ment protect the people's interest in and upon the railroads of the State." This right has been exercised to a great extent in both instances, and the many additions to the railroad law of each of these States which have been made at the suggestion or with the advice of its commission, testify to the harmony existing between boards of this class and the State government, as well as to the influence which they indirectly but properly exert upon the corporations.

RESTRICTIONS UPON LOCAL AND SPECIAL LEGISLATION IN THE UNITED STATES.

BY CHARLES CHAUNCEY BINNEY, ESQ.

II.

THE DISTINCTIONS BETWEEN GENERAL, LOCAL AND SPECIAL LEGISLATION.

The word "general" is defined by Webster as "relating to a genus or kind; pertaining to a whole class or order;" while "special," by the same authority, means "pertaining to a species or sort; designed for a particular purpose or person;" and "local," "pertaining to a particular place, or to a fixed or limited portion of space."

The term "general law," as used in our State constitutions, has not been found easy of definition, and no court has as yet undertaken to state its meaning with any great measure of exactness. It is clear that it is not merely a law in regard to a general subject, for if the subject be regulated in a particular locality only, or as affecting particular persons, the law regulating it is local or special, and not general. From the definitions given above, it

1 See the remarks in the opinions in Earle v. San Francisco Board of Education, 55 Cal., 489; Matter of N. Y. Elev. Ry. Co., 70 N. Y., 327, 350; Matter of Church, 92 id., 1; State v. Lean, 9 Wis., 279.

2 See Ryan v. Johnson, 5 Cal., 85; People v. C. P. R. R. Co., 43 id., 398, 433; State v. Judges, 21 Ohio St., 1; State v. Covington, 29 id., 102; McGill v. State, 34 id., 228; State v. Shearer, 47 id., 275.
follows that a general Act must be one which is designed neither for one or more particular persons, nor to operate exclusively in any particular part or parts of the State; yet such an Act is not necessarily universal, i.e., capable of operating upon all persons or all things within the State legislated for. 1 Provided that an Act be not expressly limited to operate upon particular persons or in particular localities, it is enough to constitute it a general Act, first, that it should operate wherever the circumstances to which it is applicable exist in the State, and secondly, that it should operate uniformly, i.e., upon "every person who is brought within the relations and circumstances provided for," without regard to the number of such persons as compared with the whole population of the State. 2 Or,

1 "Are we then to understand that a general law is only one which operates upon all persons or all things? If so, it is obvious that our general laws are very few, if, indeed, there are any of that class. Obviously such cannot be the meaning of the words 'of a general nature' as here used [in the constitution]. The word general comes from genus, and relates to a whole genus or kind, or 'in other words to a whole-class or order. Hence a law which affects a class of persons or things less than all may be a general law:" Brooks v. Hyde, 37 Cal., 366, 375.

"The term 'general law' does not import universality in the subject or operation of such law:" Van Riper v. Parsons, 40 N. J. L., 1.

2 L. R. & Ft. S. R. R. Co. v. Hanniford, 49 Ark., 291; McAunich v. M. & M. R. Co., 20 Id., 343; People v. Wright, 70 Ill., 388; Snyder v. Warford, 11 Mo., 513; People v. Formosa, 68 S. C. N. Y., 272; and see Mayer v. Deermon, 2 Sn. (Tenn.), 104, where an Act requiring the sheriff of DeKalb County to hold certain municipal elections for the town of Alexandria in each year, was held not to be "the law of the land," as it did not extend to and embrace all who came into the like situation and circumstances. As was said in a recent case in North Dakota, an Act general in form and relating to all the objects to which it should relate except one, is as much a special law as if it related to one object only: Edmonds v. Herbrandson (N. D.), 50 N. W. Rep., 970.

It should not be forgotten that while uniform operation is essential to a general law (French v. Teschemaker, 24 Cal., 518, 544; Brooks v. Hyde, 37 Id., 366), it is not the only requisite. It is incorrect to say (as was said in Cox v. State, 8 Tex. App., 254, 286, misquoting Brooks v. Hyde, 37 Cal., 366), that every law is general which operates equally upon all persons and all things upon whom it acts at all. Such uniformity may often characterize a local or special law, and this must indeed be the case with every law affecting only a single person or thing.
looking at it from another standpoint, it is enough that a
general Act should operate upon one or more particular con-
ditions (as distinguished from persons and localities), and
attach thereto certain consequences, so that whenever and
wherever the conditions exist the consequences follow,\(^1\)
and where the conditions do not exist the consequences do
not follow.

Thus an Act making railroads liable for double dam-
ages for stock killed in consequence of their failure to
erect and maintain fences is a general Act, not only
because it applies to all railroads, affecting any one of them
whenever stock is killed by it through insufficient fencing,
but also because there are no other carriers who are in a
position to kill stock as railroad companies are, or whose
neglect to keep out stock by fencing would expose human
life and property to the same risk as in the case of railroads.\(^2\)

For the same reason an Act is 'general which allows the
plaintiff in such cases, or in those of the violation of a law
regulating rates of transportation, an attorney's fee as costs
in addition to actual damages, for such an Act is not to be
regarded as affecting merely one species of litigation, but
a whole class of injuries, the remedy for which is sought
by the litigation.\(^3\) On the other hand, an Act requiring
railroad companies to pay their employees within fifteen
days of the date of a demand for wages due, under penalty
of an additional payment of 20 per cent. upon the amount
of wages in default, is special, as railroad companies do not

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\(^1\) Haskel v. Burlington, 30 Ia., 232; Iowa R. R. Land Co. v. Soper,
38 id., 112.

