

F
431
A5
v. 1

THE
AMERICAN HISTORICAL
MAGAZINE,

REPRESENTING THE

CHAIR OF AMERICAN HISTORY,

IN THE

PEABODY NORMAL COLLEGE.

DEVOTED ESPECIALLY TO THE HISTORY OF
TENNESSEE AND ADJOINING STATES.

PUBLISHED QUARTERLY BY THE PEABODY NORMAL
COLLEGE, AT NASHVILLE, TENN.

Vol. 1. 1896,

W. R. GARRETT, Editor.
W. R. PAYNE, Business Manager.
GOODPASTURE BOOK CO., Gen. Agts.

\$3.00 PER ANNUM

State Historical Society
OF WISCONSIN,
MADISON, - WIS.

SINGLE NUMBERS, 85 CENTS.

NASHVILLE, TENN., December 1, 1898.

To our Friends and Patrons:

With the forthcoming January number, the AMERICAN HISTORICAL MAGAZINE enters upon the fourth year of its existence. The high character of matter which has filled its pages has met the warmest approval of its friends and patrons. It expects to maintain this high standard for the coming year.

The Polk genealogy, prepared with so much care and labor, will be continued. It is a distinct contribution to American history, giving not only the genealogy of one of our great men and presidents, but much other valuable information of the historic family with which he was connected.

The publication of the Robertson correspondence will likewise be continued. This correspondence has never before been given to the public, and throws much light on the settlement of the Southwest.

In general, the historical matter furnished will be original, and published for the first time. However, the Magazine has full access to and use of the varied and immensely valuable collection of the State Historical Society. Hence, from time to time will appear matter from this source, none of which has been published by the Society, and thus has long been forgotten or lost to the public; so that the pages of the Magazine will be a source of original information to the historian and general student of history.

The accompanying table of contents and general index are sent for the use of such subscribers as may desire to have the volume bound, and may also serve to inform those who wish to inquire into the character of the work which has been done by the Magazine.

We would respectfully ask all old subscribers to renew their subscriptions, and all others interested we solicit to become subscribers.

GOODPASTURE BOOK CO.,

General Agents.

American Historical Magazine.

Editor, W. R. GARRETT, Ph.D., Nashville, Tenn.
Business Manager, W. R. PAYNE, Nashville, Tenn.
General Agent, J. W. PAULETT, Nashville, Tenn.



CONTENTS.

No. 1. JANUARY. 1896.

THE FATHER OF REPRESENTATIVE GOVERNMENT IN AMERICA, W. R. Garrett	3
THE BATTLE OF KING'S MOUNTAIN, Rev. Stephen Foster, ANOTHER ACCOUNT OF THE BATTLE OF KING'S MOUNTAIN, Robert Campbell	22
A LETTER RELATIVE TO THE BATTLE OF KING'S MOUNTAIN, A. W. Putnam	40
THE PROVISIONAL CONSTITUTION OF FRANKLAND	45
EARLIEST AMERICAN LITERATURE—CAPT. JOHN SMITH, S. A. Link	48
THE CORRESPONDENCE OF GEN. JAMES ROBERTSON	64
GENEALOGICAL NOTES:	71
Yardley or Yeardley—English Documents Relating to Yardley.	92
EDITORIAL NOTES:	103
The Magazine of American History—The Letter of Robertson to McGillivray—The Date of Miro's Letter.	

No. 2. APRIL, 1896.

THE "MERO DISTRICT," John Allison	115
MEMOIR OF DANIEL BOONE, A. W. Putnam	128
STATEMENTS OF HISTORIANS CORRECTED, E. D. Hicks	134
THE CAPTURE OF AARON BURR, Related by the Captor, Maj. Nicholas Perkins, with Accompanying Documents—From the Original Manuscripts	140
PEDIGREE OF THE POLLOK OR POLK FAMILY, FROM FULBERT THE SAXON. (A. D. 1075), TO THE PRESENT TIME, Miss Mary Winder Garrett	154
THE FAMILY OF GEN. JAMES ROBERTSON, Mrs. Lavinia R. (Hill) Brown	174
THE CORRESPONDENCE OF GEN. JAMES ROBERTSON	189
EDITORIAL NOTES:	195
The First Constitution.—Spencer, the Effect of a Comma.—Gower Genealogy.—Announcements.—Notes on Books.—Books Received.—Proceedings of The Tennessee Historical Society.	

No. 3. JULY, 1896.

