1891

Valid Retroactive Laws

Martin J. Flannery
Cornell Law School

Follow this and additional works at: http://scholarship.law.cornell.edu/historical_theses

Part of the Law Commons

Recommended Citation
THEESIS

--------- 0 ---------

VALID

RETROACTIVE LAWS.

--------- 0 ---------

by

Martin J. Flannery.

Cornell University School of Law.

1891.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>II CONSTRUCTION OF PRECURSIVE LAWS</td>
<td>2</td>
</tr>
<tr>
<td>III LAWS AFFECTING REMEDIES</td>
<td>6</td>
</tr>
<tr>
<td>IV LAWS AFFECTING PROCEDURE</td>
<td>12</td>
</tr>
<tr>
<td>V RULES OF EVIDENCE</td>
<td>13</td>
</tr>
<tr>
<td>VI EXEMPTION LAWS</td>
<td>15</td>
</tr>
<tr>
<td>VII STATUTES ABOLISHING DEFENSES</td>
<td>16</td>
</tr>
<tr>
<td>VIII LIMITATION LAWS</td>
<td>19</td>
</tr>
<tr>
<td>IX LAWS VALIDATING CERTAIN CONTRACTS</td>
<td>21</td>
</tr>
<tr>
<td>X AS AFFECTING CORPORATIONS</td>
<td>23</td>
</tr>
<tr>
<td>XI AS AFFECTING CRIMINAL LAWS</td>
<td>29</td>
</tr>
</tbody>
</table>
INTRODUCTION.

The words retrospective and retroactive although literally construed convey a different meaning, are used interchangeably by the courts in referring to legislative acts which are made to operate upon some subject, contract or crime which existed before the passage of the act. Such legislation has been severely criticized by eminent authorities, but there are cases in which laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement. This is the class which we shall deal with in this article.

The Constitution of the United States provides that no state shall pass any law impairing the obligations of contracts or ex post facto law. These of course are two classes of retroactive laws that are expressly prohibited and all such are therefore void. But as to all other laws of a retroactive nature the states have a perfect right to enact provided they do not violate some other principle of constitutional law, protecting vested rights. Some of the states, however, have seen fit to expressly prohibit in their constitutions, the passage of all retroactive laws of whatsoever nature. Such is the case in the constitutions
of New Hampshire, Ohio, Tennessee, Texas, and perhaps some others.

CONSTRUCTION OF RETROSPECTIVE LAWS.

In construing statutes the courts always give them a prospective effect unless the legislative intent, that they shall act retrospectively, is expressed in clear and unambiguous terms, or such intent is necessarily implied from the language of the statute, which would be inoperative otherwise than retrospectively. In Dash v. VanCluck, 7 Johns 506, the validity of retrospective laws underwent an able consideration and the judges unanimously agreed as to the propriety of construing a statute in prevention of having a retrospective operation, if the court were not restrained by expressions explicit and unequivocal. This doctrine is well sustained by modern authorities. Knowlton v. Redenbaugh, 40 Iowa, 114. In the case of the city of Elizabeth against Hill, 39 N.J.Law 565, Depew J. said: "The effort of the courts is always to give statutes a prospective effect only, unless the language is so clear and imperative as not to admit of doubt." But when a
retroactive statute has escaped the strictness of construction of the courts as to the intent of the legislature, and does not violate any constitutional prohibition, and is not found contrary to the fundamental principles of the social compact, it is above the province of the judicial department to say, that it shall not be a law. According to this fundamental principle of construction, statutes in which the legislative intent is expressed in language so broad in its literal extent as to comprehend existing cases, will not be construed as embracing them unless such intention is so clearly manifest as to remove all doubt, or unless such construction is necessary in order to give the legislative act any meaning whatever. This rule of construction is applicable to state constitutions as well as to legislative acts, and in fact to every conceivable expression of the will of the law-making power, where there is a doubt as to whether it was intended to act prospectively or retrospectively. Indiana County v. Agricultural Society, 89 Pa. St. 357. But in England where there are no constitutional restrictions upon the legislative power, and the question whether an act of parliament is retrospective in its effect
is purely one of construction, there seems to be a greater
degree of reluctance on the part of the courts to enlarge
the jurisdiction of the law-making power by giving statutes
a retrospective interpretation.

