hold that under this principle credits cannot be taxed to the creditor at the residence of the debtor. Liverpool & L & G. Ins. Co. v. Bd. of Assessors, 51 La. Ann. 1028, 25 So. 970, 46 L. R. A. 524; but see in this connection cases cited in note a, p. 696. Moneys and securities held in the State for investment, reinvestment, and sale are taxable against the owners where so held. Buck v. Miller, 147 Ind. 580, 45 N. E. 647, 37 L. R. A. 384. And so are unpaid legacies and distributive shares taxable within the State, even though the beneficiaries are non-resident. Schmidt v. Failey, 148 Ind. 150, 47 N. E. 326, 37 L. R. A. 442. A vessel engaged in commerce is taxable only at her home port if she is duly registered there, even though she is used practically all of the time within the limits of another State than that of her home port. Johnson v. De Bary-Baya M. Line, 37 Fla. 490, 10 So. 640, 37 L. R. A. 518; upon situs of ships for purpose of taxation, see note a; this case in L. R. A. Water-power is deemed for purposes of taxation to have situs where it is used. *Union W. C. v. Auburn, 90 Mo. 60, 37 Atl. 381. 37 L. R. A. 651; but see Amuckog Mfg. Co. v. Concord, 60 N. H. 592, 31 Atl. 241, 32 L. R. A. 621, holding that water power is appurtenant to lands upon which it may be used. Ice may be taxed where stored, though it is to be used elsewhere. Winkle v. Newton, 67 N. H. 59, 90 Atl. 610, 35 L. R. A. 756. Average amount of livestock in the hands of cattle-dealers may be taxed, although brought from other States and usually retained by dealers for only one day. Myers v. Baltimore Co. Comm’rs, 83 Md. 285, 35 Atl. 144, 31 L. R. A. 309. So with bonds of
In Wells v. City of Weston, 1 the Supreme Court of Missouri deny the right of the legislature to subject property located in one taxing district to assessment in another, upon the express ground that it is in substance the arbitrary taxation of the property of one class of citizens for the benefit of another class. The case was one where the legislature sought to subject real estate lying outside the limits of a city to taxation for city purposes, on the theory that it received some benefit from the city government, and ought to contribute to its support. In Kentucky 2 and Iowa 3 decisions have been made which, while affirming the same principle as the case above cited, go still further, and declare that it is not competent for the legislature to increase the limits of a city, in order to include therein farming lands, occupied by the owner for agricultural purposes, and not required for either streets or houses, or other purposes of a town, where the purpose is merely to increase the city revenue by taxation. The courts admit that


[But the mere fact that the land is not yet plotted is not sufficient to exempt it. Briggs v. Russellville, 99 Ky. 515, 39 S. W. 538, 34 L. R. A. 193.]

3 Morford v. Unger, 8 Iowa, 82.
the extension of the limits of a city or town, so as to include its actual enlargement, as manifested by houses and population, is to be deemed a legitimate exercise of the taxing power, but they declare that an indefinite or unreasonable extension, so as to embrace lands or farms at a distance from the local government, does not rest upon the same authority. And although it may be a delicate as well as a difficult duty for the judiciary to interpose, the court had no doubt but strictly there are limits beyond which the legislative discretion cannot go. "It is not every case of injustice or oppression which may be reached; and it is not every case which will authorize a judicial tribunal to inquire into the minute operation of laws imposing taxes, or defining the boundaries of local jurisdictions. The extension of the limits of the local authority may in some cases be greater than is necessary to include the adjacent population, or territory laid out into city lots, without a case being presented in which the courts would be called upon to apply a nice and exact scrutiny as to its practical operation. It must be a case of flagrant injustice and palpable wrong, amounting to the taking of private property without such compensation in return as the taxpayer is at liberty to consider a fair equivalent for the tax." This decision has been subsequently recognized and followed as authority, in the last-named State. 1

1 Langworthy v. Dubuque, 13 Iowa, 86; Fulton v. Davenport, 17 Iowa, 404; Buell v. Ball, 29 Iowa, 252. These cases were cited and followed in Bradshaw v. Omaha, 1 Neb. 16. These cases, however, do not hold the legislative act which enlarges the city limits to be absolutely void, but only hold that they will limit the exercise of the taxing power as nearly as practicable to the line where the extension of the boundaries ceases to be beneficial to the proprietor in a municipal point of view. For this purpose they enter into an inquiry of fact, whether the lands in question, in view of their relative position to the growing and improved parts of the town, and partaking more or less of the benefits of municipal government, are proper subjects of municipal taxation; and if not, they enjoin the collection of such taxes. It would seem as if there must be great practical difficulties — if not some of principle — in making this disposition of such a case. They have nevertheless been followed repeatedly in Iowa. Davis v. Dubuque, 20 Iowa, 458; Deeds v. Sanborn, 20 Iowa, 419; Durant v. Kaufman, 31 Iowa, 194. [But such exemption does not cover lands held for speculative purposes and only incidentally or temporarily used for agriculture. Farwell v. Des Moines Brick Mfg. Co., 97 Iowa, 286, 06 N. W. 176, 35 L. R. A. 63. Where the statute permits the annexation of platted sections and "land adjacent thereto," the adjacent land must be somewhat suburban in character. State v. Minnetonka, 57 Minn. 526, 59 N. W. 972, 25 L. R. A. 755, and note. But some allowance may be made for prospective growth. Ferguson v. Snohomish, 8 Wash. 658, 36 Pac. 963, 24 L. R. A. 755. See also Vestal v. Little Rock, 54 Ark. 321, 329, 15 S. W. 891, 10 S. W. 291, 11 L. R. A. 778. There are decisions adverse to these. See Stiltz v. Indianapolis, 55 Ind. 515; Martin v. Dix, 52 Miss. 63, 24 Am. Rep. 661; Giboney v. Cape Girardeau, 58 Mo. 141; New Orleans v. Cazelear, 27 La. Ann. 159; Kimball v. Grantsville City, 10 Utah, 368, 57 Pac. 1, 45 L. R. A. 628, overr. Kaysville
The second essential is that there should be uniformity in the manner of the assessment, and approximate equality in the amount of exactions within the district; and to this end that all the objects of taxation within the district should be embraced. The correctness of this principle will be conceded, but whether in practice it has been applied or not, it may not always be easy to determine.

"With the single exception of specific taxes," says Christianity, J., in Woodbridge v. Detroit, the terms 'tax' and 'assessment' both, I think, when applied to property, and especially to lands, always include the idea of some ratio or rule of apportionment, so that, of the whole sum to be raised, the part paid by one City v. Ellison, 18 Utah, 163, 55 Pac. 396; 43 L. R. A. 84. 1 Compare Weeks v. Milwaukee, 10 Wis. 242; Kelly v. Pittsburgh, 85 Pa. St. 170; Hewitt's Appeal, 88 Pa. St. 55; Stoner v. Flournoy, 28 La. Ann. 850; Norris v. Waco, 57 Tex. 655; Washburn v. Oshkosh, 69 Wis. 453, 10 N. W. 364; [State v. Eidsen, 76 Tex. 302, 18 S. W. 263, 7 L. R. A. 733.] That the legislature cannot annex to a village, territory not contiguous for the purpose of increasing its revenues, see Smith v. Sherry, 50 Wis. 210, 6 N. W. 661. [The Federal courts will not intervene to correct any purely arbitrary action of the State authorities in respect to the annexation of territory to municipalities. Forsyth v. Hammond, 160 U. S. 506, 17 Sup. Ct. Rep. 661. Upon municipal taxation of rural lands, see Briggs v. Russellville, 90 Ky. 515, 36 S. W. 558, 34 L. R. A. 193, and note. Legislation cannot annex non-contiguous lands. Denver v. Coulahan, 29 Col. 471, 39 Pac. 425, 27 L. R. A. 751. Upon power of legislature to annex territory to municipalities, see State v. Cincinnati, 52 Ohio St. 419, 40 N. E. 508, 27 L. R. A. 757, and note; also a valuable case, Vestal v. Little Rock, 51 Ark. 321, 329, 15 S. W. 891, 16 S. W. 201, 11 L. R. A. 778, and note.] 1


2 B Mich. 274, 301. See also Chicago v. Larned, 31 Ill. 203; Creote v. Chicago, 56 Ill. 422.
piece of property shall bear some known relation to, or be affected by, that paid by another. Thus, if one hundred dollars are to be raised from tracts A, B, and C, the amount paid by A will reduce by so much that to be paid by B and C; and so of the others. In the case of specific taxes, as well as duties and imposts, though the amount paid by one is not affected by that paid by another, yet there is a known and fixed relation of one to the other, a uniform rate by which it is imposed upon the whole species or class of property or persons to which the specific tax applies; and this is so of duties and imposts, whether specific or ad valorem. To compel individuals to contribute money or property to the use of the public, without reference to any common ratio, and without requiring the sum paid by one piece or kind of property, or by one person, to bear any relation whatever to that paid by another, is, it seems to me, to lay a forced contribution, not a tax, duty, or impost, within the sense of these terms, as applied to the exercise of powers by any enlightened or responsible government.”

