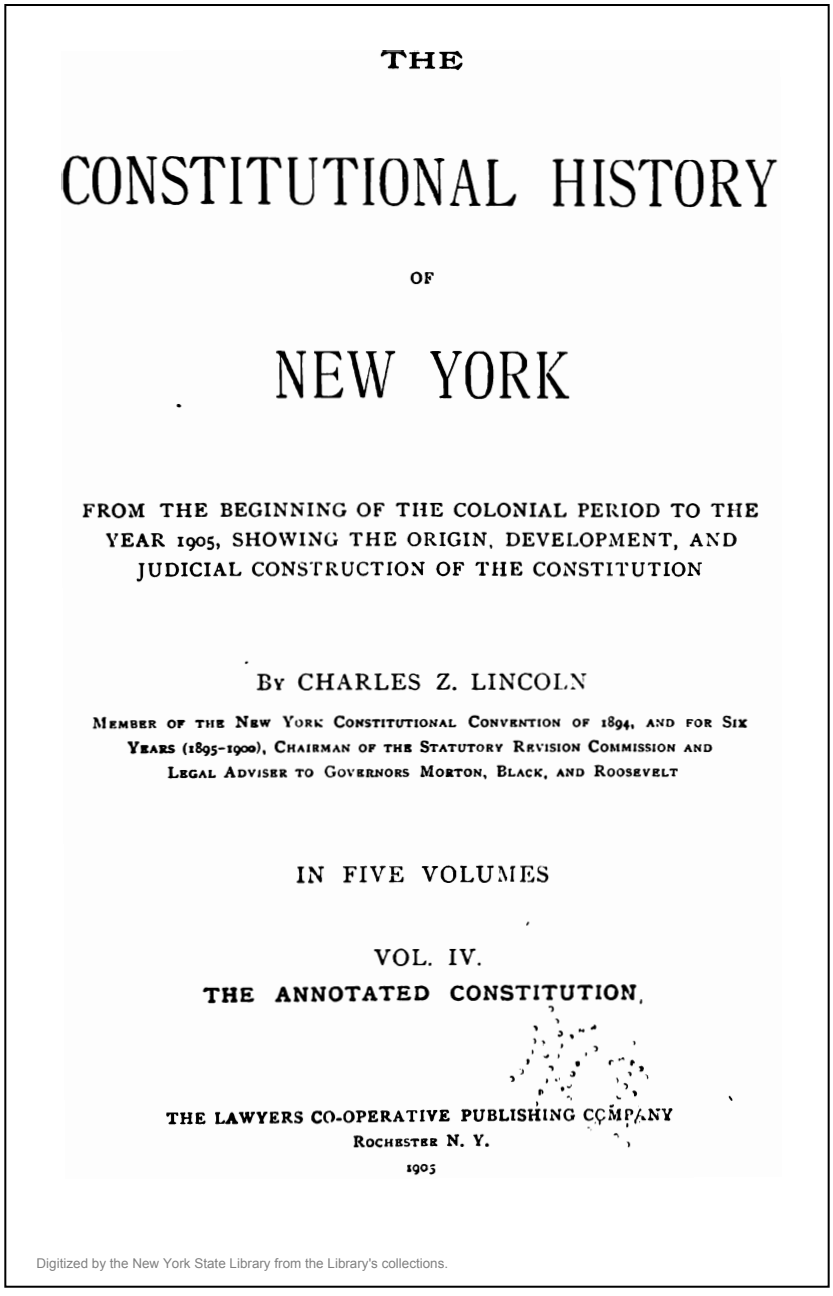
The Constitutional History of New York

From the beginning of the Colonial Period to the Year 1905, Showing the origin, Development, and Judicial Construction the Constitution



THE

CONSTITUTIONAL HISTORY

OF

NEW YORK

FROM THE BEGINNING OF THE COLONIAL PERIOD TO THE YEAR 1905, SHOWING THE ORIGIN, DEVELOPMENT, AND JUDICIAL CONSTRUCTION OF THE CONSTITUTION

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"The Constitution is the voice of the people, speaking in their sovereign capacity." *Re New York Elev. R. Co. (1877) 70 N. Y. 327, 342.*

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Constitutional question can be raised only by a person who has an interest in the controversy. Board of Education v. Board of Education (1902) 76 App. Div. 355, 361, 78 N. Y. Supp. 522.

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PRINCIPLES OF CONSTRUCTION. 'The first rule in interpreting and construing a constitution is to give to it the effect and meaning contemplated by its framers and by the people who adopted it. And the first rule for ascertaining what that intent and meaning was, is that it is to be gathered, if possible, from the plain and ordinary meaning of the words used." People ex rel McClelland v. Roberts (1895) 91 Hun, loi, 34 N. Y. Supp. 641, 36 N. Y. Supp. 677, (1896) 148 N. Y. 360, 31 L. R. A. 399, 42 N. E. 1082.

A written constitution must be interpreted and effect given to it as the paramount law of the land, equally obligatory upon the legislature as upon other departments of government and individual citizens, according to its spirit and the intent of its framers, and indicated by its terms. People ex rel. Bolton v. Albertson (1873) 55 N. Y. 50, 55.

