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CONSTITUTIONS OF KENTUCKY
AND THEIR HISTORY

BENNETT H. YOUNG

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Rev. Jas. McCosh
With kindest regards
of
Gerrit H. Young

handed to library by
Lama McCosh

HISTORY AND TEXTS
OF THE
THREE CONSTITUTIONS
OF KENTUCKY,

WITH ILLUSTRATIVE STATE HISTORY PREFACING THEM AND
MARGINAL NOTES SHOWING ALL ALTERATIONS
IN THE FUNDAMENTAL LAW,

TO WHICH IS ADDED

THE ACT CALLING THE CONVENTION OF 1890, THE MAGNA CHARTA, THE COM-
PACT WITH VIRGINIA AND THE CONSTITUTION OF THE UNITED
STATES, WITH THE AMENDMENTS AND ANNOTATIONS.

BY

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LOUISVILLE:
COURIER-JOURNAL JOB PRINTING COMPANY.
1890.

PREFACE.

After forty years of political life under the Constitution of 1849-50, public sentiment demands change and amendment of the fundamental State law.

Centuries under other governments have oftentimes been less fruitful of vicissitudes and mutations than this brief period in Kentucky's history.

Slavery, then considered the most important of all the issues involved in the discussion of our present constitution, has been blotted out by a higher, stronger and wiser power than man's, and the declaration in Act XIII., Section 3, that,

"The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same and as inviolable as the right of the owner of any property whatever," has been nullified by the edict of a great civil war; and that paragraph, then deemed so essential, so ably demanded, will now, by common consent, be stricken out, and its elimination is even urged as one of the reasons for the calling of a Constitutional Convention.

Other changes scarcely less surprising have taken place in Kentucky's political condition. The Whig party, then dominant in Kentucky and in the United States, has been annihilated by the logic of events.

After a decade of argument and effort, the Legislative Department, in obedience to the unmistakable will of the people of this Commonwealth, has called a convention "for the purpose of readopting, amending or changing" the present constitution.

Chosen as a delegate to this convention, it has appeared to me that it would be useful and convenient to have in concise form the constitution of the United States and the three former constitutions of Kentucky, together with some brief account of the several conventions heretofore called, and also a statement showing those provisions

(RECAP)

and clauses, which, in the wisdom of our forefathers, have been brought down to us unchanged through the several constitutions which have been adopted by the people.

With this idea this volume has been prepared, and it goes forth with the earnest desire and sincere hope of the compiler and author (who claims no credit for originality or any great research in its preparation, but who has relied largely on the labors and investigations of others), that it may further the efforts of the convention of 1890 in giving to the State an organic law which shall, in the highest degree, promote the peace, good government, prosperity and happiness of the people of Kentucky.

LOUISVILLE, August 5, 1890.

TABLE OF CONTENTS.

PART I.

	PAGE.
PREFACE	3- 4
SUMMARY	7
HISTORY OF THE CONVENTIONS	9- 30
CONSTITUTION OF 1792	30- 38
CONSTITUTION OF 1799	38- 48
CONSTITUTION OF 1849-50	48- 74
CONVENTION OF 1890	74- 79
ACT CALLING CONVENTION OF 1890	80- 82

PART II.

	PAGE.
MAGNA CHARTA	1- 10
COMPACT WITH VIRGINIA	11- 15
FIRST CONSTITUTION OF KENTUCKY	16- 34
SECOND CONSTITUTION OF KENTUCKY	35- 56
THIRD CONSTITUTION OF KENTUCKY	57- 93
INDEX TO THIRD CONSTITUTION OF KENTUCKY	94-104
CONSTITUTION OF THE UNITED STATES	105-118
AMENDMENTS TO CONSTITUTION OF THE UNITED STATES,	118-122
INDEX TO CONSTITUTION OF THE UNITED STATES	123-129

SUMMARY.

In a brief statement of the constitutions and preparatory conventions of Kentucky up to 1799, one is confronted with the conflict of historians. Collins, who had the advantage of Filson's History of 1784, Imlay's of 1792, of Littell's in 1806, of Marshall's in 1812 and 1824, Bradford's in 1827 and Butler's in 1834 and 1836, and who published his father's edition in 1847, counted the conventions up to 1792 as nine, and indexes their records up to this number. Smith, in his History of Kentucky, 1886, counts the conventions as nine. W. H. Perrin counts them as ten.

R. H. Collins' History of Kentucky, Vol. 1, p. 185.

Z. F. Smith, pp 246 to 253, 261 to 301. Perrin, pp. 225 to 296, inclusive.

Taking the count of Collins, the convention of 1792 would be nine; the convention of 1799 would be ten; the convention of 1849-50 would be eleven, and the convention of 1890 will be twelve. Summarized, then, the conventions of Kentucky have been as follows:

- 1784—December 27th.
- 1785—May 23d.
- 1785—August 8th.
- 1786—September, fourth Monday.
- 1787—September 17th.
- 1788—July 28th, and
- 1788—November 3d.
- 1789—July 20th.
- 1790—July 26th.
- 1792—April, first Monday.
- 1799—August 17th.
- 1849—October 1st.

Perrin's History of Kentucky, p. 284.

Period covered by sittings of conventions preparing constitutions:

- 1792—eighteen days.
- 1799—twenty-seven days.
- 1849-50—ninety-one days.

HISTORY

OF THE SEVERAL CONVENTIONS HELD IN KENTUCKY PRIOR
AND SUBSEQUENT TO ADMISSION INTO THE UNION.

The first constitution of Kentucky was largely the work of Colonel George Nicholas, who was elected as a member from Mercer county to this convention. He was one of the most distinguished men which Virginia sent into the new State. He had been a member of the Virginia convention which ratified the Constitution of the United States. He was the friend and associate of Madison, Randolph and Patrick Henry. He was an able lawyer, a profound statesman, and did as much as any one man to shape the initial political history of Kentucky. His knowledge of law, his thorough acquaintance with the principles of the Constitution of the United States, and his association with all the greatest statesmen of Virginia of his day, gave him great intellectual strength as well as influence.

R. H. Collins' History of Kentucky, pp. 181, 184, 634, 662.

This constitution, in many respects, was modeled after that of the United States. The convention comprised a number of the ablest, most patriotic men of the State. In order to fully understand the provisions of this constitution and the surroundings of the State at the time of its adoption, it will be necessary to enter into a brief history of the years immediately preceding the admission of Kentucky into the Union:

The beginning of Kentucky (then West Fincastle county, Va.) was by the settlement of James Harrod and his party at Harrods Town (Harrodsburg) on Thursday, June 16, 1774; and, in some respects, Kentucky was the first born of the American Union under the constitution. She applied first and was first recommended by Washington to Congress, but was delayed by prejudice.

Collins' History, Vol. I, p. 508.

Mr. John Brown, the representative of Kentucky, had presented the proceedings of the Danville convention of the

people of Kentucky, of 1787, and the request of Kentucky for admission as a member of the confederation.

The almost exclusive attention of the Confederate Congress had been given to the matter of the ratification of the Constitution of the United States. The action of nine States, members of this confederation, being sufficient to virtually dissolve the confederation, as well as to make the then proposed union a certainty, Congress, on May 30, 1787, named the ensuing Monday for consideration of the matter, and on the 2d of June, 1787, the Kentucky delegate of the convention at Danville had the pleasure of seeing Mr. Otis, of Massachusetts, pass a favorable report through the congressional committee of the whole. On July 3d, Congress agreed to the report and designated a committee to prepare the proper legislative measures to admit the State.

But, on the 2d of July, 1787, it had become impossible for the Confederate Congress to so act. The new organic law provided that its ratification by nine of the States of the old confederation should establish the constitution. This was completed by the ratification by New Hampshire on June 21, 1787, one week prior to the action of the convention of Virginia, which occurred on the 26th of the same June. Nine of the States having left the confederation, its power to admit another State had ceased, and Kentucky must now await the action of the first Federal Congress, as yet unformed. Thus ended all of the work of the Danville convention of 1787, as its delegate only had credentials to the Congress of the confederation. The history of the reasons of the people of Kentucky for desiring separate State existence can not be given here in full detail, nor will the space justify a complete account of the nine Kentucky conventions that preceded the final success of April, 1792. Judge Harry Toulmin, one of the early historians of Kentucky, took full notes of the proceedings of the second of the two constitutional conventions of Kentucky, held at Frankfort, August 17, 1799; but, although he issued a prospectus, he never published the journal of the convention, nor did he, indeed, certainly write out his notes, although Governor Breathitt, January 1, 1834, intimated that a MS. journal existed.

Hon. Thomas Todd, afterward Associate Justice of the Supreme Court of the United States, wrote out, in his own

Journal of Congress,
Vol. 4, pp. 811 and
819.

handwriting, the records of the Danville conventions of July, 1788, November, 1788, July 17, 1789, July, 1790, and of the successful constitutional convention of April, 1792. This book has never been published, but it has been discovered in manuscript form in good order, and is now in the possession of Colonel R. T. Durrett, President of the Historical Club of Louisville, Ky. By this manuscript, many of the dates of the late R. H. Collins have been corrected, and H. W. Cleveland, LL. D., has been so good as to compare them, at my request, as well as to give me the use of his own notes upon the beginnings of States and the early constitutions, prepared for "The War Between the States" of Alex H. Stevens. I have also used freely the two volumes of the "History of Kentucky," by the late R. H. Collins, Smith's, Perrin's, Allin's, Marshall's and Butler's histories, and Colonel John Mason Brown's "Political Beginnings of Kentucky."

Undoubtedly, a chief reason of the people of Kentucky for seeking separate political existence was the distance and difficulty of access of Williamsburg, then the capital of Virginia. Virginia burgesses felt little interest in the matters of the new West. The importance of their western title was underestimated, and their duty to their fellow-citizens over the mountains had often needed the sharp reminders of George Rogers Clark, if, indeed, Spanish and French intrigue had not threatened the very dismemberment of her territory. The Virginia title to the territory which now constitutes Kentucky had been seriously questioned by Thomas Paine in his pamphlet, "Public Good, being an examination into the claims of Virginia to the vacant Western territory," which was the first American dispute upon the subject of State rights and paramount local sovereignty, and proposed treating the entire Northwest country as a basis or asset of a fund to pay the war debt of the late revolution.

The Virginia sovereignty, over the domain now Kentucky, had, however, been established by discovery, by charter from the British crown of 1609; by treaty stipulation between France, Spain and Great Britain of 1763; by extinction of the title of the Six Nations at Fort Stanwix in 1768; by the Henderson purchase of the Cherokee title at Watauga, 1773 and 1774; by Henderson's abdication of title and his acceptance of the Green river grant from Virginia, 26th of Au-

Brown's Pol. Beg.,
pp. 55 and 56.

Same, p. 53, note.

See Paine Edition of
1780, p. 41; also
pp. 36 and 37.

Brown's Pol. Beg.,
pp. 39, 40.

gust, 1776, and 17th November, 1778; and, by the almost unanimous request of the people of Kentucky, made repeatedly by the parties of James Harrod, Benjamin Logan and others, to assume jurisdiction and protection over lands covered by the map of John Fitch, and later, by that of John Filson.

Therefore, to Virginia first turned the people of Kentucky for leave to withdraw and live under their own constitution, and, when that was granted, their next step was to secure admission to the federal union. It was deemed wise to have the petition of the Danville convention of August, 1785, laid before the Virginia Legislature. Judges George Muter and Harry Innes were chosen for this purpose. They performed this duty, and, in the winter of 1785-86, they presented this petition and that body passed "An Act Concerning the Erection of the District of Kentucky into an Independent State," subject to the consent of Congress. This was signed on the 10th of January, 1786.

This left Kentucky free to enter the confederation of the union when she could. The causes of the delay up to 1792 will be understood later on. It will be seen that the reasons given for separation, and, therefore, the causes of and the necessity for the Kentucky constitution, are such as mainly arose from the imperfect resources of that period; and, while they may have no bearing on the organic law of 1890, yet they are interesting as a matter of political independence and State history, and if they throw no light upon the new constitution, will at least give us a more thorough conception of the patience, patriotism and courage and ability of Kentucky's earlier statesmen.

The reasons set forth for political independence were:

First: The situation of the District; distant more than five hundred miles from the seat of government.

Second: The separation of the settlers by two hundred miles of mountains and broken land from the frontiers of Virginia.

Third: The impassableness of both mountains and water channels of communication in winter, and of this separated section being never free from Indian menace.

Fourth: The impossibility of early application to the executive power in cases of public emergency and when clemency needed to be implored in private cases.

Fifth: The difficulty of adequate legislative representation, in view of the long journey and the expense which deterred many fit persons from serving as delegates.

Sixth: Penalties and losses resulting from want of knowledge of the laws when passed.

Seventh: The practical denial of justice to all save the rich, by reason of the expense and sacrifice of time in taking appeals to the High Court at Williamsburg.

Eighth: The unequal operation of revenue and land laws made by majorities whose attention and interests lay elsewhere, and which Virginia, at one time, proposed to continue over her territory after its partition, to the extent of the paramount title of the military royal proclamation warrants of 1763 and the Virginia Treasury warrants issued during the revolution.

For the foregoing reasons, separation from Virginia was prayed for by Kentucky, "on terms honorable to both sections and injurious to neither." Virginia was also respectfully asked to rescind her legislation which gave military claimants holding land warrants, either "proclamation" or "Treasury of Virginia," unlimited time for location and survey, and to withdraw the demand imposing part of the "domestic debt" of Virginia upon the Commonwealth of Kentucky. As to the right to punish Indian and English outrages, it will be seen that Colonel Ben. Logan and General Geo. Rogers Clark felt that nature gave them rights as she had courage, and that, with some thousand more of Kentuckians, they need not wait for the consent of the Virginia Legislature nor of the Continental Congress.

The grave rebuke of Governor Edmund Randolph and the implied censure of Washington they bore calmly as they might, while they still acted as their consciences dictated and as self-protection—the highest law of nature—required.

It is useless to now deny, as some would do who are passionately devoted to the Union and anxious for the reputation of ancestors, that much and well-grounded dissatisfaction existed prior to that epoch, from 1792 to 1807, when General James Wilkinson, Judge Benjamin Sebastian, Dr. James White and Aaron Burr were engaged in the scheme of a new empire and their own personal promotion. This dissatisfaction was about equally with Virginia and the then loosely confederated

Brown's Pol. Beg.,
pp. 52 and 53, 61,
69, 70.

Brown's Pol. Beg.,
p. 52. Same, pp. 46,
74, 80.

R. H. Collins' History of Kentucky,
Vol. 1, p. 22.

Brown's Pol. Beg.
pp. 198, 199.

States. It began prior to the military convention and did not expire before the convention of 1799.

MSS. Life and Times
of James Harrod.

Col. Hist., Bk. 2, pp.
61, 63, 64 to 70.

Many of the pioneers and settlers of Kentucky were not the children of Virginia and were not allied to her by blood nor domestic ties. The Henderson Company from North Carolina long denied the Virginia title and held to their right by purchase from the Cherokees, much as William Penn did to his land. Rev. Dr. Cleveland, in the preparation of his "Life and Times of James Harrod," has found strong documentary evidence that the first party of the early summer of 1774 were from Pennsylvania, although the McAfee Company that surveyed at Frankfort and Salt river, of nearly the same date, and the Hancock-Taylor and Thomas Bullitt parties at the Falls of the Ohio, were from Virginia; the former being from Botetourt and the latter from Fincastle county. Then again, the lack of adequate protection from the English and Indians had long been a sore matter, for it is very much more serious for it to be *our* horses and cattle that are stolen, *our* homes burned and *our* kindred slain than if they are those of other folk.

R. H. Collins, Vol.
1, p. 263.

General Washington, with his military training and ideas brought from the revolutionary war, and with the assent of Congress, had opposed the settlers in fighting both English and Indians in their own way and time, as they had done and been obliged to do since the day, as pioneer parties, they had entered the wilderness, depending alone upon the good providence of God, their trusty rifles and stout hearts. It seemed very hard to these pioneers not to be allowed to kill their constant foes when and where they could, either individually or in companies, regardless of orders or tactics or treaties. Right or wrong, they did these things, as a rule. They were too far to be reached by courts-martial or by process of the courts.

The navigation of the Mississippi river had oftentimes created the greatest solicitude and intense indignation. With the people of Kentucky, it ranked next in dignity to the law of self-preservation; indeed, it was part of it, to the extent of commerce and increase of property.

It is not necessary to become the apologist of any of these men of 1780 and 1790, on patriotic grounds. The confederation had been a common cause made by common necessity.

The bond was a rope of sand, holding people who for a time were in mutual peril, but never free from petty jealousy. Colonel R. T. Durrett has found evidence that duties were collected at the Falls of the Ohio (Louisville) for the State of Virginia, and reluctantly paid by people who had the power in turn to tax, and who did, at times, prohibit the outlet of the Mississippi, the port of New Orleans, and the shipping of the globe, to the pioneers; who found small profit on skins and tobacco, rowed tediously and amid perils up the swift Ohio, or which were taken on pack horses over the mountains. There was then no sentimental patriotism; very few had ever seen the national flag.

Self-interest that had made the first confederacy in the storms of 1776-77 was slowly building the federal union on the narrow Atlantic strip that then constituted the national territory; and if self-interest had led the new West to become Spanish or French, or even English, as they were repeatedly offered opportunity and inducements to do by the three powers, who shall say they would have been more to blame than are the Canadas, which remain loyal to Great Britain down to the present time? Even John Mason Brown, who wrote as much with the zeal of a federal soldier as with the calmness of the historian, uses the following explanation of the fact that not one of the Kentucky conventions—not even that of the militia officers of the convention of December 27, 1784, at Danville—ever looked strongly elsewhere, so far as can be seen by speeches and resolves, than to Virginia, for leave to act; and to first the confederation and then to the union, for acceptance after their action. Colonel Brown writes in substance that it was very unlikely that sturdy Presbyterian, Baptist and Methodist pioneers would have gone under the dominion of a power like Spain that yielded to the authority of the Catholic priests and the resources of the Inquisition. He also shows fully that the Spanish minister and Government, after the revolution, were much alarmed lest the men of the new West should make common cause and force the passage of the Mississippi; and General Wilkinson's successful trade enterprise with New Orleans occurred years before the Burr conspiracy. Collins, in speaking of the third or August convention at Danville, wrote of "the labyrinth of conventions" that, "in the meantime, Indian

Articles of Confederation, 1777.

Brown's Pol. Beg., pp. 97 to 104.

"The Wilderness Road," by Thos. Speed, pp. 17, 22 and 23.

Brown's Pol. Beg., pp. 159 to 169, inclusive.

Same, pp. 52, 224 to 228.

R. H. Collins' Hist. Ky., Vol. 1, pp. 281 to 268.

hostilities became so frequent that the exasperation of the people daily increased. * * * A petition drawn in language less simple, and addressed to the people of Kentucky, was more excited, impassioned and exaggerated. No printing-press as yet existed in the country, but copies of the address and petition were zealously multiplied by the pen and widely dispersed among the people. * * * In the meantime, Kentucky was smarting under the Indian warfare, had no government at home, and their government beyond the mountains, however sincerely disposed, was totally unable to protect them from the radical and incurable vices in its constitution.

“In the meantime, Indian depredations became so harassing that the people determined upon a grand expedition against the Indians at once. Notwithstanding all of the treaties of Congress, in the absence of local power, a thousand volunteers, under General George Rogers Clark, assembled at Louisville with the determination to thoroughly chastise the tribes on the Wabash.”

The only good result of this expedition was to deprive the September convention of 1786 of a quorum until January, 1787.

Col. Hist. of Ky.,
Vol. 1, p. 262.
(25 years.)

Collins again writes: “To this cause of dissatisfaction came, in the succeeding year, the astounding intelligence that several States in Congress had voted to barter away the right to navigate the Mississippi, in consideration of commercial advantages to be yielded by Spain to the Eastern States, in which Kentucky could have no direct interest.” * * * On the 29th of March, a circular-letter was addressed to the people of Kentucky, signed by George Muter, Harry Innes, John M. Brown and Benjamin Sebastian, recommending the election of five delegates from each county to meet in Danville in May, and to take into consideration the late action of Congress upon the navigation of the Mississippi. The letter contemplated the formation of a committee of correspondence through the West, “a decent and spirited remonstrance to Congress against the cession, which they evidently supposed was in danger of being consummated.” When this convention met, the causes which had been considered necessary for its assembling no longer existed, and it quietly adjourned after a brief conference.

It may be said that, when the war of seven years with England was about to end in American independence, France and Spain used their utmost influence to make the Alleghenies the western limit of the new nation. Failing in this, to bound the States by the Ohio, leaving Kentucky, Tennessee and Mississippi, with all of the western wilderness, to the partition of their Catholic majesties.

Speaking of the birth of the American Constitution in Philadelphia in September, 1787, Collins, in his history, makes a statement in relation to John Brown, the delegate to Virginia, which John Mason Brown, in his "Political Beginnings," does not seem to accept: "Thus was Kentucky again baffled. * * Her long array of conventions had, in effect, decided again and again that it was expedient to separate from Virginia and become an independent member of the confederacy. Mr. Brown communicated the intelligence to his constituents, and his own views upon the subject are clearly contained in two letters; the one to Samuel McDowell, who acted as President to nearly all the Kentucky conventions; the other to George Muter. In these letters, he attributes the refusal of Congress to act upon the petition of Kentucky [elsewhere explained] to the jealousy of the New England States of any accession to the southern strength in Congress, and he inclines to the opinion that the same causes will have equal weight with the new Government. He gives the result of various private interviews between himself and Don Gardoqui, the Spanish minister; speaks of the promises of that minister of peculiar commercial advantages to Kentucky connected with the navigation of the Mississippi, *if she will erect herself into an independent government; but these advantages, he says, can never be given to her by Spain so long as she remains a member of the Union.*" [Italics by Collins.]

In July, 1787, Harry Innes, Attorney-General of Kentucky, wrote to the Executive of Virginia, giving it as his opinion that Kentucky would form an independent government in two or three years, as Congress did not seem disposed to protect them and, under the present system, she could not exert her strength.*

In the Danville convention of November, 1789, on the proposal to refer the navigation resolution of the former convention, to the committee on the resolution in Congress,

Collins, Vol. 1, p. 265.

Collins, Vol. 1, p. 267.

The Muter letter gives this in full. (D., 157.) John Mason Brown truly says that this important matter was not in one letter, *but it was in a separate slip enclosed in the McDowell letter.*

Collins, Vol. 1, p. 267.

*NOTE.—He adds: "I have just dropped this hint to your Excellency for matter of reflection."

Collins, Vol. 1, pp. 270-271.

Virginia made any attempt to erect any government in her territory, high treason, by her constitution. See 9 Henning's Statutes at large, 118.

General Wilkinson, after dwelling upon the vital importance of the navigation (of the Mississippi) to Kentucky, and the improbability that Spain would ever grant it to Congress, concluded with emphasis that there was one way and only one, of obtaining this rich prize for Kentucky, and that way was so guarded by laws and fortified by constitutions, that it was difficult and dangerous of access. He added, that "Spain might concede to Kentucky alone what she might not concede to the United States." He spoke also of information of the utmost importance in the power of the convention, which he had no doubt "a gentleman in the convention would communicate." He sat down, and John Brown arose and remarked "that he did not consider himself at liberty to disclose the private conferences had with Don Gardoqui, but this much he would say, that, provided they were unanimous, everything they could wish for was within their reach."

General Wilkinson was made one of the committee to memorialize Virginia as to the independence of Kentucky. It is only fair to Colonel John Mason Brown to say that he regards the interview of his ancestor with Gardoqui, as only to draw him out and, when possessed of his plans, to defeat them. George Rogers Clark had also spoken with great plainness, and Judge Harry Innes had refused to obey the order of the Attorney-General of Virginia in relation to district prosecutions. Space does not allow further history of these "Political Beginnings," but enough has been said to show that, to a very large degree, district and self-interest governed the eight conventions as much as any abstract ideas of patriotism.

And now, after the lapse of a century, the sons of the sires of 1774 and 1792 assemble, with the changes of the past impressed upon them, to make a constitution which shall remove the last vestige of slavery and fully recognize the end of that institution which the constitutions of 1792, of 1799 and of 1850 were specially constructed to limit benevolently, while intending to guard and protect it forever.

These men of the eight conventions, who threatened both the parent Virginia and the compromising confederation of 1777 with what they would do, and how differently ally themselves if their rights were not respected; and those legislators of 1850—the air then still ringing with the Clay compromise—who, for nearly a century had used the pregnant words, "we in-

Brown's Pol. Beg., pp. 223, 225, 227.

struct our Senators and request our Representatives in Congress;" did not anticipate as an outcome of a war for human liberty, that a convention would sit to frame a constitution, which, while maintaining State independence in a union of States, should adjust and accommodate themselves to the enforcement of a federal force bill, enacted in part by the votes in Congress of those, representing States which had been ceded by Virginia and defended by the best and noblest blood of Kentucky pioneers.

A brief review may now be taken of the conventions, and the story of the third constitution may close with a sketch of its features, especially as it is proposed to incorporate the three constitutions entire in this little work.

The first movement in this way was a memorial, bearing date the 15th of May, 1780, and signed by six hundred and seventy-two inhabitants of the "County of Kaintuckey and Illinois," which carried the prayer "that the Continental Congress will take proper methods to form us into a separate State."

This is manuscript 48, of the papers of the old Congress, which, being immature, was not acted upon.

Next, it was determined to elect representatives—one from each militia company—and these assembled in Danville on the 27th of December, 1784. This convention felt itself only advisory, and called another convention at the same place for 1785, to apply to Virginia for State independence.

The convention of May, 1785, met—as did all the others including that of 1792—at Danville, and spent a week in preliminary exchange of views; these proceedings being marked with calmness and decorum. On the ninth day of the assembly (May 31, 1785), it was that they resolved upon a petition to Virginia for separation and independence, and also that they should be received into the United States. Further, they recommended to their constituents another convention on the state of the district, to convene on the second Monday in August, and to continue by adjournment to the April next. The terms of this last resolution will be considered later, as they are the basis of the constitution of 1792, as to representation. In this petition to Virginia, they asked to assume a portion of the debt of that State, from which they, later on, prayed for release. They also asked that the acts

Brown's Pol. Beg.,
p. 59.

Littell's Pol. Trans.
Kentucky, p. 16;
Marshall, 1812, p.
227; Butler, p. 145.

Brown, p. 60.

Militia Convention,
Dec. 27, 1784.

Convention, May 23,
1785.

Brown's Pol. Beg.,
p. 61.

of Parliament of and anterior to the reign of James I., general and unrepealed, might continue in force as to Kentucky.

It will be observed that, up to this time, these conventions and assemblies were called without any legislative authority, and with no powers save those of an advisory character. A common peril to Kentucky's commerce and to Kentucky's safety from Indian outrages had first engendered in the minds of the people of the territory this desire for statehood—a desire which neither disappointments nor the lapse of years, nor the multiplicity of conventions, could destroy or abate, and which finally culminated, after seven years of patient pursuit, in the coveted goal of independence.

A body of thirty delegates assembled at Danville, August 8, 1785, and it was here that the causes already stated were set forth as reasons for separation. The petition, as said before, was written by General James Wilkinson, and was strong and unobjectionable. Upon this, Virginia acted favorably, January 10, 1786. That act of Virginia made its assent subject to an action by Congress, to be taken prior to June 1, 1787, agreeing to admit Kentucky "at some convenient time." It also directed the calling of yet another convention at Danville, on the fourth Monday of September, 1786, and when this convention met on the 30th of September, so many of its members were absent with the two volunteer armies—namely, that of General George Rogers Clark against the Wabash tribes, and of Colonel Ben Logan against the Shawnees—"that a sufficient number to proceed to business could not be had." The members present, however, prepared a memorial reciting their condition, and requesting some changes in the act of separation. The memorial was signed by John Marshall, afterward Chief Justice of the United States. They then named a few members to adjourn from time to time with the clerk, but did not gain a business quorum until January, 1787. They then, in terms of the authority from Virginia, passed a resolution, "that it was expedient, and the will of the good people of the district, to separate from the State of Virginia and become an independent State."

No sooner was this done than, to its dismay, the convention learned of new and adverse legislation in Virginia. The enabling act required the action of Congress prior to June 1, 1787, and only four months of the time remained, and Vir-

Brown's Pol. Beg.,
p. 69.

Convention, Aug.,
1785.

Convention, Sept.
1786.

Brown's Pol. Beg.,
p. 73.

Todd's Journal, Fil-
son Club Library.

January, 1787.

Littel's Pol. Trans.,
pp. 21, 22.

Brown, p. 74.

ginia deemed this inadequate to have a financial and political settlement. The reluctant assent of John Marshall to more legislation had resulted in the act of January 10, 1787, which recapitulated the facts and reiterated the good intentions of Virginia. The Act called for another convention. An election should be held in August, 1787, of five delegates from each county, and the body assemble at Danville on the third Monday in September, 1787, with plenary powers. Congress, too, should assent to the district becoming a State prior to July 4, 1788, and release Virginia from federal obligations as to its territory. Also should agree to its admission into the Union "at some convenient time."

This postponed organization a year or more, or until January 1, 1789. Thus did the blessing of separate organization from time to time slip from the grasp of Kentucky's early statesmen.

Into this interval penetrated the news of Jay's project of ceding the navigation of the Mississippi to Spain for twenty-five years, in return for commercial advantages, mainly to New England and New York, in which the Spanish Minister resident in New York was thought to be interested, but in which the viceroy and governor of the South-western Spanish domain was not invited to share. This proposed Jay treaty of cession for twenty-five years, caused much and justifiable bitterness in Kentucky.

The August election of 1787 was free from great excitement, and the session of the resulting September convention was calm and deliberate. It passed unanimously a declaration in favor of separation, and the 31st of December, 1788, was fixed as its date. Hon. John Brown became a member of the Virginia delegation in the Continental Congress, and much good was expected from his personal appeals for his section. The enabling Act of Virginia required congressional action prior to July 4, 1788. This last had important consequences. The Act of June 13, 1787, or "ordinance for the government of the territory of the United States north-west of the Ohio," had committed Congress to governmental organization west of the Alleghenies, and provided that the lands be partitioned into "not less than three nor more than five States" when necessary.

The conquest by Gen. George Rogers Clark of the Wabash

Heming's Statutes at Large, vol. 12, p. 240.

Littell's Pol. Trans., App. 7.

Convention, Sept., 1787.

Brown's Pol. Beg., p. 76.

Same, p. 77.

Brown, pp. 76, 79, 80.

September, 1787.

Brown, pp. 84, 85.

Brown's Pol. Beg.,
p. 85.

territory from the English, was held as the national boundary by Congress, even while envious correspondence to Governor Edmund Randolph, of Virginia, with much assent from the Governor, charged that General Clark held Vincennes against English and Indians, Spanish and French, alike, "without authority." From the Scioto to the Father of Waters, Virginia's sons, unaided, save by pioneers from Pennsylvania and North Carolina, created national domination, holding what they, "without authority," took.

Into this period enters a stream of emigration and commerce. In May, 1782, Jacob Yoder had launched his great "Broadhorn" at Redstone, on the Monongahela, destined to traverse the great rivers to New Orleans, La. With the proceeds he bought peltries, sent as tribute to the post of St. Louis, in Northern Louisiana, and over the streams of Iowa and Wisconsin, then unnamed. These he exchanged at Havana for sugar for Philadelphia, and, returning by Fort Pitt, he at last came safely to his home at Bardstown, on the Beech Fork of Salt river. This was a "royal road" to riches, if a bold one, and the story fired the whole land. It had seemed to American statesmen that it was folly to anger Spain while independence was yet doubtful, but, with the dawn of success, free navigation of the Mississippi became again the demand, from Pennsylvania to North Carolina. General Wilkinson's schemes of commerce came next in order, and his courage and success surpassed, if it were possible, that of Yoder. It is certain that he was then but a trader, needing money after the sacrifices of the revolution; and Aaron Burr had not yet imparted to Sebastian and others the scheme of a South-western empire. The permit of Governor Miro really opened the rivers to Kentucky, as it included "his associates." Wilkinson returned in February, 1787, with new plans.

Brown, pp. 92, 93,
101.

In the meantime, the convention of federal delegates, presided over by Washington, had, in September, 1787, promulgated the "new plan" or constitution, and the disputes upon it in all the public domain were anxious and, at times, bitter. Virginia did not assent until after other nine States had done so; and then by a small majority of its convention.

Brown's Pol. Beg.,
pp. 1, 6, 7 and 8.

The papers of the "Political Club," a social organization at Danville, created for the consideration and discussion of

public questions of Kentucky, of which an ancestor of Thomas Speed, of Louisville, was Secretary, are yet in the hands of his descendant, and their "amendments" and "approvals" are curious and instructive reading in this day.

Into the history of this time Colonel John Mason Brown has interpolated much valuable matter, gathered at his own expense from original sources and papers at Madrid, in Spain. The Gardoqui conferences with his ancestor were his incentive to this research, and, in his opinion, at least, the newly-discovered facts were an adequate reward for his labor and outlay. It was in this June, 1788, spoken of, that John Brown had, with the aid of James Madison, hoped to secure the admission of Kentucky. How this lapsed and became impossible for a time, as the confederation really perished in the adhesion of nine States to the Union, has already been briefly told.

This failure was seized as the time of Spanish, French and English opportunity, but, the news from New Orleans was encouraging. France was not near enough as a neighbor, and England had no friends among the pioneers who had felt her Indian cruelties.

Miro, the Spanish Governor-General, had instructed Lieutenant Colonel Grandpre at Natchez, that emigrants need not become Catholics, but must not hope to build churches or employ ministers of their own. After the death of Charles the III. of Spain, the Capuchin, Antonio de Sedella, came to New Orleans as a Commissioner of the Holy Inquisition. Governor Miro sent him back quickly under military arrest, and no others came.

Speaking of Spanish hopes of the West, Colonel John Mason Brown says: "A better knowledge of the people would have shown him the futility of such expectations. He would have understood the hopelessness of bringing under Spanish rule and Catholic control and inquisitorial domination that hardy and independent race of Presbyterians and Baptists who had come out of Rockbridge and Augusta to people Kentucky and impress upon the new State the political and religious features of their faith. The New England colonists at Marietta had come into the West, bringing with them the Bible and the sword, as their Puritan forefathers had aforetime done. It was mere madness to expect the allurements or

Brown's Pol. Beg., 106.

Brown's Pol. Beg., p. 120. Note 1, pp. 122, 123.

Same, 114, 115, 117.

Gayarre's Hist. of La., p. 144.

Brown, p. 129.

Brown, 134, note.

Brown, p. 133-4.

Convention, June, 1788. See Brown's letter to Judge Muter, of July 10, 1788. B. p. 156. Same, 148, 150.

Marshall, Vol. 1, p. 289.

subjugation of such a population." He adds, that the Catholics of Kentucky were from Maryland, partaking of the toleration of the English Lord Baltimore.

The convention met on the last of that June, 1788, and one more failure of independence tried Kentucky sorely, but prudence and the counsels of Thomas Jefferson and James Madison prevailed.

"The temper manifested in this convention was remarkably different from that which characterized the disbanded convention of 1787. In the place of the momentary vexation which yielded to a sense of duty and love of peace and the force of reason, which had occasioned the postponement of separation in that instance, there were now observable the most deep-felt vexation and a share of ill-will bordering on disaffection to the legal course of things, and some strong symptoms of assuming independent government. And had not this disposition been met with a determined countenance fraught with a contrary tendency, in others, it is not difficult to see what would have been the result: a violent separation without doubt."

"The navigation of the Mississippi and the trade of New Orleans, now just tested for the first time, was strenuously pressed into the argument in favor of completing the constitution and organizing a government without delay."