In the case of Knowlton v. Supervisors of Rock County,¹ an important and interesting question arose, involving the very point now under discussion. The Constitution of Wisconsin provides that “the rule of taxation shall be uniform,” which, if we are correct in what we have already stated, is no more than an affirmation of a settled principle of constitutional law. The city of Janesville included within its territorial limits, not only the land embraced within the recorded plat of the village of Janesville and its additions, but also a large quantity of the adjacent farming or agricultural lands. Conceiving the owners of these lands to be greatly and unequally burdened by taxation for the support of the city government, the legislature passed an act declaring that

¹ 9 Wis. 410. A tax case of much more than ordinary interest and importance is that of San Mateo County v. The Southern Pacific R. R. Co., 18 Fed. Rep. 722. Justice Field delivering an elaborate opinion, in the conclusions of which Judge Sawyer concurred. The suit was brought for the recovery of a tax assessed upon the franchises, roadway, roadbed, rails, and rolling-stock of the defendant. By the Constitution of the State the real estate of private individuals is valued for taxation, with a deduction of all mortgages and other liens, but the value of the property of railroads is to be assessed without any such deduction. It was held by these eminent judges that this discrimination in taxation between the property of natural persons and railroad corporations was an unwarrantable departure from the rule of equality and uniformity in taxation; that the provision which establishes the discrimination is not due process of law, and is therefore opposed to the fourteenth amendment to the Constitution of the United States, which is equally effectual to protect against an unwarranted exercise of the taxing power as against any other unlawful deprivation of property. It was also affirmed that the State has no power, by its constitution or otherwise, to withdraw corporations from the guaranties of the Federal Constitution.
"in no case shall the real and personal property within the territorial limits of said city, and not included within the territorial limits of the recorded plat of the village of Janesville, or of any additions to said village, which may be used, occupied, or reserved for agricultural or horticultural purposes, be subject to an annual tax to defray the current expenses of said city, exceeding one-half of one per cent; nor for the repair and building of roads and bridges, and the support of the poor, more than one-half as much on each dollar's valuation shall be levied for such purposes as on the property within such recorded plats, nor shall the same be subject to any tax for any of the purposes mentioned in § 3 of c. 5 of [the city charter]; nor shall the said farming or gardening land be subject to any tax, other than before mentioned, for any city purpose whatsoever." Under the charter the property of the city was liable to an annual tax of one per centum to defray the current expenses of the city; and also an additional tax of such sum as the common council might deem necessary for the repair and building of roads and bridges, and for the support of the poor. Thus it will be perceived that the legislature within the same taxing district, — if the whole city is to be considered one district only, — undertook to provide that a portion of the property should be taxed at one rate in proportion to value, and another portion at a much lower rate; while from taxation for certain proper local purposes the latter class was exempted altogether.

"It was contended in argument," say the court, "that as those provisions fixed one uniform rate without the recorded plats, and another within them, thus taxing all the property without alike, and all within alike, they do not infringe the constitution. In other words, that for the purpose of taxation, the legislature have the right arbitrarily to divide up and classify the property of the citizens, and, having done so, they do not violate the constitutional rule of uniformity, provided all the property within a given class is rated alike.

"The answer to this argument is, that it creates different rules of taxation, to the number of which there is no limit, except that fixed by legislative discretion, while the constitution establishes but one fixed, unbending, uniform rule upon the subject. It is believed that if the legislature can, by classification, thus arbitrarily, and without regard to value, discriminate in the same municipal corporation between personal and real property within, and personal and real property without a recorded plat, they can also by the same means discriminate between lands used for one purpose and those used for another, such as lands used for
growing wheat and those used for growing corn, or any other crop; meadow-lands and pasture-lands, cultivated and uncultivated lands; or they can classify by the description, such as odd-numbered lots and blocks and even-numbered ones, or odd and even-numbered sections. Personal property can be classified by its character, use, or description, or, as in the present case, by its location, and thus the rules of taxation may be multiplied to an extent equal in number to the different kinds, uses, descriptions, and locations of real and personal property. We do not see why the system may not be carried further, and the classification be made by the character, trade, profession, or business of the owners. For certainly this rule of uniformity can as well be applied to such a classification as any other, and thus the constitutional provision be saved intact. Such a construction would make the constitution operative only to the extent of prohibiting the legislature from discriminating in favor of particular individuals, and would reduce the people, while considering so grave and important a proposition, to the ridiculous attitude of saying to the legislature, 'You shall not discriminate between single individuals or corporations; but you may divide the citizens up into different classes, as the followers of different trades, professions, or kinds of business, or as the owners of different species or descriptions of property, and legislate for one class, and against another, as much as you please, provided you serve all of the favored or unfavored classes alike;' thus affording a direct and solemn constitutional sanction to a system of taxation so manifestly and grossly unjust that it will not find an apologist anywhere, at least outside of those who are the recipients of its favor. We do not believe the framers of that instrument intended such a construction, and therefore cannot adopt it."  

The principle to be deduced from the Iowa and Wisconsin cases, assuming that they do not in any degree conflict, seems to

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1 Per Dun, Ch. J., 9 Wis. 410, 421. Besides the other cases referred to, see, on this same general subject, Lin Sing v. Washburn, 20 Cal. 544; State v. Merchants' Ins. Co., 12 La. Ann. 802; Adams v. Somerville, 2 Head. 363; McComb v. Bell, 2 Minn. 295; Attorney-General v. Winnebago Lake & Fox River P. R. Co., 11 Wis. 35; Weeks v. Milwaukee, 10 Wis. 242; O'Kane v. Treat, 25 Ill. 557; Philadelphia Association, &c. v. Wood, 39 Pa. 73; Sacramento v. Crocker, 16 Cal. 110. There was a provision in the charter of Covington that a street might be paved with the Nicholson pavement at the expense of the adjoining owners, when the owners of the larger part of the frontage should petition therefor. An amendatory act authorized it as to a portion of a certain street without such a petition; thus permitting a special improvement on that street, at the expense of the owners of adjoining lots, on a different principle from that adopted for the city generally. In Howell v. Bristol, 8 Bush, 453, this amendment was held inconsistent with the fundamental principles of taxation, and consequently void.
be this: The legislature cannot arbitrarily include within the limits of a village, borough, or city, property and persons not properly chargeable with its burdens, and for the sole purpose of increasing the corporate revenues by the exaction of the taxes. But whenever the corporate boundaries are established, it is to be understood that whatever property is included within those limits has been thus included by the legislature, because it justly belongs there, as being within the circuit which is benefited by the local government, and which ought consequently to contribute to its burdens. The legislature cannot, therefore, after having already, by including the property within the corporation, declared its opinion that such property should contribute to the local government, immediately turn about and establish a basis of taxation which assumes that the property is not in fact urban property at all, but is agricultural lands, and should be assessed accordingly. The rule of apportionment must be uniform throughout the taxing district, applicable to all alike; but the legislature have no power to arrange the taxing districts arbitrarily, and without reference to the great fundamental principle of taxation, that the burden must be borne by those upon whom it justly rests. The Kentucky and Iowa decisions hold that, in a case where they have manifestly and unmistakably done so, the courts may interfere and restrain the imposition of municipal burdens on property which does not properly belong within the municipal taxing district at all. It must be manifest, however, that the effect of the decisions in the States last referred to is to establish judicially two or more districts within a municipality where the legislature has established one only; and as this is plainly a legislative function, it would seem that the legislature must be at least as competent to establish them directly as any court can be to do the same thing indirectly. And in Missouri, Kentucky, and Pennsylvania, no difficulty has been found in sustaining legislation which discriminated in taxation between “rural” lands and others within the same city.1

This rule of uniformity has perhaps been found most difficult of

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In Missouri such land, though taxed at a different rate, must be valued like other land. State v. O’Brien, 89 Mo. 631, 1 S. W. 733. In Utah it is denied that such land within the limits, but outside the city as built, can be subjected to city taxes. Terr. v. Daniels, 0 Utah, 288, 22 Pac. 169.

Agricultural land in tracts of ten acres or more brought within a city may be exempted from city taxes: Leicht v. Burlington, 73 Iowa, 29, 34 N. W. 494; if brought in after the passage of an act allowing it. Perkins v. Burlington, 77 Iowa, 558, 42 N. W. 441. Under Indiana statutes such land may not be taxed for general purposes above township rates, but is liable for special assessments. Dickerson v. Franklin, 112 Ind. 178, 13 N. E. 570.
application in regard to those cases of taxation which are commonly known under the head of assessments, and which are made either for local improvement and repair, or to prevent local causes resulting in the destruction of health or property. In those cases where it has been held that such assessments were not covered by the constitutional provision that taxation should be laid upon property in proportion to value, it has, nevertheless, been decided that the authority to make them must be referred to the taxing power, and not to the police power of the State, under which sidewalks have sometimes been ordered to be constructed. Apportionment of the burden was therefore essential, though it need not be made upon property in proportion to its value. But the question then arises: What shall be the rule of apportionment? Can a street be ordered graded and paved, and the expense assessed exclusively upon the property which, in the opinion of the assessors, shall be peculiarly benefited thereby, in proportion to such benefit? Or may a taxing district be created for the purpose, and the expense assessed in proportion to the area of the lots? Or may the street be made a taxing district, and the cost levied in proportion to the frontage? Or may each lot-owner be required to grade and pave in front of his lot? These are grave questions, and they have not been found of easy solution.

The case of The People v. The Mayor, &c. of Brooklyn,1 is a leading case, holding that a statute authorizing a municipal corporation to grade and improve streets, and to assess the expense among the owners and occupants of lands benefited by the improvement, in proportion to the amount of such benefit, is a constitutional and valid law. The court in that case concede that taxation cannot be laid without apportionment, but hold that the basis of apportionment in these cases is left by the constitution with the legislature. The application of any one rule or principle of apportionment to all cases would be manifestly oppressive and unjust. Taxation is sometimes regulated by one principle, and sometimes by another; and very often it has been apportioned without reference to locality, or to the taxpayer's ability to contribute, or to any proportion between the burden and the benefit. “The excise laws, and taxes on carriages and watches, are among the many examples of this description of taxation. Some taxes affect classes of inhabitants only. All duties on imported goods are taxes on the class of consumers. The tax on one imported article falls on a large class of consumers, while the tax on another affects comparatively a few individuals. The duty on one article consumed by one class of inhabitants is twenty per cent of

1 4 N. Y. 419, 427; reversing same case, 6 Barb. 209.
its value, while on another, consumed by a different class, it is forty per cent. The duty on one foreign commodity is laid for the purpose of revenue mainly, without reference to the ability of its consumers to pay, as in the case of the duty on salt. The duty on another is laid for the purpose of encouraging domestic manufactures of the same article, thus compelling the consumer to pay a higher price to one man than he could otherwise have bought the article for from another. These discriminations may be impolitic, and in some cases unjust; but if the power of taxation upon importations had not been transferred by the people of this State to the federal government there could have been no pretence for declaring them to be unconstitutional in State legislation.

"A property tax for the general purposes of the government, either of the State at large or of a county, city, or other district, is regarded as a just and equitable tax. The reason is obvious. It apportions the burden according to the benefit more nearly than any other inflexible rule of general taxation. A rich man derives more benefit from taxation, in the protection and improvement of his property, than a poor man, and ought therefore to pay more. But the amount of each man's benefit in general taxation cannot be ascertained and estimated with any degree of certainty; and for that reason a property tax is adopted, instead of an estimate of benefits. In local taxation, however, for special purposes, the local benefits may in many cases be seen, traced, and estimated to a reasonable certainty. At least this has been supposed and assumed to be true by the legislature, whose duty it is to prescribe the rules on which taxation is to be apportioned, and whose determination of this matter, being within the scope of its lawful power, is conclusive."

