

## Public Good and Class Legislation

*The People ex rel. The Detroit and Howell Railroad Co. v. The Township Board of Salem* (1870)  
20 Mich. 452

*The People v. Salem* involves a collection of cities and townships, including Salem, which passed legislative acts providing bonds to the Detroit and Howell Railroad Company should the company build a railroad through the cities and townships. The bond would have been paid for with taxes levied on the citizens of the cities and townships involved. A Salem vote approved of this statute, though allegedly the vote was taken with short notice under less than ideal circumstances. The township board refused to pay the bond to the railroad company on the grounds that it was unconstitutional. The railroad company filed a writ of mandamus requiring the township board to pay the bond.

Each of the four Justices, Cooley, Christiancy, Graves and Chief Justice Campbell filed separate opinions, but three of the four decided on similar grounds to reject the writ.

Cooley, Campbell and Christiancy concluded that it was indeed unconstitutional for a city, township, or state to tax its citizens in order to pay a bond to a private company. The State Constitution provides for taxation powers to be decided by state or local legislatures, but only for funds to be used for a “public purpose.” Each of the three justices found that paying a private railroad company such as the Detroit and Howell Railroad Company did not qualify as a public purpose, despite the incidental public benefits that may follow from it. They also noted that this was to be distinguished from eminent domain law, which was not as constitutionally restricted.

Justice Graves, the lone dissenter, believed that the other Justices were placing railroads in a “middle” category, between public and private. He noted that railroads were often referred to as “public highways” and that this was an accurate assessment overall. Justice Cooley, however, found that this linguistic anomaly was only accurate in the most general sense, and that if railroads were found to serve a public purpose, almost any private business could likewise be found to do so on similar grounds. Cooley ruled that the term “public purpose” must be thought of in a stricter sense when dealing with the rules of taxation, and that despite the benefits that may follow from allowing the writ of mandamus to be executed here, it was simply not constitutional.

*Salem* marked the first instance in which a Michigan judge would declare a statute unconstitutional<sup>1</sup>, and it helped to determine the legal limitations of local and state taxation in Michigan and elsewhere.

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<sup>1</sup> PRESENTATION OF THE PORTRAIT OF JUSTICES CHRISTIANCY, CAMPBELL, GRAVES, AND COOLEY, MARCH 7, 1972  
[http://www.micourthistory.org/special\\_sessions.php?get\\_id=7](http://www.micourthistory.org/special_sessions.php?get_id=7)