prior occupancy to mining ground or agricultural land is not unrestricted. It must be exercised with reference to the general condition of the country and the necessities of the people, and not so as to deprive a whole neighborhood or community of its use and vest an absolute monopoly in a single individual. The Act of Congress of 1866 recognizes the right to water by prior appropriation for agricultural and manufacturing purposes, as well as for mining. Its language is: "That, whenever by priority of possession rights to the use of water for mining, agricultural, manufacturing or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same."

It is very evident that Congress intended, al-684*] though the *language used is not happy, to recognize as valid the customary law with respect to the use of water which had grown up among the occupants of the public land under the peculiar necessities of their condition; and that law may be shown by evidence of the local customs, or by the legislation of the State or Territory, or the decisions of the courts. The union of the three conditions in any particular case is not essential to the perfection of the right by priority; and in case of conflict between a local custom and a statutory regulation, the latter, as of superior authority, must necessarily control.

This law was in force when the plaintiffs in this case acquired their right to the waters of Avalanche Creek. There was also in force an Act of the Territory, passed on the 12th of January, 1865, to protect and regulate the irrigation of land, which declared in its first section that all persons who claimed or held a possessory right or title to any land within the Territory on the bank, margin or neighborhood of any stream of water, should be "Entitled to the use of the water of said stream for the purpose of irrigation and making said claim available to the full extent of the soil for agricultural purposes." Another section provided that in case the volume of water in the stream was not sufficient to supply the continual wants of the entire country, through which it passed, an apportionment of the water should be made between different localities by commissioners appointed for that purpose. This last section has no application to the present case, for it is not pretended that there was not water enough in the district, where Avalanche Creek flows, to supply the wants of the country; and the section itself was repealed in 1870. Sess. L. of 1865, p. 367.

In January of that year another Act was passed by the Legislature of Montana upon the same subject, which recognizes the right by prior appropriation of water for the purposes of irrigation, and declares that all controversies respecting the rights to water under its 685*] provisions shall be *determined by the date of the appropriation as respectively made by the parties, and that the water of the streams shall be made available to their full extent for irrigating purposes, without regard to deterioration in quality or diminution in quantity. "So that the same do not materially effect or impair the rights of the prior appropriator; but in no case shall the same be diverted or turned from the ditches or canals of such appropriator so as to render the same unavailable." Sess. L. of 1870, p. 57.

Several decisions of the Supreme Court of Montana have been cited to us recognizing the right by prior appropriation to water for purposes of mining on the public lands of the United States, and there is no solid reason for upholding the right when the water is thus used, which does not apply with the same force when the water is sought on those lands for any other equally beneficial purpose. In *Thorp* v. *Freed*, 1 Mont., 652, 665, the subject was very ably discussed by two of the justices of that court, who differed in opinion upon the question in that case, where both parties had acquired the title of the government. The disagreement would seem to have arisen in the application of the doctrine to a case where title had passed from the government and not in its application to a case where neither party had acquired that title. In the course of his opinion Mr. Justice Knowles stated that ever since the settlement of the Territory it had been the custom of those who had settled themselves upon the public domain and devoted any part thereof to the purposes of agriculture, to dig ditches and turn out the water of some stream to irrigate the same; that this right had been generally recognized by the people of the Territory, and had been universally conceded as a necessity of agricultural pursuits. "So universal," added the justice, "has been this usage that I do not suppose there has been a parcel of land, to the extent of one acre, cultivated within the bounds of this Territory, that has not been irrigated by water diverted from some running stream."

*We are satisfied that the right [*686 claimed by the plaintiffs is one which, under the customs, laws and decisions of the courts of the Territory, and the Act of Congress, should be recognized and protected.

We, therefore, affirm the decree of the Supreme Court of the Territory.

THE CITIZENS' SAVINGS & LOAN ASSOCIATION OF CLEVELAND, OHIO, *Plff. in Err.*,

v.

TOPEKA CITY.

(See S. C., *"Loan Association* v. *Topeka,"* 20 Wall., 655-670.)

Statute, authorizing towns to make obligations —limitation on legislative power—limitation of right of taxation cannot be exercised for private purpose—only for public purpose—private manufacturing enterprise—bonds issued for, void.

*1. A statute which authorizes towns to contract debts or other obligations payable in money, implies the duty to levy taxes to pay them, unless some other fund or source of payment is provided.

2. If there is no power in the Legislature which passes such a statute, to authorize the levy of taxes in aid of the purpose for which the obligation is to be contracted, the statute is void, and so are the bonds or other forms of contract based on the statute.

*Headnotes by Mr. Justice MILLER.

NOTE.—*Power to tax for the purpose of aiding business corporations or enterprises*—see note, 14 L. R. A. 478.

3. There is no such thing in the theory of our governments, state and national, as unlimited power in any of their branches. The Executive, the Legislative and the Judicial Departments are all of limited and defined powers.

4. There are limitations of such powers, which arise out of the essential nature of all free governments; implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name.

5. Among these is the limitation of the right of taxation, that it can only be used in aid of a public object, an object which is within the purpose for which governments are established.

6. It cannot, therefore, be exercised in aid of enterprises strictly private, for the benefit of individuals, though in a remote or collateral way the local public may be benefited thereby.

7. Though the line which distinguishes the public use for which taxes may be assessed, from the private use for which they may not, is not always easy to discern, yet it is the duty of the court where the case falls clearly within the latter class, to interpose when properly called on for the protection of the rights of the citizen, and aid to prevent his private property from being unlawfully appropriated to the use of others

8. A statute, which authorizes a town to issue its bonds in aid of the manufacturing enterprise of individuals, is void, because the taxes necessary to pay the bonds would, if collected, be a transfer of the property of individuals to aid in the projects of gain and profit of others, and not for a public use, in the proper sense of that term.

9. And in a suit brought on such bonds or the interest coupons attached thereon, the circuit court properly declared them void.

[That the town authorities have paid one installment of interest on these bonds, works no estoppel.]

[No. 729.]

Submitted Dec. 8, 1874. Decided Feb. 1, 1875.

IN ERROR to the Circuit Court of the United States for the District of Kansas.

The case is stated by the court.

Mr. **Alfred Ennis,** for plaintiff in error:

Had the legislature of the State of Arkansas the power to enact the laws referred to, authorizing the issuing of the bonds to which the interest coupons sued on belong?

The question is strictly one of legislative power, and its consideration is of sufficient importance to serve as an apology for an allusion to some of the elementary principles of government.