The reasoning of this case has been generally accepted as satisfactory, and followed in subsequent cases.1

On the other hand, and on the like reasoning, it has been held equally competent to make the street a taxing district, and assess the expense of the improvement upon the lots in proportion to the frontage. Here also is apportionment by a rule

the street in proportion to the street front, or upon the lands in proportion to their assessed value. In a case where the former mode was resorted to, and an assessment made upon property owned by the Northern Indiana Railroad Company for its corporate purposes, **Peck, J.,** thus states and answers an objection to the validity of the tax: "But it is said that assessments, as distinguished from general taxation, rest solely upon the idea of equivalents,—a compensation proportioned to the special benefits derived from the improvement, and that, in the case at bar, the railroad company is not, and in the nature of things cannot be, in any degree benefited by the improvement. It is quite true that the right to impose such special taxes is based upon a presumed equivalent; but it by no means follows that there must be in fact such full equivalent in every instance, or that its absence will render the assessment invalid. The rule of apportionment, whether by the front foot, or a percentage upon the assessed valuation, must be uniform, affecting all the owners and all the property abutting on the street alike. One rule cannot be applied to one owner, and a different rule to another owner. One could not be assessed ten per cent, another five, another three, and another left altogether unassessed because he was not in fact benefited. It is manifest that the actual benefits resulting from the improvement may be as various almost as the number of the owners, and the uses to which the property may be applied. No general rule, therefore, could be laid down which would do equal and exact justice to all. The legislature have not attempted so vain a thing, but have prescribed two different modes in which the assessment may be made, and left the city authorities free to adopt either. The mode adopted by the council becomes the statutory equivalent for the benefits conferred, although in fact the burden imposed may greatly preponderate. In such ease, if no fraud intervene, and the assessment does not substantially exhaust the owner's interest in the land, his remedy would seem to be to procure, by a timely appeal to the city authorities, a reduction of the special assessment, and its imposition, in whole or in part, upon the public at large." Northern Indiana R. R. Co. v. Connelly, 10 Ohio St. 139, 165. And see Howell v. Bristol, 8 Bush, 498; [Webster v. Fargo, 181 U. S. 394, 21 Sup. Ct. Rep. 623, aff. 9 N. D. 208, 82 N. W. 732; Ramsey County v. Nolbert P. Lewis Co., 72 Minn. 87, 75 N. W. 108, 53 L. R. A. 421.] The demand of the owner is competent to provide for assessing benefits upon the owner instead of the land. In re Centre St., 116 Pa. St. 217, 8 Atl. 50. [Contr. Ivanhoe v. Enterprise, 29 Oreg. 245, 45 Pac. 771, 55 L. R. A. 58, and see also note to this case in L. R. A.] As to repaying, see ante, 719, note. The legislative determination that certain land is benefited is conclusive. Only the question of apportionment remains open. Spencer v. Merchant, 125 U. S. 845, 8 Sup. Ct. Rep. 921; Pacific Bridge Co. v. Kirkland, 64 Cal. 519, 2 Pac. 409. The finding of benefits by a common council is conclusive unless palpably unjust. Paulson v. Portland, 16 Oreg. 450, 19 Pac. 469, 1 L. R. A. 577; Little Rock v. Katzstein, 62 Ark. 107, 12 S. W. 198; Pueblo v. Robinson, 12 Col. 593, 21 Pac. Rep. 899. In ordering a local assessment the common council may determine that the benefits to property within the district will equal the cost of the improvement. Cook v. Slucum, 27 Minn. 509, 8 N. W. 755. If a council has made an assessment district, a jury in apportioning benefits must impose some on each parcel in it. Rentz v. Detroit, 48 Mich. 544, 12 N. W. 604, 011. Contr. Kansas City v. Baird, 98 Mo. 215, 11 S. W. 249, 662. But a wholly arbitrary apportionment that could not possibly be just would be void. Thomas v. Gain, 35 Mich. 155. A council cannot be empowered to impose expense as it may "deem equitable and just." Burns v. Dyer, 56 Vt. 419.

1 Williams v. Detroit, 2 Mich. 599; Northern Indiana R. R. Co. v. Connelly,
which approximates to what is just, but which, like any other rule that can be applied, is only an approximation to absolute

10 Ohio St. 169; Lumaden v. Cross, 10 Wis. 252. And see St. Joseph v. O'Donnoghue, 31 Mo. 315; Burnett v. Sacramento, 12 Cal. 76; Szoville v. Cleveland, 1 Ohio St. 120; Hill v. Higdon, 5 Ohio St. 243; Ernst v. Kunke, 5 Ohio St. 520; Hines v. Leavenworth, 3 Kan. 189; Magee v. Commonwealth, 46 Pa. St. 358; Wray v. Pittsburgh, 46 Pa. St. 305; Palmer v. Stumpf, 29 Ind. 329; White v. People, 51 Ill. 604; Wilbur v. Springfield, 123 Ill. 305, 14 N. E. 671; Davis v. Lynchburg, 84 Va. 801, 6 S. E. 230; Farrar v. St. Louis, 80 Mo. 379; Taylor v. Boyd, 63 Tex. 553; O'Reiley v. Kingston, 111 N. Y. 469, 21 N. E. 1004; Cline v. Peence, 110 N. C. 32, 14 S. E. 521, 17 L. R. A. 330, and note on constitu-
tionality of frontage rule. Frontage rule will not be sustained where provision has not been made for a hearing in which property owners may appear and show that such assessment is not proportional to benefits. Ulman v. Baltimore, 72 Md. 587, 597, 600, 20 Atl. 141, 21 Atl. 709, 21 Atl. 714, 11 L. R. A. 221, and note.] although the assessment exceeds the value of a long, shallow strip assessed. McCormick's Est. v. Harrisburg, 129 Pa. St. 213, 18 Atl. 125. In Hammett v. Phila-
delphia, 65 Pa. St. 116, 3 Am. Rep. 615, while the cases here cited are approved, it is denied that a street already laid out and in good condition can be taken and improved for a public drive or carriage-
rents); Willard v. Preshury, 14 Wall. 676; Hoyt v. East Saginaw, 19 Mich. 39, 2 Am. Rep. 76; La Fayette v. Fowler, 34 Ind. 140; Chambers v. Satterlee, 40 Cal. 497; Bradley v. McAtree, 7 Bush, 607, 3 Am. Rep. 398. In Washington Avenue, 69 Pa. St. 352, 8 Am. Rep. 255, it is denied that this principle can be applied to the country and to farming lands. Agnew, J., says: "To apply it to the country, or to farm lands, would lead to such inequality and injustice as to deprive it of all soundness as a rule, or as a substitute for a fair and impartial valuation of benefits in pur-
suance of law; so that at the very first blush every one would pronounce it pal-
pably unreasonable and unjust." The able opinion in this case is a very satis-
factory and thorough examination of the principles on which local assess-
ments are supported. The cases of Seely v. Pittsburg, 82 Pa. St. 50; Craig v. Philadelphia, 89 Pa. St. 265; Philadel-
phia v. Rule, 83 Pa. St. 15, and Scranton v. Penn Coal Co., 105 Pa. St. 446, are in principle similar. The rule of assess-
ment by frontage is not sanctioned in Arkansas: Peay v. Little Rock, 32 Ark. 31; Monticello v. Banks, 48 Ark. 251, 2 S. W. 852; nor in Tennessee. McBean v. Chandler, 9 Heisk. 349. [Nor will the frontage rule be sustained where it results in an appomtionment varying substantially from the value of bene-
fits conferred and in excess thereof. In Norwood v. Baker, a peculiar state of facts showed the frontage rule in a most unfavorable light. B. owned a parcel of land on W. Ave. I. Ave. intersected W. Ave. at right angles, but was inter-
rupted for a space of 300 ft. by B.'s land, through which the street had not yet been opened. It had, however, been opened beyond B.'s land, so that by the opening of the street for this distance of 300 ft. across B.'s land, the street would be open throughout its length. The vil-
lage council of N. by ordinance provided for the appropriation of this strip through B.'s land, and the value thereof was duly assessed and paid to B. Thereupon the council, following the frontage rule, as-
essed upon B., whose land was the only land fronting upon the new portion of the street, the entire cost of the land ap-
propriated, and in addition all the ex-
equality. But if, in the opinion of the legislature, it is the proper rule to apply to any particular case, the courts must enforce it.