ANDREW JACKSON, TENNESSEE, AND THE UNION, Albert V. Goodpasture.....	209
WM. COCKE, William Goodrich..	224
THE ADMISSION OF TENNESSEE INTO THE UNION, Nathaniel Cross	230
BEGINNINGS OF LITERATURE IN THE SOUTHERN OHIO VALLEY, Professor S. A. Link	238
BLOCK HOUSES, Mr. P. M. Radford	247
THE OLD STONE FORT NEAR MANCHESTER, TENNESSEE, Gen. G. P. Thruston.....	253
GOVERNOR LEVIN WINDER OF MARYLAND, AND THE FAMILY OF HIS ELDEST SON, EDWARD STOUGHTON WINDER, Mrs. Elizabeth Tayloe Pennington.....	257
9 PEDIGREE OF THE POLLOK OR POLK FAMILY, FROM FULBERT THE SAXON, (A.D. 1075), TO THE PRESENT TIME, (continued from April Number), Miss Mary Winder Garrett.....	263
THE FAMILY OF GEN. JAMES ROBERTSON, (continued from April Number), Mrs. Lavinia R. (Hill) Brown....	271
7 THE CORRESPONDENCE OF GEN. JAMES ROBERTSON.....	280
GENEALOGICAL QUERIES, Flournoy Rivers.....	292
EDITORIAL NOTES:.....	296
An Interesting Letter of Thomas Jefferson.—An Old Document of the State of Franklin.—Extracts from "The Clarion and Tennessee State Gazette," of Thursday, September 8, 1814.	

No. 4. OCTOBER, 1896.

THE RECONSTRUCTION PERIOD IN TENNESSEE, R. L. McDonnold	307
BEGINNINGS OF LITERATURE IN THE SOUTHERN OHIO VALLEY, (continued from July Number) Prof. S. A. Link	329
9 SIR GEORGE YEARDLEY OR YARDLEY, GOVERNOR AND CAPTAIN-GENERAL OF VIRGINIA, AND TEMPERANCE, LADY YEARDLEY, AND SOME OF THEIR DESCENDANTS, Thomas Teackle Upshur	339
THE FAMILY OF GEN. JAMES ROBERTSON, Mrs. Lavinia R. (Hill) Brown (continued from July Number).....	375
7 CORRESPONDENCE OF GEN. JAMES ROBERTSON	390
EDITORIAL NOTES	397

ERRATA IN VOLUME I.

- Page 20, the 24th line from the top, "1627" should be 1626.
 Page 103, the heading *Magazine of American History*, should be American Historical Magazine.
 Page 267. Lines misplaced. Line 5 should be line 7.
 Page 363, in first line "Warner" should be Erwin.
 Page 397, in line 18, "Lipscomb" should be Liscomb.

SECOND EDITION.

The first edition of this number, published January, 1896, being entirely exhausted by an unexpected demand, this second edition is issued, March 10. 1896, and is a reprint of the former edition.



WESTOVER.

STILL AN ATTRACTIVE PLACE, AND LARGELY VISITED BY STRANGERS.

(For the history of this famous old place, see Page 11.)

THE
AMERICAN HISTORICAL
MAGAZINE.



PUBLISHED QUARTERLY.

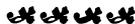
\$3.00 PER ANNUM. - SINGLE NUMBER, 85 CTS.



VOL. I.

JANUARY, 1896.

No. 1.



NASHVILLE, TENN.:
PRINTED BY THE UNIVERSITY PRESS,
208 N. COLLEGE STREET.

THE
American Historical Magazine.

VOL. I.

JANUARY, 1896.

No. 1.

THE FATHER OF REPRESENTATIVE GOVERNMENT IN AMERICA.

It is not the purpose of this article to set forth any new discovery, nor to present any reflections which are especially startling or original.

The purpose is, to emphasize a neglected fact of American history; a fact attested by ancient records, narrated in historical works, and familiar to historians; yet a fact the full significance of which is not generally recognized.

On the 30th day of July, 1619, the first Legislative Assembly in America convened at Jamestown, Virginia.

This Assembly marked the first victory of popular rights in the Western Hemisphere, and was in some respects, the most remarkable Assembly that ever convened. It was, not only the beacon light of freedom in America, but it, also, exercised an important reflex influence on the constitution of England, and is entitled to be included among the decisive events of history.

The facts connected with this important event have been sketched by Bancroft, Cooke, and other historians, but they have not taken the hold which they deserve upon

THE PROVISIONAL CONSTITUTION OF FRANKLAND.

When the eastern counties of Tennessee, in the summer of 1784, began the movement for forming an independent State, they were unable, for a time, to agree upon the form of a constitution. A provisional government was put into operation without a constitution. At a convention held in Jonesboro December, 1784, a constitution "was submitted and agreed to, subject to the ratification or rejection of a future convention to be chosen by the people, and to meet on the fourteenth of November at Greeneville."

No copy of this provisional constitution is extant, and its features can only be conjectured. At the convention held at Greeneville, November 14, 1785, a committee was appointed to report a constitution or form of government. This committee reported a Bill of Rights and a Constitution, which, it is believed, coincided in the main, with the provisional constitution; perhaps introducing modifications and additions. A printed edition of this report was issued in 1786, in pamphlet form.

One of these pamphlets is now among the treasures of the Tennessee Historical Society, and is believed to be the only complete record of this remarkable document now in existence, and the only printed record of any kind of the State of Frankland or Franklin. It is printed on a large sheet of paper, numbered and paged to be folded into a pamphlet of twenty-four pages. It is doubtless a copy laid aside by the author for his own use, after the remainder of the edition had been folded and issued as pamphlets. It is yellow with age, torn and worn, but

every word is legible, except in a few torn places, easily supplied from the context.