It is a uniform doctrine in this country well set-
tled by a long line of adjudicated cases that the legisla-
ture is the sole judge of the policy and wisdom of retroac-
tive laws; and the courts have no right to interfere and de-
clare a statute void simply because it is retroactive,
unless it is in open violation of existing rights, the secur-
ity of which are guaranteed by the constitution. Welch
v. Wadsworth, 30 Conn. 149; Cooley Cont. Lim. 168.

The underlying principle of our jurisprudence is
justice and reason. Therefore, when laws of a retroactive
character are just and reasonable they are invariably sus-
tained by the courts, because there are numerous cases which
have arisen where it has been found to be absolutely necessary
to sustain laws of a retroactive character in order to render
anything in the nature of justice in that particular case
or to establish a reasonable precedent.

In determining the validity of a retroactive law
the question resolves itself into the criterion whether or
not the act is an ex post facto law, a law impairing the obligation of a contract, or a law divesting vested rights. Whether the absence of any general prohibition in our constitutions against the disturbance of private rights, other than those that are affected by impairing the obligations of contracts, is to be attributed to the same cause which made the Roman Law silent on the subject of parricide, because it was not deemed wise to admit the possibility of such a crime, or to an inherent difficulty in determining the just limits of retroactive legislation, it is not easy to say. It is certain among the restrictions fixed by the Constitution of the United States upon the states, there is none which prevents the passage of retrospective laws, however unjust or impolitic except only where they would affect existing contracts or to attach to some previous act, the penal consequences which it did not possess when committed. But of course no man can be deprived of his property without due process of law; and a right to do a particular thing has been held by the courts to be a property right.
LAWS AFFECTING REMEDIES.

The first great class of valid retroactive laws that may be considered are those that affect the remedy merely. In fact this class constitutes the greater part of valid retroactive laws. Notwithstanding the fact that the remedy in a particular case may be changed, and made more disadvantageous to the one seeking it, the legislature has no right to deny any remedy whatever. A law may operate retrospectively by creating new remedies, by altering or abolishing old ones, and substituting new ones, provided such legislation does not substantially impair the right which the remedy was intended to enforce. A person cannot be deprived of the only remedy that he has to enforce a right by any retroactive law, for the reason that such an act would be clearly in violation of the constitution by impairing all obligation or depriving one of his property without due process of law. The authorities have generally agreed that an individual has a vested right in a remedy on a contract, notwithstanding the fact that it has heretofore been advanced with great force and eloquence that the remedy could be destroyed without affecting the right. In support
of this principle, Daniel Webster once presented an able and logical argument. At the present time, however, the courts will not sustain any such subtle reasoning. If a man has a right and a remedy to enforce such right, and the law-making body destroys his remedy, can it be contended for a moment that his right is also destroyed by the same overt act of the legislature that destroys his remedy? For, what is a right, from a legal point of view, but a claim capable of being enforced by law? And how is he going to enforce a claim without the means or remedy to do so?

It has been laid down as a maxim, or rather a catchword that "no one can have a vested right to a remedy". This however, is true only in a limited sense, and that is, that no one has a vested right to any particular remedy; but it must be understood that a law which says that one shall have no remedy to enforce an existing right would clearly impair the obligations of a contract. Some sufficient remedy or means must be left to enforce the then existing right.

The courts have repeatedly said that there is no vested right in a remedy. But this statement is generally qualified to the effect that the remedy cannot be so changed
as to render it nugatory.

The rule regarding remedies laid down by the Supreme Court of Pennsylvania in the case of Myers v. Irwin, Second Serg. & R. 398, seems to be a just and equitable view of this branch of the law, as establishing a proper limit to legislative interference with remedies. The court said: "The remedy constitutes the essential part of the legal obligation of the contract; but the remedy is not a part of the contract itself, nor does the obligation of the contract consist in any particular form of remedy. It is only necessary that there should be an adequate subsisting remedy. It is therefore believed to be competent for the legislature to change the remedy. If the remedy given be as good as that which was taken away, the contract is not impaired".