expenses connected with such appropriation. As a matter of fact the land of B. was probably not at all benefited by the opening of the street through it, since all parts of it had substantially equally good street facilities before. The United States Supreme Court sustained an injunction against the assessment on the ground that it amounted to a taking without due process. Norwood v. Baker, 172 U. S. 209, 19 Sup. Ct. Rep. 187. But under a statute authorizing the entire expense of a street pavement to be apportioned on abutting lots according to the frontage rule, and without any preliminary hearing as to benefits, the assessment cannot, in the absence of allegation and proofs that the resulting assessment is substantially in excess of benefits, be set aside where the lots are of equal depth, and are substantially similarly related to the improvement. The statute is good to the extent of furnishing a prima facie rule of apportionment. French v. Barber A. Paving Co., 181 U. S. 324, 21 Sup. Ct. Rep. 625, aff. 158 Mo. 534, 53 S. W. 924, 54 L. R. A. 492. To same effect see Farrell v. W. Chicago Park Comm'rs, 182 Ill. 250, 55 N. E. 325; Cass Farm Co. v. Detroit, 124 Mich. 493, 7 Det. L. N. 283, 83 N. W. 103; Herman v. Allen, 150 Mo. 634, 57 S. W. 659, all of which are sustained in 181 U. S. 402, 21 Sup. Ct. Rep. 645, the Missouri case sub nom. Shumate v. Herman; see the vigorous dissenting opinion of Mr. Justice Harlan in 181 U. S. 402, 21 Sup. Ct. Rep. 623. See also Banaz v. Smith, 133 Cal. 102, 65 Pac. 309, sustaining the frontage rule as prima facie rule; also Ramsey County v. Lewis Co., 82 Minn. 402, 81 N. W. 611 (June 18, 1901), rev. same case, 82 Minn. 399, 85 N. W. 207; Indianapolis v. Holt, 155 Ind. 222, 57 N. E. 906, 988, 1100; Baltimore v. Stewart, 92 Md. 533, 48 Atl. 165; Barfield v. Gleason, 23 Ky. L. 128, 63 S. W. 964, (sustaining assessment proportional to area). Notice by publication is sufficient in street improvement proceedings. Wight v. Davidson, 181 U. S. 371, 21 Sup. Ct. Rep. 618. And such notice may be by a minute in the publication of the council's proceedings. State v. Illsby, 82 Minn. 393, 85 N. W. 175. Upon constitutionality of frontage rule, see Raleigh v. Peace, 110 N. C. 82, 14 S. E. 521, 17 L. R. A. 330, and note; upon necessity of special benefit, see Re Bonds of Madera Irrig. Dist., 92 Cal. 296, 341, 25 Pac. 272, 675, 14 L. R. A. 755, and note; upon distinction between taxes and special assessments, see Adams Co. v. Quincy, 130 Ill. 505, 22 N. E. 924, 6 L. R. A. 155, and note. Upon practically unlimited power of Congress over special assessments in District of Columbia, see Parsons v. District of Columbia, 170 U. S. 45, 18 Sup. Ct. 621; Wight v. Davidson, 181 U. S. 371, 21 Sup. Ct. Rep. 616. The frontage rule is no longer valid in Indiana, and no special assessment can exceed the benefit. If the cost of the improvement exceeds the amount of the special benefits, the excess must be paid out of the general fund raised by taxation. Adams v. Shelbyville, 154 Ind. 497, 57 N. E. 114, 49 L. R. A. 797. "Compensation paid to a landowner for lands taken by appropriation proceedings to open a street cannot be assessed back upon the lands of the owner remaining after such taking. Neither can costs and expenses incurred in such proceeding be so assessed." Cincinnati, L. & N. R. Co. v. Cincinnati, 62 Ohio St. 465, 57 N. E. 229, 49 L. R. A. 550; Bloomington v. Latham, 142 Ill. 462, 32 N. E. 503, 18 L. R. A. 487. Assessment by the frontage rule rejected. Assessments must be proportioned to benefits and not in excess thereof. Kersten v. Milwaukee, 106 Wis. 209, 81 N. W. 948, 1103, 49 L. R. A. 851; Hutcheson v. Storrie, 92 Tex. 685, 51 S. W. 848, 45 L. R. A. 289. For other cases on special assessments, see Asberry v. Roanoke, 91 Va. 502, 22 S. E. 399, 42 L. R. A. 638; Weed v. Boston, 173 Mass. 28, 51 N. E. 204, 42 L. R. A. 642; Ralph v. Fargo, 7 N. D. 610, 76 N. W. 242, 42 L. R. A. 646 (sustaining frontage rule); Detroit v. Chapin, 112 Mich. 588, 71 N. W. 149, 42 L. R. A. 638; Ramsey County v. Lewis Company, 72 Minn. 87, 75 N. W. 108, 42 L. R. A. 639; Violett v. Alexandria, 92 Va. 501, 23 S. E. 909, 31 L. R. A. 382; Hayes v. Douglas County, 92 Wis. 429, 55 N. W. 482, 31 L. R. A. 213; Denver v. Knowles, 17 Col. 204, 90 Pac. 1041, 17 L. R. A.
But a very different case is presented when the legislature undertakes to provide that each lot upon a street shall pay the whole expense of grading and paving the street along its front. (a) For while in such a case there would be something having the outward appearance of apportionment, it requires but slight examination to discover that it is a deceptive semblance only, and that the measure of equality which the constitution requires is entirely wanting. If every lot-owner is compelled to construct the street in front of his lot, his tax is neither increased nor diminished by the assessment upon his neighbors; nothing is divided or apportioned between him and them; and each particular lot is in fact arbitrarily made a taxing district, and charged with the whole expenditure therein and thus apportionment avoided. If the tax were for grading the street simply, those lots which were already at the established grade would escape altogether, while those on either side, which chanced to be above and below, must bear the whole burden, though no more benefited by the improvement than the others. 1 It is evident, therefore, that a law for making assessments on this basis could not have in view such distribution of burdens in proportion to benefits as ought to be a cardinal idea in every tax-law. 2 It would be nakedly an arbitrary command of the law to each lot-owner to construct the street in front of his lot at his own expense, according to a prescribed standard; and a power to issue such command could never be exercised by a constitutional government, unless we are at liberty to treat it as a police regulation, and place the duty to make the streets upon the same footing as that to keep the sidewalk free from obstruction and fit for passage. But any such idea is clearly inadmissible. 3

135 (sustaining frontage rule in absence of any showing of unfairness); Speer v. Athens, 85 Ga. 40, 11 S. E. 802, 9 L. R. A. 402; Graham v. Chicago, 187 Ill. 411, 58 N. E. 336; King v. City of Portland, 38 Oreg. 402, 63 Pac. 2, 55 L. R. A. 812. Where a street is widened upon one side only, the lands on both sides of the street abut on the improvement. Cincinnati v. Batesche, 52 Ohio St. 324, 40 N. E. 21, 27 L. R. A. 536.]

1 In fact, lots above and below an established grade are usually less benefited by the grading than the others; because the improvement subjects them to new burdens, in order to bring the general surface to the grade of the street, which the others escape.

2 The case of Warren v. Henley, 31 Iowa, 31, is opposed to the reasoning of the text; but the learned judge who delivers the opinion concedes that he is unable to support his conclusions on the authorities within his reach.

3 All lots in the district must be assessed, not simply those in front of which work has been done. Diggins v. Brown, 76 Cal. 318, 13 Pac. 373. See City of Lexington v. McQuillan's Heirs, 9 Dana, 613, and opinions of Campbell and Christiany, J.J., in Woodbridge v. Detroit, 8 Mich. 274. The case of Weeks v. Mil-

(a) [Such assessment held clearly arbitrary and void in Davis v. Litchfield, 145 Ill. 313, 33 N. E. 888, 21 L. R. A. 563, and note upon such assessments.]
In many other cases, besides the construction, improvement, and repair of streets, may special taxing districts be created, with

waneeke, 10 Wis. 258, seems to be contra. We quote from the opinion of the court by Paine, J. After stating the rule that uniformity in taxation implies equality in the burden, he proceeds: "The principle upon which these assessments rest is clearly destructive of this equality. It requires every lot-owner to build whatever improvements the public may require on the street in front of his lot, without reference to inequalities in the value of the lots, in the expense of constructing the improvements, or to the question whether the lot is injured or benefited by their construction. Corner lots are required to construct and keep in repair three times as much as other lots; and yet it is well known that the difference in value bears no proportion to this difference in burden. In front of one lot the expense of building the street may exceed the value of the lot; and its construction may impose on the owner additional expense, to render his lot accessible. In front of another lot of even much greater value, the expense is comparatively slight. These inequalities are obvious; and I have always thought that the principle of such assessments was radically wrong. They have been very extensively discussed, and sustained upon the ground that the lot should pay because it receives the benefit. But if this be true, that the improvements in front of a lot are made for the benefit of the lot only, then the right of the public to tax the owner at all for that purpose fails; because the public has no right to tax the citizen to make him build improvements for his own benefit merely. It must be for a public purpose; and it being once established that the construction of streets is a public purpose that will justify taxation, I think it follows, if the matter is to be settled on principle, that the taxation should be equal and uniform, and that to make it so the whole taxable property of the political division in which the improvement is made should be taxed by a uniform rule for the purpose of its construction.

"But in sustaining these assessments when private property was wanted for a street, it has been said the State could take it, because the use of a street was a public use; in order to justify a resort to the power of taxation, it is said the building of a street is a public purpose. But then, having got the land to build it on, and the power to tax by holding it a public purpose, they immediately abandon that idea, and say that it is a private benefit, and make the owner of the lot build the whole of it. I think this is the same in principle as it would be to say that the town in which the county seat is located should build the county buildings, or that the county where the capital is should construct the public edifices of the State, upon the ground that, by being located nearer, they derived a greater benefit than others. If the question, therefore, was, whether the system of assessment could be sustained upon principle, I should have no hesitation in deciding it in the negative. I fully agree with the reasoning of the Supreme Court of Louisiana in the case of Municipality No. 2 v. White, 9 La. Ann. 447, upon this point.

"But the question is not whether this system is established upon sound principles, but whether the legislature has power, under the constitution, to establish such a system. As already stated, if the provision requiring the rule of taxation to be uniform was the only one bearing upon the question, I should answer this also in the negative. But there is another provision which seems to me so important, that it has changed the result to which I should otherwise have arrived. That provision is § 3 of art. 11, and is as follows: 'It shall be the duty of the legislature, and they are hereby empowered, to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and taxation, and in contracting debts by such municipal corporations.'

"It cannot well be denied that if the word 'assessment,' as used in this section, had reference to this established system of special taxation for municipal improvements, that then it is a clear recog-
a view to local improvements. The cases of drains to relieve swamps, marshes, and other low lands of their stagnant water, and of levees to prevent lands being overflowed by rivers, will at once suggest themselves. In providing for such cases, however, the legislature exercises another power besides the power of taxation. On the theory that the drainage is for the sole purpose of benefiting the lands of individuals, it might be difficult to defend such legislation. But if the stagnant water causes or threatens disease, it may be a nuisance, which, under its power of police, the State would have authority to abate. The laws for this purpose, so far as they have fallen under our observation, have proceeded upon this theory. Nevertheless, when the State incurs expense in the exercise of its police power for this purpose, it may be proper to assess that expense upon the portion of the community specially and peculiarly benefited. The assessment is usually made with reference to the benefit to property; and it is difficult to frame or

ition of the existence and legality of the power." And the court, having reached the conclusion that the word did have reference to such an established system, sustained the assessment, adding: "The same effect was given to the same clause in the Constitution of Ohio, by the Supreme Court of that State, in a recent decision in the case of Hill v. Higdon, 5 Ohio, s. s. 243. And the reasoning of Chief Justice Ramsey on the question I think it impossible to answer."

