Record Noo 71 2
W. L. THOMPSON
D. C. SMITH, CHIEF OF POLICE OF THE CITY OF LYNCHBURG.

FROM THE CIRCUIT COURT OF THE CITY OF LYNCHBURG, VA.

"The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements. '
The foregoing is printed in small pica type for the information of counsel.
H. STEWART JONES, Clerk.

IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND.

W. L. THOMPSON
vs.
L). C. SMITH, CHIEF OF POLICE OF CITY OF LYNCHBURG.

To the Honorable Judges of the Supreme Court of Appeals of Virginia, :
Your petitioner, L. Thompson, respectfully represents that he is aggrieved by a decree entered by the Corporation (Jourt of the City of Lynchburg, Virginia, against him in a suit in chancery therein depending wherein W. L. Thompson was plaintiff and D. C. Smith, Chief of Police of Lynchburg, was defendant. The decree complained of was entered on the 15th day of March, 1929. Transcript of the record is herewith presented from which it will appear that W. L. Thompson, on the 13th day of December, 1928, filed his bill, and the defendant, on the same day, filed his demurrer. The bill asked that D. C. Smith, Chief of Police for the City of Lynchburg, he enjoined from interfering with petitioner driving his automobile on the streets of Lynchburg. The petitioner was notified by the said Chief of Police that he could not .drive his automobile on the streets of Lynchburg any more as his permit was revoked.
The ordinance requiring a permit to drive automobiles on the streets of Lynchburg is Section 134 of the Code of the City of Lynchburg, which ordinance and the amendment thereto are set out in the bill in full, as will be observed from examination of pages 2 and 3 of the record in this cause. The Chief of Police revoked the petitioner's permit under the amended clause ' 'C" of said ordinance passed September 28, 1925. The part of this amendment under wliich the permit was taken is in these words: ' 'The Chief of Police is authorized and directed to revoke the permit of any driver who, in his opinion, becomes unfit to drive an automobile on the streets of the city, with the right to the holder of such permit to apply to the Judge of the Municipal Court to have his permit reinstated.' The demurrer to the bill is based on the right of petitioner to apply to the Municipal Judge to have his permit restored. The ground of •the demurrer, record, page 7, is as follows: The bill on its face shows that the plaintiff has a remeßy at. law to have his rights in this case determined in that the ordinance set forth in said bill provides that the plaintiff shall have the right to apply to the judge of the lslunici.pal Court to have his permit reinstated and that the said plainiff has failed to exercise this legal right, and cannot apply for an injunction until he has exhausted his legal remedy."
It is shown (transcript, page 4) that F. W. Whitaker, Judge of the Municipal Court, ordered the permit revoked. but after (he order was made it was vacated by the court on the ground that he had exceeded his authority. The petitioner drove his automobile for some time on the streets of Lynchburg without any objection from any one. On the day of November, 1928, the petitioner was summoned before the Municipal Court for driving his automobile on the streets of Lynchburg without a permit. F. W. Whitaker, Judge of the Municipal Court of Lynchburg, held on the hearing of this case that there was not sufficient evidence to show that the Chief of Police had notified the petitioner his permit had been revoked, ' 'but instructed the Chief of Police, D. C. Smith, to notify the complainant then and there his permit was revoked. When counsel for complainant protested and stated that the complainant had not done anything for which his permit could be revoked the court stated that the Chief of Police was authorized by the ordinance to take the permit and would be good tinless the ordinance was held to be unconstitutional. The Chief of Police, D. C. Smith, then notified complainant that his permit was taken from him. This notice was given in open court and no reason given at the time for the taking of the permit by either the court, or D. C. Smith, Chief of Police." The petitioner's bill (transcript, page 5) charged that D. C. Smith was without authority to take petitioner's permit, as the amended ordinance of September 28, 1925, did not empov„rer the taking of his permit for the following reasons :

1. Because the complainant acquired his permit prior to said' amendment and the cöuncil in making the amendment could not take his vested right from him. If such was intended by the amendént the same would be void, as it would be prohibitéd by Section 58 of the Constitution of Virginia, and Section Il, Bill of Rights; also Fourteenth Amendment of the Constitution of the United States in Section I.
2. Because the amendment, to-wit: ' 'The Chief of Police is authorized and directed to revoke the permit of any driver who, in his opinion, becomes unfit to drive an automöbile on the streets of the City," is void, as the same is in violation of Section I of the Bill of Rights, of the Virginia Constitution, also Section Il of the same, and Section I of the Fourteenth Amendment of the Constitution of the United States ; and
That said amendment is invalid for the reason that the same is unreasonable, arbitrary, oppressive, and otherwise restricting the rights and privileges of the city's inhabitants in derogation of their rights under the common law and laws of the land and especially the common rights of the people; and
That the complainant owned his automobile at the time of receiving said notice from the Chief of Police and had owned it for several years and had been driving the same for several years, under his permit, on the streets of Lynchburg; and he has not become incapable of operating his automobile since getting his permit, nor has he forfeited his right to operate his car under his permit in any way.
From the foregoing your petitioner submits that he was greatly aggrieved by the erroneous ruling of the Court, towit: Because the court erred in entering the decree in this cause sustaining the demurrer to petitioners' bill and dismissing of the said bill.
Your petitioner is advised and respectfully represents that the court failed to give him the right due him by sustaining the defendant's demurrer to the bill and entering a decree. dismissing petitioner's bill. The amended sub-section ' made September 28, 1925, of the ordinance contains this statement: ' 'The Chief of Pofice is authorized and directed to revoke the permit of any driver\_ who, in his opinion, becomes unfit to drive an automobile on the streets of the city, with the right to the holder of such permit to apply to the Judge of the Municipal Court to have his permit reinstatéd." (Transcript, page 3.) The demurrer has only one ground, to-wit, "that the ordinance set forth in said bill provides that the plaintiff shall have the right to apply to the Judge of the Municipal Court to have his permit reinstated and that the plaintiff has failed to exercise this legal right, and cannot apply for an injunction until he has exhausted his legal remedy." (Transcript, page 7.)' Take the demurrer to mean what its language says, if the petitioner had applied to the Judge of the Municipal Court and he had refused to reinstate petitioner's permit •then an injunction should be awarded. The demurrer and the decree sustaining it did not take notice of the inconsistence of applying under the ordinance for relief and failing, then attacking the ordinance as invalid. The petitioner is advised that if he had applied under the ordinance to have his permit restored he would have precluded himself from declaring the ordinance to be void, or unconstitutional.