The same view is substantially taken by the United States Supreme Court. In Edwards v. Kearzey, 96 U.S. 393 it was held that the remedy is a vital and material part of the contract. A statute of frauds embracing pre-existing parole contracts, which were not previous to theirs enactment, required to be in writing, would affect its validity. So also a statute declaring that the word "ton" should in prior as well
as in subsequent contracts, be held to mean half or double the weight before prescribed, would materially affect previous contracts and therefore be void. And a statute providing that a previous contract of indebtedness may be extinguished by a process of bankruptcy would be null and void on the ground that it involved a complete discharge of the contract. A statute forbidding the sale of any of a debtor's property would destroy the remedy and therefore be obnoxious to a stable government. The foregoing illustrations have all been judicially determined, the courts proceeding upon the theory that all such laws completely or so nearly destroyed the remedy that they vitally impair the obligations of contracts. But the class of statutes more particularly to be considered here are those that have been declared valid.

It is with much difficulty that a precise rule of law can be deduced from the chaotic mass of cases, that would be in conformity with all; but it is practically safe to say: that any particular remedy to which a party is entitled at the time the contract is entered into, may be altered or abolished by a subsequent statute, so that it will no longer be
available, for either existing or subsequent contracts, provided it leaves a substantial remedy. The great difficulty in this class of cases is to determine whether the remedy has been altered or modified so as to materially alter the obligation. It is impossible to lay down any rule under which a large discretion of the courts cannot be used in deciding each particular case, largely on its own facts. It is not easy to apply a rigid rule, for it is a very difficult task to determine whether a rule of law in a general class of cases abrogates a mere special remedy, or destroys a substantial one, and thereby impairs the very essence of the obligation.

The remedy may be changed, revised, and reformed, and be rendered less expedient than the one which the parties had in contemplation, when the contract was entered into. Yet, although a law may literally impair the enforcement of a contract, it does not in legal contemplation materially injure nor impair the obligation of the contract, so long as an efficient remedy remains. In the language of Judge Cooley "It has been held that law's changing remedies for the enforcement of legal contracts will be valid even though the
new remedy be less convenient than the old, or less prompt and speedy". The courts have held that a judgment lien may be abolished and the judgment creditor can be left to depend upon his other remedies against the judgment debtor; and it has also been held that where the charter of a bank gave it a summary remedy for the recovery from indorsers of negotiable promissory notes, a different and probably a more expedient remedy than an ordinary proceeding, that it was subject to repeal.

Another case of retroactive laws abolishing a particular remedy which has been repeatedly sustained by the courts, is in the case of abolishing imprisonment for debt. The theory upon which the court sustains this class of statutes, is that imprisonment is a penalty for failure to perform the undertaking, and is not a part of the contract itself. They hold that the right to imprison constitutes no part of the contract, and the discharge of the person of the party from imprisonment does not impair the obligation of the contract, but leaves it in full force against his property and effects.
LAWS AFFECTING PROCEDURE.

Laws relating to procedure which have a retroactive effect are generally held to be valid on the ground that they merely change the remedy. Legislatures seem to have considerable discretion in regard to substituting one mode of action for another in which the legal rights of the parties are enforced, that have accrued prior to such changes or legislative enactments, as well as to subsequent ones.

It is generally conceded by all authorities, that the rules of pleading are within the purview of the legislature so long as it is exercised within the scope of merely regulating procedure. Laws which provide that different parties may, or must be made parties to a suit, or requiring certain defenses to be pleaded specially are permitted to act retrospectively. Also statutes giving, or taking away the right of attachment in certain actions have been sustained, as affecting procedure only, and applied to prior causes of action. And statutes changing the manner in which summons may be served is valid as to past transactions. In fact in all cases it may be laid down
that the rules of procedure in force at the time of the suit are the ones that govern. The right must be conceded to the legislature to regulate legal proceedings by general laws as best they can for the administration of justice and the public good.

In the early cases there was some doubt as to whether the rules of procedure in force at the time the suit was commenced, or those in force at the time of the trial should govern; but the later decisions confirm the view that the law of procedure in force at the time of the trial must govern regardless of when the action was commenced. But it must be kept in mind that any material change of procedure that would absolutely deprive a party of a remedy which he had at the creation of an obligation would be void as impairing the obligation of the contract, by completely destroying the remedy.

RULES OF EVIDENCE.

