corporate taxation to any other than the corporate authorities of the municipality or place to be taxed.[1]

[1] Constitution of *Illinois*, art. ix. sec. 5; Harward *v.* St. Clair & M. Levee & Dr. Co., 51 Ill. 130; *ante*, sec. 71; Primm *v.* Belleville, 59 Ill. 142 (1872). Under this provision of the Constitution, it was held that a city could not be compelled to incur debts and issue its bonds without the consent of the corporate authorities. In the case of Lincoln Park, the commissioners were created by the legislature, were not under the control of the corporation, and had the power to make purchases of lands for the park; and to pay for such purchases, the city was to issue to them its bonds. The court held that they were not the *corporate authorities* of the city, and refused a *mandamus* to the city authorities to issue the bonds. People *v.* Chicago, 51 Ill. 17; s. c. 2 Am. Rep. 278; see also, Wetherell *v.* Devine, 116 Ill. 631. But where the people of the corporation accept or adopt the act, and thereby make the commissioners corporate authorities, they may be vested with the power to assess and collect taxes. People *v.* Salomon, 51 Ill. 37. See also, Harward *v.* St. Clair & M. L. & Dr. Co., *supra;* Lovingston *v.* Wider, 53 Ill. 302; s. p. People *v.* Canty, 55 Ill. 33 (1870); Wider *v.* East St. Louis, 55 Ill. 133; School Trs. *v.* People, 63 Ill. 299 (1872); Gage *v.* Graham, 57 Ill. 144; *infra*, secs. 759, 776, 831, note; Desty, Taxation, 484, collects many of the cases illustrating what is a "corporate purpose." *Ante*, sec. 72 *et seq.*

Cities under the General Incorporation Act, prior to the act of 1871, were not restricted as to the amount of taxes to be raised for sewerage in any fiscal year. Hale *v.* People, 87 Ill. 72. The constitutional provision relating to the uniformity of taxes has respect to the laws which may be passed for the imposition of taxes, and not to the particular working of the laws. Spencer *v.* People, 68 Ill. 510 (1873). Murphy *v.* People, 120 Ill. 234. A *license fee* imposed upon a certain business or occupation is not unconstitutional if the fees are uniform as to all persons of the same class, as here, brokers, in a city. Braun *v.* Chicago, 110 Ill. 186.

In the case of The Supervisors of Livingston County *v.* Weider, decided by the Supreme Court of *Illinois*, 64 Ill. 427 (1872); s. c. 5 Chicago Legal News, 265, it was held that the State Reform School was a State institution, and not a county or corporate institution; that the expense of establishing it should be borne by all parts of the State equally; that an act of the legislature authorizing the creation of a municipal or corporate debt in order to secure its location or erection was unconstitutional, because such a debt (involving the necessity of a resort to taxation to pay it) is not created for a "corporate purpose" within the meaning of the constitutional provision referred to in the text. And in Mather *v.* Ottawa, 114 Ill. 659, bonds issued to aid in developing the natural advantages of a city for manufacturing purposes were held void as not being for a "*corporate purpose.*" For the same reason the same court, in Will Co. Sup. *v.* People, 110 Ill. 511, held invalid taxation in towns and counties, in pursuance of a general law of the State, for building bridges, maintaining highways, &c., in which all the people of the State were directly interested. See and compare Burr *v.* Carbondale, 76 Ill. 455, holding valid municipal bonds in aid of the Southern Illinois University, and Merrick *v.* Amherst, 12 Allen (Mass.), 500, where the court affirmed the power of the legislature under the Constitution of *Massachusetts* to authorize the town of Amherst to raise $50,000 for the Agricultural College located therein. But in Jenkins *v.* Andover, 103 Mass. 94, a statute permitting a town to tax itself for the benefit of a *private* incorporated academy was held invalid. See Lowell *v.* Boston, 111 Mass. 463 (1873), as to validity of aid to owners of land in Boston, the buildings upon which were burned in the great fire in that city of November 9 and 10, 1872. *Ante*, secs. 158, 159, 736, note; Commercial Nat. Bank of Cleveland *v.* Iola, 2 Dillon C. C. 353 (1873); *ante*, secs. 161–163; Page *v.* Graham, 57 Ill. 144; State *v.* Dodge Co. Comm'rs, 8 Neb. 129.

Taxation in excess of constitutional limitation of amount of indebtedness. The

§ 747. **Constitutional Provisions in Arkansas as to Taxation and Assessment construed.** — The Constitution of 1868 of Arkansas required the "taxing by a uniform rule of all property according to its true value in money;" and that "the General Assembly should provide for restricting the powers of taxation, *assessment*, &c., of cities and incorporated villages;" and it was held that a local paving assessment according to frontage, instead of the value of the property, was void for want of the uniformity required by the Constitution.[1] A prior Constitution provided that "all property shall be taxed according to its value, the manner of ascertaining which to be as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property shall be taxed higher than another species of property of equal value. The General Assembly shall have power to tax merchants, hawkers, peddlers, and privileges in such manner as may be prescribed by law." Respecting the effect of these provisions, the Supreme Court, after reviewing the previous adjudications, which were not in all respects uniform, finally decided that the Constitution did not prohibit the legislature "from *authorizing counties* and *incorporated towns* to impose a tax upon billiard tables, ten-pin alleys, taverns, groceries, and the like, for municipal purposes, and as a police regulation for the preservation of good order; that these provisions of