For a time it appeared as if patience had had its perfect work; that public sentiment, now sufficiently educated to demand by a large majority, State independence, could no longer brook the seemingly conflicting resolves of conventions, and that the people themselves, outside of legislative authority and by virtue of the natural rights of a free and independent people, should act for themselves. Amidst the uncertainties, disappointments and annoyances of these hours, it was suggested as the most efficient means of securing popular expression and popular action, that each militia captain should take the vote of his company upon the proper course to be pursued. This proposal was argued at great length for several days, and finally voted down by a large majority. The session terminated in a resolution reciting the action of Congress, the necessity of further local authority, and a recommendation to the people inhabiting the several counties within the district to elect fifteen representatives who

should meet in Danville on the first Monday in November, to continue in office until the first day of January, 1790, and suggesting that the people delegate to these representatives full power to take such measures for securing statehood, the navigation of the Mississippi river and to form a constitution or government, as their judgment might dictate.

There was some opposition at this time and a great deal of suspicion afterward, as to the intention of members of the convention in giving this body such ample powers, concerning the three questions that then agitated the district.

It must be admitted that the master minds of the convention had given their successors, so soon to be elected, very full authority. The following quotation shows the justness of this criticism: "to formulate a constitution or government for the district and organize the same when they shall judge it necessary, or to do and accomplish whatsoever on the consideration of the state of the district, may in their opinion, promote its interests." In the public prints of the country, these acts of the convention were criticised. Circumstances had created a suspicion in reference to General Wilkinson and some of his associates, and there was a fear, reasonable and general, as to the use which might be made of this authority. Marshall very properly remarks: "Powers more unlimited than these, the people themselves in a state of nature, or destitute of all government, did not possess; powers in fact thoroughly incompatible with the organized constitutions of State and general governments and broad as insurrection itself in patent form."

Marshall, Vol. 1., pp.
292-3.

Marshall, Vol. 1, p.
294.

It was this fear and alarm that called forth from Judge Muter his letter of October 15, 1788, in which he suggested that the action contemplated by the powers named in this resolution, under the laws of Virginia, might prove high treason. The convention which was elected did not go to the lengths predicted. Public opinion had performed its corrective work, and when the delegates met in convention, elected under this suggestion of the convention of July, 1787, their deliberations were conducted in the most peaceable and patriotic methods, and resulted in a resolution to apply for an act to render Kentucky independent of Virginia. The desire for separation increased apace with each convention, and, while there was a most unusual and extraordinary patience

Innes vs. Marshall.
Mercer Cir. Ct.,
August, 1813.

manifested, yet there was likewise an unfaltering determination to go forward in those paths which led to statehood.

To this period, about July 10, 1788, belong the voluminous MSS. of depositions and evidence on the trial of the slander cases of Harry Innes and others, and State trials, that were in progress from 1806 to 1834.

The visit of the British agent, Colonel John Connelly, came in between July, 1788, and the convention of the same year. The plans of Lord Dorchester may be read of fully in Colonel Brown's "Political Beginnings."

The convention of 1788 at Danville was formed with the view of having plenary powers, so strong was the faith of the constituents in its well-tryed principles.

On October 15, 1788, as said before, the state of calm was disturbed by a letter from the Chief-Justice of the District, George Muter, published in the *Kentucky Gazette*. He asserted that the plan of immediately framing the State constitution and seeking admission as such, was in violation of the fundamental law of Virginia, making it high treason to erect another government in her territory. His associate justices, McDowell and Marshall, did not share his views, but with the then limited mail facilities, there was little opportunity to contradict him in time. Colonel Thomas Marshall agreed with Judge Muter. The judge also criticised the vast powers granted the convention; holding that, from public considerations, it might, indeed treat with Spain directly for the opening of the Mississippi; a power which Virginia had under the confederation but not under the constitution.

McDowell, John Brown, Greenup, Jouett, Innes, General Wilkinson, John Marshall, Judge Muter, Colonel Joseph Crockett, Allen, R. C. Anderson, Sebastian, General Logan, Montgomery, William Irvine, John Edwards, were the leading members of this very able convention. The seven counties then in the district were all represented; the old unanimity had ceased. McDowell, Brown, Greenup and Innes held that Virginia had sufficiently consented. Muter, Marshall, Edwards, Crockett and others held that her grant of permission had died by limitation.

Brown's Pol. Beg.,
p. 195.

A draft of the State constitution, promised by James Madison in May, was put in writing in September, and Brown proceeded confidently under the guidance of his powerful

friend, having, too, the countenance of and correspondence with Thomas Jefferson. The letters of Madison and Jefferson at this period of Kentucky's history are full of interest, and especially as to the action of Congress, September 16, 1788, and of the western claim of navigation of the Mississippi.

Brown's Pol. Reg.,
p. 195.

In the convention on Wednesday, November 5, 1788, petitions were received from Mercer and Madison counties, praying for "a manly and spirited address" to Congress concerning the river; and, a committee was raised to prepare "a decent and respectful address to the Assembly of Virginia for obtaining the independence of the district of Kentucky, agreeable to the late resolution and recommendation of Congress."

This convention was marked by the first real division of political sentiment. Two parties were formed; one called "the Court party," on account of its leaders being composed largely of the legal profession, or those connected with the courts; while the other was known as "the Country party." The warmest contest was in Fayette county, General Wilkinson heading the Court party, while the Country party was represented by Colonel Thomas Marshall, Geo. Muter and Colonel Joseph Crockett. The Court party obtained a majority in the convention, but their victory produced no positive results. Each side watched the other with the greatest vigilance, and oftentimes with equal distrust. The introduction of the Spanish intrigue aroused bitterness and differences, which ended only with the death of the members taking part in these deliberations. On November 10th, Chairman Wilkinson, of the committee, reported "An address to the United States in Congress assembled," which was florid and powerful, and set forth the difficulties environing the people, the wealth of soil and the teeming abundance of the crops and total paralysis of commerce. It argued for both natural and treaty rights of navigation and implored Congress to secure that of the great river for the whole country.

1788.

Brown, pp. 200 and
201.

Mr. Innes then reported a respectful and loyal address to Virginia, on the old lines.

The convention then adjourned to meet again the first Monday in August, 1789. Angry words had passed between Judge Muter and Thos. Marshall, and the visit of Connelly

Dep. of McDowell,
Shelby and others in
Innes vs. Marshall,
Brown, pp. 154-156
to 171.

Collins, Vol. 1, pp.
262-272.

Marshall, p. 358
1812.

to this State had been termed "British intrigue," and that of Brown with Gardoqui was pointedly pronounced "Spanish conspiracy." Thus had Thos. Marshall and John Brown ample and public notice of the charges afterward formulated by Humphrey Marshall; and it is to be noted that the retorts on the floor of the convention, at that day of unformed politics and of conflicting interests, are not so vehement as are the letters and affidavits of 1806 to 1834. The Union was a fact, and doubtful intention had become to look like treason.

The November convention of 1788 had, without any formal vote, declined to form a State constitution, but was to meet in August next. Its term of election expired January 1, 1790.

The Legislature of Virginia took away the ground of Muter's alarm by an Act of December 29, 1788, "concerning the erection of the district of Kentucky into an independent State."

It awaited the election of a new convention to assemble in July, 1789, to ratify or to disapprove, in the name of the people of Kentucky, the granted terms of separation. Should the convention accept them, they were to become a compact between the two commonwealths; provided Congress should, prior to September 1, 1790, recognize and receive the new State into the Union.

Thus the weary work of six years ended—apparently wasted—now begun again and in a common sorrow and disappointment, coupled with some indignation; personal animosity seemed for a time to die.

The convention of July 20, 1789, nominated McDowell for his usual place as President. The convention at once set to work on the "terms," and asked Virginia to recede, as before stated, from the "unlimited time" granted for location and survey of its own warrants and from her demand for Kentucky's assumption of part of her "domestic debt," although a former convention had asked to share it. The district census was provided for in October, and the convention adjourned subject to the call of the President, and awaited the action of Virginia upon the memorial.

The district was still divided upon the question of statehood, taxation being feared; but the majority of those favor-

Brown, p. 218.

Same, 219.

able were no longer charged with treason for use of the strong terms, "sovereign and independent State of Kentucky."

It may here, without impropriety, be said that the second article of the Confederation of 1777, as it relates to the power of the Federal Government being limited by the express terms of the grant and of the reserved rights of the States or the people thereof, to all powers not so granted, is reaffirmed in the constitution and is not abrogated by any amendment. So understood our fathers when they assented to each, and so they wrote in the famous Virginia and Kentucky resolutions, and so likewise they wrote in their bill of rights in the constitutions of 1792, 1799 and 1850, and so, too, has held the Supreme Court of the United States in its decisions before and since the war of 1861-65.

1798.

In this convention of July, 1790, a resolution declaring it the sense of the good people of the district that it be erected into an independent State, on the terms of the Virginia act of December 18, 1789, was carried by twenty-four to eighteen votes. The warm attachment of the people to the State of Virginia, their fears as to the burdens of taxation, and their reluctance about entering upon the responsibility of statehood, caused two-fifths of its members to hesitate about taking this final and decisive action, which should consummate the separation from the mother State. This was the last protest of a respectable minority by its eighteen votes. A brief and dignified missive to the Legislature of Virginia accepted her ordinance of separation, and thanked her for a mother's care; then "To the President and Honorable, the Congress of the United States of America," a communication was adopted, asking its sanction of the compact between the people and admission into the Union, on June 1, 1792. They provided for the election of delegates to form a State constitution, and to convene in April, 1792, and thus ended the last of the nine district or territorial conventions of Kentucky.

MSS. Journal of
Convention of 1790.
Thos. Todd.

Debates in Congress,
Vol. 2, p. 2372.

The action of Congress was speedy and favorable. On the 14th of February, 1791, it was enacted that on the 1st day of June, 1792, the new State of Kentucky be received "into this Union as a new and entire member of the United States of America."

The bitterness of local politics died out temporarily, in view

of the transfer of all important questions to the higher field of Congress, and the pettiness of a district passed into the dignity of a Commonwealth.

The terms of the Virginia Act of separation having been accepted, they became a compact between Kentucky and Virginia, which will be found in this volume and has since been regarded substantially as part of the fundamental law of this State.

CONSTITUTION OF 1792.

Kentucky became entitled to two representatives in Congress, the population, at this time, being 61,133, white; free colored, 114; slaves, 12,432; total, 73,679. The number of representatives in the Congress of that time being fixed by the constitution, not to exceed "one for every thirty thousand," which basis of representation prevailed until 1800, when Kentucky's number of representatives increased to six.

Kentucky had been divided into nine counties: Jefferson, Fayette, Bourbon, Nelson, Madison, Mercer, Lincoln, Woodford and Mason. Each county was entitled to five members, making a total in the convention of forty-five. This election was the most important that had ever been held in the district, and a strong effort was made to arouse party feeling and to introduce party discipline. All the several counties were organized by county committees, "whose ostensible business was to form tickets and to recommend to the people fit persons to be elected by them as representatives. The next thing was to furnish the representatives, when chosen, with instructions how to act." These efforts were not altogether successful. The feelings engendered in the contest between the "Court" and "Country" parties had not altogether died out. The most distinguished names upon its roster were those of Alexander S. Bullitt, Benjamin Sebastian, Robert Breckinridge, George Nicholas, David Rice, Samuel McDowell, Benjamin Logan, Isaac Shelby and Caleb Wallace. These men had all been eminent and prominent in such political contests as had characterized the district.

Criticisms upon the ability and attainments of members of

the constitutional conventions seemed not to have been confined to later years. Marshall, commenting upon the material composing this convention, says: "It was to have been supposed that the occasion was momentous and the subject was much agitated, as this was to have brought out the best talents from each county into this convention. The result of the election was, however, different. It drew forth as members those who had taken most pains to please, or who happened at the time to be the greatest favorites with the people. Electioneering was already an art, and the people accustomed to be courted for their votes.

Marshall, Vol. 1, p. 384.

"By way of illustration, a few examples will be given from the most populous or conspicuous counties in the district. The county of Fayette, including Lexington, chose Thomas Lewis, Hubbard Taylor, George S. Smith, a Baptist preacher, Robert Frier and James Crawford—honest men and worthy citizens—but, and it is no disparagement to say what the truth extorts, in a political point of view, not one of them was up to mediocrity.

"Of the five members from Jefferson county, including Louisville, Alexander S. Bullitt and Benjamin Sebastian were men of talent above mediocrity; to which they added considerable acquired information and the habits of business. The names of the other three are omitted; they were, however, on a par with the representatives from Fayette. Mercer county, including Danville, the seat of the District Court, sent Samuel Taylor, Jacob Froman, George Nicholas, David Rice and Samuel McDowell. Mr. Nicholas was a distinguished lawyer, possessed of political reputation and acknowledged talents. McDowell had age and a share of information engrafted on the native stock of practical good sense. Rice was a reverend divine of the Presbyterian church, respectable in his vocation; and it may be, as some suspect, that he became a politician by way of experiment on the public temper in relation to clerical legislation. If that was the case, the result was unfavorable to preachers, for the constitution dispensed with their legislative services by rendering them ineligible. Taylor, a shrewd, and it may be subjoined, a crude politician, had his perfect contrast in the simplicity and ignorance of Jacob Froman. The average of these might be found in the members from the other counties."

Thos. Speed, owner,
Louisville.

The chief question which disturbed this convention was that of slavery, in which Kentucky then had a vested interest. Property rights in fifteen thousand slaves created deep concern and a desire for protection. The brief period covered by the sessions of the convention, showed that there could have been very little discussion. "The Political Club," whose papers should certainly one day be printed, had disapproved of that feature in the federal Constitution which practically continued the African slave trade until 1808.

Brown's Pol. Beg.,
223.

Here, again, the strong anti-slavery views of John Mason Brown entered into his otherwise able and fair history. He asserts that only a respectable minority in the new State ever expected its continuation beyond a brief period; but he altogether fails to show why the Presbyterian and Baptist majority, headed by the thoroughly Calvinistic Carman and Dodge, William Hickman, Ambrose Dudley and James Garrard (afterward second governor), the Suttons, Carter Tarrant and the brave and able pioneer Presbyterian preacher, David Rice, of Mercer, should have yielded quickly and finally to George Nicholas, then almost a stranger in the State. That he had debated with Patrick Henry and George Mason in the Virginia conventions and shared with James Madison the credit of carrying the adoption of the federal Constitution; gave him no advantage, among strangers, over the veteran McDowell, President of many conventions; over Muter the Judge; over Innes, Attorney-General; or over John Brown, member also of the House of Burgesses of Virginia, and honored delegate of Kentucky in the federal Congress.

In these earlier times, the responsibility of officers elected by the people as the representatives of their views, was much more rigidly interpreted than in the present day. George Nicholas had insisted on the clause in this constitution which provides, Article V., Section 3, "The Supreme Court shall have original and final jurisdiction in all cases respecting the titles to land under the present land laws of Virginia, including those which may be pending in the present Supreme Court for the District of Kentucky at the time of establishing the said Supreme Court, and in all cases concerning contracts for land prior to the establishing of those titles; and the said Court shall have power to hear and determine the same in a summary way, and to direct the mode of bring-

ing the same to a hearing, so as to enable them to do right and justice to the parties with as little delay and at as small an expense as the nature of the business will allow."

In the light of future judicial proceedings in the State of Kentucky, this was an exceedingly unfortunate provision. "Mr. Nicholas, finding it necessary or convenient to revise some opinion which he had advanced previous to his election, but which now stood in his way to the newly constituted measure, resigned his seat in order to submit himself as regenerated, to the people in another election, rather than forego the desire of bringing forth this recent conception—or running the risk of giving offense to his constituents—or of trusting to the intrinsic merits of the project and subsequent speculations altogether." Nicholas resigned his seat and was re-elected. His provision of original jurisdiction of the Court of Appeals in land cases being endorsed, the convention had completed its labors and adjourned within the short space of seventeen days.

Marshall, Vol. 1, p.
395.

The Constitution of 1792 was well received by the people of the State at the time of its enactment, and it was held to be replete with wisdom and good government. While it was the first experience of the new Commonwealth in constitutional structure, it contained many salutary provisions; and, in the ample and thorough protection to minorities, has set an example worthy of imitation in later years.

Marshall's criticism upon its members was mitigated to large extent by his commendation of the constitution as a whole. In discussing its merits, he says: "Take from the first constitution of Kentucky the mode of electing militia company officers, the mode of electing sheriffs and coroners, the original jurisdiction of the Court of Appeals, and render the electors of the governors and senators eligible by citizens having the fee-simple estate in one hundred acres of land and upward on which one family at least should reside, and it may be put in competition with any constitution in America without the hazard of a blush, but with a challenge of equal merits; it would, in reality, be excellent.

Marshall, Vol. 1, p.
433.

"Take it as it is, with the exception of the original jurisdiction of the Appellate Court, and it may be held up to the world as the delineation of a constitution nearly perfect, and thoroughly republican in its apparent features."

Brown, p. 229.

Article IX., Section 1, of the State Constitution, as prepared by Nicholas and passed in committee, forbade the emancipation without consent of owners, or prepayment for the slave; forbade inhibiting emigrants bringing slaves into the State; gave power to prohibit bringing them as merchandise, but the constitution did not so prohibit; and gave power to prevent slaves from being brought into the State from a foreign country, or that had so come from a foreign country since January 1, 1789, but did not so prohibit in the organic law. It gave power to pass all needed laws for the humane treatment of slaves and the power to sell ill-treated slaves for the benefit of their owners. It was a mild law, but it was proslavery, all the same; and, like all such, the sentiments of the community must, and did, interpret it and all future legislation. On its passage, the yeas and nays were called on a motion to expunge the ninth article. The preachers of the convention were practically unanimous against the institution and against this clause. These men of God were wiser than the politicians. The six ministers voted and put themselves on record as in favor of expunging the article recognizing slavery; and David Rice, having resigned his seat in the convention before the close of its session, yet during the discussion prior to the constitution, and in the convention itself, lifted his warning voice against the institution. In his pamphlet, entitled "Slavery Inconsistent with Justice and Good Policy," he had said that "slavery of the negroes begun in iniquity; a curse has attended it and a curse will follow it. * * * Holding men in slavery is the national vice of Virginia, and, while a part of that State, we were partakers of the guilt. As a separate State, we are just now coming to the birth, and it depends upon our free choice whether we shall be born in this sin or innocent of it." When the roll was called, there were sixteen yeas for expunging and twenty-six nays. Thus, the institution, protected from traffic and wicked owners, was emphatically made perpetual, with no power of emancipation save in the will of private owners. In 1799, the tremendous increase in slave population rendered emancipation, or the extinction of slavery, impossible. The slave population showed an increase from 1790 to 1800 of 224½ per cent.; and having at that period 40,343 slaves, with a white population of 179,873. Thus spoke the con-

vention of 1792, fairly representing a constituency that never dissented. Thus, too, spoke the convention of 1799. The convention of 1850 was expressly convened to cover with the ægis of State sovereignty (until 1865 unbroken) the right of property.

The motion to expunge was made by Taylor, of Mercer, seconded by Smith, of Bourbon, and the votes affirmative and negative are carefully preserved by Colonel Brown, for information as to how our special ancestors then believed. Religion entered strongly into the question, as shown by the published articles of the anti-slavery organization and the preserved minutes. Sentiment entered very little, and self-interest ruled, as it usually does, until the necessities of the federal arms, in 1862-63, cut the knot no man could untie, and ended the "irrepressible conflict," older than the State itself.

Brown, pp. 229, 230.

This action of the convention was on Wednesday, April 18, 1792, and its uses, together with its companions of 1799 and 1850, were forever ended in 1864.

Colonel Brown, in writing of the convention resolution passed May 31, 1785, and heretofore referred to, says: "It is a significant feature of this resolution, that it embodies the idea of equal representation in proportion to population, as was indeed suggested by the first militia convention. This was a departure from the ancient usages of the parent State, where representation in the House of Delegates was by counties, without regard to their population and extent. The innovation thus suggested was not only in accord with the spirit of the new community, where, as in all frontier life, individuality was so generally displayed and fostered, and the theory inseparable from the results of the revolution, and ultimately accepted throughout the land." He further adds: "It was upon this pivotal point that the differences of future years in a great degree rested."

Brown, pp. 64, 65.

Article I., Section 6, as adopted, covered this question, and provided that "the number of representatives shall, at the several periods of making such enumeration, be fixed by the Legislature, and apportioned through the several counties according to the number of free male inhabitants above the age of twenty-one years."

This new departure in the principle of representation was

extremely creditable to the wisdom and justice of these early pioneer statesmen. As before said, it was a departure from the principles which controlled the same subject in Virginia, and in that day it required no ordinary degree of courage to cut loose from the traditions and regulations of the mother State. The principle thus inaugurated by this convention has been carried on down through the several constitutions of the State, and Article II., Section 6, of the Constitution of 1799, provides that "representation shall be equal and uniform in this Commonwealth, and shall be forever regulated and ascertained by the number of qualified voters therein." And this provision of 1799 was repeated verbatim in the Constitution of 1850, in Article II., Section 6.

The Constitution of 1792 also made another departure from the usages of Virginia. Article III., Section 2, declares "all elections shall be by ballot." *Viva voce* voting was not in vogue here until the Constitution of 1799. Article VI., Section 16, declares, "in all elections by the people, and also by the Senate and House of Representatives, jointly and separately, the vote shall be personally and publicly given *viva voce*." Thus Kentucky, among the first to establish the system of voting by ballot, in eight years changed this method to that of *viva voce* voting, while all the other States have surrendered this method, and have changed back to ballots—Kentucky alone requiring that "the vote shall be personally and publicly given *viva voce*." * * * "On the 19th of April the convention closed its labors, and on the 1st of June the political existence of Kentucky was consummated on an equality with her co-States, that were members of the American confederation."

It was an unusual feature in this Constitution that it was provided (Article I., Section 24): "No minister of religious societies * * * shall be a member of either House during his continuance to act as minister." * * * With a generosity unknown to politicians, all the ministers in this convention voted for this clause, by which they themselves and their successors in the ministry were excluded from membership in either House. In the second constitution, this principle was incorporated by Article II., Section 26, as follows: "No person, while he continues to exercise the functions of clergyman, priest or teacher of any religious

profession, society or sect, shall be eligible to the General Assembly." And in still further exercise of this spirit of exclusion of the ministry from office-holding, in the same constitution, Article III., Section 6, it was provided: "Nor ministers of any religious society shall be eligible to the office of Governor."

In the Constitution of 1849-50, this restriction, the outgrowth of fear of the influence of ministers on the subject of emancipation, was also incorporated in exactly the same language; and thus ministers, for a period of ninety-eight years, by the organic law of the State of Kentucky, have been refused the right to sit as representatives in the Legislature, and for ninety-one years denied eligibility to the office of Governor.

The constitution was declared operative without a submission to the people for ratification. By its own provisions, it was to take effect on the first day of June, 1792; Section 16 of the schedule ordaining—"the government of the Commonwealth of Kentucky shall commence on the first day of June next." By Section 4 of the same, it was ordered that "the General Assembly should meet at Lexington on the fourth day of June next," all of which was duly attested by Samuel McDowell, P. C., and Thomas Todd, C. C., at Danville, "the 19th day of April, 1792, and of the independence of the United States of America, the 16th."

The story of the courts and of State internal improvements is of profound interest, but too vast to be fully treated in this limited space. It will be both instructive and pleasing to revert to the opposition of Kentucky and of Virginia by some of their greatest and best men, and to the defects of the federal Constitution, then pointed out, which bear so very much upon the politics of 1890. Patrick Henry foresaw that, to grant "the purse and the sword" to a central power, gave the chance to coerce and subdue the States, however the intention was to apply the power only to the "insurrection" possible in the States, or to "foreign invasion."

Seventeen days sufficed to prepare, discuss and ordain the first constitution of Kentucky; and, on the 4th of June, the Governor and Legislature assembled at Lexington, Isaac Shelby having been chosen for Governor by the College of Electors, as organized under this new constitu-

tion. At this session of the Legislature, the terms of the constitution regulating the selection of the seat of government were put in operation. Great jealousy and contention had been aroused between the people on opposite sides of the Kentucky river as to the location of the capital. Twenty-one commissioners were selected by the Legislature, as provided in the constitution, from which the counties of Mercer and Fayette alternately struck off one, until five gentlemen were left, and three of these five met "soon after their appointment, and fixed on Frankfort as the proper place" for the seat of government.

CONSTITUTION OF 1799.

After five years of trial, discontent began to exhibit itself with the Constitution of 1792. As early as the session of 1795, it was proposed to pass a law for taking the vote of the people in the ensuing year, upon the calling of a convention to amend the constitution.

The Senate, chosen by a body of electors, who themselves were elected by the people every four years, had been charged with being aristocratic. They had elected members of their own body as Senators before on occasions, and had rejected a bill concerning occupying claimants, which had been passed by the House of Representatives at a former session. This bill had been very popular among the people, and its failure had produced both prejudice and irritation against the Senate. It was claimed to be too independent of the people; with having aristocratic tendencies, and careless of the will or wishes of a majority of the country. Addresses had come up from various counties and were then on the table, showing this bill to be popular, and that it would be pressed upon the future Legislature with warmth and earnestness. A vast tide of emigration, not only of voters, but men of ambition and brains, poured into the new Commonwealth; its increase in population during the first eight years of statehood had been surpassed by the ratio of increase in no other portion of the United States; being at the rate of about 27 per cent. per

annum. The office-holders were in during good behavior, and the desire of the newcomers to have, at least, the right to sit in the State Senate was a strong factor in these agitations against the Constitution of '92, under which one body, the Senate, together with the Governor, were chosen by the electors, who held their office for four years.

By the eleventh article of the constitution, it was provided that "the persons qualified to vote for Representatives shall, at the general election to be held in the year one thousand seven hundred and ninety-seven, vote also by ballot for or against a convention, as they shall severally choose to do; and if, thereupon, it shall appear that a majority of all the citizens in the State, voting for Representatives, have voted for a convention, the General Assembly shall direct that a similar vote shall be taken the next year," etc. * * * "If it shall appear upon the ballot of either year that a majority of the citizens voting for Representatives is not in favor of a convention being called, it shall not be done until two-thirds of both branches of the Legislature shall deem it expedient."

The effort to pass an act calling a convention failed in the Senate, but the vote was taken under this provision of the constitution.

At this time the State was composed of twenty-one counties. Five of these made no return; a majority of all the votes given in the State was recorded "for the convention," and the returns made to the Legislature, which assembled on the first day of January, 1798. The returns showed 9,814 votes cast, of which 5,446 were for the convention, and 440 against.

That there were some irregularities attached to this vote can not be denied; the fact itself, that five of the most populous counties in the State made no returns whatever, is sufficient evidence of this. In May, 1798, a second vote was taken upon the question, and out of 11,853 votes cast, 8,804 were for the convention. As there was no legislative authority for this election, the voters seem to have acted upon their own ideas of constitutional rights and had expressed their opinions for and against the proposition. In the meantime, the counties of the State had grown to twenty-four; eight of which, viz: Bracken, Franklin, Hardin, Lincoln,

Constitution of 1799,
Art. II.

Harrison, Lincoln,
Logan, Mercer and
Green.

Logan, Washington, Woodford and Mason, made no returns whatever.

Marshall, Vol. 2,
p. 285.

This subject incited warm discussions. It was claimed "that upon the whole state of the case as presented to the General Assembly, the constitution did not authorize the passage of a law for a convention on the ground of the people's vote."

"To this was replied that, admitting it all, though there was reason to believe a majority of the voters in favor of the convention, the right of calling one was with two-thirds of the Legislature, and, accordingly, two-thirds passed the act for that purpose." The elections were to be held in May, 1799, and the convention was to assemble on Monday, the 22d of July.

Fayette county seems to have taken more interest in the members elected to this convention than any other in the State. In February, a large assemblage of the people in this county took place at Bryant's station, for the purpose of interchanging opinions and passing resolutions as to the qualifications and sentiments of persons to be chosen as members of the convention. This assemblage agreed upon "equality of representation," a divided Legislature, the independence of courts, and adjudged the compact with Virginia and the continuation of slavery exempt from legislative usurpation. The subject of slavery produced the most heated discussion. Committees of two members from each religious society and from each militia company were recommended to meet at the same place on the third Saturday of February. Other meetings were called in the same county, which passed resolutions favoring emancipation and also formed a ticket for delegates. Fayette was entitled to six members, and John Breckinridge headed the list.

The chief assaults on the Constitution of 1792 were upon its slavery clause, and the election of Governor and Senators, who held office for four years, by electors instead of by direct vote of the people. Thus early in the politics of Kentucky did the spirit of emancipation again make itself manifest and aggressive. As the Senate elected its own speaker, who would, in the absence of the Governor or inability to act, become the chief executive, it was urged that this was dangerous and deprived the people of important rights essential

to their own safety. As a sample of the suggestions in reference to the necessity of calling a constitutional convention, it will be interesting to quote the following from Marshall :

“In April, a writer of very respectable abilities, who adopted the significant signature of Gracchus, addressed the question ‘shall there be a convention’ to the citizens of Kentucky, representing to them that now was the time for them to act or lose forever the chance of having a convention to revise their constitution ; that six or eight individuals, composing a majority of the Senate, had rejected a bill for referring the question to them whether they were for the convention or not, although passed by a large majority of their immediate representatives. From the past, they were to judge of the future. The legislative body had discovered too early a jealousy of the will of the people. Their immediate representatives had declared there was a majority in favor of the convention, yet six or eight individuals in the Senate have declared otherwise. Thus are you controlled by a few men, a small minority under the present constitution. The judgment of the Senate is warped by their situation. The House of Representatives feel and know they are the people’s representatives ; they fear not a convention ; they know it will be but a House of Representatives of the people.

Marshall, Vol. 2, p. 248.

“But whence is it that your great men are thus jealous of the power of the people ? Does it not indicate something wrong in the institutions of your country ? Are you sure your liberties are not in danger ? Your constitution, which attempts to arrest the progress of the human mind, will be perpetual unless corrected now. These men may, for a moment, suspend reformation and bring on revolution.

“Those opposed to the convention say you are free from oppression, that your rights are secured under the present constitution ; that any change is unnecessary and hazardous ; that before you feel an injury, you can not so well devise or apply a remedy ; that in attempting to amend, haphazard, there is danger that the constitution will be made worse. And what does this mean but that you are ignorant and besotted ? Well may you blush to find a man among you so destitute of genuine republicanism as to suggest such degrading ideas.

“Another alarm is for its foundation and fear for the safety

or independence of the courts; as if the convention can not amend a part without overturning the whole of the constitution. Are you frightened at phantoms? Another time you hear it alleged that the friends of the convention are for agrarian laws, but you would be the idiots they take you to be were you to be frightened by suggestions like this. Discard these insinuations, which would make you think meanly of yourselves; and while you are told that you are about to strip others of their property, be careful lest they strip you of your power. Remember that all power is in you—the people; that your present constitution admits this at present, but robs you of it forever hereafter; as, if you have not a convention now, it will rest with two-thirds of the Legislature to say whether you will, in future, have one or not. Then act for yourselves; act like men; write ‘for the convention’ on your election tickets in characters too plain to be overlooked by the attending officers, and thus declare your will with a unanimity that shall appall the patrons of the aristocracy by the conviction that the will of the people is the supreme law.”

Meetings were held in various parts of the State during the canvass prior to the election in May. The country became much agitated, and, at the election of members to the Legislature, voted both for and against the convention. While there was some interest in the matter, it must have been true, at this time, that the majority of the people declined to vote at all—the entire vote cast was, as before said, 11,853. As the population of Kentucky at this time could not have been less than 150,000 whites, it is apparent that a very slight vote was cast, when only 11,853 ballots were registered. However, there were only 9,814 votes cast the year before, and only 5,446 in favor of the convention, with five counties not voting; and now 11,853 were cast—8,804 in favor of the convention—it was decided that to have a convention was “the will of the people.”

The Legislature elected at this time was to hold its session in November, 1798. This Legislature was rendered memorable by the resolutions of 1798. These were called forth by the two acts of Congress known as the Alien and Sedition Laws. These resolutions were introduced by John Breckinridge, and passed with only one single vote against them in the Senate, which may be summarized as follows: “That the

Constitution of the United States is a compact between the several States as States, each sovereign State being an integral part of that compact; that, as in all other compacts between equal sovereigns who have no common judge, each party has the right to interpret the compact for itself, and is bound by no interpretation but its own; that the General Government has no final right, in any of its branches, to interpret the extent of its own powers; that these powers are limited within certain prescribed bounds, and that the acts of the General Government, not warranted by its (constitutional grounds of) other powers, may properly be nullified by a State within its own boundaries." Copies of these resolutions neatly bound were sent with a letter to each of the States. Colonel R. T. Durrett, President of the Filson Club, has the original printed copy of the John Breckinridge resolutions, with most of the Jefferson manuscript and correspondence.

Collins, Vol. 1, p.
285.

No other State than Virginia adopted the resolutions, but in the South some few sympathized and in the North seven States denounced them. Nor did Kentucky recede from them, even under the persuasions of Henry Clay and John J. Crittenden, until 1832. Just in how far the resolutions of 1798 have ever been, or are now, abrogated by Kentucky's constitutions, let the following determine:

Section 2 of Article XII. of the Constitution of 1792 is reformed as Section 2, Article X., Constitution of 1799, and as Section 4, Article XIII., Constitution of 1850. Section 14, Article XII. of the Constitution of 1792, as Section 14, Article X. of Constitution of 1799, and Section 16, Article XIII., Constitution of 1850, assert "that no power of suspending laws shall be exercised unless by the General Assembly or its authority."

Section 28, Article XII., 1792; Section 28, Article X., 1799, and Section 30, Article XIII., of 1850, read: "To guard against the transgression of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate, and that all laws contrary thereto, or contrary to this constitution, shall be void."

Article XIII., Sections 2 and 3, Constitution of 1850, declares: "Section 2. That absolute and arbitrary powers over the lives, liberty and property of free men exist nowhere

in a republic, not even in the largest majority. Section 3. The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same and as inviolable as the right of the owner of any property whatever. Section 4. That all power is inherent in the people, and all free governments are founded on their authority."

The first constitution was adopted in May, 1792, but was never submitted to Congress; nor, subsequent to its formation, did Congress pass any act recognizing Kentucky's admission into the Union. Congress seemed to act under the assumption that the constitution prepared at that time would meet the requirements of the Federal Constitution, or, failing this, would be subordinated thereto. The rule of the Constitution of the United States, guaranteeing to every State "a republican form of government," has never been exercised in the approval of the constitutions of the State of Kentucky. Kentucky entered the Union, but the organic law of 1792, 1799 and 1850 would not now be sufficiently republican, in the sense of subservient to the Constitution of the United States, to secure such admission.

"In November, the act calling for a convention on July 22, 1799, was passed. On that day, the convention met in the new State House at Frankfort, and elected Alexander S. Bullitt, of Jefferson county, President, and Thomas Todd as Clerk, adopting the rule of the late House of Representatives for its government. The next day, it took the constitution into its custody, and placed it under its examination, for better or for worse. The proceedings were with open doors, and in all respects so similar to that of the Legislature that it is inconsistent with this history to notice the different propositions or debates. But little that is either interesting or amusing could be extracted from them and resulted—the constitution itself will be the answer.

"On Saturday, the 17th of August, 1799, the convention adjourned, having provided that the new constitution should take effect the first day of June, 1800." As the convention of 1792 had gone into effect on the first day of June of that year, its life was exactly eight years.

During this period, the State had increased in population 224 per cent., or 118,743 white and 28,913 slaves. The coun-

Marshall 2, p. 294.

ties had grown from five to twenty-four, although only seventeen counties were represented in the convention, the other seven securing their representation through the counties from which they had been taken.

Under this constitution, the Legislature, after having eleven sessions, passed six hundred and fifty laws, which were entered upon the statute book. This constitution was not submitted to the people for their ratification or rejection. The convention itself ordained it to be the organic law of the State. Marshall says: "On the first of June * * the second, called the New, Constitution of Kentucky took effect, it may be said, without even an emotion, much less commotion."

Marshall. Vol. 2, p. 327.

The last Governor under the first constitution was elected to the same office under the second (James Garrard). The Lieutenant-Governor, a new officer, and *ex-officio* Speaker of the Senate, who was Alexander S. Bullitt, a lawyer and member of the General Assembly, had been elected also at the same time, agreeable to an ordinance of the convention, without opposition to the change. Such is the benign influence of the great republican principle of free States, "that the will of the majority, expressed according to the constitution, is the law of the land," to which all are in duty bound to submit.

