of Wisconsin, in the case cited in the note, holds to some extent a contrary view, but its judgment was in effect, although not in terms, overruled by the Supreme Court of the United States, and it is not, in its full extent, in harmony with the view elsewhere taken in the State courts.[1]

§ 51 (28). **"Only One Object, which shall be expressed in the title."** — Many of the State Constitutions contain in substance a provision that *no legislative act shall embrace more than one object or, as some of them phrase it, one subject, which shall be expressed in its title.* In some of the Constitutions this prohibition is limited to *local and private acts.* The purpose of such prohibitions is obvious. The unity of object or subject is to prevent "log-rolling legislation," by prohibiting the joining of distinct measures with a view to combine votes for all. Requiring such subject or object to be expressed in the title is to prevent deceptive titles, and to enable members of the legislature, and the people, through the usual publication of legislative proceedings, to form from the title an opinion of the nature and

form the duty relative to restricting the power of taxation, &c., enjoined by the constitutional provision above cited, "may," says *Ranney*, J., in Hill *v.* Higdon, 5 Ohio St. 248, "be of very serious import, but lays no foundation for *judicial* correction." See Maloy *v.* Marietta, 11 Ohio St. 636, 638, where this view is left open, but holding that the legislature alone has the power to determine the *mode* and *measure* of the restriction to be imposed. It was also left open in the People *v.* Mahaney, 13 Mich. 481, but this case illustrates what is a sufficient *restriction* on the power of taxation to meet the constitutional requirement. See also Cooley, Const. Lim. 518; Railroad Co. *v.* Connelly, 10 Ohio St. 165. To the effect that the constitutional provision quoted in the text does not take away, but recognizes, the *discretion* of the legislature in conferring powers of the enumerated character upon municipal corporations, and that such discretion is not reviewable by the courts, see Bank of Rome *v.* Rome, 18 N. Y. 38 (1858); Benson *v.* Mayor, &c. of Albany, 24 Barb. 248 (1857); Clarke *v.* Rochester, 24 Barb. 446; Grant *v.* Courter, 24 Barb. 232; Wynehamer *v.* People, 13 N. Y. 429; Baltimore *v.* State, 15 Md. 376; People *v.* Draper, 15 N. Y. 532; White *v.* Stamford, 37 Conn. 587; Newton *v.* Atchison, 31 Kan. 151 (quoting the text).

[1] Foster *v.* Kenosha, 12 Wis. 616 (1860). The legislature cannot, consistently with this restriction, confer upon a municipal corporation an unlimited power to levy taxes and raise money for extra municipal purposes, such as aiding railroad companies; and an amendment to the charter of a city, authorizing its council "to levy and collect special taxes for *any* purpose (aside from what may be specially provided for in the city charter) which may be considered essential to promote or secure the common interests of the city, or borrow, on the corporate credit of the city, *any* sum of money at a rate of interest not exceeding ten per cent," on obtaining the previous sanction of a majority of the voters of the city, is void, and the requirement of the sanction of the voters is not a restriction on the power to levy taxes or contract debts, within the meaning of the Constitution, the court being of opinion that the duty of imposing the limitation rests on the legislature. *Ib.* But see Campbell *v.* Kenosha, 5 Wall. 194 (1866); City *v.* Lampson, 9 Wall. 477 (1869); and the authorities cited in the last note. See

objects of the bill.[1] Subject to the foregoing fundamental requirements the provision has been frequently and properly construed to require only the general or ultimate object to be stated in the title, and not the details by which the object is to be attained. Any provision fairly and reasonably connected with and calculated to carry the declared object into effect is unobjectionable, although not specially indicated in the title. It is sufficient if the title fairly expresses or plainly gives notice or warning of the subject dealt with in the body of the act. Thus, where a Constitution provides that no bill or act shall pass containing any matter different from what is expressed in the title thereof, an act, the title of which declares it to be *for the better regulation of a certain town* (naming it), *or to amend or enlarge the powers of the corporation thereof*, is sufficient, without enumerating the particulars in which the powers are enlarged or extended.[2] So a provision in an act entitled merely, "An act to amend the act incorporating the city of M.," extending the city limits, does not conflict with the constitutional requirement that "every law shall embrace but one object, which shall be expressed in its title."[3] Many illustrations of the judicial construction

