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REEVES *v.* CONTINENTAL RAILWAY CO.[1] SUPREME COURT OF PENNSYLVANIA.

Local and Special Legislation — Classification of Cities—Legislation Concerning Railways in Class of Cities.

Under the Constitution of Pennsylvania, prohibiting local or special legislation, classification of subjects, including cities, is permissible, and legislation applying alike to all the members of a class is not local or special, but general, though there be only one city in the class. Laws which operate upon the exercise of some power or duty of a municipal nature are general. An Act providing that "passenger railways in any and all cities of the first class . . . may use other than animal power . . . whenever authorized to do so by the councils of such city, and the limitations contained in any of the charters of passenger railway companies, restricting them to the use of horse power, be and they are hereby repealed," being upon a subject as to which the classification of cities is proper, is a general law.

ABSTRACT FROM OPINION OF MITCHELL, J.

By the Act of May 8, 1876, P. L. 147, "passenger railways in any and all cities of the first class . . . may use other than animal power . . . whenever authorized so to do by the councils of such city, and the limitations contained in any of the charters of passenger railway companies, restricting them to the use of horse-power, be and the same are hereby repealed, provided," etc. If this statute is constitutional, it supplies the necessary authority. It is claimed, however, that it transgresses the prohibition of Article III, Section 7, of the Constitution, in that it is a local or special law amending or extending the charter of a corporation. But under the settled construction of this section, classification of subjects, including cities, is per-

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missible, and legislation which applies alike to all the members of a class is not local or special, but general. The important inquiry, therefore, is whether the Act of 1876 is upon a subject as to which the classification of cities is proper. Repeated decisions of this Court have marked out the lines upon which such classification may proceed. It is not necessary to cite them all, but in one of the latest, Wyoming Street, 137 Pa., 494 (503), our brother WILLIAMS has put the test into the compactest phrase: "The test, therefore, by which all laws may be tried is their effect. If they operate upon the exercise of some power or duty of a municipality of the given class . . . they are general," and he gives as an example, "an Act relating to the lighting of streets in cities of the third class would be a general law." The control of the vehicles which shall be used on the public streets for the general conveyance of passengers, the rate of speed, and the motive power by which they shall be propelled, is equally or even more peculiarly the subject of municipal duty. In fact, public conveyances, whether ferry-boats, barges, hackney coaches, or omnibusses have been subjects of police regulation and license as long as they have been known or used in Pennsylvania. The Act of 1876 is, therefore, upon a subject proper for municipal classification and is a general law. It takes off restrictions previously existing as to the motive power of cars upon streets, and commits the whole subject to the control of the cities themselves acting through their councils. This is its effect, and that is the test of its constitutionality. That incidentally it has affected and enlarged the charters of certain railway corporations does not vitiate it as an exercise of unquestionable police powers over subjects within their proper province. The second clause of the Act expressly repealing the charter restrictions to horse-power as a motor, is not an essential part of its substance, and might have been omitted without impairing its general scope and effect. It was manifestly added to prevent any question of the application of the Act to companies already chartered.

The learned Court below thought itself bound by the decision in Weinman *v.* Pass. R. W. Co., 118 Pa., 192, but there is a distinction between the cases that is capable of sharp definition. The statute involved in that case was one relating to the formation of corporations. In the language of the opinion, "the subject of this statute is street railway companies, which is a subject for general legislation; while the statute professes to deal only with a limited number of these railways, and these are selected by reference to their location in certain cities. Under the guise of a general law, we have here one which is special, because it relates to a few members of the general class of corporations known as street railway companies; and local because its operations are confined to particular localities." The essence of that decision is that the formation of corporations, their corporate powers, capital stock, dividends, etc., have no relation to the classification of cities, and cannot be made in any way to depend thereon. The Act of 1876, on the contrary, as we have seen, has nothing to do with the formation, stock, or dividends of passenger railway companies, but refers solely to the management of their cars on the public streets, a subject having close relations to the powers and duties of the municipal authorities to which the Act commits its control.

CLASSIFICATION PERMISSIBLE WITHOUT INFRINGING CONSTITUTIONAL INHIBITION OF LOCAL AND SPECIAL LEGISLATION.

The decision in Reeves *v.* Continental Railway Co. seems so consistent with the trend of judicial precedents, not only in Pennsylvania but elsewhere, that the following consideration of the authorities should be regarded as convenient rather than as strictly necessary.

In the leading case of Wheeler *v.* Philadelphia, 77 Pa., 338 (1875), it was said by PAXSON, J. (on p. 384): "A statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special, and comes within the constitutional prohibition" of the enactment of local or special laws. This definition has been approved and followed in other States, and notably in *In re* Application of Church, 92 N. Y., 1, 4 (1883); *In re* New York Elevated R. R. Co., 70 Id., 327, 350 (1877); State *v.* City of Trenton, 42 N. J. L., 13 Vroom, 486, 488 (1880); State *v.* Herrmann, 75 Mo., 340, 354 (1882); State *v.* Tolle, 71 Id., 645, 650 (1880). In Wheeler *v.*