Laws relating to the rules of evidence, relate peculiarly to the remedy, therefore in accordance with the view taken of statutes affecting the remedy by the courts,
it is a well-recognized principle that the rules of evidence may be changed by retrospective statutes, provided that they thereby a cause of action is not destroyed or rendered practically worthless. Rules of evidence may have reference to the manner in which evidence is offered, or it may refer to the competency of certain evidence to prove certain facts. So long as the statute goes no further than to regulate practice in the courts, and does not impair the rights of parties, it will operate upon past as well as future transactions, and pending suits as well as those to be instituted in the future. The competency of a witness in a civil suit is to be determined by the law as it exists at the time when he is called upon to testify regardless of what may have been the rules at any previous time. So also, are the rules of evidence regarding papers, documents etc. governed by laws in force at the time of trial. It is evident that this class of laws relate merely to the form of the remedy and do not materially impair the rights of any party. A change of the rules of evidence is generally only a change of the means of accomplishing the same end.
EXEMPTION LAWS.

So also, laws relating to exemptions in certain cases are properly given a retroactive effect. But if the amount of the exemption is so great as to render a creditor's remedy under a contract nugatory the courts will not sustain such a law, because it essentially impairs a right the protection of which is guaranteed by the constitution. Laws that exempt property from taxation can at any time be repealed by the state except such as are contracts with the state. Statutes exempting certain persons from military service are at any time subject to change by the same power that created them, the legislature. So long as exemption laws do not impair the obligation of a contract they will be sustained. The later tendency of the courts seems to be to place valid retroactive exemption laws into very narrow limits, Judge Cooley remarks however, "There is no constitutional objection to such a modification of those laws which exempt certain portions of the debtor's property from execution, as shall increase the exemption, nor to the modifications being made applicable to contracts previously entered into". Cooley's Const. Lim.287.
This statement of Judge Cooley's was undoubtedly in harmony with the general trend of authorities when it was written, but as has been said before in view of the later decisions the rule prohibiting laws impairing the obligations of contracts is applied much more strictly to this class of statutes at the present time. Edwards v. Kearzey, 90 U.S. 395. And in Missouri statutes affecting exemption of property from prior debts are held to be invalid regardless of their scope or extent. The Missouri courts take the view that it is impossible for any law exempting property from sale on execution to have a retroactive effect without impairing the obligations of contracts. This is an extreme view of this class of cases, and is the very opposite of that laid down by Judge Cooley. Like all other principles of law upon which widely varying positions are taken the "happy mean" seems to be the prevailing position taken by the courts.

STATUTES ABOLISHING DEFENSES.

Statutory enactments taking away certain classes of defense have been elaborately considered by the courts, especially those relating to the defense of usury and the
like. The general conclusion seems to be, with a few slight variations, that the prevailing current of authority is in favor of the constitutionality of such legislation. It seems that any defense that is in the nature of a penalty can be obliterated by the legislature without infringing upon any inherent constitutional right.

Usury laws that prescribe a forfeiture or deprive one of a legal remedy, for the reason that the contract entered into is a usurious one may be repealed. The effect of such repeal is to authorize the enforcement of contracts which when made were invalid and unenforceable under the law as it existed at the time of such contract. In dealing with this class of cases, the courts go on the theory that a statute declaring, that an antecedent usurious contract shall not be void is not a law impairing the obligation of contracts, but rather one, the object of which is to give force and obligation to contracts illegal and void prior to its passage. There certainly is no obligation that can be impaired by a subsequent statute, in a void contract. And the same conclusion has been reached by the courts upon the ground that the forfeiture of either interest or
principle is not a right guaranteed to a party who agrees to pay a rate of interest in excess of that prescribed by law, but it is in the nature of a penalty imposed upon the party who is to receive it. Being a penalty it forms no part of the obligation of the contract, not can it be the subject of a vested right. Mr. Justice Paige says: "The defense of usury is in the nature of a penalty or forfeiture, and may be at any time taken away by the legislature in respect to previous as well as subsequent contracts, without trenching upon any vested rights. A proposition that a party can have a vested right in enforcing a penalty or forfeiture, against which it is the office of a court of equity to relieve is a legal solecism. Statutes of usury are highly penal in their character, and the defense of usury has always been regarded as an unconscionable defense, and has never received the sanction of either court of law or equity". Curtis v. Leviatt, 15 N.Y., 229. Then it may be laid down as a general rule that statutes which prohibit or take away certain defenses not appertaining to the merits of the case but arise from some technical or other rule of law are constitutional and do not impair vested rights.
LIMITATION LAWS.