It seems to have been a campaign document edited by Rev. Samuel Houston, one of the members of the Convention, and the author of many of the leading features of the Constitution. He secured an accurate copy of the Bill of Rights and Constitution, attested by Francis A. Ramsey, Clerk of the Convention. To this he prefixed the preface, which is an argument in favor of its ratification by the people. Francis A. Ramsey, the attesting clerk, was the father of Dr. J. G. M. Ramsey, the historian.

This pamphlet was presented to the Tennessee Historical Society by its former President; the venerable historian, Dr. J. G. M. Ramsey, April 9, 1880. The following extract from his letter of presentation gives a succinct history of its origin:

The history of this ancient Franklin paper is a peculiar one. It was the presentation of Rev. Samuel Houston, an influential member of the Convention of 1784, from Washington County. His constitution was rejected. He repaired to Philadelphia and had a number of copies of it printed and on his return home it was circulated through the country of Franklin. But the Constitution of North Carolina had been previously adopted by the people, and of course Mr. Houston's could not be acted on and was considered as rejected. In 1846 or probably earlier I wrote to Mr. H. inquiring for the printed document. He died soon after this in Rockbridge, Va., to which he had long since removed. I reopened my correspondence with his son and executor in search of the lost document. The son afterwards died. A daughter, Miss Serona Houston, renewed the search, and last year after a more minute examination of her grandfather's papers, she found the lost paper and sent it to me. You will perceive that it is attested by the Clerk of the Convention, Francis C. Ramsey, is almost illegible from age and exposure. I send it now to the Tennessee Historical Society for preservation. It ought to be bound and well taken care of, as perhaps, the last and only *printed document* now in existence of that ancient Commonwealth.

Dr. Ramsey's Annals of Tennessee was published in 1853. At that time he had been able, after diligent search, to procure only a mutilated copy of this pamphlet. He republished the Bill of Rights and a portion of the

Constitution, breaking off about the middle of section 45 with the following note: “[REMAINDER OF CONSTITUTION LOST].” He alluded to the preface, but did not republish it. This preface is given below, and is hardly less interesting and curious than the Constitution itself.

In the reprint below, the Constitution is continued in italics from the point where Dr. Ramsey breaks off. This document is given in full, and every word will be interesting to the student of history. Its length may deter the general reader, who is referred to sections 3, 12, 32, 42, 45. Below is given a reprint of the title page, which is very nearly a facsimile.

A

DECLARATION OF RIGHTS,

ALSO, THE

CONSTITUTION,

OR

FORM OF GOVERNMENT,

Agreed to, and resolved upon, by the REPRESENTATIVES of the Freemen of the

STATE OF *FRANKLAND*,

Elected and chosen for that particular purpose, in Convention assembled, at GREENEVILLE, the 14th of *November*. 1785.

PHILADELPHIA.

Printed by FRANCIS BAILEY, at *Yorick's Head*.

M DCC LXXXVI.

PREFACE.

That the readers may more easily and fully understand the following publication, it is proposed that, by way of Preface, he should be informed of its rise, and of the reasons why it appears so unfinished and inaccurate from the Press.

In December 1784, at Jonesborough, in this State, a Convention held, and having agreed to a Constitution, recommended and held it out to the people for their consideration, signifying to the people, that before the expiration of one year they should choose a Convention, for the express purpose of adopting it in the name of the people, or altering it, as instructed by them; which is attested by the Resolve itself, and a Resolve of the Assembly which sat August 1786.

Well, accordingly, the late Convention met at Greeneville, November the 14th, 1785; and from different parts of the State, the people laid in instructions, which shewed that there was a great diversity and contrariety of sentiments amongst them. However, the Convention, after some debate, agreed to appoint a Committee of their members, who should prepare a Form of Government to lay before the whole Convention, that it might be examined, altered, amended, and added to, as the majority should think proper; and thus be perfected and finished in as accurate a manner as the united wisdom of members of the Convention could do.

After the Committee retired, the first thing of account they agreed upon, was, to proceed upon business by taking the Constitution of North Carolina for their groundwork or foundation, and together with it, all political helps that the thirteen Constitutions, the instructions of the people, and any other quarter might afford, to prepare a report to lay before the Convention. In this manner the Committee proceeded, adhering strictly to the groundwork, viz. North Carolina Constitution, retaining of it whatever appeared suitable, and to it collected pieces out of their other political helps, till they had just conformed their plan, that it might be laid before the whole Convention, that, as has been said, it might be examined, altered, amended, and added to, as the majority should think best.

The whole house having met, the Report of the Committee was laid before them, and rejected in the lump; in consequence of which, the whole house took up the North Carolina Constitution, and hastily reading it off, approved of it in the general, whilst the friends of the Report of the Committee strove to introduce, but all in vain, some material parts of their plan, viz., a single house of Legislation, equal and adequate representation, the exclusion of attorneys from the Assembly, etc., and failing in these most important points, they, by the unanimous consent of the whole Convention, obtained leave to enter upon the Journals, their dissent to what had been carried in Convention, and also to hold out to the people, for their consideration, the Report of the Committee, except the greater part of the thirty-second section

which upon second thought they objected to. And, for the people's greater satisfaction, following is a true copy of the Dissent, taken from the Journals of the Convention.