Philadelphia, *supra*, the Act of May 23, 1874, dividing the cities of Pennsylvania into three classes as follows: Those containing a population exceeding 300,000, constituting the first class; the cities of less population, but exceeding 100,000, making the second class, and cities having a population between 10,000 and 100,000, comprising the third class, was assailed for the reason that "it creates an unconstitutional classification of the cities of the Commonwealth, and by indirection legislates specially for the city of Philadelphia," which was the only city whose population brought it within the first class. A few months previous to the enactment the new Constitution of the State was adopted, containing the new provision: "The General Assembly shall not pass any local or special law . . . . regulating the affairs of counties, cities, townships, wards, boroughs or school districts," etc.: Constitution Pennsylvania, 1874, Art. III, § 7; 1 Purd. Dig., 29. Similar provisions appear in the Constitutions of most of the States: Stimson's Am. Stat. Law, § 395. But the Act of 1874, *supra*, was held constitutional, PAXSON, J., saying (p. 349–351): "But it is contended that even if the right to classify exists, the exercise of it by the legislature, in this instance, is in violation of the Constitution, for the reason that there is but one city in the State with a population exceeding 300,000; that to form a class containing but one city is in point of fact legislating for that one city, to the exclusion of all others, and constitutes the local and special legislation prohibited by the Constitution. This argument is plausible, but unsound. It is true, the only city in the State at the present time containing a population of 300,000, is the city of Philadelphia. It is also true that the city of Pittsburgh is rapidly approaching that number, if it has not already reached it, by recent enlargements of its territory. Legislation is intended not only to meet the wants of the present, but to provide for the future. It deals not with the past, but, in theory at least, anticipates the needs of a State healthy with a vigorous development. It is intended to be permanent. At no distant day Pittsburgh will probably become a city of the first class; and Scranton, or others of the rapidly-growing interior towns, will take the place of the city of Pittsburgh as a city of the second class. In the meantime, is the classification as to cities of the first class bad because Philadelphia is the only one of the class? We think not. Classification does not depend upon numbers. The first man, Adam, was as distinctly a class when the breath of life was breathed into him, as at any subsequent period. The word is used not to designate numbers, but a rank or order of persons or things; in society it is used to indicate equality, or persons distinguished by common characteristics, as the trading classes, the laboring classes; in science it is a division or arrangement containing the subordinate divisions of order, genus and species. If the classification of cities is in violation of the Constitution, it follows, of necessity, that Philadelphia, as a city of the first class, must be denied the legislation necessary to its present prosperity and future development, or that the small inland cities must be burdened with legislation wholly

unsuited to their needs. For if the Constitution means what the complainants aver that it does, Philadelphia can have no legislation that is not common to all other cities of the State. And for this there is absolutely no remedy, but a change in the organic law itself. This is a serious question. We have but to turn to the statute-book to realize the vast amount of legislation in the past, special to the city of Philadelphia. We speak not now of what is popularly known as special legislation, private acts, etc., but of proper legislation, affecting the whole city, and indispensable to its prosperity. . . . . We have but to glance at this legislation to see that the most of it is wholly unsuited to small inland cities, and that to inflict it upon them would be little short of a calamity. Must the city of Scranton, over one hundred miles from tide-water, with a stream hardly large enough to float a batteau, be subjected to quarantine regulations, and have its lazaretto? Must the legislation for a great commercial and manufacturing city, with a population approaching 1,000,000, be regulated by the wants or necessities of an inland city of 10,000 inhabitants? If the Constitution answers this question affirmatively, we are bound by it, however much we might question its wisdom. But no such construction is to be gathered from its terms, and we will not presume that the framers of that instrument, or the people who ratified it, intended that the machinery of their State government should be so bolted and riveted down by the fundamental law as to be unable to move and perform its necessary functions."

Strenuous effort was made in Kilgore *v.* Magee, 85 Pa., 401 (1877) to overturn the decision in Wheeler *v.* Philadelphia, *supra*, without avail. It was held that an Act "in relation to cities of the first and second class, providing for the levy, collection and disbursement of taxes and water rents," was permissible legislation. It was said (p. 411) *per curiam:* "The power to classify cities according to the number of their population was fully discussed and decided in the case of Wheeler *v.* Philadelphia. . . . We adhere to that decision. . . . To say that no general law can be passed to regulate a certain subject because some of the classes contained in the regulation do not exist, or exist only in a limited number, is to hold that no law can be passed to provide for future wants or necessities. . . . If the classification had been different, and the number of the population to constitute a city of the first class had been fixed at one million, would the classification be void because no city had yet reached that number? The absurdity of that proposition is manifest, and it is simply to say that no law can provide for a state of affairs to which the subject is rapidly approaching, but which it has not yet reached. If the power to classify and regulate the subject of cities generally be admitted, and clearly it cannot be successfully denied, the question of local legislation is at an end; for though it may happen that but one city may fall within the class *non constat* that others will not shortly do so, and, therefore, may be provided for."

Legislation for classes, but not for persons or things of a class, is permissible in other States having constitutional provisions prohibit-