The Governor, Lieutenant-Governor and Senators were now to be elected by the State at large. The good-behavior tenure of the judges remained, with power to appoint their own clerks, while the Governor appointed all the judges throughout the State, including those upon the bench of the Court of Appeals. The debates of none of the constitutional conventions have been printed, except those of 1849. Those of 1792, as written out by Thomas Todd, are in the possession of Colonel R. T. Durrett, and should be, and doubtless will be at some later day, printed.

The leading spirit of the convention of 1792 had been George Nicholas, and the same relation to the Constitution of 1799 was held by John Breckinridge.

No one could be worthier of this great distinction. He removed to Kentucky from Albemarle county, Virginia, in 1793, and settled at Cabell's Dale (the name which he gave his home in Fayette county, near Lexington), where he resided until his death, which occurred in 1806. "As a lawyer,

Collins, Vol. 2, p. 798.

See "Breckinridge county," Collins', Vol. 2, pp. 98, 99.

no man of his day excelled him and very few could be compared with him. Profoundly acquainted with his profession, highly gifted as a speaker, laborious and exact in the performance of his professional duties and engagements, these great qualities, united to his exalted private character, gave him a position at the bar to which few men ever attained or ever deserved, and enabled him, besides the great distinction which he acquired, to accumulate a large fortune." As illustrating his high sense of honor and extreme conscientiousness, when urged upon his death-bed to make his will, he replied, that "having done his best to have such provisions made by law for the distribution of estates as seemed to him wise and just, he would adhere to it for his own family." "He took a leading part, perhaps a decisive part, in all the great questions of a local character that agitated Kentucky from 1793 to 1806." * * * "The Constitution of 1798-99, for fifty years preserved unaltered, was more the work of his hands than of any other single man. The question of negro slavery, as settled in that constitution upon moderate grounds—the ground which Kentucky ever occupied—the systematizing, to some extent, the civil and criminal codes; the simplification of the land law, the law of descent, the penitentiary system, the abolition of punishment by death except for willful murder and treason; all these and many other important subjects of a kindred nature fell under his molding labors at the forming period of the Commonwealth, and remained until 1850 as they were adjusted half a century before. It seems to have been decisively settled, although no one ever raised such an issue until twenty years after his death, that he was the author of the Kentucky resolution of 1798-99." These in themselves, judged by that period, would have marked him as a man of transcendent genius, able statesmanship and profound learning.

The Constitution of 1799 judged by its enemies, and by the public sentiment of the times, it was considered an abler constitution than that of 1792, and more in accord with the spirit of the new State and of the new century. The destruction of what was termed the aristocratic principle of the Constitution of 1792, under which the Governor and Senators were elected by an independent and intermediary tribunal, was highly gratifying to the majority of the people; and in

return for this, they surrendered the right to elect sheriffs and coroners, and consented that all offices should be filled by appointees to be named by the Governor and confirmed by the Senate.

At this period in the history of Kentucky, there was a very strong element which insisted upon a property qualification as the basis of suffrage; and that at least one branch of the General Assembly should not be chosen by those who were without property. It was claimed that, while the constitution promised security to life, liberty and property, it was fallacious and delusive and that property was not protected; because its safety, instead of being placed in the hands of property owners, was placed under the control and at the disposal of those who had nothing and wanted what others had. It is apparent that in the preparation of this constitution, politicians had not altogether learned that all power is derived from the people, and that that power was to be exercised to its fullest extent in every department of government, and particularly in that of legislation.

The changes which were made in this constitution in most respects were salutary, and, where carried out through proper legislation, would of necessity produce beneficial results to the Commonwealth and its people. As its sessions continued only twenty-seven days, including Sundays, it is safe to presume that there was either great unanimity as to the changes and reforms required, or that there were very few members who desired to enter into any lengthened discussion of the matters brought before this convention. It is to be regretted that the proceedings of this convention have never been published. They were taken down by Harry Toulmin, Secretary of State under James Garrard, and afterward United States District Judge for Alabama. Efforts have been made, from time to time, to secure the printing of these records, but without avail. Rev. John A. McClung writes, in *Collins' Annals of Kentucky*, February 7, 1838: "A resolution was passed requesting the Governor to obtain the manuscript journals of the conventions of 1792 and 1799. The Governor, in his annual message, reports that he procured a printed copy of that of 1799, 'but seriously apprehends that the only copies of that of 1792, then extant, were consumed some years since by the burning of the capitol.'"

Collins, Vol. 1, pp. 38, 42.

R. H. Collins' *History of Kentucky*.
Vol. I., pp. 38, 39.

By this, McClung seems to believe that there were printed copies of both once.

Governor Breathitt, in his message of June 1, 1834, said: "Some of the journals of the Commonwealth had never been printed, and others were lost in the conflagration of the Secretary's office some twenty years ago."

Governor Breathitt further adds: "Convention followed convention for many years anterior to the final separation from the State of Virginia, but journals of those conventions have never been printed, and perhaps but a single copy remains in the hands of a private gentleman. The journal of the convention of 1799, which formed our constitution, I find also in manuscript. We are proud of the name of Kentuckians. There is a laudable solicitude to know everything in respect to our history. Those pioneers of the West were a bold, patriotic and liberal people. Let us, at least, perpetuate their public acts in some durable manner, and be able to furnish a complete history of the proceedings of the various public assemblies in connection with our government. I would, therefore, suggest the propriety of the appointment of a committee to make inquiries into the matter, and that you direct the printing of such documents as may be regarded necessary to the perpetuation of our political history as a State."

On the 24th of February, 1834, a resolution passed both houses of the Kentucky Legislature, entrusting the State documents to Mann Butler, for his history of Kentucky, and exacting a bond of \$1,000 for their safe return. It may be that in after years the copies of the notes concerning these conventions will be found, as were the notes of the proceedings of the Political Club of Danville, to which reference has before been made.

THE CONVENTION OF 1849-50.

The question of calling a convention to ratify and amend the Second Constitution, which had gone into effect on the 1st day of June, 1800, was twice approved by the people of the State with unusual unanimity. The first vote had been ordered in August, 1847, when 92,639 out of 137,311 total

voters were registered in favor of the convention; and when in August, 1848, the question was again submitted as required by the constitution, 101,828 out of a total of 141,620 voters in the State again declared in favor of the convention.

In obedience to the will of the people, as thus expressed, an Act was passed and approved January 13, 1849, in which it was provided that a convention for the purpose of "re-adopting, amending, or changing the constitution of the State" should be called, to be held commencing on the first day of October, 1849, and to continue from day to day until the business should be completed; that the convention should consist of as many members as compose the House of Representatives. The calling of this convention had been discussed for six or seven years preceding this time. During this long agitation, strong prejudices had been engendered against many of the provisions of the Second Constitution. One of the most potent causes of this fierce discussion was the uncertain condition of public sentiment in regard to the institution of slavery. The Constitution of 1799, like that of 1792, had coupled with the institution of slavery provisions which mitigated a portion, at least, of the most objectionable features of that institution. While the General Assembly could pass no law for the emancipation of slaves without compensation to the owner, nor could they prevent immigrants from bringing with them slaves into the State, they were required also to pass laws permitting the owner of slaves to emancipate them. The Legislature also had power to prevent slaves from being brought into the State a merchandise, and also to prevent them from being brought into the State from a foreign country, and had power to pass such laws as might be necessary to oblige the owners to treat them with humanity, to provide them with the necessary clothing and provisions, and to abstain from injuries to life or limb; and in case of neglect of owners to comply with such laws, slaves might be sold by the State for the benefit of such owners. And while this provision was copied without material change into the new Constitution of 1850, yet in other respects the strongest possible barriers and protection were thrown around ownership of this property. During this period, there seems to have been aroused intense hatred toward free negroes. It was believed that their influence upon slaves was baneful,

and that the conservation of this institution would be more difficult where free negroes were permitted to mingle with slaves.

The elections themselves had shown beyond all question that a large majority of the people were in sympathy with the slave owners concerning their alarm as to the continuation of the institution in Kentucky. Public sentiment still demanded the preservation of humane provisions in the several constitutions on this subject, but, in view of the fear and distrust on the part of slave owners, it acquiesced in this fixed resolve to provide a constitution, which, in so far as the people of that day could see, would render it impossible at any time to interfere with slave property, unless upon a basis of compensation.

The election of one hundred delegates showed almost absolute unanimity on this point, for less than half a dozen delegates, who occupied a questionable position in this matter, were returned to the convention.

As an evidence of the feeling at this time, on the 3d of February, 1849, the House of Representatives passed a resolution as follows (yeas, 93; nays, none):

“Resolved, That we, the representatives of the people of Kentucky, are opposed to the abolition, or emancipation, of slavery in any form or shape whatever, except as now provided for by the constitution and the laws of the State.”

This resolution was doubtless called forth by the expressions both in public print and in the forum, and by the declarations of quite a large number of people in the State antagonistic to slavery. On the 12th day of February, same year, emancipation meetings were held in Maysville, and on the 13th, one in Lexington. These were the beginnings of a very earnest and exciting canvass for delegates to the Constitutional Convention, in which this question, in all its bearings, was fully argued.

At this time, the subject of emancipation had taken hold of many of the best minds of the people of the State, and it formed one of the leading topics of public, private and newspaper discussion.

On the 25th of April, same year, a State emancipation convention was held at Frankfort. This body recommended that in the new constitution, two points should be insisted

upon, and that a candidate should be run in every county favorable to these, or similar provisions:

First: The absolute prohibition of the importation of any more slaves into Kentucky; and

Second: The complete power to enforce and perfect, under the new constitution, a system of gradual prospective emancipation of slaves.

These efforts on the part of the emancipationists only more completely aroused the pro-slavery party in the State, and the result was crushing and complete in so far as emancipation in that day was concerned.

The questions which would most prominently come before the convention were discussed by most of the candidates. While in some parts of the State certain subjects would be more freely discussed than others, yet the most prominent questions which came before the people subsequent to or before the convention were:

First: The relations of the State to slavery.

Second: The election of all officers by the people.

Third: The inhibition of the use of the credit of the State for internal improvements.

Fourth: The constitution of the several courts of the State.

Fifth: The introduction of a clause for the prevention of dueling.

Sixth: The distribution of representation in the State Legislature.

Seventh: A Common School system.

It is not surprising that the immense patronage of the Governor and the life tenure of all officers appointed by him should, in the course of half a century—the lifetime of two generations—produce a tremendous feeling of discontent among the people at large. It was but natural that the Governor, with such an appointing power, should disappoint an innumerable number of able and ambitious office-seekers. The appointees bore a small proportion to those who were disappointed. These officers, being appointed for life, produced a degree of independence of public sentiment which, in the end, made the system responsible for giving such tenure, extremely unpopular, in a community where there had always been so much of social equality, and where men were

valued so highly for personal prowess and personal courage, and which latter, rather than efficiency, was considered the best ground for political advancement. This, coupled, too, with the preferment of the military element, which was both reasonable and proper in the early political history of Kentucky, left many thousands of ambitious men dissatisfied with the conditions of office-holding, then prevalent. In later days, there has been some criticism of the alleged preferment of the confederate element in Kentucky since 1866; but this, even, as magnified under political bias, can not approach the condition of affairs which existed for the first thirty-two years of State life.

From 1792 to 1824—thirty-two years—only military men were elected Governors. True, James Garrard, the second and third Governor, was a Baptist preacher; but the ground of his political preferment lay in his services as a soldier rather than in his ability and success as a divine.

The convention assembled on October 1, 1849. James Guthrie, of Louisville, was elected President by a vote of fifty, as against forty-three for Archibald Dixon, of Henderson. Thomas J. Helm, of Barren, was chosen Secretary, and T. D. Tilford, Assistant Secretary; and on the 3d of October, the regular business of the convention began.

Political divisions had been ignored in the selection of delegates. Ben Hardin and Charles A. Wickliffe, from different political parties, came from Hardin county; W. C. Bullitt and David Merriwether, of different political faith, came from Jefferson, and so, throughout the whole State, men and current issues prevailed, as against party action.

No convention ever assembled in America for the preparation of a constitution better prepared to discuss the principles of government. The perusal of the debates will show that both in statesmanship and scholarship, the body contained master minds, and that, to the discussion of all important questions, there was brought great intellectual vigor, high attainments and unquestionable patriotism.

Wide as were the differences on many subjects, they were handled in a spirit of courtesy and conciliation, and throughout the proceedings there is evident a sincere desire to do that which is best for the people and the State. It was marred by very few personalities, and these were all adjusted and ex-

plained in a manner worthy of men clothed with the power of proposing an organic law for a great commonwealth, whose sons were renowned for their chivalry as well as their courtesy.

Among the members were forty-two lawyers, thirty-six farmers, nine physicians, four merchants, three clerks, two preachers, one hotel-keeper and one mechanic.

Ample provision was made for the publication of the proceedings of the convention. William Tanner and John W. Finnell, on the third day, were elected printers. It was at first proposed to print six hundred copies of the journal, but this was overruled and the number left blank.

While one hundred men did the thinking, less than a dozen did the talking in the convention. After the expiration of thirty days, this prominence in debate of certain gentlemen came to be a source of much irritation and some criticism, and the growth of this feeling did much to shorten the session. Without disparaging the talents or wisdom of the delegates at large, the following-named gentlemen, if the report of the debates may be relied on, assumed the most prominent positions:

Charles A. Wickliffe was heard from	233 times.
'Squire Turner	129 "
William Preston	70 "
David Merriwether	100 "
Ben Hardin	183 "
Archibald Dixon	93 "
Beverly L. Clark	111 "
Garrett Davis	60 "
Richard D. Gohlson	76 "
John W. Stevenson	50 "

To make up, however, the general average, quite a number of gentlemen spoke once; and more than half a dozen of the others never spoke at all.

Without either criticism or unjust comparison, the candid reader must admit that Chas. A. Wickliffe, Garrett Davis, Wm. Preston, Jno. W. Stevenson, 'Squire Turner, Archibald Dixon, Ben Hardin, Jas. Guthrie, Beverly L. Clark, did more than any other individuals toward shaping the thought and action of the body. The debates show that the election of delegates had been marked by discussions of the more important questions to be considered, and that the expressed

views of the delegates on these various subjects had, in large measure, committed them to certain lines of action. As emancipation candidates were numerous throughout the State, and as both sides desired and sought the popular verdict on the question of slavery, and as less than a dozen members were elected who sympathized with emancipation in any shape, that question was well settled in debates on the hustings; and it was only left, with such practical unanimity, to determine how best to conserve the institution. The principal clause on this subject was taken almost verbatim from the Constitution of 1799, Article VII., Section 1, to which was added a new clause, prohibiting the immigration of free negroes into the State—same article, Section 2. It would be thought that this subject now was thoroughly settled by an appeal to the people; and, with their almost unanimous verdict in behalf of ample and complete protection to the slaveholder, little time or talk would have been required to dispose of the matter.

The growth of emancipation sentiments and the aggressive position in the campaign assumed by this party had caused a feeling of deep alarm among the pro-slavery element, and they fully resolved upon providing those measures which, for all time to come, in so far as human foresight could determine, should render the possession of slave property absolutely and utterly impregnable. The convention was of nearly one mind, but the method of accomplishing all this was the subject of earnest thought, careful study and elaborate preparation.

The great learning and transcendent genius of Garrett Davis was brought into requisition for this purpose; and, to further this end, he prepared a clause which was subsequently inserted in the Bill of Rights. To accomplish the ends he desired, words could not have been more fitly chosen. He proposed and wrote thus:

“ART. XIII., SEC. 3. The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same and as inviolable as the right of any property whatsoever.” This is interwoven with Section 2: “That absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority,” and with Section 4, same article: “That all power is inherent in

the people, and all free governments are founded on their authority and the necessity for peace, safety, happiness, security *and the protection of property.*"

These principles now set forth in the bill of rights and backed by the method adopted for the revision of the constitution, which rendered such an event apparently a political impossibility, accomplished and provided all that the learning, foresight, wisdom, prudence and ingenuity of man could devise, to stay the hand of governmental interference with human slavery.

One man, and only one, Martin P. Marshall, of Fleming, foresaw and forecast the future of this action. On the 8th of December, 1849, in discussing this question, he said: "I am aware that it is the wish of delegates to render more secure the rights of owners to certain property. I pledged myself at home to make no change on that subject in our constitution, except to provide for colonization as connected with future emancipation, so as to prevent the further increase of the free colored population in our State. I regret that excitement on that subject should cause so much discussion here; the people settled it at the polls. Resting upon the provisions of the present constitution, which should remain unchanged, and the justice and magnanimity of our people, the rights of slave-holders are entirely secure; and my conviction is that it is our duty to resist every effort to add to or take from the present constitution on that subject. And whilst gentlemen may honestly believe that they better secure that property by adding sections and declarations against the power of the people and future conventions to interfere with it, I am clearly convinced that they but weaken the tenure; they thus multiply and change issues and place themselves in a false attitude, and instead of contending against justice, propriety and manly right of interference with their property, they challenge the power of the people by asserting that such power does not exist. Power in the abstract is innocent and only productive of the qualities of good or evil as it may be put in practice. Then make no issue on the abstract question of power, but leave the question, as we find it, to the guards and sanctions of the present constitution and the justice and magnanimity of our citizens, and their response will always be such as will do credit to Kentucky character."

It may be the subject of surmise, as well as surprise, that this small treatise contains so much on the subject of a "dead issue." The answer is, that this subject is so interwoven with the constitutional history of Kentucky that it is impossible to write such history without such reference. It was a great question in 1792, again in 1799; and one-fourth of all that was said in the convention of 1849-50 bears either directly or indirectly upon the question of slavery.

With the termination of the objectionable election of governors and senators by electors in the Constitution of 1792, and while there was placed in the hands of the Governor this last appointing power, including changes in the superior and inferior courts, sheriffs, constables, coroners, justices, and all these received their commission from the Governor and held their offices, in most cases, during good behavior, it must be admitted that, for the first fifty years of the present century, Kentucky had an exceptionally good government outside of the laxity in the administration of justice where it affected human life. It is true that much of the legal machinery of the State, even after the Supreme Court lost its original jurisdiction as to land and had become appellate only, was, in that crude state, common to a community in which public opinion is really the supreme tribunal; but the Constitution was a popular one during the first forty years of its existence. Its defects were more than compensated for by legislators who respected themselves and were not for sale and could not be influenced. The series of governors compare favorably with those of any other State, and the courts below, regulated now by the Court of Appeals, that no longer had the temptation of dealing with facts at first hands, were models of incorruptibility that have made Kentucky cases, as to legal acumen and just principles, authority in all of the States, as precedents.

The convention of 1849 came together with the almost unanimous purpose, and with instructions from the people to abolish all provisions for patronage and to remit all elevation of office to the people themselves—the true source of power.

As there were at this time an even one hundred counties in the State, and, on an average, each county would have not less than twenty officials directly or indirectly appointed by

the Governor, there was a contingent of more than two thousand office-holders in the State, who held their positions by sanction of the appointing power. It argues well for the patriotism of the people of the State that, in the face of so many able and influential officials, it was possible to call a constitutional convention at all, the chief declared purpose of which, antecedent to the slavery agitation, was to destroy life tenure and insert in its place limited official terms, subject to popular suffrage.

During the ten years immediately preceding the assembling of the convention, the judiciary came in for a full share of sharp criticism. As there was no appeal in criminal cases from the judgment of the Circuit Court, the decisions of these tribunals in the several portions of the State lacked uniformity and evenness; and as each judge determined these questions of life and liberty absolutely for himself, and as his tenure "during good behavior" raised him above and beyond the reach of popular clamor or judgment, it was a natural outcome that rulings frequently became both arbitrary and unjust.

Then, too, under the Constitution of 1799, Article IV., Section 10, clerks of the several courts were appointed by the judges of such courts, and held their office "during good behavior." These absolute powers, coupled with official independence, produced much nepotism and favoritism, and so grave did this abuse become that, in some parts of the State, it affected the respect of the people for the judges themselves. Flagrant instances of appointments of this kind were many, and were discussed during the debates and statements then made by the members on the floor, justifying the extreme ground the present constitution took on that subject. The appointive method of all officers had been fairly tried for fifty years, and the men of 1849 and 1850 swung to the other extreme and placed all the offices within the State except two, under the direct control of the people at the polls.

The State, for a number of years, had carried on a system of internal improvements. It had undertaken to lock and dam Kentucky, Licking, Green and Barren rivers; to build two railroads and a large number of turnpikes. When the construction of turnpikes was commenced, there were only eleven miles of McAdam road in the State leading from Louisville

to Middletown. From these small beginnings has grown the vast, expansive and expensive system of McAdam roads which had made many parts of Kentucky the best roaded section in the world.

Under the impetus given internal improvement by State aid, there was expended :

On Kentucky river	\$901,932 70
On Licking river	372,520 70
On Green and Barren rivers	859,126 79
Total	<u>\$2,133,580 19</u>
On railroads, principally between Lexington and Louisville	322,553 00
On turnpikes	<u>2,525,456 15</u>
Making a grand total of	<u>\$4,981,589 34</u>

Laid out by the State in these several enterprises. These outlays had not produced the financial results that had been expected. Without modern appliances for constructing railways and turnpikes, the first cost had been very large, and the management, if economical, had not resulted in producing a dividend to the extent they anticipated.

The State debt at this time, exclusive of the school fund obligations, was \$4,497,652, which was to be credited by the value of bank stock, which was \$1,270,000.

While these expenditures were wise in their plans and had been of incalculable benefit to the parts of the State where designed, it became apparent that the State credit could not bear the strain necessary to carry on works of such magnitude in all parts of the Commonwealth; and, as discrimination against certain sections was bound to result under such methods, the jealousy of some localities had been aroused; and as panics, then of such frequent occurrence, had brought the credit of the State to the verge of ruin on more than one occasion, it was the almost universal verdict that the State, as such, should cease to lend its credit for internal improvements. It was, therefore, provided, Article II., Section 3:

“The credit of this Commonwealth shall never be given or loaned in aid of any person, association, municipality or corporation.”

The subject of representation consumed its full share of the

time of the convention. In the earliest of the conventions, called before the admission of the State into the Union, recognition had been made of the principle of representation based on population, thus breaking away from the doctrine which had always prevailed in Virginia, of representation by counties. Though the two former constitutions had framed this particular provision for representation based on the number of qualified voters, a strong contingency in 1849 demanded representation upon the basis of numbers pure and simple. There had not only been felt, but expressed, great alarm at the numerical growth of the counties along the Ohio river. Northern and foreign immigration had settled largely in this locality, and it was the general belief that such increase of this population would be inimical to slavery. There was a large portion of the convention that believed it was necessary, by some method in the constitution itself, to place the power of control, of the Senate at least, in the hands of the portion of the State not likely to be affected or influenced by this influx of population. The rapidly-increasing population of Louisville was cited as an evidence of this great danger, and what would necessarily happen in this regard within a very few years.

In 1831, the city of Louisville had been given separate representation; and, if this marvelous increase should be continued, it was argued that the influence of Louisville in a few years in State politics would be overweening. It was urged that, in 1785, it had contained sixty-three houses; in 1821, 4,112 inhabitants; in 1835, 19,967; in 1845, 37,218, and that the President of the convention, Mr. Guthrie, had stated on the floor that then (1850) the population of Louisville was 50,000. Then, too, Covington, Newport, Owensboro, Henderson and Paducah, it was prophesied, would increase with equal rapidity, and that, within a limited period, the bulk of population in Kentucky would lie in those counties which border on the Ohio river. The pro-slavery party frankly stated their fears and the grounds for those fears, and that the leaven of emancipation in this increased population might, in the end, overbalance the political influence which would conserve slavery in Kentucky.

Archibald Dixon, who so ably argued this subject in behalf of Louisville and the border country, said (page 483, Debates) :

"I put it in another point of view: Increase the State to 2,000,000 and the population of Louisville to 200,000, the number which she will not have within the next hundred years, perhaps, though I wish she might have; I glory in the prosperity of our State. But suppose she does; then how does it stand? There will be 200,000 against 1,800,000 in the State, and in the Senate three and eight-tenths against thirty-four and two-tenths. This is the sum and substance of the mighty uproar which the city is to make against the whole force of Kentucky, which amounts to nothing in the world—a mere man of straw which men have conjured up in their imaginations, by which they may destroy the great fundamental balance of the State." It may be observed that Dixon, while eloquent and able in the statement and argument, was not prophetic as to Louisville's future. After a discussion, much lengthened out and marked by the greatest ability, the question of representation was left where it was always under the Constitutions of 1792 and 1799, based on the qualified voters of any district, with the additional right of cities to distinct and equal representation in both the Senate and the House.

EDUCATION.

The subject of education was not reached until the 10th of December. Seventy days of the life of the convention had passed before this important question had been brought up. On November 6th a report had been made by Mr. Taylor, of Mason, the chairman of this committee—it had been referred to a committee of the whole. The first section of the report of the committee was as follows:

"SECTION 1. The diffusion of knowledge and learning among men being essential to the preservation of liberty and free government, and the promotion of human virtue and happiness, it shall be the duty of the General Assembly to establish, within — years next after the adoption of this constitution, and forever thereafter keep in existence, an efficient system of common schools throughout this Commonwealth, which shall be equally open to all the white children thereof."

The blank was filled with "five years;" and, thereupon, Mr. Hardin rose to discuss the question of education. He, together with many other able men of the convention, was

opposed to what is known as the common school system, and it resulted that the integrity of this system, under the opposition, could not be secured by the constitution itself on account of this opposition, and that, finally, a compromise was reached by which, while the school fund was maintained inviolate, yet the imperative provision for the establishment of a school system, outside of this particular fund, was not provided for.

In 1836 Kentucky had received from the General Government, for school purposes, on account of the distribution of surplus money to the older States who had had no land grants for educational objects, \$1,433,757. In 1837 the amount to be set apart for the educational system was reduced to \$1,000,000, and, in 1838, actually brought down to \$850,000. The State had executed its bonds for this amount, the interest upon which was to be used for the support of common schools. In 1840 the State refused to pay this interest, on the ground that as it was in the nature of a debt due to herself, there was no loss of credit in repudiating it or refusing payment. In 1845 an act had been passed requiring all the school bonds issued by the State to be delivered to the governor, to be burned in the presence of the auditor and treasurer.

This spirit of injustice aroused the friends of common schools, and in 1847-8 the Legislature passed an act requiring the governor to issue a new bond, and also providing for the submission to the vote of the people of an additional tax of two cents on the hundred dollars for schools. The bond was issued, and the people ratified the proposition for increased tax by a majority of 36,000. At the time of the session of the convention, there was due for school purposes, from the State, \$1,276,391.71, together with some accrued interest.

Upon this state of affairs the discussion of the common school clause began. It was opened by Mr. Hardin, who was unwilling to have any provision of this kind adopted into the constitution. He claimed that "the constitution now had all it could pack." He was in ignorance as to whether a majority of the votes had been cast in favor of the additional tax—two cents—and said: "In my county the sheriff never put the question fair until some time, I think, about the lat-

Debates of Conven-
tion, p. 881.

P. 882.

ter part of the second day. I then went up to him and told him to put the question fairly to the people, and let them understand it. I voted *no*, and as soon as I did, I turned around and explained the matter to the people, and divers men said to me that they regretted they had not understood it before they voted, and I think a majority, after that, went against it. I know my constituents do not want this in the constitution, and I know they did not understand the question. I am as perfectly certain of it as a man can be of anything in regard to which he has, to a certain extent, to indulge in conjecture. On the three cents proposed to be levied, we would pay, perhaps, \$1,500 or \$2,000, and yet we have never had a free school, nor will we ever have one, in Nelson county. * * * I have no opinion of free schools anyhow—none in the world. They are generally under the management of a miserable set of humbug teachers at best. * * * The worst taught child in the world is he who is taught by a miserable country schoolmaster, and I will appeal to the experience of every man here who ever went to those schools, to say how hard it is to get clear of the habits of incorrect reading and pronouncing they have contracted at these country schools. For myself, I will say, it cost me nearly as much labor as the study of the legal profession itself to get clear of this miserable mode of pronouncing, contracted before I went to a collegiate school at the age of seventeen—your would and could and should and all of that. I knew a man in Grayson who was to approve a settlement between two litigants in a case where some small amount—thirty, forty or fifty dollars—was involved. He gave in his testimony, and every now and then would throw in a word of four, five or six syllables, utterly inappropriate to the sense, like putting a magnificent quilted saddle and splendid bridle with a plated bit and curb upon a miserable, broken-down pony or an ox.”

P. 882.

“But as to how the teachers of these free schools in these towns and cities take care of the morals of the scholars, male and female, I would like my friend from Louisville (Mr. Rudd) to give his experience. According to what he told me, it would be a most melancholy tale which he would relate. Now, Kentucky embraces over forty thousand, five hundred square miles, and free schools can not educate

scholars upon a larger theater than nine square miles; and if we scatter them all over the State fairly, it would require a number of schools beyond what the means of the State, after paying the expenses of government, could provide. Not less than forty-five hundred free schools would be required; or, if we do not do that, the result will be, that the poor and thinly peopled counties, although taxed for, would not have the benefit of these free schools; that will be the result. I would not send a child to a free school, and would rather pay for his education myself. At this day I send some half dozen children to the Methodist or Catholic colleges, and would far rather do that than see the poor children thrown into these miserable free schools; and everybody who knows me knows that, besides my own children, I am at all times educating not less than five or six others."

Mr. Hardin then could not foresee that, within twenty-one years from the time he uttered these words, Kentucky would have over five thousand common schools taught within her forty thousand, five hundred square miles, and would expend close to a million of dollars for their maintenance; and forty years from that time the State would expend \$1,492,279.80, and would have maintained at public expense more than 7,800 of these common schools. That, in this brief period of the State's life, the ablest and most learned teachers in the land would not only consecrate themselves to the cause of this common school education, but their positions in these common schools would be sought and held as high and better and grander fields of usefulness, as well as more certain of remuneration, than any private school which could be organized.

Larkin J. Proctor, of Lewis county, threw down the gauntlet to Mr. Hardin in defense of the education of the masses. He not only contended that the adoption of this provision of the constitution for the permanent security of the school fund was demanded by the people, but was demanded by all lovers of free government and intelligence and virtue; that the members of the convention were engaged in making a constitution which was to be thoroughly democratic in all its operations; that they were throwing back into the hands of the people all political power, and that it was essential now to secure to these people and their posterity, the means of

Debates of Convention, p. 886.

P. 887.

giving their children the blessings of an education in order that they might be qualified to discharge the duties that might devolve upon them. He said : " While, however, these great and important truths are recognized and admitted by all, it is to be feared that gentlemen are not practically alive to the important influence of these truths on the operation of our government. The gradual extension of the privilege of free suffrage in the provisions of the constitution which we are about to adopt, and which is to place in the hands of the people the selection of every officer of the government, imposes on the members of this convention the solemn duty of making a corresponding effort to extend these great privileges, the light of knowledge and the means of cultivating the minds of those who are to come after us. For, sir, if we mean to preserve our free institutions, we must watch over them ; we must learn to know and number our great political rights ; we must study the tenure by which we hold them, and we must also qualify ourselves to discern from afar off the dangers that threaten us—for the rights and liberties of man are always in danger from some quarter."

Debates of Convention, p. 889.

So great a man as Chas. A. Wickliffe was not in harmony with the common school system. He says :

"I am opposed to adopting as a part of the constitution this common school system. * * I use the term 'common' as opposed to individual or private schools."

Mr. Taylor, the chairman of the committee, made a superb speech upon this subject. He did not claim the paternity of the resolution ; he gave it to T. J. Hood, the delegate from Carter. He says :

Debates of Convention, p. 891.

"There are in Kentucky ninety-one thousand children whose parents are mostly unable to educate them, and yet we are beseeched not to interfere. Great God ! can it be possible that we shall be non-combatants in the great battle of life—for knowledge is life. I ask if gentlemen can look upon this barren and unproductive field and not desire to plant and nurture within it the tree of knowledge (perhaps of life also), to lead through it those fountains of living water which slake not, but rather increase the thirst of him who drinketh ? Who does not desire to cast upon this still and unfruitful pool, bread, with the cheering assurance that it shall indeed be gathered after many days ? To sow broadcast over this land the seeds

of knowledge which shall germinate and produce forever? With the startling facts presented in this report of the second Auditor, how can gentlemen hesitate about the absolute necessity of a constitutional provision for some system of general education? It can not be that this convention will adjourn without the expression of some solicitude on this great matter. We have been told by the gentleman from Nelson (Mr. Hardin), that the Catholics are opposed to this system of common schools, and that if we put it in the constitution they will oppose its adoption. * * Sir, I do not believe it. I will not do them the injustice to believe this imputation upon their patriotism and intelligence. * * They will not send their children, 'tis said, to free schools. Be it so. Let them educate their own children; they have the right to do so, and the ability, too. Is that any reason why the friends of education should neglect to provide for such a system of public instruction as will hang up at every man's fireside the lamp of knowledge? * * We have erected the lamp—if I may use the figure—like the brazen serpent in the wilderness, and invited every man to look and live, and if he will not, we have the consolation that it is not our fault or our neglect.”

Mr. Root, from Campbell, made one of the most eloquent and entertaining speeches of the whole convention on this subject. He went back at Mr. Hardin in the most vigorous language:

“Would to God that the powerful talents of the gentleman from Nelson—for his talents must be felt wherever he may take a part—could have been exerted, at this late hour of his life, upon one of the greatest and most ennobling theaters that would crown every other act of his honorable career. Sorry am I, as he is about to descend to his grave in the due course of nature, that this venerable man should endeavor to put out the lights which are destined to cheer us along our pathway. And for what reason? Is it to be borne with? Is it to be tolerated, that in this crisis of affairs in Kentucky, that by mere fun, or the recital of anecdotes that may be true—for if the gentleman vouches for it, I am bound to believe it—we are to be diverted from the fulfillment of our purpose, because the gentleman has found one solitary schoolmaster who supposed there were thirty-nine days in September—which fact is enough to create laughter among the un-

Debates of Convention, p. 893.

Debates of Convention, p. 894.

thinking, and it might do to relate at some cross-road by way of perpetrating a joke—but would it be right if it were to have the effect of cheating the great mass of children, now born and to be born in the Commonwealth, out of their birth-right? If there be one subject higher than another, one subject holier than another, one subject that calls for more intellectual exertion than another, it is to plant the common school system in Kentucky permanently and upon a sure basis.

“I call on the Democrats now in the majority in this body, and I call upon the Whigs, who, in times gone by, stood up for education; and I call in the name of the mighty dead, whose sentiments I have uttered to-day, to come up and dedicate the fund. You will make your constituents all-powerful; you will make them rich in all that is virtuous and glorious, and you will aid in the perpetuation of human liberty. Let him who chooses dodge this question.

“In conclusion, permit me to say, if there is a delegate here who wishes to erect a monument to his name more enduring than brass, more lasting than the eternal hills, let him devote the few hours remaining of this session, if it be necessary, to the advocacy of the establishment of a school fund which shall throw light and knowledge to the darkest corners of the Commonwealth, and gladden the heart of every mother and child in this land. * * * Leave this subject to the Legislature, judging from the past, the schools will never go into operation, and the fund will be squandered and re-squandered, abstracted and re-abstracted, and nothing will be permanent. * * *

P. 895.

“Here we have a learned body of men understanding the great interests of the Commonwealth; now strike for the interests of your constituents and my word for it, if you die politically in the attempt to do the people good, your praises will be echoed and your names eternized when new generations shall arise and call you blessed.”

