the lien of the mortgage." Fisher v. Foote, 25 Tex. Supp. 317. The question now under consideration was not before that court. It is true the court referred to the matter in this language: "The purchaser at the execution sale acquired no right or interest by his purchase, as against the title of the purchaser at the sale under the decree of foreclosure of the mortgage. Even if the vendor's lien might be enforced by execution upon the judgment, still, being a secret lien, it could not be set up against a purchaser of the land bona fide, without notice of the lien, and such the plaintiff appears to have been." In using that language, the court had in mind only the vendor's lien, and did not in the remotest sense refer to the title reserved to secure the lien. It will be seen that the reason given by the court why Fisher did not acquire the equity of redemption was that it had been foreclosed under the mortgage. In that case, Fisher parted with the legal title when he deeded the land to Taylor. Therefore he had no title to transmit, and the question we have could not have arisen. The question in hand was not involved in Meyer v. Paxton. Judge Williams said: "The charge should have been given, and the decision of the case should have been made to depend upon the issue whether or not the land was the homestead of Freeland at the date of the levy." Meyer v. Paxton, 4 Tex. Civ. App. 29, 23 S. W. 284. It is apparent that the issue involved here did not arise in that case. In fact, the plaintiff in the execution did not have the legal title to the land, and therefore it could not have passed by the sale.

Counsel for appellant cite Summers v. Hancock, 23 Tex. 150, as conclusively settling the question. In that case W. J. Ryan transferred a note given to him by Hancock for the land in question to M. K. Ryan, who sued W. J. Ryan and Hancock, and obtained judgment, under which the lots were sold and bought by Slayton. The Summers were not parties to the suit. W. J. Ryan gave bond for title to Hancock, and when the latter sold to Summers, by agreement, between the parties, W. J. Ryan made a deed to the Summers, who gave the note sued upon. Summers pleaded failure of consideration, alleging that the sale under the execution conveyed the superior title to Slayton, who purchased at the sale. It is patent that the issue presented here did not arise, because the legal title was vested in Summers by the deed from W. J. Ryan, and M. K. Ryan, the assignee of the purchase money notes, the plaintiff in the execution, had no title, legal or equitable.

Since Bagby took the legal title of Holman under the sale, it is unnecessary for us to answer the first question. Whether Bagby bought for Holman or not becomes immaterial.

GRINER v. THOMAS, District Judge.

(Supreme Court of Texas. Oct. 23, 1907.)

1. OFFICERS—REMOVAL—LEGISLATIVE POWER.
Where the Constitution prescribes a mode for removing officers, the Legislature may not authorize a removal in another mode.
[Ed. Note.—For cases in point, see Cent. Dig. vol. 37, Officers, § 90.]

2. JUDGES—TEMPORARY SUSPENSION—CONSTITUTIONAL LAW.
Rev. St. 1895, art. 3550, empowering district judges to suspend temporarily county judges, etc., for whose removal a petition has been presented to him, and to appoint some one to fill the temporary vacancy, is not a violation of Const. art. 5, § 15, fixing the county judge's term at two years; section 24 providing for the removal of such officer by the district judge for certain causes established by the verdict of a jury, and section 28 providing that vacancies in the office of county judge shall be filled by the commissioner's court.

3. SAME.
Under Rev. St. 1895, art. 3550, authorizing the temporary suspension of county judges, etc., for whose removal a petition has been presented at any time after the order for final hearing, and requiring notice of such hearing to be given, notice and hearing are not necessary before the suspension may be made.

4. CONSTITUTIONAL LAW — DUE PROCESS OF LAW—SUSPENSION FROM OFFICE.
Since such property right in an office as the holder has is qualified by all pre-existing valid laws, providing for its suspension or termination, the application of remedies so provided for does not unduly deprive him of any property.

Original petition by J. G. Griner for mandamus to B. C. Thomas, district judge. Writ refused.

Newton & Ward, for relator. Geo. M. Thurmond and Walter Gillis, for respondent.