ing special or local legislation. Walker *v.* City of Cincinnati, 21 Ohio St., 14 (1871) is one of the earliest of cases of importance, and was approved in Wheeler *v.* Philadelphia, 77 Pa., 338, 351 (1875). An Act applying to all cities in the State falling within a specified class is neither local nor special, but of uniform operation: DAY, J., in Haskel *v.* City of Burlington, 30 Iowa, 232, 237 (1870). It was said by MILLER, C. J., in Iowa Railroad Land Co. *v.* Soper, 39 Id., 112, 116 (1874), concerning a statute whose constitutionality was questioned: "The Act applies to all 'counties, school districts, or other municipal corporations' falling within the conditions mentioned in the Act; and it is, therefore, not a local or special law, but general." In Pritchett *v.* Stanislaus County, 73 Cal., 310 (1887), an Act dividing all municipal corporations within the State into six classes, according to population, was held constitutional. See also Thomason *v.* Ashworth, Id., 73, 78, per THORNTON, J. (1887); Desmond *v.* Dunn, 55 Cal., 242 (1880); Earle *v.* Board of Education, Id., 489 (1880); McConihe *v.* State, 17 Fla., 238 (1879); State *v.* Stark, 18 Id., 255 (1881); State *v.* Butts, 31 Kansas, 537 (1884); Gilmore *v.* Hentig, 33 Id., 156 (1885); Mason *v.* Spencer, 35 Id., 512 (1886). For the purposes of legislation cities constitute a class, and a law applicable to cities only is not unconstitutional: *In re* Commissioners of Elizabeth, 49 N. J. L., 20 Vroom, 488 (1887); State *v.* City of Camden, 40 N. J. L., 11 Vroom, 156 (1878); State *v.* Newark, Id., 71, 550 (1878); State *v.* Steen, 43 N. J. L., 14 Vroom, 542 (1881). A law applicable to all counties of a class, as made or authorized by the Constitution, is neither a local nor a special law. If it applies to all the counties of a class authorized by the Constitution to be made, it is a general law, and whether there may be few or many counties to which its provisions will apply, is a matter of no consequence: SCOTT, J., in Knickerbocker *v.* People, 102 Ill., 218, 229 (1882). A general law, unlimited as to time in its operation, is not obnoxious to a constitutional inhibition against local legislation because it happens that but one city in the State has the population necessary to come within its purview: Darrow *v.* People, 8 Colorado, 417 (1885). The Act criticized in this case was for the creation of a Superior Court. HELM, J., said (p. 418): "Denver, it is true, is the only city to which the Act at present applies. But the Legislature clearly intended to provide for places that may hereafter acquire the population mentioned. The law is general and unlimited as to time in its operation. There is nothing unreasonable in the supposition that other towns and cities within the State will eventually contain twenty-five thousand inhabitants."

In re Application of Church, 92 N. Y., 1 (1883), an Act giving the board of supervisors in any county containing an incorporated city of over 100,000 inhabitants, where contiguous territory in the county has been mapped out into streets and avenues, power to lay out, open, grade and construct the same, and to provide for the assessment of damages on the property benefited, was held not to be a local law within the intendment of the State Constitution. FINCH, J., said (p. 4), referring to the distinction between local and general legislation, given

by EARL, J., *In re* New York Elevated R. R. Co., 70 N. Y., 327, 350 (1877): "A law relating to particular persons or things *as a class* was said to be general; while one relating to particular persons or things *of a class* was deemed local and private. The Act of 1881 [in question] relates to a class, and applies to it as such, and not to the selected or particular elements of which it is composed. The class consists of every county in the State having within its boundaries a city of 100,000 inhabitants, and territory beyond the city limits mapped into streets and avenues. How many such counties there are now, or may be in the future, we do not know, and it is not material that we should. Whether many or few, the law operates upon them all alike, and reaches them, not by a separate selection of one or more, but through the general class of which they are individual elements." EARL, J., said, *In re* N.Y. Elevated R. R. Co., *supra:* "A law granting to all horse railway companies, elevated railway companies, the right to lay down railroad tracks, would be constitutional. It would operate uniformly and generally upon all companies in the same situation and belonging to the same class, and that would make it general." See, also, People *v.* Newburgh and Shawangunk Plank Road Co., 86 N.Y., 1, 7 (1881), per EARL, J., *In re* Application of Woolsey, 95 N. Y., 135 (1884). Statutes exempting citizens in certain excepted counties of a State from the duty of fencing their fields, and permitting them to let their sheep run at large, confer privileges denied to others within the same class in other parts of the State, and are therefore unconstitutional: Darling *v.* Rodgers, 7 Kansas, 592 (1871); Robinson *v.* Perry, 17 Id., 248 (1876); see, also, People *v.* Central Pacific R. R. Co., 43 Cal., 398 (1892); Brooks *v.* Hyde, 37 Id., 366 (1869); French *v.* Teschemaker, 24 Id., 518 (1864); People *v.* Judge of the Twelfth District, 17 Id., 547 (1861). In McGill *v.* State, 34 Ohio St., 228, 245 (1877), BOYNTON, J. says: "That a law of a general nature must concern a subject-matter existing and capable of uniform operation, cannot be denied; for, if the law, from the nature of its subject-matter, is not susceptible of an operation throughout the State, it cannot, within the meaning of the Constitution, be a law of general nature." See, also, Fields *v.* Commissioners, 36 Ohio St., 476 (1881); State *v.* Riordan, 24 Wis., 484 (1869); *ex parte* Westerfield, 55 Cal., 550 (1880); State *v.* California Mining Co., 15 Nevada, 234 (1880).