"A dissent entered by the following members to what has been agreed to in Convention:

"Because we deem the Report of the Committee, excluding that part of the thirty-second Article, which fixes a tax upon certain articles, as indigo, tobacco, flour, etc., to be the sense of a majority of the freemen of Frankland, and more agreeable to a Republican Government: which Report so amended we hold out for the consideration of the people."

David Campbell,
Samuel Houston,
John Tipton,
John Ward,
Robert Love,
William Cox,
David Craig,
James Montgomery,
John Strain,

David Looney,
John Blair,
James White,
Samuel Newell,
John Gilliland,
James Stuart,
George Maxwell,
Joseph Tipton,
Peter Parkison,

Robert Allison.

Candid Reader, when you consider all these things, you will very readily account for the inaccuracies of the Report, and see full room to pass them over without critical or severe remarks; for it is certain, from the nature of things, and the declarations of many of those who entered the above Dissent, that they did not look upon the above Report by any means as a finished and perfect piece, as its warmest advocates themselves said in Convention, and, therefore, that they, as well as they who were its enemies, meant to inspect every paragraph narrowly, and what, upon mature deliberation, appeared good, to receive, and by a majority of votes confirm, and what did not, reject; for the true light in which it should be viewed is, that every sentence was a mere proposal, unfinished, unconfirmed, and not to be established till the whole house, after due examination and debate upon it, had approved it. Hence, it must appear evident to the impartial reader, that the loud and bitter outcry that has been raised against the Report and its friends, is not like the friendly criticism of loving citizens, but resembles the advantages enemies take of one another, and the use they make of them when excited by malice and bitter enmity.

To conclude; dear reader, lay aside prejudice, and search honestly for truth, and not for catches and quibbles, patiently weighing every part in connection with the whole, and very probably you will clearly see, that the general part and the substance of the Report of the Committee contains principles, provisions, and restrictions which secure the poor and the ruled from being trampled on by the rich and the rulers; also their property and money from being taken from them to support the extravagance of the great men—and that it is full of that

which tends to free them from prevailing enormous wickedness, and to make the citizens virtuous, also, that it is well calculated to open the eyes of the people to look in upon the proceedings of the public, and know and judge for themselves when their rights and privileges are enjoyed or infringed; and therefore suitable to remove ignorance from the country, which is as beneficial to men who wish to live upon the people, as ignorance is in the Church of Rome to support the tyranny of the Pope and his clergy.

A DECLARATION OF RIGHTS,

MADE BY THE REPRESENTATIVES OF THE FREEMEN OF THE STATE OF
FRANKLAND.

1. That all political power is vested in and derived from the people only.
2. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.
3. That no man, or sett of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services.
4. That the Legislative, Executive and Supreme Judicial powers of government ought to be forever separate and distinct from each other.
5. That all powers of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people, is injurious to their rights and ought not to be exercised.
6. That elections of members to serve as representatives, in General Assembly, ought to be free.
7. That in all criminal prosecutions, every man has a right to be informed of the accusation against him, and to confront the accusers and witnesses with other testimony, and shall not be compelled to give evidence against himself.
8. That no freeman shall be put to answer any criminal charge but by indictment, presentation, or impeachment.
9. That no freeman shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court, as heretofore used.
10. That excessive bail should not be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.
11. That general warrants, whereby an officer or messenger may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.
12. That no freeman ought to be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any

manner destroyed or deprived of his life, liberty, or property, but by the law of the land.

13. That every freeman, restrained of his liberty, is entitled to a remedy, to enquire into the lawfulness thereof, and to remove the same, if unlawful: and that such remedy ought not to be denied or delayed.

14. That in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.

15. That the freedom of the press is one of the great bulwarks of liberty, and, therefore, ought never to be restrained.

16. That the people of this State ought not to be taxed, or made subject to payment of any impost or duty, without the consent of themselves, or their representatives, in General Assembly, freely given.

17. That the people have a right to bear arms for the defence of the State; and as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power.

18. That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and apply to the Legislature for redress of grievances.

19. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences.

20. That, for redress of grievances, and for amending and strengthening the laws, elections ought to be often held.

21. That a frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

22. That no hereditary emoluments, privileges, or honours, ought to be granted or conferred in this State.

23. That perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed.

24. That retrospective laws, punishing acts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; therefore no *ex post facto* law ought to be made.

THE CONSTITUTION OR FORM OF GOVERNMENT

AGREED TO AND RESOLVED UPON BY THE REPRESENTATIVES OF THE FREEMEN OF THE STATE OF FRANKLAND, ELECTED AND CHOSEN FOR THAT PARTICULAR PURPOSE, IN CONVENTION ASSEMBLED AT GREENEVILLE, THE 14TH NOVEMBER, 1785.

This State shall be called the *Commonwealth of Frankland* and shall be governed by a General Assembly of the representatives of the freemen of the same, a Governor and Council, and proper courts of justice, in the manner following, *viz.*

Section 1. The supreme legislative power shall be vested in a sin-

gle House of Representatives of the freemen of the commonwealth of Frankland.