Illinois Constitution, art. ix. sec. 12, declares that no "municipal corporation shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per cent on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness." Construction of this provision. See Hale *v.* People, 87 Ill. 72; 29 Central Law Jour. 346, Nov. 1, 1889; *ante*, secs. 136, 136 *a*, where the subject is fully presented. "The constitutional provision that no municipal corporation shall be allowed to become indebted to an amount exceeding five per cent of the assessed value of its taxable property, is a limitation upon the power of the legislature to authorize cities of the State to contract indebtedness; therefore such constitutional provision could not operate as a repeal of a clause in a city charter, which prohibited the city from contracting an indebtedness in excess of an amount less than five per cent; it was not intended to authorize a city to become indebted to the full amount of the five per cent without regard to the limitations of its charter as to the extent of its indebtedness." *Magruder*, J., East St. Louis *v.* People, 124 Ill. 655. A constitutional amendment requiring municipal corporations, before or at the time of incurring indebtedness under authority of law, to provide for an annual tax sufficient to pay the interest thereon as it falls due, and to discharge the principal within twenty years, held *to repeal* the provisions of an existing city charter, which prohibited a city from levying an annual tax of over one per cent, of which three mills only could be levied for the purpose of paying interest, &c. (following East St. Louis *v.* Amy, 120 U. S. 600). East St. Louis *v.* People, 124 Ill. 655.

[1] Peay *v.* Little Rock, 32 Ark. 31 (1877). The court seems to question or regard as inapplicable the prior decisions in Washington *v.* State, 13 Ark. 752, and McGehee *v.* Mathias (levee tax), 21 Ark. 40.

the Constitution apply to *State* revenue, and are not applicable to taxes levied for county [and city] purposes."[1]

§ 748 (593). **Same subject. In Ohio.** — The Constitution of Ohio, in substance, requires "the taxing" by the legislature of "all property by a uniform rule;" but, as construed, this provision does not necessarily exclude the right to tax that which is *not property*, nor does it cover the whole ground included within the scope of the taxing power.[2] An "assessment" is not "taxing," within the meaning of the Constitution;[3] nor is the exacting by a municipality of money for granting a *license for shows and exhibitions* a "taxing of property," and hence such exaction is not unconstitutional.[4] But although this constitutional provision does not apply to "assessments" it does apply to "all *taxes* either for State, county, township, or *corporation* purposes;" and it deprives the legislature of the plenary power it would otherwise have over the subject of taxation, and of the right (which it would otherwise possess) to make exceptions and exemptions. *All* property must be taxed.[5]

§ 749. **Same subject. In Kansas.** — In Kansas a constitutional provision which requires that "the legislature shall provide for a *uniform and equal rate* of assessment and taxation" does not prohibit it from authorizing municipalities to require a license tax from foreign insurance companies.[6]

[1] Washington *v.* State, 13 Ark. 752 (1853). Compare Peay *v.* Little Rock, 32 Ark. 31 (1877); decided under the Constitution of 1868. See State *v.* Cassidy, 22 Minn. 312 (1875); s. c. 21 Am. Rep. 765; Morrill *v.* State (tax on peddlers sustained), 38 Wis. 428 (1875); s. c. 20 Am. Rep. 12. *Infra*, sec. 750.

[2] Constitution of *Ohio*, art. xii. sec. 2; Zanesville *v.* Richards, 5 Ohio St. 589, 593 (1855); Baker *v.* Cincinnati, 11 Ohio St. 534, 541, *per Gholson*, J.; Exch. Bank of Columbus *v.* Hines, 3 Ohio St. 1; Hill *v.* Higdon, 5 Ohio St. 243; *Ib.* 520.

[3] Reeves *v.* Wood County Treas., 8 Ohio St. 333; 9 Ohio St. 520; No. Ind. R. R. Co. *v.* Connelly, 10 Ohio St. 159, and cases cited; People *v.* Brooklyn, 4 N. Y. 419, 440; Richmond & Allegheny R. R. Co. *v.* Lynchburg, 81 Va. 473; Norfolk *v.* Ellis, 26 Gratt. 224; Roosevelt Hospital *v.* New York, 84 N. Y. 108.

[4] Baker *v.* Cincinnati, 11 Ohio St. 534, correcting and qualifying report in Mays *v.* Cincinnati, 1 Ohio St. 268, 273. See Peay *v.* Little Rock, 32 Ark. 31 (1877). See also *Ex parte* Montgomery, 64 Ala. 463; *infra*, sec. 753, note.

[5] Zanesville *v.* Richards, 5 Ohio St. 589, 592 (1855), *per Ranney*, C. J.; Hill *v.* Higdon, *Ib.* 243, 246. A similar provision in the Constitution of *Indiana* was held not to prevent the legislature from making exemptions in respect to *municipal* taxation. Hamilton *v.* Fort Wayne, 40 Ind. 491; *post*, sec. 750, note.

[6] Leavenworth *v.* Booth, 15 Kan. 627 (1875). "The provisions of the Constitution with reference to taxation have no application whatever to this class of cases. And it would make no difference if these sums required of foreign insurance companies were required solely for the purpose of swelling the general revenue fund." *Ib.* p. 636, *per Valentine*, J. The Constitution of *Kansas* only requires a uniform "rate." Ottawa Co. *v.* Nelson, 19 Kan. 234.

§ 750 (594). **Same subject. In Louisiana and elsewhere.** — A provision in the Constitution of Louisiana declaring that "taxation shall be *equal and uniform throughout the State*," even if it extends to municipal taxation, is not violated by a legislative provision authorizing the taxation by municipalities of callings, trades, and professions exercised within their limits; and taxation of this character is *equal* "*and uniform*" if all persons engaged in the same business are taxed alike.[1] The construction of *similar provisions in other States* is given in the cases referred to in the note.