In Hirsh v. Block, Van Orsdel, judge, in delivering the degision of the Court of Appeals of the District of Columbia, ] 1 A. L. R., at page' .1241, said: ' 'The right of plaintiff to question the constitutionality of the act in this proceeding is assailed. It is urged that he should have pursued the remedy prescribed in the act, and, if unsuccessful, appeal. But plaintiff would be in poor position to question the jurisdiction which he had himself invoked merely because of an adverse decision. If he should invoke the aid of thé statute and suffer defeat before the commission, he would egtop himself to seek' further relief on the ground of the unconstitutionality of the act. He would not be permitted to thus experiment with the

law. Electric co. v. Dow, 166 U. S. 489, 41 L. m. 1088, 17 sup. Ct. Rep. 645; Wight v. Davidson, 181 U. S. 371, 45 L. m. 900, 21 sup. Ct. Rep. 616; Shepard v. Barron, 194 U. S. 553, 48 L. Ed. 1115, 24 sup. Ct. Rep. 737; Daniels v. Tearney, 102 NJ. S. 415, 26 L. Ed. 187; Grand Rapids 1. R. co. v. Osborn, 193 U. S. 17, 48 L. Ed. 598."
It clearly appears that demurrer yhould not have been sustained. The court's decree had the effect of holding the ordinance constitutional, when in fact the court refused to consider that question until application had been made under the ordinance to the Municipal Judge of Lynchburg. That was the position urged by counsel for Smith ill arguing the demurrer. The bill shows that if petitioner had applied to F. W. Whitaker, the judge of the Municipal Court, for reinstatement of his permit the application would have been refused. The court erred in dismissing petitioner's bill as the same contains facts showing equity jurisdiction.
The question presented to the court by this bill is one of injunction. The first thing to be considered is whether the facts stated in the bill give' jurisdiction to the court to grant the injunction. It Seems that Judge Brannon in Fellows v. Charleston, 13 L. R. A. (N. S.), at pages 739-740, presents the contention of this bill in the affirmative when he said:
' 'The first question arises upon the contention by the city that equity has no jurisdiction of the case, because it will not enjoin a criminal prosecution. For this position we are referred to Flaherty v. Fleming, 58 W. Va. 669, 3 L. R. A. (N. S.) 461, 52 S. E. 857. It holds the general principle that 'it is a rule, subject to few exceptions, that a court of equity will not interfere by injunction with criminal proceedings'. But that case distinctly admits that, if criminal prosecution destroys civil property and its enjoyment, in protection of the property rights equity may properly enjoin the criminal prosecution. Now, surely, the prosecution of criminal process illegally preventing the construction of a residence on real estate deprives the owner of a very important use of his land, practically taking it from him. 6 Pom. Eq. Jur. 3d Dd., Sect. 644 ; 2'2 Cyc. Law & Proc., p. 902 ; Dobbins v. Los Angeles, 195 U. S. 224, 49 L. Ed. 169, 25 Sup. Ct. Rep. 18. Therefore there is jurisdiction in equity for injunction. And, aside from that question, there stands the fact alleged that the city and its constituted officers were hindering and obstructing the erection of the house, and that itself, I think would sustain the jurisdiction.
The note of authorities in that case cited by counsel for complainant is not only a good note, but it presents this case. In 22 Cyc., at pages 902-3, the law is stated as follows: "Nevertheless the rule is well settled that where •the intervention of equity by injunction is warranted by the necessity of protection to civil rights or property interests, the mere fact that a crime or statutory offense must be enjoined as incidental thereto will not operate to deprive the court of its jurisdiction.
In the same book, at pages 903-4, this language is found: ' 'But where the statute or ordinance under which the complainant is prosecuted is void or unconstitutional, and the prosecution may result in irreparable injury to his property rights, an injunction will be granted to restrain the commencement or continuance of criminal proceedings under such statute or ordinance."
The syllabus of Coal d; Cohe Ry. Co. v. Conley, 67 S. E.) at page 614, contains the following: ' 'Nor is it material that the officer's color of authority for the enforcement of the act is found, not in it, but in the common law or• some other statute. That he has some connection with the enforcement of the act is the important and material fact, whatever its source or origin may be. (Ed. Note—For other cases, see Injunction, .1)ec. Dig., Sect. 85\*.)
(10) Injunction (Sect. 85\*.) Jurisdiction—Enforcement of Void Act.
•Unconstitutionality of the act is not alone sufficient to con. fer jurisdiction of such a suit or proceeding in equity. To this there may be added for such purpose, some right or injury, respecting the persons or property, not adequately remediable by any proceeding at law.
(Ed. Note.—For other cases, see Injunction, Cent. Dig.,
Sect. 156 Dec. Dig., Sect. 85\*.)
(11) Injunction (Sect. 105\* Criminal Proceedings.
When the two grounds for relief, just mentioned, exist, the remedy in equity is not precluded, though it involves restraint, by injunction, of a criminal proceeding.
(Ed. Note.—For other cases, see Injunction, Cent. Dlg., Sect. 179; Dec. Dig. Sect. 105\*.)
(12) Injunction (Sect. 105\*)—Enforcement of Unconstitu tional Act—Restraint of Criminal Proceeding.
Under such circumstances, restraint of a criminal proceeding is merely incidental to adequate protection of a personal or property right, and is not founded upon the mere illegality of such proceeding. Its chief object being the maintenance and protection of such right, the bill is not only merely to enjoin such a proceeding.
(Ed. Note—For other cases, see Injunction, Cent. Dig.,
Sect. 179; Dec. Dig., Sect. 105\*.)
(13) Injunction (Sect. 74\*)—Acts of Officers—Unconstitutional Statute.
A wrong, attempted by an officer under color of a void statute, will be enjoined as readily as one attempted by a private person in violation of law and without color of office, if sufficient grounds for injunction, under the rules and principles governing the subject, are shown. Both acts are trespasses.