The British Parliament, not subject to the restrictions and limitations of a written constitution, is omnipotent. It is the supreme power of the realm. Its powers are undefined and undefinable. "It can do everything that is not naturally impossible." And what it does, no earthly power except Parliament can undo.

1 Bl. Com., 161; 4 Coke, Inst., 36; 1 De Tocqueville's Democracy in America (Reeves), 2 Am. ed., 80; *Eaton* v. *B. C. & M. R. Co.*, 51 N. H., 504.

If the British Parliament enact a thing to be done, although it be unwise, impolitic and unreasonable, no power, other than that of Parliament itself, can restrain its operation. The courts are not at liberty to interfere.

1 Bl. Com. 91.

While the Legislative Department of our Federal Government is one of enumerated and limited powers, wherein Congres can exercise no legislative authority unless it is expressly delegated by or shall be necessary to carry into effect the enumerated powers of the Federal Constitution, the Legislative Department of the State Governments possesses all the legislative power not vested in the Federal Government, and may exercise supreme, omnipotent and legislative authority, and may enact any law, if not forbidden by the State Constitution, the Constitution of the United States or the laws and treaties made under it.

Township of Pine Grove v. *Talcott*, U. S. Sup. Court, Oct. Term, 1873, *ante*, 227; *R. Co.* v. *County of Otoe*, 16 Wall., 667, 21 L. ed. 375; *McCulloch* v. *State of Maryland*, 4 Wheat., 316; *Golden* v. *Prince*, 3 Wash. (C. C.) 313; *Beauchamp* v. *The State*, 6 Blackf., 299; *The Board of Com. of Leavenworth Co.* v. *Miller*, 7 Kan., 479; *Lafayette, M. & B. R. Co.* v. *Geiger*, 34 Ind., 185; *S. & V. R. Co.* v. *Stockton*, 41 Cal., 147; *Guilford* v. *Supervisors of Chenango Co.*, 13 N. Y., 145; *People* v. *Flagg*, 46 N. Y. 407; *People* v. *Draper*, 15 N. Y. 543; *Clarke* v. *Rochester*, 24 Barb., 446; *Morrison* v. *Springer*, 15 Ia., 304; *Stewart* v. *Supervisors of Polk Co.*, 30 Ia. 9.

It may be stated thus: that, when the validity of an Act of Congress is brought in question, reference is had to the Federal Constitution, to ascertain if the power to enact the same has been conferred; while, on the other hand, when the validity of an Act of the State Legislature is brought in question, reference is had to both the State and Federal Constitutions, to ascertain if the power to enact the same has been forbidden.

Section 2 of the Bill of Rights in the Constitution of the State of Kansas reads as follows "All political power is inherent in the people."

Section 1 of article 2 of the Constitution of the State of Kansas reads as follows: "The legislative power of the State shall be vested in a House of Representatives and Senate."

Section 2 of the Bill of Rights declares all political power to be inherent in the people.

Section 1 of article 2 of the Constitution vests all the legislative power, inherent in the people, in the legislature.

This is not a grant of enumerated and limited powers, as is the case with the Constitution of the United States, but is a general grant of power, and confers upon the Legislature supreme and omnipotent legislative authority, subject only to constitutional restrictions and limitations.

In the case of *Pine Grove* v. *Talcott*, decided at the October Term, 1873, of the U. S. Supreme Court, and not yet reported (*ante*, 227), Justice Swayne, in delivering the opinion of the court, having under consideration the validity of an Act of the Legislature of the State of Michigan, says:

"The legislative power of a State extends to everything within the sphere of such power, except as it is restricted by the Federal Constitution, or that of the State."

See, *Bushnell* v. *Beloit*, 10 Wis., 195; *People* v. *Mitchell*, 35 N. Y., 551; *Evansville, etc., R. Co.* v. *Evansville*, 15 Ind., 395; *Aurora* v. *West*, 9 Ind., 75, 22 Ind., 88; *V. S. & Tex. R. W. Co.* v. *Ouachita*, 11 La. Ann., 649; *City and Co. of St. Louis* v. *Alexander*, 23 Mo., 483; *Taylor* v. *Newberne*, 2 Jones, Eq. (N. C.), 141; *Stein* v. *Mobile*, 24 Ala., 591; *Whittaker* v. *Johnson Co.*, 10 La., 161; *Fosdick* v. *Perrysburg*, 14 Ohio St., 472; *Cotten* v. *Co. Commissioners*, 6 Fla., 610; *Price* v. *Foster*, 4 Harr., (Del.), 479; *Piatt* v. *People*, 29 Ill., 54; *Maddox* v. *Graham*, 2 Met. (Ky.) 56; *Slack* v. *M. & L. R. Co.*, 13 B. Mon., 1; *Strickland* v. *Miss. R. Co.*, not reported; *L. & N. R. R.*

Co. v. *Davidson*, 1 Sneed (Tenn.), 637; *Commonwealth* v. *Perkins*, 43 Pa., 400; *Bridgeport* v. *The Housatonic R. Co.*, 15 Conn., 475; *Commissioners of Knox Co.* v. *Aspinwall*, 21 How., 539, 16 L. ed., 208, and 24 How., 376, 16 L. ed., 735; *Bissell* v. *City of Jefferson*, 24 How., 287, 16 L. ed., 664; *Woods* v. *Lawrence*, 1 Black, 386, 17 L. ed., 122; see cases reported in 1 Wall., pp. 83, 175, 272, 291, 384, 17 L. ed., 613, 684, 553, 538, 564; 6 Wall., pp. 166, 210, 514, 518, 18 L. ed. 768, 781, 933, 918; 7 Wall., pp. 182, 313, 19 L. ed., 160, 93; *City* v. *Lamson*, 9 Wall., 477, 19 L. ed., 725; *People* v. *San Francisco*, 27 Cal., 655; *Augusta Bank* v. *Augusta*, 49 Me., 507; *Wyman* v. *Macon*, 21 Va., 275.

It is not on slight implications and vague conjectures that the Legislature is pronounced to have transcended its powers, and its Acts to be considered void. The conflict between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other.