[1] Merriam *v.* New Orleans (billiard tables), 14 La. An. 318; New Orleans *v.* Kaufman, 29 La. An. 283; New Orleans *v.* Staiger, 11 La. An. 68; New Orleans *v.* Southern Bank, *Ib.* 41; New Orleans *v.* Turpin (tax on auctioneers), 13 La. An. 56 (1858); Municipality No. 2 *v.* Dubois (special tax on livery-stable keepers), 10 La. An. 56; New Orleans *v.* Com. Bank of N. O., *Ib.* 735; Municipality No. 2 *v.* White (Benton Street Case), 9 La. An. 446; s. p. Am. Union Exp. Co. *v.* St. Joseph, 66 Mo. 675, citing text; Glasgow *v.* Rowse, 43 Mo. 479; St. Louis *v.* Sternberg, 69 Mo. 289; Ottawa Co. Comm'rs *v.* Nelson, 19 Kan. 234; *infra*, secs. 756, 778.

Construction of the provisions of the *Constitutions of the several States* requiring "equality" and "uniformity" of taxation. Desty on Taxation, sec. 35, pp. 173–190. Such provisions are generally held not to apply to license taxes or taxation on privileges and occupations. *Ib.* sec. 37, p. 191.

Whether the "equality" and "uniformity" of taxation required by the Constitution extends to municipal taxation. Lynch *v.* Alexandria, 9 La. An. 498; Municipality No. 2 *v.* White, *Ib.* 446; Cumming *v.* Rapides Par. Pol. Jury, *Ib.* 503. But see later case of New Orleans *v.* Elliott (paving street), 10 La. An. 59, and cases above cited. Casacalvo & Moreau Streets, *In re*, 20 La. An. 497 (1868); New Orleans Draining Co., *In re*, 11 La. An. 338 (1856); Wallace *v.* Shelton (levee assessment), 14 La. An. 498; Municipality No. 2 *v.* Dunn, 10 La. An. 57; Same *v.* Guillotte, 14 La. An. 297 (1859); State *v.* Volkman, 20 La. An. 585. It is held that the constitutional provision quoted did not prohibit the legislature from authorizing a municipal corporation to require the payment of $500 as the price of a license for theatre exhibitions; the court putting its judgment on the ground that the exaction of a price for the license so granted was not, in the sense of the Constitution, a *tax*. Charity Hospital *v.* Stickney, 2 La. An. 550 (1847); Municipality No. 2 *v.* Duncan, *Ib.* 182. It does not prohibit local assessments for sidewalks and the like. Daniel *v.* New Orleans, 26 La. An. 1 (1874). The Constitution of *Texas* contains the same provision as that of *Louisiana*, and is held to control municipal as well as State taxation. Austin *v.* Austin Gasl. & C. Co., 69 Tex. 180 (an exemption from taxation declared void). In *Virginia*, it is considered that the constitutional requirement of equality and uniformity does not require the taxes on all licenses to be equal and uniform. Slaughter *v.* Commonwealth, 13 Gratt. (Va.) 767; Gilkerson *v.* Frederick Jus., *Ib.* 577; and see Livingston *v.* Paducah, 80 Ky. 656. Construction of provision in the Constitution of *Massachusetts* requiring taxation to be "reasonable and proportional." Merrick *v.* Amherst, 12 Allen (Mass.), 500. In this case it was held that the legislature might authorize a town to raise money by taxation for an agricultural college to be established therein. *Ib.*; *ante*, secs. 158, 159, 746, note. In *Pennsylvania* (whose Constitution, however, contained no express provision requiring *equality* of taxation), an act of the legislature was held constitutional which compelled the property owners of the *county town* to contribute, in the way of

§ 751 (595). **Retrospective Taxation may be authorized.** — The legislature may, within constitutional limits, authorize a municipal-

taxes, $500 annually for several years, over and above the usual county rates and levies, to aid in defraying the expenses of erecting a court-house and jail therein, then in process of erection. Kirby *v.* Shaw, 19 Pa. St. 258 (1852). See Schenley *v.* Allegheny, 25 Pa. St. 128. Compare Hammett *v.* Philadelphia, 65 Pa. St. 146 ; s. c. 3 Am. Rep. 615; *post*, sec. 780, note. As to construction of provision requiring "*the rule of taxation to be uniform*, and to be levied upon such property as the legislature shall prescribe" (Constitution of *Wisconsin*, art. viii. sec. 1). Carter *v.* Dow (dog license tax valid), 16 Wis. 298, 566 ; Milw. Fire Dep. *v.* Helfenstein (foreign insurance company tax valid), *Ib.* 136 ; Walker *v.* Springfield, 94 Ill. 364 ; Milw. & Miss. R. R. Co. *v.* Waukesha Co. Sup., 3 Am. Law Reg. 679 ; Weeks *v.* Milwaukee, 10 Wis. 242 ; Lumsden *v.* Cross, *Ib.* 282 ; State *v.* Portage, 12 Wis. 562; Bond *v.* Kenosha, 17 Wis. 284 ; Hale *v.* Kenosha, 29 Wis. 599 ; Dean *v.* Gleason, 16 Wis. 1 ; Brightman *v.* Kirner, 22 Wis. 54 ; Morrill *v.* State (tax on peddlers sustained), 38 Wis. 428 (1875); s. c. 20 Am. Rep. 12. And see Gilman *v.* Sheboygan, 2 Black (U. S.), 510 ; Muscatine *v.* Miss. & Mo. R. R. Co., 1 Dillon C. C. R. 536. Uniformity of taxation of corporations required by the *Iowa* Constitution. Muscatine *v.* Railroad Co., *supra ;* Davenport *v.* Miss. & Mo. R. R. Co., 16 Iowa, 348, the opinion of *Wright* and *Dillon*, JJ., subsequently, in 1871, approved by a majority of the court ; Dunleith & D. Br. Co. *v.* Dubuque, 32 Iowa, 427. And see U. S. Exp. Co. *v.* Ellyson, 28 Iowa, 370, 380. The Constitution of *Indiana* (art. x. sec. 8) provides that "the General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation," &c. ; it is held in that State that this does not apply to municipal taxation, the Supreme Court admitting that a similar provision in *Ohio* (*ante*, sec. 748) and *Missouri* had been otherwise construed, and declining to overrule their prior decisions, made as early as 1858, and to adopt the views held in those States. Hamilton *v.* Fort Wayne, 40 Ind. 491 (1872). A privilege tax levied by a municipal corporation on one occupation — as here, liquor selling — does not contravene the constitutional requirement as to uniformity, &c., merely because others taxed by the State are not taxed by the corporation. Holberg *v.* Macon, 55 Miss. 112. In *Nebraska*, cities of the second class may impose an occupation tax upon liquor dealers in addition to requiring them to take out licenses to sell liquor, but cannot make the payment of such a tax a condition precedent to issuing to them a license. State *v.* Bennett, 19 Neb. 191. The provision of the *Georgia* Constitution of 1877, that "all taxation shall be uniform upon the same class of subjects . . . within the territorial limits of the authority levying the tax," does not prevent the imposition by a municipal corporation of a tax on one class of business and not on another. Cutliff *v.* Albany, 60 Ga. 597. The maxim that taxation and representation should go together applies to political communities, as such, and not to individuals. Accordingly the North Carolina act of 1864, empowering the authorities of Fayetteville to impose the same taxes for municipal purposes upon non-residents pursuing their ordinary avocations within the corporate limits as upon the inhabitants, with a *proviso* that non-residents so taxed shall have the right to vote at municipal elections, is not abrogated by a change in the State Constitution which deprives the non-resident taxpayer of his vote. The statute of 1864 authorizes a tax upon the shares in a national bank located in the town, and held by one who conducted his ordinary business therein, but whose residence was in the county, outside the corporate limits. A tax to pay an existing debt, incurred in the past, is a tax "for municipal purposes" within the meaning of the statute. Moore *v.* Fayetteville Comm'rs, 80 N. C. 154. A city authorized by its charter to license, tax, and regulate merchants, express companies, agents, insurance companies, imposed an *ad valorem* tax on the gross annual receipts of an express company derived from its business done in the