Statutes which provide that no action shall be maintained upon certain demands, unless suit be brought within a limited time do not generally violate the constitutional prohibition of laws impairing the obligations of contracts. They merely modify the remedy and require a party to bring his action within a certain time. If he neglects to prosecute his action within the time that the law specifies, truly it cannot be said that the law has worked an injustice when the party by his own lapses has permitted his cause of action to be determined by operation of law. The law is settled beyond a doubt that the mere fact that the cause of action accrued prior to the enactment of the statute will be no objection to the limitation. Solan v. Watterson, 17 Wall. 590; Goal v. Zacher, 12 Ohio, 364.

The courts base their decisions on the ground of public policy, and rightly too. If the legislature did not have power to enact reasonable limitation laws which would cancel stale demands, there would be no end to the multiplicity of litigating obsolete demands. In order to affect existing causes of action, there must be allowed a reasonable time after the statute goes into effect, within which such
action may be brought; but it must be noticed that if the legislature should declare that a period already elapsed, should bar a right of action this would be under color of regulating arbitrarily a rule that would take away all remedy, and in effect destroy the contract within its jurisdiction, and would be a mere abuse of power, which the constitution permits no legislature to indulge.

If a right of action has been barred by the statute of limitations, it is beyond the power of the legislature to revive it, for as has been said by an eminent jurist "statutes of limitation are statutes of repose". But the time within an action may be extended at any time before it is completely barred, either in respect to civil or criminal actions, is unlimited. So also a statute providing: "That where any cause of action has been or shall be obstructed by a war, insurrection or rebellion, the time that such obstruction may have continued shall not be reckoned as any part of the time in which such right of action ought to have been prosecuted" has been held valid by the courts.

The parties to a contract have no more a vested right in the time for the commencement of an action, than they have in
the form of the action to be commenced. Perry v. Anderson, 95 U.S. 628.

LAWS VALIDATING CERTAIN CONTRACTS.

The instances of the exercise of legislative authority to supply former omissions and legalize past acts, have been necessary as well as just, and the courts have recognized the expediency of such legislation, and generally give it their unqualified sanction. In the language of Judge Cooley "If the thing wanting, or which failed to be done and which constitutes the defect in the proceedings, is something which the legislature might have dispensed with the necessity of by a prior statute, then a subsequent statute dispensing with it, retrospectively, must be sustained". Cons. Lim. 371. People v. McDonald, 69 N.Y. 302. In accordance with this principle contracts of marriage, which by reason of some defect or informality were void, have been legalized and validated by subsequent statutes and such statutes have been sanctioned by the court. If for instance the statute law required, at the time the marriage relation was entered into, that the ceremony must be performed by a
person ordained and settled in the work of the ministry; and contrary to the law, it is performed by an itinerating clergyman. Such a marriage the legislature enacts a law, making valid all marriages performed by an ordinary minister. Such law, although having a retroactive effect is valid and in violation of no constitutional principle. It is a law founded upon justice and sound reason, because its effect is merely to carry out the original intention of the parties concerned. And why should a rule of law not be sanctioned which merely aids the parties, to a contract, in carrying out an honest and legitimate purpose?

This principle was evolved by an able bench in the case of Goshen v. Stonington, 4 Conn. 309, and was subsequently sanctioned by a long line of well-considered decisions in that state. It has been repeatedly cited as a leading case throughout the country, and has almost invariably been adopted by the different courts.