WILLIAMS, J. Relator has applied to this court for a writ of mandamus to compel the respondent, who is judge of the Sixty-Third judicial district, to vacate an order made by him temporarily suspending relator from his office of county judge of Val Verde county, pending the hearing of a petition for the removal of relator from his office; and relator also asks that, if he be not entitled to such relief, respondent be ordered to give him a speedy trial upon such petition. The petition for the removal of relator, as to the sufficiency of which no question is made, was presented to the respondent on the 15th day of June, 1907, whereupon he made his order for the issuance of citation to the relator to appear on the first day of the next term of the court, November 25, 1907; and also made a further order suspending relator from his office until final trial should be had, and appointing Henry I. Moore, Esq., to discharge, in the meantime, the duties of county judge. No notice was given to respondent before the order of suspension was made. This statement is sufficient to raise the questions discussed, since the proceedings for removal conform to the provisions of the statute regulating the removal of county officers. Chapter

2 of title 74 of the Revised Statutes of 1895. The application for mandamus was presented to some of the justices of this court in vacation, and they were asked then to issue the mandamus under the authority of article 946, Rev. St. 1895, but were of the opinion that the Legislature was empowered by section 3 of article 5 of the Constitution to confer such original jurisdiction upon the court only, and not upon the judges thereof. The cause was therefore set down for a hearing in term time, and was submitted on the first day of this term.

The chief contention of counsel for relator is that article 3550 of the Revised Statutes of 1895, which attempts to empower the district judge to suspend temporarily an officer for whose removal a petition has been presented to him, is unconstitutional and void. The argument, in the main, is based upon sections 15, 24, and 28 of article 5 of the Constitution, which fix the term of the office of county judge at two years, and provide for the removal of such officer by the district judge for given causes established by the verdict of a jury, and for the filling ofvacancies therein by the commissioners' court. It is contended that right to the office is thus secured by the Constitution, and that it can only be taken away, either temporarily or permanently, by removal of the incumbent by the district judge, for causes set forth in writing and found by a jury to be true as prescribed by section 24.

It is well established by the authorities that under a Constitution like this there is no power in the Legislature to authorize a removal so provided for otherwise than in the prescribed mode, and if a temporary suspension of the officer, during the pendency of valid proceedings to remove, and as an incident of such proceedings, were equivalent to a removal, the argument would be complete. We thus state the character of the suspension as temporary and incidental to the trial of a legal and valid proceeding to remove, because that is all that exists in this case, as well as for the reason that we do not doubt that there might be attempts at suspensions, as well as at removals, that would violate the Constitution. Lowe v. Commonwealth, 3 Metc. (Ky.) 237; Gregory v. Mayor, etc., 113 N. Y. 416, 21 N. E. 119, 3 L. R. A. 854. Regarding a suspension of the character in question, we find a number of decisions in point, all holding that it is within the power of the Legislature to authorize it, although the Constitution has in express terms given power only to remove for cause and upon a hearing. Among them is Poe v. State, 72 Tex. 625, 10 S. W. 737, in which the opinion discusses the very question now raised, as follows: "It is unquestionably true that the Constitution does not allow the Legislature to confer upon the district judges authority to appoint a sheriff to fill a vacancy. It is equally true that it does not allow the Legislature to give him the power to remove one, and thus create a vacancy, without the verdict of a jury. The suspension of an officer may be inconvenient, and may even prove to be a great wrong to him. While the suspension is by the terms of the law only a temporary deprivation of the office, it in every case may be what it in effect was in this—a permanent deprivation of the office. Still a suspension is in no proper sense the same thing as a removal. We are not at liberty by construction or otherwise to hold that the provisions of the Constitution with regard to removals apply equally to suspensions from office. The Legislature, finding the power to suspend undefined by the Constitution, has regulated its exercise with due regard to the rights of the office holder. The act, while allowing an appeal, authorizes it to be returned to the next term of the Supreme Court, wherever it may be in session, and to have there precedence of the ordinary business, and requires it to be decided with all convenient dispatch. The mandate of this court is required to be issued, unless there be cause to the contrary, within five days after the judgment is rendered. The law, through the instrumentality of a bond to the suspended officer, undertakes to preserve him from pecuniary loss, if it shall be ascertained by the verdict of a jury that the alleged causes for his removal are insufficient or untrue. The public interests, as well as those of the office holder, are to be regarded. The law does not compel the district judges to suspend the officer, but intrusts them with the discretion to do it, as it in like manner trusts to their discretion in many other matters equally important. The safety of the public and every citizen is found in the judicious exercise of that discretion."

In that case there had been a suspension upon proceedings like those adopted in this case, and a subsequent trial and judgment of removal, and the appeal before the court was from the latter. We do not see that the question of the validity of the suspension was properly involved in the appeal from the judgment of removal, since the correctness of that judgment could hardly have depended upon the validity or invalidity of the suspension, and for this reason we have given the question the reconsideration demanded by its gravity and importance. The appellant in the Poe Case did, however, raise the question, and the court treated it as up for decision and decided it. We therefore give to the opinion the respect to which it is entitled, not only because of the ability of the judges who participated in it, but because of the clear and weighty reasoning by which the conclusion is sustained. We find no decision upon the precise point which conflicts with it, but several that agree, not only with the conclusion adopted, but, substantially, with the reasoning advanced to sustain it.