If the State of Wisconsin had any settled and known practice, designated as assessments, under which each lot-owner was compelled to construct the streets in front of his lot, then the constitution as quoted may well be held to recognize such practice. In this view, however, it is still difficult to discover any "restriction" in a law which perpetuates the arbitrary and unjust custom, and which still permits the whole expense of making the street in front of each lot to be imposed upon it. The only restriction which the law imposes is, that its terms exclude uniformity, equality, and justice, which surely could not be the restriction the constitution designed. Certainly the learned judge shows very clearly that such a law is unwarranted as a legitimate exercise of the taxing power; and as it cannot be warranted under any other power known to constitutional government, the authority to adopt it should not be found in doubtful words. The case of Hill v. Higdon, referred to, is different. There the expense of improving the street was assessed upon the property abutting on the street, in proportion to the foot front. The decision there was, that the constitutional provision that "laws shall be passed taxing by a uniform rule all moneys, &e., and also all real and personal property, according to the true value in money," had no reference to these local assessments, which might still be made, as they were before the constitution was adopted, with reference to the benefits conferred. The case, therefore, showed a rule of apportionment which was made applicable throughout the taxing district, to wit, along the street so far as the improvement extended. The case of State v. City of Portage, 12 Wis. 562, holds that a law authorizing the expense of an improvement to be assessed upon the abutting lots, in proportion to their front or size, would not justify and sustain city action which required the owner of each lot to bear the expense of the improvement in front of it.

It has been often contended that taxation by frontage was in effect a taking of property for the public use, but the courts have held otherwise. People v. Mayor, &e. of Brooklyn, 4 N. Y. 419; Allen v. Drew, 44 Vt. 174; Warren v. Henley, 31 Iowa, 31; Washington Avenue, 69 Pa. St. 552; 8 Ann. Rep. 255; White v. People, 94 Ill. 604.
to conceive of any other rule of apportionment that would operate so justly and so equally in these cases. There may be difficulty in the detail; difficulty in securing just and impartial assessments; but the principle of such a law would not depend for its soundness upon such considerations.\footnote{1 See Reeves v. Treasurer of Wood Co., 8 Ohio St. 333; Sessions v. Crunk- hinton, 20 Ohio St. 340; French v. Kirk- land, 1 Paige, 117; Phillips v. Wickham, 1 Paige. 590; Anderson v. Kerus Co., 14 Ind. 193; O'Reiley v. Kankakee Co., 32 Ind. 169; Draining Co. Case, 11 La. Ann. 385; Hagar v. Supervisors of Yolo, 47 Cal. 222; Davidson v. New Orleans, 96 U. S. 97. [\textit{Re Tuthill}, 103 N. Y. 136, 57 N. E. 303, 49 L. R. A. 781.] In Wood- ruff v. Fisher, 17 Barb. 224, \textit{Hand, J.}, speaking of one of these drainage laws, says: "If the object to be accomplished by this statute may be considered a public improvement, the power of taxation seems to have been sustained upon analogous principles. [Citing People v. Mayor, &c. of Brooklyn, 4 N. Y. 419; Thomas v. Leland, 24 Wend. 65; and Livingston v. Mayor, &c. of New York. 8 Wend. 85, 22 Am. Dec. 622.] But if the object was merely to improve the property of individuals, I think the statute would be void, although it provided for compensation. The water privileges on Indian River cannot be taken or affected in any way solely for the private advantage of others, however numerous the beneficiaries. Several statutes have been passed for draining swamps, but it seems to me that the principle above advanced rests upon natural and constitutional law. The professed object of this statute is to promote public health. And one question that arises is, whether the owners of large tracts of land in a state of nature can be taxed to pay the expense of draining them, by destroying the dams, &c., of other persons away from the drowned lands, and for the purposes of public health. This law proposes to destroy the water power of certain persons against their will, to drain the lands of others, also, for all that appears, against their will; and all at the expense of the latter, for this public good. If this taxation is illegal, no mode of compensation is provided, and all is illegal." "The owners of these lands could not be convicted of maintaining a public nuisance because they did not drain them; even though they were the owners of the lands upon which the obstructions are situated. It does not appear by the act or the complaint that the sickness to be prevented prevails among inhabitants on the wet lands, nor whether these lands will be benefited or injured by draining; and certainly, unless they will be benefited, it would seem to be partial legislation to tax a certain tract of land, for the expense of doing to it what did not improve it, merely because, in a state of nature, it may be productive of sickness. Street assessments are put upon the ground that the land assessed is improved, and its value greatly enhanced." The remarks of \textit{Green, J.}, in Williams v. Mayor, &c. of Detroit, 2 Mich. 500, 507, may be here quoted: "Every species of taxation, in every mode, is in theory and principle based upon an idea of compensation, benefit, or advantage to the person or property taxed, either directly or indirectly. If the tax is levied for the support of the government and general police of the State, for the education and moral instruction of the citizens, or the construction of works of internal improvement, he is supposed to receive a just compensation in the security which the government affords to his person and property, the means of enjoying his possessions, and their enhanced capacity to contribute to his comfort and gratification, which constitute their value." It has been held incompetent, however, for a city which has itself created a nuisance on the property of a citizen, to tax him for the expense of removing or abating it. \textit{Weeks v. Milwaukee}, 10 Wis. 258.}
Sewers in cities and populous districts are a necessity, not only that the streets may be kept clean and in repair, but to prevent the premises of individuals from becoming nuisances. The expense of these is variously assessed. It may unquestionably be made by benefits and by frontage under proper legislation. In certain classes of cases, it has been customary to call upon the citizen to appear in person and perform service for the State, in the nature of police duties. The burden of improving and repairing the common highways of the country, except in the urban districts, is generally laid upon the people in the form of an assessment of labor. The assessment may be upon each citizen, in proportion to his property; or, in addition to the property assessment, there may be one also by the poll. But though the public burden assumes the form of labor, it is still taxation, and must therefore be levied on some principle of uniformity. But it is a peculiar species of taxation; and the general terms "tax" or "taxation," as employed in the State constitutions, would not generally be understood to include it. It has been decided that the clause in the Constitution of Illinois, that "the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession," did not prevent the levy of poll-taxes in highway labor. "The framers of the constitution intended to direct a uniform mode of taxation on property, and not to proportion its valuation did not preclude this mode of assessment. The same ruling was made in Louisiana cases. Crowley v. Copley, 2 La. Ann. 323; Yeatman v. Cran dall, 11 La. Ann. 220; Wallace v. Shelton, 14 La. Ann. 498; Bishop v. Marks, 16 La. Ann. 117; Richardson v. Morgan, 16 La. Ann. 420. So with reference to assessments for irrigating arid lands. Turlock Irrig. Dist. v. Williams, 76 Cal. 360, 18 Pac. 579. And see McGhee v. Mathis, 21 Ark. 40; Jones v. Boston, 101 Mass. 461; Daily v. Swope, 47 Miss. 367; Alcorn v. Hamer, 38 Miss. 652; Boro v. Phillips Co., 4 Dill. 216. [Expense of street sprinkling may be met by special assessments on the benefit rule. Phillips Academy v. Andover, 175 Mass. 118, 55 N. E. 514, 48 L. R. A. 556.]

1 In England it is made by benefits. In this country different methods are adopted. See Wright v. Boston, 9 Cush. 232; Leominster v. Conant, 130 Mass. 384, 2 N. E. 690; Cone v. Hartford, 28 Conn. 365; St. Louis v. Oeters, 56 Mo. 450; Rutherford v. Hamilton, 97 Mo. 543, 11 S. W. 249; Strand v. Philadelphia, 61 Pa. St. 259; Philadelphia v. Tyrone, 45 Pa. St. 401; Warner v. Grand Haven, 39 Mich. 24. It may be made according to the value of the lots: Mason v. Spencer, 35 Kan. 512, 11 Pac. 402; Snow v. Fitchburg, 136 Mass. 183; or by area. Reese v. Denver, 10 Col. 112, 16 Pac. 825. It would not be competent, however, to make the assessment for a city sewer by the area upon both in and out lots, as this, from the nature of the case, could not possibly be equal. Thomas v. Gain, 35 Mich. 155. Street sprinkling may be paid for according to the frontage upon the street sprinkled. State v. Reis, 33 Minn. 371, 35 N. W. 97. [Expense of maintenance of sewers, as well as of construction, may be met by special assessments according to benefits. Carson v. Brockton Sewer Commrs., 182 U. S. 398, 21 Sup. Ct. Rep. 890, aff. 175 Mass. 212, 59 N. E. 1, 48 L. R. A. 277.]
hibit any other species of taxation, but to leave the legislature the power to impose such other taxes as would be consonant to public justice, and as the circumstances of the country might require. They probably intended to prevent the imposition of an arbitrary tax on property, according to kind and quantity, and without reference to value. The inequality of that mode of taxation was the object to be avoided. We cannot believe they intended that all the public burdens should be borne by those having property in possession, wholly exempting the rest of the community, who, by the same constitution, were made secure in the exercise of the rights of suffrage, and all the immunities of the citizen." 1 And in another case, where an assessment of highway labor is compared with one upon adjacent property for widening a street,—which had been held not to be taxation, as that term was understood in the constitution,—it is said: "An assessment of labor for the repair of roads and streets is less like a tax than is such an assessment. The former is not based upon, nor has it any reference to, property or values owned by the person of whom it is required, whilst the latter is based alone upon the property designated by the law imposing it. Nor is an assessment a capitation tax, as that is a sum of money levied upon each poll. This rate, on the contrary, is a requisition for so many days' labor, which may be commuted in money. No doubt, the number of days levied, and the sum which may be received by commutation, must be uniform within the limits of the district or body imposing the same. This requisition for labor to repair roads is not a tax, and hence this exemption is not repugnant to the constitution." 2

It will be apparent from what has already been said, that it is not essential to the validity of taxation that it be levied according to the rules of abstract justice. 3 It is only essential that the legislature keep within its proper sphere of action, and do not impose burdens under the name of taxation which are not taxes in fact; and its decision as to what is proper, just, and politic,

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2 Town of Pleasant v. Kost, 20 Ill. 490, 491.