See, also, *State* v. *Robinson*, 1. Kan., 18; *Atchison* v. *Bartholow*, 4 Kan., 124; *Board of Com. of Leavenworth Co.* v. *Miller, supra; Legal Tender* cases, 12 Wall., 531, 20 L. ed., 305; *Commonwealth* v. *Smith*, 4 Binn. Pa., 123; *Freeland* v. *Hastings*, 92 Mass., 585; *Oliver* v. *Washington Mills*, 93 Mass., 279; *Cheaney* v. *Hooser*, 9 B. Mon., 345; *Maddox* v. *Graham*, 2 Metc. (Ky.), 56; *Tyler* v. *People*, 8 Mich., 333; *People* v. *Mahany*, 13 Mich., 501; *Oliver* v. *Keightley*, 24 Ind., 514; *Talbot* v. *Hudson*, 82 Mass., 417; *Wellington et al., Petitioners, etc.*, 33 Mass., 95; *Ogden* v. *Saunders*, 12 Wheat., 270; *Dow* v. *Norris*, 4 N. H., 16; *Franklin Bridge Co.* v. *Wood*, 14 Ga., 80; *Foster* v. *Essex Bank*, 16 Mass., 245; *Newland* v. *Marsh*, 19 Ill., 381; *Hartford Bridge Co.* v. *Union Ferry Co.*, 29 Conn., 210; *Eason* v. *State*, 6 Eng., 481; *Matter of Clinton Street*, 2 Brewst., Pa., 599; *Leonard* v. *Wiseman*, 31 Md., 201; *Bennett* v. *Boggs*, Bald., 74; *Kirby* v. *Shaw*, 7 Pa., 258; *State* v. *Dawson*, 3 Hill, S. C., 100; *James* v. *Patton*, 2 Seld., 9; *McCulloch* v. *Maryland*, 4 Wheat., 316; *Clarke* v. *People*, 26 Wend., 599; *Sun Mut. Ins. Co.* v. *New York*, 5 Sandf., 10; *Lane* v. *Dorman*, 3 Scam., 238; *State* v. *Springfield*, 6 Ind., 84; *Fletcher* v. *Peck*, 6 Cranch, 128; *People* v. *Supvrs. of Orange Co.*, 17 N. Y., 241.

The judiciary cannot declare a legislative enactment invalid because such enactment is thought to infringe or be repugnant to some latent spirit supposed to pervade or underlie the Constitution, but which is not clearly disclosed. Such would be invoking the aid of a higher power than the Constitution itself.

There is a marked distinction between taxation and eminent domain. Taxation exacts money as the individual share of a justly imposed and definitely ascertained general public burden, for which an equivalent is presumably received in the benefits resulting therefrom; while property taken by right of eminent domain is so taken, not as the individual share of an ascertained general public burden, but as something distinct from and more than such share of the public burdens. The right of eminent domain does not grow out of the right of taxation. The constitutional provisions to the effect that private property shall not be taken for public use without just compensation, has no application or reference to the taxing power.

The Legislature possesses the exclusive power to designate the public purpose to which the right of eminent domain may be applied.

See, *Harding* v. *Goodlett*, 3 Yerg., 41; *Stark* v. *McGowan*, 1 Nott. & McC., 387; *Lindsay* v. *Commissioners*, 2 Bay, 38; *Tipton* v. *Miller*, 3 Yerg., 423.

The taxing power is one of the inherent powers of government and belongs appropriately to the legislative department.

McCulloch v. *Maryland*, 4 Wheat., 428; *Prov. Bk.* v. *Billings*, 4 Pet., 514, 561; *Brewster* v. *Striker*, 2 N. Y., 29, 419; *Guilford* v. *Supervisors*, 13 N. Y., 144.

Within the limits of legitimate taxation, the legislative discretion is utterly uncontrollable, as it is indefinable in its objects, uses, purposes and extent.

Thomas v. *Leland*, 24 Wend., 65; *Wetumpka* v. *Winter*, 29 Ala., 651; *Booth* v. *Woodbury*, 32 Conn., 118.

The section of the Constitution providing that private property shall not be taken for public use without just compenstaion has reference exclusively to eminent domain and has no reference to the taxing power of the Legislature. The Legislature is the sole judge of the necessity or expediency of exercising the right of eminent domain.

See, *Guilford* v. *Cornell*, 18 Barb., 615; *Chambers* v. *Satterlee*, 40 Cal., 497; *Nichols* v. *Bridgeport*, 23 Conn., 189; *Wynehamer* v. *People*, 13 N. Y., 378; *Booth* v. *Woodbury*, 32 Conn., 118; *Grant* v. *Courter*, 24 Barb., 232; *Pine Grove* v. *Talcott*, U. S. S. C., October Term, 1873 (*ante*, 227).

Legislative enactments authorizing local aid to turnpike and gravel road companies, by assessing a tax, called benefits, upon all real estate within specified distances of either road, and of the *termini* of the proposed turnpike or gravel road, have been held valid, notwithstanding that such turnpike or gravel road companies were private corporations, organized solely for private gain.

Goodrich v. *Winchester & Deerfield Co.*, 26 Ind., 119; *Law* v. *Madison S. & G. Turnpike Co.*, 30 Ind., 37; *Anderson* v. *Kerns Draining Co.*, 13 Ind., 199; *Reeves* v. *Treasurer*, 8 Ohio St., 333; *State* v. *New Brunswick*, 30 N. J., 395; *Livingston* v. *The Mayor, etc.*, 8 Wend., 85; *People* v. *Mayor*, 4 N. Y., 419; *The Prov. Bank* v. *Billings*, 4 Pet., 514; *McCulloch* v. *Maryland*, 4 Wheat., 428.

Messrs. Ross, Burns and **A. L. Williams**, for defendant in error:

At this day it is useless to discuss the question whether municipal corporations may rightfully be taxed to aid in the construction of railroads, and equally useless in this court, to insist that the construction of statutes authorizing such aid is a local, statutory question belonging exclusively to the state courts, and not a question of general law. But it is proper to inquire whether the Acts in question are without the scope of legislative power, or violate any of the fundamental principles of free governments.

It is very commonly said that the Federal Government is one of delegated powers, and the state government of non-delegated or general powers. This, in the sense which it is

used, is true, but the argument of counsel for plaintiff that it is true of Kansas, and that the Legislature may do anything which it is not expressly prohibited by the Constitution from doing, is too broad.

Our Constitution, at least, is a grant of enumerated powers. It creates the Legislature, the Executive and the Court, defines their duties, grants, and limits their power.

Sec. 1, art. II., says: "The legislative power of this State shall be vested in a House of Representatives and Senate." Then follow many sections prescribing rules for the government of the Legislature, delegating to it certain powers in some matters, and restricting it in others.

Before this grant of powers, however, the people in their Bill of Rights declare as follows:

" Sec. 2. All political power is inherent in the people, and all free governments are founded upon their authority, and are instituted for their equal protection and benefit. No special privileges or immunites shall ever be granted by the Legislature, which may not be altered, revoked or repealed by the same body, and this power shall be exercised by no other tribunal or agency."