William B. Machen, afterward United States Senator, also took grounds against this constitutional provision. Dr. William K. Bolling, from Logan, made a magnificent oration for the common school clause. He says:

P. 897.

“But the gentleman from Caldwell (Mr. Machen) would not force the State to pay the interest on this national gift,

made sacred by a solemn act of the Legislature forever, to educational purposes. He thinks it might be inconvenient. That is her concern, not mine. It will not be denied that she justly owes the money, for she has, through her Legislature, ordered the evidences of the debt to be listed. A listed debt, I understand from the lawyers, is not assignable, and, therefore, does not require the baptismal fire to stave off its payment until a more convenient season. * * But, sir, let these hundred chosen delegates go home and tell the anxious thousands that will greet their return, that a part of our labors here insures to the descendants of this land of heroes and of song the keys to the temple of knowledge; that henceforth, under the new organization, schools are to spring up in every neighborhood, and to be as free as the gush of waters from the mountain rock. * * Tell them that the mountains and the valleys and the plains of this heavenly heritage are to be studded with school-houses, which, like the temples of the living God, are to be free to all, without money and without price. Tell the children of the poor and unfortunate that hope, heretofore that mystic shadow of good which receded as they advanced, and whose home was the fabled terminus of the rainbow, has been made to receive substantive proportions and to become a smiling reality. Tell them that the fountains of living water have been opened up, in which the budding desire for knowledge may lave its thirst, and where all are invited to come and partake freely. Let this be told them, sir, and a voice redolent of thanksgiving and benediction will go up from half a million of the best of our people, to the God of the widow and fatherless."

T. J. Hood, of Carter, a lawyer, a man of strong mind also, was one of the champions of this constitutional provision for the common school system. He said:

"We are also admonished by that same gentleman (Mr. Hardin) and others upon this floor, to leave the school fund, and the proceeds of the school tax, to the guardian care and tender mercies of the Legislature. Sir, the experience of some eleven years has demonstrated to the people of Kentucky the necessity of placing that fund upon more elevated ground, and of securing it against that rapacious spirit of legislation which has not hesitated to lay violent hands upon it whenever an emergency seemed to require a prostitution

P. 912.

of its means. The general principles of this report, as I before remarked, meet my cordial approbation. It consecrates and forever establishes the school fund, and places its principal beyond the reach of legislative abuse, while at the same time it secures the faithful application of the interest to the education of the children of all classes of society. * * * Under the benign auspices of these extended means for intellectual development, we shall see loom out from every city and country, from lowland and mountains, many an intellectual giant, with names gilded with no phosphoretic aureola borrowed from a distinguished ancestry, but with minds 'swelling with energies,' fresh, free, native and vigorous, and owing their attractions and power alone to their own masculine proportions. Then, indeed, will Kentucky become what I would have her—as distinguished for the virtue and intelligence of her citizens as she is for the chivalry of her sons and the beauty of her daughters."

The present Article (XI.) on Education was the outcome of this discussion, and was reached after several days' debate.

One of the most remarkable proceedings of this convention was the action in regard to newspaper reporters. The Louisville *Courier* had sent H. M. McCarthy—who later has occupied many offices of honor, and who is now one of the brightest and ablest of Kentucky editors—to Frankfort, for the purpose of reporting for that paper.

On the third day, Mr. Preston, of Louisville, offered the following resolution:

"Resolved, That H. M. McCarthy, reporter for the Louisville *Courier*, be admitted to the floor of this convention and have the privilege of the reporter's desk."

Mr. Preston said he presumed there would be no inconvenience attending it, and he hoped this privilege would be extended to this gentleman. In this presumption, it seems Mr. Preston was mistaken.

Mr. Chas. A. Wickliffe asked to postpone. He suggested that if this resolution be passed, every reporter from every paper in the State, who might present himself, would be entitled to the same privilege, and he thought it worthy of consideration how far this privilege ought to extend; that he feared conflicting reports in the different papers; that, if conferred upon one whose application was before the body, it

would have to be extended to all others; there could be no distinction; therefore, he hoped the resolution would lie over.

Mr. Preston, in response, suggested that he would willingly consent to the proposition to lie over, but he thought it might as well be settled at that time; that important matters would arise later on which might debar this consideration; that Congress had a great many reporters and there could be no inconvenience from reporters being on the floor; that while the convention had its official reporter, it was probable two or three papers in various parts of the State would ask this privilege, and that their co-operation would assist the official reporter in giving a correct statement of what was done. Mr. Preston declined to consent to a postponement of the vote, and the vote was taken upon the resolution and was rejected; and thus the *Courier* reporter was shut out from the privileges of the House. Mr. Preston called for the yeas and nays on this vote, but the Chair decided that the call came too late.

Mr. Merriwether suggested that there was no necessity for the admission of the reporter, because by subscribing to the *Daily Commonwealth*, the *Louisville Courier* could obtain all the reports as quickly as by having its own reporter and at as early a period, for the *Daily Commonwealth* would reach Louisville by the same mail by which the communication of the reporter would be forwarded; that Mr. Preston was mistaken as to the number of applicants, for he already had three made to him. Mr. Bullitt likewise opposed the proposition, claiming that there was no necessity for granting the privilege; that if they admitted one, they must admit all; that this would be troublesome and annoying.

Mr. Turner said: "I believe I shall vote for this man having this privilege, though rather against my judgment, for I believe that the newspaper for which the privilege is asked is an emancipation paper and I wish to let him tell all he can."

The motion for a reconsideration laid over until the following day, the 4th of October, when, by a vote of seventy to twenty-seven, the *Courier* reporter was finally debarred from the courtesies of the convention.

Times have changed since 1850, as the members of all such conventions now would not only be ready, but anxious, to

grant to all reporters of all papers the opportunity to secure for the public the proceedings of the convention, and to give them the widest publicity possible.

It will be observed that, at least, in so far as the proper use of newspapers is concerned, there has been aggressive education among the statesmen of Kentucky during the past forty years.

The dueling clause, new in the constitution, produced earnest and able discussion. In 1811 the Legislature had passed a law against dueling, which was brought down intact to 1850; and, while this was stringent enough in its provisions, it had been found in practice that public sentiment had not been educated sufficiently to permit brave men to decline a challenge. Great care had been exhibited by Ben Hardin and Solomon Sharp in the preparation of this law, but it had failed to correct the evil. Several instances of death under the dueling code in Kentucky, and in duels fought by Kentuckians, had greatly shocked public sentiment, and a large proportion of the more conservative public men in the State felt that statute law was inadequate for the eradication of this practice. It was believed that a constitutional provision, which should go beyond the reach of legislative modification, and which should add to other fines and penalties, disqualification for office, could alone remedy this evil. Accordingly, a Committee on General Provisions, of which John W. Stevenson was chairman, brought in, as the best means of controlling this subject, the last clause of Section 19 of General Provisions, which provided that all members of the Legislature and all officers, before entering upon the execution of their duties, and all members of the bar, before entering upon the practice of their profession, should swear that since the adoption of the present constitution they had not fought a duel, sent or accepted a challenge nor acted as second in carrying a challenge, or aided or assisted any person thus offending. And, as a further safeguard in this direction, it was provided by Section 20 of the General Provisions, "that any person who, after the adoption of the constitution, should either directly or indirectly give, accept or knowingly carry a challenge to any person or persons to fight a single combat with a citizen of the State, either in or out of the State, should be deprived of the right to hold any

office of honor or profit, and should further be punished as provided by law for such offenses."

While almost every man in the convention felt that dueling was a great wrong, and that extreme measures should be used to stamp out the evil, there was an able, as well as an earnest, protest against these stringent provisions. It was argued that, in the first place, to single out the crime of dueling which, whatever might be its wrongs, always secured a fair and equal combat, as worthy of most condign punishment, and that it alone should become the unpardonable offense, and forever disqualify a man from holding any office, was such a punishment as public sentiment could not and would not justify; that any such provision could not be enforced; that dueling had a tendency to make men observe more thoroughly the conventionalities of life; that it was far better than street fights or assassinations; that it was an interpolation of criminal law into the constitution; the crime and the punishment were disproportioned; that man should be taught to hold that the highest principles of honor pervade society, and to defend his character and reputation as dearer than life; and that it operated as a restraint on bullies in high and public life, who might take advantage of this law to insult people with impunity; that all the safeguards thrown around dueling, and the time necessary in making preparations, gave opportunities for conciliation; and that the true remedy was in the amelioration of public opinion by an efficient administration of the laws then in force. Wm. C. Bullitt, A. K. Marshall and Wm. Preston made the principal arguments on this side of the question, and these names are sufficient guarantee of ability and honesty of purpose. Wm. Preston not only in this convention, but elsewhere, has abundantly demonstrated that he was one of the greatest "all-around" men Kentucky has ever produced; W. C. Bullitt, with a naturally strong and judicial mind, had added much culture, and A. K. Marshall, who inherited a reasonable share of both the brilliance and genius of that illustrious family from which he descended, loaned their names and talents to the opposition. It was finally decided by a vote in favor of the provision—sixty-two for, twenty-eight against. Voting in the negative were some of the best men in the convention, among them Mr. Guthrie, W. C. Bullitt, Beverly L.

Clark, Nathan Gaither, Thos. J. Hood, Geo. W. Johnson, Chas. C. Kelly, Alex. K. Marshall, Thomas P. Moore, Philip Triplett and Chas. A. Wickliffe.

Later on in the session, after these provisions had been passed by this full majority, as a modification of the apparent severity of this constitutional legislation, John D. Taylor, of Mason county, moved to add an article to the General Provisions, providing that the governor should have the power, after five years, to pardon all persons who should in anywise participate in a duel, and to restore them to all the rights, privileges and immunities to which they might be entitled before such participation. This was passed by a vote of fifty to thirty-nine.

It can not be doubted, in the light of observation and experience, that the framers of this provision of the constitution acted wisely. It will be conceded on all hands that the people of Kentucky are marked by an unusual degree of sensitiveness on the subject of their character and reputation. Men who have lived under the influence of a popular demand for the exhibition of personal courage on every occasion where public sentiment required it, can readily understand that it would require more than ordinary moral and physical courage, in the face of a mere statute, to decline to fight a duel in Kentucky with a social equal. After forty years under this constitutional prohibition, this sentiment, which justifies a man in seeking personal redress for specific difficulties and personal wrongs, has not altogether died out, and, while in calmer and juster moments, ninety-nine-hundredths of the people of Kentucky may condemn the spirit which animates her people in this regard, and prompts men to resent an insult irrespective of consequences, as unhealthy and vicious; yet few men have ever risen higher than public sentiment on this subject, and it will require another generation of education to reduce this anomalous condition of opinion to a proper and normal state.

The popular vote calling the constitutional convention had been one of extreme unanimity. The reasons have heretofore been given which secured and prompted this large vote in favor of remodeling the organic law of the State. But the convention was full of able men, with fixed and pronounced and, in many instances, extreme views on some of the ques-

tions to be considered. All parts of the State had not voted or instructed alike on the same question. On quite a number of leading subjects reasonable unanimity was alone attainable upon compromise and conciliation. This was principally true of the questions affecting the courts, representation and its apportionment, and matters relating to taxation; but the courtly spirit, the deferential consideration of the wishes of others, and the readiness to yield in non-essentials, manifested by all the leaders of this convention, will strike the reader of the debates with great force and power, and will certainly create in the mind admiration and esteem for the character and attainments and courtesy of the men who wrote the Constitution of 1849-50.

Commencing on the 1st of October, 1849, the convention adjourned on the 21st day of December, to meet again in Frankfort on the first Monday in June, 1850. By the terms of the Schedule, Section 4, it was provided that the Governor should issue his proclamation directing an election to be held on the first Monday and Tuesday of May, 1850, "for the purpose of taking the sense of the good people of the State in regard to the adoption or rejection of the constitution, and requesting—Section 5—that the General Assembly, now about to assemble, be requested to make all necessary provisions by law for the proper carrying out of the submission of the new constitution to the people of the Commonwealth.

All the members present signed this first draft of the constitution except Garrett Davis, of Bourbon, whose views upon the subject of elective judiciary were such that he felt he could not conscientiously attach his signature to the instrument. He therefore resigned, and Richard H. Hanson was elected in his stead, but Hanson did not sign the constitution until after its ratification by the people.

On the 1st of March the Legislature by law provided for a special election on the first Monday in May and following Tuesday, to take the sense of the people on the adoption or rejection of the constitution. At the election held in May, on Monday the 7th and continuing through Tuesday, the constitution was adopted by a majority of fifty-one thousand, three hundred and fifty-one. Seventy-one thousand, six hundred and fifty-three votes were cast, and of these, twenty thousand, three hundred and two were against the new or-

ganic law. On the 3d of June the convention reassembled at Frankfort. In the meantime, four new delegates had been elected to fill the vacancies. These having been duly sworn in, the convention proceeded to business, after adopting several amendments which were never submitted to the people, and which were, therefore, declared as part of the constitution by the convention without any reference to public vote.

During this period the convention adopted some changes in the Schedule, and added Section 26, Article VIII., and they also inserted the ordaining clause as follows: "We, the representatives of the freemen of Kentucky, in convention assembled, in their name and by the authority of the Commonwealth of Kentucky, and by virtue of the powers vested in us as delegates from the counties respectively affixed to our names, do ordain and proclaim the foregoing to be the Constitution of the Commonwealth of Kentucky, from and after this date." After this, the signatures of all members present were again attached. Richard H. Hanson signed for Bourbon in place of Garrett Davis. W. W. Blair signed for Fleming in place of Martin P. Marshall and Selucius Garfield, who had originally represented Fleming. Jas. D. Allcorn signed for Pulaski, in place of Milford Elliott, who had originally represented that county; and Daniel J. Stevens signed for Breckinridge county, in place of Henry Washington, who signed the original instrument.

Thus, after exactly fifty years of existence, the Constitution of 1799 was set aside, and amid the plaudits of the people and the approval of their constituents, the delegates ordained the Third Constitution of Kentucky.

CONVENTION OF 1890.

As early as 1867, Governor Stevenson, in his annual message, suggested to the Legislature the propriety of calling a convention to take the sense of the people as to the revision of the constitution.

Nothing, however, was done until December 18, 1873, when an act was passed "to take the sense of the people of

this State as to the propriety of calling a convention to revise the constitution." On December 4th, previously, a committee of nine had been appointed from the Senate and House to consider the question.

On February 4, 1876, a law was passed by which commissioners were appointed by joint resolution, to compare the vote and ascertain the result.

On the 19th of January, 1878, an act was passed "to take the sense of the people of the State" on the same subject. On April 9, 1878, a law was passed to provide for counting the votes, and on May 6, 1880, a further act was passed to provide for the counting of all votes in election and taking the sense of the people of the Commonwealth as to the calling of a convention.

On January 19, 1880, another act was passed entitled "An Act to take the sense of the people of this Commonwealth as to the propriety of calling a convention to revise the constitution and to regulate the manner of taking the list of qualified voters." See Assembly Acts, 1879-80, page 2. On the 7th of January, 1882, another act was passed, see Assembly Acts, 1881-82, vol. I, page 6, entitled "An Act to take the sense of the people of this Commonwealth as to the propriety of calling a convention to revise the constitution and to regulate the manner of taking the list of qualified voters."

On the 19th of January, 1884, still another act was passed on this subject. See Acts 1883-84, vol. I, page 4, entitled "An Act for taking the sense of the good people of this Commonwealth as to the necessity and expediency of calling a convention to amend the constitution and to ascertain the number of persons entitled to vote for representatives."

Although the Legislature had now proceeded with the utmost diligence and untiring pertinacity, in the endeavor to secure a revision of the constitution, it became apparent that under the system of returns made by the assessors upon which the vote must be based, it would be impossible to secure a sufficient number of voters to justify the calling of a convention by the Legislature. In the meantime, the subject had been widely discussed. Quite a number of able men had suggested and insisted that under the inherent powers possessed by every people, they had a right, as declared by the constitution of Kentucky, Article XIII., Section 4: "For the ad-

vancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper ;” and the Legislature was both justified and required by the exigency of the case, in calling a convention without further submission, under the provisions of Article XII. of the present constitution. Article XII. provided that a convention should be called only “when it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives did not vote for calling a convention, a convention shall not then be called.” As there are always a large number of stay-at-homes among the voters of Kentucky, after ten years of patient effort, it became apparent that if the number of citizens entitled to vote for representatives were to be determined by the assessors’ returns made to the Auditor, as the assessors were paid at so much per head, it would be impossible, at any time, to secure a majority of all the citizens entitled to vote for the proposition.

The Legislature, seeing the failure of these repeated efforts, undertook to provide some more accurate and specific method for determining who were entitled to vote for representatives. This was presumably under the last clause of Article XII. in the constitution, which declares :

“And for the purpose of ascertaining whether a majority of the citizens entitled to vote for representatives did or did not vote for calling the convention as above, the General Assembly passing the law authorizing such vote shall provide for ascertaining the number of citizens entitled to vote for representatives within the State.”

In accordance with these provisions, on the 18th of January, 1886—see Session Acts, 1885-6, vol. I., page 1—an act was passed “for taking the sense of the good people of this Commonwealth as to the necessity and expediency of calling a convention to amend the constitution, and to provide for ascertaining the number of citizens entitled to vote for representatives within this State.” It was; therefore, provided, that in 1887, at the general election, polls should be opened; and in order to ascertain the number of citizens entitled to vote, a registration book should be provided and delivered to the officers of election, in which the officers of election should record the names of all citizens entitled to vote for repre-

sentatives within this State at the said election. The officers of election were *ex-officio* officers of registration; and it was made the duty of all citizens who should vote in August, 1887, to cause themselves to be registered on the poll-book, thus provided, as qualified voters; and the names of any and all citizens living in the district, known to said officers to be entitled to vote for representatives, or made known to them by evidence on that day, should be registered as not voting. And in order to fully meet the necessities of the case, it was further provided, that no other officers should be authorized, in the year 1887, to make any list or return of the qualified voters of the Commonwealth; and all laws requiring this list, or returns of the qualified voters, so far as the year 1887 was concerned, were repealed. And it was further provided, that "the total number of voters, thus registered by these officers of election, should be the true number of citizens entitled to vote for representatives within the State, for the purpose of ascertaining whether a majority of the citizens of the State, entitled to vote for representatives, voted for calling a convention for the purpose of readopting, amending or changing the constitution."

The registration books under the foregoing act were required to be sent, at the expense of the State, to the Secretary of State at Frankfort.

While this act may not have been in the exact spirit of the Constitution of 1849-50, yet it must be admitted that it was drawn with great skill as well as great ability, and would, if such a thing were possible, accomplish the result of securing a fair expression of the voters of the State on this subject. It produced the result that was expected, and showed that a majority of the people of the State desired the calling of the convention.

Accordingly, on the 20th day of January, 1888 (see Session Acts 1887-88, vol. I., page 4), a further act was passed in substantially the same terms, providing for "taking the sense of the good people of this Commonwealth as to the necessity and expediency of calling a convention to amend the constitution." Of 300,339 registered votes, 175,362 were in favor of the convention.

This act recited that it appeared from the returns of election that on the first Monday in August, 1887, now on file in

the office of the Secretary of State, "that a majority of all the citizens of this State entitled to vote for representatives voted for calling the said convention; and whereas, the constitution provides that, at its next regular session preceding such election, the General Assembly shall direct that a similar poll shall be opened and returns made at the next general election in said State for representatives." Thereupon, in 1889, a second election was held and resulted in another verdict of the people, which vote was ascertained in exactly the same manner as had been done in 1887; and out of the 296,700 registered voters, 180,280 declared themselves for a convention. Acting upon this authority, and thus with the approval of the people, on the third day of May, the Legislature passed an act calling a constitutional convention for the State of Kentucky, to meet on the second Monday in September, 1890, in Frankfort for the purpose of "readopting, amending or changing" the present constitution.

More than forty years have passed since the present constitution went into effect. Of the one hundred and four men who took part in the proceedings of that distinguished body, according to one of its members, only three remain. The youngest man of that assembly would now border close upon three score and ten. The widely accomplished Preston, the philosophic Davis, the broad and cultured Wickliffe, the forcible Hardin, the sagacious Guthrie, the eloquent Dixon, ~~the versatile Clark~~, the versatile Clark, the impartial Bullitt, have all passed away, and a generation of men who know them mostly only through tradition or history have come upon the stage, and are now charged with Kentucky's destiny, and are called upon in her name and for the welfare of her people to solve the constitutional problems of the closing years of the nineteenth century. Since these, our constitutional forefathers, have met, the nation has passed through a great civil war, in comparison to which the other wars of modern days sink into insignificance. Three millions of American freemen have met in deadly conflict, and the soil of Kentucky, once red with the blood of her sons, shed in Indian contests, has been reddened with blood shed by brothers in this tremendous national struggle. More than one hundred thousand of Kentucky's sons, upon one side or the other, have marched to the scenes made illustrious and

forever memorable by the courage and skill of both contestants; and from and through all this the nation has come, greater and grander and more patriotic than ever before.

Slavery has gone never to return, and with none to desire its return. In the march of progress, Kentucky has kept step with the advancement of the period. She has added more than a million to her population; she has extended her means of communication, and her vast and tremendous resources, now for the first time known and appreciated, has entered upon a career of prosperity and development which will result, within a quarter of a century, in making her one of the wealthiest and most populous States in the Union. The money and the enterprise, not only of this country but Europe, are now turning toward this Commonwealth. Investments in the year 1890 will be fifty times what they were in 1850, and in 1900 the wealth of the State will, without some woeful change in the political history of our country, be double what it is to-day.

Facing these momentous problems, which will affect the comfort and destiny of a great State, toward which the hearts of its sons always turn with love, admiration and affection, with the past secure and the future so brilliant with promise and hope, the men of 1890 gather in the name of the State, and with the combination of the wisdom of its chosen delegates, to frame a new organic law, and to elaborate those principles which must control and direct legislative action, individual rights and State prosperity for a century to come.

After seventeen years of enacting the expediency and necessity of this convention, the goal has been reached at last, and the history of future years must decide whether the patriotism and accomplishments of the men of the later generation, under the changed circumstances, are equal to those of the generation now gone.

CHAPTER 1237.

AN ACT

TO CALL A CONVENTION TO ADOPT, AMEND OR CHANGE THE
CONSTITUTION OF THE STATE OF KENTUCKY.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ 1. That a convention be, and the same is hereby, called for the purpose of readopting, amending or changing the Constitution of this State, to be held in the city of Frankfort, the capital of the State, commencing on the second Monday in September, one thousand eight hundred and ninety, and continuing from day to day till the business thereof be completed, with power to adjourn and reassemble at such times as it may deem proper. Said convention shall consist of as many members as there are of the House of Representatives and no more, who shall have the qualifications of an elector for representative. Said members shall be apportioned among the several counties of the State, in the same manner and proportion that representatives now are by the law as it now exists.

§ 2. That it shall be the duty of the sheriff and other returning officers, at the election to be held on the first Monday in August, one thousand eight hundred and ninety, to open a poll at their several places of voting for delegates to said convention, and all citizens entitled to vote for representative shall have the right to vote for delegate.

§ 3. That the sheriffs, judges and clerks of the county courts of the several counties shall, upon comparison and count of the votes, within ten days after the election of delegates to said convention, deliver to each person who shall have been elected a delegate a certificate of his election as such; and they shall, within twenty days after said election,

transmit a copy thereof to the Secretary of State, which certificate shall be in the following form, namely: "Be it known to all whom these presents shall come, that we, ———, sheriff, and ———, judge of the county court, and ———, clerk of the county court of ——— county, by an election held on the first Monday in August, one thousand eight hundred and ninety, by the electors of said county, qualified according to law, caused to be chosen ——— for said county, to represent the same in the convention to be held in the city of Frankfort on the second Monday in September, one thousand eight hundred and ninety, for the purpose of readopting, amending or changing the Constitution of this State. Given under our hands this, the ——— day of ———, one thousand eight hundred and ninety;" *Provided*, That in case of the resignation, inability to serve, or death of any member who may be elected a delegate to said convention, the Governor shall, upon information, issue a writ of election to the sheriff of the county where said vacancy may occur, directing and authorizing him to hold an election in ten days after the receipt of said writ to fill any vacancy so occurring.

§ 4. The convention when assembled, after taking the oath of office as prescribed by the Constitution, shall elect one of their number president, and may elect a secretary, assistant secretary, printer, stenographer and assistants, and such other officers and employes as they may deem necessary and proper. The delegates shall receive as compensation the same allowance per diem and mileage as is now allowed by law to members of the House of Representatives, but shall not be paid for any recess longer than five days at one time. The president, officers and employes shall receive as compensation such as may be fixed by said convention. The compensation to the delegates, president, officers, et cetera, shall be paid by the Auditor and Treasurer in the same manner as now provided by law concerning the pay of members, officers, et cetera, of the House of Representatives.

§ 5. That the sheriff and other officers of the election shall be liable to all such fines and penalties for failing to discharge the several duties imposed by this act as are now imposed upon them by law for a failure to perform their duty in conducting other general elections; and all persons who shall be found guilty of casting illegal votes for delegates shall be

liable, upon conviction, to all the fines and penalties now provided by law for illegal voting.

§ 6. That when two or more counties vote together in the election of a delegate, the sheriffs of said counties, after the votes of each county shall have been compared and counted in the manner and by the officers hereinbefore provided for, shall meet at the court-house of the county polling the largest number of votes, within ten days after the comparison and counting in each county; and said sheriffs shall then compare the returns from said counties and shall jointly give the certificate hereinbefore described to the delegate elected.

§ 7. The said sheriffs, county judges and county clerks shall be governed by the said laws now in force regarding the comparison of the polls for representatives.

§ 8. The said convention, when assembled, shall have authority to cause to be printed, at the cost of the State, all such of its debates and proceedings as it may deem proper, and it shall be the duty of the State Librarian to furnish a hall for the meeting of said convention, and all such committee rooms as the business of the convention may require, and each member of said convention shall be allowed the sum of twenty-five dollars for stationery, to be paid as herein provided for as to other allowances for them.

§ 9. In case the right to a seat in said convention, by any delegate who holds a certificate of election, is contested, said convention shall decide such contest, and testimony shall be taken in the same manner and the same proceedings had as in case of a contest as to the seat of a representative; and in case of a tie, the Governor shall issue a writ of election as provided for herein in case of a vacancy.

§ 10. That before any constitution agreed upon by said convention shall take effect or become operative, the same shall be submitted to the qualified voters of this Commonwealth, after at least ninety days' notice, and ratified by a majority of those voting.

§ 11. This act shall take effect from and after its passage.

APPROVED May 3, 1890.

PART II.

MAGNA CHARTA.

THE GREAT CHARTER,

(TRANSLATED AS IN THE STATUTES AT LARGE).

MADE IN THE NINTH YEAR OF KING HENRY THE THIRD, AND
CONFIRMED BY KING EDWARD THE FIRST, IN THE
FIVE-AND-TWENTIETH YEAR OF HIS REIGN.

EDWARD, by the grace of God, King of England, Lord of Ireland, and Duke of Guyan: to all archbishops, etc. We have seen the Great Charter of the Lord Henry, sometimes King of England, our father, of the Liberties of England, in these words:

“HENRY, by the grace of God, King of England, Lord of Ireland, Duke of Normandy and Guyan, and Earl of Anjou: to all archbishops, bishops, abbots, priors, earls, barons, sheriffs, provosts and officers, and to all bailiffs and other our faithful subjects, which shall see this present Charter, greeting: Know ye that We, unto the honour of Almighty God, and for the salvation of the souls of our progenitors and successors, kings of England, to the advancement of Holy Church and amendment of our realm, of our mere and free will have given and granted to all archbishops, bishops, abbots, priors, earls, barons, and to all freemen of this our realm, these liberties following, to be kept in our kingdom of England forever.”

CHAPTER I.

A Confirmation of Liberties.

FIRST, we have granted to God, and by this our present Charter have confirmed for us and our heirs forever, that the Church of England shall be free, and shall have all her whole rights and liberties inviolable. We have granted also, and

given to all the freemen of our realm, for us and our heirs forever, these liberties, under-written, to have and to hold to them and their heirs, of us and our heirs forever.

CHAPTER II.

The Relief of the King's Tenant of full Age.

If any of our earls, or barons, or others, who hold of us in chief by military service, shall die, and at the time of his death, his heir shall be of full age, and owes a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees.

CHAPTER III.

The Wardship of the Heir within Age. The Heir a Knight.

But if the heir of any such shall be under age, and shall be in ward when he comes of age, he shall have his inheritance without relief and without fine.

CHAPTER IV.

No waste shall be made by a Guardian in Ward Lands.

The keeper of the land of such an heir being under age, shall take of the land of the heir none but reasonable issues, reasonable customs and reasonable services, and that without destruction and waste of his men and his goods; and if we commit the custody of any such lands to the sheriff, or any other who is answerable to us for the issues of the land, and he shall make destruction and waste of the lands which he hath in custody, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall answer for the issues to us, or to him to whom we shall assign them: and if we sell or give to any one the custody of any such lands, and he therein make destruction or waste, he shall lose the same custody, which shall be committed to two lawful and discreet men of that fee, who shall in like manner answer to us as aforesaid.

CHAPTER V.

Guardians shall maintain the Inheritance of Wards. Of Bishoprics, etc.

But the keeper, so long as he shall have the custody of the land, shall keep up the houses, parks, warrens, ponds, mills and other things pertaining to the land, out of the issues of the same land; and shall deliver to the heir, when he comes of full age, his whole land, stocked with ploughs and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear.

CHAPTER VI.

Heirs shall be Married without Disparagement.

Heirs shall be married without disparagement, and so that before matrimony shall be contracted those who are near in blood to the heir shall have notice.

CHAPTER VII.

A Widow shall have her Marriage, Inheritance and Quarantine. The King's Widow, etc.

A widow, after the death of her husband, shall forthwith and without difficulty have her marriage and inheritance; nor shall she give anything for her dower, or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the mansion house of her husband forty days after his death, within which term her dower shall be assigned. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband; but yet she shall give security that she will not marry without our assent, if she holds of us; or without the consent of the lord of whom she holds, if she hold of another.

CHAPTER VIII.

How Sureties shall be charged to the King.

Neither we nor our bailiffs shall seize any land or rent for any debt, so long as the chattels of the debtor are sufficient to pay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor is sufficient for the payment of the debt; and if the principal debtor shall fail in the payment of the debt, not having wherewithal to pay it, then the sureties shall answer the debt; and if they will, they shall

have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties.

CHAPTER IX.

The Liberties of London and other Cities and Towns Confirmed.

And the city of London shall have all its ancient liberties and free customs, as well by land as by water: furthermore, we will and grant, that all other cities and boroughs and towns and ports shall have all their liberties and free customs.

CHAPTER X.

None shall Distrain for more Service than is Due.

No man shall be distrained to perform more service for a knight's fee, or other free tenement, than is due from thence.

CHAPTER XI.

Common Pleas shall not follow the King's Court.

Common pleas shall not follow our court, but shall be holden in some place certain.

CHAPTERS XII AND XIII.

When and before whom Assizes shall be taken. Adjournment for Difficulty. Assizes of Darrien Presentment.

Assizes of novel disseisin, and of mort d'ancestor, and of darrien presentment, shall not be taken but in their proper counties, and after this manner: We, or, if we should be out of the realm, our chief justiciary, shall send two justiciaries through every county four times a year, who with four knights, chosen out of every shire by the people, shall hold the said assizes, in the county, on the day, and at the place appointed. And if any matters cannot be determined on the day appointed for holding the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid shall stay to decide them, as is necessary, according as there is more or less business.

CHAPTER XIV.

How Men of all sorts shall be Amerced, and by whom.

A freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great crime accord-

ing to the heinousness of it, saving to him his contenement; and after the same manner a merchant; saving to him his merchandise. And a villein shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerciaments shall be assessed but by the oath of honest men in the neighborhood. Earls and barons shall not be amerced but by their peers, and after the degree of the offense.

CHAPTERS XV AND XVI.

Making and Defending of Bridges and Banks.

Neither a town nor any tenant shall be distrained to make bridges or banks, unless that anciently and of right they are bound to do it.

CHAPTER XVII.

Holding Pleas of the Crown.

No sheriff, constable, coroner, or other our bailiffs, shall hold pleas of the Crown.

CHAPTER XVIII.

The King's Debtor Dying, the King shall be first Paid.

If any one holding of us a lay-fee die, and the sheriff, or our bailiffs, show our letters patent, of summons for debt which the dead man did owe to us, it shall be lawful for the sheriff or our bailiff to attach and inroll the chattels of the dead, found upon his lay-fee, to the value of the debt, by the view of lawful men, so as nothing be removed until our whole clear debt be paid; and the rest shall be left to the executors to fulfill the testament of the dead, and if there be nothing due from him to us, all the chattels shall go to the use of the dead, saving to his wife and children their reasonable share.

CHAPTERS XIX, XX AND XXI.

Purveyors for a Castle. Doing of Castle-ward. Taking of Horses, Carts and Woods.

No constable or bailiff of ours shall take corn or other chattels of any man, unless he presently give him money for it, or hath respite of payment by the good will of the seller. No constable shall distrain any knight to give money for castle guard, if he himself will do it in his person, or by

another able man in case he can not do it through any reasonable cause. And if we lead him, or send him in an army, he shall be free from such guard for the time he shall be in the army by our command. No sheriff or bailiff of ours, or any other, shall take horses or carts of any freeman for carriage, but by the good will of the said freeman. Neither shall we nor our bailiffs take any man's timber for our castles or other uses, unless by the consent of the owner of the timber.

CHAPTER XXII.

How Long Felons' Land Shall be Holden by the King.

We will retain the lands of those convicted of felony only one year and a day, and then they shall be delivered to the lord of the fee.

CHAPTER XXIII.

In what places Wears shall be put down.

All wears for the time to come shall be put down in the rivers of Thames and Medway, and throughout all England, except upon the seacoast.

CHAPTER XXIV.

In what case a *Præcipe in Capite* is grantable.

The writ which is called *præcipe* for the future, shall not be made out to any one, of any tenement, whereby a freeman may lose his court.

CHAPTER XXV.

There shall be but one Measure through the Realm.

There shall be but one measure of wine and one of ale through our whole realm; and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth, and russets, and haberjeets, that is to say, two ells within the lists; and it shall be of weights as it is of measures.

CHAPTER XXVI.

Inquisition of Life and Member.

Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.

CHAPTER XXVII.

Tenure of the King in Socage and of another by Knight's Service. Petit Serjeanty.

If any do hold of us by fee-farm, or by socage, or by burgage, and he hold also lands of any other by knight's service, we will not have the custody of the heir or land, which is holden of another man's fee by reason of that fee-farm, socage, or burgage; neither will we have the custody of such fee-farm, socage, or burgage, except knight's service was due to us out of the same fee-farm. We will not have the custody of an heir, or of any land which he holds of another by knight's service, by reason of any petty serjeanty that holds of us, by the service of paying a knife, an arrow, or the like.

CHAPTER XXVIII.

Wager of Law shall not be without witness.

No bailiff from henceforth shall put any man to his law upon his own bare saying, without credible witnesses to prove it.

*CHAPTER XXIX.

None shall be condemned or injured in property, person or liberty, without Trial. Justice shall not be sold or deferred.

No freeman shall be taken, or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed, nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man, either justice or right.

CHAPTER XXX.

Merchant Strangers coming into this Realm shall be well used.

All merchants shall have safe and secure conduct, to go out of, and to come into, England, and to stay there, and to pass as well by land as by water, for buying and selling by the ancient and allowed customs, without any evil tolls; except

*CAP. XXIX. Nullus liber homo capiatur vel imprisonetur, aut disseisiatur de aliquo libero tenemento suo vel libertatibus vel liberis consuetudinibus suis, aut utlagetur aut exulet aut aliquo alio modo destruatur; nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum vel per legem terræ. Nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam.

in time of war, or when they are of any nation at war with us. And if there be found any such in our land, in the beginning of the war, they shall be attached, without damage to their bodies or goods, until it be known unto us or our chief justiciary, how our merchants be treated in the nation at war with us; and if ours be safe there, the others shall be safe in our dominions.

CHAPTER XXXI.

Tenure of a Barony coming into the King's Hands by Escheat.

If any man hold of any escheat, as of the honour of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which be in our hands, and are baronies, and die, his heir shall give no other relief, and perform no other service to us than he would to the baron, if it were in the baron's hand; we will hold it after the same manner as the baron held it.

CHAPTER XXXII.

Lands shall not be Aliened to the Prejudice of the Lord's Service [i. e. Lord of the Fee].

Lands shall not be aliened to the prejudice of the lord's service [i. e. lord of the fee].

CHAPTER XXXIII.

Patrons of Abbeys shall have the custody of them in time of Vacation.

