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Extension of Judicial Review in New York

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THE EXTENSION OF JUDICIAL REVIEW IN NEW YORK: 1783-1905.

THERE are several reasons why it should be worth while to investigate the operation of the most unique of American governmental institutions in the most important state of the Union. For one thing, in the person of Chancellor KENT New York furnished one of the founders of American Constitutional Law, while at the same time it was KENT's fame that early gave New York decisions the importance they still retain in great part in the field of citation and precedent. Again it was KENT's influence that inclined the fresh shoot of constitutional jurisprudence in New York in a conservative direction, so that in the face of the most complex social and economic conditions that obtain anywhere in the Union, the New York courts have ordinarily pressed those doctrines of constitutional law which have for their purpose the security of property rights more vigorously than the courts of almost any other jurisdiction. But on the other hand, finally, with respect to her written constitution New York has had a normal and representative history, having had, since 1777, four successive constitutions, each of which has progressively stimulated the extension of judicial review by increased and more detailed inhibitions upon legislative action.

I. STATISTICS OF JUDICIAL REVIEW IN NEW YORK.

The list which I print below¹ of cases wherein New York courts have exercised their constitutional function is based primarily upon data furnished in the fourth and fifth volumes of LINCOLN'S CONSTITUTIONAL HISTORY OF NEW YORK, extended and corrected by direct examination of the reports themselves. The preparation of such a list raises certain problems, the solution of which will

¹ For this list of cases see post pp. 306-313.

necessarily affect the significance of the results to be obtained from their consideration, and which, therefore, should be stated at the outset. Should, for example, the decisions of lower courts be counted or only those of the highest court? Clearly, since there is often no legal provision by which the constitutional question can be appealed to the highest court, one must count all decisions which were in fact final. But suppose that a lower court's pronouncement of unconstitutionality upon a legislative provision is in principle reversed in a later case decided by the highest court? I still list the lower court's decision but specifically note that it was finally overruled,—a result which, however, registers itself in only six cases.² And this anticipates, in effect, my answer to a related question, to-wit: whether, where a number of decisions occur more or less contemporaneously and all bearing on the same legislative measure, they should be reckoned as only one decision or for their total number. Since it is *decisions* we are dealing with primarily, I reckon each as *one*, provided it was *final*, but at the same time I have kept careful account of all cases of this sort of duplication.³ Lastly, this most important question presents itself: Should decisions *setting aside* legislative provisions alone be counted, or also those *construing* such provisions, with a view to bringing them into harmony with constitutional requirements? Now, most of the latter sort of cases illustrate the rule laid down in the early case of *Dash v. Van Kleeck*, that a statute may not validly operate "retrospectively" to the impairment of vested rights,—indeed some of the most important decisions in support of the doctrine of Vested Rights rest upon this principle. I have accordingly felt no hesitation in reckoning such cases, which I indicate in the list below by an asterisk, as true constitutional cases if the language of the court itself indicates the fact that the statute was being curtailed in deference to some right thought to be protected by the constitution. For in such cases, it is obvious, the constitutional function of the judiciary has operation as truly, and frequently as decisively, as in cases where the statute is pronounced void *à outrance*.

These considerations set forth, I may proceed to summarize the results shown by the list given below. The list runs from 1783 to 1905, a little better than one hundred and twenty years, and from *Rutgers v. Waddington*, in which HAMILTON won his spurs, to *Wright v. Hart*, in which the Court of Appeals, going counter to the weight of decision in other states, on the constitutional issue involved, held

² Nos. 30, 60, 77, 78, 93*, 145*.

³ Attention is drawn to the fact in the text, when it is material.

void the Bulk Sales Act of 1902.⁴ In this list are cited 363 cases. In six of these the decision was in principle later overruled by a higher court.⁵ In thirty-one, the great majority of which occurred before the Civil War, the legislative measure involved was *construed* but not avowedly set aside. In fifty-seven the decisions involved the same legislative provision or provisions as some previous case, though it was not rested necessarily on the same constitutional grounds as its fellow.⁶ In a number of cases not particularly noted more than one enactment was under review, while in a number of others the decision was based on more than one constitutional provision or principle.

More striking results emerge when we proceed to classify these 363 cases chronologically. Thus we find that for more than a generation after *Rutgers v. Waddington*, no act of the legislature was pronounced void by a New York court, and that for more than a quarter-century none was even construed. Indeed, not till 1802 was a statute attacked by counsel at bar as void, and it was seven years before such an argument was again addressed to a New York court. For the whole period of forty-five years during which the constitution of 1777 was in effect eleven constitutional cases were decided by the New York courts; in three the statute assailed was sustained; in three it was curtailed in such a way as not to govern the case; in the remaining five it was pronounced void.⁷

⁴ See *Lemieux v. Young*, 211 U. S. 489 (1909), and cases there cited.

⁵ See note 2, *supra*.

⁶ The following groups of cases involve each the same act or acts: 11 and 31; 19 and 21; 23 and 24; 27, 29, 33^a, 44 and 48—the Married Women's Property Act of 1848; 34, 39 and 41—the Free School Act; 35 and 49; 37 and 37^a; 45 and 47; 51 and 54—the Anti-Liquor Act of 1855; 61, 64 and 65; 69 and 80; 77 and 78; 87, 92, 121 and 122; 115 and 123; 127 and 215; 140 and 141; 153 and 154; 158^a and 182; 159 and 242; 161 and 199; 163 and 214; 165 and 166; 188 and 196; 191 and 192; 193 and 298, involving the same parties; 193^a and 197; 201, 202, 203 and 212; 245 and 246; 250, 251, 252 and 254; 253, 256, 257 and 293; 266 and 286; 267 and 274; 269, 279 and 284; 272 and 287; 277, 278 and 327; 277^a and 296^a; 281 and 294; 290, 309 and 326; 310 and 311; 322, 323 and 332.

⁷ The following is a list of the cases in which, during the period covered by the first two constitutions, acts of the legislature were unsuccessfully challenged before New York courts. After 1846 such cases become too numerous to list here, but the citations given in the fourth volume of *Lincoln* are nearly enough complete, I believe, to show the approximate truth:

1807: 1 *Holmes v. Lansing*, 3 Johns. Cas. 73.

1809: 2 *Jackson v. Griswold*, 5 Johns. 139.

1812: 3 *Livingston v. Van Ingen*, 9 ib. 506.

1819: 4 *Mather v. Bush* 16 ib. 233.

1821: 5 *People v. Foot*, 19 ib. 58.

1823: 6 *Re Oaths of Attorneys*, 20 ib. 492;

6^a *Rogers v. Bradshaw*, ib. 735, overturning *Bradshaw v. Rogers*, ib. 103;

7 *Ex parte McCollum*, 1 Cow. 550.

The small number of constitutional cases under this first constitution is referred by LINCOLN to the fact that under it "the Council of Revision, composed of the Governor, the Chancellor, and the judges of the Supreme Court, passed on all bills before they became laws," with the result that "laws received a judicial construction prior to their enactment."⁸ The explanation is at best very imperfect. The factors of judicial review are three-fold: first, the bulk of the legislative product; secondly, the scope of the principles which the judges themselves have developed for the evaluation of this product; thirdly, the number and detail of the provisions in the written constitution restrictive of legislative power. Anterior to the constitution of 1821, the annual legislative grist in New York was still small; the courts had not yet perfected the doctrine of Vested Rights, which with its various ramifications and derivatives is still

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- 1824: 8 Murphy v. People, 2 ib. 815;
9 Jackson v. Wood, ib. 819;
10 Barker v. People, 3 ib. 686.
 - 1825: 11 No. R. S. B. Co. v. Livingston, ib. 713;
12 People ex rel. Israel v. Tibbets, 4 ib. 384.
 - 1826: 13 Jaques v. Marquand, 6 ib. 497.
 - 1827: 14 Vanderbilt v. Adams, 7 ib. 349;
15 Coates v. N. Y., ib. 585.
 - 1828: 16 Lansing v. Smith, 8 ib. 146;
17 Candler v. N. Y., 1 Wend. 493.
 - 1829: 18 Bank of Columbia v. Att'y Gen'l, 3 ib. 588.
 - 1830: 19 Wheelock v. Young, 4 ib. 647.
 - 1831: 20 Beekman v. Saratoga & S. R. Co., 3 Paige 45.
 - 1833: 21 Re Smith, 10 Wend. 449.
 - 1836: 22 People v. Rensselaer & S. R. Co., 15 Wend. 113.
 - 1837: 23 Bloodgood v. Mohawk & H. R. R. Co., 14 ib. 52, and 18 ib. 9;
24 Frost v. Brisbin, 19 ib. 11.
 - 1838: 25 Dutch Church v. Mott, 7 Paige 77;
26 Cochran v. Van Surlay, 20 Wend. 365.
 - 1839: 27 Ferrine v. Striker, 7 Paige 598;
28 People v. Morrell, 21 Wend. 563.
 - 1840: 29 Thomas v. Leland, 24 ib. 65.
 - 1841: 30 Butler v. Palmer, 1 Hill 324;
31 People v. Jenkins, ib. 469;
32 People ex rel. Lynch v. N. Y., 25 Wend. 680;
33 Ex parte Lynch, 2 Hill 45.
 - 1842: 34 Welch v. Silliman, ib. 491;
35 Colt v. People, 1 Park. Crim. 611.
 - 1843: 36 Foote v. N. Y. Fire Dept., 5 Hill 99.
 - 37 Duffy v. People, 1 ib. 355, and 6 ib. 75.
 - 1845: 38 Ingersoll v. Skinner, 1 Denio 540;
39 Striker v. Kelly, 2 ib. 323;
40 Gifford v. Livingston, ib. 380;
41 Russell v. N. Y., ib. 461.
 - 1846: 42 Stocking v. Hunt, 3 ib. 274;
43 Morris v. People, ib. 381;
44 People v. Huntington, 4 N. Y. Legal Observer 187.

⁸ Loc. cit. V, 4.

the principal foundation of judicial review; and the provisions of the written constitution directly restricting legislative power were few. There was, in short, little judicial review because there was little to base it upon.

From this point on the results may be summarized by decades. From 1822 to 1830 inclusive, sixteen cases appear to have been argued before New York courts on constitutional grounds, but in only one of these was the statute brought into review overturned, while in a second it was curtailed by construction. From 1831 to 1840 inclusive, fourteen such cases were argued, in four of which the result was adverse to the statute. From 1841 to 1850 there is a considerable expansion of judicial review, due in part to the going into effect of the constitution of 1846, but in greater part to conflict between the conservative principles of the courts and the reform tendencies of legislation, a conflict which also characterizes the ensuing decade.⁹ Thus for the decade from 1841 to 1850, I find fifty-eight constitutional cases, in eighteen of which the decision was rendered in favor of the party claiming his constitutional rights; while for the decade from 1851 to 1860, the figures are respectively 127 and 34. For the remaining periods I am less confident of the accuracy of my statistics showing the number of cases argued, which should therefore be taken as approximate only:

Period	Number of Cases Ar- gued on Constitutional Grounds	Number of these in which Acts were set aside or curtailed
1861-70	128	39
1871-80	251	45
1881-90	263	49
1891-1900	334	99
1901-05	147	65
Total from beginning	1345 (Approx.)	363

In short, before the outbreak of the Civil War 225 cases had been argued before New York courts on constitutional grounds, in sixty-five of which the court had intervened against the statute; while since that date more than 1100 such cases have been so argued, in nearly 300 of which statutes have been set aside. Nor is this the only clue that the above statistics furnish to the extension of judicial review in New York in recent years. Of equal significance is the

⁹ See J. Bronson's sarcastic language in *Stockton v. Green*, 3 Hill 469 (1841). Compare the same justice's ardent defense of the Property Right in *Sackett v. Andross*, 5 ib. 327 (1843).

varying ratio between the number of cases argued and those in which the statutory provision under review succumbed to constitutional tests. Ignoring the few sporadic cases before 1822, we notice that in the nine years between this date and 1830, this ratio is 8 to 1; that in the four succeeding decades it shrinks to approximately $3\frac{1}{2}$ to 1; that from 1871 to 1880 it rises to $5\frac{5}{9}$ to 1, where it remains approximately till 1890; that since this last date it has fallen to less than 3 to 1. The explanation is to be found, I surmise, in the expansion of constitutional doctrine.

Moreover, the same result is indicated in another way. If the dates of the cases be compared with the dates at which the legislative provisions reviewed in them were enacted, it will be found that in recent years the period between the two is usually somewhat less than three years. Early cases, on the other hand, arose, on the average, eight or ten years after the passage of the statute attacked, and not infrequently the interval was much greater. The explanation of this phenomenon is to be found, in part at least, in the fact that, as new constitutional doctrine developed, statutes that had frequently stood on the books for years unchallenged became tainted with doubt as to their validity,—that with the lapse of time, new and more rigorous standards were drawn into use.¹⁰

II. INTERPRETATION OF THE WRITTEN CONSTITUTION.

As I have before noted, the multiplication in its constitution of specific prohibitions on legislative power has been one of the principal factors of the extension of judicial review in New York. I shall now consider the matter a little more in detail, prefacing only that, in what I shall say in this connection, I leave entirely out of account the doctrine of Vested Rights and its derivatives.