"Sec. 20. This eunmeration of rights shall not be construed to impair or deny others retained by the people, and all powers not herein delegated remain with the people."

Under our Constitution, then, with its restrictions and limitations, has the Legislature power to compel, by law, the citizens of Topeka to contribute to the erection and maintenance of bridge shops? Or, to state the question squarely, is such enforced donation taxation or robbery? This power, if it exists, is claimed under the law making power, and the power to levy and collect taxes; and we are defiantly told to point out the precise clause of the Constitution which prohibits its exercise.

Under a Constitution like ours, of delegated and limited powers, sustained by the assertion that "All powers not herein delegated remain with the people," we may well call upon the other side to show the clause which authorizes such legislation. The answer is, "The Legislature is vested with the power to make laws. The power to make laws includes the power to make laws levying taxes; the Legislature passed the law, ordered the taxes to be collected and, therefore, the law is constitutional, the tax is valid." But is a legislative enactment necessarily a law, unless it violates some specific limitations imposed by the Constitution? In Kansas, where the line between legislative and judicial authority is not yet definitely settled in the legislative mind, we have many illustrations to show that all enactments, though called laws, are not so, even where no constitutional provision, express in its terms, has been violated.

The taking of the property of one person and giving it to another, with or without pay, is not within the province of the Legislature, and any attempts by statute to do so is void, irrespective of any constitutional prohibition of such acts.

Cooley, Const. Lim., 530; *In the Matter of Townsend*, 39 N. Y., 171; *Mill-Dam Foundry* v. *Hovey*, 38 Mass., 421; *Stinson* v. *Rouse*, 52 Me., 265; *Embury* v. *Conner*, 3 N. Y., 511; *Harding* v. *Butts*, 18 Illinois, 502; *Baker* v. *Kelley*, 11 Minnesota, 496; *Reeves* v. *Treasurer*, 8 O. St. 333; *Brown* v. *Foster*, 51 Pa. St., 167; *Atkins* v. *Randolph*, 31 Vt., 236; *Hampshire* v. *Franklin*, 16 Mass., 83.

Whatever other difference of opinion may exist as to the nature and requisites of a tax, it will be conceded that, irrespective of constitutional provisions, it can only be raised as revenue for public or governmental purposes, and that any attempt to compel the payment of money for purely private purposes is void, no matter by what name the imposition is called.

Who shall determine what is a public purpose? The courts. It is essentially a judicial question, and no legislative declaration of the public purpose of a proposed tax, will or should have any weight, if, upon an inspection of the statute authorizing such tax, it is apparent that the purpose is purely a private one.

The Supreme Court of Kansas, in the case of *Commissioners of Leavenworth Co.* v. *Miller*, 7 Kan., 479, take strong ground in favor of the constitutionality of bonded aid to railroads, and in as careful, well considered and exhaustive examination as can be found in any report, grouped together and stated all the arguments for and against such aid, and arrived at the conclusion, of course, that "If it were not for the public purpose to be attained by the building of such roads, no aid could constitutionally be given them."

Sharpless v. *Phila.*, 21 Pa., 147; *Nat. Bank* v. *Iola City*, 9 Kan., 701; *Olcott* v. *Supvs. of Fond du Lac Co.*, 16 Wall., 678, 21 L. ed., 382; Cooley, Const. Lim., p. 487.

We append hereto, not by way of authority, but for convenience of reference, a table of cases, chronologically arranged by States, containing, we believe, all the authorities on the subject of municipal aid to railroads; all of which show that a tax, to be constitutional, must be for a public purpose.

Goddin v. *Crump*, 8 Leigh, (1837) 140; *Harrison Justices* v. *Holland*, 3 Gratt., (1846) 236; *Langhorne* v. *Robinson*, 20 Gratt., (1871) 661; *Case of Co. Levy*, 5 Call, (1871) 139; *Bridgeport* v. *Housatonic R. Co.*, 15 Conn., (1843) 475; *Soc. for Savings* v. *New London*, 29 Conn., (1846) 174; *Harvey* v. *Lloyd*, 3 Pa. St., (1846) 331; *Com.* v. *McWilliams*, 11 Pa., (1849) 62; *Sharpless* v. *Mayor of Phila.*, 21 Pa., (1853) 188; *Moers* v. *City of Reading*, 21 Pa., (1853) 188; *Com.* v. *Comrs. of Allegheny Co.*, 32 Pa., (1858) 218; *Com.* v. *Pittsburgh*, 41 Pa., (1868) 278; *Com.* v. *Perkins*, 43 Pa., (1863) 400; *Nichol* v. *Nashville*, 9 Humph., (1848) 252, 271; *L. & N. R. Co.* v. *Davidson Co.*, 1 Sneed, (1854) 637; *Hord* v. *Rogersville, etc., R. Co.* 3 Head, (1859) 208; *Byrd* v. *Ralston*, 3 Head, (1859) 477; *Justices Campbell Co.* v. *K. & K. R. Co.*, 6 Cold., (1869) 598; *Talbot* v. *Dent*, 9 B. Mon., (1849) 526; *Justices, etc.*, v. *P. W. & K. R. Turnpike Co.*, 11 B. Mon., (1850) 143; *Slack* v. *M. & L. R. R. Co.*, 13 B. Mon., (1852) 1; *Maddox* v. *Graham*, 2 Metc. Ky., (1859) 56; *Ryder* v. *A. & S. R. Co.* 13 Ill., (1851) 516; *Prettyman* v. *Tazewell Co.*, 19 Ill., (1858) 406; *Robertson* v. *Rockford*, 21 Ill., (1859) 451; *Johnson* v. *Stark Co.*, 24 Ill., (1860) 75; *Perkins* v. *Lewis*, 24 Ill., (1860) 208; *Butler* v. *Dunham*, 27 Ill., (1861) 474; *Clarke* v. *Hancock Co.*, 27 Ill., (1862) 305; *Piatt* v. *People*, 29 Ill., (1862) 54; *Keithsburg* v. *Frick*, 34 Ill., (1864) 405; *Cotten* v. *Co. Comrs.*, 6 Fla., (1856) 616;