Rogan *v.* Watertown, 30 Wis. 259 (1872), as to *loaning credit.*

For other restrictions upon the power to contract debts and limitations upon such power, see chapters on Charters and Contracts, *post.*

[1] Carter County *v.* Sinton (Const. Ky.), 120 U. S. 517; Montclair *v.* Ramsdell (Const. New Jersey), 107 U. S. 147; Jonesboro *v.* Cairo, &c. R. R. (Const. Ill.), 110 U. S. 192; Mahomet *v.* Quackenbush (Const. Ill.), 117 U. S. 509; Otoe County *v.* Baldwin (Const. Neb.), 111 U. S. 1; Ackley School Dist. *v.* Hall (Const. Iowa), 113 U. S. 135; *Re* Phœnixville, 109 Pa. St. 44; *Re* Airy Street, 113 Pa. St. 281; Cooley, Const. Lim. 141–151, and authorities.

[2] Green *v.* Mayor, R. M. Charlt. (Ga.) 368 (1832), *per Law*, J.; Mayor *v.* State, 4 Ga. 26; Hill *v.* Decatur, 22 Ga. 203. Text affirmed. Luehrman *v.* Taxing Dist., 2 Lea (Tenn.), 425; Murphy *v.* State, 9 Lea (Tenn.), 373. An act which, in effect, amended the charters of cities of a certain class held void because this purpose did not appear in its title. State *v.* Wright, 14 Ore. 365.

[3] Morford *v.* Unger, 8 Iowa, 82 (1859); Davis *v.* Woolnough (act establishing city court), 9 Iowa, 104; s. p. St. Paul *v.* Coulter, 12 Minn. 41, 50 (1866).

The subject of a law to incorporate a city or town is the *charter of incorporation*, and the title need not enumerate all the powers intended to be conferred. Lockhart *v.* Troy, 48 Ala. 581 (1872). Where the title to an act is "*to consolidate and amend the several acts incorporating the city of Brunswick, and for other purposes therein mentioned*," and the act contains a provision to make valid and confirm "*all the ordinances* of the mayor and city council of the city of Brunswick heretofore passed, and not in conflict with the Constitution of the State of Georgia or of the United States," it was held that it was in violation of the Constitution of 1868, which declares: "Nor shall any law or ordinance pass which refers to more than one subject-matter, or contains matter different from what is expressed in the title thereof." Brieswick *v.* Brunswick, 51 Ga. 639 (1874). And in a later case it was held that the Act of 1872, entitled "to prescribe the manner of incorporating towns and villages," not having indicated by its title the provision making the act an amendment of existing municipal charters, is unconsti-

of this constitutional provision as applicable to municipalities are given in the note.

tutional. Ayeridge *v.* Comm'rs, 60 Ga. 404.

A statute *designated in its title as an amendment to a city charter*, but which embraces objects foreign to the charter, is in conflict with the Constitution and void. Williamson *v.* Keokuk, 44 Iowa, 88 (1876). The judgment in the case last cited would seem to be of doubtful correctness upon the facts.