\(^2\) Humes v. M. R. R. Co., 82 Mo. 221; see M. R. R. Co. v. Humes,
115 U. S., 512.

\(^3\) P. D. & C. R. Co. v. Duggan, 109 Ill., 537; B. C. R. & N. R. Co. v.
occupy a different relation to their employees from that of all other employers.  

An Act creating a short cause calendar in all courts of record in the State, and giving precedence to the cases on that calendar, is not a special Act in regard to the practice of courts, as it applies to all courts of record, and to what may fairly be considered a distinctive class of cases in those courts; but an Act establishing a procedure in certain localities, differing from that required elsewhere in matters of the same sort, would be a local law.  

The extent of the operation of a really general law is not determined by arbitrary limitations imposed by the legislature, but by the existence of the conditions on which the law is to operate. "A law," therefore, as was said by the New Jersey Supreme Court, "is to be regarded as general when its provisions apply to all objects of legislation, distinguished alike by qualities and attributes which necessitate the legislation to which the enactment has manifest relation. Such laws must embrace all and exclude none whose conditions and wants render such legislation equally necessary or appropriate to them as a class."

Of course, it is not every condition or set of conditions the existence of which makes an Act operating upon it a general law. Thus while an Act providing for the taxation of mortgages generally is a general Act, a law for the taxation of one kind of mortgages, those on land situated in more than one county, is special, since that species of mortgage does not so differ from others as to require that their taxation should be made under a different law.  

1 San Antonio & A. P. Ry. Co. v. Wilson (Tex. App., 1892), 19 S. W. Rep., 910. In A. & N. R. R. Co. v. Baty, 6 Neb., 37, a statute authorizing double damages for non-payment within thirty days of demand of claims for stock killed by railroad companies was held void as an attempt to take property without due process of law, but it might also have been treated as special legislation.


3 Ruan St., 132 Pa., 257, 277.


LEGISLATION IN THE UNITED STATES.

roads situated in more than one county do not, for the purpose of the levying and collection of taxes upon their property, differ from those situate in one county only, and an Act in regard to this matter, in the case of such railroads only, is special, although the Constitution may itself recognize the need of a particular method of assessing the property of such railroads for taxation. 1

From the illustrations above given, it is evident that Webster's definition of the word "general," as "relating to a genus or kind; pertaining to a whole class or order," satisfactorily covers the case of a general Act, and that, as stated in the leading Pennsylvania case on legislative classification, 2 and approved in many other States, 3 "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." Hence, postponing for the present the inquiry into what constitutes a class for legislative purposes, and premising only that the class to which the general laws are applicable must be real and substantial, it may be said in brief that:

(I) A general law is one which applies to and operates uniformly upon all members of any class of persons, places or things, requiring legislation peculiar to itself in the matter covered by the law.

(2) A special law is one which relates either to particular persons, places or things, or to persons, places or things which, though not particularized, are separated, by any method of selection, from the whole class to which the law might, but for such limitation, be applicable.

(3) A local law is one whose operation is confined within territorial limits other than those of the whole State or any properly constituted class of localities therein.

2 Wheeler v. Phila., 77 Pa., 338. For an earlier recognition of the same doctrine, see Henry v. Henry, 13 Ind., 251.
The term "local law" is rather modern, having been brought into use by the necessity of distinguishing between those public laws which are general and those which are not, the latter including both special and local laws. The matter to which a local law relates may be either general or special, but in either case the law itself is not in force outside of the locality or localities for which it is passed. A local law in regard to liens, mortgages, elections or judicial procedure is local only, not special; while a law in regard to particular persons or things in a place, or to the government or affairs of particular places, is both local and special. The fields of local and special legislation overlap, but they are not conterminous. Hence, unless there be something to indicate that a prohibition of special legislation as to any given subject was intended as including all legislation which is not general, such prohibition is not to be understood as forbidding purely local laws as to such subject;\(^1\) though it must be admitted that the terms "local law" and "special law" have often been loosely used, as if the former were one species of the latter,\(^2\) and that the absence of any reference, in some constitutions,\(^3\) to

\(^1\) Thus the constitution of Maryland forbids both local and special laws as to certain matters, but special laws only for "any case for which provision has been made by existing general law," and this has been held not to forbid a road law for a particular county, although a general road law existed. The Court said that local laws of this sort "are applicable to all persons, and are distinguished from public general laws only in this, that they are confined in their operation to certain prescribed or defined territorial limits, and the violation of them must in the nature of things be local:"

\(^2\) The Texas constitution (Art. XVI, \$ 23) provides that the legislature may "pass general and special laws for the inspection of cattle, ... provided that any local law thus passed shall be submitted to the freeholders of the section to be affected thereby." It has been held that the words "special" and "local" are here used as synonymous and interchangeable: Lastro v. State, 3 Tex. App., 363.

\(^3\) Those of Kansas, Kentucky (1850), Maine, Michigan, Minnesota, Ohio, South Dakota, Texas, Virginia, Washington and Wisconsin. In the North Carolina constitution the legislation forbidden is described as "private," except that in regard to corporations, which is denoted "special."
local legislation, seems to indicate an opinion that it was superfluous to distinguish it from special.