In construing a constitution the only sound principle is to declare *Ita lex scripta est,* to follow and to obey; arguments ab *inconvenienti* cannot be considered for the purpose of enlarging or contracting its import. People v. Morrell (1839) 21 Wend. 563, 583; Newell v. People (1852) 7 N. Y. 109.

The language of a constitution cannot be extended beyond the scope of its terms because the enlarged construction would be desirable or convenient People ex rel. Williams v. Dayton (1874) 55 N. Y. 367.

In the construction of constitutional provisions, the language used, if plain and precise, should be given its full effect, and we are not concerned with the wisdom of their insertion. "As adopted by the people, the intent is to be ascertained, not from speculating upon the subject, but from the words in which the will of the people has been expressed. To hold otherwise would be dangerous to our political institutions. . . . It must be presumed that its framers understood the force of the language used and as well the people who adopted it." People v. Rathbone (1895) I45 N. Y. 434, 438, 28 L. R. A. 384, 40 N. E. 395.

The rule that, in the construction of a law, every part of it must be viewed in connection with the whole, so as to make, if possible,.

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all its parts harmonious (i Kent, Com. 462), must be applied in the construction of a constitution. Where great inconvenience will result from a particular construction, that construction is to be avoided, unless the meaning of the lawmaker is plain. People ex rel. Jackson v. Potter (1872) 47 N. Y. 375, construing the provisions of the judiciary article of 1869, relating to vacancies in the office of justice of the supreme court

"The same general rules which govern the construction and interpretation of statutes and written instruments generally apply to and control in the interpretation of written constitutions. They are made by practical and intelligent men, for the practical administration of the government, and they are to receive that interpretation which will give

effect to the intent of the framers, as deducible from the language employed, and operate most benignly in the interest of the governed, and best harmonize with and give effect to the general scope and design of the instruments. As in other written instruments, the intent and design of a particular provision being ascertained from the words used, effect will be given to it in harmony with such intent and design. . . . If words have a doubtful meaning, or are susceptible of two meanings, they should, within the rule, receive that which will effectuate the intent of the framers of the constitution, and the general intent of the instrument"" People V. Fancher (1872) 50 N. Y. 288, 291.

"The language of a constitution is presumed to be selected with more care and exactness than that of a statute, and when such language has a definite meaning, there is no occasion for construction, and it is not the province of courts to speculate upon what might have been intended." People ex rel. Garling v. Van Allen (1873) 55 N. Y. 31, 35, per Church, Ch. J.

Nothing but a clear violation of the Constitution will justify a court in overruling the legislative will. Re New York Elev. R, Co. (1877) 70 N. Y. 327, 342.

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Meaning, when fixed.—"The meaning of the Constitution is fixed when it is adopted, and it is not different at any subsequent time, when a court has occasion to pass upon it. The object of construction, as applied to a written constitution, is to give effect to the intent of the people in adopting it." Cooley, Const. Lim. 6th ed. 69, cited in Reilly v. Gray (1894) yy Hun, 402, 409, 28 N. Y. Supp. 811, in which the court also say that "in construing a provision of the Constitution, its history and the conditions and circumstances attending its adoption must be kept in view."

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LAW OF THE LAND. The phrase "law of the land" is synonymous with the words "due process of law," and has the same legal import and effect. It does not mean merely an act of the legislature, for that would abrogate all restraints upon legislative authority. The clause means that the statute which deprives a citizen of the rights of person or property without a regular trial according to the course and usage of the common law would not be the law of the land in the sense of the Constitution. People v. Toynbee (1855) 20 Barb. 194, affirmed m (1856) 13 N. Y. 378.

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The rights and privileges secured to citizens include the formalities and the safeguards recognized as due process of law, or the orderly application of the law of the land. People ex rel. Frank v. Davis (1903) 80 App. Div. 448, 457. The words "by the law of the land" do not mean a statute passed for the purpose of working a wrong. Rights and privileges cannot be taken away unless the matter is adjudged upon trial had according to the course of the common law. "It must be ascertained judicially that he has forfeited his privileges, or that someone else has a superior title to the property he possesses, before either of them can be taken from him. It cannot be done by mere legislation." Taylor v. Porter (1843) 4 Hill, 140, 40 Am. Dec. 274; also White v. White (1849) 5 Barb. 474, in which the married woman's act of 1848, chap. 200, was held unconstitutional. Wynehamer v. People (1856) 13 N. Y. 392.

The act of 1797, chap. 51, "to settle disputes concerning the titles to lands in the county of Onondaga," and appointing a commission to take testimony and determine all controversies relating to such lands, was held to be the law of the land within the meaning of this section, although

applicable only to a single county. Barker v. Jackson (1826) I Paine, 559, Fed. Cas. No. 989.

The act of 1818, chap. 213, providing for closing streets in the city of New York, and which vested in the city the title to the land in the streets so closed, was held to deprive adjoining owners of their property in such land. The legislature has no power to transfer property from one person to another without the owner's consent, and a statute which purports to do this is not due process of law, and is therefore not the law of the land. Re John & C. Streets (1839) 19 Wend. 659.

§ 2. [Trial by jury.]—The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law. [Const. 1777, art. 41; 1821, art 7, § 2; 1846, art. i, § 2.]