Defective execution of deeds and other contracts can, constitutionally be remedied by subsequent legislative acts. In the case of Tate v. Shoutzpoos, 14. S & R., 137, a legislative act validating defective acknowledgments,
which did not specify that the wife had been separately examined for the purpose of determining her willingness to sign a conveyance with her husband, was sustained. Confirming acts of this character are not at all uncommon. The legislatures have repeatedly remedied proceedings and judgments of commissioners, and of justices of the peace, who were not commissioned agreeable to the then existing laws, or when their powers had ceased under different circumstances and for divers reasons. It is perfectly clear that remedial statutes of this type infringe upon no constitutional provision nor divest any vested right, but merely cure a defect in a proceeding otherwise fair and just. It is an abuse of terms to contend that this class of cases involve the consideration of vested rights; for it is not intended by a vested right that it shall be a right to do a wrong; to take advantage of a mere slip of form. When and the transaction is a bona fide one, the only element wanting is simply the cancellation of some technical formality by the legislature, it seems as though a party cannot object to such validating acts on the ground that he has a vested right not to do what he is in reality bound to do, and what
Surely this class of legislation, curing defective contracts, cannot be objected to on the ground that it impairs an obligation of a contract, because the very object of such legislation is to make potent an inchoate right under a contract, which is nothing more than completing an obligation. The obligation exists in fact from the time the contract is made and the legislative act merely gives it existence in law as well as in fact. The conclusion gleamed from all the cases on this branch of the law cannot be stated better than in the language of Judge Cooley: "Legislative acts validating invalid contracts have been sustained when these acts go no further than to bind a party by a contract which he has attempted to enter into, but which was invalid by reason of some personal inability on his part to make, or through neglect of some legal formality, or in consequence of some ingredient in the contract forbidden by law, the question they suggest is one of policy and not of constitutional law". In the case of Blakely v. Farmers National Bank, 17 Serg. & R. 64, a note was given by the bank after it had forfeited its charter and a subsequent act of the legislature restored the charter,
revived the corporation and legalized its past acts. The court held the law to be constitutional and the note therefore valid. So also, in a statute authorizing the placing of stamps on instruments from which they have been omitted when executed, where not enforceable when unstamped, is of this character, whether the statute requiring the stamp renders the instrument absolutely void or only withholding the remedy. Harris v. Rutledge, 19 Iowa, 388. Contracts void at the time they are entered into may be rendered valid and binding by a retroactive law, when their invalidity does not result from some condition incorporated within the contract, or some stipulation purposely omitted, which the healing act undertakes to supply.

AS AFFECTING CORPORATIONS

Our corporation law is saturated with the principle that a charter granted by a state creates a contract between the state and the corporators which the former cannot violate nor impair. This principle which was evolved in the Dartmouth College case is now supported by a torrent of authorities, and no court at this day will attempt to deny
that it is immoveably established. As a charter to a private corporation is a contract it is within the constitutional prohibition which prohibits the states from passing a law which impairs the obligation of contracts.

Hence it is beyond the power of the state to repeal or materially annul such a corporate charter, unless the power of amendment and repeal have been expressly reserved, or unless all the parties consent to the change. All the franchises, privileges, express and implied powers, necessary and essential to carry out the corporate purposes are also protected by the constitution. But the fact that a charter of incorporation is a contract, and entitled to all the constitutional protections, does not prevent the state from passing remedial and curative statutes correcting prior invalid proceedings of a corporation. The legislature has the same power to ratify and confirm an irregularly organized corporation as they have to create a new one.

So by an act confirming a consolidation between two railroad companies, which was not binding when entered into, is valid. Citing Mitchell v. Reed, 49 Ill. 410.

Although the charters of stock corporations are protected by the constitution to the same extent that other
contracts are, they are not exempt from the operation of general laws, imposing upon them such additional duties as the legislature may deem necessary for the better security of persons and property, and prescribing penalties for failure to comply with their requirements. Within this category of statutes are those that relate to the exercise of callings which endanger life, limb or property. This class of statutes does not depend for their validity upon any privileges conferred by the grant of a franchise. The farthest that the cases have gone on this subject, is to permit the legislature to regulate the carrying rates of passengers and freight. Laws of this kind are clearly within the regulation of the police power of the state, and if such laws require the operations of a corporation to be conducted in a manner different from that required by the law as it existed when the charter was granted there can be no objection. A corporation is an artificial person and it must be subject to the police regulations of a state in the same manner and to the same extent, in certain respects, as a natural person, when the safety and welfare of the public demands it, regardless of what might have been the
law when the act of incorporation was consummated.

Municipal corporations stand upon a different footing than private or stock corporations. Charters of such corporations are not contracts, and are not protected by the constitutional prohibition applicable to contracts like stock corporations are. When a legislative act is in response to the petition of the inhabitants of a particular district, who ask for the construction of a municipal government, the granting of the prayer is not for their pecuniary benefit, nor does the state receive nor the inhabitants part with any consideration, express or implied. The status of the individuals composing such corporations is not changed in any respect concerning their private property. It is merely the giving of certain functions of municipal government to them. And as it is not protected by the inviolability of contracts it may be amended, altered, restricted or enlarged by the legislature without even consulting the members composing it. Such corporations are mere creatures of the legislature from which they derive all the powers they possess. They have no inherent jurisdiction to make laws or regulations of government. Their
powers rest on a legislative grant and must be expressly or
impliedly conferred. The same power that creates these
corporate privileges prescribes the rules and declares the
formalities under which they shall be called into action,
and in granting them does not divest itself, of the right
at all times to modify or altogether abolish them in legis-
lative discretion.