O. W. & Z R. R. Co. v. *Comrs. Clinton Co.*, 1 Ohio St., (1852) 77; *The S. & I. R. R. Co.* v. *Trustees of N. T. Ship, etc.*, 1 Ohio St., (1852) 105; *Cass* v. *Dillon*, 2 Ohio St., (1853) 607; *Kelly* v. *Thompson*, 2 Ohio St., (1853) 647; *State* v. *VanHorne*, 7 Ohio St., (1857) 327: *State* v. *Union T'p.*, 8 Ohio St., (1858) 394; *State* v. *Comrs. Hancock Co.* 12 Ohio St., (1861) 596; *Comrs. of Knox Co.*, v. *Nichols*, 14 Ohio St., (1863) 260; *Fosdick* v. *Perrysburg*, 14 Ohio St., (1863) 472: *Shoemaker* v. *Goshen, T'p.*, 14 Ohio St., (1863) 569; *Police Jury* v. *Suc. of McDonogh*, 8 La. Ann., (1853) 341; *New Orleans* v. *Graihle*, 9 La. Ann., (1854) 561; *Parker* v. *Scogin*, 11 La. Ann., (1856) 629; *V. S. & T. R. Co.* v. *Parish of Ouachita*, 11 La. Ann., (1856) 649; *Dubuque Co.* v. *D. & P. R. Co.* 4 G. Greene, (1853) 1; *State* v. *Bissell*, 4 G. Greene, (1854) 328; *Clapp* v. *Cedar Co.* 5 Ia., (1857) 15; *Ring* v. *Johnson Co.*, 6 Ia., (1858) 265; *McMillen* v. *Boyles*, 6 Ia., (1858) 304; *McMillen* v. *Lee Co.*, 6 Ia., (1858) 391; *Whittaker* v. *Johnson Co.*, 10 Ia., (1859) 161; *Stein* v. *Mayor of Mobile*, 24 Ala., (1854) 591; *Wetumpka* v. *Winter*, 29 Ala., (1857) 651; *Gibbons* v. *Mobile, etc., R.*, 36 Ala., (1860) 410; *Strickland* v. *Miss. Central R. R. Co.*, (1854) not reported; *Williams* v. *Cammack*, 27 Miss., (1854) 224; *Taylor* v. *New Berne*, 2 Jones, Eq., (1855) 151; *Caldwell* v. *Justices of Burke Co.*, 4 Jones, Eq., (1858) 323; *St. Louis* v. *Alexander*, 23 Mo., (1863) 483; *Flagg* v. *Palmyra*, 33 Mo., (1863) 440; *St. Jo. & D. C. R. Co.* v. *Buchanan Co.*, 39 Mo., (1867) 485; *Grant* v. *Courter*, 24 Barb., (1857) 232; *Benson* v. *Mayor of Albany*, 24 Barb., (1857) 248; *Clarke* v. *City of Rochester*, 24 Barb, (1857) 446; *Bank of Rome* v. *Rome*, 18 N. Y., (1858) 38; *Gould* v. *Town of Venice*, 29 Barb., (1859) 442; *Starin* v. *Genoa*, 23 N. Y., (1861) 439; *Clarke* v. *Rochester*, 28 N. Y., (1866) 605; *People* v. *Mitchell*, 45 Barb., (1865) 208; *S. C.*, 35 N. Y., (1866) 551; *Copes* v. *Charleston*, 10 Rich., (1857) 491; *Winn* v. *Macon*, 21 Ga., (1857) 275; *Powers* v. *Dougherty Co.*, 23 Ga., (1857) 65; *Aurora* v. *West*, 9 Ind., (1857) 74; *Evansville R. Co.* v. *Evansville*, 15 Ind., (1860) 395; *Bartholomew Co.* v. *Bright*, 18 Ind., (1862) 93; *Aurora* v. *West*, 22 Ind., (1864) 88; *Comrs. Knox Co* v. *Aspinwall*, 21 How., (1858) 539, 16 L. ed., 208; *Same* v. *Wallace*, 21 How., (1858) 547, 16 L. ed. 211; *Zabriskie* v. *R. Co.*, 23 How., (1859) 381, 16 L. ed., 488; *Bissell* v. *Jeffersonville*, 24 How., (1860) 287, 16 L. ed., 664; *Amey* v. *Allegheny City*, 24 How., (1860) 365, 16 L. ed., 614; *Comrs. Knox Co.* v. *Aspinwall*, 24 How., (1860) 376, 16 L. ed., 735; *Woods* v. *Lawrence Co.*, 1 Black, (1861) 386, 17 L. ed., 122; *Moran* v. *Miami Co.*, 2 Black, (1862) 722; 17 L. ed. 342; 1 Wall. (1863) 80, 175, 272, 291 and 384, 17 L. ed., 548, 684, 553, 538, 564; 3 Wall., (1865) 93, 294, 327 and 654, 17 L. ed., 33, 38, 177, 79; 4 Wall., (1866) 270, 275, and 535, 18 L. ed., 350, 370, 403; 6 Wall., (1869) 166, 210, 514 and 518, 18 L. ed., 768, 781, 933, 918; 7 Wall., (1868) 181 and 313, 19 L. ed., 160, 93; 9 Wall., (1879) 477, 19 L. ed., 725; *Clark* v. *Janesville*, 10 Wis., (1859) 136; *Bushnell* v. *Beloit*, 10 Wis., (1860) 195; *Pattison* v. *Yuba Co.*, 13 Cal., (1859) 175; *Hobart* v. *Butte Co.*, 17 Cal., (1860) 23; *Robinson* v. *Bidwell*, 22 Cal., (1863) 379; *French* v. *Teschemaker*, 24 Cal., (1864) 518; *People* v. *Coon*, 25 Cal., (1864) 635; *People* v. *San Francisco*, 27 Cal., (1865) 655; *Augusta Bank* v. *Augusta*, 49 Me., (1860) 507.

Mr. Justice **Miller** delivered the opinion of the court:

The plaintiffs in error brought their action in the Circuit Court for the District of Nebraska, on coupons for interest attached to bonds of the City of Topeka.

The bonds on their face purported to be payable to the King Wrought Iron Bridge Manufacturing and Iron Works Company, of Topeka, to aid and encourage that company in establishing and operating bridge shops in said City of Topeka, under and in pursuance of section 26 of an Act of the Legislature of the State of Kansas, entitled An Act to Incorporate Cities of the Second Class, approved Feb. 29, 1872; also another Act to authorize cities and counties to issue bonds for the purpose of building bridges, aiding railroads, water-power, or other works of internal improvement, approved March 2, 1872.

The City issued one hundred of these bonds, for $1,000 each, as a donation, and so it is stated in the declaration, to encourage that company in its design of establishing a manufactory of iron bridges in that City.

The declaration also alleges that the interest coupons first due were paid out of a fund raised by taxation for that *purpose, [*657 and that after this purchase the plaintiff became the purchaser of the bonds and the coupons on which suit is brought for value.