In Mayor, etc., of Bal,tiønore v. Radecke, 33 Am. Rep. at pages 245-6, Judge Miller said: ' 'As to the question of jurisdiction we have no doubt. It has been decided by this Court in too many cases to be longer open to question, that where a municipal corporation is seeking to enforce an ordinance which is void, a court of equity has jurisdiction at the suit of any person injuriously affected thereby, to stay its execution by injunction. This was distinctly announced in Page 's case, 34 Md. 564, where it is said: 'There is no doubt that where an ordinance is void, and its provisions are about to be enforced, any party whose interests are to be injuriously affected thereby may, and properly ought to go into a court of equity and have the execu.tion of the ordinance stayed by injunction. This course of proceeding has been sanctioned and approved by this court in numerous cases,' and they refer to Holland's case, 11 Md. 187; Bouldin's case, 15 id. 18, and Porter's case, 18 id. 284. To these may be added Groshon's case, 30 id. 436; GilPs case, 31 id. 375; Hazelhurst's case, 37 id. 220, and St. Mary's Industrial school v. Brown, 45 id.
See also City of Atlanta v. Jacobs, 54 S. E. 534; Hewin v. City of Atlanta, 49 S. E. 771. In these cases injunction were sought against collection of taxes under void ordinances and it was contended that the taxes should have been paid under protest and suit brought to recover it and not a suit for injunction. That position the court did not approve but said a suit in equity for injunction was proper. See also Steelrna•n, Oyster Inspector, et al., v. Field, 128 S. E. 558. This was an injunction suit against the officer making assignments of oyster beds that the commissioner had no authority to make. On demurrer the court held if. there was no lawful authority for the assignment the act was a trespass and could be enjoined. See page 560. In Whitalcer v. Stanvic,7c (Minn.), 10 .1J. R. A. (N. S.) at page 924, Judge Jaggard said:
"The second question is whether or not an injunction will lie under the circumstances. It is elementary that equity will grant. that relief to prevent a threatened trespass, especially where there can be no adequate pecuniary compensation, because it would be difficult or impossible to ascertain the damage resulting from such an act, and where otherwise a multiplicity of suits cannot be prevented. 1 High. Inj., 4th Ed. 697; 27 Century Dig. 'Injunction', Sect. 87, cols. 1626, 1627; id. Sect. 101, col. 1663. There has been a material modification in such cases of the requirements that the injury should be irreparable and the legal remedy inadequate. The tendency of American authorities is to extend the application of the remedy, and to grant it 'in many instances and under many circumstances where Chancellor Kent would have probably have refused to interfere. 3 Pom. Eq. Jur. 1357. In cases of continuing trespass, 'there can be no question that all the better class of authorities \* \* \* (the landowner) is entitled t.o an injunction, even though the damages are merely nominal in a pecuniary point of view.' Wood, Nuisances, 3d., p. 1156, Sect. 789. On general principles, accordingly, and in view of the specific rule of this court in the duck-pass cases (Lampray v. Done, and L. Realty Co. v. Johnson, supra), there can be no doubt as to the propriety of. granting an injunction in such a case as is here presented."
That case was cited with approval by the court in the case of Meredith v. Triple Island Cunning Club, 73 S. D., page
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Judge Keith in commenting on the Minn. case, said that case the injunction was issued upon the ground that the facts showed that the defendant shot over the plaintiff's land which constituted a trespass. Long's Baggage Transfer Co. v. Burford, 132 S. E. at 359, deals with this question and cites with approval the law as stated in Minn. case and cited 14 R. L. C., Sect. 66, p. 365, and quoted the following :
't It may be stated generally that the office of an injunction is the protection of property and the rights of property. \* \* \* In fact, it may be said that interposition by restraining orders is a matter of growth and keeps pace with advancing civilization and that the courts are continually finding new subjects for such relief; and, while it is true that the familiar rule requiring the existence of a property right to justify the granting of this relief is generally adhered to, yet in many instances there is an endeavor to enlarge and broaden the originally narrow right which ',vould formerly have been denied protection by injunction, as being beyond the confines of equity injunction. ' '
In wo v. Hopkins, 30 U. S. L. Ed., at page 227, Baltimore v. Rueclce, was quoted as a good decision. Mr. Justice Johnson in Boyd's Ececutors v. Grundy, 7 U. S. (L. Dd.), at page 213, said: ' 'It is not enough that there is a remedy at law; it must be plain and adequate, or in other words, as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity."
This proposition was affirmed in the case of Walla Walla v. walla Walla, Water co., 43 U. S. (L..Ed.), at page 346, Mr. Justice Brown said :
"This court has repeatedly declared in affirmance of the generally accepted proposition that the remedy at law, in order to exclude a concurrent remedy at equity, must be as complete, as practical, and as efficient to the ends of justice and its prompt administration as the remedy in equity."
Parish, et al., v. City of Richmond, 89 S. E. 102, was a case of injunction as this one and the court granted the injunction. It clearly appears that the demurrer should have been overruled. This, of course, is based on the invalidity of the ordinance. Let us now look at the ordinace. Judge Keith, in Parish, et al., v. City of Richmond, 89 S. at pages 102-3, said: ' 'It is well settled that an ordinance, to be valid, must be reasonable, and that an unreasonable by-Iå.w is void. See v. Russell, 76 Va. 956. The Kirkham case is not only a leading case but contains a full discussion of the requirement of an ordinance as will be observed from the reading of the opinion. On page' 962 of 76 Va., Judge Lewis said : ' 'It is essential to the validity of an ordinance that it be reasonable. An unreasonable by-law is void. Bac. Abr. title Bylaw; 2 Ryd on Corps, 107; Dunham v. Rochester) 5 Cowen 464; 1 Dillon's Munic. Corps., Sect. 327, a.nd cases there cited.
' 'In England, says Judge Dillon, the subject upon which bylaws may be made were not usually specified in the king's charter, and it became an established doctrine of the courts that every corporation had the implied or- incidental right to
pass by-laws ; but this power was not accompanied with these limitations, namely ; that every by-law must be reasonable, not inconsistent with the charter of the corporation, nor with any statute of parliament, nor with the general principles of the common law of the land, particularly those having relation to the liberty of the subject or the rights of private property."