In McAunnich *v.* Railroad Co., 20 Iowa, 338, 343 (1866), COLE, J., says of laws conferring certain rights, powers and privileges on cities of the first class, and different and less powers and privileges on cities of the second class, and still different and less upon towns: "Each class has its powers and privileges different from the other. These laws are general and uniform, not because they operate upon every person in the State, for they do not, but because every person who is brought within the relations and circumstances provided for is affected by the law. They are general and uniform in their operation upon all persons in the like situation, and the fact of their being general and uniform is not affected by the number of persons within the scope of their operation." The statute whose validity was attacked

provided that "every railroad company shall be liable for all damages sustained by any person, including employees of the company, in consequence of any neglect of the agents, or by any mismanagement of the engineer or other employees of the corporation, to any person sustaining such damage." It was urged that the Act was unconstitutional because limited in its operation to railroad companies, subjecting them to a liability from which other persons and corporations were exempt. But the statute was held to be constitutional, for the reasons stated by COLE, J., *supra*. The same Judge says of an Act providing for the taxation of express and telegraph companies: "This Act operates upon all corporations or companies engaged in telegraph or express business within this State, and concerns the public. It cannot, therefore, be a special statute, but it is a general statute:" U. S. Express Co. *v.* Ellyson, 28 Iowa, 370, 375 (1869). In C., B. & Q. R. R. Co. *v.* Iowa, 94 U. S., 155 (1876), it was held that railroads within the State could be classified according to business, and a maximum of rates established for each of the classes, since the operation upon each class was uniform within the constitutional requirement, and "a uniform rate of charges for all railroad companies in the State might operate unjustly on some. It was proper, therefore, to provide in some way for an adaptation of the rates to the circumstances of the different roads; and the General Assembly, in the exercise of its legislative discretion, has seen fit to do this by a system of classification:" per WAITE, C. J. (p. 164). Justices FIELD and STRONG dissented. See, also, L. R. & Ft. S. Ry. Co. *v.* Hanniford, 49 Ark., 291, 294, per BATTLE, J. (1887).

In State *v.* Parsons, 40 N. J. L., 11 Vroom, 1 (1878), it was held that, a general law as contradistinguished from one special or local, is a law that embraces a class of subjects or places, and does not omit any subject or place naturally belonging to such class. BEASLEY, C. J., said (p. 8): "A law settling the methods by which all railroads should become incorporated would be special in the sense that it would be confined in its operation to but a single kind of corporation, and so a law would be local by this same test that should provide for the organization, under one system, of all the municipal governments in the State, as such a law would manifestly have a restricted effect with respect to locality." In State *v.* City of Trenton, 42 N. J. L., 13 Vroom, 486, 488 (1880) DIXON, J., gave as an illustration that "a statute giving to all cities bordering upon tide-water the power to construct docks or establish quarantine regulations, or providing that in all towns having volunteer fire departments the members of the department should choose a commission to govern them," would presumably be valid. Likewise "a statute declaring that all cities containing a population over a certain number shall have a given number of voting places, and all cities containing a lesser number shall have a prescribed lesser number," would be obviously legal, "because the classes of persons thus distinguished from each other would naturally stand upon a different footing with respect to the particular subject to which such legislation related; but if a law, based on the same classifications,

should provide that the former of such classes should have a certain system of laying out streets and the latter a different system, such a classification would be clearly illusive, inasmuch as the law thus enacted would bear no affinity to the qualities or attributes forming the basis of the classification:" BEASLEY, C. J., in State *v.* Parsons, *supra*. A law is general if "it does not exclude from its sway or effect any place or subject belonging to the class to which it relates:" *Id.* In State *v.* Parsons the statute considered was "An Act concerning commissioners to regulate municipal affairs;" and it was held valid, though applying only to Jersey City.

The same case came again before the Court, and DIXON, J., held that a law, framed in general terms, restricted to no locality and operating equally upon all of a group of objects which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law, without regard to the consideration that within the State there happens to be but one individual of the class, or one place where it produces effects: State *v.* Parsons, 40 N. J. L., 11 Vroom, 123, 125 (1878). The case was approved by SHERWOOD, C. J., in State *v.* Herrmann, 75 Mo., 340, 348 (1882): "Plainly a law may be general in its provisions, and may apply to the whole of a group of objects having characteristics sufficiently marked and important to make them a class by themselves, and yet such a law may be in contravention of this constitutional prohibition. Thus, a law enacting that in every city of the State in which there are ten churches there should be three commissioners of the water department, with certain prescribed duties, would present a specimen of such a law, for it would sufficiently designate a class of cities and would embrace the whole of such class; and yet it does not seem to me (BEASLEY, C. J., of New Jersey) that it could be sustained by the courts. If it could be so sanctioned then the constitutional restriction would be of no avail, as there are few objects that can be arbitrarily associated, if all that is requisite for the purpose of legislation is to designate them by some quality, no matter what that may be, which will so distinguish them as to mark them as a distinct class."

In State *v.* City of Trenton, 42 N. J. L., 13 Vroom, 486 (1880), a statute purporting to confer upon all cities having a population of not less than 25,000 inhabitants the power of issuing bonds to fund their floating debt was held to be a special law, violating the Constitutional Amendment forbidding the passage of private, special or local laws to regulate the internal affairs of towns. DIXON, J., said (p. 487): "Under this clause of the Constitution it has already been decided, in this State, that a law, to be neither special nor local, need not apply to all towns—that it will be general if it apply to a class of towns. Thus, cities have been held to be included among 'towns,' as here intended, and doubtless a law embracing all cities and all townships would be constitutional, for these bodies, because of their marked peculiarities, are, by common consent, regarded as distinct forms of muni-

cipal government, and so constituting classes by themselves. . . . (p. 488): The class to be affected must consist of individuals distinguished by some important characteristic to which the purpose of the law relates, and must embrace all those so characterized." The Judge shows the distinction between the statute involved and that dividing the cities of Pennsylvania into three classes: Wheeler *v.* Philadelphia, 77 Pa., 338 (1875); Kilgore *v.* Magee, 85 Id., 401 (1877). The classification by the Pennsylvania statute, he says (p. 489), "was made for all the purposes of municipal legislation, and could therefore be regarded as a general classification, while in the present law the grouping of cities is for a special purpose only—to confer on some a power of funding debts not granted to others; and hence, in this aspect, the law is special. If it be sustained, the classes into which towns may be divided, on this simple basis of population, will be as numerous and diversified as the purposes of the legislature, and all the evils sought to be averted by the abolition of the power to legislate for individuals will return under the form of class legislation." See, also, State *v.* City of New Brunswick, 42 N. J. L., 13 Vroom, 51 (1880); State *v.* Bogert, Id., 407 (1880).