A demurrer to this declaration was sustained by the Circuit Court, and to the judgment rendered thereon in favor of defendant, the present writ of error is prosecuted.

The section of the Act of February 29, on which the main reliance is placed for the authority to issue these bonds, reads as follows:

Section 76. The Council shall have power to encourage the establishment of manufactories and such other enterprises as may tend to develop and improve such City, either by direct appropriation from the general fund, or by the issuance of bonds of such City in such amounts as the Council may determine: *Provided*, That no greater amount than $1,000 shall be granted for any one purpose, unless a majority of the votes cast at an election called for that purpose shall authorize the same. The bonds thus issued shall be made payable at any time within twenty years, and bear interest not exceeding ten per cent. per annum.

It is conceded that the steps required by this Act, prerequisite to issuing the bonds and other details, were regular, and that the language of the statute is sufficient to justify the action of the city authorities if the statute was within the constitutional competency of the Legislature.

The single question, therefore, for consideration raised by the demurrer, is the authority of the Legislature of the State of Kansas to enact this part of the statute.

Two grounds are taken in the opinion of the circuit judge and in the argument of counsel for defendant, on which it is insisted that the statute is unconstitutional.

The first of these is, that by section 5 of article 12 of the Constitution of that State it is declared that provision shall be made by general law for the organization of cities, towns

and villages; and their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, shall be so restricted as to prevent the abuse of such power.

The argument is that the statute in question 659*] is void *because it authorizes cities and towns to contract debts, and does not contain any restriction on the power so conferred. But whether the statute which confers power to contract debts should always contain some limitation or restriction, or whether a general restriction applicable to all cases should be passed, and whether in the absence of both, the grant of power to contract is wholly void, are questions whose solution we prefer to remit to the state courts, as in this case we find ample reason to sustain the demurrer on the second ground on which it is argued by counsel and sustained by the circuit court.

That proposition is, that the Act authorizes the towns and other municipalities to which it applies, by issuing bonds or loaning their credit, to take the property of the citizen under the guise of taxation to pay these bonds, and use it in aid of the enterprises of others which are not of a public character, thus perverting the right of taxation, which can only be exercised for a public use, to the aid of individual interests and personal purposes of profit and gain.

The proposition as thus broadly stated is not new, nor is the question which it raises difficult of solution.

If these municipal corporations, which are in fact subdivisions of the State, and which for many reasons are vested with *quasi* legislative powers, have a fund or other property out of which they can pay the debts which they contract, without resort to taxation, it may be within the power of the Legislature of the State to authorize them to use it in aid of projects strictly private or personal, but which would in a secondary manner contribute to the public good; or where there is property or money vested in a corporation of the kind for a particular use, as public worship or charity, the Legislature may pass laws authorizing them to make contracts in reference to this property, and incur debts payable from that source.

But such instances are few and exceptional, and the proposition is a very broad one, that debts contracted by municipal corporations must be paid, if paid at all, out of taxes which they may lawfully levy, and that all contracts 660*] creating *debts to be paid in future, not limited to payment from some other source, imply an obligation to pay by taxation.

It follows that in this class of cases the right to contract must be limited by the right to tax, and if in the given case no tax can lawfully be levied to pay the debt, the contract itself is void for want of authority to make it.

If this were not so, these corporations could make valid promises, which they have no means of fulfilling, and on which even the Legislature that created them can confer no such power. The validity of a contract which can only be fulfilled by a resort to taxation, depends on the power to levy the tax for that purpose. *Sharpless* v. *Mayor of Phila.*, 21 Pa. St., 147, 167; *Hanson* v. *Vernon*, 27 Iowa, 28; *Allen* v. *Inhab. of Jay*, 60 Me., 127; *Lowell* v. *Boston* [111 Mass., 454]; *Whiting* v. *Fond du Lac*, 25 Wis., 188.

It is, therefore, to be inferred that when the Legislature of the State authorizes a county or city to contract a debt by bond, it intends to authorize it to levy such taxes as are necessary to pay the debt, unless there is in the Act itself, or in some general statute, a limitation upon the power of taxation which repels such an inference.

With these remarks and with the reference to the authorities which support them, we assume, that unless the Legislature of Kansas had the right to authorize the counties and towns in that State to levy taxes to be used in aid of manufacturing enterprises, conducted by individuals, or private corporations, for purposes of gain, the law is void, and the bonds issued under it are also void. We proceed to the inquiry whether such a power exists in the Legislature of the State of Kansas.

We have already said that the question is not new. The subject of the aid voted to railroads by counties and towns has been brought to the attention of the courts of almost every State in the Union. It has been thoroughly discussed and is still the subject of discussion in those courts. It is quite true that a decided preponderance of authority is to be found in favor of the proposition that the Legislatures of the States, *unless restricted by some [*661 special provisions of their Constitutions, may confer upon these municipal bodies the right to take stock in corporations created to build railroads, and to lend their credit to such corporations. Also to levy the necessary taxes on the inhabitants, and on property within their limits subject to general taxation, to enable them to pay the debts thus incurred. But very few of these courts have decided this without a division among the judges of which they were composed, while others have decided against the existence of the power altogether. *State* v. *Wapello Co.*, 13 Iowa, 388; *Hanson* v. *Vernon, supra; Sharpless* v. *Mayor, supra; Whiting* v. *Fond du Lac, supra.*

In all these cases, however, the decision has turned upon the question whether the taxation by which this aid was afforded to the building of railroads was for a public purpose. Those who came to the conclusion that it was, held the laws for that purpose valid. Those who could not reach that conclusion held them void. In all the controversy this has been the turning point of the judgments of the courts. And it is safe to say that no court has held debts created in aid of railroad companies, by counties or towns, valid on any other ground than that the purpose for which the taxes were levied was a public use, a purpose or object which it was the right and the duty of state governments to assist by money raised from the people by taxation. The argument in opposition to this power has been, that railroads built by corporations organized mainly for purposes of gain—the roads which they built being under their control, and not that of the State—were private and not public roads, and the tax assessed on the people went to swell the profits of individuals and not to the good of the State, or the benefit of the public, except in a remote and collateral way. On the other hand, it was said that roads, canals, bridges, navigable streams and all other highways had in all

times been matter of public concern. That such channels of travel and of the carrying business had always been established, improved, regulated by the State, and that the railroad 662*] had *not lost this character because constructed by individual interprise, aggregated into a corporation.

We are not prepared to say that the latter view of it is not the true one, especially as there are other characteristics of a public nature conferred on these corporations, such as the power to obtain right of way, their subjection to the laws which govern common carriers, and the like, which seem to justify the proposition. Of the disastrous consequences which have followed its recognition by the courts and which were predicted when it was first established there can be no doubt.