A single decision overturning a statute is referable to the constitution of 1777,¹¹ and but six such decisions to the constitution of 1821.¹² Under the constitution of 1846, on the other hand, and the amendments added to it in 1874 and 1876, 108 decisions of this character were rendered, involving at least one hundred statutory provisions; while to the constitution of 1894 sixty-eight such decisions are to be credited in little over a decade, albeit sixteen of these are to be reckoned as duplicates of others as to the measures reviewed.

¹⁰ In this connection, see the interesting testimony of Justice Chase in *Cooper v. Telfair*, 4 Dall. 13 (1800).

¹¹ No. 7 in Note 1, *supra*. This is always the list referred to in the following notes.

¹² Nos. 10, 16, 19, 20, 21, 52.

But it should also be interesting to see what specific provisions, particularly of the last two constitutions, have been of greatest importance in this connection. Two stand out preëminent: Article III, §§ 16 and 18, both of which were carried over to the present constitution from the amended constitution of 1846 without substantial change. Under the former of these provisions, which ordains that "no private or local bill * * * shall embrace more than one subject" which must be "expressed in the title," thirty-five cases have been decided overturning thirty-four legislative measures;¹³ and under the latter, which inhibits certain types of special legislation altogether, seventeen cases overturning sixteen measures.¹⁴ The obvious purpose of these provisions is to prevent log-rolling, and in no other connection has judicial review proved of greater practical value in New York than in stringently enforcing them.¹⁵ Nor is the objection forthcoming in this sort of case that some great legislative policy, touching important social interests, has been rendered impossible. The measures overturned under these provisions are ordinarily of very limited application, and when they succumb to the constitutional test it is not because they were beyond the legislative power to enact at all but merely because they were beyond the legislative power to enact in that *form*,—for even the objective of prohibited special acts may be obtained, if it is otherwise constitutional, by general legislation. Moreover, it is worth noting that the legislature has gradually learned to accommodate itself to the judicial view of these sections, so that, of the fifty-two cases just referred to, only twelve were decided under the constitution of 1894.

Next to these two sections the most prolific source of decisions invalidating legislation have been the constitutional provisions which, beginning with the instrument of 1846, have defined the judicial system of the state and have assigned the several courts their jurisdiction. Under these sections, which were amplified by amendment in 1869, and in this form are continued in Article VI of the present constitution, there have been, during the period covered by this article, forty-two decisions,—eleven of them duplicates as to the enactments reviewed—invalidating acts. The majority of these in-

¹³ Under the constitution of 1846, Nos. 55, 70^a, 74, 84, 86, 91, 93, 94, 95, 96, 98, 99, 109, 125, 126, 127, 135, 137, 148, 149, 155, 158, 162, 170, 178, 185, 215, 216; under the constitution of 1894, to 1905, Nos. 220, 231, 262, 273, 302^a, 324, 333^a.

¹⁴ Under the constitution of 1846, as amended in 1874, Nos. 138, 144, 153, 154, 164, 168, 169, 177, 179, 180, 184^a, 213; under the later constitution, to 1905, Nos. 222, 231, 247, 289, 297.

¹⁵ Some courts regard such provisions as directed only to the conscience of the legislature, see Reinsch, *American Legislatures and Legislative Methods*, p. 147ff.

voke the principle of construction which is made familiar by *Marbury v. Madison*, that jurisdiction bestowed by the constitution is neither to be enlarged nor diminished by statute.¹⁶ Four decisions—involving two different legislative provisions—call into use the equally familiar principle that a court is possessed of certain inherent powers and a certain inherent discretion that may not be invaded by the legislature.¹⁷ One decision enforces that interpretation of the doctrine of the Separation of Powers which was first brought forward in the famous *Hayburn* case of 1792, and which pronounces void any attempt to foist administrative powers upon the judiciary.¹⁸

Another considerable class of decisions—twenty-four in number—safeguard the rights of localities in the choice of their officials from what would appear in most cases to have been inadvertent trespasses by the legislature.¹⁹ With these may be grouped five other decisions, under the constitution of 1846, and involving two distinct enactments, which assert the principle that the qualifications stipulated by the constitution for voters may not be added to by statute.²⁰ And with similar logic three other cases support the principle that the oath of office prescribed by the constitution is an exclusive test.²¹ Thus we gather that when the constitution deals with a subject, such subject is put definitely beyond the reach of *direct* legislative action, although it may be still more or less affected by legislation regulative of matters within legislative control; and the problem before the courts is to draw the line between these two classes of enactments.

The personal rights—in contradistinction to political rights—that have exacted the greatest ingenuity from the New York courts in their behalf are those which I shall consider presently in connection with the development of the doctrine of Vested Rights in this

¹⁶ In No. 33, the act overturned was held to confer judicial power upon a non-constitutional court. In the following cases the legislature was held to have attempted to enlarge the territorial jurisdiction of local courts unconstitutionally: 115, 123, 146, 194, 211; 224, 227 and 228, all involving the same act; 239; 250, 251 and 252, involving the same act. In 129, 163, 193^a, 197, 214, 271, 272 and 287, jurisdiction of the Supreme Court was held to have been curtailed unconstitutionally. In 165 and 166, both involving the same act, certain appeals to the Court of Common Pleas were held to have been wrongly dispensed with.

¹⁷ No. 186; and Nos. 322, 323 and 332, all involving the same act.

¹⁸ No. 200. Compare *In re Cooper*, 22 N. Y. 67, where it is said that powers administrative in character become judicial powers when conferred on a court. See also *United States v. Duell*, 172 U. S. 576.

¹⁹ Nos. 58^a, 69, 80, 83, 85, 104, 111, 116, 118, 152^a, 156, 232, 235, 236, 240, 258, 264, 282, 302, 303, 305, 311^a, 330, 333. Article VI, § 17, and Article X, §§ 2 and 5, of both constitutions, and Article XII, § 3 of the later one.

²⁰ No. 89; and Nos. 201, 202, 203 and 212, all involving the same act. Article II, § 1 of the constitution of 1846.

²¹ Nos. 205, 296, 307. Article XII, § 1 of the amended constitution of 1846, and article XIII of the present constitution.

state. But outside this field, though at some points tangent to it, there is that field of rights which may be called the rights of personal security and which is safeguarded by certain constitutional requirements as to the procedure of law enforcement. One of these requirements is that "no person shall be compelled in any criminal case to be a witness against himself"; under this clause three cases have been decided setting aside as many acts.²² Another requirement is that "excessive bail shall not be required"; under this one such case has been decided.²³ Another requirement is that "the trial by jury in all cases in which it has been heretofore used, shall remain inviolate forever"; to this provision eight constitutional decisions are referable, though three of them concerned the same act.²⁴ Finally there is the general requirement of "due process of law," which, taken in the strictly literal sense of that method of procedure which was "due," has furnished the basis for eleven cases reviewing adversely eight different enactments.²⁵

The construction that has been given the requirement against excessive bail by the New York courts demands no comment. Not so of the interpretation they give the "self-incrimination" clause. Stated in the language of one of the cases it runs thus: "No one shall be compelled in any judicial or other proceeding against himself, or upon the trial of issues between others, to disclose facts or circumstances that can be used against him as admission tending to prove his guilt or connection with any criminal offense of which he may then or afterwards be charged, or the sources from which or the means by which evidence of its commission or of his connection with it may be obtained."²⁶ Clearly, this is a rather considerable edifice for so slight a foundation. But it must be admitted that the New York decisions, which in fact are comparatively recent ones, merely reiterate the accepted American doctrine on this point.²⁷

²² Nos. 292^a, 316, 321. Article I, § 6 of both constitutions.

²³ No. 50. Article I, § 5 of both constitutions.

²⁴ Nos. 38, 58, 76, 145^a, 234; 269, 279 and 284, involving the same act. Article I, § 2 of both constitutions.

²⁵ Nos. 71, 73, 76; 140 and 141, involving the same act; 237, 243^a, 244; 322, 323 and 332, involving the same act.

²⁶ *People ex rel. Taylor v. Forbes*, 143 N. Y. 219 (1894). The rule is reiterated in *People ex rel. Lewisohn v. O'Brien*, 176 N. Y. 253 (1903). See further *Lincoln*, loc. cit., IV, 78-83.

²⁷ See *Counselman v. Hitchcock*, 142 U. S. 547, and cases therein cited; also a note in *Harv. Law Rev.*, XXIV, 570-1. In *People v. Rosenheimer*, 209 N. Y. 115, 102 N. E. 530 (1913), the New York Court of Appeals was much embarrassed by this enormous and overgrown doctrine. The statute before it provided that any operator of a motor vehicle who, knowing that injury had been caused by him to property or person, should leave the place without giving his name, residence and license number

Interesting questions are also raised by the interpretation given by the New York courts to the "trial by jury" and "due process of law" clauses. In the former clause the material phrase is "all cases," which has been held to mean, "not the mere instances in which it [trial by jury] had been used," but also "such new instances and like cases as might afterwards arise."²⁸ It thus follows that, since *felonies* were triable by jury at the time of the adoption of the constitution, new felonies subsequently created, since they belong to the same *genus*, must be similarly tried.²⁹ This again is generally accepted American doctrine. Questionable, on the other hand, is the proposition for which a recent group of cases is citable, that, because certain kinds of civil claims were ordinarily tried by jury at the common law, the legislature may not abolish the right of action thereon.³⁰

Judicial construction of the phrase "due process of law," in the class of cases now under consideration, boils down to the more concrete idea of the ordinary procedure of the ordinary courts; to the idea, in other words, that one against whom a claim is being made by the state or by another person is entitled, unless there is usage to the contrary that antedates the constitution, to "his day in court," which means, moreover, a court possessed of its constitutional discretion. Thus arbitration of claims against a city, which in this connection is treated as a private person, may not be foisted upon the city without its consent.³¹ So, too, an inebriate may not be committed to an asylum upon a mere *ex parte* affidavit.³² Again, there may be no examination out of court of a person alleged to be in possession of certain property of another.³³ Again, the identity of alleged second offenders may not be established out of court for the purpose of lengthening, in accordance with the law, the penal

to the injured party or to a policeman, should be guilty of a felony. In the lower court this act was pronounced void under article I, § 6. The Court of Appeals, however sustained the act on the ground that, inasmuch as the legislature might exclude all motor vehicles from the highways, it could insist that as a condition precedent to the use thereof, operators of such should waive the constitutional privilege! See also *Wigmore, Evidence*, § 2266.

²⁸ *Wynehamer v. The People*, 13 N. Y. 378, 426 (1856).

²⁹ The privilege extends, it is elsewhere said, to all offenses indictable at the common law, see No. 58.

³⁰ See Nos. 269, 279 and 284, all involving the same act. In the recent case of *Ives v. So. Buffalo R. Co.*, 201 N. Y. 271, the same proposition is advanced, and article I, § 1 invoked in support of it.

³¹ No. 71.

³² Nos. 76 and 243^a.

³³ Nos. 140 and 141, both involving the same act.

sentence of such offenders.³⁴ Again, a warrant issued by a commissioner has been held not to be due process;³⁵ also, an act requiring the trial of certain kinds of civil cases on a specific day to be set in advance by the court.³⁶

These results sometimes diverge from those reached by courts in other states, but the logic underlying them is familiar and well established. Likewise, the difficulty that the New York courts have sometimes encountered in distinguishing between a *penalty* and a *remedy* is one that has often caused trouble in other jurisdictions. Thus the common law sometimes gives an aggrieved party, which may be the state itself, a remedy enforceable out of court by summary action. On the other hand, a *penalty* may, of course, be enforced only in court. The difficulty is to draw the line between the two classes of cases, and this the New York courts have not always done with entire consistency. So, a statute allowing owners to seize and dispose of stock that had trespassed upon their lands from the highway was at first overturned and then, after some unessential modification, sustained.³⁷ Contrariwise, a statute allowing the confiscation, by officers of the law, of fishing nets in illegal use was sustained,³⁸ while a later statute subjecting offending oyster-boats to the same treatment was set aside.³⁹ Plainly, here is a point at which conclusive results have not yet been reached.⁴⁰

³⁴ No. 237. J. Delehanty's decision, recently reported in the press, questioning the validity of the identification of second offenders by the finger-mark test may have involved this point.

³⁵ No. 244.

³⁶ Nos. 322, 323 and 332, involving the same act.

³⁷ The first case referred to is No. 73, *Rockwell v. Nearing*, 35 N. Y. 302 (1866). The amended statute was sustained in *Campbell v. Evans*, 45 N. Y. 356 (1871). Compare this decision with that in *McConnell v. Van Aerman*, 56 Barb. 334 (1869), where the amended act is pronounced void.

³⁸ *Lawton v. Steele*, 119 N. Y. 226 (1890).

³⁹ No. 234, *Colon v. Lisk*, 153 N. Y. 188 (1897).