ity to levy and collect retrospective taxes, and for this purpose to use the assessment rolls of a previous year.[1]

§ 752 (596). **Local Assessments for Local Improvements upon Persons and Property benefited.** — The expense of making local improvements, such as grading and paving or otherwise improving streets and sidewalks, constructing drains, sewers, and the like, is very generally met, in whole or in part, by local assessments authorized to be made upon persons or property benefited, or deemed to be benefited. Legislation of this character, both in respect to its justice and its constitutional validity, has been extensively discussed by the judicial tribunals of nearly every State in the Union.[2] The courts are very generally agreed that the authority

city. The business of the company consisted in receiving goods for transmission to points outside the State to which its own line did not extend. *Held*, 1. The power conferred was valid under the State constitutional provision enjoining a uniform rate of taxation. 2. That it was not in conflict with Federal Constitution. 3. That its exercise was valid, although the tax was different from that imposed on merchants. American Union Express Co. *v.* St. Joseph, 66 Mo. 675.

[1] Municipality No. 1 *v.* Wheeler, 10 La. An. 745 ; New Orleans *v.* Poutz, 14 La. An. 853 ; *ante*, sec. 79 ; St. Louis *v.* Clemens, 52 Mo. 133 (1873). In *Wisconsin* it was held, that an act passed in 1862 (made necessary to avoid difficulties growing out of previous unconstitutional taxation) providing for the re-assessment of taxes of 1854, '55, '56, and '57, in one of the cities of that State, was constitutional. Tallman *v.* Janesville, 17 Wis. 71 ; *ante*, secs. 77–79, 544, and notes ; *post*, sec. 814, and cases there cited ; Fairfield *v.* People, 94 Ill. 244, citing and approving text. Desty, Taxation, sec. 91, p. 441, and cases. Where a tax was declared illegal by the courts for want of power to impose it, and the legislature afterwards legalized the assessment and conferred power to levy it, the court held that the legislative action was not retrospective, and that if the assessment was such as could have been authorized by the legislature at the time, it could afterwards be legalized for the future action of the city under the new act. Jacksonville *v.* Basnett, 20 Fla. 525. See Index, tit. *Curative Acts*.

[2] In holding that the legislature may constitutionally confer upon municipal corporations the power to improve streets at the expense of the adjoining proprietors, the Supreme Court of *Missouri* say: "The subject has been thoroughly discussed, and every principle bearing on it severely analyzed, in almost every State of the Union where the power has been exercised ; and it is now as firmly established as any other doctrine of American law." *Per Richardson*, J., in Palmyra *v.* Morton, 25 Mo. 593 (1857) ; see, also, in the same State, Egyptian Levee Co. *v.* Hardin, 27 Mo. 495 ; St. Joseph *v.* O'Donoghue, 31 Mo. 345 (1861) ; Lockwood *v.* St. Louis, 24 Mo. 20 ; reaffirmed, St. Louis *v.* Clemens, 36 Mo. 467 (1865) ; Eyerman *v.* Blaksley, 78 Mo. 145 ; Busbee *v.* Wake Co. Comm'rs, 93 N. C. 143 ; Galveston *v.* Heard, 54 Tex. 420 ; Sinton *v.* Ashbury, 41 Cal. 525 (1871). See State *v.* Leffingwell, 54 Mo. 458 (1873) ; *ante*, sec. 598, note ; and see authorities cited *infra*. Parliament has the power, and for a long time has exercised it, of assessing property for benefits conferred. Viner's Abr. "Sewers," Comyn's Dig. "Sewers." Bedford Union Poor Guard. *v.* Bedford Imp. Comm'rs, 7 Exch. 777. The legislature may authorize the expenses of constructing sewers to be assessed upon the adjoining property. Stroud *v.* Philadelphia, 61 Pa. St. 255 (1869) ; Mauch Chunk Bor. *v.* Shortz, *Ib.* 399. The power

