BY THE COURT:

The act whose validity is challenged (91 O. L., 679), is void, being an act of a general nature, not having a uniform operation throughout the state. It is not deemed necessary to add to recent expression of our views upon this subject. *Hixson* v. *Burson et al.*, 54 Ohio St., 470; *State ex rel. The Attorney General* v. *Davis et al.*, 35 W. L. B., 387. The circuit court could not have regarded the act as valid.

But the record shows that Alter, before bringing the suit, had voluntarily paid all the taxes to be assessed against him for carrying out the provisions of the act. True, the petition alleges that the defendants were about to issue bonds for that purpose, but this allegation is embraced within the general denial of the answer. Upon the record, therefore, no burden, was to be placed upon him for the purpose of carrying out the void act except the levy of the tax which he had voluntarily paid before bringing the suit. At the time of the suit there was, therefore, no remedy available to him.

It will not be a mis-appropriation of the moneys now in the treasury to the credit of this fund to use them for the purpose for which they were voluntarily paid. They cannot be recovered by those who voluntarily paid them, nor can they be properly devoted to another purpose.

Judgment affirmed.

STATE EX REL. ATTORNEY GENERAL v. KINNEY, SECRETARY OF STATE.

Constitutional Convention—Invalidity of Joiut Resolution of April 16, 1896—Constitutional law.

Joint resolution, April 16, 1896, (92 Laws, 787,) submitting the question of calling a constitutional convention to the electors of the state, held invalid.

(Decided June 25, 1897.)

IN QUO WARRANTO.

F. S. Monnett, Attorney General and *Daniel J. Ryan*, for plaintiff.

The legislature cannot by joint resolution repeal or amend a law.

Our contention is that this piece of legislation being a joint resolution, that part of it relating to the manner of the election is null and void, for the reason that, in order to amend or repeal the general election of the state, it is necessary that the legislature should accomplish this purpose by law, and not by a joint resolution. Section 18, article 2, of the Constitution.

This is mandatory and it means that all the laws of Ohio shall be so framed; and that legislation, to have the force and effect of amending a general law, cannot be in the shape of a joint resolution.

Cushing in his Law and Practice of Legislative Assemblies, Section 2102. *May* v. *Rice*, 91 Ind., 546; *State* v. *Rogers*, 10 Nev., 250; *Boyer* v. *Crane*, 1 W. Va., 176.

The great weight of authority on this proposition supports what we claim in this case, that a joint resolution which amends, or changes, or re-

vises a general law is null and void, for the simple reason that it is not a law and is therefore ineffective to accomplish what it purports to on its face. *State* v. *Patterson*, (N. C.) 4 S. E. Reporter, 350; *Barry* v. *Viall*, 12 R. I., 18; 34 Ohio St., 440; *Reynolds* v. *Blue*, 47 Ala., 711; *Brown* v. *Fleischmer*, 4 Ore., 132: 1 Wash. Terr., 143; Chapter 3 of Southerland on Statutory Construction.

J. F. Laning and *H. M. Daugherty*, for defendant.

The constitution has prescribed no form to be followed by the General Assembly, either in declaring the necessity of calling a convention, or in recommending to the electors to vote for or against a convention. The form to be followed is within the discretion of the legislature. *Blanchard* v. *Bissell*, 11 Ohio St., 103; *Uppington* v. *Oviatt*, 24 Ohio St., section 232.

All former submissions have been by joint resolution, prescribing the manner of voting.

This resolution does not repeal or amend an existing statute, directly or by implication.

The method of voting provided in this resolution is in harmony with the methods of the Australian Ballot Law.

If any advantage is given to the affirmative, it is a legitimate one.

As it was not necessary to enact a law to submit the question, Section 26 of Art. 2, does not apply. But the joint resolution does have an uniform operation throughout the state.

Its provisions are clear and consistent with other election laws.

The constitution provides that the recommendation may be made to the electors, but does not provide the particular manner of voting upon the

recommendation. This is left to the legislature. *State* v. *Moffitt*, 5 Ohio, 361.