Patrons of abbeys shall have custody of them in time of vacation.

CHAPTER XXXIV.

In what cases only a Woman shall have an Appeal of Death.

No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than her husband.

CHAPTER XXXV.

At what time shall be Kept a County Court, a Sheriff's Tourn, and a Leet.

No county court shall from henceforth be holden but from month to month: and where a greater term has been used, it shall be greater. Neither shall any sheriff or his bailiff keep his tourn in the hundred but twice in the year; and nowhere but in due and accustomed place, that is to say, once after Easter

and again after the Feast of St. Michael. And the view of frank-pledge shall be likewise at St. Michael's term without occasion ; so that every man may have his liberties, which he had and was accustomed to have in the time of King Henry our grandfather, or which he hath purchased since. The view of frank-pledge shall be done so that our peace may be kept, and that the tything be wholly kept as it hath been accustomed and that the sheriff seek no occasions, and that he be content with so much as the sheriff was wont to have for his view-making in the time of King Henry our grandfather.

CHAPTER XXXVI.

No Land Shall be given in Mortmain.

It shall not be lawful from henceforth to any to give his lands to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any, and to lease the same to him of whom he received it : if any from henceforth give his lands to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the lord of the fee.

CHAPTER XXXVII.

A Subsidy in Respect of this Charter and the Charter of the Forest, Granted to the King.

Escuage from henceforth shall be taken like as it was wont to be in the time of King Henry our grandfather ; reserving to all archbishops, bishops, abbots, priors, templars, hospitalers, earls, barons, and all persons as well spiritual as temporal, all their free liberties and free customs which they have had in time passed. And all these customs and liberties aforesaid, which we have granted to be holden within this our realm, as much as appertaineth to us and our heirs, we shall observe. And all men of this our realm, as well spiritual as temporal (as much as in them is), shall observe the same against all persons in likewise. And for this our gift and grant of these liberties and of other contained in our Charter of liberties of our forest, the archbishops, bishops, abbots, priors, earls, barons, knights, freeholders, and other our subjects, have given unto us the fifteenth part of all their movables. And we have

granted unto them, for us and our heirs, that neither we nor our heirs shall procure or do anything whereby the liberties in this Charter contained shall be infringed or broken. And if anything be procured by any person contrary to the premises, it shall be had of no force nor effect. These being witnesses, Lord B. Archbishop of Canterbury, E. Bishop of London, I. Bishop of Bath, P. of Winchester, H. of Lincoln, R. of Salisbury, W. of Rochester, W. of Worcester, J. of Ely, H. of Hereford, R. of Chichester, W. of Exeter, Bishops: the Abbot of St. Edmonds, the Abbot of St. Albans, the Abbot of Bello, the Abbot of St. Augustines in Canterbury, the Abbot of Evesham, the Abbot of Westminster, the Abbot of Bourgh St. Peter, the Abbot of Reding, the Abbot of Abindon, the Abbot of Malmsbury, the Abbot of Wincheomb, the Abbot of Hyde, the Abbot of Certesy, the Abbot of Sherburn, the Abbot of Cerne, the Abbot of Abbot-ebir, the Abbot of Middleton, the Abbot of Seleby, the Abbot of Cirencester: H. de Burgh, Justice, H. Earl of Chester and Lincoln, W. Earl of Salisbury, W. Earl of Warren, G. de Clare Earl of Gloucester and Hereford, W. de Ferrars Earl of Derby, W. de Mandeville Earl of Essex, H. de Bygod Earl of Norfolk, W. Earl of Albemarle, H. Earl of Hereford, J. Constable of Chester, R. de Ros, R. Fitzwalter, R. de Vyponte, W. de Bruer, R. de Muntefichet, P. Fitzherbert, W. de Aubenie, J. Gresly, F. de Breus, J. D. Monemue, J. Fitzallen, H. de Mortimer, W. de Beauchamp, W. de St. John, P. de Mauly, Brian de Lisle, Thomas de Multon, R. de Argenteyn, G. de Nevil, W. Mauduit, J. de Balun, and others.

We, ratifying and approving these gifts and grants aforesaid, confirm and make strong all the same for us and our heirs perpetually; and by the tenor of these presents do renew the same, willing and granting for us and our heirs, that this Charter, and all and singular its articles forever shall be steadfastly, firmly and inviolably observed. Although some articles in the same Charter contained yet hitherto peradventure have not been kept, we will, and, by authority royal, command, from henceforth firmly they be observed. In witness whereof, we have caused these our letters patent to be made. Witness, Edward, our Son, at Westminster, the twelfth day of October, in the twenty-fifth year of our reign.

COMPACT WITH VIRGINIA.

COMMONWEALTH OF VIRGINIA.

An Act concerning the erection of the District of Kentucky into an Independent State.

WHEREAS, It is represented to this present General Assembly, that the act of last session, entitled "An act concerning the erection of the District of Kentucky into an Independent State," which contains terms materially different from those of the act of October session, one thousand seven hundred and eighty-five, are found incompatible with the real views of this Commonwealth, as well as injurious to the good people of the said district:

SEC. 1. *Be it enacted by the General Assembly, That in the month of May next, on the respective court days of the counties within the said district, and at the respective places of holding courts therein, representatives to continue in appointment for one year, and to compose a convention, with the powers, and for the purposes hereinafter mentioned, shall be elected by the free male inhabitants of each county above the age of twenty-one years, in like manner as delegates to the General Assembly have been elected within said district, in the proportions following: In the county of Jefferson shall be elected five representatives; in the county of Nelson five representatives; in the county of Mercer five representatives; in the county of Lincoln five representatives; in the county of Madison five representatives; in the county of Fayette five representatives; in the county of Woodford five representatives; in the county of Bourbon five representatives; and in the county of Mason five representatives: Provided, That no free male inhabitant above the age of twenty-one years, shall vote in any other county except that in which he resides, and that no person shall be*

capable of being elected unless he has been a resident within the said district at least one year.

SEC. 2. That full opportunity may be given to the good people of exercising their right of suffrage on an occasion so interesting to them, each of the officers holding such elections, shall continue the same from day to day, passing over Sunday, for five days, including the first day, and shall cause this act to be read on each day immediately preceding the opening of the election, at the door of the court-house or other convenient place; each of the said officers shall deliver to each person duly elected a representative, a certificate of his election, and shall transmit a general return to the clerk of the Supreme Court, to be by him laid before the convention.

SEC. 3. For every neglect of any of the duties hereby enjoined on such officer, he shall forfeit one hundred pounds, to be recovered by action of debt by any person suing for the same.

SEC. 4. The said convention shall be held at Danville on the twenty-sixth day of July next, and shall and may proceed, after choosing a president and other proper officers, and settling the proper rules of proceeding, to consider and determine whether it be expedient for, and the will of the good people of the said district, that the same be erected into an independent State, on the terms and conditions following:

SEC. 5. First, that the boundary between the proposed State and Virginia, shall remain the same as at present separates the district from the residue of this Commonwealth.

SEC. 6. Second, that the proposed State shall take upon itself a just proportion of the debt of the United States, and the payment of all the certificates granted on account of the several expeditions carried on from the Kentucky district against the Indians, since the first day of January, one thousand seven hundred and eighty-five.

SEC. 7. Third, that all private rights and interests of lands within the said district, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in this State.

SEC. 8. Fourth, that the lands within the proposed State of non-resident proprietors, shall not in any case be taxed higher than the lands of residents, at any time prior to the admission of the proposed State to a vote by its delegates in Congress, where such non-residents reside out of the United States, nor at any time, either before or after such admission, where such non-residents reside within this Commonwealth, within which this stipulation shall be reciprocal; or where such non-residents reside within any other of the United States, which shall declare the same to be reciprocal within its limits; nor shall a neglect of cultivation or improvement of any land within either the proposed State or this Commonwealth, belonging to non-residents, citizens of the other, subject such non-residents to forfeiture or other penalty, within the term of six years, after the admission of the said State into the Federal Union.

SEC. 9. Fifth, that no grant of land or land warrant to be issued by the proposed State, shall interfere with any warrant heretofore issued from the land office of Virginia, which shall be located on land within the said district, now liable thereto, on or before the first day of September, one thousand seven hundred and ninety-one.

SEC. 10. Sixth, that the unlocated lands within the said district, which stand appropriated to individuals, or description of individuals, by the laws of this Commonwealth, for military or other services, shall be exempted from the disposition of the proposed State, and shall remain subject to be disposed of by the Commonwealth of Virginia, according to such appropriation, until the first day of May, one thousand seven hundred and ninety-two, and no longer; thereafter the residue of all lands remaining within the limits of the said district, shall be subject to the disposition of the proposed State.

SEC. 11. Seventh, that the use and navigation of the river Ohio, so far as the territory of the proposed State, or the territory which shall remain within the limits of this Commonwealth lies thereon, shall be free and common to the citizen of the United States, and the respective jurisdictions of this Commonwealth, and of the proposed State, on the river as aforesaid, shall be concurrent only with the States which may possess the opposite shores of the said river.

SEC. 12. Eighth, that in case any complaint or dispute shall at any time arise between the Commonwealth of Virginia and the said district, after it shall be an independent State, concerning the meaning or execution of the foregoing articles, the same shall be determined by six commissioners, of whom two shall be chosen by each of the parties, and the remainder by the commissioners so first appointed.

SEC. 13. *Provided, however,* That five members assembled shall be a sufficient number to adjourn from day to day, and to issue writs for supplying vacancies which may happen from deaths, resignations, or refusals to act; a majority of the whole shall be a sufficient number to choose a president, settle the proper rules of proceeding, authorize any number to summon a convention during a recess, and to act in all other instances where a greater number is not expressly required. Two-thirds of the whole shall be a sufficient number to determine on the expediency of forming the said district into an independent State on the aforesaid terms and conditions: *Provided,* That a majority of the whole number to be elected concur therein.

SEC. 14. *And be it further enacted,* That if the said convention shall approve of the erection of the said district into an independent State on the foregoing terms and conditions, they shall and may proceed to fix a day posterior to the first day of November, one thousand seven hundred and ninety-one, on which the authority of this Commonwealth, and of its laws, under the exceptions aforesaid, shall cease and determine forever over the proposed State, and the said articles become a solemn compact mutually binding on the parties, and unalterable by either without the consent of the other.

SEC. 15. *Provided, however,* That prior to the first day of November, one thousand seven hundred and ninety-one, the general government of the United States shall assent to the erection of the said district into an independent State, shall release this Commonwealth from all its Federal obligations arising from the said district as being part thereof, and shall agree that the proposed State shall immediately after the day to be affixed as aforesaid, posterior to the first day of November, one thousand seven hundred and ninety-one, or at some convenient time future thereto, be admitted into the Federal Union.

SEC. 16. And to the end that no period of anarchy may happen to the good people of the proposed State, it is to be understood that the said convention shall have authority to take the necessary provisional measures for the election and meeting of a convention, at some time prior to the day fixed for the determination of the authority of this Commonwealth, and of its laws over said district, and posterior to the first day of November, one thousand seven hundred and ninety-one aforesaid, with full power and authority to frame and establish a fundamental constitution of government for the proposed State, and to declare what laws shall be in force therein, until the same shall be abrogated or altered by the legislative authority acting under the constitution so to be framed and established.

SEC. 17. *And be it further enacted,* That the electors in going to, continuing at, and returning from, an election of members to the said convention, shall be entitled to the same privileges from arrest, as are by law allowed at an election of members to the General Assembly; and each person returned to serve as a member in said convention shall be entitled to the same privileges from arrest in going to, during his attendance on, and returning from said convention, as are by law allowed to the members of the General Assembly.

SEC. 18. This act shall be transmitted by the executive to the Representatives of this Commonwealth in Congress, who are hereby instructed to use their endeavors to obtain from Congress a speedy act to the effect above specified.

Passed the 18th of December, 1789.

FIRST CONSTITUTION

OF THE

STATE OF KENTUCKY.

We, the representatives of the people of the State of Kentucky, in Convention assembled, do ordain and establish this Constitution for its government.

ARTICLE I.

SEC. 1. The powers of government shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to-wit: those which are legislative to one, those which are executive to another, and those which are judiciary to another.

SEC. 2. No person, or collection of persons, being of one of these departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly permitted.

SEC. 3. The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

SEC. 4. The Representatives shall be chosen annually, by the qualified electors of each county respectively, on the first Tuesday in May; but the several elections may be continued for three days, if, in the opinion of the presiding officer or officers, it shall be necessary, and no longer.

SEC. 5. No person shall be a Representative who shall not have attained the age of twenty-four years, and have been a citizen and inhabitant of the State two years next preceding his election, and the last six months thereof an inhabitant of the county in which he may be chosen, unless he shall have been absent on the public business of the United States or of this State.

SEC. 6. Within two years after the first meeting of the General Assembly, and within every subsequent term of four years, an enumeration of the free male inhabitants above twenty-one years of age shall be made, in such manner as may be directed by law. The number of Representatives shall, at the several periods of making such enumeration, be fixed by the Legislature, and apportioned among the several counties according to the number of free male inhabitants above the age of twenty-one years in each, and shall never be less than forty nor greater than one hundred; but no county hereafter erected shall be entitled to a separate representation, until a sufficient number of free male inhabitants above the age of twenty-one years, shall be contained within it, to entitle them to one Representative agreeable to the ratio which shall then be established.

SEC. 7. The Senators shall be chosen for four years.

SEC. 8. Until the first enumeration be made, the Senate shall consist of eleven members, and thereafter for every four members added to the House of Representatives, one member shall be added to the Senate.

SEC. 9. In choosing the Senate, one member at least shall be elected from each county, until the number of counties is equal to the number of Senators; after which, when a new county is made, it shall, as to the choice of Senators, be considered as being a part of the county or counties from which it shall have been taken.

SEC. 10. The Senate shall be chosen in the following manner: All persons qualified to vote for Representatives shall, on the first Tuesday in May, in the present year, and on the same day in every fourth year forever thereafter, at the place appointed by law for choosing Representatives, elect by ballot, by a majority of votes, as many persons as they are entitled to have for Representatives for their respective counties, to be electors of the Senate.

SEC. 11. No person shall be chosen an elector who shall not have resided in the State three years next before his election, and who shall not have attained the age of twenty-seven years.

SEC. 12. The electors of the Senate shall meet at such place as shall be appointed for convening the Legislature, on the third Tuesday in May in the present year, and on the same

day in every fourth year forever thereafter; and they, or a majority of them, so met, shall proceed to elect, by ballot, as Senators, men of the most wisdom, experience and virtue, above twenty-seven years of age, who shall have been residents of the State above two whole years next preceding the election. If on the ballot two or more persons shall have an equal number of ballots in their favor, by which the choice shall not be determined by the first ballot, then the electors shall again ballot before they separate, in which they shall be confined to the persons who, on the first ballot, shall have an equal number, and they who shall have the greatest number in their favor on a second ballot, shall be accordingly declared and returned duly elected; and if, on the second ballot, an equal number shall still be in favor of two or more persons, then the election shall be determined by lot between those who have equal numbers; which proceedings of the electors shall be certified under their hands, and returned to the secretary for the time being, to whom shall also be made by the proper officers, returns of the persons chosen as electors in the respective counties.

SEC. 13. The electors of Senators shall judge of the qualifications and elections of members of their own body; and on a contested election, shall admit to a seat, as an elector, such qualified person as shall appear to them to have the greatest number of legal votes in his favor.

SEC. 14. The electors, immediately on their meeting, and before they proceed to the election of Senators, shall take an oath, or make affirmation of fidelity to this State, and also an oath or affirmation to elect without favor, affection, partiality, or prejudice, such person for Governor, and such persons for Senators, as they, in their judgment and conscience, believe best qualified for the respective offices.

SEC. 15. That in case of refusal, death, resignation, disqualification, or removal out of this State of any Senator, the Senate shall immediately thereupon, or at their next meeting thereafter, elect, by ballot, in the same manner as the electors are herein directed to choose Senators, another person in his place, for the residue of the said term of four years.

SEC. 16. The General Assembly shall meet on the first Monday in November, in every year, till the time of their meeting shall be altered by the Legislature, unless sooner convened by the Governor.

SEC. 17. Each House shall choose its Speaker and other officers, and the Senate shall also choose a speaker *pro tempore*, when their Speaker shall exercise the office of Governor.

SEC. 18. Each House shall judge of the qualifications of its members; contested elections shall be determined by a committee to be selected, formed, and regulated in such manner as shall be directed by law. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members, in such manner, and under such penalties, as may be provided.

SEC. 19. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

SEC. 20. Each House shall keep a journal of its proceedings, and publish them weekly, except such parts of them as may require secrecy; and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journals.

SEC. 21. The doors of each House, and of committees of the whole, shall be open, unless when the business shall be such as ought to be kept secret.

SEC. 22. Neither House shall, without the consent of the other, adjourn for more than three days; nor to any other place than that in which the two Houses shall be sitting.

SEC. 23. The members of the General Assembly, and the electors of the Senate, shall receive from the public treasury a compensation for their services, which, for the present, shall be six shillings a day during their attendance on, going to, and returning from the Legislature, and the place for choosing the Senators; but the same may be increased or diminished by law, if circumstances shall require it, but no alteration shall be made, to take effect during the existence of the Legislature which shall make such alteration. They shall, in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest during their attendance at the session of the respective Houses, and at the place for choosing Senators, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

SEC. 24. No Senator or Representative shall, during the time for which he shall have been elected, or for one year afterward, be appointed to any civil office under this State, which shall have been created, or the emoluments of which shall have been increased, during the time such Senator or Representative was in office: *Provided*, That no member of the first Legislature, which shall be assembled under this Constitution, shall be precluded from being appointed to any office which may have been created during his time of service in the said Legislature; and no minister of religious societies, member of Congress or other person holding any office of profit under the United States or this Commonwealth, except attorneys at law, justices of the peace, militia officers, and coroners, shall be a member of either House during his continuance to act as a minister, in Congress or in office.

SEC. 25. When vacancies happen in the House of Representatives, the Speaker shall issue writs of election to fill such vacancies.

SEC. 26. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose amendments as in other bills.

SEC. 27. Each Senator, Representative, and sheriff shall, before he be permitted to act as such, take an oath or make affirmation that he hath not, directly or indirectly, given or promised any bribe or treat to procure his election to the said office; and every person shall be disqualified from serving as a Senator, Representative, or sheriff for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat, or canvassed for the said office.

SEC. 28. Every bill which shall have passed both Houses shall be presented to the Governor; if he approve, he shall sign it; but if he shall not approve, he shall return it, with his objections, to the House in which it shall have originated, who shall enter the objections at large upon their journals, and proceed to reconsider it; if, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two-thirds of that House, it shall be a law; but, in such cases, the votes of both Houses shall be determined by yeas and nays,

and the names of the persons voting for or against the bill shall be entered on the journals of each House, respectively; if any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return; in which case it shall be a law unless sent back within three days after their next meeting.

SEC. 29. Every order, resolution, or vote, to which the concurrence of both Houses may be necessary, except on a question of adjournment, shall be presented to the Governor, and before it shall take effect, be approved by him; or being disapproved, shall be repassed by two-thirds of both Houses, according to the rules and limitations prescribed in case of a bill.

ARTICLE II.

SEC. 1. The supreme executive power of this Commonwealth shall be vested in a Governor.

SEC. 2. The Governor shall be chosen by the electors of the Senate at the same time, at the same place, and in the same manner, that they are herein directed to elect Senators; and the said electors shall make return of their proceedings in the choice of a Governor, to the Secretary for the time being.

SEC. 3. The Governor shall hold his office during four years from the first day of June next ensuing his election.

SEC. 4. He shall be at least thirty years of age, and have been a citizen and inhabitant of this State at least two years next before his election, unless he shall have been absent on the public business of the United States or of this State.

SEC. 5. No member of Congress, or person holding any office under the United States or this State, shall exercise the office of Governor.

SEC. 6. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected.

SEC. 7. He shall be commander-in-chief of the army and navy of this Commonwealth, and of the militia, except when they shall be called into the service of the United States.

SEC. 8. He shall nominate, and by and with the advice and consent of the Senate, appoint all officers whose offices are es-

tablished by this Constitution, or shall be established by law, and whose appointments are not herein otherwise provided for; but no person shall be appointed to an office within any county, who shall not have been a citizen and inhabitant therein one year next before his appointment, if the county shall have been so long erected; but, if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

SEC. 9. The Governor shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SEC. 10. He shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment; in cases of treason, he shall have power to grant reprieves until the end of the next session of the General Assembly, in whom the power of pardoning shall be vested.

SEC. 11. He may require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices.

SEC. 12. He shall, from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he shall judge expedient.

SEC. 13. He may, on extraordinary occasions, convene the General Assembly, and in case of disagreement between the two Houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

SEC. 14. He shall take care that the laws be faithfully executed.

SEC. 15. In case of the death or resignation of the Governor, or of his removal from office, the Speaker of the Senate shall exercise the office of Governor until another shall be duly qualified.

SEC. 16. An Attorney General shall be appointed and commissioned during good behavior; he shall appear for the Commonwealth in all criminal prosecutions, and in all civil cases in which the Commonwealth shall be interested, in any of the superior courts; shall give his opinion when called upon for that purpose, by either branch of the Legislature, or by the

Executive, and shall perform such other duties as shall be enjoined him by law.

SEC. 17. A Secretary shall be appointed and commissioned during the Governor's continuance in office, if he shall so long behave himself well; he shall keep a fair register of, and attest all the official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before either branch of the Legislature, and shall perform such other duties as shall be enjoined him by law.

ARTICLE III.

SEC. 1. In elections by the citizens, all free male citizens of the age of twenty-one years, having resided in the State two years, or the county in which they offer to vote one year next before the election, shall enjoy the rights of an elector; but no person shall be entitled to vote except in the county in which he shall actually reside at the time of the election.

SEC. 2. All elections shall be by ballot.

SEC. 3. Electors shall, in all cases, except treason, felony and breach or surety of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from them.

ARTICLE IV.

SEC. 1. The House of Representatives shall have the sole power of impeaching.

SEC. 2. All impeachments shall be tried by the Senate; when setting 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.

SEC. 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 honor, trust or profit under this Commonwealth; but the party convicted shall, nevertheless, be liable and subject to indictment, trial and punishment according to law.

ARTICLE V.

SEC. 1. The judicial power of this Commonwealth, both as to matters of law and equity, shall be vested in one supreme

court, which shall be styled the Court of Appeals, and in such inferior courts as the Legislature may, from time to time, ordain and establish.

SEC. 2. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; but for any reasonable cause which shall not be sufficient ground of impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office.

SEC. 3. The Supreme Court shall have original and final jurisdiction in all cases respecting the titles to land under the present land laws of Virginia, including those which may be depending in the present Supreme Court for the district of Kentucky, at the time of establishing of the said Supreme Court; and in all cases concerning contracts for land, prior to the establishing of those titles. And the said court shall have power to hear and determine the same in a summary way, and to direct the mode of bringing the same to a hearing; so as to enable them to do right and justice to the parties, with as little delay and at as small an expense as the nature of the business will allow; but the said court shall, in all such cases, oblige the parties to state the material parts of their complaint and defense in writing; and shall, on the conclusion of every cause, state on the records the whole merits of the case, the questions arising therefrom, the opinions of the court thereupon, and a summary of the reasons in support of those opinions.

SEC. 4. And it shall be the duty of each judge of the Supreme Court, present at the hearing of such cause, and differing from a majority of the court, to deliver his opinion in writing, to be entered as aforesaid; and each judge shall deliver his opinion in open court. And the said court shall have power, on the determination of any such case, to award the legal costs against either party or to divide the same among the different parties, as to them shall seem just and right. And the said court shall have full power to take such steps as they may judge proper, to perpetuate testimony in all cases concerning such titles: *Provided*, That a jury shall always be empaneled for the finding of such facts as are not

agreed by the parties; unless the parties, or their attorneys, shall waive their right of trial by a jury, and refer the matter of fact to the decision of the court: *Provided also*, That the Legislature may, whenever they may judge it expedient, pass an act or acts to regulate the mode of proceedings in such cases, or to take away entirely the original jurisdiction hereby given to the said court in such cases.

SEC. 5. In all other cases the Supreme Court shall have appellate jurisdiction only, with such exceptions and under such regulations as the Legislature shall make; and the Legislature may, from time to time, vest in the Supreme and inferior courts, or either of them, such powers, both in law and equity, as they shall judge proper and necessary for the due administration of justice.

SEC. 6. A competent number of justices of the peace shall be appointed in each county; they shall be commissioned during good behavior, but may be removed on conviction of misbehavior in office, or of any infamous crime, or on the address of both Houses of the Legislature.

SEC. 7. The judges shall by virtue of their office be conservators of the peace throughout the State. The style of all process shall be, "*The Commonwealth of Kentucky*;" all prosecutions shall be carried on in the name and by the authority of the Commonwealth of Kentucky, and conclude against the peace and dignity of the same.

ARTICLE VI.

SEC. 1. Sheriffs and coroners shall, at the times and places of elections of Representatives, be chosen by the citizens of each county qualified to vote for Representatives. They shall hold their offices for three years, if they shall so long behave themselves well, and until a successor be duly qualified; but no person shall be twice chosen or appointed sheriff in any term of six years. Vacancies in either of the said offices shall be filled by a new appointment to be made by the Governor, to continue until the next general election, and until a successor shall be chosen and qualified as aforesaid.

SEC. 2. The free men of this Commonwealth shall be armed and disciplined for its defense. Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service.

SEC. 3. The field and staff officers of the militia shall be appointed by the Governor, except the battalion staff officers, who shall be appointed by the field officers of each battalion respectively.

SEC. 4. The officers of companies shall be chosen by the persons enrolled in the list of each company, and the whole shall be commissioned during good behavior, and during their residence in the bounds of the battalion or company to which they shall be appointed.

SEC. 5. Each court shall appoint its own clerk, who shall hold his office during good behavior; but no person shall be appointed clerk only *pro tempore*, who shall not produce to the court appointing him, a certificate from a majority of the judges of the Court of Appeals that he hath been examined by their clerk in their presence, and under their direction, and that they judge him to be well qualified to execute the office of clerk to any court of the same dignity with that for which he offers himself. They shall be removable for breach of good behavior, by the Court of Appeals only, who shall be judges of the fact as well as of the law; two-thirds of the members present must concur in the sentence.

SEC. 6. All commissions shall be in the name and by the authority of the State of Kentucky, and be sealed with the State seal, and signed by the Governor.

SEC. 7. The State Treasurer shall be appointed annually by the joint ballot of both Houses.

ARTICLE VII.

SEC. 1. Members of the General Assembly, and all officers, executive and judicial, before they enter upon the execution of their respective offices, shall take the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be), that I will be faithful and true to the Commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of ———, according to law."

ARTICLE VIII.

SEC. 1. Treason against the Commonwealth shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted

of treason, unless on the testimony of two witnesses to the same overt act, or on his own confession in open court.

SEC. 2. Laws shall be made to exclude from office and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors; the privilege of free suffrage shall be supported by laws regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practices.

SEC. 3. No money shall be drawn from the Treasury but in consequence of appropriations made by law, nor shall any appropriations of money for the support of an army be made for a longer term than one year, and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

SEC. 4. The Legislature shall direct by law, in what manner and in what courts, suits may be brought against the Commonwealth.

SEC. 5. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the Legislature the most solemn appeal to God.

SEC. 6. All laws now in force in the State of Virginia, not [in]consistent with this Constitution, which are of a general nature, and not local to the eastern part of that State, shall be in force in this State until they shall be altered or repealed by the Legislature.

SEC. 7. The compact with the State of Virginia, subject to such alterations as may be made therein, agreeably to the mode prescribed by the said compact, shall be considered as a part of this Constitution.

ARTICLE IX.

The Legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated; they shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in

slavery by the laws of this State; that they shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a charge to the county in which they reside; they shall have full power to prevent slaves being brought into this State as merchandise; they shall have full power to prevent any slave being brought into this State from a foreign country, and to prevent those from being brought into this State who have been since the first day of January, one thousand seven hundred and eighty-nine, or may hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary, to oblige the owners of slaves to treat them with humanity, to provide for them necessary clothing and provisions, to abstain from all injuries to them extending to life or limb; and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of their owner or owners.

ARTICLE X.

SEC. 1. The place for the Seat of Government shall be fixed in the following manner: The House of Representatives shall, during their session, which shall be held in the year one thousand seven hundred and ninety-two, choose, by ballot, twenty-one persons, from whom the representation from Mercer and Fayette counties then present shall alternately strike out one, until the number shall be reduced to five, who, or any three of them concurring in opinion, shall have power to fix on the place for the Seat of Government; to receive grants from individuals therefor, and to make such conditions with the proprietor or proprietors of the land so pitched on by them, as to them shall seem right and shall be agreed to by the said proprietor or proprietors, and lay off a town thereon in such manner as they shall judge most proper.

SEC. 2. The General Assembly and the Supreme Courts shall, within five years, hold their sessions at the place so pitched upon by the said commissioners; and the Seat of Government so fixed shall continue until it shall be changed by two-thirds of both branches of the Legislature. The commissioners, before they proceed to act, shall take an oath or make affirmation that they will discharge the trust reposed

in them, in such manner as in their judgment will be most beneficial to the State at large.

ARTICLE XI.

SEC. 1. That the citizens of this State may have an opportunity to amend or change this Constitution in a peaceable manner, if to them it shall seem expedient, the persons qualified to vote for Representatives shall, at the general election to be held in the year one thousand seven hundred and ninety-seven, vote also by ballot, for or against a convention, as they shall severally choose to do; and if thereupon it shall appear that a majority of all the citizens in the State voting for Representatives have voted for a convention, the General Assembly shall direct that a similar ballot shall be taken the next year; and if, thereupon, it shall also appear that a majority of all the citizens of the State voting for Representatives have voted for a convention, the General Assembly shall, at their next session, call a convention, to consist of as many members as there shall be in the House of Representatives, to be chosen in the same manner, at the same places, and at the same time that Representatives are, by the citizens entitled to vote for Representatives, and to meet within three months after the said election, for the purpose of readopting, amending or changing this Constitution. If it shall appear upon the ballot of either year, that a majority of the citizens voting for Representatives is not in favor of a convention being called, it shall not be done until two-thirds of both branches of the Legislature shall deem it expedient.

ARTICLE XII.

That the general, great and essential principles of liberty and free government may be recognized and established, we
DECLARE—

SEC. 1. That all men, when they form a social compact, are equal, and that no man or set of men are entitled to exclusive separate public emoluments or privileges from the community, but in consideration of public services.

SEC. 2. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness. For the advancement of these ends, they have at all times an unalienable and

indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship.

SEC. 4. That the civil rights, privileges or capacities of any citizen shall in nowise be diminished or enlarged on account of his religion.

SEC. 5. That all elections shall be free and equal.

SEC. 6. That trial by jury shall be as heretofore, and the right thereof remain inviolate.

SEC. 7. That printing-presses shall be free to every person who undertakes to examine the proceedings of the Legislature or any branch of Government; and no law shall ever be made to restrain the right thereof; the free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.

SEC. 8. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have a right to determine the law and the facts under the direction of the court as in other cases.

SEC. 9. That the people shall be secure in their persons, houses, papers and possessions from unreasonable seizures and searches; and that no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

SEC. 10. That in all criminal prosecutions, the accused hath a right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by in-

dictment or information, a speedy public trial by an impartial jury of the vicinage; that he can not be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers, or the law of the land.

SEC. 11. That 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.

SEC. 12. No person shall, for the same offense, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

SEC. 13. That all courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law; and right and justice administered without sale, denial or delay.

SEC. 14. That no power of suspending laws shall be exercised, unless by the Legislature or its authority.

SEC. 15. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

SEC. 16. That all prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

SEC. 17. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

SEC. 18. That no *ex post facto* law, nor any law impairing contracts, shall be made.

SEC. 19. That no person shall be attainted of treason or felony by the Legislature.

SEC. 20. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth.

SEC. 21. The estates of such person as shall destroy their own lives shall descend or vest as in case of natural death,

and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

SEC. 22. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes by petition, address or remonstrance.

SEC. 23. The rights of the citizens to bear arms in defense of themselves and the State shall not be questioned.

SEC. 24. That no standing army shall, in time of peace, be kept up without the consent of the Legislature; and the military shall, in all cases and at all times, be in strict subordination to the civil power.

SEC. 25. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

SEC. 26. That the Legislature shall not grant any title of nobility or hereditary distinction, nor create any office the appointment of which shall be for a longer time than during good behavior.

SEC. 27. That emigration from the State shall not be prohibited.

SEC. 28. To guard against transgressions of the high powers which we have delegated, WE DECLARE, that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this Constitution shall be void.

SCHEDULE.

That no inconvenience may arise from the establishing the government of this State, and in order to carry the same into complete operation, it is hereby declared and ordained:

SEC. 1. That all rights, actions, prosecutions, claims, and contracts, as well of individuals, as of bodies corporate, shall continue as if the said government had not been established.

SEC. 2. That all officers, civil and military, now in commission under the State of Virginia, shall continue to hold and exercise their offices until the 10th day of August next, and no longer.

SEC. 3. That until the first enumeration shall be made as directed by the sixth section of the first article of this Consti-

tution, the county of Jefferson shall be entitled to elect three Representatives; the county of Lincoln, four Representatives; the county of Fayette, nine Representatives; the county of Nelson, six Representatives; the county of Mercer, four Representatives; the county of Madison, three Representatives; the county of Bourbon, five Representatives; the county of Woodford, four Representatives; and the county of Mason, two Representatives.

SEC. 4. The General Assembly shall meet at Lexington on the fourth day of June next.

SEC. 5. All returns herein directed to be made to the Secretary shall, previously to his appointment, be made to the clerk of the Supreme Court for the district of Kentucky.

SEC. 6. Until a seal shall be procured for the State, the Governor shall be at liberty to use his private seal.

SEC. 7. The oaths of office herein directed to be taken may be administered by any justice of the peace, until the Legislature shall otherwise direct.

SEC. 8. All bonds given by any officer within the district of Kentucky, payable to the Governor of Virginia, may be prosecuted in the name of the Governor of Kentucky.

SEC. 9. All offenses against the laws of Virginia, which have been committed within the present district of Kentucky, or which may be committed within the same before the first day of June next, shall be cognizable in the courts of this State, in the same manner that they would be if they were committed within this State after the said first day of June.

SEC. 10. At the elections herein directed to be held in May next, the sheriff of each county, or in case of his absence, one of his deputies, shall preside, and if they neglect or refuse to act, the said election shall be held by any one of the justices of the peace for the county where such refusal or neglect shall happen; each officer holding such election having first taken an oath before a justice of the peace to conduct the said election with impartiality, shall have power to administer to any person offering to vote at such election, the following oath or affirmation: "I do swear (or affirm) that I am qualified to vote for Representatives in the county of—— agreeably to the Constitution formed for the State of Kentucky;" and such officer shall have a right to refuse to receive the vote of any person who shall refuse to take the said oath, or

make affirmation when tendered to him; and the said elections shall be held at the several places appointed for holding courts in the different counties.

SEC. 11. The Government of the Commonwealth of Kentucky shall commence on the first day of June next.

Done in Convention at Danville, the nineteenth day of April, one thousand seven hundred and ninety-two, and of the independence of the United States of America, the sixteenth.

By order of the Convention.

SAMUEL M'DOWELL, *P. C.*

Attest: THOMAS TODD, *C. C.*

SECOND CONSTITUTION

OF THE

STATE OF KENTUCKY.

We, the representatives of the people of the State of Kentucky, in convention assembled, to secure to all the citizens thereof the enjoyment of the right of life, liberty and property, and of pursuing happiness, do ordain and establish this Constitution for its government.

ARTICLE I.

Concerning the Distribution of the Powers of the Government.

SEC. 1. The powers of government of the State of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to-wit: those which are legislative to one; those which are executive to another; and those which are judiciary to another.

SEC. 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE II.

Concerning the Legislative Department.

SEC. 1. The legislative power of this Commonwealth shall be vested in two distinct branches; the one to be styled the House of Representatives, the other the Senate, and both together the General Assembly of the Commonwealth of Kentucky.