In determining whether a law be in conflict with the provision of the Constitution, *the unity of the object* is to be looked for in the ultimate end to be attained, and not in the details leading to that end. State, &c. *v.* Co. Judge, 2 Iowa, 280; People *v.* Mahaney, 13 Mich. 481 (1865), holding that the title of "an act to establish a police government for the city of Detroit," was sufficiently specific; approved, White *v.* Lincoln, 5 Neb. 505, (1877); Atty. Gen. *v.* Bradley, 36 Mich. 447 (1877); People *v.* Hurlbut, 24 Mich. 44 (1871); s. c. 9 Am. Rep. 103. *Construction of similar constitutional provision.* Arnoult *v.* New Orleans, 11 La. An. 54; Kathman *v.* New Orleans, 11 La. An. 145; People *v.* Mellen, 32 Ill. 181; Railroad Co. *v.* Gregory, 15 Ill. 21; Davis *v.* State (inspection act for Baltimore), 7 Md. 151; Annapolis *v.* State, 30 Md. 212; Lafon *v.* Dufrocq, 6 La. An. 350; *Re* Airy Street, 113 Pa. St. 281 (1886); *Re* Phœnixville, 109 Pa. St. 44; Ottawa *v.* People, 48 Ill. 233 (1868); Miles *v.* Charleton, 29 Wis. 400 (1872); Murdock *v.* Woodson, 2 Dillon, C. C. R. 188 (1873); Hubert *v.* People, 49 N. Y. 132 (1872); State *v.* Union, 33 N. J. L. 350 (4 Vroom), where the subject is fully discussed. Montclair *v.* Ramsdell, 107 U. S. 147, in which Mr. Justice *Harlan* quoted the opinion in State *v.* Union, *supra*, and added, "The objections should be grave, and the conflict between the statute and the Constitution palpable, before the judiciary should disregard a legislative enactment upon the sole ground that it embraced more than one object, or if but one object, that it was not sufficiently expressed by the title." Montclair *v.* Ramsdell, *supra*, followed in State *v.* Comm'rs of Duval Co., 23 Fla. 483 (1887). See, also, State *v.* Elvins, 32 N. J. L. (3 Vroom), 362; State *v.* Newark, 34 N. J. L. (5 Vroom) 236; *In re* Comm'rs of Elizabeth, 49 N. J. L. (20 Vroom), 488; Sedgwick Co. *v.* Bailey, 13 Kan. 600 (1874); Comm'rs of Marion Co. *v.* Comm'rs of Harvey Co., 26 Kan. 181; Devlin *v.* New York, 63 N. Y. 8 (1875); People *v.* Willsea, 60 N. Y. 507 (1875); Tecumseh *v.* Phillips, 5 Neb. 305 (1877); Dows *v.* Town of Elmwood, 34 Fed. Rep. 114; Baltimore & Ohio R. R. Co. *v.* County of Jefferson, 29 Fed. Rep. 305. An act public in its nature, in which the people of the whole State have an interest, but *which specially concerns the property and rights of a portion of the people of the State, is a local act* within the meaning of the Constitution of Illinois, 1848 (art. 3, sec. 23), requiring the subject thereof to be expressed in the title (citing and reviewing various cases in Illinois and elsewhere on this subject). Applying these principles to an act of the Illinois legislature of April 16, 1869, known as the Lake Front Act, entitled "An act in relation to a portion of the submerged lands and Lake Park grounds lying on and adjacent to the shore of Lake Michigan on the eastern frontage of the City of Chicago," it was held that since the general subject of that act was the disposal of lands on and adjacent to the shore of Lake Michigan on the eastern frontage of Chicago, the subject was sufficiently expressed in the title within the meaning of the Constitution, which provides that all local laws must contain but one subject, which must be expressed in the title. Illinois *v.* Ill. Cent. R. R. Co. (Lake Front Case), 33 Fed. Rep. 730 (*Harlan* and *Blodgett*, JJ.). Where the act has but one general object it is sufficient if the object or subject is fairly expressed in the title. White *v.* Lincoln, 5 Neb. 505 (1877); Black *v.* Cohen, 52 Ga. 621 (1874); Lockport *v.* Gaylord, 61 Ill. 276 (1871), where a *curative act* legalizing warrants was held invalid because it did not set forth the subject-matter in the title. In Watertown *v.* Fairbanks, 65 N. Y. 588 (1875), a legislative act validating previous illegal assessments was held to conflict with the constitutional requirement (art. 3, sec. 16), that "no private or local bill shall embrace more than one subject, and that shall be expressed in the title." An act entitled "An act to legalize and authorize the assessment of street improvements and assessments," not specifying any city or locality, held not sufficiently to express the subject of the act, which was solely to legalize certain proceedings of the common council of a single city. Durkee *v.* City of Janesville, 26 Wis. 697. Under an *act to revise the charter* of a specified city, there may be conferred upon the municipality the usual legislative, taxing, judicial and police powers, including the creation of a city court. This is but one subject, and a charter with such a title does not infringe the provision of the Constitution that no local bill shall embrace more than one subject which shall be expressed in its title. Harris *v.* People, 59 N. Y. 599 (1875), where *Folger*, J., explains the object of this constitutional provision to be "to prevent the joining of one local subject to another or others of the same kind, or to one or more general subjects, so that each should gather votes for all; and to advise the public and the locality, and the representatives of the locality and of other parts, of the general purpose of the bill, so that those interested might be on their guard as to the whole or as to the details." People *v.* Supervisors, 43 N. Y. 10. See also Sullivan *v.* New York, 53 N. Y. 652 (1873); Volkening, *In re*, 52 N. Y. 650 (1873); Astor, *In re*, 50 N. Y. 363 (1872); Mayer, *In re*, 50 N. Y. 504 (1872); and People *v.* Briggs, 50 N. Y. 553, where the purpose of the constitutional provision is well expounded by *Church*, C. J. People *v.* Rochester, 50 N. Y. 525 (1872). The word "private" (art. 3, sec. 16, *supra*) refers to "persons," the word "local" to "territory." People *v.* O'Brien, 38 N. Y. 193; People *v.* Supervisors, 43 N. Y. 10; People *v.* Hills, 35 N. Y. 449, 451.