The definitions given above are made expressly with reference to the modern restrictions on local and special legislation, and indicate the change which these restrictions have introduced in the use of the terms "general law" and "special law." As originally used, these terms were respectively synonymous with "public law" and "private law," and interchangeable with them. Thus Blackstone, in distinguishing the kinds of Acts, states that they are "general or special, public or private." 1 Comyn's Digest uses the former terms, 2 Bacon's Abridgement the latter, 3 and the same interchangeable use is seen in several reported cases. 4 As the terms were so used, the chief practical differences between public (or general) and private (or special) laws were that the former received judicial notice in the courts and were binding upon all of the public who might happen to be affected by them; while the latter were required to be pleaded and proved like any other facts, 5 and did not bind those who were strangers to them unless by express words or a necessary implication of the intention of Parliament. 6 In the summary of the earlier authorities in Coke's note to Holland's Case, 7 it is pointed out that statutum generale and statutum speciale relate to genera and species respectively, but the term genus was not construed to mean a class in the modern sense. Thus laws relating to all spiritual persons, all officers, or all trades 8 were

1 i Bl. Com., 86.
2 Com. Dig. Parl. R., 6, 7.
3 Bac. Abr., Stats. P.
4 Samuel v. Evans, 2 Term, 569; Burnham v. Acton, 7 Rob. (N. Y.), 395; Strien v. Foltz, 113 Pa., 349, 353; Burhop v. Milwaukee, 21 Wis., 259, where the Supreme Court stated that it had repeatedly treated the term "general law" as synonymous with "public law" as regarded the necessity of publishing general laws.
5 i Bl. Com., 86; Dwarris on Stats., 629; Bac. Abr., Stats. P.; Com. Dig. Parl. R., 6, 7.
6 Barrington's Case, 8 Rep., 138; Luey v. Levington, 1 Vent., 175.
7 4 Rep., 75a.
8 Kirk v. Nowell, 1 Term, 125.
general, while those relating to all bishops, all sheriffs, or the trade of grocers were special. In the course of time, however, the distinction taken between *genera* and *species* became less artificial,¹ and it was considered that a law which in its operation affected any of the public who might come within its provisions was general. This gradual change is illustrated by the remarkable history of the statute of 23 Henry VI, c. 9, relating to bail in civil causes, which is unique in the annals of law in that it took the English courts three hundred and forty-four years to decide whether it was a general Act or not. It was repeatedly held that as it related to sheriffs, a particular species of officers, it was special,² but the common-sense view which finally prevailed was that, as every person who might be arrested was within its provisions, it was public and general.³

BLACKSTONE defines a "general or public Act" as "a universal rule that regards the whole country," while he states that "special or private Acts are rather exceptions than rules, being those which only operate upon particular persons and private concerns." These definitions have been repeatedly cited with approval, but they hardly cover the case of Acts which do not concern particular persons or private affairs only, yet whose operation is expressly confined to certain localities. Such Acts were at one time classed among the special or private laws,⁴ but in the present century they have been looked at more with regard to the persons affected than with regard to their form, and consequently their public character has been more fully recognized. It has been held not to be essential

¹ See Dawson *v.* Paver, 5 Hare, 415, where it is stated that the distinction must depend on the nature of the case, and not on the form of the act, or on whether it contains a clause forbidding that it shall be deemed a public act.

² Holland's Case, 4 Rep., 75 a; Allen *v.* Robinson, Sid., 22; Parker *v.* Welby, id., 439; S. c. sub. nom., Benson *v.* Welby, 2 Saund., 154, and see note.

³ Bentley *v.* Hoar, 1 Lev. 86; Oky *v.* Sell, 2 id., 103; Mills *v.* Bond, 1 Str., 399; Samuel *v.* Evans, 2 Term, 569; Lovell *v.* Sheriffs, 15 East, 320.

⁴ See remarks of LORD, J., in Maxwell *v.* Tillamook Co., 20 Ore., 495.
that a public law should operate throughout the whole realm or State, but merely that within the sphere of its operation it should affect all members of the community, no matter how local or restricted that sphere of operation might be. Thus the metropolitan police Acts\(^1\) were held public and general in view of "the public importance of the right that they maintained and the generality of their application to all the Queen's subjects within the metropolitan police district;"\(^2\) and an Act establishing a public harbor and authorizing tolls to be taken, though private in form, was held by Lord Cairns as entitled to be judicially noticed as a public Act, it being an Act of the most comprehensive kind, and relating to public matters, though unquestionably local.\(^3\) With the rise, too, of great corporations, private in that they had no connection with the government, yet exercising public franchises and whose dealings were with great numbers of the community, it was inevitable that many Acts of incorporation, though in one sense private, should be held to be practically public.\(^4\)

In America it has been decided that as the preservation of fish is for the public benefit, Acts for their preservation in certain specified rivers are public, obligatory to all the citizens, and to be taken notice of by the courts.\(^5\) So Acts regulating the pilotage in Boston harbor,\(^6\) regulating the putting of pine timber into the Connecticut River,\(^7\) prescribing the limits of particular counties and towns,\(^8\) locating county seats,\(^9\) incorporating particular

\(^1\) Barnett v. Cox, 9 A. and E., N. S., 617.
\(^3\) Hargreaves v. L. & P. Ry., Co., 1 Ry. Cas., 416.
\(^4\) Burnham v. Webster, 5 Mass., 266; Comth. v. McCurdy, id., 324; cited with approval, Pierce v. Kimball, 9 Green. (Me.), 54.
\(^5\) Heridia v. Ayres, 12 Pick. (Mass.), 334.
\(^6\) Scott v. Wilson, 3 N. H., 321. In the opinion in this case the Act was referred to as a general law in relation to a particular place, rather a contradiction in terms.
\(^7\) New Portland v. New Vineyard, 16 Me., 69, where it is stated that those Acts are public which regulate the general interests of the State or of any of its divisions: Comth. v. Springfield, 7 Mass., 9.
\(^8\) State v. Lean, 9 Wis., 279.
cities, authorizing the State lands in a particular city to be laid off into lots and sold, relating to the affairs or the administration of justice in particular cities, counties, or townships, authorizing an election to be held for certain officers in a particular county, legalizing elections held in a certain county to authorize the issue of bonds in aid of a certain railroad, and affecting particular highways, have also been held public; and the same view has been taken of Acts incorporating particular banks, enabling a particular foreign corporation to be sued like a domestic corporation, or authorizing railroad companies to subscribe to the stock of a particular foreign railroad corporation.