Sec. 2. The House of Representatives of the freemen of this State shall consist of persons most noted for wisdom and virtue, to be chosen equally and adequately according to the number of freemen in the commonwealth; provided when the number amounts to one hundred it shall never exceed it, nor be ever afterwards reduced lower than eighty, and every county shall annually send the number apportioned to it by the General Assembly.

Sec. 3. No person shall be eligible to, or hold a seat in the House of Representatives of the freemen of this commonwealth, unless he actually resides in, and possesses land in the county to the quantity of one hundred acres, or to the value of fifty pounds, and is of the full age of twenty-one years. And no person shall be eligible or capable to serve in this or any other office in the civil department of this State, who is of an immoral character, or guilty of such flagrant enormities as drunkenness, gaming, profane swearing, lewdness, Sabbath breaking, and such like; or who will, either in word or writing, deny any of the following propositions, *viz.*:

1st. That there is one living and true God, the Creator and Governor of the universe.

2nd. That there is a future state of rewards and punishments.

3rd. That the scriptures of the Old and New Testaments are given by divine inspiration.

4th. That there are three divine persons in the Godhead, co-equal and co-essential.

And no person shall be a member of the House of Representatives, who holds a lucrative office either under this or other States; *that is* has a fixed salary or fees from the State, or is in actual military service and claiming daily pay, or minister of the gospel, or attorney at law, or doctor of physic.

Sec. 4. Every free male inhabitant of this State, of the age of *twenty-one* years, who shall have resided in this State six months immediately preceding the day of election, shall have a vote in electing all officers chosen by the people, in the county where he resides.

Sec. 5. The House of Representatives of this commonwealth shall be styled the *General Assembly of the Representatives of the Freemen of Frankland*; and shall have power to choose their own Speaker, and all other officers, Treasurer, Secretary of State, Superior Judges, Auditors, members to Congress. They shall have power to sit on their own adjournments; to prepare bills, and to enact them into law; to judge of the election of, and qualifications of, their own members. They may expel a member, but not the second time for the same cause; they may administer oaths on the examination of witnesses, redress grievances, impeach State criminals, grant charters of incorporation, constitute towns, cities, boroughs, and counties, and shall have all other powers necessary for the Legislature of a free State or common-

wealth. But they shall have no power to add, alter, abolish, or infringe any part of the Constitution.

Two-thirds of the whole members elected shall constitute a House, (and the expense from the appointed time 'til they make a House, shall be laid on absentees, without a reasonable excuse,) and having met and chosen their Speaker, shall, each of them, before they proceed to business, take and subscribe, as well the oath of fidelity and allegiance hereafter directed, as the following oath—

“I, *A. B.*, do swear, That, as a member of this Assembly, I will not propose or assent to any bill or resolution, which shall appear to me injurious to the people, nor do, nor consent to any act or thing whatever, that shall have a tendency to lessen or abridge the rights and privileges as declared in the Constitution of this State; but will in all things conduct myself as a faithful honest representative and guardian of the people, according to the best of my judgment and abilities. *So help me God.*”

The doors of the house in which the representatives of the freemen of this State shall sit in General Assembly, shall be and remain open, for the admission of all persons who shall behave decently; except when the good of the commonwealth requires them to be shut.

Sec. 6. The votes and proceedings of the General Assembly shall be printed weekly, during their sitting, with the Yeas and Nays on any question, vote, or resolution, (except when the vote is taken by ballot,) when any two members require it; and every member, shall have a right to insert the reasons of his vote upon the Journals, if he desires it.

Sec. 7. That the laws, before they are enacted, may be more maturely considered, and the danger of hasty and injudicious determinations as much as possible prevented, all Bills of a public and general nature shall be printed for the consideration of the people, before they are read in the General Assembly the last time, for debate and amendment; and, except on occasions of sudden necessity, shall not be passed into laws before the next session of the Assembly: And, for the more perfect satisfaction of the public, the reasons and motives for making such laws shall be fully and clearly expressed in the preambles.

Sec. 8. The style of the laws of this commonwealth shall be, *Be it enacted. and it is hereby enacted, by the Representatives of the Freemen of the Commonwealth of Frankland, in General Assembly, and by the authority of the same.* And the General Assembly shall affix their Seal to every Bill as soon as it is enacted into a law; which seal shall be kept by the Assembly, and shall be called the *Seal of the Laws of Frankland*, and shall not be used for any other purpose.

Sec. 9. As in every free government the people have a right of free suffrage for all officers of government that can be chosen by the people, the freemen of this State shall elect Governor and Counsellors, Justices of the Peace for each county, and Coroner or Coroners, Sheriffs,

and all other such officers, except such as the Assembly are empowered to choose.

Sec. 10. All the able bodied men in this State shall be trained for its defence, under such regulations, restrictions and exceptions as the General Assembly shall direct by law, preserving always to the people, from the age of sixteen, the right of choosing their colonels, and all other officers under that rank, in such manner and as often as shall be by the same laws directed.