AS AFFECTING CRIMINAL LAWS.

Under the English constitution there has been fre-
quenct instances where the government has found itself unable
to vindicate its peace and dignity, without a new law, prohibiting past acts, and prescribing punishments to meet the exigency of the case. But this mode of legislation is so expressly prohibited by the federal constitution, that in the United States the instances have been rare, where there has been any legislative intent to make crimes out of pre-
vious innocent acts. The violations of this constitution-
al prohibition have generally been in other respects, and are for the most part the result of clumsy legislative in-
tents to make the law apply to future criminal acts only.
The clause of the constitution prohibiting the enactment of ex post facto laws first received a judicial construction in the case of *Calder v. Bull*, 3 Dallas, 269. Here it was laid down that this prohibition referred only to laws of a criminal character; and the celebrated and judicious Judge Chase laid down the four fundamental rules to determine ex post facto laws, that are today substantially recognized by the courts in testing the validity of statutes of this character. The following are the ones which he enumerates: "First, every law that makes an action, done before, which was innocent when done, criminal; and punishes such action. Second, every law that aggravates a crime or makes it greater than it was when committed. Third, every law that changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed. Fourth, every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender". These four test rules are now firmly established, with the exception of the last. And upon this there has been considerable con-
flict in the cases, and it is still of doubtful validity.

It is settled beyond a doubt that laws diminishing the punishment or laws changing procedure merely are not ex post facto. But the courts have met with not a little difficulty in determining what is punishment within the meaning of this rule. The question was thoroughly considered by the courts in settling cases that arose from the late rebellion. In the reconstruction of the southern states, some of the new state constitutions or statutes prescribed a test oath of previous loyalty as a prerequisite to the exercise of privileges of citizenship, or the carrying on of certain designated callings. The taking and subscribing of the test oath was generally made not only a condition precedent to the exercise of the privileges, or following the calling, but a failure to comply was made a disqualification of those already in possession of such rights and privileges. These provisions were objected to on the ground that they made an act punishable which was not so when committed. The question then arose whether such disqualifications were punishments. The courts have generally held that laws depriving one of the right
to pursue a lawful calling for some previous innocent act was ex post facto because it was the infliction of a legal punishment for a past innocent act. But merely to deprive one of the elective franchise is not a punishment, for the reason that voting is not an inherent right but simply a privilege subject to the regulation of the state.

The next difficult question that presents itself in this class of cases is: What changes of punishment will be held to be an increase thereof? The rule laid down by the New York Court of Appeals in Hartung v. People, 22 N.Y. and Ratzky v. People 29 N.Y. is "That in any case where reasonable men might deem a change to be an increase of punishment the courts will declare the law affecting such change ex post facto". The Supreme Court of Missouri has recently established the rule, "That in order to effect the diminution of punishment the new law must take away some separable portion of the former punishment". These rules, however, are not safe discriminating tests and the cases upon this subject seem to be decided largely upon the particular circumstances of each. It is clear however, that a law decreasing the time of imprisonment
or the amount of a fine would be a diminution of punishment, but the great difficulty arises where there has been a substitution of punishments. This is the doubtful margin. Some laws changing the mode of punishment, have been sustained, while others apparently of a similar character have been condemned by the courts. Therefore, to try to lay down any distinguishing rule concerning this class of cases would be nothing more than absurd presumption, under the present existing state of the law.

The same general laws of limitation that apply to civil causes of action are equally applicable in criminal cases. And changes in criminal procedure are also held to affect no substantial right of the defendant, and are valid. A law changing the place of trial to another county will govern the trial of previous offenses as well as those committed subsequently. A citizen has no right to demand a trial in a particular court, or by any particular mode of procedure. Any change of procedure is valid when it can be made without impairing the defendant's right to a speedy, public, and efficacious trial, and without rendering it more burdensome upon him than it was under the law as it existed
when the crime was alleged to have been committed. Statutes which give to the state a greater number of peremptory challenges have been sustained. Also changes in the manner of summoning jurors, and laws requiring a jury instead of the court to assess damages are mere changes in procedure and do not affect any substantial right.

Thus we conclude a brief view of a branch of our jurisprudence, the peculiarities of which were created by our constitution; and which has received not a small portion of the judicial consideration during an hundred years of constitutional interpretation.