The underlying principle in all these cases is the same, viz., that though the law might operate within a restricted territory, it affected a large number of people, treating them simply as members of the community and without any distinctions among them as individuals; or, in other words, that the law was for the public benefit, not for that of particular individuals. Though the principle was probably correctly applied in these cases, and the various laws passed upon in them may fairly be regarded as public, some of them are unquestionably confined in their operation to particular localities, while others as unquestionably con-

1 Bass v. Fontleroy, xi Tex., 698; Clark v. Janesville, io Wis., 136.
2 West v. Blake, 4 Blackf. (Ind.), 234.
3 McCuen v. State, 19 Ark., 630; Bevens v. Baxter, 23 id., 387; Bankert v. Jansen, 94 Ill., 283; Levy v. State, 6 Ind., 282; Covington v. Hoadly, 83 Ky., 444; Preston v. Louisville, 84 id., 118; Connor v. Mayer, 5 N. Y., 285; People v. McCann, 16 id., 58; Brez v. Mayor, 6 Rob. (N. Y.), 627; Burnham v. Acton, 7 id., 395; Phillips v. Mayor, 1 Hilt. (N. Y.), 483.
7 Young v. Bk. of Alexandria, 4 Cr. (U. S.) 384; Douglass v. Bk. of Missouri, 1 Mo., 20; Bk. of Utica v. Smedes, 3 Cow. (N. Y.), 662.
8 In Ferguson v. M. & M. Bk., 3 Sn. (Tenn.), 609, however, a bill to charter a bank was held not to be a "bill of a general character" within the meaning of the Tennessee constitution, such a bill being apparently the same as a public bill in other States.
9 Fall Brook Coal Co. v. Lynch, 47 How. Pr. (N. Y.) 520.
cern the interest of a special part of the public only; in other words, all of these laws are either local or special.

The fact that such laws were held to be public, however, made it necessary to regard the terms "general" and "special" either as wholly technical, and to be used in a sense distinct from the natural meaning of the words, or as not equivalent to "public" and "private." And accordingly we find that a distinction was eventually made both in England and in some parts of America between public general laws, which operate wherever the circumstances with which they dealt existed, and public local and special laws, whose operation was restricted either by the special nature of their subject-matter, or by limitation to a certain locality. In America this distinction was made the more necessary by those restrictions upon local and special legislation which, though at first few in number, and in some States only in regard to the form of such laws and the manner of their passage, have now become, in the great majority of States, of such importance in limiting and controlling the action of legislatures.

In these restrictions the terms "general law" and "special law" are clearly used as defined above, and not as respectively equivalent to "public law" and "private law," since special legislation may be either public or private, and a local law, though its subject may be of a public nature and the people of the entire State may, in some sense, have an interest in it, cannot be considered general.

1 See, as to England, May's Law and Usage of Parliament (7th ed.), chap. xxiv.

2 New York Const. of 1846, Art. III, § 16.

3 Dundee Mtg. Co. v. School Dist., 10 Sawy. (U. S.), 52, 78, where the Court said: "A 'special' Act relates to a part and not the whole... and whether it is also considered a 'public' or 'private' one is altogether immaterial and irrelevant."

4 Illinois v. Ill. Cent. R. R. Co., 33 Fed. R., 730, 764; Cass v. Dillon 2 O. St., 607. In the latter case, it was said of a law authorizing a county to subscribe to the stock of a particular railroad, "That it is a public law, of which the courts ex officio take notice, may well be admitted, but it does not follow that it is of a general nature. It is no more of a general nature than would be an Act to authorize the construction of a bridge or the erection of a poorhouse... All such Acts are of necessity local in their character."
Were this otherwise, were the fact that an Act was technically "public," and to be taken judicial notice of by the courts, sufficient to prevent its being regarded as special on account of its subject-matter, or local on account of its restricted operation, every prohibition of the constitutions in regard to such legislation could be violated with impunity.¹

It does not make an Act the less local or special that its operation is general as far as it goes, nor because it applies to many persons or things. If the persons or things be regarded by the law as individuals, be they few or many, this stamps it as special.² The form of language is also immaterial. If the particular places, persons or things to which the law applies be described in any way that they may be known as distinguished from others of like character or in like circumstances, the law is as special as if the particular names or distinctive appellations were given.³ So if the operation of a law is confined arbitrarily to any portion of the State, great or small, it must be regarded as local.