⁴⁰ The remaining cases assignable to specific constitutional provisions, other than those considered in connection with the doctrine of Vested Rights, may be classified thus: Constitution of 1846, art. I, § 9 (Two-thirds bills), Nos. 97, 117; § 10 (Lotteries, etc.), Nos. 209, 218; art. III, § 5 (Apportionments), Nos. 59 and 72; art. V, § 1 (Compensation of certain officers, not to be increased or decreased), No. 45; art. VI, § 8 (Right to practice law), Nos. 23, 24; art. VII, § 3 (State canals), No. 106; § 12 (Referendum of indebtedness propositions), Nos. 37, 37^a; § 13 (Tax laws), No. 112; art. IX, § 1 (Common school fund inviolable), No. 107. Amendments added in 1874, art. III, § 24 of the amended constitution (Against extra-compensation, etc.), No. 132; art. VII, § 14 (Barring claims lapsed by statute of limitations), Nos. 172, 190; art. VIII, § 10 (Against gratuities and aids by local governments), No. 152. Amendment of 1876, art. V, § 4 of the amended constitution (Appointive power of superintendent of prisons), Nos. 171, 176. Constitution of 1894, art. III, § 28 (Against extra-compensation, etc.), No. 306; art. V, § 9 (Civil service examinations), Nos. 221, 230; same (Appointive power to civil service), No. 275; art. VIII, § 10 (Against gratuities and aids by local governments), Nos. 238, 253, 256, 257, 260, 292, 293; art. XII, § 2 (Referendum of special acts to city authorities), Nos. 243, 285.

III. THE DOCTRINE OF VESTED RIGHTS AND GENERAL LEGISLATIVE POWER.

The primary purpose, however, of judicial review and its principal effect upon legislative policies are to be seen only when we turn to consider it in relation to the doctrine of Vested Rights and those clauses of the written constitution which have come to embody this doctrine, with the result at once of extending it and rendering it more flexible. For, as I have shown elsewhere, the doctrine of Vested Rights is the very matrix of constitutional limitations in this country, their *raison d'être*.⁴¹ In no other field, moreover, does the responsibility of the courts themselves for the development of judicial review appear so immediate and striking as in this. Yet, if the responsibility of the courts in this connection is immediate, that of society at large is mediate and very real. For the process of constitutional amendment has left the doctrine for the most part untouched; has left, in other words, its modification and adaptation to circumstances to judicial discretion. These are conclusions that hold for practically all jurisdictions in the United States, but they receive peculiar confirmation and emphasis from New York.

The doctrine of Vested Rights, in its original and primitive form, is simply the doctrine that the property right is fundamental and that the legislature cannot, therefore, be deemed to have been given power, by the act creating it, to impair that right. But, as I have above indicated, the doctrine has undergone extension and development. To indicate the principal steps of this development in New York, so far as it has proved restrictive of general legislative power, is my purpose at this point.

The doctrine of Vested Rights may be said to have been launched in New York by the decision in the early case of *Dash v. Van Kleeck*,⁴² and especially by KENT's opinion in that case. Here were established, either directly or by inference, three propositions: first, that an accrued right of action under the standing law is a property right; second, that the common law rule that an ambiguous statutory provision should not be given a "retroactive" application in a way to impair vested rights, is of constitutional obligation and extends, furthermore, to unambiguous as well as ambiguous provisions; third, that special legislation affecting detrimentally the vested rights of selected persons is void. The basis for the two latter propositions, in KENT's opinion at least, is furnished by the theory elaborated in

⁴¹ See Mich. Law Review, XII, 247 ff (1914).

⁴² 7 Johns. 477 (1811). But see also *Beadlestone v. Sprague*, 6 ib. 101 (1810). Here the results of the doctrine are achieved without the doctrine being avowed,—a characteristic device of the courts in the early days of judicial review.

Justice CHASE's dictum in *Calder v. Bull*,⁴³ that, under the social compact, legislative power is an intrinsically limited power, and by an interpretation of the doctrine of the Separation of Powers supporting this theory. That is to say, legislative power is, in the first place, a trust in the interest of certain rights, which therefore it may not transgress; while in the second place, the principle of the Separation of Powers makes it clear that it is only *legislative* power with which the legislature is constitutionally endowed.

For many years the doctrine of Vested Rights rested in New York upon this extra-constitutional basis, and a whole series of decisions overturning acts invoke no provision of the written constitution, but only such authority as CHASE's above-mentioned dictum, a similar utterance by STORY in *Wilkinson v. Leland*, and certain passages from KENT'S COMMENTARIES.⁴⁴ Eventually, however, with the advance, in the late twenties and early thirties, of the notion of Popular Sovereignty, the opinion came to prevail among lawyers and judges that, unless an act of the legislature could be shown to be incompatible with some provision of the written constitution, it must receive judicial enforcement.⁴⁵ So, the New York courts were confronted with the dilemma of either dismissing the doctrine of Vested Rights or of finding some phrase of the written constitution capable of giving it shelter. I say they were confronted with a *dilemma*. Yet strictly speaking, this is a misstatement, since, so far as I can discover, it was hardly suggested that the doctrine of Vested Rights should be made to walk the plank.⁴⁶ What was really required, and all that was required, was a certain measure of ingenuity on the part of the judges in conforming to a new standard of decorum when overturning legislative enactments that were thought to infract unduly the property right. The requisite ingenuity was forthcoming, but as I have told the story elsewhere in detail, I need not do so here.⁴⁷ Suffice it to say that the decision of the new Court of Appeals in the case of *Westervelt v. Gregg*,⁴⁸ in

⁴³ 3 Dall. 386 (1798).

⁴⁴ Nos. 2, 3, 9, 18, 26, 32, 36. But along with these should be reckoned certain transitional cases, in which both extra-constitutional considerations and the "due process" clause furnish the basis of the decision: Nos. 27, 29, 33^a, 42, 44, 51.

⁴⁵ See Senator Verplanck's words on this point in *Cochran v. Van Surlay*, 20 Wend. 365 (1838). In *Grant v. Courter*, 24 Barb. 232, 237 (1857), the court pronounces the idea that there are extra-constitutional restrictions on legislative power "fanciful." See also *Benson v. the Mayor*, ib. 248; *People v. Draper*, 15 N. Y. 532 (1855); *Sill v. Corning*, ib. 549, and the cases cited below. The original statement of the established view is J. Iredell's opinion in *Calder v. Bull*, 3 Dall. 386. Today it is as impossible to make the orthodox lawyer believe that courts have ever set aside statutes on other than strictly constitutional grounds as it is to make an orthodox Jew eat pork.

1854, whereby the Married Women's Property Act of 1848 was confined, in the case of existing marriages, to acquisitions of property subsequent to the passage of the act, and its even more notable decision in *Wynehamer v. the People*,⁴⁹ whereby the Anti-Liquor Act of 1855 was set aside, were both based exclusively on the "due process of law" clause, which was thus rendered an independent limitation on substantive legislation.

By the Civil War, then, the doctrine of Vested Rights had been brought in New York within the fold of the written constitution and so placed beyond the criticism of the most meticulous. Its benefits, on the other hand, were still confined to a relatively narrow range of rights: to an owner's valuable control of his tangible property;⁵⁰ to servitudes and easements approximating to a right of ownership;⁵¹ to litigated claims redeemable in money;⁵² to accrued rights of action,⁵³ and to the rights protected by the "obligation of contracts" clause of the United States Constitution.⁵⁴ Since the addition of the Fourteenth Amendment to the United States Constitution, however, the scope of rights protected by the "due process" clause, not only of the Amendment itself but of any constitution in which the clause occurs, has been tremendously expanded by the action of the courts in undertaking to construe the term "liberty".⁵⁵ For there can be no doubt that anterior to the Civil War and for some years after it, "liberty" meant only such freedom of action as the ordinary law allowed and was subject, therefore, to curtailment substantially at legislative discretion.⁵⁶ The later doctrine, which was the outcome of debates in Congress on the rights of the freedmen immediately following the War, was first foreshadowed judicially in the dissenting opinions of Justices FIELD and BRADLEY in the *Slaughter House Cases*⁵⁷ in 1873. Ten years later the two justices had an opportunity to reiterate their view in concurring opinions in the case of *The Butcher's Union Co. v. The Cres-*

⁴⁹ An interesting exception to this statement is, however, afforded by J. Cowen's opinion in *Butler v. Palmer*, 1 Hill 324 (1841).

⁴⁷ See my articles in the Harv. Law Rev., XXIV, 366 ff. and 460 ff.

⁴⁸ 12 N. Y. 202.

⁴⁹ 13 ib. 378.

⁵⁰ See e. g. the Anti-Liquor Act cases.

⁵¹ See the Married Women's Property Act cases.,

⁵² No. 42.

⁵³ Nos. 2, 3, 32, 70, 88. Contra: C. J. Savage in *People v. Livingston*, 6 Wend. 526, 530-1 (1831). The established view is well stated in 86 App. Div. 335 (1903).

⁵⁴ Vd. infra. And see generally my article cited in note 41, supra.

⁵⁵ See my article in Mich. Law Rev., VII, 643 ff.

⁵⁶ The reference is note 41, supra. See also the argument of counsel on both sides in *People v. Toynbee*, 20 Barb. 168 (1855).

⁵⁷ 16 Wall. 36.

cent City Co.,⁵⁸ and from this plane it was lifted two years later, by the New York Court of Appeals, into the full dignity of established doctrine, in the case of *In re Jacobs*.⁵⁹ But not till twelve years later was the new doctrine accepted by the United States Supreme Court. This occurred in the case of *Allgeyer v. Louisiana*,⁶⁰ in which the spokesman of the Court was Justice PECKHAM, who had been a member of the bench that decided *In re Jacobs*, and its fellow, *People v. Marx*.⁶¹

Dash v. Van Kleeck, *Wynehamer v. The People*, and *In re Jacobs* mark, then, the principal stages by which the doctrine of Vested Rights was expanded in New York to the modern concept of Due Process of Law, the obverse of which is the present-day judicial theory of the Police Power. Within this field, moreover, the New York courts were doing constructive, if not entirely original, work, and their results, modified to some extent by contributions from other jurisdictions, have today become the most important part of the constitutional jurisprudence of the country. Indeed, from the point of view of the primary aim of constitutional law, that of delimiting the rightful interference of government with private rights, they comprise constitutional law.

And this signifies that the statistical phase of the matter, to which we now turn for a moment, should also illustrate like developments in other jurisdictions. The statistics showing the influence of *Dash v. Van Kleeck* and the principles therein enunciated are imperfect until we come to consider those more specialized powers of the state, Taxation and Eminent Domain, as we shall do immediately. Even so, of the twenty-four decisions which, before 1855, overturned or curtailed legislative acts not thus classifiable and which were rendered without reference to the federal Constitution, one-half followed in the wake of this case.⁶² On the other hand, the effect of the transference of the doctrine of Vested Rights from its somewhat precarious footing on the theory of the social compact to the "due process" clause is not at once so apparent. Thus, in the course of the thirty years between *Westervelt v. Gregg* and *In re Jacobs* only

⁵⁸ 111 U. S. 746.

⁵⁹ 98 N. Y. 98.

⁶⁰ 165 U. S. 578.

⁶¹ 99 N. Y. 377.

⁶² See note 44, *supra*.

⁶³ Those invoking the clause are Nos. 48, 51, 54, 77, 78, 120. Those which omit mention of the clause are 70, 88, 101, 114, 148. It would seem that the period following the Dred Scott Decision and the bitter criticism which it evoked was a period of judicial modesty. See, e. g. the words of J. Wright in *Met. Board of Excise v. Barrie*, 34 N. Y. 657, 668, criticizing certain "inconsiderate dicta" in the Wynehamer decision and warning against setting "the judicial power above the legislative."

eleven decisions assert the paramountcy of vested rights to the legislative measures involved, and five of these do so without reference to the constitutional provision.⁶³ But, in all these cases save one the act is set entirely aside, whereas in eleven of the twelve or thirteen cases based on *Dash v. Van Kleeck*, the act was merely denied what was termed "retroactive" operation. The decision in the *Jacobs* case, however, introduces a new epoch in judicial review in New York; and in the twenty years between that case and *Wright v. Hart*,⁶⁴ forty-seven decisions overturned nearly as many acts on the basis of the "due process" clause,⁶⁵ while one other set aside the statute in review as "oppressive,"⁶⁶ and yet another strangely invoked the Fifth Amendment of the federal Constitution.⁶⁷ Such is the stimulus of a new point of view!

IV. THE DOCTRINE OF VESTED RIGHTS IN RELATION TO EMINENT DOMAIN AND TAXATION.

This concludes the story of the development of constitutional limitations on general legislative power in New York, except for those limitations that attach themselves to the federal Constitution. But as I have already indicated, the full effect of the doctrine of Vested Rights is to be appreciated only by canvassing also the restrictions that have been built up, partly by judicial decision, partly by specific constitutional provision, about the powers of taxation and eminent domain.