to require the property specially benefited to bear the expense of local improvements is a branch of the taxing power, or included within it;[1] and the many cases which have been decided fully establish the general proposition that a statute authorizing the municipal authorities to open or establish streets,[2] or to make local improvements of the character above mentioned and to assess the expense upon the property which, in the opinion of the designated tribunal or officers, shall be specially benefited by such street or improvement in proportion to the amount of such benefit, or upon the abutters in proportion to benefits or frontage or superficial contents, is, in the absence of some special constitutional restriction, a valid exercise of the power of taxation.[3] Whether the expense of making such improvements shall be paid out of the general treasury, or be assessed upon the abutting property or other property specially benefited, and, if in the latter mode, whether the assessment shall be upon all property found to be benefited, or alone upon the abutters, according to frontage or according to the area of their lots, is according to the present weight of authority considered to be a question of legislative expediency, unless there is some special restraining constitutional provision upon the subject.[4] Whatever limitation there is upon the

to assess the lot-owner for the expense must be given by statute. *Ib.; post*, sec. 808.

The Constitution confers upon Congress the authority to exercise exclusive legislation over the District of Columbia, and hereunder it is competent for *Congress* to authorize the city of Washington to assess the expense of making local improvements in or upon streets on the abutters, and the tax for such improvements need not be a general one on the city. Willard *v.* Presbury, 14 Wall. 676 (1871). Local assessment is a species of tax. Van Antwerp, *In re*, 56 N. Y. 251 (1874). The cost of improving property owned by a city for special purposes, — as for market-places, engine-houses, station-houses, city hall, &c., — cannot be assessed upon adjoining lot-owners. Fort Wayne *v.* Shoaff, 106 Ind. 66. A statute authorizing the assessment of land not bordering upon a street to be improved, but within fifty feet of it, held constitutional. Ray *v.* Jeffersonville, 90 Ind. 567. Acts intended to equalize assessments should be construed so as to carry out their spirit. Parmelee *v.* Youngstown, 43 Ohio St. 162. By the Constitution of *Minnesota* only "municipal corporations" may be authorized to levy assessments for local improvements. It has been construed not to prevent a levy in behalf of a municipal corporation by its authorized agents, — as a board of park commissioners. State *v.* Hennepin Co. Dist. Court, 33 Minn. 235.

[1] Cities have no power, in the absence of statute conferring it, to subject the property of the State to local assessments. Polk Co. Sav. Bank *v.* State, 69 Iowa, 24. See also Sioux City *v.* S. C. Ind. Sch. Dist., 55 Iowa, 150. *Post*, sec. 773.

[2] As to apportioning *the damages* for opening streets *among the lots or property benefited*, see chapter on Eminent Domain, *ante*, sec. 616, and authorities there cited. "Owner," who is. Newark *v.* State, 34 N. J. L. 523; Morange *v.* Mix, 44 N. Y. 315.

[3] Quoted with approval in Farrar *v.* St. Louis, 80 Mo. 379, wherein the *Missouri* cases are ably reviewed by *Norton*, J. Whiting *v.* Quackenbush, 54 Cal. 306; Baltimore *v.* Johns Hopkins Hospital, 56 Md. 1; Jaeger *v.* Burr, 36 Ohio St. 164.

[4] Text cited and approved. White *v.* People, 94 Ill. 604; Dickson *v.* Racine, 61 Wis. 545; see also Centre Street Vac., *In re*, 115 Pa. St. 247; Norfolk *v.* Ellis, 26 Gratt. 224. There has been much controversy upon the point whether it is more just that the adjacent property should bear the whole expense of sidewalks or other local improvement, or that it should be borne by the corporation at large. See, for example, opinion of *Paine*, J. (Weeks *v.* Milwaukee, 10 Wis. 258), attacking, and of *Beck*, J., defending local assessments upon the abutters. Warren *v.* Henly, 31 Iowa, 31 (1870). See, also, Philadelphia *v.* Tryon, 35 Pa. St. 401; Lexington *v.* McQuillan's Heirs, 9 Dana (Ky.), 513; Craycraft *v.* Selvage, 10 Bush (Ky.), 696; Howell *v.* Bristol, 8 Bush, 493, holding portion of the amended charter of Covington void; People *v.* Brooklyn, 4 N. Y. 419. The author sums up the general result of the cases, *infra*, sec. 761, and notes.

In *Louisiana*, the equitable, and, it seems to the author, just rule is adopted of compelling the owner of property to pay a portion (one-third) of the cost of improvements in front of it, and the residue to be paid by the municipality. In reference to this subject, *Slidell*, C. J., remarked: "I must repeat my conviction that the system of paying for local improvements wholly out of the general treasury is inequitable, and will result in great extravagance, abuse, and injustice. I think the system of making particular localities, which are specially benefited, bear a special portion of the burden is safer, and more just to the citizens at large, by whose united contributions the city treasury is supplied. What is taken out of the treasury is out of the pockets of all the proprietors." Municipality No. 2 *v.* Dunn, 10 La. An. 57 (1855). See Same *v.* White, 9 *Ib.* 447; *infra*, secs. 761, 808.