Sec. 11. The Governor of the State shall be annually chosen by the free suffrages of the people on the day of general election for Representatives for the General Assembly, and the returning officers for each county shall make a fair return to the House of Representatives, of the persons voted for, and the number of votes to each, which the Assembly shall examine, and the highest in votes shall be declared constitutionally elected; but no person shall be eligible more than three years out of seven, nor hold any other office at the same time.

Sec. 12. This State shall be divided into six grand divisions, each of which, as in the above mentioned sections, shall choose a Counsellor; And these divisions shall be thrown into three classes, numbered 1st, 2nd and 3rd, which shall change their members in Council by rotation, beginning with the first class the first year after they have served one, and the second the second year, and so on forever; by which means some acquainted with business will be always in Council. And no person shall be eligible more than three years in seven, nor shall hold any other office in the State.

Sec. 13. The Governor and Council shall meet annually at the same time and place with the General Assembly; The Governor, or, in his absence, the Lieutenant Governor, who shall be one of their number, chosen with the rest, with the Council, (two-thirds of whom shall make a board), shall have power to correspond with other States; to transact business with the officers of government, civil and military; to prepare such business as may appear to them necessary to be laid before the General Assembly: They shall also have power to grant pardons and remit fines, in all cases whatever, except in case of murder, impeachment, and treason, which they may reprieve 'til the end of the next session of Assembly; but there shall be no mitigation of punishment on impeachment, unless by act of the Legislature; They are to take care that the laws be faithfully executed; to expedite the execution of such measures as may be resolved upon by the General Assembly: They may draw upon the Treasury for such sums as shall be appropriated by the House of Representatives—they may also lay embargoes, or prohibit the exportation of any commodity for any time not exceeding thirty days, in the recess of the General Assembly only: They may grant licenses, as the laws shall direct, and shall have power to convene the House of Representatives, when necessary, before the day to which they were adjourned. The Governor shall be commander-in-chief of the forces of the State; but shall not command in person,

except advised thereto by the Council, and then only for so long as they shall approve of. The Governor and Council shall have a Secretary, and keep fair books of their proceedings, wherein any Counselor may enter his dissent, with his reasons in support of it.

Sec. 14. All commissions and grants shall be in the name and by the authority of the freemen of the commonwealth of Frankland, sealed with the State seal, signed by the Governor, or, in his absence, the Lieutenant Governor, and attested by the Secretary; which seal shall be kept by the Council.

Sec. 15. No justice of the peace shall receive any fee, gratuity or reward for his services as a justice; but all other officers of this State shall be allowed as moderate fees or salaries as possible, to be an adequate compensation for their services. And if any officer shall take other or greater fees than the laws allow, it shall ever afterwards disqualify him to hold any office in this State.

Sec. 16. Every officer of government shall be liable to be impeached by the General Assembly, or presented by the grand jury of any of the superior courts, either in office, or after his resignation or removal, for mal-administration. All impeachments shall be before a temporary court composed of the Governor or Lieutenant Governor, and two members of the Council, to be chosen by the Council; the three senior Judges of the Supreme Court, and three members of the General Assembly, to be chosen by the Assembly, who shall, or any five of them, hear and determine the same.

Sec. 17. The Treasurer of State shall be annually appointed, and no person eligible more than three years successively. The Secretary of State, Attorney-General, Auditors, and such like officers, shall be appointed triennially; but removable for misconduct. And any officer, representative in General Assembly, or in the Congress of the United States, who is convicted of a second violation of any part of this constitution, shall be forever afterwards disqualified to hold any place or office in this State.

Sec. 18. That in every case, where any officer, the right of whose appointment is, by this constitution, vested in the General Assembly, shall, during the recess, die, or his office, by other means, become vacant, the Governor shall have power with the advice of the Council of State, to fill up such vacancy, by granting a temporary commission, which shall expire at the end of the next session of the Assembly.

Sec. 19. That no Treasurer, until he shall have finally settled his accounts with the public, and paid the money remaining in his hand to the succeeding Treasurer, nor any person who heretofore has been, or hereafter may be, a Receiver of public monies; under this or any other State, until he has fully accounted for and paid into the treasury all monies for which he may be accountable and liable, shall have a seat in the General Assembly, or be eligible to any civil office in this State.

Sec. 20. The freemen of each county shall, for the purpose of ease, justice and conveniency in holding elections, and other public affairs,

be divided into districts, as near one hundred in each as local circumstances will admit.

Sec. 21. The freemen of each district shall meet upon the second Tuesday of *February* forever, and, at their first meeting, elect three of **their own members**, who shall be called Registers, and who shall keep a fair alphabetical roll of the freemen of their district. Any two of them agreeing, or upon advice of any five freemen, shall have power to assemble the freemen of their district to consult for the common good, give instructions to their Representatives, or to apply to the Legislature for redress of grievances by address, petition, or remonstrance. They shall preside in all civil district elections, shall meet twice, or oftener, in the year, to deliberate upon and prepare to lay before the people such matters as may be necessary for them to consider. And, to keep up a rotation of the members, the person who shall have fewest votes at the first election, shall continue in office one year, the second two, and the highest three. And no Register shall be eligible for two years after he has served his term.

