REPORT

OF THE

DEBATES AND PROCEEDINGS

OF THE

CONVENTION

FOR THE

REVISION OF THE CONSTITUTION

OF

THE STATE OF KENTUCKY.

1849.

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ey—the decision of the court falls to the ground of course.

Mr. WILLIAMS. I do not like to oppose the wishes of gentlemen. The first proposition contains two provisions—the first of which authorizes the legislature to direct in what mode claims against the commonwealth shall be adjusted. My proposition does not necessarily take the claims before the courts; it merely, as I have already said, leaves it to the Legislature to point out the mode in which they shall be properly and justly settled. The legislature may point out by law the court, or direct the establishment of a tribunal, or a commission before which these claims may be examined and speedily disposed of. My second provision is, that no money shall be drawn from the treasury but in pursuance of appropriations made by law; and no private claim for money shall be allowed in appropriation laws. With regard to the position taken by the gentleman from Henderson, it amounts, in my opinion, to nothing; because, is not the legislature competent to provide by law that when an individual has a claim against the commonwealth, that claim shall be paid out of the treasury, if substantiated? Every gentleman who has been in the habit of attending here when the legislature is in session, knows that the greater part of its time has been consumed in the consideration of private claims. I know one case that has been before the legislature for the last four years, session after session, the case of Robert Williams, which was a claim on account of some contract on Licking river, and I believe it can be shown he has received money time after time. I repeat that the object of this proposition is not at all to interfere with the ordinary expenses of the government.

Mr. DIXON. I have listened to the argument of the gentleman from Bourbon, and I, by no means, think his amendment ought to be adopted. I suggested a difficulty which I still think would exist, and that was the enforcement of the judgment of the court. But there is another still greater, to which I will call the attention of the convention. There are a great many individual claims that must come before the legislature to be adjusted, and nowhere else. There are claims too, growing out of committees appointed by the legislature, of individuals who appeared as witnesses before them, and other claims of a similar description, which must be paid in some form or other. I think the power is better where it is with the legislature, than in the hands of an individual.

The amendment was rejected.

Mr. BOYD offered the following as an additional section:

No charter shall be granted giving banking or trading powers, without providing that the private property of stockholders be made liable for all the debts and obligations of any such corporations or chartered company.

Mr. GRAY moved to substitute the following: "Taxation shall be equal and uniform throughout the state."

Mr. HARDIN. In reference to the proposition of my friend from Trigg, (Mr. Boyd,) I do not see how we can act on it. It will cut down every corporation in Kentucky. It will be a veto on all corporations so long as this constitution shall stand, because we know no company will ever be incorporated. Would I take a hundred dollars stock in any company? Never in the world. It is nearly as broad as that of David Trimble, when he offered a resolution in congress. He said he would take the world for his theatre, that heaven should contribute to his speech, the sun, moon, and stars as his quarry, and with the indulgence of the house, he would take a whack at eternity. [Roars of laughter.] This is the broadest whack at eternity I ever saw. [Renewed laughter.]

Pending this question, the convention adjourned.

FRIDAY, NOVEMBER 23, 1849.

Prayer by the Rev. Mr. LANCASTER.

CLERICAL REPRESENTATIVES.

Mr. DAVIS presented the memorial of two clergymen of the city of Frankfort—Mr. Robinson and Mr. Brush—in opposition to the twenty fifth section of the report on the legisative department, which provides that no person while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, shall be eligible to the general assembly.

It was referred to the committee of the whole, and is as follows:

To the Honorable, the Constitutional Convention of Kentucky, now in Frankfort assembled.

The memorial of the undersigned, citizens of Kentucky, respectfully sheweth.—

That your memorialists have observed, with much concern, in the report of the committee on the legislative department, (section 25,) a clause proposed for the adoption of your honorable body, as a part of the new constitution, to the following effect, to-wit:

"No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, shall be eligible to the general assembly."

In regard to which proposition, your memorialists beg leave to lay before your honorable body certain considerations, which, in their view, go to establish the injustice and inexpediency of any such constitutional provision.

We make no objection to the opinion that, as a matter of practical duty, clergymen ought not to be aspirants for political office, nor mingle in political strife. Not only are we averse to such a course, but we should feel bound, moreover, as office-bearers in the church, to vote for the suspension of any clergyman from his office in the church, who should be shown to have prostituted the influence of his ministerial character to the promotion of his political elevation. And that this is the general sentiment of the various bodies of christians in our country at large, is most clearly evident from this fact,—that in twenty one states of the Union no such constitutional provision, as we here complain of, exists; this provision being found only in the constitutions of nine states—namely, Virginia, North and South Carolina, Florida, Texas, Louisiana,

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Missouri, Tennessee, and Kentucky. And yet in the twenty one states no more disposition to interfere with politics has ever been manifested by the clergy, than in the nine states in which the clergy are excluded from political preferment by the constitution.