Interestingly enough, the constitution of 1777 contained no mention of eminent domain. In the case of *Gardner v. Newburgh*,⁶⁸ however, which was decided in 1816, Chancellor KENT held that the state possessed the power as an incident of sovereignty but that its exercise was governed by two fundamental limitations: first, that private property could be thus appropriated for a "public purpose only," and secondly, that the owner must receive full compensation. The requirement of "just compensation" was soon after embodied in the constitution of 1821, from which it has since been transferred successively to the constitutions of 1846 and 1894,⁶⁹ while in en-

⁶⁴ 182 N. Y. 330 (1905).

⁶⁵ In the following cases vested rights are involved: Nos. 158*, 159, 176, 182, 185*, 188, 189, 196, 198, 206, 225, 226, 229, 259, 263, 266, 283*, 286, 301, 304, 314, 328. Of these Nos. 263, 266, 286 and 328 assert the right to a reasonable remedy where property rights are involved; see 128 N. Y. 190. In the following cases, the derived definition of "liberty" furnishes the basis of the decision: Nos. 160, 161, 174, 217, 241, 249, 274, 281, 290, 294, 295, 299, 300, 309, 310, 311, 315, 317, 319, 320, 325, 326, 329, 334, 335.

⁶⁶ No. 283.

⁶⁷ No. 267.

⁶⁸ 2 Johns. Ch. 162.

⁶⁹ Art. I, § 6, which is largely taken from Amendment V of the federal constitution.

forcement of it there had occurred, within the period considered in this article, twenty-two decisions involving twenty different enactments.⁷⁰ The same constitutional clause, moreover, stipulates for a "public use" of the property thus taken. Even so, the question still remained whether this was a judicially enforceable limitation, whether, in other words, the judiciary was entitled to oppose its test of a "public use" to that of the legislature. The implication of *Gardner v. Newburgh*, carrying with it the great weight of KENT's authority, was plainly affirmative, as was also that of the oft-quoted maxim—dating at least from COKE—that "property cannot be taken from A and given to B without A's consent."⁷¹ Nevertheless, in the earliest case in which the investiture of a railroad corporation with the power of eminent domain was assailed before the courts, the court manifested great reluctance to concede the presence of a constitutional issue.⁷² But this attitude did not long endure. In later cases the building of railroads, albeit by private corporations, was pronounced a "public purpose," but because the furnishing of transportation was traditionally a public function;⁷³ while in *Albany Street Matter*,⁷⁴ which was decided in 1834, an act was set aside which gave a municipal corporation the power, in opening a street, to acquire the whole of an owner's lot, though only part of it was required for the street, and to apply the remainder to private uses.⁷⁵ Thus was judicial review clearly established in this class of cases on extra-constitutional foundations; while in *Taylor v. Porter*,⁷⁶ decided by Justice BRONSON in 1843, the doctrine was transferred to the "due process" clause; and altogether eleven cases have first and last vindicated the judicial view of "public use" against the legislative view.⁷⁷ Meantime, there had been inserted in the constitution of 1846 certain requirements for the ascertainment of compensation in eminent domain cases, which are repeated in the constitution of 1894 and upon which twelve decisions overturning acts have been based.⁷⁸ Later still, in consequence of the development of a similar doctrine in the case of special assessments, the courts have laid down the requirement that before private property can be appropriated by the state the owner is entitled to a notice and a hearing. This doc-

⁷⁰ Nos. 4, 15^a, 28, 45, 46, 47, 56, 79, 109^a, 139, 159, 164, 193, 204, 206, 207, 242, 255, 261, 276, 298, 313.

⁷¹ This maxim was invoked by a Massachusetts magistrate in the 17th century against a town vote, see present writer in Mich. Law Rev., IX, 105.

⁷² *Beekman v. Saratoga & S. R. Co.*, 3 Paige 45 (1831).

⁷³ *Bloodgood v. Mohawk & H. R. R. Co.*, 18 Wend. 9 (1837), is the leading case.

⁷⁴ 11 Wend. 148. See also Nos. 13 and 14. In all this class of cases the "A to B" maxim plays an important part.

⁷⁵ Amendments have at various times been offered to the constitution to give municipalities the power denied by the decision in *Albany St. matter*, but always without avail.

trine, which is asserted in four comparatively recent cases, is referred to the "due process" clause.⁷⁹

The taxing power came within the radius of the doctrine of Vested Rights, both in New York and elsewhere, at a comparatively late date. This is partly due to the fact, no doubt, that it was precisely for the purpose of raising revenue that legislatures were first called into existence, and that consequently an unhampered legislative discretion in this field of power was very ancient. As Chief Justice MARSHALL put it in *McCulloch v. Maryland*,⁸⁰ "The power to tax involves the power to destroy,"—words which have frequently arrested the judicial arm. Furthermore, the power to tax is ordinarily granted the state legislature without other specification, so that the written constitution does not furnish convenient pegs upon which to hang newly elaborated doctrine, as in the case of the eminent domain power. The result is that the taxing power remains to this day a power little amenable to judicial construction.⁸¹

None the less, there are two principles with which the legislature must comply in New York if its tax measures are to survive judicial scrutiny. The first is the today widely accepted, though rarely enforced doctrine, which has been carried over from the law governing eminent domain, that a tax must be for a "public purpose." When the Court of Appeals was first confronted with this doctrine in 1856 it flatly rejected it.⁸² But twenty years later, in *Weismer v. Douglas*,⁸³ which involved an act authorizing a village to issue bonds for the benefit of a private manufacturing concern, the court reconsidered its earlier position; and altogether eight cases in which enactments were set aside have invoked more or less directly the "public purpose" doctrine in the period we are investigating.⁸⁴ Today, how-

⁷⁹ 4 Hill 140, in which an act providing for the laying out of a private road was disallowed. The power thus denied the legislature was specifically granted in the constitution of 1846, art. I, § 7.

⁸⁰ Nos. 11, 13, 14, 17, 22, 31, 91, 128, 139, 157, 195. See note 74, *supra*.

⁸¹ Nos. 40, 43, 68, 100, 119, 130, 142, 184^b, 207^a, 233, 268, 270. Art. I, § 7 of both constitutions.

⁸² Nos. 183, 195, 219, 285.

⁸³ 4 Wheat. 316 (1819).

⁸⁴ Observe the court's floundering in *McCray v. United States*, 195 U. S. 27 (1904).

⁸⁵ In *Guilford v. the Supervisors of Chenango C'ty*, 13 N. Y. 143. See also dicta in *Thomas v. Leland*, 24 Wend. 65 (1840), and *Clarke v. Rochester*, 24 Barb. 446 (1857). See also the cases cited in note 45, *supra*, from the same volume and from 15 N. Y. In these cases the legislature's discretion in taxation is stated to be that of Parliament.

⁸⁶ 64 N. Y. 92 (1876). Kent's theory of taxation was the *quid pro quo* theory, 2 Comms. 332. From this theory the doctrine of Public Purpose is a logical deduction, for if the party paying the tax is to get his due return it must be as a member of the public. The *quid pro quo* theory is also adopted by the court in *Gordon v. Carnes*, 47 N. Y. 608 (1872), and *Wilson v. N. Y.*, 4 E. D. Smith 675 (1855).

⁸⁷ Nos. 90, 125^a, 238, 260 and 280 are directly to the point. In Nos. 113, 133, and 134, acts compelling the issuance of bonds to create a bonus for railway companies were

ever, the doctrine is practically nugatory. For it had never proved effective except to check gratuities by local governments, and these are now specifically forbidden by the constitution of 1894.⁸⁵

The other principle to which I referred above as governing the taxing power in New York is the principle first laid down in *Stuart v. Palmer*,⁸⁶ that, in connection with special assessments, notice and an opportunity to be heard are essential to "due process of law."⁸⁷ This requirement invalidated acts in seven cases within our period.^{88 89}

V. NEW YORK COURTS AND THE FEDERAL CONSTITUTION.

Finally, we should consider briefly a group of decisions resting in whole or in part upon some clause of the federal Constitution or upon the supremacy of federal law. Leaving out of account the cases in which the final clauses of the first section of the Fourteenth Amendment were brought to the support of the "due process" clause of the state constitution, there were, in the period here under

overturned: the state cannot make contracts for the individual. In No. 125 a municipal tax is restricted to the locality.

⁸⁵ See note 40, *supra*.

⁸⁶ 74 N. Y. 183 (1878).

⁸⁷ An earlier difficulty encountered in the case of special assessments was that they violated the principle that a tax must be "a public tax upon principles of just equality," J. Barculo in *People ex rel. Post v. Brooklyn*, 6 Barb. 209 (1849), citing 2 Kent's Comms. 332. The learned judge proceeds to argue that either the benefit from such assessments is public or it is not. In the latter case they are not taxes, in the former the public should bear the burden. The assessment in review is accordingly set aside as violative of the "due process" clause, and an earlier case, *Livingston v. the Mayor*, 8 Wend. 85, is overruled. Barculo's decision is in turn overruled in *People ex rel. Griffin v. Brooklyn*, 4 N. Y. 419 (1851); and in *Guilford v. Cornell*, 18 Barb. 615, it is asserted that the "due process" clause has no application to the taxing power.

⁸⁸ Nos. 136, 167, 188^a, 191, 192, 223, 269^a.

⁸⁹ The doctrine that the legislature may not delegate its power, which was first launched as a judicially enforceable principle of constitutional law in 1847, in the case of some local option laws (see *Rice v. Foster*, 4 Harr. 479, and *Parker v. Comm.*, 6 Pa. St. 507), has never had any great influence in New York. It was first brought forward in this jurisdiction in connection with the Free School Act of 1849, which by its own terms was to become "a law" upon its approval by the people at a general election. In *Johnson v. Rich*, 9 Barb. 680 (1851), the act was none the less sustained by J. Johnson, who expressed an uncomplimentary opinion of the Delaware and Pennsylvania decisions above cited. But in succeeding cases, listed *supra* as Nos. 34, 39 and 41, the School Act was pronounced void on the basis of the new doctrine—new, that is, as a constitutional restriction. A little later the same principle was again invoked successfully in *People ex rel. McSpedon v. Stout*, 23 Barb. 349 (1856), where was overturned an act providing for the submission of certain charter provisions to the voters of New York City. A referendum of such measures to the municipal authorities is today provided for by the constitution itself, art. XII, § 2. In recent years the New York courts have had no difficulty in sustaining legislative delegations of broadly discretionary powers to administrative bodies. See especially *Cooper v. Schultz*, 32 How. Pr. 107 (1866) and *Trustees v. Saratoga Gas, etc. Co.*, 191 N. Y. 123 (1908).

survey, fifty-five such cases, to-wit: twenty-three cases invoking the "obligation of contracts" clause;⁹⁰ thirteen cases invoking the "commerce" clause;⁹¹ six cases condemning *ex post facto* acts;⁹² four cases in which the act involved was held to infract the admiralty jurisdiction of the United States;⁹³ two cases in which the treaty or commercial rights of Indians were held to have been invaded,⁹⁴ and four cases in which the treaty rights of aliens were sustained as against conflicting legislation;⁹⁵ two cases involving tax measures, one of which was held void as constituting a tax on imports,⁹⁶ under the principle established in *Brown v. Maryland*,⁹⁷ and the other of which was set aside for taxing the shares of national banks,⁹⁸ contrary to the rule laid down in *McCulloch v. Maryland* and *Weston v. Charleston*,⁹⁹ and lastly, one case concerning the rendition of fugitive slaves,¹⁰⁰ and one concerning the rendition of fugitives from justice.¹⁰¹

In interpreting the "obligation of contracts" clause the New York courts have never had any trouble making it a supplemental basis for the doctrine of Vested Rights. Indeed the way to this consummation was early pointed out by the federal Supreme Court itself. Thus in *Fletcher v. Peck*,¹⁰² in which the protection of the clause is extended in the most unwarrantable fashion to public land grants, MARSHALL made a bold attempt to grapple the whole doctrine of Vested Rights to the federal Constitution; and in the *Dartmouth College* case,¹⁰³ in which corporation franchises were accorded the same protection, a still more impalpable logic prevails.¹⁰⁴ Many of the New York decisions, accordingly, in which enactments are disallowed under this clause, are easily classified by reference to federal precedents. A single early case¹⁰⁵ is based squarely on *Fletcher v. Peck*, which, however, is also cited in cases where it does

⁹⁰ See notes 102-116, *infra*.

⁹¹ See notes 117-26, *infra*.

⁹² Nos. 61, 64 and 65, involving the same act; Nos. 67, 173, 288.

⁹³ Nos. 87, 92, 102, 121.

⁹⁴ Nos. 63, 210.

⁹⁵ Nos. 216^a, 217, 277^a, 296^a.

⁹⁶ No. 81.

⁹⁷ 12 Wheat. 419 (1827).

⁹⁸ No. 108.

⁹⁹ 2 Pet. 449 (1829). The disability of the state with respect to national bank shares is largely removed by § 5219 of the Revised Statutes, in which connection see *Van Allen v. the Assessors*, 3 Wall. 573.

¹⁰⁰ No. 14.

¹⁰¹ No. 110.

¹⁰² 6 Cr. 87 (1810).

