

1939

## CONSTITUTIONAL LAW - POWER OF LEGISLATIVE INVESTIGATING COMMITTEE TO SUPERSEDE GRAND JURY

D. M. Swope

*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Constitutional Law Commons](#), and the [Courts Commons](#)

---

### Recommended Citation

D. M. Swope, *CONSTITUTIONAL LAW - POWER OF LEGISLATIVE INVESTIGATING COMMITTEE TO SUPERSEDE GRAND JURY*, 37 MICH. L. REV. 1310 (1939).

Available at: <https://repository.law.umich.edu/mlr/vol37/iss8/17>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

CONSTITUTIONAL LAW — POWER OF LEGISLATIVE INVESTIGATING COMMITTEE TO SUPERSEDE GRAND JURY — The court of quarter sessions of Dauphin County ordered a grand jury investigation of alleged criminal misconduct by civil officers of the commonwealth. The governor then issued a call for a special session of the legislature. When this body had convened, seven members of the House of Representatives were appointed a committee to investigate the charges against those civil officers liable to impeachment. This committee sought a writ of prohibition to restrain the quarter sessions court from proceeding with the grand jury investigation, in pursuance of a statute enacted at the special session of the legislature giving the legislative investigating committee priority over all other investigations of the same charges.<sup>1</sup> *Held*, that the act was a deprivation of the exercise of a judicial power vested in the court by the constitution of the commonwealth. *In re Investigation by Dauphin County Grand Jury* (No. 2) 332 Pa. 342, 2 A. (2d) 804 (1938).

The constitution of Pennsylvania, like that of most of the states, confers impeachment powers upon the legislative branch of the government.<sup>2</sup> On the

<sup>1</sup> Pa. Laws (Spec. Sess. 938), no 4: "§ 1. Whenever the House of Representatives shall undertake the investigation of charges of, or involving, misdemeanor in office on the part of the Governor, or any other civil officer who is liable to impeachment, any other investigation of the same charges, theretofore instituted by or before any other officer, body, agency or court of the Commonwealth, or any political subdivision thereof, whether such investigation be legislative, executive, or judicial, shall be suspended until the House of Representatives shall have completed its investigation, and shall not thereafter be resumed unless the legislative, executive or judicial officer, body, agency or court which shall have ordered the investigation shall, after examining the testimony taken by the House of Representatives, or its committee, determine that a further investigation is necessary to develop information not disclosed to the House of Representatives, or its committee.

"§ 2. This act shall apply to, and suspend, investigations instituted by or before any officer, body, agency or court of the Commonwealth, or any political subdivision thereof, prior to the effective date of this act, as well as to such investigations hereafter instituted."

<sup>2</sup> Pa. Const., art. 6: "§ 1. The House of Representatives shall have the sole power of impeachment.

"§ 2. All impeachments shall be tried by the Senate; when sitting for that purpose the Senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two thirds of the members present.

"§ 3. The Governor and all other civil officers shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth; *the person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.*" (Italics added.)

other hand, judicial powers of the commonwealth are vested by the constitution in the courts.<sup>3</sup> The power of the grand jury to find true bills of indictment is preserved by the declaration of rights.<sup>4</sup> When conducting impeachment proceedings, a legislative body may conduct necessary investigations and summon witnesses.<sup>5</sup> Hence the court here was faced with a situation where one of two branches of government having concurrent powers was claiming to have priority over the other, the latter being the first to exercise the power. The court concluded that the statute was in violation of the principle of the separation of governmental powers by depriving the courts of the exercise of a judicial power vested in them by the constitution.<sup>6</sup> The court's conclusion would seem inescapable. The very wording of the constitutional provision delegating the impeachment power to the legislature indicates that criminal proceedings against the same officers may be conducted quite independently.<sup>7</sup> And read in connection with related provisions, there is nothing upon which to base a decision that the impeachment proceedings may supersede the constitutionally authorized grand jury.<sup>8</sup> In spite of the contention that the grand jury investigation was politically motivated, there would seem to be no authority in the legislature to suspend it for the purposes of an investigation of its own,<sup>9</sup> and no sound reason for recognizing such a legislative power when one realizes that such legislative interference is as much susceptible to political motivation as is the judicial investigation it may seek to supplant.

*D. M. Swope*

<sup>3</sup> Pa. Const., art. 5, § 1: "The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, magistrates' courts, and in such other courts as the General Assembly may from time to time establish."

<sup>4</sup> Pa. Const., art. 1, § 10: "No person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office."

<sup>5</sup> ROTTSCHAFFER, CONSTITUTIONAL LAW 163 (1939); *Burnham v. Morrissey*, 14 Gray (80 Mass.) 226 (1859); *In re Chapman*, 166 U. S. 661, 17 S. Ct. 677 (1897); Cousins, "The Purposes and Scope of Investigations under Legislative Authority," 26 GEORGETOWN L. J. 905 (1938).

<sup>6</sup> Principal case, 2 A. (2d) 804 at 809.

<sup>7</sup> See italicized portion of constitutional provision quoted supra, note 2.

<sup>8</sup> "In construing a constitutional provision it is the duty of the court to have recourse to the whole instrument, if necessary, to ascertain the true intent and meaning of any particular provision, and if there is an apparent repugnancy between different provisions *the court should harmonize them if possible.*" (Italics added.) 6 R. C. L. 47 (1915), and cases cited therein; 6 AM. & ENG. ENCYC. LAW, 2d ed., 925 (1898), and cases cited therein.

<sup>9</sup> See 87 UNIV. PA. L. REV. 228 (1938).