Where the board of public works added fifty per cent to the estimated cost of work to be done in front of each lot, and adopted the amount so determined as the measure of such benefits, irrespective of the actual benefits, and the lots were differently af-

legislative power of taxation (which includes the power of apportioning taxation) must be found in the nature of the power, and in express constitutional provisions.[1]

[1] People *v.* Brooklyn, 4 N. Y. 419 (1851), which is the leading case on this subject. See chapter on Eminent Domain, sec. 616. Speaking of the Constitution of New York, in this respect, Mr. Justice *Ruggles*, in the case just cited, says: "It is not ordained [by the Constitution] that taxation shall be general, so as to embrace all persons or *all* taxable property within the State, or *within any district* or territorial division of the State; nor that it shall or shall not be numerically equal, as in the case of a capitation tax; nor that it must be in the ratio of the value of each man's land, or of his goods, or of both combined; nor that a tax 'must be coextensive with the district, or upon all the property in a district which has the character of, and is known to the law as, a local sovereignty.' Nor has the Constitution ordained or forbidden that a tax shall be apportioned according to the benefit which each taxpayer is supposed to receive from the object on which the tax is expended. In all of these particulars, the power of taxation [in this State] is unrestrained." 4 N. Y. 419, 427. The case of The People *v.* Brooklyn was recognized and followed in Brewster *v.* Syracuse, 19 N. Y. 116, 118; Guilford *v.* Chenango Co. Sup., 13 N. Y. 143; Sun Ins. Co. *v.* New York, 8 N. Y. 241, 251; Litchfield *v.* Vernon, 41 N. Y. 123 (1869); Howell *v.* Buffalo, 37 N. Y. 267 (1868). May be assessed against owner. Chapman *v.* Brooklyn, 40 N. Y. 372. The expense of a local assessment for sidewalks should be apportioned between the tenant for life and the remainderman. Peck *v.* Sherwood, 56 N. Y. 614 (1874); *post*, secs. 754, 761; Sands *v.* Richmond, 31 Gratt. (Va.) 571, approving text.

Not only can the legislature authorize, but it may, in the absence of any special restriction upon its power in this respect, *compel* a municipal corporation to *lay out and improve highways or streets* within its limits, without its consent or a vote of its

§ 753 (597). **Whether Whole Cost may be imposed on the Abutter.** — Upon the kindred question, whether it is competent for the legislature to require the *abutter to bear the whole expense* of the improvement in front of his particular property, — in other words, whether

fected by the improvement, there being a total failure to exercise the judgment of the board in determining the actual benefits, the assessment was void. Watkins *v.* Zwietusch, 47 Wis. 513; Johnson *v.* Milwaukee, 40 Wis. 315; Watkins *v.* Milwaukee, 52 Wis. 98; s. c. 55 Wis. 335; Zwietusch *v.* Milwaukee, 55 Wis. 369.

If the charter requires the assessment to be according to *benefits received*, it is not sufficient to assess according to *frontage*, and the report of the commissioners of assessment should show that the assessment was made upon the right basis. Only actual benefits can be assessed. State *v.* Hudson, 29 N. J. L. 104 (1860); Same *v.* Same, *Ib.* 115; State *v.* Bergen, *Ib.* 266; State *v.* Jersey City, 40 N. J. L. 485; State *v.* Guttenberg, 38 N. J. L. 419; State *v.* Rahway, 39 N. J. L. 646; State *v.* Newark, 37 N. J. L. 415. The phrase, "more than one-half of the frontage," is held to mean one-half of the owners in numbers. State *v.* Newark, 37 N. J. L. 415. Course of decision in *New Jersey*, see *infra*, sec. 760 *a*. Where the charge is to be "in proportion to frontage," the amount of the whole work is to be ascertained and each lot charged in the proportion its frontage bears to that of all the lots. Neenan *v.* Smith, 50 Mo. 525 (1872); s. c. again, 60 Mo. 292 (1875); St. Louis *v.* Clemens, 49 Mo. 552. Difference between "benefits" and "frontage." State *v.* Hudson, *supra;* Clapp *v.* Hartford, 35 Conn. 66; Amery *v.* Keokuk, 42 Iowa, 701; Sheley *v.* Detroit, 45 Mich. 431; Johnston *v.* Trenton, 43 N. J. L. 166; Cleveland *v.* Tripp, 13 R. I. 50. An ordinance levying the cost of improving streets and sidewalks by special taxation upon abutting real estate in *proportion to frontage* is valid under the Constitution of *Illinois*. Springfield *v.* Green, 120 Ill. 269. Further as to *frontage assessments*, when valid and when not. State *v.* Jersey City, 24 N. J. L. 662; State *v.* Passaic, 37 N. J. L. 65; *Ib.* 128; Cronin *v.* Jersey City, 38 N. J. L. 410; State *v.* Guttenberg, *Ib.* 419; *post*, sec. 808; Hoyt *v.* East Saginaw, 19 Mich. 39; s. c. 2 Am. Rep. 76.

Construction of word "fronting." — Authority to pave a highway at the expense of the property *fronting* thereon does not authorize an assessment against a lot which is separated from the highway so paved by a railway running side by side therewith, which is liable to be "fenced up at any moment." The court add: "We are unable, indeed, to see how it can be said that this lot fronts on the highway in question, when its real front is on another public highway — the railroad — forty-seven feet south of it." Philadelphia *v.* Eastwick, 35 Pa. St. 75 (1860). See, also, Philadelphia *v.* Phila., W. & B. R. R. Co., 33 Pa. St. 41. An assessment for a local improvement apportioned among the owners of abutting real estate according to frontage is held to be valid, and an assessment on that basis against lots, some of which were vacant and others occupied by buildings, was sustained, since under the charter it was the duty of the assessors to determine the benefits, in doing which they acted judicially; and their judgment as to the amount of benefit was held not to be judicially reviewable unless it appeared (which in the case before the court it did not) that they acted upon some erroneous principle in making the assessment. O'Reilley *v.* Kingston, 114 N. Y. 439 (1889). Assessment on *corner-lots* with double frontage held valid for entire extent improved. Morrison *v.* Hershire, 32 Iowa, 271 (1871). See, also, Wolf *v.* Keokuk, 48 Iowa, 129; Warren *v.* Henly, 31 Iowa, 31 (1870); Springfield *v.* Green, 120 Ill. 269. Construction of words "adjacent" and "adjoining." "Adjoining" means touching or contiguous, as distinguished from lying near or adjacent. Ward, *In re*, 52 N. Y. 395 (1873), *per Andrews*, J. O'Reilley *v.* Kingston, 114 N. Y. 439 (1889).