¹⁰³ 4 Wheat. 518 (1819).

¹⁰⁴ I have dealt with the subject at length in a study not yet published.

¹⁰⁵ No. 6.

not furnish the principal ground of the decision;¹⁰⁸ three comparatively recent cases¹⁰⁷ illustrate the rule established by the *Dartmouth College* case; three early cases directly invoke the principle upheld in *Sturges v. Crowninshield*,¹⁰⁸ in which the original intention of the clause finds expression; three other cases reiterate the rule established in *Bronson v. Kinzie*,¹⁰⁹ that the law of remedy under which they are made constitutes a part of the obligation of private contracts; and two more enforce the extension of this rule in *Von Hoffman v. Quincy*¹¹⁰ to the case of municipal bonds. On the other hand, in a number of decisions the New York courts have felt free to take a line of their own in applying this clause. Thus, in three of the cases in which the Married Women's Property Act was restricted to subsequent acquisitions of property in the case of existing marriages, the proposition was advanced that marriage is a contract within the meaning of the federal Constitution;¹¹¹ again, in another case a license to sell liquors is treated as a contract;¹¹² while in two others an award of damages—in one case, a judgment for breach of contract—is treated as a contract.¹¹³ None of these positions is today tenable, nor would they probably be so regarded by the Court of Appeals. And questionable are two other decisions in this field, both comparatively recent. In the earlier one¹¹⁴ it was held by the Supreme Court that, where property was taken for a public use on certain conditions, the legislature could not abrogate these. In the

¹⁰⁸ See especially Kent's argument in *Gardner v. Newburgh*, cited *supra*, where it is suggested that the federal case supports the proposition that the power of eminent domain may be exercised for a "public purpose only." The argument is further elaborated in 2 Kent's Comms. 340. See also the statement by Chancellor Walworth in *Cochran v. Van Surlay*, 20 Wend. 365, 371, that *Fletcher v. Peck* protects "rights vested under executed contracts"! In other words, the "obligation" clause is made to do the work later cast on the "due process" clause.

¹⁰⁷ Nos. 176, 267, 270.

¹⁰⁸ 4 Wheat 117 (1819). The New York cases are Nos. 5, 8, 15.

¹⁰⁹ 1 How. 319 (1840), followed in New York by the decisions in Nos. 25, 57, 181.

¹¹⁰ 4 Wall. 535. The New York cases are Nos. 103 and 150.

¹¹¹ Nos. 27, 33*, 44. A dictum of Story's in his concurring opinion in the *Dartmouth College* case supports the idea, which is decisively rejected in *Maynard v. Hill*, 125 U. S. 190.

¹¹² No. 77.

¹¹³ Nos. 75 and 208. In the latter case, an award of damages made by a city with statutory authority is stated to have the effect of a judgment and to constitute a contract the obligation of which is impaired by an act materially abridging the means of its enforcement. In *Dash v. Van Kleeck* the theory is developed by J. Spencer that, immediately a judgment is rendered against a party, "there then * * * arises a contract against the party adjudged to the sum of money in favor of him to whom it is awarded." From this it follows that a legislative act annulling a judgment is void under art. I, § 10 of the federal constitution, which thus supports the principle of the Separation of Powers in forbidding legislative interferences with judicial decrees. 7 Johns. 477, 489.

¹¹⁴ No. 184.

later one,¹¹⁵ it was held by the Appellate Division that an act prohibiting the disposal of garbage by specified methods in the borough of Brooklyn was invalid as to an existing corporation carrying on this business under a contract with the city, in a way that did not constitute a nuisance.¹¹⁶

But while the New York courts have shown a somewhat excessive zeal, perhaps, in pressing the "obligation of contracts" clause as a restriction on the legislative power of the state, this is not at all the case with their application of the "commerce" clause. Indeed, it was not till 1875 that a local court ever set aside a New York statute as transgressing this clause, though the federal Supreme Court had before this date set several of them aside.¹¹⁷ Nor is the explanation far to seek. It is to be found in New York City's commercial situation in relation to the rest of the country and the peculiar local problems to which this frequently gave rise.¹¹⁸ For this reason the New York courts were reluctant for many years to recognize the dogma of the exclusiveness of Congress' power under this clause, with the result that their decisions were more than once reversed by the United States Supreme Court. Following *Henderson v. New York*,¹¹⁹ however, three statutes were promptly set aside by New York courts as trespassing on power reserved to Congress.¹²⁰ But even more pronounced was the effect of the federal Court's decision in *Leisy v. Harden*,¹²¹ which for the first time applied the "original package" doctrine in the field of interstate commerce. Between 1893 and 1905, seven decisions setting aside four acts were based on this precedent,¹²² which, it may be surmised, was the more favorably regarded because of the support it lent the new-found doctrine of Liberty.¹²³ Meantime, however, in *Plumley v. Massachusetts*,¹²⁴ the federal Supreme Court had virtually abandoned the logic of its earlier decision, the benefits of which it now became

¹¹⁵ No. 283^a.

¹¹⁶ Cf. *Buffalo East Side R. Co. v. Buffalo St. R. Co.*, 111 N. Y. 132 (1888); *Manigault v. Springs*, 195 U. S. 473 (1905); and *Hudson Water Co. v. McCarter*, 209 U. S. 349, 357.

¹¹⁷ *Gibbons v. Ogden*, 9 Wheat. 1 (1824), with which compare Kent's decision in *Livingston v. Van Ingen*, 9 Johns. 507 (1812); the *Passenger Cases*, 7 How. 283 (1849), with which compare *New York v. Miln*, 11 Pet. 102 (1837); and *Henderson v. N. Y.*, 92 U. S. 259 (1875).

¹¹⁸ Particularly the problem of disposing of hordes of immigrants, especially in the days before federal inspection had been sufficiently developed.

¹¹⁹ See note 117, *supra*.

¹²⁰ See Nos. 122, 143, 147, 187. The last two involve the same act.

¹²¹ 135 U. S. 100 (1890).

¹²² Nos. 199, 218^a, 248; and 277, 278, 308, 327, all involving the same act.

¹²³ No. 248 bears out this suggestion. See also Nos. 241 and 291 in the same connection.

¹²⁴ 155 U. S. 461 (1894).

anxious to confine to dealers in liquor and cigarettes. Following the new clue, the New York Court of Appeals in 1905, in the case of *People ex rel. Silz v. Hesterberg*,¹²⁵ upheld an act forbidding the sale during the closed season of certain game birds even when imported into the state from abroad, and was sustained, on appeal, by the United States Supreme Court.¹²⁶ It, therefore, appears that a comparatively liberal formula has today been arrived at for adjusting the claims of the state's police power as against the exclusive power of Congress under the "commerce" clause, and that this formula has been finally accepted by the local courts. Still more recently the Court of Appeals has shown itself prepared to ratify a similar adjustment between the contesting claims of the police power and the doctrine of Liberty that attaches to the "due process" clause.¹²⁷

* * * * *

From 1840 on, judicial review became a considerable factor of constitutional government in New York. From that date till the Civil War there were probably more statutes invalidated in New York on constitutional grounds than in all the other states of the Union combined. But the great extension of judicial review in New York, as in other states, has taken place since 1870. This has been due, first, to the increase in the legislative product; secondly, to the greater detail of state constitutional provisions governing legislative power; thirdly, to the development of constitutional doctrine.

Those features of constitutional doctrine which have been most material in bringing about the extension of judicial review in New York may be summarized thus:

1. The principal assumption underlying the construction which the New York courts have made of the written constitution of the state is that of the *completeness* of this document and, therefore, of the *exclusiveness* of its provisions with reference to any matter with which it specifically deals. By this assumption—for it is hardly an explicit dogma—the differentiation of constitutional provisions from statutory enactments has been maintained, and the prerogative of the people in amending the constitution has been upheld against the claims of Legislative Sovereignty.

2. A secondary and more or less corollary doctrine which the New York courts, in common with the courts of other jurisdictions, have manipulated—though, again, more by implication than

¹²⁵ 184 N. Y. 126.

¹²⁶ 211 U. S. 31 (1908).

¹²⁷ See especially the recent cases of *People v. the Klinck Packing Co.*, 214 N. Y. 121, and *Heim v. McCall*, ib. 629.

by explicit assertion of it—is the doctrine that any constitutional office carries with it certain intrinsic functions and a certain intrinsic discretion in the discharge of these functions. Reinforced by a particular interpretation of the doctrine of the Separation of Powers, this doctrine has supported judicial independence against Legislative Sovereignty, and has kept the power of appointment from slipping into the hands of the legislature.¹²⁸

3. But the heart and soul of constitutional limitations in New York, thanks especially to Chancellor KENT, has been the doctrine of Vested Rights. The first deposit of this doctrine was that principle of statutory construction which forbids any “retroaction” of statutes, *that is*, any operation disturbing property *rights*. Disguised as an interpretation of the doctrine of Separation of Powers, the doctrine of Vested Rights also early ruled out, except in carefully defined cases, special legislation dealing with the vested rights of named parties. Again, it is the doctrine of Vested Rights which, in the more definite form of the ancient gnome that “Property may not be taken from A and given to B without A’s consent,” that underlies the doctrine of Public Purpose, both as a limitation on the eminent domain power and—in which relation it was established at a comparatively late date—on the taxing power.

4. The New York courts also did constructive work of an important character in utilizing the “due process of law” clause as a safe vehicle for the doctrine of Vested Rights.¹²⁹ The initial motive of this step was to meet the criticism of those who held that the will of the legislature should prevail unless in contravention of the written constitution: its final result has been the entire transformation of constitutional law in some of its most important phases. For once the “due process” clause was applied to substantive legislation of a general character, the term “liberty” in it became eventually drawn into construction, as well as the term “property,” and the outcome of this development, in connection with which New York’s courts again played a leading and decisive rôle, was a tremendous and well-nigh revolutionary extension of judicial review.

5. But if judicial review has been extended to new and important fields, it has, by the same token, been liberalized. Before the Civil War, judicial review was governed, in New York as elsewhere, by the general theory that certain kinds of legislative action

¹²⁸ See Nos. 7, 58*, 171, 176, 240, 275, 333.

¹²⁹ In *Stuart v. Palmer*, 74 N. Y. 183 (1878), the “due process” clause is characterized as “the most important guaranty of personal rights to be found in the federal or state constitution. It is,” the court continues, “a limitation upon arbitrary power and is a guaranty against arbitrary legislation.”

were prohibited absolutely and that certain other kinds—taxation, for instance—were allowed absolutely.¹⁸⁰ Today constitutional limitations upon state power, when it does not invade the field of national power, are qualified more and more by a general allowance for the "police power," with the result that they tend to dissolve and merge into the judicial view of the "reasonable" requirements of the case.¹⁸¹

The extension of judicial review in New York must be deemed to have taken place, not only by popular allowance, but with popular approval. In all the changes that have been made since the beginning in New York's constitutional arrangements, few attempts have been made till a very recent date to curtail judicial review or to set aside or modify any of its doctrines.¹⁸² On the contrary, new provisions have again and again been added to the constitution which were designed to restrict legislative power and which the courts were relied upon to enforce.

Most important among such provisions are certain ones, which like Article III, § § 16 and 18, have for their purpose, not the curtailment of legislative discretion in the choice and development of public policies, but the rendering impossible of certain legislative malpractices, like log-rolling in its various forms. In no other field can judicial review perform a greater service than in the rigorous enforcement of such provisions; and it may be suggested that, with the growing tendency on the part of courts to abandon the impracticable notion of fundamental and indefeasible rights of "liberty" and "property," local judicial review will become confined to the performance of this modest but most useful task. Meantime, two reforms should be instituted in the practice of local judicial review: the prompt and sure appeal of all constitutional cases for final decision by the highest state court, and the intervention of the attorney-general in all such cases.

As in the parallel case of the Confessional, judicial review has from the first been manipulated by two schools, the Laxists and

¹⁸⁰ See my article cited in note 41, *supra*.

¹⁸¹ For a broad definition of the Police Power in relation to the "due process" clause, see J. Andrews' opinion in *Bertholf v. O'Reilly*, 74 N. Y. 509, with which compare J. Werner's decision in the *Ives* case, 201 N. Y. 271. In the latter case the court plays tricks with its own logic. It starts out by defining the Police Power as extending to the promotion of "the general welfare," but presently drops this term out, and then sets aside the act before it as not a real health measure! Compare also *People v. Berberich*, 20 Barb. 224 (1855) and *Metropolitan Board of Excise v. Barrie*, 34 N. Y. 657 (1866), where the Police Power is broadly defined, with the *Wynehamer* case, 13 N. Y. 378 (1856), and *Coe v. Schultz*, 47 Barb. 64 (1866), where the emphasis is on private rights. The rise and development of what may be called the Doctrine of the Police Power before the Civil War I have investigated in another study not yet published.

¹⁸² See notes 75 and 76, *supra*. The doctrine of the *Ives* case has since been virtually disallowed, so far as the state constitution is concerned, by a recent amendment.

the Rigorists. New York judges have often been in the fore rank of the latter school. Yet even in New York "laxism" is today winning out—if slowly, yet surely. And this signifies that the time is at hand when, even in this conservative jurisdiction, point of view will be more potent than precedent in fixing the judicial application of constitutional restrictions.