While the definitions above given are based on what seems to be the best modern authority, the fact that for so long a time the word "general" was considered as equivalent to "public," and "special" to "private," when used in regard to legislation, has in a few States produced, even in recent years, some uncertainty in the use of these terms, and has prevented the distinction between general and special laws from being clearly laid down. Thus in Wisconsin the word "general" is held to be used in the constitution in two different senses. In the provision that no general law shall be in force until published, the word is stated to be used in the old sense as equivalent to "public," and to cover the case of laws in regard to a single

² Topeka v. Gillett, 32 Kan., 431.
³ Ibid.
county or city,\textsuperscript{1} while in the requirement of incorporation by "general law" the word is used in the modern sense, as opposed to "special law," without regard to whether such special law be public or private,\textsuperscript{2} and a proper distinction is, moreover, taken between laws of a private nature, but expressed to be public, and actually general laws.\textsuperscript{3}

In Indiana, too, the Supreme Court has apparently failed to consider that the object which the framers of the constitutional restrictions had in view, the prohibition of special legislation in regard to many matters, was something quite different from what had led to the old distinction between general and special, or public and private, Acts. This Court has accordingly laid it down that the distinction between general and special laws being well known to the common law, though sometimes a question of great nicety, it accorded with well-established principle to assume that the framers of the constitution intended the terms to be understood in the sense which was at that time recognized by the courts; and that, therefore, a special Act was one such as at common law the courts would not notice unless it were pleaded and proved.\textsuperscript{4} The Acts which were sustained as general under this view could, it is true, have been properly so held on other grounds, one Act conferring upon courts of a certain grade jurisdiction of cases of violation of the liquor laws, and the other being for the enforcement of judgments against railway companies for stock killed by them.

Elsewhere, however, this view of the identity of general and public laws has led to even more anomalous decisions.

\textsuperscript{1} In re Boyle, 9 Wis., 264; State v. Lean, id., 279; Clark v. Janesville, 10 id., 136. In Luling v. Racine, 1 Biss. (U. S.), 316, it was not decided whether an Act authorizing a certain city to issue bonds, which Act had been passed as local, was general in the sense of requiring publication, since the city was, under the circumstances of the case, estopped from defending on this ground.

\textsuperscript{2} Clark v. Janesville, 10 Wis., 136.

\textsuperscript{3} Burhop v. Milwaukee, 21 Wis., 259; see Dundee Mtge. Co. v. School Dist., 10 Sawy. (U. S.), 52.

\textsuperscript{4} Hingle v. State, 24 Ind., 28; approved in T. L. B. R. Co. v. Nor dyke, 27 id., 95.
Thus, in Nevada an Act to provide for the indebtedness of a particular county was held not to conflict with the prohibition of local and special laws regulating county business, for the reason that such an Act operated upon all county creditors equally, wherever resident, and hence was neither local nor special. In Oregon, too, local and special legislation for laying out, opening and working on highways being forbidden, Acts to lay out particular roads were sustained in Allen v. Hirsch on ground that, as the road was in each case of importance to the whole State, the Act providing for it was neither local nor special. In the following year, however, all the judges composing the court in 1850 having left the bench, an Act regulating the fees and salaries of sheriffs and clerks in fourteen counties was held to be local within the meaning of the constitution, and therefore void, and very recently an Act making appropriations in aid of the construction of certain specified roads was overthrown for the same reason. The former case has been regarded as overruling Allen v. Hirsch, although it was not referred to in the opinion. In the latter case the reasons for the decision in Allen v. Hirsch were explained, and the roads in question stated to have been for the interest of the public rather than the locality, yet the decision rendered must be regarded as wholly at variance with the doctrine of Allen v. Hirsch.

In Texas, where the constitution empowers the legislature to authorize "by general Act" the holding of special terms of court when necessary, this has been held to permit an Act in regard to terms of court in a particular judicial district, and even a particular county, such an Act being "intended to form a part of the general machinery to be used in the administration of the laws of the State," and affecting equally all persons coming within its range.

1 Youngs v. Hall, 9 Nev., 212.
2 7 Ore., 412.
3 Manning v. Klippel, 9 Ore., 367.
6 Cox v. State, 8 Tex. App., 254.
Special and local legislation in regard to courts was not expressly forbidden, but the case came under the proviso forbidding such laws in any case where a general law could be made applicable, and in this connection it was further held that no general law could possibly provide for a special term of court in but one county, and that, therefore, what the constitution contemplated was merely an Act passed according to the forms observed in the case of an ordinary general law. The obvious answer to this inference is that an actually general law, defining the circumstances under which a special term of court could be held in any county, was perfectly feasible, and that the constitution must be presumed to have contemplated a law which was general in point of fact, and not merely in form, but this does not seem to have occurred to the Court.

In New York no clear distinction between general and special laws has been made, the constitutional restrictions being upon private and local laws only. The constitution of 1846 required that "no private or special bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title," a provision since adopted in some other States. Under this provision the Court of Appeals has held that the character of a law, as general or local, did not depend upon the extent of the locality it affected, nor upon the number of people therein, but upon whether or not its whole effect is confined to a particular locality. Hence Acts relating to the government of a single city, enabling the supervisors of two counties to levy assessments for a bridge, for the improvement of a river in one county, and relating to the expense of judicial sales in one county, have been held local. These cases admit that an Act may be public and yet local, but maintain, and justly, that even though pub-

1 Peop. v. O'Brien, 38 N. Y., 193. See Conner v. Mayor, 5 id., 285, where practically the same point was raised, but not decided.
3 Peop. v. Chautauqua, 43 N. Y., 110.
5 Kerrigan v. Force, 68 N. Y., 381.
lic, an Act which manifestly touches but a portion of the territory of the State, a part of its people, or a fraction of the property of its citizens, is not a general law.\textsuperscript{1}

In Williams \textit{v.} People,\textsuperscript{2} an early case in the same State, however, it was the opinion of DENIO, J., though not actually decided, that an Act making theft from the person of property under $25 in value grand larceny, if committed in the city of New York, was general, as it concerned every one who might go to that city, and, in fact, was probably intended rather for the protection of unsophisticated strangers than of the more wide-awake city folk.