The legislature may adopt and sanction a local improvement which it could previously authorize, and may authorize an assessment for an improvement after the

citizens; and for this purpose it may provide for raising the money by a sale of the bonds of the municipality, due at a future period, and to be paid by *taxation;* and if the local authorities refuse to issue the bonds, the duty may be enforced by *mandamus*. People, *ex rel.* McLean *v.* Flagg, 46 N. Y. 401; s. c. 11 Am. Law Reg. (N. S.) 80. See also *ante*, sec. 71 *et seq.*, and cases cited; *post*, sec. 831, note.

In *Pennsylvania*, local assessments on the property benefited are "clearly within the competency of the legislature," are a legitimate exercise of the taxing power, and "have been many times sustained by this court." *Per Woodward*, J., in Philadelphia *v.* Tryon, 35 Pa. St. 401, 404 (1860). See, in same State, O'Connor *v.* Pittsburgh, 18 Pa. St. 187; Schenley *v.* Allegheny, 25 Pa. St. 128 (1854). See Kirby *v.* Shaw, 19 Pa. St. 258, as to *Pennsylvania* Constitution, and the absence of any provision therein requiring *equality* of taxation. Compare Hammett *v.* Philadelphia, *infra*. The assessment may ordinarily be *upon the abutter*, "in proportion to the distance in feet which the property may abut" on the improvement. Pittsburgh *v.* Woods, 44 Pa. St. 113 (1862), approves People *v.* Brooklyn, *supra;* Magee *v.* Commonwealth, 46 Pa. St. 358; Wray *v.* Pittsburgh, *Ib.* 365 (this case refers to O'Connor *v.* Pittsburgh, *supra*, and says the charter was altered after it was decided); McGonigle *v.* Allegheny, 44 Pa. St. 118; Seely *v.* Pittsburgh, 82 Pa. St. 360 (1877); s. c. 22 Am. Rep. 760; Wolf *v.* Philadelphia, 105 Pa. St. 25; Ferson's Appeal, 96 Pa. St. 140; *infra*, sec. 761, and note. May be *made a lien* upon the property benefited. McMasters *v.* Commonwealth, 3 Watts (Pa.), 292 (1834); Greensburg Bor. *v.* Young, 53 Pa. St. 280, construing charter to authorize assessment upon the abutter. Stroud *v.* Philadelphia 61 Pa. St. 255: Fenelon's Petition, 7 Pa. St. 173. In *Pennsylvania* a city cannot support a claim for paving against the roadbed of a railroad. Junction R. R. Co. *v.* Philadelphia, 88 Pa. St. 424. The right of way acquired by a railroad company is exclusive at all times and for all purposes. *Ib.;* s. p. Philadelphia *v.* Phila. W. & B. R. R. Co., 33 Pa. St. 41; Little Schuylkill Nav. R. R. & C. Co. *v.* Norton, 24 Pa. St. 465; Mulherrin *v.* Del., L. & W. R. R. Co., 81 Pa. St. 366. In Philadelphia *v.* Tryon, above cited, Mr. Justice *Woodward* thus vindicates the *justice* of such assessments: "Local impositions for grading, paving, sewerage, and the like," he says, "have been many times sustained by this court, and are, in the long run, perfectly fair, for they enter into and enhance the value of the property assessed. The public, it is true, are benefited, but so is the individual; and as an owner of urban property, he is further benefited when, in due time, the same tax falls on his neighbor." 35 Pa. St. 401, 404 (1860). That the legislature may confer upon municipal corporations the power of assessing the cost of local improvements upon the property benefited has, as above shown, been frequently decided; and whether the assessment shall be made upon all the property specially benefited, or alone upon the abutters, is a question of legislative expediency, unless there be some restraining constitutional provision upon the subject.

The later decisions of the Supreme Court of *Pennsylvania* have, however, asserted an important limitation upon this legislative discretion. In Hammett *v.* Philadelphia, 65 Pa. St. 146; s. c. 3 Am. Rep. 615, there was an act of the Assembly authorizing the city of Philadelphia to take a street already laid out, and in good condition, and improve it for a public drive or carriage-way, and to assess the expense of the improvements upon the property abutting upon said street. The court held this to be unconstitutional, on the ground that it imposed a local assessment for improvements which were for the public benefit. There was no clause in the Constitution of *Pennsylvania* restraining the legislative discretion; but it was said the limitation grew out of the very nature of the subject. Mr. Justice *Shars-*

the abutters can be made to pay the cost of the improvement in front of their respective lots, instead of having the whole expense

improvement is made. A local improvement act which directs commissioners to fix a district of assessment which should include all the land which in their judgment should be benefited, and then that other commissioners should assess such lands within the district as in *their* judgment were benefited, is not invalid by reason of not requiring the assessment of all the land within such district. The validity of an assessment on lots benefited by a local improvement is not affected by the fact that the assessment is greater than the tax valuation of the lots. Sackett, &c. Streets, *In re*, 74 N. Y. 95.

Alabama. The doctrine in this State seems to be that assessments for local improvements on the basis of frontage or benefits are valid in the absence of any special restriction in the Constitution. Irwin *v.* Mobile, 57 Ala. 6, 9 (1876). In Mobile *v.* Dargan, 45 Ala. 310 (1871), arising under the Constitution of 1868, which required "all *taxes* on property in the State to be assessed in exact proportion to the *value* of such property," it was held that an assessment for a local improvement on the basis of "frontage" was inconsistent with the constitutional provision above quoted. But *quære*. The Constitution of 1875 contains the above mentioned provision and others, under which the question whether an assessment for local improvements on the basis of "special benefits" is a tax within the meaning of the various provisions of the Constitution applicable to the subject, is now (February, 1890) before the Supreme Court of the State for decision in the case of Birmingham *v.* Klein. *Post*, sec. 761.