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CASES REFERRED TO IN NOTE 1, P. 281.

The legislative provisions in review in each case are cited in the brackets by date, chapter, etc. The further data necessary for the interpretation of this list of cases are given in the text.

- 1783: 1 Rutgers v. Waddington,* see my article in 9 Mich. Law Rev. 115-16.
- 1810: 2 Beadleston v. Sprague,* 6 Johns. 101, [Laws, I, 490.]
- 1811: 3 Dash v. Van Kleeck,* 7 ib. 477, [Act of Apr. 28, 1810.]
- 1816: 4 Gardner v. Newburgh, 2 Johns. Ch. 162, [1809, ch. 119].
- 1819: 5 Roosevelt v. Cebra, 17 Johns. 108, [1811, ch. 123].
- 6 People v. Platt, ib. 195, [1801, ch. 127, and 1813, ch. 62].
- 1821: 7 People v. Foot, 19 ib. 58, [1808, ch. 216, § 13];
- 8 Re Wendell, ib. 153, [1 Rev. Laws, 460].
- 1826: 9 Jackson ex dem. Ten Eyck v. Frost,* 5 Cow. 346, [1793, ch. 57].
- 1827: 10 People ex rel. Ingersoll v. Garey, 6 ib. 642, [1824, ch. 266, and 1825, ch. 181].
- 1834: 11 Re Albany St., 11 Wend. 149, [2 Rev. Laws, 416, § 179];
- 12 Jack v. Martin, 12 ib. 311, [2 Rev. Stat. 560, § § 6-19].
- 1835: 13 Varick v. Smith,* 5 Paige, 136, [Sess. Laws, 1825, p. 399, § 3].
- 1839: 14 Re John and Cherry Strs., 19 Wend. 659, [Sess. Laws, 1818, p. 201].
- 1841: 15 Van Hook v. Whitlock, 26 ib. 43, [1814, ch. 172];
- 1842: 15* Trustees of Presbyterian Soc. v. Rochester and Auburn R. Co.,* 3 Hill 567, [Sess. Law, 1836, pp. 493-4];
- 16 Purdy v. People, 4 ib. 384, [1840, ch. 311].
- 1843: 17 Taylor v. Porter, ib. 140, [1 Rev. Stat. 517, § 77].
- 1845: 18 Dikeman v. Dikeman, 11 Paige 484, [1841, ch. 341];
- 19 DeBow v. People, 1 Denio 9, [1838, ch. 260];
- 20 Warner v. People, 2 ib. 272, [1843, ch. 88].
- 1846: 21 Commercial Bank v. Sparrow, ib. 97, [1837, ch. 450].
- 1848: 22 Tonawanda R. R. Co. v. Munger, 5 ib. 255, [1 R. S., p. 355, § 44];
- 23 McKoan v. Devries, 3 Barb. 196, [1847, ch. 470];
- 24 Bullard v. VanTassell, 3 How. Pr. 401, [see 23];
- 25 Danks v. Quackenbush, 1 N. Y. 129, [1842, ch. 157];
- 26 People ex rel. Fountain v. Westchester C'ty, 4 Barb. 64, [1846, ch. 133];
- 27 Holmes v. Holmes,* ib. 295, [1848, ch. 200—Married Women's Property Act].
- 1849: 28 Gilbert v. Foote, cited in 5 Barb. 483, [Act prescribing "proceedings for the draining of swamps," etc., cf. 46];
- 29 White v. White,* ib. 474, [see 27];
- 30 People ex rel. Post v. Brooklyn, 6 ib. 209, overruled in People ex rel. Griffin v. Brooklyn, 4 N. Y. 419 (1851),
- 1850: 31 Embury v. Conner,* 3 N. Y. 511, [see 11].
- 1851: 32 Vrooman v. Jones,* 5 How. Pr. 369, [Code of Proc., § 121];
- 33 Griffin v. Griffith, 6 ib. 428, [1849, ch. 121, § 4].
- 33* Perkins v. Cottrell,* 15 Barb. 446, [see 27];
- 34 Thorne v. Cramer, ib. 112, [1849, ch. 140—Free School Act];
- 35 Griswold v. Sheldon, 4 N. Y. 581, [1847, ch. 280, § 30].

- 1852: 36 Powers v. Bergen, 6 ib. 358, [1849, ch. 112];
 37 Newell v. People, 7 ib. 9, [1851, ch. 485];
 38^a Rodman v. Munson, 13 Barb. 188, [see 37].
- 1853: 38 Wood v. Brooklyn, 14 ib. 425, [Act of June 19, 1851, § 10];
 39 Bradley v. Baxter, 15 ib. 122, [see 34];
 40 House v. Rochester, ib. 517, [1850, ch. 262, § 193];
 41 Barto v. Himrod, 8 N. Y. 483, [see 34];
 42 Burch v. Newbury, 10 N. Y. 374, (J. Jewett's opinion), [Code of Proc. 1849, § 460].
- 1854: 43 Clarke v. Utica, 18 Barb. 451, [1849, ch. 184, § § 60-64];
 44 Benedict v. Seymour,* 11 How. Pr. 176, [see 27];
 45 Wallace v. Karlenowefski, 19 Barb. 118, [1 Rev. St. 514, § 58];
 46 Hartwell v. Armstrong, ib. 166, [1854, ch. 396];
 47 Gould v. Glass, ib. 179, [see 45].
 48 Westervelt v. Gregg,* 12 N. Y. 202, [see 27].
- 1855: 49 Kundolf v. Thalheimer, ib. 593, [see 35].
 50 People v. Carroll, 3 Park Crim. 22, [1850, ch. 139].
 51 People v. Toynbee, 20 Barb. 168, [1855, ch. 231—Anti-Liquor Act].
- 1856: 52 Corning v. Greene, 23 ib. 33, [1823, ch. 111, § 12];
 53 People ex rel. McSpedon v. Stout, ib. 349, [1853, ch. 217];
 54 Wynehamer v. People, 13 N. Y. 378, [see 51].
 55 Fishkill v. Fishkill and B. Plank R'd Co., 22 Barb. 634, [1854, ch. 271].
- 1857: 56 Williams v. N. Y. Central R. Co.,* 16 N. Y. 97, [1836, ch. 319, § 11];
 57 Conant v. Van Schaick,* 24 Barb. 87, [1854, ch. 282];
 58 Warren v. People, 3 Park Crim. 544, [1 Rev. Stat. 638, § 1].
- 1858: 58^a People v. Keeler, 17 N. Y. 370, [1849, ch. 28].
- 1859: 59 Lanning v. Carpenter, 20 ib. 447, [1854, ch. 386].
- 1860: 60 Re University of New York, 31 Barb. 353, substantially overruled in Re Cooper, 22 N. Y. 67, same year, [1860, ch. 187];
 61 Hartung v. People,* 22 N. Y. 95, [1860, ch. 410];
 62 People ex rel. Mitchell v. Haws, 32 Barb. 207, [1852, ch. 374, § 7].
- 1861: 63 Fellows v. Denniston, 23 N. Y. 420, [1840, ch. 254; 1841, ch. 166].
- 1862: 64 Shepherd v. People,* 25 ib. 406, [see 61];
 65 Kuckler v. People,* 5 Park Crim. 212, [see 61].
- 1863: 66 Waters v. Langdon, 40 Barb. 408, [1859, ch. 10];
 67 Hartung v. People, 26 N. Y. 167, [1861, ch. 303, amending act involved in 61];
 68 People ex rel. Cook v. Nearing, 27 ib. 306, [1858, ch. 266, amended by 1860, ch. 258];
 69 Harbeck v. New York, 10 Bosw. 366, [1857, ch. 569].
- 1864: 70 Ganson v. Buffalo,* 2 Abb. App. Dec. 236, [1853, ch. 230].
 70^a Baldwin v. New York, 42 Barb. 549, [1863, ch. 227].
- 1865: 71 Baldwin v. New York, 30 How. Pr. 289, [1860, ch. 449, § 4].
- 1866: 72 Kinne v. Syracuse, 3 Keyes 110, [1858, ch. 341, par. 9];
 73 Rockwell v. Nearing, 35 N. Y. 302, [1862, ch. 459];
 74 People ex rel. McConvill v. Hills, ib. 449, [1865, ch. 181];
 75 Hadfield v. New York, 6 Rob't 501, [1865, ch. 646 § 5];
 76 Re Janes, 30 How. Pr. 446, [1865, ch. 266, § 4];
 77 Holt v. Excise Commissioners, 31 How. Pr. 334, note, overruled in matter of James de Vaucene, ib. 289, [1866, ch. 578];
 78 People v. Krushaw, ib. 344 note, [see 77];
 79 Morgan v. King, 35 N. Y. 454, [1850, ch. 264].
- 1867: 80 Devoy v. New York, 36 ib. 449, [see 69];
 81 People v. Acton, 48 Barb. 524, [1867, ch. 806, § 12];
 82 People v. Maring, 3 Keyes 374, [1867, ch. 547];
 83 People ex rel. Brown v. Blake, 49 Barb. 9, [1866, ch. 214].
- 1868: 84 Smith v. New York, 34 How. Pr. 508, [1866, ch. 876, § 10];
 85 People v. Raymond, 37 N. Y. 428, [1855, ch. 407, and 1867, ch. 410];

- 86 *People v. O'Brien*, 38 ib. 193, [1866, ch. 586—N. Y. Charter Amendments];
- 87 *Bird v. The Josephine*, 39 ib. 19, [1862, ch. 482];
- 88 *Re Townsend*, ib. 171, [1855, ch. 296];
- 89 *Green v. Shumway*, ib. 418, [1867, ch. 194];
- 90 *Sweet v. Hulbert*, 51 Barb. 312, [1868, ch. 334].
- 1869: 91 *People ex rel. Failing v. Highway Commissioners*, 53 ib. 70, [1868, ch. 687];
- 92 *Ferran v. Hosford*, 54 ib. 200, [see 87];
- 93 *Pullman v. New York*, ib. 169, [1866, ch. 876, § 9];
- 93^a *McConnell v. Van Aerman*, 56 ib. 334, overruled in *Campbell v. Evans*, 45 N. Y. 356 (1871), [1867, ch. 418];
- 94 *People ex rel. Bradley v. Stevens*, 51 How. Pr. 103, [1867, ch. 285].
- 1870: 95 *People ex rel. Pratt v. Brooklyn*, 13 Abb. Pr. (N. S.) 121, [1869, ch. 507];
- 96 *Gaskin v. Meek*, 42 N. Y. 186, [1869, ch. 569];
- 97 *People ex rel. Adsit v. Allen*, ib. 378, [1869, ch. 880];
- 98 *People ex rel. Schenectady Astron. Observ. v. Allen*, ib. 404, [1868, ch. 254];
- 99 *People ex rel. Lee v. Chautauqua City*, 43 ib. 10, [1868, ch. 717].
- 1871: 100 *Rochester Water W'ks Co. v. Wood*, 60 Barb. 137, [1852, ch. 356, pars. 8-11];
- 101 *Hopkins v. Mason*, 61 ib. 469, [1863, ch. 269];
- 102 *Vose v. Cockcroft*, 44 N. Y. 415, [1859, ch. 79];
- 103 *Brooklyn Park v. Armstrong*, 45 ib. 234, [1870, ch. 373];
- 104 *People ex rel. Fowler v. Bull*, 46 ib. 57, [1866, ch. 217, § 1];
- 105 *People ex rel. Sherrill v. Canal Board*, 4 Lans. 272, [1870, ch. 543];
- 106 *Healey v. Dudley*, 5 ib. 115, [1870, ch. 467, § 3].
- 1872: 107 *Gordon v. Cornes*, 47 N. Y. 608, [1866, ch. 466, § 7];
- 108 *First Nat'l Bank v. Fancher*, 48 ib. 524, [1865, ch. 97, § 10];
- 109 *Huber v. People*, 49 ib. 132, [1871, ch. 383, § 49];
- 109^a *People ex rel. Williams v. Haines*,* ib. 587, [1867, ch. 774];
- 110 *People ex rel. Barlow v. Curtis*, 50 ib. 321, [1 Rev. Stat. 164, § § 8-11—Extradition to For. Country].
- 1873: 111 *People ex rel. Williamson v. McKinney*, 52 ib. 374, [1870, ch. 374];
- 112 *People ex rel. Hopkins v. King's County*, ib. 556, [1872, ch. 700];
- 113 *People ex rel. Dunkirk, W. and P. R. Co. v. Batchellor*, 53 ib. 128, [1870, ch. 282];
- 114 *Brevoort v. Grace*,* ib. 245, [1872, ch. 73];
- 115 *Landers v. Staten Is. Ry. Co.*, ib. 450, [1870, ch. 470, amended by 1871, ch. 282, and 1873, ch. 239];
- 116 *People ex rel. Lord v. Crooks*, ib. 648, [1871, ch. 385, § 1];
- 117 *People ex rel. Purdy v. Highway Commissioners*, 54 ib. 276, [1868, ch. 776];
- 118 *People ex rel. Bolton v. Albertson*, 55 ib. 50, [1873, ch. 638].
- 1874: 119 *Menges v. Albany*, 56 ib. 374, [1870, ch. 77, title 1, § 1];
- 120 *N. Y. and O. Midland R. Co. v. Van Horn*, 57 ib. 473, [1869, ch. 84, § 2];
- 121 *Murphy v. Salem*,* 3 Thomp. and C. 660, [see 87].
- 1875: 122 *Poole v. Kermit*, 59 N. Y. 554, [see 87];
- 123 *Hoag v. Lamont*, 60 ib. 96, [see 115];
- 124 *Alexander v. Bennett*, ib. 204, [1874, ch. 545, § 4];
- 125 *Re Assessments of Land in Flatbush*, ib. 398, [1872, ch. 711].
- 1876: 125^a *Weismer v. Douglas*, 64 ib. 92, [1868, ch. 577];
- 126 *Watertown v. Fairbanks*, 65 ib. 588, [1871, ch. 810, § 38];
- 127 *Patten v. N. Y. Elev. R'y Co.*, 3 Abb. N. C. 306, [1866, ch. 855];
- 128 *Re Deansville Cemetery Assoc.*, 66 N. Y. 569, [1873, ch. 452];
- 129 *DeHart v. Hatch*, 3 Hun. 375, [1872, ch. 629, § 3].