On page 963, this same Judge said: " The books abound in •instances or ordinances adjudged to be void for unreasonableness; as for example, because in restraint of trade, or oppressive, or in derogation of the rights of the people, or in contravention of the objects of the corporation, or the geneval law or policy of the state."
That judge cites cases to illustrate as will be seen from opinion.
On page 961, JudÅe Lewis gave as the law where there was a doubt of the authority to make the by-law it must be decided in favor of the people.
In the case of the City of v. Model Steam Laundry Company, 69 S. E. 532, that case is a full discussion of the question now before the court. Judge Whittle, on page 932, said :
" Careful consideration of the condemned ordinance shows that it prescribes no fixed rules for the conduct of the business with which it undertakes to deal, applicable alike to all citizens who may bring themselves within its terms; but every person desiring to engage in such occupations must first oblain a permit from the city council, whose powers are undefined and absolute; and in default thereof shall be deemed guilty of a misdemeanor. The ordinance prescribes no conditions upon which the permit may be granted, and furnishes no rules by which an impartial exercise of the power vested in the council may be secured. The discretion of that body is in no way regulated or controlled, and is purely arbitrary.
It is no answer to these objections to say 'that it is time enough to complain of the ordinance when the power of the city council. shall have been arbitrarily exercised'. The test of the validity of a law is not what has been done, but what may be done under its provisions. As far as our investigat.ion of the authorities has gone, they are practically unanimous in declaring invalid ordinances of this character as

obnoxious to the equality and uniformity clause of the Constitution.
The West Virginia Court in State ec rel Coste, et al., v. Town of Ripley, 121 S. E. 725, held an ordinance to be void as our court did in Richmond case. The syllabus of that case contains the following: ' 'An ordinance of a town, which fails to specify rules and regulations for the erection of buildings and their locations, within the corporate limits of such town, and grants the Common Council the right to grant or withhold its permission to erect buildings thereon, is void." In that case, Judge McGinnis, on page 726, said: ' 'Under this ordinance the door stands wide open for favoritism and discrimination. We do not think, either under the charter or under the police power, the town council was authorized to pass this ordinance. Ordinances which invest a city council, or a board of trustee, or officers, with a. discretion which is purely arbitrary, and which may be exercised in the interest of a favored few are unrea.sonable and invalid. Opinion of the court Judge Williams in Lynch, v. Town of North View, 73 W. Va. 612; 81 S. E. 834." See State ec rel Nunley v. Mayor and Council of Montgomery, 117 S. E. 888.
In State v. Robertson (W. Va.), 104 S. E., at page 476, Judge Miller said: "Except as to those persons proposing to use roads and streets for special purposes and carry on business thereon, all such roads and streets are to be regarded, under proper police regulations, as open and free to all persons to travel over them without unreasonable interference by anyone ; they are the state's highways, and no municipality has the authority to exclude the public in general therefrom. If a municipality could exclude the public from such highways, it could stop all intercourse thereon between the citizens of different parts of this state and other states by the mere arbitrary rule or regulation of its officer. This it cannot do. The legislature could not lawfully authorize the exercise of such arbitrary power when not involving any special use of such roads and streets. parte Dickey, 76 W. Va. 576, 85 S. E. 781, L. R. A., 1915 F 840."
In Dickey v. Davis, L. R. A. 19.15 F, at pages 846-7, Judge Poffenbarger (W. Va.), said : ' 'The right of a citizen to travel upon the highways and transport his property thereon in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain, in the running of a stage coach or omnibus. The former is the usual and ordinary right, a right common to all; while the latter is special, unusual and extraordinary,. As to the former, the extent of legislative power is that of regulation; but, as to the latter, its power is broader; the right may be• wholly denied, or it may be permitted to some and denied to others, because of its extraordinary nature. This distinction, elementary and fundamental in character, is recognized by all authori-
ties. ' '
Judge Burks in the case of Taylor v. Smith, 124 S. E., at page 264, quoted the extract from Dickey case with approval. In Taylor v. Smith, at page 263, Judge Burks said: ' 'Arbitrary and capricious powers are contrary to the genius of our government, are never favored, and seldom granted. But, where the power exists to prohibit the doing of an act altogether, there necessarily follows the power to permit the doing of the act upon a.ny condition, or subject to any regulation, however arbitrary or capricious it may be, as the greater powér includes the less.
But there are certain inherent rights which men do not surrender by entering into organized society, and of which they cannot be arbitrarily deprived by the state. They are briefly summarized in general terms in Section I of the Constitution of this state as follows :
That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; Namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."
They embrace all business that are legitimate in character, and are of such nature as to indicate that they are inherent in the individual claiming them.
In Cutrona v. (Del. Ch.), 124 Atl. 658, 663, 664, it is said:
" The right of dominion over one's own property, to use it as he seems fit so long as the rights of others are not infringed upon, is a right which not even the legislative power of the state can take from the individual. With respect to such proprietary interests the extent of the state's power is that of regulation, and such regulation must be of a kind that
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that operates impartially and alike upon all persons similarly situated. Regulation in matters of this kind can never extend to the point of bestowing upon any official or officials the power to permit or deny, according as whim, fancy or favoritism may suggest, the enjoyment of the right by the individual. The equal protection of the laws guaranteed by the Fourteenth amendment to the Constitution of the United States denounces all attempts to subject the property rights of individuals to the unrestrained discretion or control of administering officials, except in those special instances where the police power of the state may within the appropriate field reserved to it interpose its restraining arm. "
The cases furnish many illustrations. Yich Wo. v. Hopkins, 118 U. S. 356, 6 sup. Ct. 1064, 30 L. Ed. 220; Eubank v. Richmond, 226 U. S. 137, 33 sup. Ct. 76, 57 L. m. 156, 42 L. R. A. (N. S.) 1123; v. Commonweath, 101 Va. 853, 45 S. Fl. 327; State v. Tenant, 110 N. C. 609, 14 S. E. 387, 15 L.
R. A. 423, 28 Am: St. Rep. 715; City of Richmond v. Dudley, 129 Ind. 112, 28 N. E. 312, 13 L. R. A. 587, 28 Am. St. Rep. 180 ; Cutrona v. Wilmington (Del. Ch.) supra, and cases cited.