Sec. 22. That elections may be free, and corruption prevented as much as possible, the Registers of each district shall summon the freemen of their district to meet at some convenient place, upon the first Tuesday of March forever, where they shall elect by ballot, all the officers for their district, which shall be hereafter directed, and the number of persons, indiscriminately, out of the county, appointed to represent it in the General Assembly, in the following manner: the Senior Register shall call each freeman by name, in the order of the roll, who shall give his ticket or tickets to the second Register, and the highest in votes for district officers shall then be declared constitutionally elected; but the names of the persons to represent the county in General Assembly, and their respective numbers of votes, shall, by one of the Registers, be laid before a meeting of one from each district, within ten days after the election; and when all are examined, the highest in votes shall be declared constitutionally elected, and certified by the same Register. No freeman shall have, in this commonwealth, more than one annual vote for any officer of government, and the Legislature hereafter to be appointed, shall, from time to time, enact and keep in force such laws as may appear necessary to prevent and remedy every species of corruption, and to oblige freemen to attend upon elections.

Sec. 23. Justices of the peace shall be elected for each county, ten or, more by the freemen, as shall, by the General Assembly, be thought necessary for each, of those residing within the same, and qualified as mentioned in Section 3, who shall be commissioned during good behaviour, by the Governor or Lieutenant Governor in Council; and no justice of the peace, or any other commissioned officer, shall hold his commission who misbehaves, or is found guilty of such things as disqualify; nor shall any one be chosen who is not a scholar to do the business, nor, unless acquainted with the laws of the country in some measure, but particularly with every article of the Constitution.

Sec. 24. To prevent the civil power usurping spiritual supremacy, the establishing of professions, denominations, or sects of religion, or patronizing ecclesiastical hierarchies and dignitaries, also to secure religious liberty and the rights of conscience forever inviolate, every citizen of this commonwealth shall forever have full and free liberty to join himself to any society of Christians who may judge most for his edification, and shall experience no civil or legal disadvantages for his so doing: And every society or congregation shall have full liberty, without any restraint from law, to choose any minister they think best suited for their Christian instruction, and to support him as they think best: And every such society or congregation shall have full right to hold all lands given to, or purchased by them, for the use of their society, or any other property they may possess for religious purposes: and the society, or any description of men chosen by them, with power to act in their name, shall have power to receive, or to make and execute deeds, and enter into such other specialties as the society may direct them to make; and shall have full power, by their agent, treasurer, or collector, to receive, recover and retain all property and money justly due to them, in as full a manner as any other collector or agent in this commonwealth. And the future Legislature of this State shall have no power to make any law, act, or resolve whatsoever respecting religion, or the spiritual service we owe to God; but shall confine themselves wholly to matters purely civil.

Sec. 25. Laws for the encouraging of virtue, and preventing and suppressing of vice and immorality, shall be made and constantly kept in force, and provision shall be made for their due execution.

Sec. 26. That no person in the State shall hold more than one lucrative office at any one time, provided that no appointment in the militia, or the office of a justice of the peace, shall be considered as a lucrative office.

Sec. 27. All writs shall run in the name of the State of Frankland, and bear test, and be signed by the clerks of the respective courts. Indictments shall conclude, *against the peace and dignity of the State.*

Sec. 28. That the delegates of this State to the Continental Congress while necessary, shall be chosen annually by the General Assembly, by ballot, but may be superseded, in the meantime, in the same manner; and no person shall be elected to serve in that capacity for more than three years successively.

Sec. 29. A Sheriff and Coroner shall be annually elected, on the day, and in the manner, for electing Representatives in General Assembly, who shall be commissioned as before mentioned; and no person shall be eligible more than two years out of five. Also Commissioners, Assessors, Overseers of the Poor, Surveyors of Roads, and all such officers as each district may require, at the same time and in such number as in future may appear necessary to the Legislature.

Sec. 30. That the person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering

up, *bona fide*, all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient sureties, unless for capital offences, where the proof is evident or the presumption great.

Sec. 31. That every foreigner, who comes to settle in this State, having first taken an oath of allegiance to the same, may purchase, or, by other just means, acquire, hold, and transfer land or other real estate, and, after one year's residence, shall be deemed a free citizen.

Sec. 32. All kinds of useful learning shall be encouraged by this commonwealth, *that is to say*, the future Legislature shall erect, before the year seventeen hundred and eighty-seven, one University, which shall be near the centre of this State, and not in a city or town: And for endowing the same, there shall be appropriated such lands as may be judged necessary, one-fourth of all the monies arising from the surveys of land hereafter to be made, one halfpenny upon every pound of inspected indigo, that shall be carried out of the State, by land or water; threepence upon every barrel of flour, and one shilling on every hogshead of tobacco, forever.* And, if the fund thence arising shall be found insufficient, the Legislature shall provide for such additions as may be necessary. And if experience shall make it appear to be useful to the interest of learning in this State, a Grammar School shall be erected in each county, and such sums paid by the public as shall enable the trustees to employ a master or masters of approved morals and abilities.