It will not fail to occur to any one, on reflection, that such a prohibition in the constitution is, practically, wholly inoperative to prevent the perversion of their clerical influence, by designing men, for the purposes of political promotion. Facts show, that none who sincerely love their calling as clergymen, will be willing to endanger their ministerial influence and reputation by becoming candidates for political favor. While on the other hand, it is obvious that those whose clerical character sits loosely upon them, and who aspire after political distinction, can very easily qualify themselves for holding office under such a constitutional prohibition, by some immorality of conduct, if they be ministers in churches which hold that the clerical office may not voluntarily be laid aside; or by a temporary resignation, (when the views of their church may admit of it) as has frequently been done in this and other states. Or they may render the constitution inoperative against themselves, by holding in fact, the position and influence of a clergyman, without formally assuming the title.

Thus the practical effect of such a clause is to restrain and preclude only the worthy and conscientious of the clergy, whose influence need not be feared in any position; while it is no restraint whatever upon the unscrupulous, who might be disposed to make a bad use of the influence over the minds of men, which their office confers.

Considerations of this kind alone, would not, however, have induced your memorialists to remonstrate, thus publicly against the adoption of the proposed clause in the constitution. But we conceive there are far more important objections to this measure—objections arising out of the grounds on which, if adopted at all, this clause must be adopted. Here we believe are involved certain great principles of civil and Religious Freedom.

We suppose that any constitutional provision clearly in conflict with, or an exception to the general rule of equal privileges to all classes—or which operates in restraint of the power of the people to choose whom they please to office; ought to be founded on the plainest reasons of expediency, if not of necessity. The provision in question is, manifestly, such an exception in both points of view. In the first place, it excludes a large and reputable class of citizens from the enjoyment of one of the highest privileges of citizenship—the privilege of being chosen to office. In the second place, it is an exception to the great law that the people are capable of judging, and ought to judge, who may be chosen to office.

The adoption of the proposed clause, as a part of the constitution implies therefore, of necessity, some more important reason for it, than any as yet alluded to. And though no reason for this ineligibility of the clergy is set forth in the clause reported by your committee, we are constrained to conclude, and we doubt not, the great mass of men will come to the same conclusion,—that the ground on which a provision, is adopted so obviously in conflict with generally admitted principles, as above shown, must be some supposed incompatibility of the clerical office in its very nature with the duties of civil life. And we are led the more certainly to this conclusion by the fact that we find this reason actually assigned for the ineligibility of ministers to civil office in three out of nine of the state constitutions which make ministers ineligible. In each of the three, (and only three assign any reason) the same words in effect are used—namely: "Ministers of the gospel are by their profession dedicated to the service of God, and the care of souls, and ought not to be diverted from the great duty of their functions, therefore no minister shall be eligible &c."

If this, therefore, be the implied ground of the restriction reported by your committee—and we can conceive of no other ground sufficient to justify a manifest departure from the general law of equal rights to all—then we feel bound, solemnly, to protest against any such provision, as in conflict with one great principle of free government—which it is the peculiar glory of the American states to recognise—the principle of non-interference of civil government with matters of religion.

We deny the competency of the civil government to define the character and functions of the gospel ministry. Admitting the truth of the general sentiment above quoted, still we protest against such a declaration, as a portion of constitutional law. It is solely the office of the church to declare the functions of her ministers. To say nothing, therefore, of the fact that the tastes, the views, and the habits of those composing the bodies which frame state constitutions, are not necessarily, nor always, such as to qualify them for deciding justly, in regard to the proper character and duties of the gospel ministry, we hold that this declaration, either expressed or implied, in any constitution, is in conflict with the great doctrine of non-interference with religion. And the history of modern nations teaches, that it behooves freemen to watch, with jealousy, any interference of the state with the church; seeing that from the slightest beginning, the precedent shall grow till designing and ambitious politicians corrupt the purity of the church, and thereby render her a fit instrument for the purposes of tyrants.

Not to mark, either, the obvious impropriety of a declaration either in words, or in effect, by the civil authority—or indeed any other authority that the ministry, any more than all other christians, are, by their profession, dedicated to the service of God—we object, furthermore, to the conclusion derived from that premise, that "ministers ought not to be diverted from the great duty of their functions," by being eligible and elected to the legislature. Why select this one, out of a thousand modes of being diverted from their duty, as the sole object of constitutional guardianship? Why not as well declare that ministers shall not engage in farming or merchandise, or in any other than this single pursuit—the care of souls? Or why provide, by constitutional enactment, that this profession alone shall not be diverted from the duty of its functions? It is obviously equally competent for the constitution to declare that physicians,

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who have the important care of the lives of men, ought not to be diverted from the duty of their functions, and, therefore, should not be eligible to political office. And also, that aged men, especially those yet impenitent, ought not to be diverted from the high duty of preparation for death, and therefore shall not be eligible to political distinctions, which are, in their nature, so unfavorable to this great duty.