But this class of cases has no application to the inhibition or regulation of that which the claimant has no inherent right
This ordinance as amended cönfers on the Chief of Police the power to say who can continue to operate cars on the streets of Lynchburg, as he may arbitrarily say who is unfit without any standard of. conduct to establish the unfitness

by. The prejudice and spite of the officer may be the sole reason for wanting to take up the permit.
The petitioner is advised and upon such advice charges that the city council of Lynchburg is without authority to pass an ordinance to deprive the owner of an automobile from driving it on the streets for .pleasure, or for his own purpose, so long as it is not being used for hire. The city may regulate the driving of cars but not forbid the absolute use of the streets to such drivers. If the ear is used for hire then the city may reject the use of the streets to persons applying for permits. The whole ordinance ancf especially section ' 'C" is in conflict with state law, and for that reason the same is void. The state laws do not require any examination, or permits, to drive cars on public highways of the state. Any person living outside of the city limits can drive a car on the streets of Lynchburg without any experience with driving of
cars. The use of the streets is free to the owners of cars who live outside of the city limits, while the owners of cars who .1ive within the city limits are required to be examined, and if such examination satisfies the officer making the examination, then they will be granted a permit to drive on the streets and not otherwise. In the case of the City of Chicago v. Banker, 112 Appellate Court of Ill., at pages 99-100, Mr. Justice Ball, speaking for the court, said: "In the case at bar the right of dppellee to use the streets is undoubted. It is true he must use them without interfering with the safety of others in the exercise of the same rights; subject to that limitation his right cannot be regulated by an ordinance. The fact that an automobile is comparatively a new vehicle is beside the question. The use of the streets must be extended to meet the modern means of locomotion. Moses v. P. F. W. dc C. Ry. Co., 21 Ill. 513. The speed of the automobile may be regulated, and reasonable safety appliances, such as gongs and brakes, may be required, but to compel one who uses his automobile for his private business and pleäsure only to submit to an examination aud to take out a license, if the examining board sees fit to grant it, is imposing a burden upon one class of citizens in the use of the streets, not imposed upon the others. We must, therefore, hold this ordinance so far as it obliges appellee to take out a license before he can use his own automobile in his own business, or for his own pleasuve, is beyond the power of the city council, and is therefore void.
In Taylor v. Smith, supra, our court held in effect the same as the Illinois court. It was there held that the use of the streets by the user of an automobile in his own business, or for pleasure, was an inherent right; this right being inherent in the person so using the streets the city council could not deny the use of the streets by such persons any more than it could forbid persons from walking on the streets, or driving wagons, or riding horseback, along such streets. It would have the right to regulate the use as to all of such parties. The parties walking can be required to walk on the sidewalks and the others to use the driveways, &c.
The state legislature could not confer authority on the city council to pass the ordimince in question. The legislature cannot by statute deprive the inherent right of the use of highways of the state to those driving their ears on such highways for their personal pleasure and private business. The legislature cannot require its consent before this inherent right can be exercisefl. It is doubtless for this reason the
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state has no statute requiring users of the state highways when driving their cars for pleasure and private business to get a permit before using such highways with their cars. This ordinance under consideration is clearly class legislation as shoivn in the case of the City of v. Bank, supra.
The inequality and ununiformity of the requiring of permits to users of the streets for private business, or pleasure, by driving cars thereon presents a serious question for, in our form of government, all stand, or should stand equal before the law, and entitled to its equal protection, and any exaction which savers of ununiformity and 'inequality at once awakens attention. It is submitted that an ordinance requiring an aybitrary granting or refusing applicants permits to drive flaeir cars on the streets of Lynchburg for pleasure, by the Chief of Police, is void, as the same is not uniform or equal between the different classes who use such streets. This ordinance is inconsistent with the laws of the state as it places a burden on the pleasure owners of cars living in Lynchburg that is not put on those who live in other parts of the state. The state does not require such owners to get permits to run cars on her highways. It will be observed that cars can be driven on the streets by persons who live outside of the city limits without restraint, although they may not know how a car should be driven, or know the traffic laws of such city, or even of the state. In other words a man may apply for a permit and the Chief of Police may refuse to grant it and thé applicant can move just across the corporate line into Campbell, Bedford or Amherst County and use the streets in the same way he would have used them if the permit had been granted without violating any law. This is true although the applicant only moved a hundred yards from his former home. It is also true that a person may be refused a permit by the Chief of Police but he can under the law of the state drive his car from the corporate limit anywhere he pleases within the state without hinderance. Such a condition should not be allowed to exist. The streets of Lynchburg are state highways and the citizens of the state possess an inherent right to use them at will without regard as to whether -they live in the City of .l%ynchburg or elsewhere in the state and therefore an ordinance• requiring permits from the owners of cars living in the City of Lynchburg is void. Sub-section 15 of Section 5 of the Code of Virginia contains the following, to-wit : "Where the council or authorities of any city or town, or any

corporation, board or number of persons are aüthorized to make. ordinances by laws, rules, regulations, or orders, it shall be understood that the same must not be incqnsistent with the constitution and laws of the United States, or of this state.
In Eo Parte Daniels, 21 A. L. R., 1172, the-Supreme Court, Cal., in case of speeding by Daniel in violation of city ordinanee in conflict with the state law the court held the ordinance to be void and discharged Daniels on habeas corpus.
In State v. Robinson, 123 S'. De, at pages 577-578, Judge McGinnis, speaking for the Court of Appeals for W. Va., said: "Ordinances must not be inconsistent with the statute or the general law of the state, for if they are they will be null and void unless by virtue of express grant of the state.
McQuillan on Municipal Corporations, Sect. 647; Dillon on Municipal Corporations, Sect. 601."
In State v. Freshwater, N. C, 111 S. E. 161, the syllabus is in these words:
' '1. Municipal corporations—Ordinance held void as eonflicting with statutes.
Under C. S. Sect. 2618, limiting speed of automobiles to 18 miles per hour in the residence section of a city, and to 10 miles per hour in the business section, and section 2599, making the violation of those statutes punishable by a fine not exceeding $50, and imprisonment not more than 30 days, and section 2601, inhibiting passage of ordinance by a city contrary to the provisions of the chapter in which those statutes are found, a city ordinance limiting the speed of automobiles to 15 miles per hour in the residence section, and to 8 miles per hour in the business section, and punishing the first violation by a fine of $5.00, the second by a fine of $10, and the third by canceliug the permit to operate motor vehicles, is void.