In State *v.* Jersey City, 45 N. J. L., 16 Vroom, 297 (1883), an "Act respecting licenses in cities of the first class," was held to be local and special, and therefore unconstitutional, inasmuch as its provisions limited its operation to cities having a population of over 100,000, "according to the last census of the United States," "and thereby preventing its ever applying to any other city than Newark and Jersey City," using "population as a means of designating particular cities, to the exclusion of others that may acquire the same characteristics:" DIXON, J., p. 298.

In Ernst *v.* Morgan, 39 N. J. Eq., 12 Stewart, 391, 394 (1885), an Act providing for an assistant clerk in a county exceeding 60,000 in population to be paid by the county if in that county the fees go by law to the county, but not otherwise, was held to be interdicted by the constitutional prohibition against special legislation regulating the internal affairs of towns and counties: *Per* RUNYON, Chancellor. See, also, State *v.* Gaddis, 44 N. J. L., 15 Vroom, 363 (1882).

In State *v.* Hammer, 42 N. J. L., 13 Vroom, 435 (1880), it was held, that although the title, "An Act relating to the assessment and revision of taxes in cities in this State," was general, yet this generality was curtailed by the words in the beginning of the body of the enactment, "that in any city of this State where a board of assessment and revision of taxes now exists, such board, etc.," the effect being to restrict the operation of the law to those certain localities that were possessed, at the time of the passage of the enactment, of the body of officers so designated," viz.: the cities of Elizabeth and Newark. "The result, therefore, is that the Act was intended to apply, and that it does and must ever apply, to these two cities alone, and that the legal effect of this law, as now constituted, is the same as though it had in express terms declared that it was not to be operative through the State at large, but in the cities of Elizabeth and Newark only:" per BEASLEY, C. J., p. 439. The case was affirmed

in 1882 by the Court of Errors and Appeals, Chancellor RUNYON saying: "Normally, there can be under our Constitution no such thing as local or special legislation to regulate the internal affairs of municipalities; but all legislation to that end must be general and applicable alike to all. Nor can any departure from the rule be justified except where, by reason of the existence of a substantial difference between municipalities, a general law would be inappropriate to some, while it would be appropriate to and desirable for others. There it would be warranted, not only by the necessities of the situation, but by a reasonable construction of the constitutional provision. In such a case the municipalities in which the peculiarity exists would constitute a class, and the legislation would in fact be general, because it would apply to all to which it would be appropriate. But distinctions which do not arise from substantial differences—differences so marked as to call for separate legislation—constitute no ground for supporting such legislation:" Hammer *v.* State, 44 N. J. L., 15 Vroom, 667, 669, 670 (1882). See, also, State *v.* Common Pleas of Morris County, 42 N. J. L., 13 Vroom, 631 (1880).

In State *v.* Mitchell, 31 Ohio St., 592 (1877), an Act providing "for the improvement of streets and avenues in certain cities of the second class," and applicable to "cities of the second class having a population of over 31,000 at the last Federal census," was held to be a special statute. WHITE, C. J., said (p. 607): "Columbus is the only city in the State having the population named at the last Federal census, and the Act, therefore, applies alone to that city, and never can apply to any other. The effect of the Act would have been precisely the same if the city had been designated by name instead of by the circumlocution employed."

In People *v.* Cooper, 83 Ill., 585 (1876), "an Act in regard to the assessment of property and the levy and collection of taxes by incorporated cities in this State," was held to be a local or special law, within the intendment of the Constitution prohibiting the passage of "any local or special law incorporating cities, towns or villages, or changing or amending the charter of any town, city or village." SCHOLFIELD, J., said (p. 591): "The question . . . . is not merely what kind of a law does the 'City Tax Act' profess to be, but what is the result it must necessarily produce? If it is to establish dissimilarity in the powers and modes of different cities in the levy and collection of taxes, then, in our opinion, since the law conferring these powers and prescribing these modes becomes a part of the charters of the cities, it is forbidden by the Constitution, and does not have the force of law."

In Devine *v.* Board of Commissioners of Cook County, 84 Ill., 590 (1877), an Act limited in its operations to counties containing over 100,000 inhabitants, was held to be a local law. SCOTT, J., said (p. 592): "Its very terms preclude it from having any application to any county except the county of Cook, for we take judicial notice no other county in the State contains over 100,000 inhabitants. . . . . No express words that could have been used by the General Assembly could limit the operation of this law to the county of Cook more absolutely and definitely than

those employed." (P. 594): "Designating counties as a class according to a minimum population, which makes it absolutely certain but one county in the State can avail of the benefits of a law applicable to such class, cannot but be regarded as a mere device to evade the constitutional provision forbidding special legislation."