The chief objection, however, and that which has led your memorialists to obtrude themselves upon your honorable body, is, that while this provision is advocated most warmly, by those who are peculiarly jealous, as all men ought to be, of any interference between the church and state; yet the insertion of such a clause in the constitution, on such grounds as we have shown to have been expressed, and as are necessarily implied in so doing, is a decision by civil authority of the great theological question of the age.

The great point in dispute between the church of Rome and those who sympathise with her on the one hand, and the churches of the Reformation on the other, is involved in the question—Is the minister of religion a priest? Is he a peculiar sacred person—standing to mediate between God and his offending creatures, by the offering of sacrifice? Or is he chiefly a teacher—an expounder of the truth, and administrator of sealing ordinances in the church? The church of Rome, if we understand aright her teachings, holds the former view; and consistently with that view, has for her ministers *priests*, ministering at an altar—offering the sacrifice of the mass—absolving the penitent on confession and pennance, and constituting the channel of mysterious grace to the faithful. Protestant churches, on the other hand, have for their ministers *teachers*, called of God as they believe, and chosen by the people to instruct the people, and administer ordinances established to be signs and seals of spiritual blessing. Of course the ministry of the latter has not that sort of sacredness of character, which necessarily separates them from the mass of christian people—nor that spiritual power and that control over the conscience, which the office of a priesthood in its very nature confers.

Now if the minister of religion be a *priest*—a man apart from the mass of christian people, by the mysterious sacrednesss of his office, and if in virtue of his office, he have a spiritual power which can be shown to be incompatible with the free suffrage of the people in any way—there might then be some good reason for debarring him from civil office. But if the minister of religion be merely one of the people, set apart to the duty in the church of expounding the truth and dispensing ordinances, with no other influence and power than that, which the faithful discharge of his duty confers upon him; then clearly there is no reason for making any distinction between him and other citizens in regard to the privileges of citizenship.

If this statement of the question be correct—and we have no motive to misstate it—or do we think any one, whichever view of the question he takes, will be disposed to controvert its main features, then it follows that to decide by the constitution, that ministers of the gospel shall be ineligible to political preferment, is, in so far, to decide this great theological controversy against Protestants. Our complaint, however, is not that it is decided agaist us—but that it is decided at all by such authority.

It may have been wise to provide against the undue influence of the priesthood in the government, in an age when statesmen still had reason to fear the influence of a doctrine that held the power of the church to be above all civil power. For in that case the priests would be the subjects ot an adversary power to the civil government. But we can see no strong reason for such a provision, even against a priesthood, in an age when all men treat with derision, the claim of a spiritual power above civil government, more especially does it seem to us needless, to apply such a prohibition to those teachers of religion, whose distinguishing characteristic as a body of men, has ever been to be foremost in the war against the domination of the spiritual over the civil power.

Entertaining these views we respectfully submit them to your honerable body for consideration. Nor do we doubt that a careful examination of the subject, will lead you, as it recently led the convention of New York, to strike this clause from the constitution of the state, as incompatible with those enlightened views of republican government, which are the glory of our age and country.

And thus your memorialists will ever pray.

STUART ROBINSON.
GEO. W. BRUSH.

BASIS OF REPRESENTATION.

Mr. WOODSON. I offer the following resolution:

Resolved, That the basis, as well as the apportionment of representation, as provided in the sixth section of the report of the committee on the legislative department. is just and equitable, and that this convention will not depart therefrom.

On this resolution I wish to offer a few remarks. We have been engaged about two weeks in the discussion of the proper basis of representation and apportionment among the several counties of the commonwealth. I am emboldened to offer this resolution from the fact, that if it is adopted, to the exclusion of the basis of free white inhabitants, it injures my immediate constituency as much, if not more, than that of any other delegate on this floor. I have been figuring pretty extensively to see what peculiar benefits would accrue to my region of country by the adoption of the basis contained in the resolution of the gentleman from Simpson; and I find the mountain counties, except two, will be entitled to a separate representative in the lower branch of the next legislature. At the first blush, I was inclined to the opinion that it was right and proper that that basis should be adopted. And I now must be permitted to say I am not convinced its adoption would be improper, or that the basis is not the true basis in all free and well organized governments. I know we have the precedents of many state governments for its adoption. But, as the people are not familiarized with it, and as I would do nothing calculated to be the slightest drawback to the constitution we shall

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