3 Freullen v. Mahan, 21 La. Ann. 79; People v. Whyler, 41 Cal. 55; Warren v. Henley, 31 Iowa, 31. In this last case, Beck, J., criticizes the position taken ante, pp. 730-732, that the cost of a local improvement cannot be imposed on the adjoining premises irrespective of any apportionment, and appears to suppose our views rest upon the injustice of such a proceeding. This is not strictly correct; it may or may not be just in any particular case; but taxation necessarily implies apportionment, and even a just burden cannot be imposed as a tax without it. [See a peculiar case in Baldwin v. Douglas County, 37 Neb. 293, 55 N. W. 875, 20 L. R. A. 850, declaring a doubtful rule.]
must then be final and conclusive. Absolute equality and strict justice are unattainable in tax proceedings. The legislature must be left to decide for itself how nearly it is possible to approximate so desirable a result. It must happen under any tax law that some property will be taxed twice, while other property will escape taxation altogether.\(^1\) Instances will also occur where persons will be taxed as owners of property which has ceased to exist. Any system adopted for taking valuations of property must fix upon a certain time for that purpose, and a party becomes liable to be taxed upon what he possesses at the time the valuing officer calls upon him. Yet changes of property from person to person are occurring while the valuation is going on, and the same parcel of property may be found by the assessor in the hands of two different persons, and be twice assessed, while another parcel in the transfer from hand to hand fails to be assessed at all. So the man who owns property when the assessment is taken may have been deprived of it by accident or other misfortune before the tax becomes payable; but the tax is nevertheless a charge against him. And when the valuation is made but once in a series of years, the occasional hardships and inequalities in consequence of relative changes in the value of property from various causes, becomes sometimes very glaring. Nevertheless, no question of constitutional law is raised by these inequalities and hardships, and the legislative control is complete.\(^2\)

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\(^1\) Duplicate taxation must occasionally take place, however carefully the law may have been framed to avoid it. A tax cannot be set aside on that ground merely. Augusta Bank v. Augusta, 30 Me. 255. It is customary to tax corporations on their capital stock, or on their property, and also the corporators on their shares; and this is entirely admissible. Farrington v. Tennessee, 95 U. S. 679; Sturges v. Carter, 114 U. S. 511, 5 Sup. Ct. Rep. 1014; Bido v. Commissioners, 82 N. C. 415, 33 Am. Rep. 688; Bradley v. Bander, 36 Ohio St. 28, 38 Am. Rep. 547; Cook v. Burlington, 59 Iowa, 251, 13 N. W. 113; Lee v. Sturges, 40 Ohio St. 153, 19 N. E. 599. The tax on the shares may be collected from the corporation out of dividends. Street Railroad Co. v. Morrow, 87 Tenn. 406, 11 S. W. 348. But it is said the intent to tax both stock and shares must be clear. Penn. Co. v. Corn., — Pa. St. —, 15 Atl. 456. [And see Farrington v. Tennessee, 95 U. S. 679, and Bk. of Commerce v. Tennessse, 101 U. S. 134, 16 Sup. Ct. Rep. 460, s. c. 103 U. S. 416, 16 Sup. Ct. Rep. 1113, where it is held that the language "Said institution . . . shall pay to the State an annual tax of 4 of 1 per cent on each share of capital stock, which shall be in lieu of all other taxes" makes the shares in the hands of the stockholders non-taxable. But the bank may be taxed upon its capital stock under that provision. Shelby Co. v. Union & Planters' Bank, 101 U. S. 149, 16 Sup. Ct. Rep. 568.] So land may be taxed at its full value, and also the mortgage upon it. People v. Board of Supervisors, 71 Mich. 16, 38 N. W. 639. [But not in California. Germania Trust Co. v. San Francisco, 129 Cal. 539, 61 Pac. 178.]

\(^2\) In Shaw v. Dennis, 10 Ill. 405, objection was taken to an assessment made for a local improvement under a special statute, that the commissioners, in determining who should be liable to pay the tax, and the amount each should pay,
The legislature must also, except when an unbending rule has been prescribed for it by the constitution, have power to select in its discretion the subjects of taxation. The rule of uniformity requires an apportionment among all the subjects of taxation within the districts; but it does not require that everything which the legislature might make taxable shall be made so in fact. Many exemptions are usually made from taxation from reasons the cogency of which is at once apparent. The agencies of the national government, we have seen, are not taxable by the States; and the agencies and property of States, counties, cities, boroughs, towns, and villages are also exempted by law, \((a)\) be-

were to be governed by the last assessment of taxable property in the county. It was insisted that this was an unjust criterion, for a man might have disposed of all the taxable property assessed to him in the last assessment before this tax was actually declared by the commissioners. The court, however, regarded the objection as more refined than practical, and one that, if allowed, would at once annihilate the power of taxation. "In the imposition of taxes, exact and critical justice and equality are absolutely unattainable. If we attempt it, we might have to divide a single year's tax upon a given article of property among a dozen different individuals who owned it at different times during the year, and then be almost as far from the desired end as when we started. The proposition is Utopian. The legislature must adopt some practical system; and there is no more danger of oppression or injustice in taking a former valuation than in relying upon one to be made subsequently." And see People v. Worthington, 21 Ill. 171.


\(^{(a)}\) But in Kentucky, a municipal corporation may be taxed upon its franchise to operate water-works. Newport v. Com., 106 Ky. 434, 50 S. W. 845, 45 L. R. A. 518. Public parks and the property used by the fire department are public prop-
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cause, if any portion of the public expenses was imposed upon them, it must in some form be collected from the citizens before it can be paid. No beneficial object could therefore be accomplished by any such assessment. The property of educational and religious institutions is also generally exempted from taxation by law upon very similar considerations, and from a prevailing belief that it is the policy and the interest of the State to encourage them.1 If

the State may cause taxes to be levied from motives of charity or gratitude, so for the like reasons it may exempt the objects of charity and gratitude from taxation.\(^1\) Property is sometimes released from taxation by contract between the State and corporations, (\(a\)) and specified occupations are sometimes charged with


\(a\) [Upon exemption from taxation, see note to 22 L. ed. U. S. 805.]
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specific taxes in lieu of all taxation of their property. A broad field is here opened to legislative discretion. As matter of State policy it might also be deemed proper to make general exemption of sufficient of the tools of trade or other means of support, to enable the poor man, not yet a pauper, to escape becoming a public burden. There is still ample room for apportionment after all such exemptions have been made. The constitutional requirement of equality and uniformity only extends to such objects of taxation as the legislature shall determine to be properly subject to the burden. The power to determine the persons and the objects to be taxed is trusted exclusively to the legislative department; but over all those objects the burden must be spread or it will be unequal and unlawful as to such as are selected to make the payment.


3 In the case of Weeks v. Milwaukee, 10 Wis. 212, a somewhat peculiar exemption was made. It appears that several lots in the city upon which a new hotel was being constructed, of the value of from $150,000 to $200,000, were purposely omitted to be taxed, under the direction of the Common Council, "in view of the great public benefit which the construction of the hotel would be to the city." Paine, J., in delivering the opinion of the court, says: "I have no doubt this exemption originated in motives of generosity and public spirit. And perhaps the same motives should induce the taxpayers of the city to submit to the slight increase of the tax thereby imposed on each, without questioning its strict legality. But they cannot be compelled to. No man is obliged to be more generous than the law requires, but each may stand strictly upon his legal rights. That this exemption was illegal, was scarcely contested. I shall therefore make no effort to show that the Common Council had no authority to suspend or repeal the general law of the State, declaring what property shall be taxable and what exempt. But the important question presented is, whether, conceding it to have been entirely unauthorized, it vitiates the tax assessed upon other property. And upon this question I think the following rule is established, both by reason and authority. Omissions of this character, arising from mistakes of fact, erroneous computations, or errors of judgment on the part of those to whom the execution of the taxing laws is entrusted, do not necessarily vitiate the whole tax. But intentional disregard of those laws, in such manner as to impose illegal taxes on those who are assessed, does. The first part of the rule is necessary to enable taxes to be collected at all. The execution of these laws is necessarily entrusted to men, and men are fallible, liable to frequent mistakes of fact and errors of judgment. If such errors, on the part of those who
In some of the States it has been decided that the particular provisions inserted in their constitutions to insure uniformity are so worded as to forbid exemptions. Thus the late Constitution of Illinois provided that "the General Assembly shall provide for levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his or her property."\(^1\) Under this it was held that exemption by the legislature of persons residing in a city from a tax levied to repair roads beyond the city limits, by township authority,—the city being embraced within the township which, for that purpose, was the taxing district,—was void.\(^2\) It is to be observed of these cases, however, that they would have fallen within the general principle laid down in Knowlton v. Supervisors of Rock Co.,\(^3\) and the legislative acts under consideration might, if that case were followed, have been declared void on general principles, irrespective of the peculiar wording of the constitution. These cases, notwithstanding, as well as others in Illinois, recognize the power in the legis-

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1. Art. 9, § 2, of the old Constitution.
2. O’Kane v. Trent, 25 Ill. 557; Hunraker v. Wright, 30 Ill. 146. See also Trustees v. McConnell, 12 Ill. 138; Madison County v. People, 33 Ill. 456; Dunham v. Chicago, 55 Ill. 357; Louisville, &c. R. R. Co. v. State, 8 Heisk. 663, 744. [People’s Loan & H. Assn. v. Keith, 153 Ill. 600, 39 N. E. 1077, 28 L. R. A. 65.]
3. 9 Wis. 410. See ante, p. 723.
lature to commute for a tax, or to contract for its release for a consideration. The Constitution of Ohio provides\(^1\) that "laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and also all real and personal property, according to its true value in money." Under this section it was held not competent for the legislature to provide that lands within the limits of a city should not be taxed for any city purpose, except roads, unless the same were laid off into town lots and recorded as such, or into out-lots not exceeding five acres each.\(^2\) Upon this case we should make the same remark as upon the Illinois cases above referred to. The Constitution of California provides that "all property in the State shall be taxed in proportion to its value;" and this is held to preclude all exemptions of private property when taxes are laid for either general or local purposes.\(^3\)

It is, moreover, essential to valid taxation that the taxing officers be able to show legislative authority for the burden they assume to impose in every instance. Taxes can only be voted by the people's representatives. They are in every instance an appropriation by the people to the government, which the latter is to expend in furnishing the people protection, security, and such facilities for enjoyment as it properly pertains to government to provide. This principle is a chief corner-stone of Anglo-Saxon liberty; and it has operated not only as an important check on government, in preventing extravagant expenditures, as well as unjust and tyrannical action, but it has been an important guaranty of the right of private property. Property is secure from the lawless grasp of the government, if the means of existence of the government depend upon the voluntary grants of those who own the property. Our ancestors coupled their grants with demands for the redress of grievances: but in modern times the surest protection against grievances has been found to be to vote specific taxes for the specific purposes to which the people's representatives are willing they shall be devoted;\(^4\) and the persons exercising the functions of government must then become petitioners if they desire money for other objects. And then these grants are only made periodically. Only a few things, such as the salaries of officers, the interest upon the public debt, the support of schools, and the like, are provided for by permanent

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\(^1\) Art. 12, § 2.