2. Municipal corporations—In case of conflict, ordinances must yield to state law.
In case of conflict between municipal ordinances and the state law, the former must yield."
Section 3030 of the Code of Virginia contains the following: "Every city and town shall have the power to lay off

streets, walks, or alleys, alter, improve, and light the same, and have them kept in good order \* \* \* „
Seétion 3032 of the Code of Virginia was held by the Supreme Court of the U. S. in Euban,lc v. Richmond, 57 U. S. L. Ed. 156, to not confer the power of the City Council to fix the lines for buildings •on the street.
Section 3034 of the Code of Virginia confers general powers to city council. Section 3014 of the Code of Virginia is in these words :
' 'Streets, etc., of cities and towns not to be used for certain purposes, without previous consent of corporate authorities.—No street railway, gas, water, steam or electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone or bridge company, nor any corporation, association, person, or partnership engaged in these or like enterprises, shall be permitted to use the streets, alleys, or public grounds of a city or town, without the previous consent of the corporate authorities of such city or town.
It will be observed that the rule of construction on such statutes excludes everything not mentioned in th estatute. Section 2125 of the Code of Virginia contains the following: "It shall be unlawful for any person or persons \* \* \* except in accordance with the provisions of chapter ninety of the Code of Virginia 1919, and the amendments thereto, to use, drive or operate any automobile, on, along or across any public road, street, alley, highway, avenue, or turnpike of any county, city, town or village in the state." Section 2126 requires license for the automobile; Section 2127 gives the form of such license; Section 2128 is about the license of manufacturer, &c. Section 2129 of the Code of Virginia contains the following: " Any person, other than the owner of a machine which has been registered and licensed to be operated in this State, who shall operate machines for pay, before he shall operate a machine in this State shall first take out a chauffeur's license to operate machines in this State."
From these sections of the Code it clearly appears that the ordinance is inconsistent with the state law and therefore void. If it should appear from the ordinance and laws of Virginia that the petitioner could be required to get a

permit to drive his automobile on the streets of Lynchburg, but the ordinance and laws of Virginia fail to authorize the Chief of Police to take such a permit away from petitioner. The Chief of Police claims the right to take the permit under the ordinance as amended September 28, 1925, to-wit: ' 'The Chief of Police is authorized and directed to revoke the permit of any drivér who, in his opinion, becomes unfit to drive an automobile on the streets of the city." This provision in this ordinance is invalid. In Green v. Blanchard, (,Ark.), 5 A. L. R., at page 89, Judge Hart speaking for the court, said : ' 'It is competent for the legislature to declare for what acts or conduct a license may be revoked, and to vest in state boards the authority to investigate and try the charges which may be made under such a statute; but the statute should specifically name or designate the offenses or wrongful acts which shall constitute a causé for revoking his license, so that the dentist may know in advance whether he has violated the terms of the statute.
This same Judge quoted the Supreme Cour.t of the U. S. as saying: ' 'Every man should be able to know with certainty when he is committing a crime." On page 90 this •same Judge said: ' 'The right to practice the profession, once regularly obtained by compliance with the law, becomes a valuable privilege or right in the nature of property, and is safeguarded by the principles that apply in the protection of property lawfully acquired.
In Montgomery v. West, (Ala.), 9 L. R. A. (N. S.), at page 662, Judge Haralson, speaking for the court, said: ' 'In Smith on Modern Law of Municipal Corporations, Vol. I, Section 526, in defining conditions to be considered in determining the validity of an of&inance, it is laid down that the ordinance must be impartial and general in its cperation. So far as it restricts the aljsolute dominion of an owner over his property, it should furnish a uniform rule of action, and its application cannot be left to the arbitrary will of the governing authorities." The citations to support the text are very numerous. Again, the same author in Section 530 observes : ' 'Ordinances which invest a city council, or a board of trustees, or officers, with a discretion which is purely arbitrary, and which may be exercised in the interest of a favored few, are unreasonable and invalid."
The syllabus in the State of Washington Bc Rel.. Tom Markis v. Supreme Court of Pierce County, .12 A. L. IR. 1428, contains the following: ' 'A provision for revocation of a license to sell candy and soft drinks by the commissioner of public safety, with right of appeal to the city council whenever the preservation of the public morality, health, peace, and good order shall in his judgment render such revocation necessary, is invalid. 2. Charter authority to rnunicipal corporations to grant licenses for any lawful purpose, to fix the amount to be paid therefor, and provide for revoking them, does not empower the municipality to provide for their revocation at the arbitrary pleasure of a municipal Officer."
It will be observed that case was brought to enjoin the commissioner, as this one, as will appear from the following: "Petition for a writ of certiorari to review a judgment of the Superior Court for Pierce County denying relator relief in an action by him against the Commissioner of Public Safety, to enjoin interference with his business. Reversed."
The opinion of the court in that case and the authorities cited show the injunction should have been awarded petitioner restraining D. C. Smith, Chief of Police, from interfering with petitioner driving his car, as the ordinance was invalid. In Buchanan v. Warley, 62 U. S. (L. 'Ed.), at page 161, Mr. Justice Day, speaking for the court, said : • Ihe 14th Amendment protects life, liberty, and property {'rom invasion by the states without due process of law. Property is more than the mere thing which a person ov„rns. It is elementary f.hat it includes the right to acquire, use, and dispose of it. The Constitution protects these essentiall attributes of property. \* \* \* Property consists of the free use, en.joyment, and disposal of a person's acquisitions without control or diminution save by the law of the land."
There is another reason why the ordinance did not authorize the taking of petitioner's permit. This permit was gotten before the amendment authorizing the Chief of Police to revoke such permits. The privilege of driving a car on the streets of Lynchburg was a vested right in the petitioner to use his property by driving his car on the streets of Lynchburg without any interference by the officers.