We have referred to this history of the contest over aid to railroads by taxation, to show that the strongest advocates for the validity of these laws never placed it on the ground of the unlimited power in the State Legislature to tax the people, but conceded that where the purpose for which the tax was to be issued could no longer be justly claimed to have this public character, but was purely in aid of private or personal objects, the law authorizing it was beyond the legislative power, and was an unauthorized invasion of private right. *Olcott* v. *Supervisors*, 16 Wall., 689, 21 L. ed. 386; *People* v. *Salem*, 20 Mich., 452; *Jenkins* v. *Andover*, 103 Mass., 94; Dill. Mun. Cor., § 587; 2 Redf. R. R., 398, rule 2.

It must be conceded that there are such rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

663*] *The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers.

There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D. Or which should enact that the homestead now owned by A should no longer be his, but should henceforth be the property of B. *Whiting* v. *Fond du Lac*, 25 Wis., 188; Cooley, Const. Lim., 129, 175, 487; Dill. Mun. Cor., § 587.

Of all the powers conferred upon government that of taxation is mose liable to abuse. Given a purpose or object for which taxation may be lawfully used and the extent of its exercise is in its very nature unlimited. It is true that express limitation on the amount of tax to be levied or things to be taxed may be imposed by constitution or statute, but in most instances for which taxes are levied, as the support of government, the prosecution of war, the national defense, any limitation is unsafe. The entire resources of the people should in some instances be at the disposal of the government.

The power to tax is, therefore, the strongest, the most pervading of all the powers of government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of *McCulloch* v. *Md.*, 4 Wheat. 431, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent. imposed by the United States on the circulation of all other banks than the National Banks, drove out of existence every *state bank of [*664 circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised.

To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It it a decree under legislative forms.

Nor is it taxation. "A tax," says Webster's Dictionary, "is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or State." "Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for public purposes." Cooley, Const. Lim., 479.

Coulter, J., in *Northern Liberties* v. *St. John's Church*, 13 Pa. St., 104, says, very forcibly, "I think the common mind has everywhere taken in the understanding that taxes are a public imposition, levied by authority of the government for the purpose of carrying on the government in all its machinery and operations—that they are imposed for a public purpose." See, also *Pray* v. *Northern Liberties*, 31 Pa. St., 69; *Matter of Mayor of N. Y.*, 11 Johns., 77; *Camden* v. *Allen*, 2 Dutch., 398; *Sharpless* v. *Mayor, supra; Hanson* v. *Vernon*, 27 Ia., 47; *Whiting* v. *Fond du Lac, supra.*

We have established, we think, beyond cavil, that there can be no lawful tax which is not laid for a public purpose. It may not be easy to draw the line in all cases so as to decide what is a public purpose in this sense and what is not.

It is undoubtedly the duty of the Legislature which imposes or authorizes municipalities to impose a tax, to see that it is not to be used for purposes of private interest instead of a public use, and the courts can only be justified in interposing when a violation of this principle is clear and the *reason for [*665 interference cogent. And in deciding whether,

in the given case, the object for which the taxes are assessed falls upon the one side or the other of this line, they must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects or purposes have been considered necessary to the support and for the proper use of the government, whether State or municipal. Whatever lawfully pertains to this and is sanctioned by time and the acquiescence of the people may well be held to belong to the public use, and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation.

But in the case before us, in which the towns are authorized to contribute aid by way of taxation to any class of manufacturers, there is no difficulty in holding that this is not such a public purpose as we have been considering. If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the inn-keeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions. No line can be drawn in favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two thirds of the business men of the city or town.

A reference to one or two cases adjudicated by courts of the highest character will be sufficient, if any authority were needed, to sustain us in this proposition.

In the case of *Allen* v. *Inhab. of Jay*, 60 Me., 124, the town-meeting had voted to loan their credit to the amount of $10,000, to Hutchins & Lane, if they would invest $12,000 in a steam saw mill, grist-mill and box-factory machinery, to be built in that town by them. There was a provision to secure the town by mortgage on [*666] the mill, and the selectmen *were authorized to issue town bonds for the amount of the aid so voted. Ten of the taxable inhabitants of the town filed a bill to enjoin the selectmen from issuing the bonds.

The Supreme Judicial Court of Maine, in an able opinion by Chief Justice Appleton, held that this was not a public purpose, and that the town could levy no taxes on the inhabitants in aid of the enterprise, and could, therefore, issue no bonds, though a special act of the Legislature had ratified the vote of the town, and they granted the injunction as prayed for.

Shortly after the disastrous fire in Boston, in 1872, which laid an important part of that City in ashes, the Governor of the State convened the legislative body of Massachusetts, called the General Court, for the express purpose of affording some relief to the City and its people from the sufferings consequent on this great calamity. A statute was passed, among others, which authorized the City to issue its bonds to an amount not exceeding $20,000,000, which bonds were to be loaned, under proper guards for securing the City from loss, to the owners of the ground whose buildings had been destroyed by fire, to aid them in rebuilding.

In the case of *Lowell* v. *Boston*, in the Supreme Judicial Court of Massachusetts, the validity of this Act was considered. We have been furnished a copy of the opinion, though it is not yet reported in the regular series of that court. [111 Mass., 454.] The American Law Review for July, 1873, says that the question was elaborately and ably argued. The court, in an able and exhaustive opinion, decided that the law was unconstitutional, as giving a right to tax for other than a public purpose.

The same court had previously decided, in the case of *Jenkins* v. *Anderson*, 103 Mass., 94, that a statute authorizing the town authorities to aid by taxation a school established by the will of a citizen, and governed by trustees selected by the will, *was void because [*667 the school was not under the control of the town officers, and was not, therefore, a public purpose for which taxes could be levied on the inhabitants.

The same principle precisely was decided by the State Court of Wisconsin in the case of *Curtis* v. *Whipple*, 24 Wis., 350. In that case a special statute which authorized the town to aid the Jefferson Liberal Institute was declared void because, though a school of learning, it was a private enterprise not under the control of the town authorities. In the subsequent case of *Whiting* v. *Fond du Lac*, already cited, the principle is fully considered and re-affirmed.

These cases are clearly in point, and they assert a principle which meets our cordial approval.

We do not attach any importance to the fact that the town authorities paid one installment of interest on these bonds. Such a payment works no estoppel. If the Legislature was without power to authorize the issue of these bonds, and its statute attempting to confer such authority is void, the mere payment of interest, which was equally unauthorized, cannot create of itself a power to levy taxes, resting on no other foundation than the fact that they have once been illegally levied for that purpose.