In State *v.* Herrmann, 75 Mo., 340 (1882), An Act regulating "the appointment of notaries public in all cities having a population of 100,000 inhabitants or more," and providing that "the office of any notary public in such a city holding a commission," etc., shall be abolished, was held to be unconstitutional as being special legislation applicable only to notaries "in such city," and for the further reason that it applied only to a particular class of notaries, viz., those whose commissions bore date prior to the passage of the Act and had not expired when the statute took effect. SHERWOOD, C. J., said (p. 352): "The city of St. Louis . . . . is to be regarded as the city intended, and the only city intended, as much so as if called by name. But if St. Louis had been thus directly designated no one would have the temerity to contend that such a law could withstand the charge of being a special law." (P. 353): "Section 4 . . . . selects particular individuals, *i. e.*, notaries whose commissions bear certain dates, from a general class, *i. e.*, all notaries in said jurisdiction, and subjects them to peculiar rules, from which all others in the same class are exempt. Such a law cannot be otherwise than special." Referring to State *v.* Tolle, 71 Mo., 645, 650 (1880) the Chief Justice further says (p. 354): "We still adhere to the doctrine, there approved, that a statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special, and that classification does not depend upon numbers:" Wheeler *v.* City of Philadelphia, 77 Pa., 338, 348 (1875); Ewing *v.* Hoblitzelle, 85 Mo., 64, 75 (1884). In State *v.* Tolle, *supra*, a statute providing that "in all cities having a population of more than 100,000 inhabitants," a board consisting of the judges of the Circuit Court of such cities shall receive bids and award the publication of all advertisements, was held to relate to "persons or things as a class," and "did not single out and relate to 'particular persons or things of a class,'" and was a general law. Moreover, "it would only operate, and was only intended to operate, in the future, and its general rule would operate as fast as cities having a population of 100,000 inhabitants should give occasion to apply the law:" SHERWOOD, C. J., 75 Mo., 354. See also State *v.* Kring, 74 Id., 612 (1881); State *v.* Walton, 69 Id., 556 (1879). In Ewing *v.* Hoblitzelle, 85 Mo., 64, 75 (1884) the Act assailed was held constitutional by NORTON, J., because it "is not restricted or limited in its operations only to cities having a population of over 100,000 at the time it was passed, but applies to all cities in the State attaining such population in the futnre."

The decisions upon the subject have been prolific in Pennsylvania. Wheeler *v.* Philadelphia is the leading case, and has already been considered.

In Commonwealth *v.* Patton, 88 Pa., 258, 260 (1879), an Act providing for the holding of courts in certain cities of the State, and re-

ferring to counties containing over 60,000 inhabitants in which there shall be any city incorporated at the time of the passage of the Act with a population exceeding 8,000, situate at a distance from the county seat of more than twenty-seven miles, was held unconstitutional as being "classification run mad. . . . There can be no proper classification of cities or counties except by population. The moment we resort to geographical distinctions we enter the domain of special legislation, for the reason that such classification operates upon certain cities or counties to the perpetual exclusion of all others. . . . Said Act makes no provision for the future. . . . That is not classification which merely designates one county in the Commonwealth, and contains no provision by which any other county may, by reason of its increase of population in the future, come within the class:" per PAXSON, J.

In Scowden's Appeal, 96 Pa., 422, 425 (1881), an Act referring to cities of the fifth class in counties having 60,000 population was held unconstitutional, inasmuch as it was "merely an effort to legislate for certain cities of the fifth class to the exclusion of all other cities of the same class:" per PAXSON, J.

In Davis *v.* Clark, 106 Pa., 377 (1884), an Act relating to mechanics' liens, whose provisions were expressly that it should not apply to counties having a population of over 200,000 inhabitants, was held to be special in its terms and local in its effect, since two counties in the State had a population larger than that specified in the Act, and hence were excluded. MERCUR, C. J., held (p. 385) that "the exclusion of a single county from the operation of the Act makes it local. . . . Within reasonable limits and for some purposes classification is allowable. It has been sustained on the basis of population of counties on the assumption that those having a small population may ultimately have one much larger. Here the larger are excluded. We cannot assume that their population will ever be reduced to less than the number named." A similar decision was made in reference to "An Act fixing the salary of county officers in counties containing over 100,000 and less than 150,000 inhabitants, and requiring the payment of fees of such officers into the respective county treasuries." It was an attempt to legislate directly for the few counties falling within the limits designated in the Act and selected from all others in the State. The legislation was special: McCarthy *v.* Commonwealth, 110 Pa., 243 (1885), per GORDON, J. Likewise, in Morrison *v.* Bachert, 112 Pa., 322 (1886), an Act concerning the fees of certain officials of the Commonwealth, "except in counties containing more than 150,000 or less than 10,000 inhabitants" was held unconstitutional by PAXSON, J. (p. 329). "It excludes perpetually from its operation all counties having a population of over 150,000 inhabitants. This makes it a local law. If it can exclude Philadelphia and Pittsburgh, it may exclude every other county in the State but the one county seeking such special or local legislation." In City of Scranton *v.* Silkman, 113 Pa., 191, 199 (1886), an Act relating to owners of real estate "in any county of less than 500,000 inhabitants" was unconstitutional, under the ruling in Davis *v.* Clark, *supra*, since "the exclusion of a single county from the operation of the Act makes