In State v. Peterson, 50 Minn. 244, 52 N. W.

655, the court, in passing upon the validity of such a suspension, under a Constitution which gave the Legislature power to provide for the removal of officers for malfeasance or nonfeasance in the performance of their duties, and a statute which allowed suspension pending the proceeding to remove, said: "But, says respondent, authority to provide for the removal does not carry with it the power to provide for the suspension of an officer. Whether the power to suspend is included generally in the power to remove, so that the former may be exercised independently of the latter, we need not consider. But we are very clear that the power of temporary suspension, so far as necessary and ancillary to the power to remove, is included in the latter. This is under the familiar doctrine of implication that, where a Constitution gives a general power or enjoins a duty, it also gives by implication every particular power necessary for the exercise of the one or the performance of the other. Cooley, Const. Lim. 78. As is well said in State v. Police Com'rs, 16 Mo. App. 50: 'The suspension of an officer pending his trial for misconduct, so far as to tie his hands for the time being, seems to be universally accepted as a fair, salutary, and often necessary incident to the situation. His retention at such a time of all the advantages and opportunities afforded by official position may enable and encourage him, not only to persist in the rebellious practices complained of, but also to seriously embarrass his triers in their approaches to the ends of justice.' These considerations have especial force as applied to officers intrusted with public moneys. The running of the governmental machinery is so intimately connected with, and dependent upon, the public treasury that, unless summary power and a speedy remedy be lodged somewhere, great danger to the public may ensue. The safety of the state, which is the highest law, imperatively requires the suspension, pending his trial, of a public officer—especially a custodian of public funds—charged with malfeasance or nonfeasance in office. Suspension does not remove the officer, but merely prevents him, for the time being, from performing the functions of his office, and, from the very necessities of the case, must precede a trial or hearing. Such temporary suspension without previous hearing is fully in accordance with the analogies of the law. It is a constitutional principle that no person shall be deprived of his liberty or property except by due process of law, which includes notice and a hearing. Yet it was never claimed that in criminal procedure a person could not be arrested and deprived of his liberty until a trial could reasonably be had, or that in civil actions ex parte and temporary injunctions might not be issued and retained in proper cases, until a trial could be had, and the rights of the parties determined. We have no doubt, therefore, of the authority of the Legislature to vest the Governor with power to temporarily suspend a county treasurer pending the investigation of the charges against him of official misconduct."

The same doctrine was afterwards announced by the same court in the case of State v. Megaarden, 85 Minn. 41, 88 N. W. 412. The case of Allen v. State, 32 Ark. 241, also, is directly in point, and the decision in the case of State v. Lingo, 26 Mo. 496, in principle, sustains the holding in Poe v. State. Other authorities touching the question, but not conflicting with the doctrine of the Poe Case, are the first cited above, and State v. Police Com'rs, 16 Mo. App. 48; Bringgold v. Spokane, 27 Wash. 207, 67 Pac. 612.

Admitting that the question is a debatable one, we cannot say that the statute in question is so clearly opposed to the Constitution as to justify us in disregarding it. But it is urged that, if this provision be valid, still notice and a hearing should be required before a suspension may be made. It is conceded that the statute does not, in terms, require notice; but it is insisted that it is essential to that due process of law without which no one may be deprived of his property, and that the requirement of it should therefore be read into the law. But such a requirement would be inconsistent with the terms of the statute, which prescribes the only notice to be given, that of the final hearing, and authorizes the suspension at any time after the order therefor has been made. To hold that notice and a hearing were necessary before suspension would render the power futile. To the contention that suspension without notice is a deprivation of property without due process, the answer is that such property right in an office as the holder has is qualified by all pre-existing valid laws which provide for its suspension or termination, and hence the application of remedies so provided for does not unduly deprive him of any property. Trigg v. State, 49 Tex. 669. Whether the suspension of the relator's functions took effect at once upon the making of the order, or, as contended by him, only when he received notice of it, is a question which cannot affect this proceeding to vacate the order. It is equally valid whether it operated from one time or the other.

The importance which the prayer that respondent be compelled to fix for the hearing of the charges an earlier date than that specified in his order would have assumed, had we been able to act upon the application when presented in vacation, no longer exists, since no order we might make at this late day would very materially hasten the trial. We therefore deem it unnecessary to pass upon the questions whether or not the petition to remove could and should have been heard in vacation, and whether or not the discretion of the district judge in fixing the time for the hearing can in any case be controlled by mandamus from this court.

Writ refused.