The Act of March 2, 1872, concerning internal improvements, can give no assistance to these bonds. If we could hold that the corporation for manufacturing wrought iron bridges was within the meaning of the statute, which seems very difficult to do, it would still be liable to the objection that money raised to assist the company was not for a public purpose, as we have already demonstrated.

The judgment of the Circuit Court is affirmed.

Mr. Justice **Clifford**, dissenting:

Unable to concur either in the opinions or judgments in this case, I will proceed to state, in very brief terms, the reasons which compel me to withhold my concurrence.

*Corporations of a municipal character [*668 are created by the Legislature, and the Legislature, as the trustee or guardian of the public interest, has the exclusive and unrestrained control over such franchise, and may enlarge, diminish, alter, change or abolish the same at pleasure. Where the grantees of a franchise, as well as the grantors, are public bodies, and the franchise is created solely for municipal objects, the grant is at all times within the control of the Legislature and, consequently, the charter

is subject to amendment or repeal at the will of the granting power.

Hartford v. *Bridge Co.*, 10 How., 534; *Bissell* v. *Jeffersonville*, 24 How., 294, 16 L. ed. 670; *Darlington* v. *Mayor*, 31 N. Y., 187; *Granby* v. *Thurston*, 23 Conn., 416; 2 Kent, Com., 12th ed., 275.

Errors of indiscretion which the Legislature may commit in the exercise of the power it possesses cannot be corrected by the courts, for the reason that the courts cannot adjudge an Act of the Legislature void unless it is in violation of the Federal or State Constitution.

Benson v. *Mayor*, 24 Barb., 248; *Clarke* v. *Rochester*, 24 Barb., 446; *Bk.* v. *Rome*, 18 N. Y., 38.

State Constitutions may undoubtedly restrict the power of the Legislature to pass laws, and it is plain that any law passed in violation of such a prohibition is void, but the better opinion is, that where the Constitution of the State contains no prohibition upon the subject, express or implied, neither the State nor Federal Courts can declare a statute of the State void as unwise, unjust or inexpedient, nor for any other cause, unless it be repugnant to the Federal Constitution. Except where the Constitution has imposed limits upon the legislative power, the rule of law appears to be, that the power of legislation must be considered as practically absolute, whether the law operates according to natural justice or not in any particular case, for the reason that courts are not the guardians of the rights of the people of the State, save where those rights are secured by some constitutional provision which comes within judicial cognizance; or, in the language of Marshall, Ch. J., "The interest, wisdom and justice of the representative body furnish the 669*] only security *in a large class of cases not regulated by any constitutional provision."

Bk. v. *Billings*, 4 Pet., 563; Cooley, Const. Lim. (2d ed.), 168; *Calder* v. *Bull*, 3 Dall., 398.

Courts cannot nullify an Act of the State Legislature on the vague ground that they think it opposed to a general latent spirit supposed to pervade or underlie the Constitution, where neither the terms nor the implications of the instrument disclose any such restriction.

Walker v. *Cincinnati*, 21 Ohio St., 41.

Such a power is denied to the courts, because to concede it would be to make the courts sovereign over both the Constitution and the people, and convert the government into a judicial despotism.

Golden v. *Prince*, 3 Wash. (C. C.), 313.

Subject to the Federal Constitution, the Legislature of the State possesses the whole legislative power of the people, except so far as the power is limited by the State Constitution.

Bk. v. *Brown*, 26 N. Y., 467; *People* v. *Draper*, 15 N. Y., 532.

Our own decisions are to the same effect, as appears by one of very recent date, in which the court say that "The legislative power of a State extends to everything within the sphere of such power, except as it is restricted by the Federal Constitution or that of the State."

Pine Grove v. *Talcott*, *ante*, 227.

Apply those principles to the cases before the court, and it follows, as it seems to me, that the judgment in each case should be reversed for the following reasons: (1) Because the demurrer to the declaration in each case should have been overruled. (2) Because the bonds to which the coupons sued on were attached were issued in pursuance of the express authority of the Legislature vesting that power in the Corporation defendants. (3) Because the Constitution of the State does not in any manner prohibit the passage of such a law as that under which the bonds were issued. (4) Because it is not competent for a Federal Court to adjudge a state statute void which does not conflict in any respect with the Constitution of the United States or that of the State whose Legislature enacted the statute.

*Unwise laws and such as are highly [*670 inexpedient and unjust are frequently passed by legislative bodies, but there is no power vested in a circuit court, nor in this court, to determine that any law passed by a State Legislature is void, if it is not repugnant to their own Constitution nor the Constitution of the United States.

Vague apprehensions seem to be entertained that unless such a power is claimed and exercised, inequitable consequences may result from unnecessary taxation; but, in my judgment, there is much more to be dreaded from judicial decisions which may have the effect to sanction the fraudulent repudiation of honest debts, than from any statutes passed by the State to enable municipal corporations to meet and discharge their just pecuniary obligations.

THE COMMERCIAL NATIONAL BANK OF CLEVELAND, OHIO, *Plff. in Err.*, *v.* IOLA CITY, Kansas.

(154 U. S. 617, Appx.)

Municipal bonds issued to aid a private enterprise, void.

1. Bonds of a city, issued to a private corporation to aid in constructing and operating a foundry and machine shops, are void, although their issue is ratified by a subsequent Act of the State Legislature.

2. Citizens' Bank *v.* Topeka, *ante*, 455, followed.

[No. 741]

Submitted Dec. 9, 1874. Decided Feb. 1, 1875.

IN ERROR to the Circuit Court of the United States for the District of Kansas.

The case is sufficiently stated by the court.

Mr. **Alfred Ennis**, for plaintiff in error.

Mr. **A. L. Williams**, for defendant in error:

These bonds were issued to a bridge factory, a private and not a public end. The taxing power cannot be exercised in behalf of a bridge factory.

Curtis v. *Whipple*, 24 Wis., 350; *People* v. *Salem*, 20 Mich., 452; *Jenkins* v. *Andover*, 103 Mass., 94; *Tyson* v. *School Directors*, 51 Pa., 9; *Thompson* v. *Pittston*, 59 Me., 545.

Mr. Justice **Miller** delivered the opinion of the court:

The only difference between this case and that of *The Citizens' Bank* v. *Topeka*, *ante*,

NOTE.—*Power to tax for the purpose of aiding business corporations or enterprises*—see note, 14 L. R. A. 478.