Following this dictum, decisions have been rendered in the lower courts, and cited with apparent approval in the Court of Appeals, which to some extent confuse general laws with public laws, and include as general all laws "extending to all persons doing or omitting to do an act within the territorial limits described in the statute."\textsuperscript{3} Thus it has been held that a section giving the Supreme Court exclusive jurisdiction in all actions against the corporation of the city of New York was general,\textsuperscript{4} as it made no distinction among the persons having a right to sue, but merely created a class of civil cases analogous to the class of criminal cases noticed in Williams \textit{v.} People.\textsuperscript{5} So, too, the Act creating the Metropolitan Sanitary District,\textsuperscript{6} and the section regulating the Court of Special Sessions of the city of New York\textsuperscript{7} have been held general, the latter because it related to part of the judicial system of the State and thereby affected the people at large, although it was contained in an Act which was admitted to be local.

\textsuperscript{1} Peop. \textit{v.} Chautauqua, 43 N. Y., 10.
\textsuperscript{2} 24 N. Y., 405. The point was raised, but not passed upon in Peop. \textit{v.} Mann, 16 id., 58.
\textsuperscript{3} Burnham \textit{v.} Acton, 7 Rob. (N. Y.), 395.
\textsuperscript{4} Bretz \textit{v.} Mayor, 6 Rob. (N. Y.), 325, 333.
\textsuperscript{5} 24 N. Y., 405, cited supra.
\textsuperscript{6} Burnham \textit{v.} Acton, supra.
\textsuperscript{7} Peop. \textit{v.} Davis, 61 Barb. (N. Y.), 456, a case decided by BARNARD and CARDozo, JJ., and therefore, perhaps, questionable authority. For a similar decision see Cox \textit{v.} State, 8 Tex. App., 254, 286, cited infra.
For the same reason it has been held that the power of the boards of county supervisors to fix the salaries of county judges is not a power of local legislation. It is hard to reconcile these cases to the doctrine laid down by the Court of Appeals, as above stated, and as almost every local law affects people residing outside the locality, the distinction between general and local laws would seem, under the doctrine of these cases, to be very indefinite.

In 1874 a constitutional amendment was adopted prohibiting private and local legislation as to many matters, but the distinction between such legislation and that which is general still remains rather indefinite. In Matter of New York Elevated Railway Co., it is judicially stated that laws whose operation is confined to the existing members of the various classes of persons and corporations are general, and in People v. Newburg Plank Road Co. it was held that the exception of a few counties from the operation of an Act did not make it local, on the ground that a local Act was one which operated only within a limited territory or specified locality, and that a territory comprising nearly the whole State was not a limited territory. The position of the Court of Appeals is, perhaps, best expressed in Earl, J.'s statement that "it is not always easy to determine what is a local Act. . . . No definite rule can be laid down, but each case must be determined upon its own circumstances." In other words, it would seem that in New York any law is general in which the local or special features do not absolutely predominate, and this being so it is no wonder that the Court of Appeals admits that "there may be ways for our legislature to circumvent a constitutional provision without violating it." 4

In a recent case an Act was held general which prohibited the deposit of carrion, offal, or dead animals in the North and East Rivers, or in New York or Raritan Bays

1 Healey v. Dudley, 5 Lans. (N. Y.), 115, 125.
2 70 N. Y., 327, 350.
3 86 N. Y., 1, 7. See Lankford v. Co. Commrs., 73 Md. 105.
within the jurisdiction of the State of New York. The purpose of the Act, said the Court, "was essentially public, and the fact that it wears some local features was insufficient to place it among the local Acts. . . . It operates upon a subject in which the whole people were interested, prescribes a rule of conduct for all persons, and renders all persons liable to its penalties wherever they reside."\(^1\)

This decision is more readily understood than those cited just before. The object of the Act under review was to prevent the pollution of certain waters which were peculiarly exposed to pollution, and where this nuisance was far more serious than in any other part of the State. For the purpose of this Act these waters constituted a class, and the fact that for convenience they were all mentioned by name, instead of collectively, cannot affect the matter, the geographical condition of the State being such that it may be pronounced impossible that any other of the tidal waters of the State could ever come into this class. This reasoning does not apply to the dictum in Williams v. People,\(^2\) above cited, for even if there be anything in the offence of theft from the person to require its more rigid repression in large cities than elsewhere, there can be no difference in the respect between New York, and Brooklyn, Buffalo, Albany, or any other large city.

It must be admitted that the local Acts under review in the cases above referred to were general from one point of view; they operated upon the public in general, and not upon particular individuals. In other words, they were not special. But their sphere of operation was confined to particular localities, and never could be extended to any others; and, being local, they could not (with the probable exception of the Act in regard to pollution of waters)\(^3\) be general in any true sense of the term.

If the definitions previously given are correct, it is

\(^1\) Ferguson v. Ross, 66 S. C. N. Y., 207.
\(^2\) 24 N. Y., 405.
\(^3\) Ferguson v. Ross, 66 S. C. N. Y., 207.
clear that the character of an Act, as general or otherwise, depends on its substance, not on its form. Thus, no intention of the legislature, even if directly expressed, that an Act be regarded as general, will make it such if it be not so in substance. On the other hand, an Act which is special or local in terms is really general if it apply to an entire and distinct class. Thus an Act applying to all cities and towns incorporated under a general law then in force excludes by its terms all other cities and towns; but if there are no others, it is general. The Texas constitution (Art. xvi, § 23), to take another instance, provides that "the legislature may pass laws for the regulation of live stock, and the protection of stock raisers, in the stock-raising portion of the State, and exempt from the operation of such laws other portions, sections, or counties; and it has been held that a stock law, exempting by name from its operations the counties which were known to be outside the stock-raising portion of the State, was not only constitutional, but was really a general law. Another illustration of this is seen in a Pennsylvania law, the constitutionality of which has apparently never been questioned. The constitution of Pennsylvania forbids local or special laws regulating the practice or jurisdiction of courts, and also requires the legislature to designate by general law the courts and judges by whom the several classes of election contests shall be tried. The legislature has accordingly provided that contested elections for all State offices except those of governor and lieutenant-governor shall be tried by the Court of Common Pleas of Dauphin County, the county containing the State capital, to which court the two president judges residing nearest to the court house shall be added. Under ordinary circum-