SEC. 2. The members of the House of Representatives shall continue in service for the term of one year from the day of the commencement of the general election, and no longer.

SEC. 3. Representatives shall be chosen on the first Monday in the month of August in every year; but the presiding officers of the several elections shall continue the same for three days, at the request of any one of the candidates.

SEC. 4. No person shall be a Representative, who at the time of his election is not a citizen of the United States, and hath not attained the age of twenty-four years, and resided in this State two years next preceding his election, and the last year thereof in the county or town for which he may be chosen.

SEC. 5. Elections for Representatives for the several counties entitled to representation shall be held at the places of holding their respective courts, or in the several election precincts into which the Legislature may think proper, from time to time, to divide any or all of those counties: *Provided*, That when it shall appear to the Legislature that any town hath a number of qualified voters equal to the ratio then fixed, such town shall be invested with the privilege of a separate representation, which shall be retained so long as such town shall contain a number of qualified voters equal to the ratio which may, from time to time, be fixed by law; and thereafter elections for the county in which such town is situated shall not be held therein.

SEC. 6. Representation shall be equal and uniform in this Commonwealth, and shall be forever regulated and ascertained by the number of qualified electors therein. In the year eighteen hundred and three, and every fourth year thereafter, an enumeration of all the free male inhabitants of the State, above twenty-one years of age, shall be made in such manner as shall be directed by law. The number of Representatives shall, in the several years of making these enumerations, be so fixed as not to be less than fifty-eight nor more than one hundred; and they shall be appointed for the four years next following, as near as may be, among the several counties and towns in proportion to the number of qualified electors; but when a county may not have a sufficient number of qualified electors to entitle it to one Representative, and when the adjacent county or counties may not have a residuum or residuums, which, when added to the small county, would entitle it to a separate representation, it shall then be in the power of the Legislature to join two or more

together for the purpose of sending a Representative: *Provided*, That when there are two or more counties adjoining which have residuums over and above the ratio then fixed by law, if said residuums, when added together, will amount to such ratio, in that case one Representative shall be added to that county having the largest residuum.

SEC. 7. The House of Representatives shall choose its Speaker and other officers.

SEC. 8. In all elections for Representatives, every free male citizen (negroes, mulattoes and Indians excepted), who at the time being, hath attained to the age of twenty-one years, and resided in the State two years, or the county or town in which he offers to vote one year next preceding the election, shall enjoy the right of an elector; but no person shall be entitled to vote except in the county or town in which he may actually reside at the time of the election, except as is herein otherwise provided. Electors shall in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest during their attendance at, going to and returning from elections.

SEC. 9. The members of the Senate shall be chosen for the term of four years; and when assembled, shall have the power to choose its officers annually.

SEC. 10. At the first session of the General Assembly after the Constitution takes effect, the Senators shall be divided by lot, as equally as may be, into four classes. The seats of the Senators of the first class shall be vacated at the expiration of the first year; of the second class, at the expiration of the second year; of the third class, at the expiration of the third year; and of the fourth class, at the expiration of the fourth year; so that one-fourth shall be chosen every year, and a rotation thereby kept up perpetually.

SEC. 11. The Senate shall consist of twenty-four members at least, and for every three members above fifty-eight which shall be added to the House of Representatives, one member shall be added to the Senate.

SEC. 12. The same number of senatorial districts shall, from time to time, be established by the Legislature, as there may then be Senators allotted to the State; which shall be so formed as to contain, as near as may be, an equal number of free male inhabitants in each above the age of twenty-one years,

and so that no county shall be divided or form more than one district; and where two or more counties compose a district, they shall be adjoining.

SEC. 13. When an additional Senator may be added to the Senate, he shall be annexed by lot to one of the four classes, so as to keep them as nearly equal in numbers as possible.

SEC. 14. One Senator for each district shall be elected by those qualified to vote for Representatives therein, who shall give their votes at the several places in the counties or towns where elections are by law directed to be held.

SEC. 15. No person shall be a Senator, who, at the time of his election, is not a citizen of the United States, and who hath not attained to the age of thirty-five years, and resided in this State six years next preceding his election, and the last year thereof in the district for which he may be chosen.

SEC. 16. The first election for Senators shall be general throughout the State, and at the same time that the general election for Representatives is held; and thereafter, there shall, in like manner, be an annual election for Senators to fill the places of those whose time of service may have expired.

SEC. 17. The General Assembly shall convene on the first Monday in the month of November in every year, unless a different day be appointed by law; and their sessions shall be held at the Seat of Government.

SEC. 18. Not less than a majority of the members of each House of the General Assembly shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and shall be authorized by law to compel the attendance of absent members, in such manner, and under such penalties, as may be prescribed thereby.

SEC. 19. Each House of the General Assembly shall judge of the qualifications, elections, and returns of its members; but a contested election shall be determined in such manner as shall be directed by law.

SEC. 20. Each House of the General Assembly may determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

SEC. 21. Each House of the General Assembly shall keep and publish weekly, a journal of its proceedings; and the

yeas and nays of the members, on any question, shall, at the desire of any two of them, be entered on their journal.

SEC. 22. Neither House, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 23. The members of the General Assembly shall severally receive, from the public treasury, a compensation for their services, which shall be one dollar and a half a day, during their attendance on going to and returning from the sessions of their respective Houses: *Provided*, That the same may be increased or diminished by law; but no alteration shall take effect during the session at which such alteration shall be made.

SEC. 24. The members of the General Assembly shall, in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest, during their attendance at the sessions of their respective Houses, and in going to and returning from the same; and for any speech or debate, in either House, they shall not be questioned in any other place.

SEC. 25. No Senator or Representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit under this Commonwealth, which shall have been created or the emoluments of which shall have been increased during the time such Senator or Representative was in office, except to such offices or appointments as may be made or filled by the elections of the people.

SEC. 26. No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, nor whilst he holds or exercises any office of profit under this Commonwealth, shall be eligible to the General Assembly, except attorneys at law, justices of the peace, and militia officers: *Provided*, That justices of the courts of quarter sessions shall be ineligible, so long as any compensation may be allowed them for their services: *Provided also*, That attorneys for the Commonwealth, who receive a fixed annual salary from the public treasury, shall be ineligible.

SEC. 27. No person, who at any time may have been a collector of taxes for the State, or the assistant or deputy of

such collector, shall be eligible to the General Assembly until he shall have obtained a *quietus* for the amount of such collection, and for all public moneys for which he may be responsible.

SEC. 28. No bill shall have the force of a law, until, on three several days, it be read over in each House of the General Assembly, and free discussion allowed thereon; unless, in cases of urgency, four-fifths of the House where the bill shall be depending may deem it expedient to dispense with this rule.

SEC. 29. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose amendments, as in other bills: *Provided*, That they shall not introduce any new matter, under the color of an amendment, which does not relate to raising a revenue.

SEC. 30. The General Assembly shall regulate, by law, by whom and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

ARTICLE III.

Concerning the Executive Department.

SEC. 1. The supreme executive power of the Commonwealth shall be vested in a chief magistrate, who shall be styled the Governor of the Commonwealth of Kentucky.

SEC. 2. The Governor shall be elected for the term of four years, by the citizens entitled to suffrage, at the time and places where they shall respectively vote for Representatives. The person having the highest number of votes shall be Governor; but if two or more shall be equal and highest in votes, the election shall be determined by lot, in such manner as the Legislature may direct.

SEC. 3. The Governor shall be ineligible for the succeeding seven years after the expiration of the time for which he shall have been elected.

SEC. 4. He shall be at least thirty-five years of age, and a citizen of the United States, and have been an inhabitant of this State at least six years next preceding his election.

SEC. 5. He shall commence the execution of his office on the fourth Tuesday succeeding the day of the commencement of the general election on which he shall be chosen, and shall continue in the execution thereof until the end of four weeks

next succeeding the election of his successor, and until his successor shall have taken the oaths or affirmations prescribed by this Constitution.

SEC. 6. No member of Congress, or person holding any office under the United States, nor minister of any religious society, shall be eligible to the office of Governor. •

SEC. 7. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

SEC. 8. He shall be commander-in-chief of the army and navy of this Commonwealth, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he be advised so to do by a resolution of the General Assembly.

SEC. 9. He shall nominate, and by and with the advice and consent of the Senate, appoint all officers, whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for: *Provided*, That no person shall be so appointed to an office, within any county, who shall not have been a citizen and inhabitant therein one year next before his appointment, if the county shall have been so long erected; but if it shall not have been so long erected, then within the limits of the county or counties from which it shall have been taken: *Provided, also*, That the county courts shall be authorized by law to appoint inspectors, collectors, and their deputies, surveyors of the highways, constables, jailers, and such other inferior officers, whose jurisdiction may be confined within the limits of a county.

SEC. 10. The Governor shall have power to fill up vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SEC. 11. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In cases of treason he shall have power to grant reprieves until the end of the next session of the General Assembly, in which the power of pardoning shall be vested.

SEC. 12. He may require information, in writing, from the

officers in the executive department, upon any subject relating to the duties of their respective offices.

SEC. 13. He shall, from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he shall deem expedient.

SEC. 14. He may, on extraordinary occasions, convene the General Assembly at the Seat of Government, or at a different place, if that should have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two Houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

SEC. 15. He shall take care that the laws be faithfully executed.

SEC. 16. A Lieutenant Governor shall be chosen at every election for a Governor, in the same manner, continue in office for the same time, possess the same qualifications. In voting for Governor and Lieutenant Governor, the electors shall distinguish whom they vote for as Governor, and whom as Lieutenant Governor.

SEC. 17. He shall, by virtue of his office, be Speaker of the Senate; have a right, when in committee of the whole, to debate and vote on all subjects, and when the Senate are equally divided, to give the casting vote.

SEC. 18. In case of the impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the Lieutenant Governor shall exercise all the power and authority appertaining to the office of Governor, until another be duly qualified, or the Governor absent or impeached shall return or be acquitted.

SEC. 19. Whenever the government shall be administered by the Lieutenant Governor, or he shall be unable to attend as Speaker of the Senate, the Senators shall elect one of their own members as Speaker for that occasion. And if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the Speaker of the Senate shall, in like manner, administer the government.

SEC. 20. The Lieutenant Governor, while he acts as Speaker

to the Senate, shall receive for his services the same compensation which shall, for the same period, be allowed to the Speaker of the House of Representatives, and no more; and during the time he administers the government, as Governor, shall receive the same compensation which the Governor would have received and been entitled to, had he been employed in the duties of his office.

SEC. 21. The Speaker *pro tempore* of the Senate, during the time he administers the government, shall receive in like manner, the same compensation which the Governor would have received had he been employed in the duties of his office.

SEC. 22. If the Lieutenant Governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the State during the recess of the General Assembly, it shall be the duty of the Secretary for the time being to convene the Senate for the purpose of choosing a Speaker.

SEC. 23. An Attorney General and such other attorneys for the Commonwealth as may be necessary, shall be appointed, whose duty shall be regulated by law. Attorneys for the Commonwealth for the several counties shall be appointed by the respective courts having jurisdiction therein.

SEC. 24. A Secretary shall be appointed and commissioned during the term for which the Governor shall have been elected, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts and proceedings of the Governor; and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before either House of the General Assembly, and shall perform such other duties as may be enjoined him by law.

SEC. 25. Every bill which shall have passed both Houses shall be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it shall have originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be considered, and if approved by a majority of all the members elected to that House, it shall

be a law; but in such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

SEC. 26. Every order, resolution, or vote to which the concurrence of both Houses may be necessary, except on a question of adjournment, shall be presented to the Governor, and, before it shall take effect, be approved by him, or, being disapproved, shall be repassed by a majority of all the members elected to both Houses, according to the rules and limitations prescribed in case of a bill.

SEC. 27. Contested elections for a Governor and Lieutenant Governor shall be determined by a committee, to be selected from both Houses of the General Assembly, and formed and regulated in such manner as shall be directed by law.

SEC. 28. The freemen of this Commonwealth (negroes, mulattoes and Indians excepted) shall be armed and disciplined for its defense. Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service.

SEC. 29. The commanding officers of the respective regiments shall appoint the regimental staff; brigadier-generals their brigade majors; major-generals their aids; and captains the non-commissioned officers of companies.

SEC. 30. A majority of the field officers and captains in each regiment shall nominate the commissioned officers in each company, who shall be commissioned by the Governor: *Provided*, That no nomination shall be made unless two at least of the field officers are present; and when two or more persons have an equal and the highest number of votes, the field officer present who may be highest in commission shall decide the nomination.

SEC. 31. Sheriffs shall be hereafter appointed in the following manner: When the time of a sheriff for any county may be about to expire, the county court for the same (a majority

of all its justices being present) shall, in the months of September, October, or November next preceding thereto, recommend to the Governor two proper persons to fill the office, who are then justices of the county court; and who shall, in such recommendation, pay a just regard to seniority in office and a regular rotation. One of the persons so recommended shall be commissioned by the Governor, and shall hold his office for two years, if he so long behave well, and until a successor be duly qualified. If the county court shall omit, in the months aforesaid, to make such a recommendation, the Governor shall then nominate, and by and with the advice and consent of the Senate, appoint a fit person to fill such office.

ARTICLE IV.

Concerning the Judicial Department.

SEC. 1. The judicial power of this Commonwealth, both as to matters of law and equity, shall be vested in one Supreme Court, which shall be styled the Court of Appeals, and in such inferior courts as the General Assembly may, from time to time, erect and establish.

SEC. 2. The Court of Appeals, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may, from time to time, be prescribed by law.

SEC. 3. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; but for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any of them, on the address of two-thirds of each House of the General Assembly: *Provided, however,* That the cause or causes for which such removal may be required shall be stated at length in such address, and on the journal of each House. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law.

SEC. 4. The judges shall, by virtue of their office, be conservators of the peace throughout the State. The style of all process shall be "The Commonwealth of Kentucky." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Kentucky, and conclude against the peace and dignity of the same.

SEC. 5. There shall be established in each county, now or which may hereafter be erected within this Commonwealth, a county court.

SEC. 6. A competent number of justices of the peace shall be appointed in each county; they shall be commissioned during good behavior, but may be removed on conviction of misbehavior in office, or of any infamous crime, or on the address of two-thirds of each House of the General Assembly: *Provided, however,* That the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each House.

SEC. 7. The number of justices of the peace to which the several counties in this Commonwealth now established, or which may hereafter be established, ought to be entitled to, shall, from time to time, be regulated by law.

SEC. 8. When a surveyor, or coroner, or a justice of the peace, shall be needed in any county, the county court for the same, a majority of all its justices concurring therein, shall recommend to the Governor two proper persons to fill the office; one of whom he shall appoint thereto: *Provided, however,* That if the county court shall, for twelve months, omit to make such recommendation, after being requested by the Governor to recommend proper persons, he shall then nominate, and by and with the advice and consent of the Senate, appoint a fit person to fill such office.

SEC. 9. When a new county shall be erected, a competent number of justices of the peace, a sheriff, and a coroner therefor, shall be recommended to the Governor by a majority of all the members of the House of Representatives from the senatorial district or districts in which the county is situated; and if either of the persons thus recommended shall be rejected by the Governor or the Senate, another person shall immediately be recommended as aforesaid.

SEC. 10. Each court shall appoint its own clerk, who shall hold his office during good behavior; but no person shall be appointed clerk, only *pro tempore*, who shall not produce to the court appointing him, a certificate from a majority of the judges of the Court of Appeals, that he hath been examined by their clerk, in their presence, and under their direction, and that they judge him to be well qualified to execute the office of clerk to any court of the same dignity with that for

which he offers himself. They shall be removable for breach of good behavior by the Court of Appeals only, who shall be judges of the fact as well as of the law. Two-thirds of the members present must concur in the sentence.

SEC. 11. All commissions shall be in the name and by the authority of the State of Kentucky, and sealed with the State seal, and signed by the Governor.

SEC. 12. The State Treasurer and printer or printers for the Commonwealth, shall be appointed annually by the joint vote of both Houses of the General Assembly: *Provided, That,* during the recess of the same, the Governor shall have power to fill vacancies which may happen in either of the said offices.

ARTICLE V.

Concerning Impeachments.

SEC. 1. The House of Representatives shall have the sole power of impeaching.

SEC. 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.

SEC. 3. The Governor and all 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 honor, trust or profit under this Commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial and punishment according to law.

ARTICLE VI.

General Provisions.

SEC. 1. Members of the General Assembly, and all officers, executive and judicial, before they enter upon the execution of their respective offices, shall take the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be), that I will be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of ———, according to law."

SEC. 2. Treason against the Commonwealth shall consist only in levying war against it, or in adhering to its enemies,

giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 3. Every person shall be disqualified from serving as Governor, Lieutenant-Governor, Senator or Representative, for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat to procure his election.

SEC. 4. Laws shall be made to exclude from office and from suffrage those who shall thereafter be convicted of bribery, perjury, forgery or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult or other improper practices.

SEC. 5. No money shall be drawn from the Treasury but in pursuance of appropriations made by law, nor shall any appropriations of money for the support of an army be made for a longer time than one year; and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

SEC. 6. The General Assembly shall direct by law, in what manner, and in what courts, suits may be brought against the Commonwealth.

SEC. 7. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the General Assembly the most solemn appeal to God.

SEC. 8. All laws which, on the first day of June, one thousand seven hundred and ninety-two, were in force in the State of Virginia, and which are of a general nature, and not local in that State, and not repugnant to this Constitution, nor to the laws which have been enacted by the Legislature of this Commonwealth, shall be in force within this State until they shall be altered or repealed by the General Assembly.

SEC. 9. The compact with the State of Virginia, subject to such alterations as may be made therein agreeably to the mode prescribed by the said compact, shall be considered as part of this Constitution.

SEC. 10. It shall be the duty of the General Assembly to

pass such laws as shall be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment.

SEC. 11. All civil officers for the Commonwealth at large shall reside within the State, and all district, county or town officers within their respective districts, counties or towns (trustees of towns excepted), and shall keep their respective offices at such places therein as may be required by law; and all militia officers shall reside in the bounds of the division, brigade, regiment, battalion, or company to which they may severally belong.

SEC. 12. The Attorney-General and other attorneys for this Commonwealth, who receive a fixed annual salary from the public treasury, judges and clerks of courts, justices of the peace, surveyors of lands, and all commissioned militia officers, shall hold their respective offices during good behavior, and the continuance of their respective courts, under the exceptions contained in this Constitution.

SEC. 13. Absence on the business of this State, or the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under this Commonwealth, under the exceptions contained in this Constitution.

SEC. 14. It shall be the duty of the General Assembly to regulate, by law, in what cases, and what deduction from the salaries of public officers, shall be made, for neglect of duty in their official capacity.

SEC. 15. Returns of all elections for Governor, Lieutenant Governor, and members of the General Assembly, shall be made to the Secretary for the time being.

SEC. 16. In all elections by the people, and also by the Senate and House of Representatives, jointly or separately, the votes shall be personally and publicly given, *viva voce*.

SEC. 17. No member of Congress, nor person holding or exercising any office of trust or profit under the United States, or either of them, or under any foreign power, shall be eligible as a member of the General Assembly of this Commonwealth, or hold or exercise any office of trust or profit under the same.

SEC. 18. The General Assembly shall direct, by law, how persons who now are, or who may hereafter become securities

for public officers, may be relieved or discharged on account of such securityship.

ARTICLE VII.

Concerning Slaves.

SEC. 1. The General Assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money, for the slaves so emancipated. They shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State. They shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a charge to any county in this Commonwealth. They shall have full power to prevent slaves being brought into this State as merchandise. They shall have full power to prevent any slaves being brought into this State from a foreign country, and to prevent those from being brought into this State who have been, since the first day of January, one thousand seven hundred and eighty-nine, or may hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary to oblige the owners of slaves to treat them with humanity, to provide for them necessary clothing and provision, to abstain from all injuries to them, extending to life or limb; and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of their owner or owners.

SEC. 2. In the prosecution of slaves for felony, no inquest by a grand jury shall be necessary, but the proceedings in such prosecutions shall be regulated by law, except that the General Assembly shall have no power to deprive them of the privilege of an impartial trial by a petit jury.

ARTICLE VIII.

SEC. 1. The Seat of Government shall continue in the town of Frankfort until it shall be removed by law: *Provided, however,* That two-thirds of all the members elected to each

House of the General Assembly shall concur in the passage of such law.

ARTICLE IX.

Mode of Revising the Constitution.

SEC. 1. When experience shall point out the necessity of amending this Constitution, and when a majority of all the members elected to each House of the General Assembly shall, within the first twenty days of their stated annual session, concur in passing a law for taking the sense of the good people of this Commonwealth, as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs, and other returning officers, at the next general election which shall be held for Representatives, after the passage of such law, to open a poll for, and make a return to the Secretary for the time being, of the names of all those entitled to vote for Representatives who have voted for calling a convention; and if, thereupon, it shall appear that a majority of all the citizens of this State, entitled to vote for Representatives, have voted for a convention, the General Assembly shall direct that a similar poll shall be opened and taken for the next year; and if, thereupon, it shall appear that a majority of all the citizens of this State entitled to vote for Representatives have voted for a convention, the General Assembly shall, at their next session, call a convention, to consist of as many members as there shall be in the House of Representatives, and no more, to be chosen in the same manner and proportion, at the same places, and the same time, that Representatives are, by citizens entitled to vote for Representatives, and to meet within three months after the said election for the purpose of readopting, amending, or changing this Constitution. But if it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for Representatives did not vote for a convention, a convention shall not be called.

ARTICLE X.

That the general, great and essential principles of liberty and free government may be recognized and established: WE DECLARE—

SEC. 1. That all freemen, when they form a social compact, are equal, and that no man or set of men are entitled to

exclusive separate public emoluments or privileges from the community, but in consideration of public services.

SEC. 2. That all power is inherent of the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness. For the advancement of these ends, they have at all times an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship.

SEC. 4. That the civil rights, privileges, or capacities of any citizen shall in nowise be diminished or enlarged on account of his religion.

SEC. 5. That all elections shall be free and equal.

SEC. 6. That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate.

SEC. 7. That printing-presses shall be free to every person who undertakes to examine the proceedings of the Legislature or any branch of Government; and no law shall ever be made to restrain the right thereof; the free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.

SEC. 8. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

SEC. 9. That the people shall be secure in their persons, houses, papers and possessions from unreasonable seizures and searches; and that no warrant to search any place, or to seize any person or things, shall issue without describing

them as nearly as may be, nor without probable cause, supported by oath or affirmation.

SEC. 10. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; that he can not be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

SEC. 11. That 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, by leave of the court, for oppression or misdemeanor in office.

SEC. 12. No person shall, for the same offense, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

SEC. 13. That all courts shall be open, and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law; and right and justice administered, without sale, denial, or delay.

SEC. 14. That no power of suspending laws shall be exercised, unless by the Legislature or its authority.

SEC. 15. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

SEC. 16. That all prisoners shall be bailable by sufficient securities, unless for capital offenses, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

SEC. 17. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

SEC. 18. That no *ex post facto* law, nor any law impairing contracts, shall be made.

SEC. 19. That no person shall be attainted of treason or felony by the Legislature.

SEC. 20. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth.

SEC. 21. That the estates of such persons as shall destroy their own lives, shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

SEC. 22. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes by petition, address, or remonstrance.

SEC. 23. That the rights of the citizens to bear arms in defense of themselves and the State shall not be questioned.

SEC. 24. That no standing army shall, in time of peace, be kept up without the consent of the Legislature; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

SEC. 25. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

SEC. 26. That the Legislature shall not grant any title of nobility or hereditary distinction, nor create any office, the appointment to which shall be for a longer term than during good behavior.

SEC. 27. That emigration from the State shall not be prohibited.

SEC. 28. To guard against transgressions of the high powers which we have delegated, WE DECLARE, that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this Constitution, shall be void.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments made in the Constitution of this Commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained :

SEC. 1. That all laws of this Commonwealth, in force at the time of making the said alterations and amendments, and not inconsistent therewith, and all rights, actions, prosecutions, claims and contracts, as well of individuals as of bodies corporate, shall continue, as if the said alterations and amendments had not been made.

SEC. 2. That all officers now filling any office or appointment, shall continue in the exercise of the duties of their respective offices or appointments for the terms therein expressed, unless by this Constitution it is otherwise directed.

SEC. 3. The oaths of office herein directed to be taken, may be administered by any justice of the peace, until the Legislature shall otherwise direct.

SEC. 4. The General Assembly, to be held in November next, shall apportion the Representatives and Senators, and lay off the State into Senatorial districts, conformable to the regulations prescribed by this Constitution. In fixing those apportionments, and in establishing those districts, they shall take for their guide the enumeration directed by law to be made in the present year by the commissioners of the tax; and the apportionments thus made, shall remain unaltered until the end of the stated annual session of the General Assembly, in the year eighteen hundred and three.

SEC. 5. In order that no inconvenience may arise from the change made by this Constitution, in the time of holding the general election, it is hereby ordained that the first election for Governor, Lieutenant-Governor and members of the General Assembly, shall commence on the first Monday in May, in the year eighteen hundred. The persons then elected shall continue in office during their several terms of service prescribed by this Constitution, and until the next general election which shall be held after their said terms shall have respectively expired. The returns for the said first election of Governor and Lieutenant-Governor, shall be made to the Secretary within fifteen days from the day of election; who shall, as soon as may be, examine and count the same in the presence of at least two Judges of the Court of Appeals, or district courts, and shall declare who are the persons thereby duly elected, and give them official notice of their election; and if any person shall be equal and highest on the poll, the said Judges and Secretary shall determine the election by lot.

SEC. 6. This Constitution, except so much thereof as is therein otherwise directed, shall not be in force until the first day of June, in the year one thousand eight hundred, on which day the whole thereof shall take full and complete effect.

Done in Convention at Frankfort, the seventeenth day of August, one thousand seven hundred and ninety-nine, and of the independence of the United States of America the twenty-fourth.

ALEXANDER S. BULLITT,

President of Convention and Member from Jefferson.

BOURBON.—John Allen, Charles Smith, Robert Wilmot, James Duncan, William Griffith, Nathaniel Rogers.

BRACKEN.—Philip Buckner.

CAMPBELL.—Thomas Sanford.

CLARK.—Robert Clarke, R. Hickman, William Sudduth.

CHRISTIAN.—Young Ewing.

FAYETTE.—John Breckinridge, John McDowell, John Bell, H. Harrison, B. Thruston, Walter Carr.

FRANKLIN.—Harry Innis, John Logan.

FLEMING.—George Stockton.

GARRARD.—William M. Bledsoe.

GREEN.—Will Casey.

HARRISON.—Henry Coleman, William Elliott Boswell.

JEFFERSON.—Richard Taylor.

JESSAMINE.—John Price.

LINCOLN.—Wm. Logan, N. Huston.

LOGAN.—John Bailey, Reuben Ewing.

MASON.—Philemon Thomas, Thomas Marshall, Jr., Joshua Baker.

MERCER.—Peter Brunner, John Adair, Thomas Allin, Samuel Taylor.

MADISON.—Green Clay, Thomas Clay, Will Irvine.

MONTGOMERY.—Jilson Payne.

NELSON.—John Rowan, Richard Prather, Nicholas Minor.

SHELBY.—Benjamin Logan, Abraham Owen.

SCOTT.—Wm. Henry, Robert Johnson.

WOODFORD.—Caleb Wallace, Wm. Steele.

WASHINGTON.—Felix Grundy, Robert Abell.

WARREN.—Alexander Davidson.

THIRD CONSTITUTION

OF THE

STATE OF KENTUCKY.

(1850.)

[PREAMBLE.]

We, the representatives of the people of the State of Kentucky, in convention assembled to secure to all the citizens thereof the enjoyment of the rights of life, liberty, and property, and of pursuing happiness, do ordain and establish this Constitution for its government.

From "to secure" to "happiness," is brought from Constitution of 1799. These words not in 1792.

ARTICLE I.

Concerning the Distribution of the Powers of Government.

SEC. 1. The powers of the government of the State of Kentucky shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to-wit: those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another.

Except words "of the State of Kentucky," the same in 1792, same in 1799.

SEC. 2. No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

The same in 1799. Substantially the same in 1792.

ARTICLE II.

Concerning the Legislative Department.

SEC. 1. The legislative power shall be vested in a House of Representatives and Senate, which together, shall be styled the General Assembly of the Commonwealth of Kentucky.

Same in substance, both in 1792 and 1799. 1792 has, "of this Commonwealth." After "vested," "in two distinct branches," 1799; different phraseology.

In 1799, *one* year from general election.

Every year, 1799. Election "three days" by request of any candidate.

Same in 1799:

Different in 1792, "six months" residence in County.

In 1792 citizenship of U. S. not prescribed.

"City" added in 1850.

Constitution of 1799 provided for State Census in 1803, and fixed the Representatives at from 58 to 100.

City representation by "districts," where entitled to more than one member, is a new feature.

Constitution of 1850, caused by the growth of Louisville: new.

SEC. 2. The members of the House of Representatives shall continue in service for the term of two years from the day of the general election, and no longer.

SEC. 3. Representatives shall be chosen on the first Monday in August in every second year; and the mode of holding the elections shall be regulated by law.

SEC. 4. No person shall be a Representative, who, at the time of his election, is not a citizen of the United States, has not attained the age of twenty-four years, and who has not resided in this State two years next preceding his election, and the last year thereof in the county, town, or city for which he may be chosen.

SEC. 5. The General Assembly shall divide each county of this Commonwealth into convenient election precincts, or may delegate power to do so to such county authorities as may be designated by law; and elections for Representatives for the several counties shall be held at the places of holding their respective courts, and in the several election precincts, into which the counties may be divided: *Provided, That* when it shall appear to the General Assembly that any city or town hath a number of qualified voters equal to the ratio then fixed, such city or town shall be invested with the privilege of a separate representation, in either or both Houses of the General Assembly, which shall be retained so long as such city or town shall contain a number of qualified voters equal to the ratio which may, from time to time, be fixed by law; and thereafter elections for the county in which such city or town is situated, shall not be held therein; but such city or town shall not be entitled to a separate representation unless such county, after the separation, shall also be entitled to one or more Representatives. That whenever a city or town shall be entitled to a separate representation in either House of the General Assembly, and by its numbers shall be entitled to more than one Representative, such city or town shall be divided, by squares which are contiguous, so as to make the most compact form, into Representative districts, as nearly equal as may be, equal to the number of Representatives to which such city or town may be entitled; and one Representative shall be elected from each district. In like manner shall said city or town be divided into Senatorial districts, when, by the apportionment, more than one Senator shall be

allotted to such city or town; and a Senator shall be elected from each Senatorial district; but no ward or municipal division shall be divided by such division of Senatorial or Representative districts, unless it be necessary to equalize the elective, Senatorial or Representative districts.

SEC. 6. Representation shall be equal and uniform in this Commonwealth, and shall be forever regulated and ascertained by the number of qualified voters therein. In the year 1850, again in the year 1857, and every eighth year thereafter an enumeration of all the qualified voters of the State shall be made; and to secure uniformity and equality of representation, the State is hereby laid off into ten districts. The first district shall be composed of the counties of Fulton, Hickman, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, Union, Hopkins, Caldwell, and Trigg. The second district shall be composed of the counties of Christian, Muhlenberg, Henderson, Daviess, Hancock, Ohio, Breckinridge, Meade, Grayson, Butler, and Edmonson. The third district shall be composed of the counties of Todd, Logan, Simpson, Warren, Allen, Monroe, Barren, and Hart. The fourth district shall be composed of the counties of Cumberland, Adair, Green, Taylor, Clinton, Russell, Wayne, Pulaski, Casey, Boyle, and Lincoln. The fifth district shall be composed of the counties of Hardin, Larue, Bullitt, Spencer, Nelson, Washington, Marion, Mercer, and Anderson. The sixth district shall be composed of the counties of Garrard, Madison, Estill, Owsley, Rockcastle, Laurel, Clay, Whitley, Knox, Harlan, Perry, Letcher, Pike, Floyd, and Johnson. The seventh district shall be composed of the counties of Jefferson, Oldham, Trimble, Carroll, Henry, and Shelby, and the city of Louisville. The eighth district shall be composed of the counties of Bourbon, Fayette, Scott, Owen, Franklin, Woodford and Jessamine. The ninth district shall be composed of the counties of Clark, Bath, Montgomery, Fleming, Lewis, Greenup, Carter, Lawrence, Morgan and Breathitt. The tenth district shall be composed of the counties of Mason, Bracken, Nicholas, Harrison, Pendleton, Campbell, Grant, Kenton, Boone, and Gallatin. The number of Representatives shall, at the several sessions of the General Assembly next after the making of the enumerations, be apportioned among the ten several districts, according to the number of

First clause in 1799,
not in 1792.

Subsequent clause
fixing representa-
tion by districts is
new to 1850. See
Sec. 6, 1799.

qualified voters in each ; and the Representatives shall be apportioned, as near as may be, among the counties, towns and cities in each district ; and in making such apportionment the following rules shall govern, to-wit : Every county, town, or city having the ratio, shall have one Representative ; if double the ratio, two Representatives, and so on. Next, the counties, towns, or cities having one or more Representatives, and the largest number of qualified voters above the ratio, and counties having the largest number under the ratio, shall have a Representative, regard being always had to the greatest number of qualified voters : *Provided*, That when a county may not have a sufficient number of qualified voters to entitle it to one Representative, then such county may be joined to some adjacent county or counties, which counties shall send one Representative. When a new county shall be formed of territory belonging to more than one district, it shall form a part of that district having the least number of qualified voters.

Previously representation was apportioned by counties.

Same as 1799, and in 1792, applied to both Senate and House.

Much the same as Sec. 8, Art. II, 1799.

Sec. Sec. 6, Art. I, Constitution 1792.

Residence in precinct 60 days.

"Voting only in precinct" added in 1850.

Included in Sec. 8, Art. II, 1799, and Sec. 3, Art. III, 1792.

Changed from 1792, 1799. Same term, 1799. Officers "annually" in 1799.

Not in 1792.

Sec. 10, Art. II, 1799, divides the Senators into four classes, one quarter chosen each year.

SEC. 7. The House of Representatives shall choose its Speaker and other officers.

SEC. 8. Every free white male citizen, of the age of twenty-one years, who has resided in the State two years, or in the county, town or city in which he offers to vote, one year next preceding the election, shall be a voter ; but such voter shall have been, for sixty days next preceding the election, a resident of the precinct in which he offers to vote, and he shall vote in said precinct and not elsewhere.

SEC. 9. Voters, in all cases except treason, felony, breach or surety of the peace, shall be privileged from arrest during their attendance at, going to, and returning from elections.

SEC. 10. Senators shall be chosen for the term of four years ; and the Senate shall have power to choose its officers biennially.

SEC. 11. Senators and Representatives shall be elected under the first apportionment after the adoption of this Constitution, in the year 1851.

SEC. 12. At the session of the General Assembly next after the first apportionment under this Constitution, the Senators shall be divided by lot, as equally as may be, into two classes ; the seats of the first class shall be vacated at the end of two years from the day of the election, and those of the second

class at the end of four years, so that one-half shall be chosen every two years.

SEC. 13. The number of Representatives shall be one hundred, and the number of Senators thirty-eight.

SEC. 14. At every apportionment of representation, the State shall be laid off into thirty-eight senatorial districts, which shall be so formed as to contain, as near as may be, an equal number of qualified voters, and so that no county shall be divided in the formation of a senatorial district, except such county shall be entitled, under the enumeration, to two or more Senators; and where two or more counties compose a district they shall be adjoining.

SEC. 15. One Senator for each district shall be elected by the qualified voters therein, who shall vote in the precincts where they reside, at the places where elections are by law directed to be held.

SEC. 16. No person shall be a Senator, who at the time of his election, is not a citizen of the United States, has not attained the age of thirty years, and who has not resided in this State six years next preceding his election, and the last year thereof in the district for which he may be chosen.

SEC. 17. The election for Senators, next after the first apportionment under this Constitution, shall be general throughout the State, and at the same time that the election for Representatives is held; and thereafter, there shall be a biennial election for Senators to fill the places of those whose term of service may have expired.