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wood, after discussing some of the authorities, said: "The original paving of the street brings the property bounding upon it into the market as building lots. Before that it is a road, not a street. It is therefore a local improvement, with benefits almost exclusively peculiar to the adjoining properties. Such a case is clearly within the principle of assessing the cost on the lots lying upon it. . . . But, when a street is once opened and paved, thus assimilated with the rest of the city and made a part of it, all the particular benefits to the locality derived from the improvements have been received and enjoyed. Repairing streets is as much a part of the ordinary duties of the municipality — for the general good — as cleaning, watching, and lighting. It would lead to monstrous injustice and inequality, should such general expenses be provided for by local assessments."

The court laid down the following general rule: "Local assessments can only be constitutional when imposed to pay for local improvement, clearly conferring special benefits on the properties assessed, and to the extent of these benefits. They cannot be so imposed where the improvement is either expressed or appears to be for general public benefit." This rule, though clearly sound upon principle, would be inconvenient of application from the difficulty in many cases of determining whether an improvement was a public or a private benefit. In order to justify an assessment, the improvement must be for a public purpose, since the public have no right to tax a citizen to make improvements for his own benefit solely. All streets which are opened for public use are public benefits, and it is upon that ground only that the State can take private property for streets; but the cost of opening and improving them is assessed on adjoining owners on the ground of private benefit. The last two sentences were quoted with approval in Baltimore *v.* Hanson, 61 Md. 462.

In the case of Washington Avenue, 69 Pa. St. 352, it was held to be beyond the power of the legislature to require owners of farm lands, lying within one mile on either side of a public highway, to pay for improving it by an assessment upon their lands by the acre. The highway in question was seven miles long, was not within the bounds of a municipality; but its improvement and management was placed in the hands of a board of commissioners.

of the improvement assessed or apportioned among all, on the basis of frontage, or of benefits, — there has been more diversity of opin-

The main ground on which the decision was based was that the improvement would be a general public benefit. The secondary ground was that the rule of charging benefits by frontage could "apply only to cities and large towns when the density of population along the street and the small size of lots make it a reasonably certain mode of arriving at a true result. But to apply it to the country and to farm lands would lead to such inequality and injustice as to deprive it of all soundness as a rule, or as a substitute for a fair and impartial valuation of benefits in pursuance of law." See Weber *v.* Reinhard, 73 Pa. St. 370 (1873); s. c. 13 Am. Rep. 747. See comments of Justice *Sharswood* on the above case.

In the opinion in the Washington Avenue Case, *supra*, after referring with approval to Hammett *v.* Philadelphia, Judge *Agnew* says: "Indeed, I consider it a fortunate circumstance that that case came up; for it led to an inquiry into the power of special taxation, which was in danger of running wild by insensible degrees, and leading, before we had become aware of it, into the exercise of a bastard power, dangerous to the right of private property, and violative of the provisions in the Bill of Rights placed there for its protection. In questions of power exercised by agents, it is sometimes the misfortune of communities to be carried, step by step, into the exercise of illegitimate powers, without perceiving the progression, until the usurpations become so firmly fixed by precedents it seems to be impossible to recede or to break through them.

"The majority opinion in that case did not then, and this opinion does not now, dispute the long-recognized power of local taxation for local improvements, according to the benefits conferred; but they meet and dispute departures from that power, which, if recognized, will end in the overthrow of the right of private property. Laws which cast the burdens of the public on a few individuals, no matter what the pretence or how seeming their analogy to constitutional enactments, are, in their essence, despotic and tyrannical; and it becomes the judiciary to stand firmly by the fundamental law, in defence of their general, great, and essential principles of liberty and free government, for the establishment and perpetuation of which the Constitution itself was ordained."

See on this subject, Seely *v.* Pittsburgh, 82 Pa. St. 360 (1877); s. c. 22 Am. Rep. 760; Philadelphia *v.* Rule, 93 Pa. St. 15; Scranton *v.* Pa. Coal Co., 105 Pa. St. 445 (1884), denying right to make assessments on basis of frontage on rural or suburban property. These decisions and others are referred to below, in another connection. *Infra*, sec. 761, note; *post*, sec. 808; Wistar *v.* Philadelphia, 80 Pa. St. 505. The legislature may provide for the payment of damages for opening, widening, or vacating streets either by an assessment against the property or the owner, in its discretion. *Re* Centre Street Vac., 115 Pa. St. 247 (1886). See also Sawmill Run Bridge, 85 Pa. St. 163, holding that a bridge, which is part of a public highway of a city, is a public and not a local improvement; and legislation authorizing the assessment of its cost upon the properties benefited will not be sustained, as all citizens have an interest in such an improvement, and the assessment of its cost upon individuals would be taking private property for public use without just compensation. Also, Tide-water Co. *v.* Coster, 18 N. J. Eq. 518. See *post*, sec. 780, and note, and extract from opinion of *Wagner*, J., there given; State *v.* Leffingwell, 54 Mo. 458 (1873). Compare Lafayette *v.* Fowler, 34 Ind. 140; Williams *v.* Detroit, 2 Mich. 560 (1861); Hoyt *v.* East Saginaw, 19 Mich. 39; Municipality No. 2 *v.* Dunn, 10 La. An. 57 (1855), cited *infra;* Broadway Bapt. Ch. *v.* McAtee, 8 Bush (Ky.), 508, 512; *post*, sec. 759.

The legislature may, in *Massachusetts*, authorize the cost of opening, widening, and grading streets to be assessed upon the estates that will abut on the street afterwards. Dorgan *v.* Boston, 12 Allen (Mass.), 223; Harvard College *v.* Boston, 104 Mass. 470; Boston Seamen's Fr. Soc. *v.* Boston, 116 Mass. 181 (1874); s. c. 17