The constitutional provision in New York as to the *title* of local and private bills (art. 3, sec. 16, *supra*), underwent careful consideration in the Court of Appeals in the great cases of Astor and Bailey *v.* New York Arcade Railway Co. (1889) (not yet reported, but will probably appear in 113 or 114 N. Y. Rep.), relating to the *right of the defendant company to construct an underground railway in Broadway and Madison Avenue* in New York City. It was incorporated in 1868, by a local and private act to transmit packages and merchandise by means of pneumatic tubes. In 1873, by local and private act its charter was amended, and the *title* thereof expressed that it was an act "to provide for the transportation of passengers in said [pneumatic] tubes." In the body of this amended act, however, the corporation was given authority to construct and operate an ordinary railway under the said streets. The amended act of 1873 was held to be unconstitutional because the title was deceptive. Giving the judgment of the court on this point, *Earl*, J., said: "The construction of such a railway [an ordinary railroad] by such a corporation is certainly a subject not expressed in the title of the act. The only subject there indicated is the transportation of passengers and property through pneumatic tubes by atmospheric pressure. A title purporting that an act provides for pneumatic transportation, would not be sufficient for an act authorizing the construction and operation of a horse railway or a steam railway, as a title purporting that an act authorizes a line of omnibuses for the transportation of passengers would not be sufficient for an act authorizing the construction of a railway for the same purpose. The constitutional provision referred to has been deemed by statesmen and jurists — *conditores legum* — of so much importance that it is found in the fundamental law of most of the States. Its *purpose is to prevent fraud and deception* by concealment in the body of acts subjects not by their titles disclosed to the general public, and to legislators who may rely upon them for information as to pending legislation. When the subject is expressed, all matters fairly and reasonably connected with it, and all measures which will or may facilitate its accomplishment, are proper to be incorporated in the act, and are germane to the title. The title must be such at least *as fairly to suggest or give a clue to the subject dealt with in the act*, and unless it comes up to this standard it falls below the constitutional

requirement (The Mayor, &c. *v.* Colegate, 12 N. Y. 146 ; People *v.* Hills, 35 N. Y. 449, 452 ; Matter of New York, &c. Bridge, 72 N. Y. 527 ; Matter of Application of Department of Public Parks, 86 N. Y. 439 ; People *v.* Whitlock, 92 N. Y. 191 ; Matter of Knaust, 101 N. Y. 188 ; Cooley, Constitutional Limitations, 141). Here the only subject suggested by the title is the transportation of passengers and property through pneumatic tubes, by atmospheric pressure, and everything appropriate and germane to that subject could be provided for in the act. But a person reading the title alone would have no clue whatever to the great railway scheme actually authorized by the act."