In the case of Whitlock v. Hawkins, 53 S. E., at page 403, Judge Keith, speaking for the court, said: ' 'Courts do not look with favor upon retroactive and retrospective laws, and a statute is always to be construed as operating prospectively, unless a contrary intent is manifest: But it cannot be denied that the Legislature may, in its wisdom, pass retrospective statutes, sometimes called curative laws, subject to certain well-defined limitations upon its power. It cannot pass an em post facto lavvr, nor a law which impairs the obligation of a contract, and, since the adoption of the fourteenth amendment and the introduction into our Constitution of identical phraseology,.it may be conceded that it cannot devest vestedl rights, because that would be to deprive a citizen of property without due process of law.
From the foregoing it is submitted that the court erred in entering a decree on the 15th day of March, 1929, sustaining the demurrer and dismissing petitioner's bill. Vour petitioner therefore prays that an appeal may be awarded him in order that said decree, for the cause of errors above set forth, may be brought before you and the whole matttr and the decree contained may be reheard and the decree reversed, annulled, and the same may be superseded.
And your petitioner will ever pray, etc.
W. L. THOMPSON.
By A. S. HESTER,
His • Attorney.
I, A. S. Hester, an attorney and counsellor, practicing in the Supreme Court of Virginia, do certify that in my opinion the judgment complained of in the foregoing petition should be reviewed by the said Supreme Court.
A. S. HESTER.
Received May 26, 1929.
Appeal allowed. Bond $300.00.
PRESTON W. CAMPBELL.
To the Clerk at Richmond.
Received June 22, 1929.
1-1. S. J.
VIRGINIA:
Pleas before the Honorable Frank P. Christian, Judge of the Corpora.tion Court for the •City of Lynchburg, on the 15th day of March, 1929, and in the 153rd year of the Come monwealth.
Be it remembered that heretofore, to-wit, on the 13th day of December, 1928, the following degree was entered by said court in the chancery suit of W. L. Thompson, plaintiff, vs. D. C. Smith, Chief of Police •of the City of Lynchburg, defendant, to-wit :
On motion of W. L. Thompson, by counsel, and on notice to the defendant, leave is given the said plaintiff to file his bill, and said bill is filed accordingly,
And on motion of the defendant, by counsel, leave is given him to file his demurrer to said bill, and the said demurrer is filed accordingly, and the case is ordered to be docketed.
The plaintiff's bill and the defendant's demurrer thereto, referred to in the foregoing decree, are in the words and fig• ures following, to-wit:
page 2 BILL.
To the Honorable Frank P. Christian, Judge of the Corporation Court for the City of Lynchburg, Va. :
Your complainant, W. L. Thompson, respectfully repre, sents.:
That the Council for the City of Lynchburg enacted oro dinance, Section 134 of the City Code, which ordinance is in these words :
(a) ' 'It shall be unlawful for any person (other than transients remaining in the City not exceeding seven days) to drive or operate any motor vehicle upon the streets of the City until a permit so to do has been issued to such person by the Chief of Police.
(b) Any person desiring to secure such permit shall apply in person therefor to the Chief of Police, who shall cause such applicant to be carefully examined as to his or her ability to safely and properly operate motor vehicles upon the streets of the City, and as to his or her knowledge of the traffic laws of the State of Virginia and City of Lynchburg. And no permit shall be issued to such person unless such examination shall disclose thai: he 01' sho possesses such ability and knowledge as, in the judgment of the Chief of Police, qualifies such person to receive such permit. And in no event shall any such permit be issued to any person under the age of sixteen years.
(c) The person to whom such permit shall. be issued, shall pay a fee of one. dollar therefor; and such permit shall always be carried by such person while operating any motor vehicle upon the streets of the City and shall be presented by such person to any Police Officer upon request. Such permits shall be perpetual unless revoked as provided in this chapter. '
Sub-section ' 'c" of this ordinance was amended September 28, 1925, which amendment is as follows, to-wit:
' 'The person to whom such permit shall be issued, shall pay a fee of $1.00 therefor; and such permit shall page 3 always be carried by such person while operating any motor vehicle upon the streets of the City and shall be permitted by such person to any Police Officer upon request. Such permit shall be perpetual unless revoked as provided in this chapter. Conviction of a felony, or of violating the prohibition law, shall revoke such permit for a period of twelve months and conviction of the vilations of the traffic laws three times within one year shall revoke such permit for such time as the Judge of the Municipal Court may direct, not to exceed one year. The Chief of Police is authorized and directed to revoke the permit of any drivr who, in his opinion, becomes unfit to drive an automobile on the streets of the City, with the right to the holder of such permit to apply to the Judge of the Municipal Court to have his permit reinstated.
That your complainant applied to and acquired from the Chief of Police for the City of Lynchburg a permit to drive or operate a motor vehicle upon the streets of the City of Lynchburg, Virginia, as required by sub-section (b) of said ordinance a great many years ago. This permit was obtained several years prior to the amendment of sub-section (c) of said ordinance on the 28th of September, 1925 ; and That complainant has been driving or operating motor vehicles on the streets of Lynchburg for more than ten years without any complaint of his lack of ability to safely and properly operate motor vehicles upon the streets of the City of Lynchburg. Neither has there been any complaint as to his lack of knowledge of the traffic laws of the State of Virginia and the City of Lynchburg. This . complainant avers that he possessed at the time he obtained •said permit all the requirements of said ordinance,. and especially the requirements of sub-section (b) thereof; and that he has possessed the ability and knowledge, and does now possess such ability and knowledge as required by sub-section (b) of said ordinance to drive or opera.te a motor vehicle on the streets of Lynchburg; and
That complainant has not had his permit taken page 4 from him by any conviction of any offense mentioned in said ordinance. It is true that the Municipal Judge, F. W. Whitaker, did convict complainant for •speeding twice in the absence of the complainant and imposed a fine of fifty dollars in each trial and ordered complainant's permit revoked and when it was brought to the attention of said court that that ordinance did not give him the authority to revoke said permit the Municipal Court corrected the order and held the court did not have the right to revoke complainant's permit to drive or operate motor vehicles on the streets of Lynchburg under the provisions of said ordinance. This complainant avers that he was driving his car when Policeman l)eaner reported him for speeding and was out of the City when •the case came up in the Court and did not make any defense, and the other time x.'lhen he was rported by Policeman Bailey he was not driving his car, it was being driven by someone else, in fact he was not in the car at the time it was reported to have been •speeding and it was not so. he could get to the trial of the. case and was out of the City until it was too late to appeal the case; and
That complainant continued to drife his car in the City of Lynchburg for sometime without anything being said by the police, or any one else up to theday of November, 1928, when he was summoned to appear before the Municipal Court for driving a car without a permit. When the case was tried complainant claimed to have a permit as he had not received any notice from anyone that his permit had been revoked and Chief of Police D. C. Smith said he had written complainant that his permit had been revoked, but
he did not know whether the complainant had gotten the no- tice. The Court held that the complainant could not be fined but instructed the Chief of Police, D. C. Smith, to notify the complainant then and there tha.t his permit was revoked. When counsel for complainant protested and stated that the complainant had not done anything for which his permit could be revoked the Court stated that the Chief of Police was authorized by the ordinance to take the perpage 5 mit and would be good unless the ordinance was held to be unconstitutional. The Chief of Police, D. C. Smith, then notified complainant that his permit was taken from him. This notice was given in open court and no reason given at the time for the taking of the permit by either the Court, or D. C. Smith, Chief of Police.