- 1877: 130 *Hilton v. Bender*, 69 N. Y. 75, [1844, ch. 86];
 131 *People ex rel. Killmer v. Baird*, 4 N. Y. W'kly Dig. 576, [1873, ch. 35];
 132 *People ex rel. Kene v. Olcott*, 11 Hun. 610, [1876, ch. 193].
- 1878: 133 *Hardenbergh v. Vankeuren*, 16 ib. 17, [1868, ch. 45];
 134 *Horton v. Thompson*, 71 N. Y. 513, [1871, ch. 809];
 135 *Re Sackett D. and DeG. Strs.*, 74 ib. 95, [1868, ch. 631];
 136 *Stuart v. Palmer*, ib. 183, [*Cf. Spencer v. Merchant*, 100 ib. 585 (1885), affirmed in 125 U. S. 345, and qualifying the doctrine in 74 N. Y.], [1869, ch. 217, § 4, amended by 1870, ch. 619];
 137 *Murray v. New York*, 11 Jones and S. 164, [1870, ch. 382, § 9];
 138 *Re Brooklyn, W. and N. R. Co.* 75 N. Y. 335, [1878, ch. 206].
- 1879: 139 *Re Cheesebrough*, 78 ib. 232, [1871, ch. 566].
- 1880: 140 *Re Beebe*, 20 Hun. 462, [1870, ch. 394];
 141 *Re Rosenthal*, 59 How. Pr. 327, [see 140];
 142 *Re Middletown* 82 N. Y. 196, [1885, ch. 85, § 4].
- 1881: 143 *Cole v. Johnson*, 10 Daly 258, [1867, ch. 256, and 1871, ch. 205];
 144 *People ex rel. Hassell v. Hoffman*, 60 How. Pr. 324, [1878, ch. 253].
- 1882: 145 *People ex rel. Gould v. Mutual Teleg. Co.*, 2 N. Y. Civ. Proc. 295, [Code of Civil Proc., §1986];
 145* *People v. Lyon*, 27 Hun. 180, overruled in *Excise Commissioners of Auburn v. Merchant*, 103 N. Y. 143 (1886), [1857, ch. 628];
 146 *Buckhout v. Rall*, 28 ib. 484, [1880, ch. 480];
 147 *People v. Edye*, 11 Daly, 132, [1881, ch. 432, which was also held void by U. S. Sup. Ct. in *N. Y. v. Compagnie Générale Transatlantique*, 107 U. S. 59 (1882)];
 148 *Webb v. N. Y.*, 64 How. Pr. 10, [1881, ch. 456];
 149 *Re Blodgett*, 89 N. Y. 392, [1870, ch. 593];
 150 *People ex rel. Manhattan Sav. Inst. v. Otis*, 90 ib. 48, [1880, ch. 59, § 4];
 151 *People ex rel. Townsend v. Porter*, ib. 68, [1881, ch. 415].
- 1883: 152 *Wheatland v. Taylor*, 29 Hun. 70, [1876, ch. 66];
 152* *People ex rel. McEwan v. Keeler*, ib. 175, [1882, ch. 251];
 153 *People v. Fitzpatrick* 30 ib. 493, [1881, ch. 532, amending Code Civ. Proc. § 1041];
 154 *People v. Petrea*, 92 N. Y. 128, [see 153].
- 1884: 155 *Re Paul*, 94 ib. 497, [1883, ch. 93];
 156 *People ex rel. Smith v. Schiellein*, 95 ib. 124, [1881, ch. 564];
 157 *Re Eureka Basin Warehouse and Mfg. Co.*, 96 ib. 42, [1881, ch. 637];
 158 *Harris v. Niagara C'ty*, 33 Hun. 279, [1881, ch. 13].
- 1885: 158* *Bowe v. U. S. Reflector Co.*, 36 ib. 407, [Code of Civil Proc., § 709];
 159 *Re Rogers Av.*, 29 Abb. N. S. 361, [1869, ch. 670].
 160 *Re Jacobs*, 98 N. Y. 98, [1884, ch. 272—Regulating Manufacture of Tobacco in Tenements];
 161 *People v. Marx*, 99 ib. 377, [1884, ch. 202, amended by 1885, chs. 183 and 458—Oleomargarine Act].
- 1886: 162 *Tingue v. Port Chester*, 101 ib. 294, [1878, ch. 277];
 163 *Popfinger v. Yutte*, 102 ib. 38, [Code of Civil Proc. § 263];
 164 *People ex rel. Harvey v. Loew*, ib. 471, [1885, ch. 554];
 165 *Hutkoff v. Demorest*, 103 ib. 377, [1865, ch. 418, amending Code of Civil Proc.].
- 1887: 166 *Jones v. Jones*, 104 ib. 234, [see 165];
 167 *Remsen v. Wheeler*, 105 ib. 573, [1859, ch. 396, § 24];
 168 *Re N. Y. Dist. R. Co.*, 107 ib. 42, [1880, ch. 582].
 169 *Farnham v. Benedict*, ib. 159, [1880, ch. 577];
 170 *Johnston v. Spicer*, ib. 185, [1885, ch. 337].
- 1888: 171 *People ex rel. Travis v. Durston*, 3 N. Y. Supp. 522, [1887, ch. 464];
 172 *McDougall v. State*, 109 N. Y. 73, [1886, ch. 510];
 173 *People v. O'Neil*,* ib. 251, [1882, ch. 410, § 2143];

- 174 *People v. Gillson*, ib. 389, [1887, ch. 691, amending Penal Code—Prohibiting Gift Enterprises];
- 175 *People ex rel. Killeen v. Angle*, ib. 564, [1883, ch. 354];
- 176 *People v. O'Brien*, 111 ib. 1, [1886, chs. 268, 271, 310];
- 177 *Re Met. Transit Co.*,* ib. 588, [1881, ch. 636, amending 1872, ch. 833].
- 1889: 178 *McCabe v. Kenny*, 52 Hun. 514, [1871, ch. 706];
- 179 *Re N. Y. and L. I. Bridge Co.*, 54 ib. 400, [1885, ch. 392];
- 180 *Astor v. Arcade R. Co.*, 113 N. Y. 93, [1873, ch. 185; 1874, ch. 503; 1881, ch. 454];
- 181 *First National B'k of Lockport v. Bissell*, 7 N. Y. Supp. 53, [Code of Civil Proc., § 401, amended by 1888, ch. 498];
- 182 *Un. Distilling Co. v. Un. Pharm. Co.*, 24 Jones and S. 417, [see 158*].
- 1890: 183 *People ex rel. Dexter v. Mosier*, 56 Hun. 64, [1880, ch. 114, § 2];
- 184 *Re Southern Boulevard R. Co.*, 58 ib. 497, [1887, ch. 723];
- 184^a *People ex rel. Third Av. R. Co. v. Gilroy*, 9 N. Y. Supp. 833, [1889, ch. 531];
- 184^b *Re Malone Waterworks Co.*, 15 ib. 649, [1887, ch. 156, § 12];
- 185 *New York v. Eighth Av. R. Co.*,* 118 N. Y. 389, [1874, ch. 478];
- 185^a *Cromwell v. MacLean*, 123 ib. 474, [1887, ch. 627, § 2];
- 1891: 186 *Standfast v. Crptty*, 13 N. Y. Supp. 584, [Code of Civ. Proc., § 901];
- 187 *New York v. Commissioners of Emigration*, ib. 751, [1882, ch. 145];
- 188 *People ex rel. Miller v. Ryder*, 124 N. Y. 500, [Code of Civil Proc., amended by 1892, ch. 39—Unknown Heirs];
- 189 *Gilman v. Tucker*, 128 ib. 190, [Code of Civil Proc., amended by 1881, ch. 681];
- 190 *Gates v. State*, ib. 221, [1886, ch. 244];
- 191 *Re Union College*, 129 ib. 308, [1871, ch. 461; 1882, ch. 383; 1886, ch. 656].
- 1892: 192 *Re Flower*, ib. 643, [see 191];
- 193 *Egerer v. N. Y. C. and H. R. R. Co.*, 130 ib. 108, [1880, ch. 147];
- 193^a *Mussen v. Ausable Granite Wks.*, 63 Hun. 367, [1882, ch. 410, § 1103];
- 194 *Carroll v. Langan*, ib. 380, [1872, ch. 284, § 10, amending 1849, ch. 150, § 101];
- 195 *People ex rel. Pulman v. Henion*, 64 ib. 471, [1867, ch. 372];
- 196 *People ex rel. Griffin v. Ryder*, 65 ib. 175, [see 188];
- 197 *Getman v. New York*, 66 ib. 236, [see 193^a];
- 198 *Re St. Lawrence and Adirondack R. Co.*, 133 N. Y. 270, [1890, ch. 95, amending Code Civ. Proc., § 3379].
- 1893: 199 *Waterbury v. Egan*,* 3 Misc. 355, [see 161];
- 200 *People ex rel. Decker v. Waters*, 4 ib. 1, [1892, ch. 401, § 24, amended by 1893, ch. 481];
- 201 *Re Cancellation of Names*, 5 ib. 375, [1892, ch. 214];
- 202 *Re Woods*, ib. 575, [see 201];
- 203 *Re Inspectors of Election*, 25 N. Y. Supp. 1063, [see 201].
- 204 *Re So. Market St.*, 67 Hun. 594, [1891, ch. 136, amending 1881, ch. 303];
- 205 *People ex rel. Bishop v. Palen*, 74 ib. 289, [1890, ch. 163, § 3];
- 206 *Forster v. Scott*, 136 N. Y. 577, [1882, ch. 410, § 677];
- 207 *Mitchell v. White Plains*, 138 ib. 627, [1868, ch. 552];
- 207^a *Re Buffalo*, 139 ib. 422, [1887, ch. 557];
- 208 *People ex rel. Reynolds v. Buffalo*, 140 ib. 300, [1891, ch. 42].
- 1894: 209 *Irving v. Britton*, 8 Misc. 201, [1887, ch. 479];
- 210 *Buffalo R. and P. R. Co. v. Lavery*, 75 Hun. 396, affirmed on basis of lower court's opinion in 149 N. Y. 576, [1836, ch. 316];
- 211 *People v. Upson*, 79 ib. 87, [1887, ch. 384, § 265, amended by 1890, ch. 561];
- 212 *Re Gage*, 141 N. Y. 112, [see 201];
- 213 *People ex rel. Keene v. Queens C'ty*, 142 ib. 271, [1891, ch. 290];
- 214 *Flynn v. Central R. Co.*, ib. 439, [see 163];