Sec. 33. That no purchase of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly.

Sec. 34. That the future Legislature of this State shall regulate entails in such a manner as to prevent perpetuities.

Sec. 35. That the Declaration of Rights is hereby declared to be a part of the Constitution of this State, and ought never to be violated, on any pretence whatsoever.

Sec. 36. No tax, custom or contribution shall be imposed upon, or paid by, the people of this State, nor any appropriation of public monies made by the Legislature, except by a law for that purpose; and the purposes for which the money is raised, and to which it is appropriated, shall be clearly expressed in the preamble. And, annually, the General Assembly shall publish a full account of all money paid into the Treasury, and by whom; also of all paid out of it, to whom, and for what.

Sec. 37. If any dispute or difference shall arise betwixt citizens, in matters of debt, property, character, or such things, the parties, agreeing to state their dispute, and leave it to arbitration, shall proceed in the following manner:—they shall apply by joint petition to the Registers of the district where the case exists, or the defendant's lives, unless they shall otherwise agree, who shall name, in writing, twenty-four substantial freemen residing in the same, and the parties shall alternately

*Dissented, to as is mentioned in the Preface.

strike out one until one half are struck out; then the parties shall draw by lot such an odd number as they shall agree upon, out of the remainder, who, after taking an oath to try the case in dispute without favor, affection, or partiality, shall hear and finally determine the same.

Sec. 38. The printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature, or any person or part of government; and no prosecution shall commence against a printer for printing anything whatsoever, provided he gives up the person's name.

Sec. 39. The Legislature shall take care to proportion punishments to the crimes, and may provide houses for punishing, by hard labour, those convicted of crimes not capital, wherein the criminals shall be employed, for the benefit of the public, or for the reparation of injuries done to private persons. All persons at proper times, shall be admitted to see the prisoners at their labour.

Sec. 40. The inhabitants of this State shall have liberty to fowl and hunt in seasonable times, on the lands they hold, and all others therein, not enclosed, and in like manner to fish in all boatable waters, and others, not private property.

Sec. 41. The Legislature hereafter to be chosen, shall provide that marriages, in this commonwealth, be regularly and solemnly celebrated, between one man and one woman, before free and single.

Sec. 42. That this Constitution may be the better understood by the citizens of this commonwealth, and be more effectually kept inviolate to the latest ages, the future Legislature shall employ some person or persons, at the public expense, to draw it out into a familiar catechetical form, and the Registers shall take care that it be taught in all the schools within their respective districts; and shall further provide, that a sufficient number of the Constitution be printed, that each citizen may have one, as the inviolable charter of his privileges.

Sec. 43. The future Legislature shall choose and keep a chaplain during their session, if to be obtained, and shall annually invite some minister of the gospel to open their first session, after the annual election, with a sermon.

Sec. 44. The privileges and benefit of the writ of *Habeas Corpus* shall be enjoyed in this commonwealth, in the most free, easy, cheap, expeditious and ample manner, and shall not be suspended by the Legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months. And, in all cases, every person shall enjoy the liberty of being heard by himself and his counsel.

Sec. 45. In order that the freedom of this commonwealth may be preserved inviolate forever, there shall be chosen by the free suffrage of the freemen of the State, on the day of in the year one thousand seven hundred and ninety, and in every succeeding fifth year forever, twenty-four freeholders, two-thirds of which shall constitute a Board in every case, and known by the name of a *Council of Safety*,

and shall meet on the day of next ensuing their election, who, during one year after said day, shall have full power, and their duty shall be, to inquire whether the Constitution has been preserved *inviolate in every part; whether Legislative, Executive Judiciary and Military branches of government, and public servants have faithfully performed their several duties, or whether they have assumed to themselves, or exercised, greater or other powers than they are entitled to by this Constitution, or neglected to exercise those with which they were invested.*

They are to enquire whether the public taxes have been justly laid and collected in every part of this commonwealth; in what manner the public money and property have been disposed of, and whether the laws have been duly exercised: For these, they shall have power to send for papers and records, to recommend impeachments, and the repealing of such laws as shall appear contrary to the principles of Constitution; they shall fix and regulate the salaries and fees of all civil officers: And no other powers shall they be invested with, or attempt to exercise, and no person shall be eligible as a member of this Council, who, has held any civil office, (except a Justice of the Peace and subaltern in the militia) for the space of two immediately preceding years, nor shall he hold any other office in government, whilst he is a member of Council.

Sec. 46. Estate shall not be entailed, and when a person dies intestate, his or her estate shall be equally divided among their children, considering the part every child before received in his or her portion, the widow shall have a child's share, or her dower, at her option. All other intestate estate, as may be directed by the future Legislature.

Sec. 47. This form of government shall be enrolled on parchment, and be deposited in the Secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of the commonwealth, in all future editions of the said laws.

A true copy from the original,

Attested: per FRANCIS A. RAMSEY, Clerk.

After the rejection of the above Constitution, John Sevier proposed the Constitution of North Carolina, which was adopted with a few amendments. The name of Franklin was adopted for the State.