it local:" per GREEN, J. In Appeal of the City of Scranton School District, 113 Pa., 176, 190 (1886), an Act dividing cities into three classes, to become effective in cities of a class when adopted by them, was held unconstitutional. The Act "will be limited to the one or more cities that do accept, and that makes it local:" per GREEN, J. In City of Reading *v.* Savage, 23 W. N. C., 332; 124 Pa., 329 (1889), the same Judge held (overruling the prior decision (1888) in the same case: 22 W. N. C., 3; 120 Pa., 198; and distinguishing the Appeal of the City of Scranton School District, *supra*), that the section of the Act of 1874 (relating to the classification of cities according to population) providing that any city of the third class may become subject to the provisions of the Act, and that the mayor and councils of said city may effect the same by ordinance thereof duly passed, was not local or special legislation. GREEN, J., said: "When the requirements of the fifty-seventh section are complied with in any given case of a pre-existing city, such city enters into the third class of cities whose future incorporation has been provided for, and becomes a constitutional part thereof. No city is prevented from doing this, and all have the opportunity of doing it. Those that do not embrace the opportunity simply remain as they were before, and all that do embrace it become members of a class whose existence and all the elements of whose government are regulated by general law. There is no possibility of any exercise of the powers or privileges conferred by the fifty-seventh section, which can work affirmatively a local or special result." See, also, *In re* Henry Street, 23 W. N. C., 60; 123 Pa., 346 (1889); Evans *v.* Phillipi, 20 W. N. C., 173; 117 Pa., 235 (1887). In Evans *v.* Phillipi, an Act passed before the adoption of the Constitution of 1874, regulating the collection of school taxes in certain school districts, was held to be local, inasmuch as it provided that none of its provisions should apply to a large portion of the State. The same case also decided that the provisions of an Act regulating the collection of taxes in the several boroughs and townships, that "this Act shall not apply to any taxes the collection of which is regulated by a local law," is not in conflict with the constitutional provision forbidding local and special legislation: per CLARK, J. See, also, Bitting *v.* Commonwealth, 20 W. N. C., 178 (1887). Malloy *v.* Reinhard, 19 W. N. C., 43; 115 Pa., 25 (1887), was approved. It was there held that the Constitution of 1874, inhibiting local legislation, "changes no rule relative to the repeal by legislation of local laws existing when it was adopted:" per TRUNKEY, J., p. 31. In City of Philadelphia *v.* Haddington Church, 19 W. N. C., 109; 115 Pa., 291 (1887), an Act relating to revival of municipal liens in cities of the first class, conferring unusual powers of a judicial character on the plaintiff's attorney was held unconstitutional under the clause which prohibits special laws authorizing the creation, extension or impairing of liens. In delivering the opinion of the Court, GORDON, J., approved of the decision made in the Court below by ARNOLD, J., as follows: "But the Act of 1883 does not of necessity embrace the whole of a county even, but only a city of the first class, which may be less than a county. Should the city of Pittsburgh become a city of the first class, there would be one law in that city for the collection of

municipal claims, and another for the rest of the county of Allegheny." This decision is to the effect that the revival of municipal liens ought to be under a law co-extensive with the Commonwealth. Legislation for classes on this subject is unconstitutional because unequal and *unnecessary*.

In Ayars' Appeal, 23 W. N. C., 97; 122 Pa., 266 (1889); Shoemaker *v.* Harrisburg, 23 W. N. C., 105; 122 Pa., 285 (1889); Berghaus *v.* Harrisburg, 23 W. N. C., 106; 122 Pa., 289 (1889), it was held than an Act dividing the cities of the State into seven classes and legislating for each class being *unnecessary*, was obnoxious to the constitutional prohibition of special or local legislation and, therefore, invalid. STERRETT, J., said: "The underlying principle of all the cases is that classification, with the view of legislating for either class separately, is essentially unconstitutional, unless a necessity therefor exists, a necessity springing from manifest peculiarities, clearly distinguishing those of one class from each of the other classes, and imperatively demanding legislation for each class separately, that would be useless and detrimental to the others. Laws enacted in pursuance of such classification and for such purposes are, properly speaking, neither local nor special. They are general laws because they apply alike to all that are similarly situated as to their peculiar necessities. All legislation is necessarily based on a classification of its subjects, and when such classification is fairly made, laws enacted in conformity thereto cannot be properly characterized as either local or special. A law prescribing the mode of incorporating all railroad companies is special in the narrow sense that it is confined in its operations to one kind of corporations only, and, by the same test, a law providing a single system for organization and government of boroughs in the State would be a local law, but every one conversant with the meaning of those words when used in that connection would unhesitatingly pronounce such statutes general laws. But, as was said in Scowden's Appeal, *supra*, 'classification which is grounded on no necessity and has for its sole object an evasion of the Constitution' is quite a different thing. The purpose of the provision under consideration was not to limit legislation, but merely to prohibit the doing by local or special laws that which can be accomplished by general laws. It relates not to the substance, but to the method of legislation, and imperatively demands the enactment of general instead of local or special laws whenever the former are at all practicable:" 122 Pa., 281 *et seq.*