If, however, a local act contains a subject which *is* properly expressed in its title it is valid as to that subject although it is invalid as to a subject *not* expressed. Van Antwerp, *In re*, 56 N. Y. 261, 267 (1874); s. p. McGee's Appeal, 114 Pa. St. 470, 478 (1886) ; Dewhurst *v.* Allegheny City, 95 Pa. St. 437 ; Cooley, Const. Lim. 148.

CHAPTER IV.

PUBLIC AND PRIVATE CORPORATIONS DISTINGUISHED. — LEGISLATIVE AUTHORITY AND ITS LIMITATIONS.

§ 52 (29). **Public and Private.** — A *fundamental division* of corporations, heretofore adverted to, is into *public* and *private*.[1] The

[1] *Ante*, chap. ii. secs. 19–27. In Mills *v.* Williams, 11 Ired. (N. C.) Law, 558, (1854). *Pearson*, J., commenting on the common division of corporations, says : "The purpose in making all corporations is the accomplishment of some *public good*. Hence, the division into public and private has a tendency to confuse and lead to error in investigation ; for, unless the public are to be benefited, it is no more lawful to confer 'exclusive rights and privileges' upon an artificial body than upon a private citizen. The substantial distinction is this : Some corporations are created by the *mere will* of the legislature, there being no other *party interested or concerned*. To this body a portion of the power of the legislature is delegated to be exercised for the public good, and it is subject at all times to be modified, changed, or annulled. Other corporations are the result of *contract*. The legislature is not the only party interested ; for, although it has a public purpose to be accomplished, it chooses to do it by the instrumentality of a *second party*. These two make a contract. The expectation of benefit to the public is the moving consideration on one side ; that of expected remuneration for the outlay is the consideration on the other. *It is a contract*, and, therefore, cannot be modified, changed, or annulled without the consent of both parties. Counties are an instance of the former, railroad and turnpike companies of the latter class of corporations." This recognizes the substantial difference between the two classes of corporations, and is, in effect, a criticism upon the names by which they are distinguished.

According to the view of the Supreme Court of California, corporations should be divided into three classes, to wit : Public municipal corporations, the object of which is to promote the public interest ; corporations technically private, but of a *quasi* public character, having in view some public enterprise in which the public interests are involved, such as railroad, turnpike, and canal companies ; and corporations strictly private. Miner's Ditch Co. *v.* Zellerbach, 37 Cal. 543 (1869). The opinion of *Sawyer*, C. J., in this case, is able and instructive. The author prefers the ordinary division of corporations into public (which includes municipal) and private. The Civil Code of California thus defines public and private corporations (sec. 284) : "Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the State ; all other corporations are private." Construing this section, it was held in Dean *v.* Davis, 51 Cal. 406, 410, that a levee district formed under an act of the legislature for reclamation purposes was a public corporation. *Crockett*, J., says : "It is true, perhaps, that it was not formed or organized for the government of a portion of the State, in the broadest sense of the term ; nevertheless it exercises certain governmental functions within the district. To constitute a public corporation, it is not essential that it shall exercise all the functions of government within the prescribed district." s. p., see, also, People *v.* Reclamation District, 53 Cal. 346 ; Hoke *v.* Perdue, 62 Cal. 545. See Foster *v.* Fowler, 60 Pa. St. 27 (1868), in which a company created to supply a city with water was