\(^2\) Zanesville v. Auditor of Muskingum County, 5 Ohio St. 689. See also Fields v. Com'r of Highland Co., 30 Ohio St. 476.

\(^3\) People v. McCready, 34 Cal. 432;

\(^4\) People v. Crosby, 37 Cal. 242; People v. Eddy, 43 Cal. 331, 13 Am. Rep. 143.

\(^3\) People v. McCready, 34 Cal. 432;

laws; and not always is this done. The government is dependent from year to year on the periodical vote of supplies. And this vote will come from representatives who are newly chosen by the people, and who will be expected to reflect their views regarding the public expenditures. State taxation, therefore, is not likely to be excessive or onerous, except when the people, in times of financial ease, excitement, and inflation, have allowed the incurring of extravagant debts, the burden of which remains after the excitement has passed away.

But it is as true of the political divisions of the State as it is of the State at large, that legislative authority must be shown for every levy of taxes.1 The power to levy taxes by these divisions comes from the State. The State confers it, and at the same time exercises a parental supervision by circumscribing it. Indeed, on general principles, the power is circumscribed by the rule that the taxation by the local authorities can only be for local purposes.2 Neither the State nor the local body can authorize the imposition of a tax on the people of a county or town for an object in which the people of the county or town are not concerned. And by some of the State constitutions it is expressly required that the State, in creating municipal corporations, shall restrict their power of taxation over the subjects within their control. These requirements, however, impose an obligation upon the legislature which only its sense of duty can compel it to perform.3 It is evident that if the legislature fail to enact the restrictive legislation, the courts have no power to compel such action.

1 State v. Charleston, 2 Speers, 623; Columbia v. Guest, 3 Head, 413; Bangs v. Snow, 1 Mass. 181; Clark v. Davenport, 14 Iowa, 494; Burlington v. Kellar, 18 Iowa, 59; Mays v. Cincinnati, 1 Ohio St. 298; Richmond v. Daniel, 14 Gratt. 335; Simmons v. Wilson, 66 N. C. 336; Lott v. Ross, 38 Ala. 150; Lisbon v. Bath, 21 N. H. 319; Daily v. Swope, 47 Miss. 317. The same rule applies to laying special assessments. Augusta v. Murphy, 79 Ga. 101, 3 S. E. 329; Vaughn v. Ashland, 71 Wis. 502, 37 N. W. 809. [And all conditions precedent which may have been prescribed by law for the levy of special assessments must be strictly complied with. They are jurisdictional, and their omission makes the levy void. Ogden City v. Armstrong, 168 U. S. 221, 18 Sup. Ct. Rep. 98, aff. 12 Utah, 476, 43 Pac. 119. As to equitable relief against illegal taxation, see note to this case in 42 L. ed. U. S. 445.] Without express authority a city cannot tax its own bonds. Macon v. Jones, 67 Ga. 489. Where a city has power to issue securities, it has implied power to tax to meet them, unless there is a clear limitation upon its power so to do. Quincy v. Jackson, 113 U. S. 332, 5 Sup. Ct. Rep. 544. And, if a city is dissolved, the legislature may tax for like purpose, although thus it lays a higher tax than it has the right, under ordinary circumstances, to impose. Hale v. Kennewick, 83 Ala. 605, 3 So. 403.

2 Foster v. Kenosha, 12 Wis. 616. See ante, p. 312.

3 In Hill v. Higgins, 5 Ohio St. 243, 248, Romney, J., says of this provision: "A failure to perform this duty may be of very serious import, but lays no foundation for judicial correction." And see Maloy v. Marietta, 11 Ohio St. 630.
Whether in any case a charter of incorporation could be held void on the ground that it conferred unlimited powers of taxation, is a question that could not well arise, as a charter is probably never granted which does not impose some restrictions; and where that is the case, it must be inferred that those were all the restrictions the legislature deemed important, and that therefore the constitutional duty of the legislature has been performed.\(^1\)

When, however, it is said to be essential to valid taxation that

\(^1\) The Constitution of Ohio requires the legislature to provide by general laws for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, &c. The general law authorizing the expense of grading and paving streets to be assessed on the grounds bounding and abutting on the street, in proportion to the street front, was regarded as being passed in attempted fulfilment of the constitutional duty, and therefore valid. The chief restriction in the case was, that it did not authorize assessment in any other or different mode from what had been customary. Northern Indiana R. R. Co. v. Connelly, 10 Ohio St. 150. The statute also provided that no improvement or repair of a street or highway, the cost of which was to be assessed upon the owners, should be directed without the concurrence of two-thirds of the members elected to the municipal council, or unless two-thirds of the owners to be charged should petition in writing therefor. In Maloy v. Marietta, 11 Ohio St. 636, 639, Peck, J., says: "This may be said to be a very imperfect protection; and in some cases will doubtless prove to be so; but it is calculated and designed, by the unanimity or the publicity it requires, to prevent any flagrant abuses of the power. Such is plainly its object; and we know of no rights conferred upon courts thus to interfere with the exercise of a legislative discretion which the constitution has delegated to the law-making power." And see Weeks v. Milwaukee, 10 Wis. 242. The Constitution of Michigan requires the legislature, in providing for the incorporation of cities and villages, to "restrict their power of taxation," &c. The Detroit Metropolitan Police Law made it the duty of the Board of Police to prepare and submit to the city controller, on or before the first day of May in each year, an estimate in detail of the cost and expense of maintaining the police department, and the Common Council was required to raise the same by general tax. These provisions, it was claimed, were in conflict with the constitution, because no limit was fixed by them to the estimate that might be made. In People v. Mahaney, 13 Mich. 481, 498, the court says: "Whether this provision of the constitution can be regarded as mandatory in a sense that would make all charters of municipal corporation and acts relating thereto which are wanting in this limitation invalid, we do not feel called upon to decide in this case, since it is clear that a limitation upon taxation is fixed by the act before us. The constitution has not prescribed the character of the restriction which shall be imposed, and from the nature of the case it was impossible to do more than to make it the duty of the legislature to set some bounds to a power so liable to abuse. A provision which, like the one complained of, limits the power of taxation to the actual expenses as estimated by the governing board, after first limiting the power of the board to incur expense within narrow limits, is as much a restriction as if it confined the power to a certain percentage upon taxable property, or to a sum proportioned to the number of inhabitants in the city. Whether the restriction fixed upon would as effectually guard the citizen against abuse as any other which might have been established was a question for the legislative department of the government, and does not concern us on this inquiry." [Where townships are mere adjuncts or branches of county governments, as in Missouri, the township tax rate is a part of the rate to which the county is limited. State v. Mo. P. R. Co., 128 Mo. 72, 27 S. W. 307, 26 L. R. A. 86.]
there be legislative authority for every tax that is laid, it is not meant that the legislative department of the State must have passed upon the necessity and propriety of every particular tax; but those who assume to seize the property of the citizen for the satisfaction of the tax must be able to show that that particular tax is authorized, either by general or special law. The power inherent in the government to tax lies dormant until a constitutional law has been passed calling it into action, and is then vitalized only to the extent provided by the law. Those, therefore, who act under such a law should be careful to keep within its limits, lest they remove from their acts the shield of its protection. While we do not propose to enter upon any attempt to point out the various cases in which a failure to obey strictly the requirements of the law will render the proceedings void,—in regard to which a diversity of decision would be met with,—we think we shall be safe in saying that, in cases of this description, which propose to dispossess the citizen of his property against his will, not only will any excess of taxation beyond what the law allows render the proceedings void, but any failure to comply with such requirements of the law as are made for the protection of the owner's interest will also render them void. (a)

There are several reported cases in which the taxes levied were slightly in excess of legislative power, and in which it was urged in support of the proceedings, that the law ought not to take notice of such unimportant matters; but the courts have held that an excess of jurisdiction is never unimportant. In one case in Maine, the excess was eighty-seven cents only in a tax of §225.75, but it was deemed sufficient to render the proceedings void. Said Mellen, Ch. J., delivering the opinion of the court:

"It is contended that the sum of eighty-seven cents is such a trifle as to fall within the range of the maxim de minimis, &c.; but if not, that still this small excess does not vitiate the assessment. The maxim is so vague in itself as to form a very unsafe ground of proceeding or judging; and it may be almost as difficulty to apply it as a rule in pecuniary concerns as to the interest which a witness has in the event of a cause; and in such case it cannot apply. Any interest excludes him. The assessment was therefore unauthorized and void. If the line which the legislature has established be once passed, we know of no boundary to

(a) [Ogden City v. Armstrong, 108 U. S. 224, 18 Sup. Ct. Rep. 98, aff. 12 Utah, 476, 43 Pac. 119; and see many cases cited in note in 42 L. ed. U. S. 445. See Farnsworth Lumber Co. v. Fairley,—Miss.—, 23 So. 569, (April 30, 1900) for an assessment held void for lack of opportunity to taxpayers to object to it, right to object being secured by statute.]
the discretion of the assessors." The same view has been taken by the Supreme Court of Michigan, by which the opinion is expressed that the maxim de minimis lex non curat should be applied with great caution to proceedings of this character, and that the excess could not be held unimportant and overlooked where, as in that case, each dollar of legal tax was perceptibly increased thereby. Perhaps, however, a slight excess, not the result of intention, but of erroneous calculations, may be overlooked, in view of the great difficulty in making all such calculations mathematically correct, and the consequent impolicy of requiring entire freedom from all errors.

What method shall be devised for the collection of a tax, the legislature must determine, subject only to such rules, limitations, and restraints as the constitution of the State may have imposed. Very summary methods are sanctioned by practice and precedent.