1 San Francisco v. Spring Valley Water Works, 48 Cal., 493; People v. Cent. Pac. R. R. Co., 83 id., 393.
2 Ex parte Wells, 21 Fla., 280, 300.
4 Const. of 1874, Art. IV., § 7.
5 Ibid., Art. VIII., § 17.
6 Act of 19 May, 1874, § 3; 1 Purd. Dig., 681.
stances all the Courts of Common Pleas in the State constitute a class, and an Act applying to only one or to any number less than the whole, would be special, and so of their president judges. But for the purpose of trying election contests for State offices the Court which sits at the capital offers peculiar advantages, and if it is necessary to enlarge that court for the purpose the nearest president judges are those who can most readily attend. In this instance that one Court of Common Pleas is as distinctly a class by itself as is the Supreme Court of the State, and the contested election law is as thoroughly general in this as in any other of its features.

On the same principle a law which, though local or special in form, operates to extend a general system to cases previously excepted from it, being in the nature of a repeal of prior local or special laws, is not within the prohibitions of local and special legislation,\(^1\) whether the effect of such a law be direct, or whether it be contingent on the action of the parties or communities particularly concerned.

These cases illustrate what will be more fully shown in treating of classification, viz., that the character of an Act must often depend on the nature of the subject regulated by it. Thus while the Supreme Court of Pennsylvania was correct in saying of a mechanics' lien law, "If it apply to the whole State it is general; if to a part only, it is local: as a general principle it is as effectually local when it applies to sixty-five counties out of the sixty-seven as if it applied to one county only: the exclusion of a single county from the operation of the Act makes it local,"\(^2\) yet there are many cases where such a rule would be inapplicable. The reason for allowing a mechanics' lien exists equally in all parts of the same State, nor is there any ground for allowing or requiring a different mode of obtaining it in different localities; but where the matter to which the law relates is essentially different in different places, the exclusion of those localities where the law would be inapplicable would not make it any the less general.

\(^1\) Ruan St., 132 Pa., 257.
\(^2\) Davis v. Clark, 106 Pa., 377, 384.
LEGISLATION IN THE UNITED STATES.

There are of necessity two exceptions to the rule that a general law, a law for a whole class, must of its very nature apply uniformly to all members of the class to which it relates. An exception results from the fact that a general law does not repeal by implication a prior special law on the same subject, even though the provisions of the two may differ, and this doctrine is not affected by the prohibition of special legislation on various matters by the constitution of a State, for it has been repeatedly held that the restrictions upon local and special legislation are not retroactive, and as a State constitution does not of itself nullify existing local and special legislation, neither does it make it the legislature's duty to do so. Hence, a general law may have the uniformity of its operation impaired by a special law remaining unrepealed, and such restriction of the operation of the general law, being the result of circumstances which the legislature is not called upon to alter, does not affect the character of the law as general. The legislature may even directly recognize the existence of special laws, and expressly provide that, where they are in force, the general law shall not take effect.

The other exception is seen where the operation of a general law is limited by the supreme law of the land. Thus an Act declaring non-resident aliens incapable of

2 Ex parte Burke, 59 Cal., 6; Neyada Sch. Dist. v. Shoecraft, 88 id., 372; Brown v. Denver, 7 Col., 305; People v. Jobs, id., 475; Davidson v. Koehler, 76 Ind., 398; Citizens' Bank v. Wright, 6 O. St., 318; State v. Roosa, 11 id., 16; Evans v. Philippi, 117 Pa., 226; and see Lehigh Iron Co. v. Lower Macungie, 81 id., 482; Indiana Co. v. Agricultural Soc., 85 id., 357; Coatesville Gas Co. v. Chester Co., 97 id., 476.
4 People v. Wright, 70 Ill., 388; Evans v. Philippi, 117 Pa., 226. A law for "each and every village and incorporated town" must, however, be understood as repealing local laws inconsistent therewith: McCormick v. People, 139 Ill. 499.
5 Comth. v. Sellers, 130 Pa., 32; In re Road in Cheltenham, 140 id., 136. A fortiori, a law framed in general terms, which excepts from its operation matters regulated by other general laws, is not the less valid on that account: State v. Collector (N. J. L., 1892), 23 Atl. Rep., 666.
holding real estate by descent, devise, purchase or otherwise is general, although it cannot affect those non-resident aliens who, under treaties between the United States and the nations to which they belong, are entitled to hold real estate in this country.\footnote{Wunderle \textit{v.} Wunderle (Ill., 1893). 33 N. E. Rep., 195. An exception allowing aliens to hold real estate for a limited time under certain circumstances is also not special legislation, as it applies to all who may happen to be placed in those circumstances.---\textit{Ibid}.}

The fact that an Act is in the main general does not make every part of it so. If any provision contained in it be special, such provision is none the less so because contained in an otherwise general Act.\footnote{Earle \textit{v.} San Francisco Bd. of Educ., 55 Cal., 489; Miller \textit{v.} Kister, 68 id., 142; People \textit{v.} Cent. Pac. R. R. Co., 83 id., 393.}