Even as to bills, it is held that the provision of the Constitution in that respect (Article 2, Section 16,) which requires every bill to "be fully and distinctly read on three different days" is merely directory. *Miller* v. *State*, 3 Ohio St., 475.

The whole resolution is not unconstitutional or invalid, though a part may be, if the valid or constitutional part can be separated or disconnected from the invalid or unconstitutional part. *Exchange Bank* v. *Hines*, 3 Ohio St., 1; *Monroe* v. *Collins*, 17 Ohio St., 666; *Taylor* v. *Ross Co.*, 23 Ohio St., 22; *R. R.* v. *Commissioners*; 31 Ohio St., 338; *State* v. *Frame*, 39 Ohio St., 399; *Treasurer* v. *Bank*, 47 Ohio St., 503; *Bowles* v. *State*, 37 Ohio St., 35; *Cincinnati* v. *Bryson*, 16 Ohio, 625; *McCormick* v. *Alexander*, 2 Ohio St., 65; *C. W. & Z. R. R.* v. *Clinton County*, 1 Ohio St., 77; *Lehman* v. *McBride*, 15 Ohio St., 513; *State ex rel, etc* v. *Cincinnati*, 20 Ohio St., 18; *Walker* v. *Cincinnati*, 21 Ohio St., 14; *W. U. Tel. Co.* v. *Mayer*, 28 Ohio St., 521; *Kendle* v. *State*, 52 Ohio St., 346.

It was not the intention of the legislature to pass a law in the premises, nor was it necessary that the legislature should by a law make this recommendation and submit the proposition hereby submitted. It is not therefore contended that this resolution is a law. Not being a law it is not in contravention of article 2, section 26 of the Constitution.

If a statute is constitutional the courts cannot declare it null as being against public policy or right. *Probasco* v. *Raine*, 50 Ohio St., 378.

Special provisions of the same or another statute varying a general statute will be read as an excep-

tion thereto. *State ex rel. Crawford, etc* v. *McGregor*, 44 Ohio St., 628; *Browers* v. *Hunt*, 18 Ohio St., 311.

BY THE COURT:

The statute law of the state can neither be repealed nor amended by a joint resolution of the general assembly.

In the joint resolution, adopted April 16, 1896, (92 Laws, 787,) recommending to the electors of the state the necessity for a convention to revise, amend, or change the constitution of the state, the provision directing the mode in which they shall vote thereon, the provision authorizing the deputy state supervisors of elections, to determine how the official ballot shall, in this regard, be printed, and the provision that the convention shall not sit more than ninety days, and that the pay of its members shall not exceed five dollars each per day, are void. And these provisions being so intimately connected with the recommendation for calling a convention, that the court cannot say that the recommendation would have been made without these void provisions the whole resolution must be and is held void.

It is therefore ordered and adjudged, that the defendant be ousted from the claimed power of causing the official ballot for the coming November election to be printed in accordance with said resolution, or in any form, so as to submit the question of calling a constitutional convention to the electors of the state.

MEMORANDA

OF

CAUSES DECIDED DURING THE PERIOD EMBRACED IN THIS VOLUME, WHICH ARE NOT REPORTED IN FULL.

No. 4026.

DOUGHERTY *v.* RAILWAY COMPANY.

(Decided February 2, 1897.)

ERROR to the Circuit Court of Jefferson county.

J. W. Jordan and *J. F. Daton*, for plaintiff in error.

John M. Cook; Swayne, Swayne & Hayes and *R. G. Richards*, for defendant in error.

Judgment affirmed, it appearing one ground of reversal by the circuit court, of the judgment of the common pleas, may have been that the judgment was against the evidence. Other questions not passed upon.

No. 4027.

GRAVESON *v.* CINCINNATI LIFE ASSOCIATION.

(Decided February 2, 1897.)

ERROR to the Circuit Court of Hamilton county.

Stephens, Lincoln & Smith and *Ledyard Lincoln*, for plaintiff in error.

Harmon, Colston, Goldsmith & Hoadly and *George Hoadly, Jr.*, for defendant in error.

Judgment affirmed.