- 215 *New York v. Manhattan R. Co.*, 143 ib. 1, [see 127];
- 216 *Rogers v. Un. R. Co.*, 10 Misc. 57, [1894, ch. 598].
- 1895: 216* *Matter of Tartaglio*, 12 ib. 245;
- 217 *People v. Warren*, 13 ib. 615, [1894, ch. 622, amending 1870, ch. 385];
- 218 *Dudley v. Flushing Jockey Club*, 14 ib. 58, [1895, ch. 570];
- 218* *People v. Hawkins*, 85 Hun. 43, [1894, ch. 698];
- 219 *Re Brooklyn*, 87 ib. 54, [1888, ch. 583, title 14, § 51];
- 220 *Coxe v. State*, 144 N. Y. 396, [1868, ch. 864, amended by 1869, ch. 282];
- 221 *Re Sweetley* 146 ib. 401, [1894, ch. 717];
- 222 *Williams v. Boynton*, 147 N. Y. 426, [1893, ch. 148].
- 1896: 223 *Seaman v. Dickinson*, 1 App. Div. 19, [1883, ch. 523, § § 126-7];
- 224 *Pierson v. Fries*, 3 ib. 418, [1892, ch. 182, § § 60, 111];
- 225 *Nehasane Park Asso. v. Lloyd*, 7 ib. 359, [1893, ch. 711, § 12];
- 226 *Hagner v. Hall*, 10 ib. 581, [1885, ch. 411, § 1];
- 227 *Baird v. Helfer*, 12 ib. 23, [1876, ch. 196, § 1];
- 228 *Ziegler v. Corwin*, ib. 60, [1890, ch. 561, § 29, and Code of Civil Proc., § 3226];
- 229 *Brooks v. Tayntor*, 17 Misc. 534, [1888, ch. 543];
- 230 *Re Keymer*, 148 N. Y. 219, [1895, ch. 344];
- 231 *N. Y. & L. I. Bridge Co. v. Smith*, ib. 540, [1892, ch. 411];
- 232 *Rathbone v. Wirth*, 150 ib. 459, [1896, ch. 427];
- 233 *People ex rel. Eckerson v. Haverstraw*, 151 ib. 75, [1878, ch. 59, and 1893, ch. 694].
- 1897: 234 *Colon v. Lisk*, 153 ib. 188, [1896, ch. 383];
- 235 *People ex rel. Eldred v. Palmer*, 154 ib. 133 [1896, ch. 772];
- 236 *Re Burger*, 21 Misc. 370, [1896, ch. 424].
- 1898: 237 *Re Kenny*, 23 ib. 9, [1897, ch. 378, § § 707-11];
- 238 *Mercer v. Floyd*, 24 ib. 164, [1896, ch. 111];
- 239 *Tobias v. Perry*, 25 ib. 74, [1890, ch. 58];
- 240 *People ex rel. Howard v. Wende*, ib. 330, [1891, ch. 105, § 374];
- 241 *Hargraves Mills v. Harden*, ib. 665, [1892, ch. 687, § 15];
- 242 *German-Am. R. E. Guarantee Co. v. Meyers*, 32 App. Div. 41, [see 159];
- 243 *Exempt Firemen Assoc. v. Exempt Firemen's Benev. Fund*, 34 ib. 138, [1896, ch. 141];
- 243* *People ex rel. Ordway v. St. Saviour's Sanitarium*, ib. 363, [1892, ch. 467];
- 244 *People ex rel. MacDonald v. Leubischer*, ib. 577, [Code of Civil Proc., § 920];
- 245 *People ex rel. Burby v. Howland*, 155 N. Y. 270, [1896, ch. 22, § § 19-20];
- 246 *People ex rel. Ryan v. Washington C'ty*, ib. 295, [see 245];
- 247 *Re Henneberger*, ib. 420, [1897, ch. 286];
- 248 *People v. Hawkins*, 157 ib. 1, [1896, ch. 931—see also 218*];
- 249 *People ex rel. Tyroler v. City Prison*, ib. 116, [1897, ch. 506—Brokerage in Passage Tickets].
- 1899: 250 *Rieser v. Parker & Co.*, 27 Misc. 205, [1897, ch. 378];
- 251 *Pierson v. Ward*, ib. 793, [see 250].
- 252 *Tyroler v. Gummersbach*, 28 ib. 151, [see 250];
- 253 *Re Fallon*, ib. 748, [1899, ch. 700];
- 254 *McConologue v. McCaffrey*, 29 ib. 139, [see 250];
- 255 *Rochester and C. Turnpike R'd Co. v. Joel* 41 App. Div. 43, [1898, ch. 151];
- 256 *Re Straus*, 44 ib. 425, [see 253];
- 257 *Re Jensen*, ib. 509, [see 253];
- 257* *Re Rupp*, 45 ib. 631, affirming 28 Misc. 703, [1899, ch. 587, amending 1891, ch. 105, § 184];
- 258 *People ex rel. White v. York*, 158 N. Y. 670, affirming 35 App. Div. 300, [1898, ch. 398];

- 259 *Gilbert v. Ackerman*, 159 ib. 118, [Code of Civil Proc., as amended by 1897, ch. 281];
- 260 *Bush v. Orange C'ty*, ib. 212, [1892, ch. 664];
- 261 *De Camp v. Dix*, ib. 436, [1851, ch. 207, amended by 1894, ch. 712];
- 262 *Parfitt v. Ferguson*, ib. 509, [1891, ch. 59];
- 263 *Levy v. Dunn*, 160 ib. 504, [Code of Civil Proc., § 1421];
- 264 *People ex rel. Howard v. Erie C'ty*, ib. 687, [1895, ch. 805, § 24, amending 1891, ch. 105, § 374];
- 265 *Warsaw Waterw'ks Co. v. Warsaw*, 161 ib. 176, [1894, ch. 284].
- 1900:
- 266 *Green v. Port Jervis*, 31 Misc. 59, [1896, ch. 529, § 82];
- 267 *Watson v. Del., Lack., and W. R. Co.*, 32 ib. 311, [1895, ch. 1027—*Mileage Book Acts*];
- 268 *Berridge v. Shults*, ib. 444, [1890, ch. 568, § § 106-16];
- 269 *Cottew v. Dube*, ib. 632, [1895, ch. 633];
- 269^a *Re Lent*, 47 App. Div. 349, [1871, ch. 882];
- 270 *Town of Hempstead v. N. Y.*, 52 ib. 182, [1898, ch. 469];
- 271 *People ex rel. Holmes v. Lane*,* 53 ib. 531, [1899, ch. 341];
- 272 *Bell v. Niewahner*, 54 ib. 530, [1896, ch. 376, § 29];
- 273 *Bohmer v. Haffen*, 161 N. Y. 390, [1863, ch. 361, § 9];
- 274 *Beardsley v. N. Y., L. E. and W. R. Co.*, 162 ib. 230, [see 267];
- 275 *People ex rel. Balcom v. Mosher*, 163 ib. 32, [1899, ch. 370, § 13];
- 276 *Re Tuthill*, ib. 133, [1895, ch. 384];
- 277 *People v. Buffalo Fish Co.*, 164 ib. 93, [*Cf. Silz v. Hesterberg*, 211 U. S. 31, [1893, ch. 488, § § 110, 112—*Game Law*].
- 1901:
- 277^a *Matter of Fattosini*,* 33 Misc. 18;
- 278 *People v. Cone*, ib. 393, [see 277];
- 279 *Milligan v. Brooklyn Warehouse and Storage Co.*, 34 ib. 55, [see 269];
- 280 *Re New York*, ib. 719, [1896, ch. 727];
- 281 *People ex rel. Weil v. Hagan*, 35 ib. 155, [1901, ch. 639—*Brokerage in Passage Tickets*];
- 282 *Kelly v. Van Wyck*, ib. 210, [1897, ch. 378, § § 1392, 1394];
- 283 *Signell v. Wallace*, ib. 656, [1901, ch. 334, § 4];
- 283^a *New York Sanitary Utilization Co. v. Health Dep't*,* 61 App. Div. 106, [1897, ch. 378, § 1212, amended by 1900, ch. 663];
- 284 *Follet Wool Co. v. Albany Terminal Warehouse Co.*, ib. 296, [see 269];
- 285 *Chrystal v. New York*, 63 ib. 93, [1895, ch. 167];
- 286 *Barry v. Port Jervis*, 64 ib. 268, [see 286];
- 287 *Warner v. Palmer*, 66 ib. 127, [see 272];
- 288 *People v. Cox*,* 67 ib. 344, [1900, ch. 625, amending Code Crim. Proc., § 444];
- 289 *Fox v. Mohawk and H. R. Humane Society*, 165 N. Y. 517, [1896 ch. 448];
- 290 *People ex rel. Rodgers v. Coler*, 166 N. Y. 1, [1899, chs. 192 and 567—*Labor Law*];
- 291 *People ex rel. Treat v. Coler*, ib. 144, [1897, ch. 415—*Labor Law*];
- 292 *Re Greene*, ib. 485, [1900, Ch. 614];
- 292^a *Re Peck*,* 167 ib. 391, [1896, ch. 112, § 28];
- 293 *Chapman v. New York* 168 ib. 80, [see 253];
- 294 *People ex rel. Fleischman v. Caldwell*, ib. 671, affirming 64 App. Div. 46, [see 281];
- 295 *People v. Biesecker*, 169 ib. 53, [1893, ch. 338, § 27, amended by 1900, ch. 534].
- 1902:
- 296 *People ex rel. Price v. Woodbury*, 38 Misc. 189, [1901, ch. 466, § 1560, amending 1897, ch. 378];
- 296^a *Matter of Lobrasciano*,* ib. 415;
- 297 *Auchincoss v. Met. Elev. Co.*, 69 App. Div. 63, [1875, ch. 595];
- 298 *Egerer v. N. Y. C. and H. R. R. Co.*, 70 ib. 421, [see 193].
- 299 *Wilson v. United Traction Co.*, 72 ib. 233, [1895, ch. 417];

- 300 *People ex rel. Madden v. Dycker*, ib. 308, [1900, ch. 768, amending Penal Code, § 3481];
- 301 *Young v. Rochester*, 73 ib. 81, [1902, ch. 3];
- 302 *Saratoga Springs v. Van Norder*, 75 ib. 204, [1901, ch. 178];
- 302^a *Rochester v. Bloss*, 77 ib. 28, [1901, chs. 200, 719];
- 303 *Re Brenner*, 170 N. Y. 185, [1901, ch. 602];
- 304 *Re Fell*, 171 ib. 48, [1899, ch. 76];
- 305 *People v. Dooley*, ib. 74, [1901, ch. 466, § 1392, amending 1897, ch. 378, § § 1392-94];
- 306 *Mahon v. B'd of Education*, ib. 263, [1900, ch. 725].
- 1903: 307 *Stryker v. Churchill*, 39 Misc. 578, [Penal Code, § 411];
- 308 *People v. Booth and Co.*, 42 ib. 321, [1902, ch. 194, § 141];
- 309 *Ryan v. New York*, 78 App. Div. 134, [see 290];
- 310 *Grossman v. Caminez*, 79 ib. 15, [Cf. 83 App. Div. 197], [1901, ch. 128];
- 311 *Cody v. Dempsey*, 86 ib. 335, [see 310];
- 311^a *Re Haase*, 88 ib. 242, [1903, ch. 8];
- 312 *People ex rel. Stephens v. Phillips*, ib. 560, [1899, ch. 711];
- 313 *People ex rel. Dilzer v. Calder*, 89 ib. 503, [1903 ch. 252];
- 314 *Livingston v. Livingston*, 173 N. Y. 377, [1900, ch. 742];
- 315 *People v. Orange C'ty R'd Construction Co.*, 175 ib. 84, [Penal Code, § 384h, subsec. 1—Hours of Labor];
- 316 *People ex rel. Lewisohn v. O'Brien*, 176 ib. 253, [Penal Code, § 342].
- 1904: 317 *Re Pennsylvania*, 45 Misc. 46, [Code of Crim. Proc., § 618a];
- 318 *Mt. Sinai Hospital v. Hyman*, 92 App. Div. 270, [1898, ch. 257, and 1900, ch. 166];
- 319 *People v. Windholz*, ib. 569, [1901, ch. 308, amending 1893, ch. 338, § 50];
- 320 *People v. Beattie*, 96 ib. 383, [1897, ch. 415, § § 180-84; 1899, ch. 558; 1903, ch. 151];
- 321 *Re Cullinan*, 97 ib. 122, [also, 82 ib. 445], [1901, ch. 640, and 1900, ch. 367, amending 1896, ch. 112, § 28];
- 322 *Riglander v. Star Co.*, 98 ib. 101, [Code of Civil Proc., § 793];
- 323 *Martin's B'k v. Amazonas Co.*, ib. 146, [see 322];
- 324 *Corscadden v. Haswell*, 177 N. Y. 499, [1902, ch. 127];
- 325 *People ex rel. McPike v. Van De Carr*, 178 ib. 425, [Penal Code, § 640, subsec. 16—Use of Flag];
- 326 *People ex rel. Cossey v. Grout*, 179 ib. 417, [see 290];
- 327 *People v. Bootman*, 180 ib. 1, [see 277].
- 1905: 328 *McMullen v. Middletown*, 46 Misc. 360, [1902, ch. 572, § 30];
- 329 *People ex rel. Appel v. Zimmerman*, 102 App. Div. 103, [1904, ch. 657, amending Penal Code, § 348q];
- 330 *People ex rel. Bush v. Houghton*, ib. 209, [1903, ch. 383];
- 331 *Re Grout*, 105 ib. 98, [Code of Civic Proc., § 856];
- 332 *Woerner v. Star Co.*, 107 ib. 248, [see 322].
- 333 *People v. Fitzgerald*,* 180 N. Y. 269, [1901, ch. 466, § 94];
- 333^a *Cahill v. Hogan*, ib. 304, [1904, ch. 629];
- 334 *Schnaier v. Navarre Hotel Co.*, 182 ib. 83, [1896, ch. 803];
- 335 *Wright v. Hart*, ib. 330, [1902, ch. 528, amended by 1904, ch. 569—Bulk Sales Act].