In the recent case of the City of Scranton *v.* Whyte, 30 W. N. C., 74, 76 (1892), WILLIAMS, J., said: "Classification of cities for purposes of municipal government was recognized as valid in Wheeler *v.* The City, 77 Pa., 338. Laws limited in their operation to a single class of cities are not, therefore, within the constitutional prohibition of local legislation if they relate to matters that are connected with the organization or administration of the city government or the regulation of municipal affairs. . . . . If such laws relate to other subjects not within the purposes of classification, they fall within the prohibition and are void. . . . . This is, therefore, the test by which to determine the validity of a law relating to a given class of cities. If it

relates to subjects of municipal concern only, it is constitutional, because, operating upon all the members of the class, it is a general law. If it relates to subjects of a general, as distinguished from a municipal, character, it is local, and therefore invalid, although it may embrace all the members of the class." In Commonwealth *v.* Macferron, 31 W. N. C., 320 (1893), it was held (per WILLIAMS, J.) that the power to classify being conceded, the conclusion that an Act passed for a class is not a local law within the prohibition of the Constitution is irresistible. It is general in a strictly local sense, since it embraces all the members of the class which the Legislature has created without any violation of the fundamental law, and which is, therefore, a proper subject for legislation. So far as the legislation affecting a city of the third class conflicts with the uniform general plan of municipal government provided for cities of the second class, so far it must, upon its translation into that class, leave its former system behind it; else it could not adjust itself to the class into which it has come, and the whole scheme of classification would fall. So far as its former legislation is not in conflict with the general plan of government for the new class, so far it remains in full force. See, also, Commonwealth *v.* Wyman, 27 W. N. C., 245; 137 Pa., 508 (1891). In Safe Deposit and Trust Co. *v.* Fricke, 31 W. N. C., 324 (1893), it was held that while Section 12 of the Act of March 22, 1877, purports to legislate for cities of the second class, it does not relate to corporate powers, nor control the corporate officers of such cities. On the contrary, in effect it attempts to declare the effect of certain claims filed in the courts of a particular county, and also the effect of judicial sales thereunder, by virtue of the process of said Courts, which is not a legitimate subject for classified legislation. The section was, therefore, unconstitutional.

In re Ruan Street, 25 W. N. C., 349; 132 Pa., 275 (1890), it was held (per WILLIAMS, J.) that legislation based on the classification of cities is unconstitutional if it does not relate to municipal affairs and is not directed to the existence and regulation of municipal powers and to matters of local government. *In re* Wyoming Street, 27 W. N. C., 136; 137 Pa., 494 (1891), the same Judge said: "Some confusion seems to exist, however, in regard to the definition of a general law, and a theory has been advanced in several recent cases, and has been contended for by the appellee in this case, that the division of the cities of the State into classes, by the Act of 1874, which was recognized as a necessary classification in Wheeler *v.* Philadelphia, 77 Pa., 338, requires us to hold any law to be general which embraces all the cities of a given class, without regard to the subject to which it relates. This theory overlooks the objects and purposes of classification, which are very clearly set forth in the first section of the Act, which divides the cities of the State into three classes. These are, to make provision for the municipal needs of cities which differ greatly in population. Differences in population make it necessary to provide different machinery for the administration of 'certain corporate powers,' and to make a difference in 'the number, character, powers and duties of certain corporate officers,' corresponding with the needs of the population to be provided for. An Act of Assembly

that relates to a subject within the purposes of classification, as they are thus declared by law, is a general law, although it may be operative in a very small portion of the territory of the State, if it relate to all the cities of a given class. For example, an Act relating to the lighting of streets in cities of the third class would be a general law for the following reasons: (*a*) It relates to the exercise of 'corporate powers;' (*b*) it affects all the cities of a given class in the same manner; (*c*) it affects the inhabitants and property owners in such cities, because of their residence and ownership therein, and the circumstances and needs that are peculiar to the class in which their city belongs. But a law that should provide that all applications made by guardians, administrators and executors for leave to sell the real estate of a decedent for the payment of his debts in cities of the third class should be made, not in the court having jurisdiction of the petitioner's accounts, but in the Court of Quarter Sessions, would be local law, and therefore unconstitutional. It would be applicable to the same subdivisions of territory as the law relating to the lighting of streets, but it would relate to the exercise of no corporate power residing in a city, nor to the duties of any municipal officer, nor to the needs or welfare of citizens of a city of the third class, as distinguished from other citizens of the Commonwealth. On the other hand, it would affect the jurisdiction of the State courts, modify the duties of public officers whose functions are not local but general, and touch the inhabitants of cities of the given class in the exercise and enjoyment of their rights as citizens of the State, not as dwellers in the municipality. The test, therefore, by which all laws may be tried is their effect. If they operate upon the exercise of some power or duty of a municipality of the given class, or relate to some subject within the purposes of classification they are general, otherwise they are local."

In Weinman *v.* Railway Co., 20 W. N. C., 455; 118 Pa., 192 (1888), "An Act to provide for the incorporation, and for the government and regulation of certain railway companies now incorporated or hereafter to be incorporated in cities of the second and third class," was held to be special "because it related to a certain class of railway corporations only, and local because its operations were confined to cities of the second and third classes, and, therefore, in contravention of the Constitution:" 31 W. N. C., 328, per STERRETT, J. WILLIAMS, J., said: "The subject of this statute is street railway companies, which is a subject for general legislation; while the statute professes to deal only with a limited number of these railways, and these are selected by reference to their location in certain cities. Under the guise of a general law we have here one which is special, because it relates to a few members of the general class of corporations known as street railway companies; and local because its operations are confined to particular localities." In Reeves *v.* Continental Railway Co., 31 W. N. C., 265, 280 (1893), MITCHELL, J., says: "The essence of that decision is that the formation of corporations, their corporate powers, capital stock, dividends, etc., have no relation to the classification of cities, and cannot be made in any way to depend thereon."

ALFRED ROLAND HAIG.