3 This was the view taken by the Supreme Court of Wisconsin in Kelley v. Carson, 8 Wis. 182, where an excess of $8,61 in a tax of $6,554.57 was held not to be fatal; it appearing not to be the result of intention, and the court thinking that an accidental error no greater than this ought to be disregarded. See also O'Grady v. Barnhisel, 23 Cal. 267; State v. Newark, 25 N. J. 399; Harvard v. Day, 62 Miss. 718. In Iowa the statute requires a sale to be upheld if any portion of the tax was legal. See Parker v. Sexton, 29 Iowa. 421. If a part of a tax only is illegal, the balance will be sustained if capable of being distinguished. O'Kane v. Treat, 25 Ill. 557; People v. Nichols, 49 Ill. 517. See State v. Plainfield, 38 N. J. L. 50. [That unintentional error arising from making an exemption mistakenly believed to be authorized by law will not vitiate, see McTiggen v. Hunter, 19 R. I. 265, 33 Atl. 5, 29 L. R. A. 528.]

4 The following methods are resorted to: Suit at law; arrest of the person taxed, distress of goods, and sale if necessary; detention of goods, in the case of imports, until payment is made; sale or leasing of land taxed; imposition of penalties for non-payment; forfeiture of property; making payment a condition precedent to the exercise of some legal right, such as the institution of a suit, or voting at elections, or to the carrying on of a business; requiring stamps on papers, documents, manufactured articles, &c. In Prentice v. Weston, 111 N. Y. 460, 18 N. E. 729; it is held not an unwarrantable interference with private property to forbid cutting of timber on land on which a tax remains unpaid, when the chief value of the land lay in the timber. A village occupation tax cannot be enforced by fine and imprisonment. State v. Green, 27 Neb. 61, 42 N. W. 913. [In case of gross under-assessment, the assessment may be corrected in manner prescribed by law, and the taxes based on such correction collected from the present owner of the property. Weyerhaeuser v. Minnesota, 175 U. S. 550, 20 Sup. Ct. Rep. 385, aff. 72 Minn. 519, 75 N. W. 718. Upon reassessment of taxes, see note to 61, R. A. 802. Lands may be forfeited to State for non return to assessor, if statute so provides. State v. Sponagle, 45 W. Va. 415, 28 S. E. 285, 43 L. R. A. 727.]

5 See Henderson's Distilled Spirits, 11 Wall. 44; Weimer v. Bumbury, 38 Mich. 201; Lydecker v. Palaute Land Co., 33 N. J. Eq. 415; Springer v. United States,
Wherever a tax is invalid because of excess of authority, or because the requisites in tax proceedings which the law has provided for the protection of the taxpayer are not complied with, any sale of property based upon it will be void also. The owner is not deprived of his property by "the law of the land," if it is taken to satisfy an illegal tax. And if property is sold for the satisfaction of several taxes, any one of which is unauthorized, or for any reason illegal, the sale is altogether void. And the


1 This has been repeatedly held. Elwell v. Shaw, 1 Me. 330; Lacey v. Davis, 4 Mich. 140; Bangs v. Snow, 1 Mass. 189; Thurtton v. Little, 3 Mass. 429; Dillingham v. Snow, 5 Mass. 547; Stetson v. Kempton, 13 Mass. 283; Libby v. Burnham, 13 Mass. 144; Hayden v. Foster, 13 Pick. 492; Torrey v. Millbury, 21 Pick. 61; Alford v. Collin, 20 Pick. 418; Drew v. Davis, 10 Vt. 606; Doe v. McQuilkin, 8 Blackf. 335; Kemper v. McClelland, 19 Ohio, 308; Peterson v. Kittredge, 65 Miss. 33; 2 So. 824; [Dever v. Cornell, 10 N. B. 123, 86 N. W. 227; Sheets v. Paine, 10 N. D. 103, 86 N. W. 117; Neinas v. Park Assn. v. Lloyd, 167 N. Y. 341, 60 N. E. 741.] This is upon the ground that, the sale being based upon both the legal and the illegal tax, it is manifestly impossible afterwards to make the distinction, so that the act shall be partly a trespass and partly innocent. [But see Southworth v. Edmonds, 152 Mass. 263, 25 N. E. 106, 9 L. R. A. 118.]

But when a party asks relief in equity before a sale against the collection of taxes, a part of which are legal, he will be required first to pay that part, or at least to so distinguish it from the rest that process of injunction can be so framed as to leave the legal taxes to be enforced; and failing in this, his bill will be dismissed. Conway v. Waverley, 15 Mich. 257; Palmer v. Napoleon, 16 Mich. 176; Hersey v. Supervisors of Milwaukee, 16 Wis. 185; Bond v. Kenosha, 17 Wis. 281; Myrick v. La Crosse, 17 Wis. 442; Roseberry v. Huff, 27 Ind. 12; Montgomery v. Wasem, 116 Ind. 318, 15 N. E. 735, 19 N. E. 184; Com'r v. Allegany Co. v. Union Min. Co., 61 Md. 545; Brown v. School Dist., 12 Oreg. 345, 7 Pac. 357; Gage v. Caraher, 123 III. 417, 17 N. E. 777. Compare Solomon v. Oveda, 77 Mich. 305, 33 N. W. 900; [Albuquerque Nat. Bank v. Perea, 147 U. S. 85, 13 Sup. Ct. Rep. 194; Algefeld v. San Antonio, 81 Tex. 436, 17 S. W. 75, 13 L. R. A. 383.]

As to the character and extent of the irregularities which should defeat the proceedings for the collection of taxes, we could not undertake to speak here. We think the statement in the text, that a failure to comply with any such requirements of the law as are made for the protection of the owner's interest will prove fatal to a tax sale, will be found abundantly sustained by the authorities, while many of the cases go still further in making irregularities fatal. It appears to us that where the requirement of the law which has failed of observance was one which had regard simply to the due and orderly conduct of the proceedings, or to the protection of the public interest, as against the officer, so that to the taxpayer it is immaterial whether it was complied with or not, a failure to comply ought not to be recognized as a foundation for complaint by him. But those safeguards which the legislature has thrown around the estates of citizens to protect them against unequal, unjust, and extortionate taxation, the courts are not at liberty to do away with by declaring them non-essential. To hold the requirement of the law in regard to them directory only, and not mandatory, is in effect to exercise a dispensing power over the laws. Mr. Blackwell, in his treatise on Tax Titles, has collected the cases on this subject industriously, and perhaps we shall be pardoned for saying also with
a perceivable leaning against that species of conveyance. As illustrating how far the courts will go, in some cases, to sustain irregular taxation, where officers have acted in good faith, reference is made to Kelley v. Corson, 11 Wis. 1; Hersey v. Supervisors of Milwaukee, 16 Wis. 386. See also Mills v. Gleason, 11 Wis. 470, where the court endeavors to lay down a general rule as to the illegalities which should render a tax roll invalid.

A party bound to pay a tax, or any portion thereof, cannot get title to the land by neglecting payment and allowing a sale to be made at which he becomes the purchaser. McMinn v. Whelan, 27 Cal. 590. See Butler v. Porter, 13 Mich. 292; Cooley on Taxation, 500 et seq. [See on sale of land for taxes, note to 4 L. Ed. U. S. 518; injunction to restrain collection of tax, when granted, note to 20 L. Ed. U. S. 65, and one to 22 L. R. A. 699; recovery of taxes illegally assessed, note to 21 L. ed. U. S. 63; tax as cloud on title, Ollin v. Woodruff, 31 Fla. 100, 12 So. 227, 22 L. R. A. 699, and note.] Upon when taxes illegally assessed can be recovered back, see note to 21 L. ed. U. S. 63. Upon sale of land for taxes, note to 4 L. ed. U. S. 518. Where lands are forfeited to the State for non-payment of taxes, and are thereafter assessed for taxation in the name of an assumed or non-existent owner, and then sold for non-payment of taxes based upon such assessment, the purchaser gets no valid title. Rich v. Braxton, 158 U. S. 376, 15 Sup. Ct. Rep. 1006. Assessment in name of a dead man is void. Ty v. Perea, 10 N. M. 369, 22 Pac. 1004; Millendon v. Gallagher, 104 La. 713, 29 So. 307. But since 1890 assessment may be in name of registered owner, whether alive or dead. Owner must see that proper change in registration is made when he comes into the title. Geddes v. Cunningham, 104 La. 396, 29 So. 138. Where land is assessed to holder of legal title and also to holder of equitable title, and latter pays tax assessed, rule for non-payment of tax assessed against former is void. Boggs v. Scott, 48 W. Va. 310, 37 S. E. 661. And where a new map has been made, and the landowner in ignorance thereof reports his lands for assessment under the descriptions of the old map, giving the quantities correctly, and the assessor assumes that the lot-numbers are according to the new map, and modifies the quantities reported to make them conform to the new map, and the owner in ignorance of such modification pays all taxes assessed against him, the sale of the plots not covered by the assessor's list is invalid for mistake. Lewis v. Monson, 161 U. S. 545, 14 Sup. Ct. Rep. 421. Sale for unpaid taxes is void if at time tax was due owner appeared before proper officer and offered to pay his tax and did pay all that the officer stated as the amount of tax, although he erroneously understated it. Gould v. Sullivan, 81 Wis. 659, 54 N. W. 1018, 20 L. R. A. 487, and note. And redemption is valid if the person redeeming pays all that the proper officer states is due, although the officer erroneously states the sum too small. Hintringer v. Mahony, 78 Iowa, 537, 43 N. W. 522, 6 L. R. A. 50, and note. State cannot tax lands belonging to United States, and a sale based upon tax levied upon such lands is void. Young v. Charnquist, 114 Iowa, 110, 86 N. W. 206.]


It should be stated that in Iowa, under legislation favorable to tax titles, the courts go further in sustaining them than in perhaps any other State. Reference is made to the following cases: Eldridge v. Keuhl, 27 Iowa, 100; McCready v. Sexton, 29 Iowa, 350; Hurley v. Powell, 31 Iowa, 64; Rinn v. Cowan, 31 Iowa, 125; Thomas v. Stickle, 32 Iowa, 71; Henderson v. Oliver, 32 Iowa, 512; Bulkley v. Callanan, 32 Iowa, 461; Ware v. Little, 35 Iowa, 234; Jeffrey v. Brokaw, 35 Iowa, 505; Genther v. Fuller, 36 Iowa, 604; Leavitt v. Watson, 37 Iowa, 93; Phelps v. Meade, 41 Iowa, 470. It may be useful to compare these cases with Kimball v. Rosendale, 42 Wis. 407, and Silsbee v. Stockle, 44 Mich. 501, 7 N. W. 160, 307.