The duration of an Act has nothing to do with its character as general or special. If a temporary statute be general in its application during the time it continues in force, it is none the less a general law because its duration is limited.\footnote{People \textit{v.} Wright, 70 Ill., 388.}

If the conditions upon which a law is to operate do not exist anywhere at the time of its passage, then until these conditions come into existence the law must remain inoperative, and cannot be regarded as either general or special. If the conditions subsequently exist and prove to be special, then the law must be regarded as special. This rather odd state of affairs is found in a recent New Jersey case. A statute was passed providing for the number and boundaries of wards in cities then or thereafter having more than two assembly districts exclusively within their limits. There was no such city, but at a subsequent session the legislature so districted the State as to bring Newark only within the operation of the first Act, which, it was held, by this means became special, and the concurrent operation of two Acts to produce a special result was held to violate the prohibition of special legislation as to the internal affairs of cities as completely as if it had been done by a single Act.\footnote{Dempsey \textit{v.} Newark, 53 N. J. L., 4.}
uniformly on all members of the class to which it applies, and hence it would seem that the requirement in certain constitutions that "all laws of a general nature shall have a uniform operation throughout the State," and that in others that laws in regard to certain matters, "shall be general and of uniform operation throughout the State," are really superfluous. That uniformity of operation which characterizes a general law, does not, however, involve its going into effect everywhere at identically the same time. Nearly all general laws do or may apply to and affect persons or property not *in esse* at the date of their passage, but this does not affect their uniformity. If a law operates equally upon all the subjects embraced within it when they come within the scope of its authority, this is uniformity. Thus an Act vesting the judicial power in a certain class of cities, in a police court to be held by the city justices, was properly sustained as general, although it necessarily took effect in each city respectively at the expiration of the terms of the police justices then in office, terms which expired at different dates.¹

Although a law can never, from a legal point of view, be both general and special at the same time, yet a general law may be practically special from the fact that but one or a very few persons, places, or things exist to which it can apply. That is often the case with laws in regard to municipal corporations, and the most usual objection to legislative classification is that a law for a single city is special, just as much when enacted for a class containing that city only as if the city were named in the Act. This objection would be valid if the class could never include any other members, but neither in regard to cities nor to other subjects is a law special if its operation is not necessarily limited to particular persons, places, and things for all future time. The sphere of operation of any general law is always conceivably capable of being widened or narrowed at any time, as the class to which it applies gains or loses members. If but one railroad company existed in a

¹ Peop. v. Henshaw, 76 Cal., 436.
State, a general railroad law would not on that account be special, either if there never had been any other such company in that State, or if this one company had absorbed several others, which had therefore ceased to have any independent existence. The fact that any such law is practically special may be unfortunate; it may lead to the same abuses which have marked special legislation, but such results cannot be avoided by any mere requirement that the legislature shall enact general laws only.

The "schedule," or set of regulations contained in a constitution as to the time at which and the manner in which the various changes introduced thereby shall go into operation, includes in many cases a general provision that "the legislature shall pass all such laws as may be necessary to carry this constitution into full effect," while some constitutions contain similar provisions in regard to particular articles or sections. Such laws have been held in Missouri to be directly authorized by the constitution, to be practically a creation of the people whose will is expressed in the constitution, and therefore to stand on a higher plane than any other statutes, and to constitute an exception to the restrictions upon local and special legislation. The constitution having established the St. Louis Court of Appeals, and a reporter being necessary to that court, an Act creating the office of such reporter simply completed the judicial machinery which the constitution had planned, and it derived its sanction from that instrument. Though a special law in that it affected one court only, it was equivalent to a general law in that it was subject to none of the restrictions upon special laws.¹

The decision did not, it is true, touch the case of any prohibition of such legislation, but only the requirement of prior publication in the locality to be affected, such publication being intended to enable the people to oppose the passage of any special or local law which they did not approve, a contingency which was out of the question in the case of a law authorized by the constitution. The doc-

¹ State v. Shields, 4 Mo. App., 259.
trine on which the decision is based seems sound, and must logically extend and constitute an exception to all prohibitions of local and special legislation whatever.

At the same time this doctrine must be kept strictly within its proper limits. In the first place, no special legislation should be permitted except where the constitution allows it either expressly or by necessary implication, for it is absurd to speak of carrying the constitution into effect by any law which would "destroy the uniform operation of laws which are required by the constitution itself to have a uniform operation." Thus the constitution of California, making special provisions for the assessment of the property of railroad companies whose roads extend through more than one county, and for the apportionment of such assessment among the several counties where the roads are situated, the legislature could properly pass laws providing the details for such assessment and apportionment, although special legislation in regard to the assessment of taxes, as well as in regard to their collection, is forbidden. But these provisions as to a special mode of assessing such property for taxation do not imply that the taxes so assessed should be collected by any other means than that provided by the general law applying to the collection of taxes on all kinds of property, and hence an Act providing a special system for the levy and collection of taxes upon this particular kind of property is unconstitutional.¹

Secondly, where the end to be sought can be accomplished by a general law, this should be done, for the explicit provisions as to many subjects in the more recent constitutions are intended to take the place of special legislation, not to provide opportunities for it.

Lastly, the expression "to carry the constitution into full effect" should not be extended beyond its proper meaning, and the doctrine should be applied only to those cases where the machinery provided by the constitution needs, so to speak, something more to enable it to work, and not to those which simply give it something to work upon.

¹ People v. Cent. Pac. R. R. Co., 43 Cal., 398.