SEC. 18. The General Assembly shall convene on the first Monday in November after the adoption of this Constitution, and again on the first Monday in November, 1851, and on the same day of every second year thereafter, unless a different day be appointed by law; and their sessions shall be held at the seat of Government.

SEC. 19. Not less than a majority of the members of each House of the General Assembly shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and shall be authorized by law to compel the attendance of absent members, in such manner, and under such penalties, as may be prescribed thereby.

SEC. 20. Each House of the General Assembly shall judge of the qualifications, elections, and returns of its members;

Sec. Sec. 8, Art. I, 1792.
Changed as to Senate from Sec. 11, Art. II, 1799.

Altered from Sec. 12, Art. II, Constitution 1799. The principle is much the same.

Chosen by State electors, 1792, Sec. 10, Art. I. (see)

Much the same as Sec. 14, Art. II, 1799.

Sec. 15, Art. II, Constitution 1799.

"Thirty-five years" in 1799. "Above twenty-seven," 1792, Sec. 12, Art. I.

Much the same as Sec. 16, Art. II, 1799.

Sec. 17, Art. II, 1799, required at same date in "every year."

Same date as in 1792; "every year." Sec. 16, Art. I.

Much the same as Sec. 18, Art. II, 1799; Sec. 18, Art. I, 1792.

Same as Sec. 19, Art. II, 1799; Sec. 18, Art. I, 1792.

but a contested election shall be determined in such manner as shall be directed by law.

Same as Sec. 20, Art. II, 1799; Sec. 19, Art. I, 1792.

SEC. 21. Each House of the General Assembly may determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time, for the same cause.

Same, Sec. 21, Art. II, 1799; Sec. 20, Art. I, 1792.

SEC. 22. Each House of the General Assembly shall keep and publish, weekly, a journal of its proceedings; and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on their journal.

Same, Sec. 22, 1799; Sec. 22, 1792.

SEC. 23. Neither House, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Sec. 23, 1799, compensates at a dollar and a half a day; same in traveling. In 1792, Sec. 23, Art. I, six shillings per day.

SEC. 24. The members of the General Assembly shall severally receive, from the public treasury, a compensation for their services, which shall be three dollars a day, during their attendance on, and twelve and a half cents per mile for the necessary travel in going to and returning from the sessions of their respective Houses: *Provided*, That the same may be increased or diminished by law; but no alteration shall take effect during the session at which such alteration shall be made; nor shall a session of the General Assembly continue beyond sixty days, except by a vote of two-thirds of all the members elected to each House; but this shall not apply to the first session held under this Constitution.

Same in Sec. 24, 1799; Sec. 23, 1792.

SEC. 25. The members of the General Assembly shall, in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest, during their attendance at the sessions of their respective Houses, and in going to and returning from the same; and for any speech or debate, in either House, they shall not be questioned in any other place.

Same, Sec. 25, 1799; Sec. 24, 1792.

SEC. 26. No Senator or Representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit under this Commonwealth, which shall have been created, or the emoluments of which shall have been increased during the said term, except to such offices or appointments as may be filled by the election of the people.

SEC. 27. No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, nor while he holds or exercises any office of profit under this Commonwealth, or under the Government of the United States, shall be eligible to the General Assembly, except attorneys at law, justices of the peace, and militia officers: *Provided*, That attorneys for the Commonwealth, who receive a fixed annual salary, shall be ineligible.

Substantially repeated from Sec. 26, Art. II, 1799, and second clause, Sec. 24, Art. I, 1792.

SEC. 28. No person, who at any time may have been a collector of taxes or public moneys for the State, or the assistant or deputy of such collector, shall be eligible to the General Assembly unless he shall have obtained a *quietus* six months before the election, for the amount of such collection, and for all public moneys for which he may have been responsible.

Same as Sec. 27, 1799, except the "six months" are left out. Not in Constitution 1792.

SEC. 29. No bill shall have the force of a law, until, on three several days, it be read over in each House of the General Assembly, and free discussion allowed thereon; unless, in cases of urgency, four-fifths of the House where the bill shall be, depending may deem it expedient to dispense with this rule.

Same as Sec. 28, 1799. Not the same in Constitution 1792.

SEC. 30. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose amendments, as in other bills: *Provided*, That they shall not introduce any new matter, under color of amendment, which does not relate to raising revenue.

Same as Sec. 29, 1799. In Constitution 1792, Art. I, Sec. 26, all after "*Provided*," is omitted.

SEC. 31. The General Assembly shall regulate, by law, by whom, and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

Same as Sec. 30, Art. II, 1799, and Sec. 25, 1792, only the Speaker of House "shall issue writs of election."

SEC. 32. The General Assembly shall have no power to grant divorces, to change the names of individuals, or direct the sales of estates belonging to infants, or other persons laboring under legal disabilities, by special legislation; but by general laws shall confer such powers on the courts of justice.

New section, not in 1799 or 1792 Constitutions.

SEC. 33. The credit of this Commonwealth shall never be given or loaned in aid of any person, association, municipality, or corporation.

New; and never in Constitution of 1799 or 1792.

SEC. 34. The General Assembly shall have no power to pass laws to diminish the resources of the sinking fund, as now established by law, until the debt of the State be paid,

New; and not in Constitution of 1799 or 1792.

but may pass laws to increase them; and the whole resources of said fund, from year to year, shall be sacredly set apart and applied to the payment of the interest and principal of the State debt, and to no other use or purpose, until the whole debt of the State is fully paid and satisfied.

New; not in Constitution of 1799 or 1792.

SEC. 35. The General Assembly may contract debts to meet casual deficits or failures in the revenue, but such debts, direct or contingent, singly or in the aggregate, shall not, at any time, exceed five hundred thousand dollars; and the moneys arising from loans creating such debts shall be applied to the purposes for which they were obtained, or to repay such debts: *Provided*, That the State may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense.

New; see Sec. 35, above.

SEC. 36. No act of the General Assembly shall authorize any debt to be contracted on behalf of the Commonwealth, except for the purposes mentioned in the thirty-fifth section of this article, unless provision be made therein to lay and collect an annual tax sufficient to pay the interest stipulated, and to discharge the debt within thirty years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it: *Provided*, That the General Assembly may contract debts by borrowing money to pay any part of the debt of the State without submission to the people, and without making provision in the act authorizing the same for a tax to discharge the debt so contracted, or the interest thereon.

New; not in Constitution of 1799 or 1792.

SEC. 37. No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title.

New; not in Constitution of 1799 or 1792.

SEC. 38. The General Assembly shall not change the venue in any criminal or penal prosecution, but shall provide for the same by general laws.

New; not in Constitutions of 1799, 1792.

SEC. 39. The General Assembly may pass laws authorizing writs of error in criminal or penal cases, and regulating the right of challenge of jurors therein.

New; not in Constitutions of 1799, 1792.

SEC. 40. The General Assembly shall have no power to pass any act or resolution, for the appropriation of any money, or the creation of any debt, exceeding the sum of one hundred dollars, at any one time, unless the same, on its final

passage, shall be voted for by a majority of all the members then elected to each branch of the General Assembly; and the yeas and nays thereon entered on the journal.

ARTICLE III.

Concerning the Executive Department.

SEC. 1. The supreme executive power of the Commonwealth shall be vested in a chief magistrate, who shall be styled the Governor of the Commonwealth of Kentucky.

Same as in 1799 and substantially in 1792. Chosen by electors under Constitution 1792.

SEC. 2. The Governor shall be elected for the term of four years, by the qualified voters of the State, at the time when and places where they shall respectively vote for Representatives. The person having the highest number of votes shall be Governor; but if two or more shall be equal and highest in votes, the election shall be determined by lot, in such manner as the General Assembly may direct.

Same as Sec. 2, Art. III, Constitution 1799, except "Legislature" for General Assembly. In Sec. 2, Art. II, 1792, at same time, place and manner as Senators.

Chosen by the State electors, from State at large, 1792.

SEC. 3. The Governor shall be ineligible for the succeeding four years after the expiration of the term for which he shall have been elected.

Ineligible for seven years, 1799, no limit in 1792.

SEC. 4. He shall be at least thirty-five years of age, and a citizen of the United States, and have been an inhabitant of this State at least six years next preceding his election.

Same in 1799; in 1792 thirty years of age, and two years a resident.

SEC. 5. He shall commence the execution of the duties of his office on the fifth Tuesday succeeding the day of the general election on which he shall have been chosen, and shall continue in the execution thereof until his successor shall have taken the oaths or affirmations prescribed by this Constitution.

In 1799, fourth Tuesday, and continue four weeks, after successor is elected and takes oath of office. In 1792, simply "four years."

SEC. 6. No member of Congress, or person holding any office under the United States, or minister of any religious society, shall be eligible to the office of Governor.

Same in 1799, but no "religious" limit in 1792, or, ministerial.

SEC. 7. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he was elected.

Same in 1799 and 1792. (Sec. 6, Art. II.)

SEC. 8. He shall be commander-in-chief of the army and navy of this Commonwealth, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless advised so to do by a resolution of the General Assembly.

Same in Constitution 1799, but 1792 omits clause as to commanding in the field.

Sec. 10, Art. III, 1799, and Sec. 9, Art. II, 1792, specify "during recess of the Senate" and expire "at the end of their next session," in both Constitutions. Same as in Sec. 11, 1799, and Sec. 10, 1792, (Executive Article), except last clause as to fees, as in 1850.

Same in Sec. 12, Art. III, 1799, and Sec. 11, Art. II, 1792.

Same in 1799 and 1792.

Same in 1799, but in 1792, there is no authority to remove in case of invasion or contagion. See Sec. 13, Art. II, 1792.

Same as Sec. 15, Art. III, 1799; Sec. 14, Art. II, 1792.

Same as in 1799, but in 1792 there was no Lieutenant Governor, the Speaker of the Senate acting in case of death or disability.

Same in 1799, not in 1792.

Substantially same in 1799, but not in Constitution of 1792.

SEC. 9. He shall have power to fill vacancies that may occur, by granting commissions, which shall expire when such vacancies shall have been filled according to the provisions of this Constitution.

SEC. 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In cases of treason, he shall have power to grant reprieves until the end of the next session of the General Assembly, in which the power of pardoning shall be vested; but he shall have no power to remit the fees of the clerk, sheriff, or Commonwealth's Attorney, in penal or criminal cases.

SEC. 11. He may require information in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

SEC. 12. He shall, from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he may deem expedient.

SEC. 13. He may, on extraordinary occasions, convene the General Assembly at the seat of Government, or at a different place, if that should have become, since their last adjournment, dangerous from an enemy or from contagious disorders; and in case of disagreement between the two houses with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not exceeding four months.

SEC. 14. He shall take care that the laws be faithfully executed.

SEC. 15. A Lieutenant Governor shall be chosen at every regular election for Governor, in the same manner, to continue in office for the same time, and possess the same qualifications as the Governor. In voting for Governor and Lieutenant Governor, the electors shall state for whom they vote as Governor, and for whom as Lieutenant Governor.

SEC. 16. He shall, by virtue of his office, be Speaker of the Senate; have a right, when in committee of the whole, to debate and vote on all subjects, and when the Senate are equally divided, to give the casting vote.

SEC. 17. Should the Governor be impeached, removed from office, die, refuse to qualify, resign, or be absent from the State, the Lieutenant Governor shall exercise all the power and authority appertaining to the office of Governor, until

another be duly elected and qualified, or the Governor absent or impeached shall return or be acquitted.

SEC. 18. Whenever the Government shall be administered by the Lieutenant Governor, or he shall fail to attend as Speaker of the Senate, the Senators shall elect one of their own members as Speaker for that occasion. And if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the Speaker of the Senate shall, in like manner, administer the Government: *Provided*, That whenever a vacancy shall occur in the office of Governor before the first two years of the term shall have expired, a new election for Governor shall take place to fill such vacancy.

Same in 1799, except last clause after *Provided*.

SEC. 19. The Lieutenant Governor, or Speaker *pro tempore*, of the Senate, while he acts as Speaker of the Senate, shall receive for his services the same compensation which shall for the same period be allowed to the Speaker of the House of Representatives, and no more; and during the time he administers the Government as Governor, shall receive the same compensation which the Governor would have received had he been employed in the duties of his office.

Substantially same as Constitution 1799, Secs. 20 and 21, Art. III.

SEC. 20. If the Lieutenant Governor shall be called upon to administer the Government, and shall, while in such administration, resign, die, or be absent from the State during the recess of the General Assembly, it shall be the duty of the Secretary of State, for the time being, to convene the Senate for the purpose of choosing a Speaker.

Same as in Constitution 1799, but not in 1792, there being no Lieutenant-Governor then.

SEC. 21. The Governor shall nominate, and by and with the advice and consent of the Senate, appoint a Secretary of State, who shall be commissioned during the term for which the Governor was elected, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts of the Governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before either House of the General Assembly, and shall perform such other duties as may be required of him by law.

Same as Sec. 24, Art. III, 1799; see also Sec. 9 and Sec. 17, Art. II, 1792.

SEC. 22. Every bill which shall have passed both Houses, shall be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, who shall enter the objec-

Same as Sec. 25, Art. III, 1799, and substantially included in the 28th Sec., Art. I, powers of the General Assembly, 1792.

1792 required two-thirds to pass over veto of Governor.

tions at large upon their journal, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House by which it shall likewise be considered, and if approved by a majority of all the members elected to that House, it shall be a law: but in such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journals of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting.

Same in 1799, Sec. 26, Art. III, and Sec. 29, Art. I, 1792, except required two-thirds.

SEC. 23. Every order, resolution, or vote, in which the concurrence of both Houses may be necessary, except on a question of adjournment, shall be presented to the Governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by a majority of all the members elected to both Houses, according to the rules and limitations prescribed in case of a bill.

In 1799, determined by a committee of both Houses. Not in 1792.

SEC. 24. Contested elections for Governor and Lieutenant Governor shall be determined by both Houses of the General Assembly, according to such regulations as may be established by law.

Not in 1799, 1792, see Sec. 23, Art. III, Constitution of 1799, as to Attorney-General and other Commonwealth Attorneys.

SEC. 25. A Treasurer shall be elected by the qualified voters of the State for the term of two years; and an Auditor of Public Accounts, Register of the Land Office and Attorney General, for the term of four years. The duties and responsibilities of these officers shall be prescribed by law: *Provided*, That inferior State officers, not specially provided for in this Constitution, may be appointed or elected in such manner as shall be prescribed by law, for a term not exceeding four years.

Constitution of 1799, Sec. 12, Art. IV, and Constitution 1792, Sec. 7, Art. VI, were appointed annually by both Houses of the General Assembly.

New Special Section, Constitution 1850.

SEC. 26. The first election under this Constitution for Governor, Lieutenant Governor, Treasurer, Auditor of Public Accounts, Register of the Land Office and Attorney General, shall be held on the first Monday in August in the year 1851.

ARTICLE IV.

Concerning the Judicial Department.

SEC. 1. The judicial power of this Commonwealth, both as to matters of law and equity, shall be vested in one Supreme Court (to be styled the Court of Appeals), the courts established by this Constitution, and such courts, inferior to the Supreme Court, as the General Assembly may, from time to time, erect and establish.

Caption same in 1799, not so headed in 1792.

Substantially same Sec. 1, Art. IV, in 1799, 1792. Sec. 1, Art. V.

Concerning the Court of Appeals.

SEC. 2. The Court of Appeals shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may, from time to time, be prescribed by law.

SEC. 3. The judges of the Court of Appeals shall, after their first term, hold their offices for eight years from and after their election, and until their successors shall be duly qualified, subject to the conditions hereinafter prescribed; but for any reasonable cause, the Governor shall remove any of them, on the address of two-thirds of each House of the General Assembly: *Provided, however,* That the cause or causes for which such removal may be required shall be stated at length in such address, and on the journal of each House. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during the time for which they shall have been elected.

In 1799 the words, "except in cases otherwise directed by this Constitution," are inserted after "Appeals." Secs. 3, 4, Art. V, Constitution of 1792, giving to and regulating the "Supreme Court" as to its original and final jurisdiction concerning land, are both omitted in Constitutions 1799 and 1850. Sec. 5, Art. V, Constitution 1792, is also changed in 1799, 1850.

In 1792 and 1799, appointed instead of elected.

SEC. 4. The Court of appeals shall consist of four judges, any three of whom may constitute a court for the transaction of business. The General Assembly, at its first session after the adoption of this Constitution, shall divide the State, by counties, in four districts, as nearly equal in voting population, and with as convenient limits as may be, in each of which the qualified voters shall elect one judge of the Court of Appeals: *Provided,* That whenever a vacancy shall occur in said court from any cause, the General Assembly shall have the power to reduce the number of judges and districts; but in no event shall there be less than three judges and districts. Should a change in the number of the judges of the Court of

Mainly new matter, not included in the Constitutions of 1799, 1792.

Appeals be made, the term of office and number of districts shall be so changed as to preserve the principle of electing one judge every two years.

Same as in 1799, Sec. 4, Art. IV, and Sec. 7, Art. V, Constitution of 1792.

SEC. 5. The judges shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all process shall be "The Commonwealth of Kentucky." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Kentucky, and conclude "against the peace and dignity of the same."

Changed almost entirely from Sec. 3, Art. IV, Constitution 1799, when the judges of both Appeals, or "Supreme and Inferior Courts shall hold their offices during good behavior." The same tenure also held in 1792, there being no Chief Justice. Art. V, Sec. 5, 1792, gave the Legislature discretion in defining powers of the courts.

SEC. 6. The judges first elected shall serve as follows, to-wit: one shall serve until the first Monday in August, 1852; one until the first Monday in August, 1854; one until the first Monday in August, 1856; and one until the first Monday in August, 1858. The judges, at the first term of the court succeeding their election, shall determine, by lot, the length of time which each one shall serve; and at the expiration of the service of each, an election in the proper district shall take place to fill the vacancy. The judge having the shortest time to serve shall be styled the Chief Justice of Kentucky.

Not in Constitutions of 1799, 1792.

SEC. 7. If a vacancy shall occur in said court from any cause, the Governor shall issue a writ of election to the proper district to fill such vacancy for the residue of the term: *Provided*, That if the unexpired term be less than one year, the Governor shall appoint a judge to fill such vacancy.

These qualifications are not in the Constitutions of 1799 and 1792.

SEC. 8. No person shall be eligible to the office of judge of the Court of Appeals, who is not a citizen of the United States, a resident of the district for which he may be a candidate two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall not be equal to eight years.

Not in Constitution 1799, and otherwise provided in Art. X, Sec. 11, Constitution of 1792.

SEC. 9. The Court of Appeals shall hold its sessions at the Seat of Government, unless otherwise directed by law; but the General Assembly may, from time to time, direct that said court shall hold its sessions in any one or more of said districts.

Not in Constitution of 1799, as then the Courts appointed their own clerks after examination before Judges of Appeals, Sec. 10, Art. IV, 1799. Not provided for, 1792.

SEC. 10. The first election of the Judges and Clerk or Clerks of the Court of Appeals shall take place on the second Monday in May, 1851, and thereafter, in each district as a vacancy may occur, by the expiration of the term of office;

and the judges of the said court shall be commissioned by the Governor.

SEC. 11. There shall be elected, by the qualified voters of this State, a Clerk of the Court of Appeals, who shall hold his office from the first election until the first Monday in August, 1858, and thereafter for the term of eight years from and after his election; and should the General Assembly provide for holding the Court of Appeals in any one or more of said districts, they shall also provide for the election of a clerk by the qualified voters of such district, who shall hold his office for eight years, possess the same qualifications, and be subject to removal in the same manner as the clerk of the Court of Appeals; but if the General Assembly shall, at its first or any other session, direct the Court of Appeals to hold its session in more than one district, a clerk shall be elected by the qualified voters of such district. And the clerk first provided for in this section shall be elected by the qualified voters of other district or districts. The same principle shall be observed whenever the court shall be directed to hold its sessions in either of the other districts. Should the number of judges be reduced, the term of the office of clerk shall be six years.

SEC. 12. No person shall be eligible to the office of clerk of the Court of Appeals unless he be a citizen of the United States, a resident of the State two years next preceding his election, of the age of twenty-one years, and have a certificate from a judge of the Court of Appeals, or a judge of the circuit court, that he has been examined by the clerk of his court, under his supervision, and that he is qualified for the office for which he is a candidate.

SEC. 13. Should a vacancy occur in the office of clerk of the Court of Appeals, the Governor shall issue a writ of election, and the qualified voters of the State, or of the district in which the vacancy may occur, shall elect a clerk of the Court of Appeals, to serve until the end of the term for which such clerk was elected: *Provided*, That when a vacancy shall occur from any cause, or the clerk be under charges upon information, the judges of the Court of Appeals shall have power to appoint a clerk *pro tem*, to perform the duties of clerk until such vacancy shall be filled, or the clerk acquitted: *And provided further*, That no writ of election

Entirely new matter, as in 1799, Sec. 10, Art. IV, the courts severally held the appointing power. But provided for by Constitution 1792, Sec. 5, Art. VI. The change in the number of Judges as here provided for, and the "four districts," are also new.

Altered from Sec. 10, Art. IV, Constitution of 1799, and also provided for in 1792. Certificate of Appeals Court required in 1799. See Sec. 5, Art. VI, 1792.

Not provided in Constitutions of 1799, 1792, the clerks being appointed then. Sec. 10, Art. IV, 1799, providing for removal "for breach of good behavior."

shall issue to fill a vacancy unless the unexpired term exceed one year.

New matter, as the places were not elective.

SEC. 14. The General Assembly shall direct by law, the mode and manner of conducting and making due returns to the Secretary of State, of all elections of the judges and clerk or clerks of the Court of Appeals, and of determining contested elections of any of these offices.

Entirely new provision in Constitution 1850.

SEC. 15. The General Assembly shall provide for an additional judge or judges, to constitute, with the remaining judge or judges, a special court for the trial of such cause or causes as may, at any time, be pending in the Court of Appeals, on the trial of which a majority of the judges can not sit, on account of interest in the event of the cause, or on account of their relationship to either party, or when a judge may have been employed in or decided the cause in the inferior court.

New caption and subdivision. The inferior courts are included in the same article (IV.) as the Supreme in 1792.

Concerning the Circuit Courts.

SEC. 16. A circuit court shall be established in each county now existing, or which may hereafter be erected in this Commonwealth.

SEC. 17. The jurisdiction of said court shall be and remain as now established, hereby giving to the General Assembly the power to change or alter it.

Substantially included in Sec. 2, Art. IV, Constitution of 1799.

SEC. 18. The right to appeal or sue out a writ of error to the Court of Appeals shall remain as it now exists, until altered by law, hereby giving to the General Assembly the power to change, alter, or modify said right.

New section, not in 1799, 1792.

SEC. 19. At the first session after the adoption of this Constitution, the General Assembly shall divide the State into twelve judicial districts, having due regard to business, territory and population: *Provided*, That no county shall be divided.

New section, as Judges are now first elected by the people. Also new districts.

SEC. 20. They shall, at the same time that the judicial districts are laid off, direct elections to be held in each district to elect a judge for said district, and shall prescribe in what manner the elections shall be conducted. The first election of judges of the circuit court shall take place on the second Monday in May, 1851; and afterward, on the first Monday in August, 1856, and on the first Monday in August in every sixth year thereafter.

SEC. 21. All persons qualified to vote for members of the General Assembly in each district shall have the right to vote for judges.

New section.

SEC. 22. No person shall be eligible as judge of the circuit court who is not a citizen of the United States, a resident of the district for which he may be a candidate two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall not be equal to eight years.

Entirely new provision of 1850. Same as in Sec. 8, for Court of Appeals, 1850.

SEC. 23. The judges of the circuit court shall, after their first term, hold their office for the term of six years from the day of their election. They shall be commissioned by the Governor, and continue in office until their successors be qualified, but shall be removable from office in the same manner as the judges of the Court of Appeals; and the removal of a judge from his district shall vacate his office.

New section, the old tenure being for life.

SEC. 24. The General Assembly, if they deem it necessary, may establish one additional district every four years, but the judicial districts shall not exceed sixteen until the population of this State shall exceed one million five hundred thousand.

Entirely new section.

SEC. 25. The judges of the circuit courts shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall be equal and uniform throughout the State, and which shall not be diminished during the time for which they were elected.

Altered from Sec. 3, Art. IV, 1799, and Sec. 2, Art. V, 1792.

SEC. 26. If a vacancy shall occur in the office of judge of the circuit court, the Governor shall issue a writ of election to fill such vacancy for the residue of the term: *Provided*, That if the unexpired term be less than one year, the Governor shall appoint a judge to fill such vacancy.

Formerly there was a life term with no residue—1799, 1792.

SEC. 27. The judicial districts of this State shall not be changed, except at the first session after an enumeration, unless when a new district may be established.

The "districts" are a new feature of 1850, as to number, etc.

SEC. 28. The General Assembly shall provide by law for holding circuit courts, when, from any cause, the judge shall fail to attend, or, if in attendance, can not properly preside.

Materially changed but provided for by Sec. 1, Art. IV, 1799, Sec. 1, Art. V, Constitution of 1792, but changed.

Concerning County Courts.

New section, 1850.

New matter mainly, subject included in Section 1, Art. IV, 1799, Sec. 1, Art. V, 1792.

Justices of the Peace are provided for in Secs. 5, 6, 7, Art. IV, Constitution 1799, and Sec. 6, Art. V, Constitution 1792.

Appointed during "good behavior," 1799, 1792.

Largely new. See Sec. 20, Art. IV, Constitution 1850. New matter of the above year, but provided for, Sec. 5, Art. IV, 1799. See Sec. 6, Art. V, 1792.

New section; and new office, 1799. See, 5, Art. IV, only Justices; Sec. 6, Art. V, 1792.

Sec. 5, Art. IV, 1799.

The Districts are new matter. Justices of the Peace are provided for, Sec. 6, Art. IV, 1799, and Sec. 6, Art. V, 1792. "During good behavior," before 1850.

SEC. 29. A county court shall be established in each county now existing, or which may hereafter be erected within this Commonwealth, to consist of a presiding judge and two associate judges, any two of whom shall constitute a court for the transaction of business: *Provided*, The General Assembly may, at any time, abolish the office of the associate judges, whenever it shall be deemed expedient; in which event they may associate with said court any or all of the justices of the peace for the transaction of business.

SEC. 30. The judges of the county courts shall be elected by the qualified voters in each county, for the term of four years, and shall continue in office until their successors be duly qualified, and shall receive such compensation for their services as may be provided by law.

SEC. 31. The first election of county court judges shall take place at the same time of the election of judges of the circuit court. The presiding judge first elected shall hold his office until the first Monday in August, 1854; the associate judges shall hold their offices until the first Monday in August, 1852, and until their successors be qualified; and afterward, elections shall be held on the first Mondays in August in the years in which vacancies regularly occur.

SEC. 32. No person shall be eligible to the office of presiding or associate judge of the county court, unless he be a citizen of the United States, over twenty-one years of age, and shall have been a resident of the county in which he shall be chosen one year next preceding the election.

SEC. 33. The jurisdiction of the county court shall be regulated by law, and, until changed, shall be the same now vested in the county courts of this State.

SEC. 34. Each county in this State shall be laid off into districts of convenient size as the General Assembly may, from time to time, direct. Two justices of the peace shall be elected in each district by the qualified voters therein, at such time and place as may be prescribed by law, for the term of four years, whose jurisdiction shall be coextensive with the county; no person shall be eligible as a justice of the peace unless he be a citizen of the United States, twenty-one years

of age, and a resident of the district in which he may be a candidate.

SEC. 35. Judges of the county court, and justices of the peace, shall be conservators of the peace. They shall be commissioned by the Governor. County and district officers shall vacate their offices by removal from the district or county in which they shall be appointed. The General Assembly shall provide, by law, the manner of conducting and making due return of all elections of judges of the county court and justices of the peace, and for determining contested elections and provide the mode of filling vacancies in these offices.

New.

SEC. 36. Judges of the county court and justices of the peace, sheriffs, coroners, surveyors, jailers, county assessor, attorney for the county, and constables, shall be subject to indictment or presentment for malfeasance or misfeasance in office, or willful neglect in the discharge of their official duties, in such mode as may be prescribed by law, subject to appeal to the Court of Appeals; and upon conviction, their offices shall become vacant.

New matter (but provided for, as above, and Sec. 8, Art. IV, 1799. Sheriffs and Coroners were elected for "three years," in Constitution 1792, Sec. 1, Art. VI. Vacancies filled by the Governor).

SEC. 37. The General Assembly may provide, by law, that the justices of the peace in each county shall sit at the court of claims, and assist in laying the county levy and making appropriations only.

New section.

SEC. 38. When any city or town shall have a separate representation, such city or town, and the county in which it is located, may have such separate municipal courts, and executive and ministerial officers as the General Assembly may, from time to time, provide.

New provision, on the applications of Louisville, Covington, Henderson and other cities.

SEC. 39. The clerks of the Court of Appeals, circuit and county courts, shall be removable from office by the Court of Appeals upon information and good cause shown. The court shall be judges of the fact as well as the law. Two-thirds of the members present must concur in the sentence.

Provided for by last clause, Sec. 10, Art. IV, Constitution 1799, not in 1792.

SEC. 40. The Louisville chancery court shall exist under this Constitution, subject to repeal, and its jurisdiction to enlargement and modification by the General Assembly. The chancellor shall have the same qualifications as a circuit court judge, and the clerk of said court as a clerk of a circuit court, and the marshal of said court as a sheriff; and the General Assembly shall provide for the election, by the qualified voters within its jurisdiction, of the chancellor, clerk and

Entirely new in Constitution. Previously organized by Legislative act. Now first time recognized by Constitution.

marshal of said court, at the same time that the judge and clerk of the circuit court are elected for the county of Jefferson; and they shall hold their offices for the same time, and shall be removable in the same manner; *Provided, That* the marshal of said court shall be ineligible for the succeeding term.

The word "remain," refers to the general powers created by Sec. 1, Art. IV, 1799, and Sec. 1, Art. V, 1792, but the language of the clause is new matter.

SEC. 41. The city court of Louisville, the Lexington city court, and all other police courts established in any city or town, shall remain until otherwise directed by law, with their present powers and jurisdictions; and the judges, clerks and marshals of such courts shall have the same qualifications, and shall be elected by the qualified voters of such cities or towns, at the same time, and in the same manner, and hold their offices for the same term, as county judges, clerks and sheriffs, respectively, and shall be liable to removal in the same manner. The General Assembly may vest judicial powers, for police purposes, in mayors of cities, police judges and trustees of towns.

Last clause entirely new matter.

ARTICLE V.

Concerning Impeachments.

Same in Art. V, Secs. 1, 2, 3, 1799, and Art. IV, Secs. 1, 2, 3, 1792.

SEC. 1. The House of Representatives shall have the sole power of impeachment.

SEC. 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.

SEC. 3. The Governor and all 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 honor, trust, or profit under this Commonwealth; but the party convicted shall nevertheless be subject and liable to indictment, trial and punishment by law.

ARTICLE VI.

Concerning Executive and Ministerial Officers for Counties and Districts.

In 1799, Sec. 10, Art. IV, clerks held offices "during good behavior," and Sec. 5, Art. VI, 1792; and coroners were elected for "three years," Sec. 1, Art. VI, 1792.

SEC. 1. A Commonwealth's Attorney for each judicial district, and a circuit court clerk for each county, shall be elected, whose term of office shall be the same as that of the circuit judges; also a county court clerk, an attorney, surveyor, coroner and jailer, for each county, whose term of office shall

be the same as that of the presiding judge of the county court.

SEC. 2. No person shall be eligible to the offices mentioned in this article, who is not at the time twenty-four years old (except clerks of county and circuit courts, sheriffs, constables and county attorneys, who shall be eligible at the age of twenty-one years), a citizen of the United States, and who has not resided two years next preceeding the election in the State, and one year in the county or district for which he is a candidate. No person shall be eligible to the office of Commonwealth's or county attorney unless he shall have been a licensed practicing attorney for two years. No person shall be eligible to the office of clerk unless he shall have procured from a judge of the Court of Appeals, or a judge of the circuit court, a certificate that he has been examined by the clerk of his court, under his supervision, and that he is qualified for the office for which he is a candidate.

Commonwealth attorneys provided for, Sec. 23, Art. III, 1799, Sec. 26, Art. II of same; Sec. 16, Art. II, 1792, sheriffs elected for three years.

Last clause provided for, Sec. 10, Art. IV, 1799, and Sec. 5, Art. VI, 1792.

SEC. 3. The Commonwealth's Attorney and circuit court clerk shall be elected at the same time as the circuit judge—the Commonwealth's Attorney by the qualified voters of the district, the circuit court clerk by the qualified voters of the county. The county attorney, clerk, surveyor, coroner and jailer shall be elected at the same time, and in the same manner, as the presiding judge of the county court.

First Monday in August, from 1850, Sec. 20, Art. IV, "Circuit Courts" 1850. Coroner was elected for three years, Sec. 1, Art. VI, 1792.

SEC. 4. A sheriff shall be elected in each county by the qualified voters thereof, whose term of office shall, after the first term, be two years, and until his successor be qualified; and he shall be re-eligible for a second term; but no sheriff shall, after the expiration of the second term, be re-eligible, or act as deputy, for the succeeding term. The first election of sheriffs shall be on the second Monday in May, 1851; and the sheriffs then elected shall hold their offices until the first Monday in January, 1853, and until their successors be qualified; and on the first Monday in August, 1852, and on the first Monday of August in every second year thereafter, elections for sheriff shall be held: *Provided*, That the sheriffs first elected shall enter upon the duties of their respective offices on the first Monday in June, 1851, and after the first election on the first Monday in January next succeeding their election.

Sheriffs were appointed by the Governor, Sec. 9, Art. IV, 1799, and elected for "three years," Sec. 1, Art. VI, 1792. The special provisions of this article are all new.

The Districts are new, and constables are first provided for, Sec. 9, last clause, Art. III (Executive), Constitution 1799.

New matter, see Sec. 8, Art. II (Executive), 1792.

Appointed, prior to 1850.

Same.

No bond required. Sec. 10, Art. IV, 1799; Sec. 5, Art. VI, 1792.

Provided for by Sec. 1, Art. IV, 1799.

New clause and new subject. See Sec. 27, Art. II, 1799.

SEC. 5. A constable shall be elected in every justices' district, who shall be chosen for two years, at such time and place as may be provided by law, whose jurisdiction shall be coextensive with the county in which he may reside.

SEC. 6. Officers for towns and cities shall be elected for such terms, and in such manner, and with such qualifications as may be prescribed by law.

SEC. 7. Vacancies in offices under this article shall be filled until the next regular election, in such manner as the General Assembly may provide.

SEC. 8. When a new county shall be erected, officers for the same, to serve until the next stated election, shall be elected or appointed in such way and at such times as the General Assembly may prescribe.

SEC. 9. Clerks, sheriffs, surveyors, coroners, constables and jailers, and such other officers as the General Assembly may, from time to time, require, shall, before they enter upon the duties of their respective offices, and as often thereafter as may be deemed proper, give such bond and security as shall be prescribed by law.

SEC. 10. The General Assembly may provide for the election or appointment, for a term not exceeding four years, of such other county or district ministerial and executive officers as shall, from time to time, be necessary and proper.

SEC. 11. A county assessor shall be elected in each county at the same time, and for the same term, that the presiding judge of the county court is elected, until otherwise provided for by law. He shall have power to appoint such assistants as may be necessary and proper.

ARTICLE VII.

Concerning the Militia.

New article.

Provided for, Sec. 8, Art. III (Ex.), 1799; Sec. 28, Art. III, same; Sec. 2, Art. VI, 1792.

SEC. 1. The militia of this Commonwealth shall consist of all free, able-bodied male persons (negroes, mulattoes and Indians excepted), resident in the same, between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be, exempted by the laws of the United States or of this State: but those who belong to religious societies, whose tenets forbid them to carry arms, shall not be compelled to do so, but shall pay an equivalent for personal services.

SEC. 2. The Governor shall appoint the Adjutant-General and his other staff-officers; the major-generals, brigadier-generals and commandants of regiments shall, respectively, appoint their staff-officers; and commandants of companies shall appoint their non-commissioned officers.