The Chief of Police acted under the following provision of said ordinance, to-wit: ' 'The Chief. of Police is authorized and directed to revoke the permit of any driver who, in his opinion, becomes unfit to drive an automobile on the streets of the City."
Your complainant is advised that this provision did not give the Chief of Police any greater power, or authority than that given him by sub-section (b) of said ordinance. The act of the said Chief of Police .in giving the notice of the revoking of complainant's permit is not sustained by the ordinance and the law of the land. Sub-section (c) of that ordinance at the time of getting the permit by the complainant read as follows: "The person to whom such permit shall pay a fee of one dollar therefor; and such permit shall always be carried by such person while operating any motor vehicle upon the streets of the City and shall be presented by such person to any police officer upon request. Such permit shall be perpetual unless rvokd as provided in this chapter."
The complainant is advised that the amendment of this sub-section, made September 28, 1925, giving the Chief of Police the authority td revoke permits to operate automobiles in the City of Lynchburg, did not empo"tver the taking of his permit for the following reasons :
(.1) Because the complainant acquired his permit prior to said amendment and the council in making the amendment could not take his vested right from him. If such was intended by the amendment the same would be void, as it would be prohibited by Section 58 of the Constitution of Virginia,
and Section 11 Bill of Rights ; also Fourteenth Amendment of the Constitution of the United States in Section I.
page 6 (2) Because the amendment, to-wit: ' 'The Chief of Police is authorized and directed to revoke the permit of any driver 'tvho, in his opinion, becomes unfit to drive an automobile on the streets of the City," is void, as the same is in violation of Section I of the Bill of Rights, of the Virginia Constitution, also Section 11 of the same, and Section I of the Fourteenth Amendment of the Constitution of the United States ; and
That said amendment is invalid for the reason that the same is unreasonable, arbitrary, oppressive, and otherwise restricting the rights and privileges of the city's inhabitants in derogation of their rights under the common law and laws of the land and especially the common rights of the people ; and
That. the complainant owned his automobile at the time of receiving said notibe from the Chief of Police and had owned it for several years and had been driving the same for several years, under his permit, on the streets of Lynchburg; and he has not become incapable of operating his automobile since getting his permit, nor has he forfeited his right to operate his car under his permit in any way; and
That the act of the Chief of Police in taking, or attempting to take complahant'•s permit to operate his car on the streets of Lynchburg, if not restrained, will deprive complainant of his rights as a citizen, without a hearing, and he will sustain irreparable injury in his pursuance of happiness and in ac• quiring and the use of his property. If the complainant is deprived of running his automobile by the Chief of Police he will not only have his personal rights forfeited, but will have to forfeit his automobile, as the same could not be sold for what it is worth to the complainant, non for anything near its value.
In consideration whereof, and forasmuch as your complaina ant is remediless in the premises save in a court of equity, your complainant prays that the Chief of Police, D. C. Smith, may be made a party defendant to this bill, and required, but not on oath, to answer the same the oath being hereby waived; that the said Chief of Police, D. C. Smith, page 7 may be enjoined and restrained from interfering in any way with your complainant operating his automobile, or motor vehicle, on the streets of Lynchburg; and / that he be compelled to restore to your complainant his per- , mit to operate or drive motor vehicles in the City of Lynchburg; that the ordinance be construed and that the amendment made on the 28th day of September, 1925, authorizing the said Chief of Police to revoke permits to drive automobiles be declared invalid and of no binding force as to your complainant; and 'that your complainant may have all such further, and other, and generål relief in the premises as the nature of his case may require, or to equity shall seem meet.
W. L. THOMPSON.
By A. S. HESTER,
His Atty.
(Notary certificate omitted in this transcript.)
DEMURRER..
The said defendant says that the bill in this cause is not sufficient in law, and states the ground of demurrer relied on to be as follows :
The bill on its face shows that the plaintiff has a remedy at law to have his rights in this case determined in that the ordinance set forth in said bill provides that the plaintiff shall have the right to apply to the judge of the Municipal Court to have his permit re-instated and that the said plaintiff has failed to exercise this legal right, and cannot apply for an injunction until he has exhausted his legal remedy.
T. G. HOBBS, P. D.
page 8 And now at this day, to-wit: At Lynchburg Corporation Court, March 15th, 1925, the day and year first hereinbefore mentioned.
This cause came on this day to be heard on the bill of coma plaint and the demurrer of the defendant, which demurrer states as its ground that the plaintiff has a remedy at law, and cannot apply for an injunction until he has exhausted his legal remedy, and was argued by counsel.
On consideration whereof the court doth sustain the said demurrer, and doth dismiss said bill.
I, Hubert H. Martin, clerk of the corporation court for the city of Lynchburg, hereby certify that the foregoing is a true transcript of the record in the cause of W. L. Thompson vs. D. C. Smith, Chief of Police of Lynchburg, and I further certify that notice as required by Section 6339 of the Code has been duly given, as appears by a paper writing filed with said record.
The clerk's fee for making said transcript is $4.00.
Given under my hand this 1st day of April, 1929.
HUBERT H. MARTIN, Clerk.
A Copy—Teste :
H. STEWART JONES, C. C.

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