SEC. 3. All militia officers whose appointment is not herein otherwise provided for, shall be elected by persons subject to military duty within their respective companies, battalions, regiments, brigades and divisions, under such rules and regulations, and for such terms, not exceeding six years, as the General Assembly may, from time to time, direct and establish.

ARTICLE VIII.

General Provisions.

SEC. 1. Members of the General Assembly, and all officers before they enter upon the execution of the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take the following oath or affirmation: I do solemnly swear (or affirm, as the case may be), that I will support the Constitution of the United States and the Constitution of this State, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of—— according to law; and I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State or out of it, with a citizen of this State; nor have I sent or accepted a challenge to fight a duel with deadly weapons with a citizen of this State: nor have I acted as second in carrying a challenge, or aided or assisted any person thus offending, so help me God.

SEC. 2. Treason against the Commonwealth shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 3. Every person shall be disqualified from holding any office of trust or profit, for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat to procure his election.

New clause, but included in the spirit of both of the other Constitutions, see Sec. 20, Art. III, Constitution 1799; Secs. 7, 8, Art. II, 1792.

See Sec. 30, Art. III, 1799; Secs. 3 and 4, Art. VI, 1792. All officers were "appointed" in 1799, 1792 (Constitution), save the company officers, elected by the men of the company in 1792. In 1799 selected by Field officers and captains, and confirmed by Governor.

The oath is provided for, Sec. 1, Art. VI, 1799; same, Sec. 1, Art. VII, 1792, except the oath to support the Constitution of the United States, first inserted in 1850.

The dueling clause is new in 1850, and was inserted by a vote of 62 to 28. Not in Constitutions of 1799, 1792. Supposed to have been written by John W. Stevenson, chairman Committee General Provisions.

Same in 1799, Sec. 2, Art. VI; Sec. 1, Art. VIII, 1792.

Constitution, 1799, only disqualified Governor, Lieutenant-Governor, Senator or Representative, Sec. 3, Art. VI; also same, Sec. 4, Provided for by Sec. 2, Art. VIII, 1792.

Same, Sec. 4, Art. VI, 1799; Sec. 2, Art. VIII, 1792.

SEC. 4. Laws shall be made to exclude from office and from suffrage those who shall thereafter be convicted of bribery, perjury, forgery, or other crimes or high misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult or other improper practices.

Same, in 1799, 1792, except as to time: "one" instead of "two" years.

SEC. 5. No money shall be drawn from the Treasury but in pursuance of the appropriations made by law; nor shall any appropriations of money for the support of an army be made for a longer time than two years; and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

Same, in 1799. See Sec. 6, Art. VI.

SEC. 6. The General Assembly may direct, by law, in what manner, and in what courts, suits may be brought against the Commonwealth.

Same, Sec. 7, Art. VI, 1799, Sec. 5, Art. VIII, 1792.

SEC. 7. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the General Assembly the most solemn appeal to God.

Same in Constitution 1799, Sec. 8, Art. VI, but altered from Sec. 6, Art. VIII, 1792, as to year 1792, and the words— "not local to the eastern part of that State," in first Constitution.

SEC. 8. All laws which, on the first day of June, one thousand seven hundred and ninety-two, were in force in the State of Virginia, and which are of a general nature, and not local to that State, and not repugnant to this Constitution, nor to the laws which have been enacted by the General Assembly of this Commonwealth, shall be in force within this State until they shall be altered or repealed by the General Assembly.

Same in 1799, 1792. Sec. 9, Art. VI, 1799, Sec. 7, Art. VIII, 1792.

SEC. 9. The compact with the State of Virginia, subject to such alterations as may be made therein agreeably to the mode prescribed by the said compact, shall be considered as part of this Constitution.

Same as Sec. 10, Art. VI, 1799; no arbitration provided for in 1792, save by statutes.

SEC. 10. It shall be the duty of the General Assembly to pass such laws as shall be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment.

Same as Sec. 11, Art. VI, Constitution 1799, and provided for by scattered clauses in 1792.

SEC. 11. All civil officers for the Commonwealth at large shall reside within the State, and all district, county or town officers within their respective districts, counties or towns (trustees of towns excepted), and shall keep their offices at such places therein as may be required by law: and all

militia officers shall reside in the bounds of the division, brigade, regiment, battalion or company, to which they may severally belong.

SEC. 12. Absence on the business of this State, or the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under this Commonwealth under the exceptions contained in this Constitution.

Same as Sec. 13, Art. VI, 1799.

SEC. 13. It shall be the duty of the General Assembly to regulate by law, in what cases, and what deductions from the salaries of public officers shall be made, for neglect of duty in their official capacity.

Same as Sec. 14, Art. VI, 1799.

SEC. 14. Returns of all elections by the people shall be made to the Secretary of State for the time being, except in those cases otherwise provided for in this Constitution, or which shall be otherwise directed by law.

Same as Sec. 15, Art. VI, 1799, to the word "being;" the rest is new.

SEC. 15. In all elections by the people, and also by the Senate and House of Representatives, jointly or separately, the votes shall be personally and publicly given, viva voce: *Provided*, That dumb persons entitled to suffrage may vote by ballot.

Same in 1799, to the word "*Provided*," Sec. 16, Art. VI.

SEC. 16. All elections by the people shall be held between the hours of six o'clock in the morning and seven o'clock in the evening.

New provision.

SEC. 17. The General Assembly shall, by law, prescribe the time when the several officers authorized or directed by this Constitution to be elected or appointed, shall enter upon the duties of their respective offices, except where the time is fixed by this Constitution.

Provided for in several cases in 1799, 1792. New as a section.

SEC. 18. No member of Congress, nor person holding or exercising any office of trust or profit under the United States, or either of them, or under any foreign power, shall be eligible as a member of the General Assembly of this Commonwealth, or hold or exercise any office of trust or profit under the same.

Same as Sec. 17, Art. VI, 1799.

SEC. 19. The General Assembly shall direct, by law, how persons who now are, or who may hereafter become, securities for public officers, may be relieved or discharged on account of securityship.

Same as Sec. 18, Art. V, 1799.

SEC. 20. Any person who shall, after the adoption of this Constitution, either directly or indirectly, give, accept, or knowingly carry a challenge to any person or persons, to fight

New clause inserted in 1849, 1850, by a vote of 56 to 38.

in single combat with a citizen of this State, with any deadly weapon, either in or out of the State, shall be deprived of the right to hold any office of honor or profit in this Commonwealth, and shall be punished otherwise in such manner as the General Assembly may prescribe by law.

New clause inserted in 1840.

SEC. 21. The Governor shall have power, after five years from the time of the offense, to pardon all persons who shall have in anywise participated in a duel, either as principals, seconds, or otherwise, and to restore him or them to all the rights, privileges and immunities to which he or they were entitled before such participation. And upon the presentation of such pardon, the oath prescribed in the first section of this article shall be varied to suit the case.

New clause.

SEC. 22. At its first session after the adoption of this Constitution, the General Assembly shall appoint not more than three persons, learned in the law, whose duty it shall be to revise and arrange the Statute Laws of this Commonwealth, both civil and criminal, so as to have but one law on any one subject; and also three other persons, learned in the law, whose duty it shall be to prepare a Code of Practice for the courts, both civil and criminal, in this Commonwealth, by abridging and simplifying the rules of practice and laws in relation thereto; all of whom shall, at as early a day as practicable, report the result of their labors to the General Assembly, for their adoption or modification.

New clause.

See Sec. 2, Art. III, 1850, and Sec. 3, Art. II (Legislative), of same Constitution.

SEC. 23. So long as the Board of Internal Improvement shall be continued, the president thereof shall be elected by the qualified voters of this Commonwealth, and hold the office for the term of four years, and until another be duly elected and qualified. The election shall be held at the same time, and be conducted in the same manner as the election of Governor of this Commonwealth under this Constitution; but nothing herein contained shall prevent the General Assembly from abolishing said Board of Internal Improvement, or the office of president thereof.

Substantially provided for (for Legislators) last clause, Sec. 21, Art. II, 1799; otherwise new.

SEC. 24. The General Assembly shall provide, by law, for the trial of any contested election of Auditor, Register, Treasurer, Attorney General, judges of circuit courts, and all other officers not otherwise herein specified.

See Secs. 9, 10, Art. III, 1799.

SEC. 25. The General Assembly shall provide, by law, for the making of the returns, by the proper officers, of the elec-

tion of all officers to be elected under this Constitution ; and the Governor shall issue commissions to the Auditor, Register, Treasurer, President of the Board of Internal Improvement, Superintendent of Public Instruction, and such other officers as he may be directed, by law, to commission, as soon as he has ascertained the result of the election of those officers respectively.

SEC. 26. When a vacancy shall happen in the office of Attorney General, Auditor of Public Accounts, Treasurer, Register of the Land Office, President of the Board of Internal Improvement or Superintendent of Public Instruction, the Governor, in the recess of the Senate, shall have power to fill the vacancy by granting commissions which shall expire at the end of the next session, and shall fill the vacancy for the balance of the time by and with the advice and consent of the Senate.

ARTICLE IX.

Concerning the Seat of Government.

SEC. 1. The Seat of Government shall continue in the city of Frankfort until it shall be removed by law : *Provided*, however, That two-thirds of all the members elected to each House of the General Assembly shall concur in the passage of such law.

ARTICLE X.

Concerning Slaves.

SEC. 1. The General Assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money, for the slaves so emancipated, and providing for their removal from the State. They shall have no power to prevent immigrants to this State from bringing with them such persons as are deemed slaves by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State. They shall pass laws to permit owners of slaves to emancipate them, saving the rights of creditors, and to prevent them from remaining in this State after they are emancipated. They shall have full power to prevent slaves being brought into this State as merchandise. They shall have full power to prevent slaves brought into this State who have been, since the first

See Sec. 8, Art. II, 1792.
New in form.

Provided for generally, Sec. 10, Art. III, 1799 ; Sec. 9, Art. II, 1792.
New in form.

Same as Sec. 1, Art. VIII, 1799. See Secs. 1, 2, Art. X, Constitution 1792.

With some slight changes, the same as Sec. 1, Art. VII, Constitution 1799, and as Art. IX, Constitution 1792.

“And providing for their removal from the State” is new matter. Instead of the regulation preventing their becoming a charge to the county, the Legislature here has power by law to remove them from the State.

After “slaves,” the word “being” should have been inserted.

day of January, one thousand seven hundred and eighty-nine, or may hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary to oblige the owners of slaves to treat them with humanity, to provide for them necessary clothing and provision, to abstain from all injuries to them, extending to life or limb; and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold, for the benefit of their owner or owners.

New free negro clause with penalty.

SEC. 2. The General Assembly shall pass laws providing that any free negro or mulatto hereafter immigrating to, and any slave hereafter emancipated in, and refusing to leave this State, or having left, shall return and settle within this State, shall be deemed guilty of felony, and punished by confinement in the penitentiary thereof.

Same as Sec. 2, Art. VII, 1799, but not in Constitution of 1792.

SEC. 3. In the prosecution of slaves for felony, no inquest by a grand jury shall be necessary, but the proceedings in such prosecutions shall be regulated by law, except that the General Assembly shall have no power to deprive them of the privilege of an impartial trial by a petit jury.

ARTICLE XI.

Concerning Education.

No educational provision was contained in the Constitutions of 1799, 1792, save general legislative powers granted therein.

SEC. 1. The capital of the fund called and known as the "Common School Fund," consisting of one million two hundred and twenty-five thousand seven hundred and sixty-eight dollars and forty-two cents, for which bonds have been executed by the State to the Board of Education, and seventy-three thousand five hundred dollars of stock in the Bank of Kentucky; also the sum of fifty-one thousand two hundred and twenty-three dollars and twenty-nine cents, balance of interest on the school fund for the year 1848, unexpended, together with any sum which may be hereafter raised in the State by taxation or otherwise for purposes of education, shall be held inviolate, for the purpose of sustaining a system of common schools. The interest and dividends of said funds, together with any sum which may be produced for that purpose by taxation or otherwise, may be appropriated in aid of common schools, but for no other purpose. The General Assembly shall invest said fifty-one thousand two hundred

and twenty-three dollars and twenty-nine cents in some safe and profitable manner; and any portion of the interest and dividends of said school fund, or other money or property raised for school purposes, which may not be needed in sustaining common schools, shall be invested in like manner. The General Assembly shall make provision, by law, for the payment of the interest of said school fund: *Provided*, That each county shall be entitled to its proportion of the income of said fund, and if not called for, for common school purposes, it shall be reinvested from time to time for the benefit of such county.

SEC. 2. A Superintendent of Public Instruction shall be elected by the qualified voters of this Commonwealth at the same time the Governor is elected, who shall hold his office for four years; and his duties and salary shall be prescribed and fixed by law.

ARTICLE XII.

Mode of Revising the Constitution.

SEC. 1. When experience shall point out the necessity of amending this Constitution, and when a majority of all the members elected to each House of the General Assembly shall, within the first twenty days of any regular session, concur in passing a law for taking the sense of the good people of this Commonwealth, as to the necessity and expediency of calling a convention,† it shall be the duty of the several sheriffs and other officers of elections, at the next general election which shall be held for Representatives to the General Assembly, after the passage of such law, to open a poll for, and make return to the Secretary of State, for the time being, of the names of all those entitled to vote for Representatives who have voted for calling a convention; and if, thereupon, it shall appear that a majority of all the citizens of this State, entitled to vote for Representatives, have voted for calling a convention, the General Assembly shall, at their next regular session, direct that a similar poll shall be opened, and return made for the next election for Representatives; and if, thereupon, it shall appear that a majority of all the citizens of this State entitled to vote for Representatives have

Nearly the same substance as in 1799, but much changed as to date from Sec. 1, Art. XI, 1792, in which an election was provided for 1797. The principle of the two-years' vote in two successive years, by a majority of citizens, is the same in Constitutions of 1799, 1792.

"To the General Assembly" is new.

"and return made for the next election for representatives" is new matter.

† CHAPTER 10. An act to take the sense of the people of this State as to the propriety of calling a convention to revise the Constitution. Approved December 18, 1873.

"calling" is new ;
 "pass a law" is
 new ;

"first Monday in
 August" is new.

Substantially the
 same as Sec. 1, Art.
 IX, 1799.

After the words "be
 called" is all new
 matter.

New clause, but the
 old principle gov-
 erning the General
 Assembly.

Art. X, Constitution
 1799; Art. XII, Con-
 stitution 1792.
 New caption.

Same, 1799, 1792.

"Men" for "free-
 men," 1792. Same
 otherwise in 1799,
 1792.

Entirely new sec-
 tion.

Entirely new sec-
 tion, proposed by
 Garrett Davis, and
 passed by a vote of
 77 to 10.

voted for calling a convention, the General Assembly shall, at their next session, pass a law calling a convention, to consist of as many members as there shall be in the House of Representatives, and no more, to be chosen on the first Monday in August thereafter, in the same manner and proportion, and at the same places, and possessed of the same qualifications of a qualified elector, by citizens entitled to vote for Representatives, and to meet within three months after their election for the purpose of readopting, amending, or changing this Constitution; but if it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for Representatives did not vote for calling a convention, a convention shall not then be called. And for the purpose of ascertaining whether a majority of the citizens entitled to vote for Representatives, did or did not vote for calling a convention, as above, the General Assembly passing the law authorizing such vote shall provide for ascertaining the number of citizens entitled to vote for Representative, within the State.

SEC. 2. The convention, when assembled, shall judge of the election of its members, and decide contested elections; but the General Assembly shall, in calling a convention, provide for taking testimony in such cases, and for issuing a writ of election in case of a tie.

ARTICLE XIII.

Bill of Rights.

That the general, great and essential principles of liberty and free government may be recognized and established, we
 DECLARE—

SEC. 1. That all freemen, when they form a social compact, are equal, and that no man or set of men are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services.

SEC. 2. That absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a Republic, not even in the largest majority.

SEC. 3. The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same and as inviolable as the right of the owner of any property whatever.

SEC. 4. That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, happiness, security and the protection of property. For the advancement of these ends, they have, at all times, an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

"Security and protection of property," new words. This clause is in Constitutions of 1799, 1792, omitting the above "security," etc.

SEC. 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious societies or modes of worship.

Same as Sec. 3, Art. X, 1799; Sec. 3, Art. XII, 1792.

SEC. 6. That the civil rights, privileges or capacities of any citizen shall in nowise be diminished or enlarged on account of his religion.

Same as Sec. 4, Art. X, 1799; Sec. 4, Art. XII, 1792.

SEC. 7. That all elections shall be free and equal.

Same as Sec. 5, Art. X, 1799; Sec. 5, Art. XII, 1792.

SEC. 8. That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution.

After "inviolable," "subject to" is new matter.

SEC. 9. That printing-presses shall be free to every person who undertakes to examine the proceedings of the General Assembly or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.

"Legislature" in 1799, 1792, otherwise same as in 1799, 1792; section and article numbers different.

SEC. 10. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts under the direction of the court, as in other cases.

Capital A to "and," 1799, 1792.

SEC. 11. That the people shall be secure in their persons, houses, papers and possessions from unreasonable seizures and searches, and that no warrant to search any place or to seize any person or thing shall issue without describing them

Same as Sec. 9, Art. X, 1799; Sec. 9, Art. XII, 1792.

as nearly as may be, nor without probable cause, supported by oath or affirmation.

Same Sec. 10, Art. X, 1799; Sec. 10, Art. XII, 1792.

SEC. 12. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; that he can not be compelled to give evidence against himself; nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

The word "or" rightly precedes by "leave of court," Sec. 11, Art. X, 1799; Sec. 11, Art. XII, 1792, but by misprint is omitted in second constitution.

SEC. 13. That 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.

Same Sec. 12, Art. X, 1799; Sec. 12, Art. XII, 1792.

SEC. 14. No person shall, for the same offense, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

Same as Sec. 13, Art. X, 1799; Sec. 13, Art. XII, 1792.

SEC. 15. That all courts shall be open, and every person, for an injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial, or delay.

Same; section and article chang'd, 1799 1792.

SEC. 16. That no power of suspending laws shall be exercised, unless by the General Assembly, or its authority.

Same.

SEC. 17. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Same.

SEC. 18. That all prisoners shall be bailable by sufficient securities, unless for capital offenses, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Same.

SEC. 19. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

Same.

SEC. 20. That no *ex post facto* law, nor any law impairing contracts shall be made.

SEC. 21. That no person shall be attainted of treason or felony by the General Assembly.

Same, save word "Legislature," 1799, 1792.

SEC. 22. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth.

Same, 1799, 1792.

SEC. 23. That the estates of such persons as shall destroy their own lives shall descend or vest, as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

"That" inserted, otherwise same.

SEC. 24. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

Same, 1792, 1799.

SEC. 25. That the rights of the citizens to bear arms in defense of themselves and the State, shall not be questioned, but the General Assembly may pass laws to prevent persons from carrying concealed arms.

Sec. 22, Art. X, 1799, Sec. 23, Art. XII, 1792. From "but," the concealed-arms clause is new.

SEC. 26. That no standing army shall, in time of peace, be kept up, without the consent of the General Assembly; and the military shall, in all cases and at all times, be in strict subordination to the civil power.

"Legislature," 1799, 1792; otherwise the same.

SEC. 27. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Same, 1799, 1792.

SEC. 28. That the General Assembly shall not grant any title of nobility or hereditary distinction, nor create any office, the appointment to which shall be for a longer time than for a term of years.

"Legislature," 1799, 1792.
"During good behavior," 1799, 1792.

SEC. 29. That emigration from the State shall not be prohibited.

Except two clauses, the Bill of Rights is unchanged—"the" not in Constitution 1799, 1792. Except one word, "the," this so-called nullification clause is exactly the same in Sec. 28, Art. X., 1799, and Sec. 28, Art. XII., Constitution 1792.

SEC. 30. To guard against the transgressions of the high powers which we have delegated, WE DECLARE, that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this Constitution, shall be VOID.

SCHEDULE.

Same in 1799, much the same in 1792 Constitutions.

That no inconvenience may arise from the alterations and amendments made in the Constitution of this Commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained :

Same in 1799, and substantially in 1792, save the inserted words of "the said alterations and amendments," 1799.

SEC. 1. That all the laws of this Commonwealth, in force at the time of the adoption of this Constitution, and not inconsistent therewith, and all rights, actions, prosecutions, claims and contracts, as well of individuals as of bodies corporate, shall continue as if this Constitution had not been adopted.

[Section 2, Schedule 1799, is here omitted, as to officers holding office for their terms, and Section 2, Schedule 1792, as to officers of Virginia.]

New section.

SEC. 2. The oaths of office herein directed to be taken may be administered by any judge or justice of the peace, until the General Assembly shall otherwise direct.

Same in intention as Sec. 2, Schedules 1799, 1792.

SEC. 3. No office shall be superseded by the adoption of this Constitution, but the laws of the State relative to the duties of the several officers, legislative, executive, judicial and military, shall remain in full force, though the same be contrary to this Constitution, and the several duties shall be performed by the respective officers of the State according to the existing laws, until the organization of the government, as provided for under this Constitution, and the entering into office of the officers to be elected or appointed under said government, and no longer.

Same intention as apportionment clauses Sec. 4, Schedule 1799, Sec. 3, Schedule 1792, but new matter.

SEC. 4. It shall be the duty of the General Assembly which shall convene in the year 1850 to make an apportionment of the representation of this State, upon the principle set forth in this Constitution; and until the first apportionment shall be made as herein directed, the apportionment of Senators and Representatives among the several districts and counties in this State shall remain as at present fixed by law: *Provided*, That on the first Monday in August, 1850, all Senators shall go out of office, and on that day an election for Senators and Representatives shall be held throughout the State, and those then elected shall hold their offices for one year, and no longer: *Provided further*, That at the elections to be held in the year 1850, that provision in this Constitution which re-

See Sec. 5, Schedule 1799; not included in Constitution 1792.

quires voters to vote in the precinct within which they reside, shall not apply.

SEC. 5. All recognizances heretofore taken, or which may be taken before the organization of the judicial department under this Constitution, shall remain as valid as though this Constitution had not been adopted, and may be prosecuted in the name of the Commonwealth. All criminal prosecutions and penal actions which have arisen, or may arise before the reorganization of the judicial department under this Constitution, may be prosecuted to judgment and execution in the name of the Commonwealth.

"We, the representatives of the freemen of Kentucky, in convention assembled, in their name, and by the authority of the Commonwealth of Kentucky, and in virtue of the powers vested in us, as delegates from the counties respectively affixed to our names, do ordain and proclaim the foregoing to be the Constitution of the Commonwealth of Kentucky from and after this day.

"Done at Frankfort this eleventh day of June, in the year of our Lord one thousand eight hundred and fifty, and in the fifty-ninth year of the Commonwealth."

JAMES GUTHRIE,

President of the Convention and member from city of Louisville.

ATTEST—THO. J. HELM, *Secretary of the Convention.*

THO. D. TILFORD, *Assistant Secretary.*

From the county of Adair—Nathan Gaither.

From the county of Allen—George W. Mansfield.

From the county of Anderson—George W. Kavanaugh.

From the counties of Ballard and McCracken—Richard D. Gholson.

From the county of Barren—John T. Rogers, Robert D. Maupin.

From the county of Bath—James M. Nesbitt.

From the county of Boone—Charles Chambers.

From the county of Bourbon—Geo. W. Williams, Richard H. Hanson.

From the county of Boyle—Albert G. Talbott.

From the county of Bracken—William C. Marshall.

From the counties of Breathitt and Morgan—John Hargis.

From the county of Breckinridge—Daniel J. Stephens.

New section. See Sec. 7, Schedule 1792 Secs. 4, 5, 6, 7 and 8, Constitution 1792, are not included in 1799, 1850. Also, Clauses 9, as to offenses against the laws of Virginia, and 10, as to Sheriffs and Justices presiding at elections, and their oaths, of 1792, are not in Constitutions of 1799, 1850.

This formal proclamation is not printed in General Statutes, as to 1799, 1792.

- From the county of Bullitt*—William R. Thompson.
From the counties of Butler and Edmonson—Vincent S. Hay.
From the county of Caldwell—Willis B. Machen.
From the counties of Calloway and Marshall—Edward Curd.
From the county of Campbell—Ira Root.
From the counties of Carroll and Gallatin—John T. Robinson.
From the counties of Carter and Lawrence—Thos. J. Hood.
From the county of Casey—Jesse Coffey.
From the county of Christian—John D. Morris, Ninian E. Gray.
From the county of Clark—Andrew Hood.
From the counties of Clay, Letcher and Perry—James H. Garrard.
From the counties of Cumberland and Clinton—Michael L. Stoner.
From the county of Crittenden—Henry R. D. Coleman.
From the county of Daviess—Philip Triplett.
From the counties of Estill and Owsley—Luther Brawner.
From the county of Fayette—James Dudley, Robert N. Wickliffe.
From the county of Fleming—Will W. Blair.
From the counties of Floyd, Pike and Johnson—James M. Lackey.
From the county of Franklin—Thomas N. Lindsey.
From the county of Grant—William Hendrix.
From the county of Graves—Richard L. Mayes.
From the county of Grayson—John J. Thurman.
From the county of Green—Thomas W. Lisle.
From the county of Greenup—Henry B. Pollard.
From the county of Hardin—Thos. D. Brown, Jas. W. Stone.
From the county of Harrison—Hugh Newell, Lucius Desha.
From the county of Hart—Benjamin Copelin.
From the county of Henderson—Archibald Dixon.
From the county of Henry—Elijah F. Nuttall.
From the counties of Hickman and Fulton—Thomas James.
From the county of Hopkins—William Bradley.
From the county of Jefferson—David Meriwether, William C. Bullitt.
From the county of Jessamine—Alexander K. Marshall.
From the county of Kenton—John W. Stevenson.

From the counties of Knox and Harlan—Silas Woodson.

From the county of Larue—James P. Hamilton.

From the counties of Laurel and Rockcastle—Jonathan Newcum.

From the county of Lewis—Larkin J. Proctor.

From the county of Lincoln—John L. Ballinger.

From the county of Livingston—William Cowper.

From the county of Logan—William K. Bowling, James W. Irwin.

From the city of Louisville—James Rudd, Wm. Preston.

From the county of Madison—Squire Turner, Wm. Chenault.

From the county of Marion—Green Forrest.

From the county of Mason—Peter Lashbrooke, John D. Taylor.

From the county of Meade—Thomas J. Gough.

From the county of Mercer—Thomas P. Moore.

From the county of Monroe—John S. Barlow.

From the county of Montgomery—Richard Apperson.

From the county of Muhlenburg—Alfred M. Jackson.

From the county of Nelson—Ben Hardin, Chas. A. Wickliffe.

From the county of Nicholas—Benjamin F. Edwards.

From the county of Owen—Howard Todd.

From the counties of Ohio and Hancock—Jno. H. McHenry.

From the county of Pendleton—John Wheeler.

From the county of Pulaski—James D. Allcorn.

From the county of Russell—Nathan McClure.

From the county of Scott—William Johnson.

From the county of Simpson—Beverly L. Clarke.

From the county of Shelby—Andrew S. White, George W. Johnston.

From the county of Spencer—Mark E. Huston.

From the county of Taylor—William N. Marshall.

From the county of Todd—Francis M. Bristow.

From the county of Trigg—Alfred Boyd.

From the county of Trimble—Wesley J. Wright.

From the county of Union—Ignatius A. Spalding.

From the county of Warren—Chasteen T. Dunavan.

From the county of Wayne—James S. Chrisman.

From the county of Whitley—Thomas Rockhold.

From the county of Woodford—John L. Waller.

From the county of Washington—Charles Cooper Kelly.

INDEX TO THIRD CONSTITUTION OF KENTUCKY.

	ART. SEC.
Actions pending when Constitution was made, to continue (schedule)	1
Appeals, Court of, established	4 1
to have appellate jurisdiction only	4 2
judges of, term of office	4 3
how they may be removed	4 3
compensation to be fixed by law	4 3
composed of four judges	4 4
judges of, to be chosen by districts	4 4
in what event the number of judges may be reduced	4 4
judges of, conservators of the peace	4 5
if the number of judges is changed, the term of office shall be changed	4 4
term of service of those first elected fixed	4 6
term of service of those first elected to be determined by lot	4 6
who shall be styled Chief-Justice	4 6
how vacancy may be filled	4 7
who shall be eligible to the office	4 8
sessions where held	4 9
first election held in May, 1851	4 10
judges to be commissioned by Governor	4 10
clerk of, how elected and term of office	4 11
clerk of, when elected for first time	4 10
if held in districts, a clerk to be chosen for each district	4 11
term of office reduced if number of judges reduced	4 11
clerk of, qualifications of	4 12
vacancy in clerkship, how filled	4 13
when a <i>pro tem</i> clerk may be appointed	4 13
when and how special judges may be appointed	4 15
Apportionment of representation (schedule)	4
how regulated and ascertained	2 6
when cities and towns may have a separate representa- tion	2 5
Arbitrations, General Assembly shall pass laws to decide differences by,	8 10
Army, standing, none to be kept up in time of peace without the con- sent of the Legislature	13 26
Assembly, when to convene and where to hold sessions	2 18
a majority of each House to constitute a quorum to do busi- ness	2 19
a smaller number of, may adjourn and compel attendance of absent members	2 19

Assembly, each House of, to judge of qualifications, elections and returns	
of its members	2 20
contested elections determined by law	2 20
each House of, to determine rules of its proceedings	2 21
may punish a member for disorderly conduct	2 21
two-thirds may expel a member, but not second time for same cause	2 21
each House shall keep a journal of its proceedings, and pub- lish the same weekly	2 22
General, any two members of may require the yeas and nays, neither House of, shall adjourn for more than three days, nor to any other place, without the consent of the other House	2 22
members of, to receive three dollars per day during their attendance on, and twelve and one-half cents per mile for the necessary travel in going to and returning from the sessions of their respective Houses	2 23
may be increased or diminished; no alteration shall take effect the session it is made	2 24
General, session of, not to continue longer than sixty days, except by a vote of two-thirds of all the members elected to each House	2 24
General, members of, privileged from arrest, except for treason, felony, breach or surety of the peace	2 25
not to be questioned elsewhere for any speech or debate in the House	2 25
shall not be appointed to offices created, or whose emolu- ments have been increased during the terms for which they were elected, nor for one year thereafter	2 26
who ineligible to	2 27
no collector of public moneys eligible unless he shall have obtained a quietus for amounts collected six months pre- vious	2 28
General, shall direct the mode of conducting and making returns of all elections of the judges and clerk or clerks of the Court of Appeals, and of determining contested elec- tions of any of these officers	4 14
General, shall provide for an additional judge or judges, to constitute a special court when a majority of the regular judges are disqualified to sit	4 15
General, may establish an additional judicial district every four years, said districts not to exceed sixteen until the population of the State shall exceed one million five hun- dred thousand	4 24
General, shall divide each county of this Commonwealth into election precincts, or delegate power so to do, to county authorities designated by law	2 5
shall regulate, by law, by whom and in what manner writs of election shall be issued to fill vacancies which may occur in either branch thereof	2 31

	ART.	SEC.
Assembly, shall have no power to grant divorces, change the names of individuals or direct the sales of estates belonging to infants, but shall confer such powers on courts of justice,	2	32
General, shall not pass laws to diminish the resources of the sinking fund until the debt of the State shall be paid	2	34
may contract debts not exceeding five hundred thousand dollars, to meet casual deficits or failures in the revenue, and may contract debts to repel invasions, etc.	2	35
General, under what circumstances may contract debts on behalf of the Commonwealth	2	36
General, shall not change venue in any criminal or penal prosecutions	2	38
may pass laws authorizing writs of error in criminal or penal cases	2	39
shall have no power to appropriate any sum of money exceeding one hundred dollars, except by a vote of a majority of all the members of both Houses	2	40
General, shall divide the State into twelve judicial districts	4	19
shall direct elections for judges in each district	4	20
to provide for vacancies in office	6	7
shall prescribe the manner of electing or appointing officers for new counties	6	8
may provide for election or appointment of other county, district, ministerial and executive officers	6	10
General, who ineligible to	8	18
shall pass laws making it a felony for any free negro or mulatto to immigrate to this State hereafter	10	2
Assessor, county, to be elected—time of election and term of office—may appoint assistants	6	11
subject to indictment and removal	4	36
Attainder, bill of, prohibited	13	21
shall not work corruption of blood or forfeiture, except during the life of the person attainted	13	22
Attorney, General, elected for a term of four years	3	25
Commonwealth's, for each judicial district to be elected . . .	6	1
term of office same as that of circuit judge	6	1
county, to be elected	6	1
term of office same as that of presiding judge of county court	6	1
subject to indictment and removal	4	36
Attorney, ineligible to Legislature	2	27
at law, eligible to the Legislature	2	27
who may be a Commonwealth's or county	6	2
Auditor of Public Accounts, elected for four years, duties prescribed by law	3	25
Bail, excessive, shall not be required	13	17
prisoners to be admitted to, unless for capital offenses when proof is evident, or presumption great	13	18

	ART.	SEC.
Bill, each, to be read on three several days before passage, in each House, unless four-fifths dispense with the rule	2	29
for raising revenue, shall originate in the House of Representatives	2	30
Senate may propose amendments to	2	30
no new matter to be introduced by the Senate by way of amendment	2	30
before it become a law, shall be passed by both Houses, and approved by the Governor; or if disapproved, shall be passed by a majority of all the members elected, of both Houses . .	3	22
if not returned by Governor in ten days, unless an adjournment intervene, shall be a law; and if adjournment intervene, it shall be a law unless returned within three days after the meeting of the next General Assembly	3	22
Bribing, or treating, disqualification for certain offices	8	3
Chancellor of Louisville chancery court, how and by whom elected, qualifications of	4	40
Claims of individuals and bodies corporate, not affected by Constitution (schedule)		1
Clergyman, priest, or teacher of any religious persuasion, ineligible to General Assembly	2	27
Clerk of Court of Appeals, to be elected	4	11
term of office eight years (after 1858)	4	11
should the General Assembly district Court of Appeals, a clerk shall be elected for such district by the qualified voters of same .	4	11
term of office, qualifications, and subject to removal same as the clerk of the Court of Appeals	4	11
of Court of Appeals to be elected by remaining districts, in case the General Assembly directs Court of Appeals to hold sessions in more than one district	4	11
term of office to be six years should number of judges be reduced, of Court of Appeals, to be elected by special election in case of vacancy, to serve until the end of the term	4	13
judges of Court of Appeals shall have power to appoint a <i>pro tem.</i> .	4	13
of Court of Appeals not to be elected by special election unless the unexpired term exceed one year	4	13
of Court of Appeals, who are eligible to the office of	4	12
of Court of Appeals, circuit and county courts, subject to be removed by the Court of Appeals	4	39
Clerk of Louisville chancery court, qualifications of	4	40
to be elected	4	40
of circuit and county court to be elected	6	1
who eligible to the office of	6	2
county, when and how elected	6	3
to give bond	6	9
Commonwealth, credit of, to whom shall never be loaned or given . .	2	33
Commissioners shall be appointed by the General Assembly to revise and arrange the Statute Laws of this Commonwealth	8	22
shall be appointed to prepare a Code of Practice for the courts of this Commonwealth	8	22

	ART.	SEC.
Commissioners shall report the result of their labors to the General Assembly	8	22
Constable shall be elected in every justices' district, jurisdiction of . .	6	5
to give bond	6	9
subject to indictment and removal	4	36
Constitution, when in force		
mode of revising all laws contrary thereto void	13	30
Contracts, law impairing not to be made	13	20
Convention, majority of all members elected within first twenty days		
of their regular session, may pass a law to take the		
sense of the people on the expediency of	12	1
how and when to be called	12	1
how many members to consist of	12	1
when to meet	12	1
to be authorized only by a majority of all the qualified		
voters of the State	12	1
General Assembly shall provide for ascertaining num-		
ber of persons in the State entitled to vote for the		
calling of	12	1
to judge of election of its members, and decide contested		
elections	12	2
Coroner for each county to be elected, and term of office fixed	6	1
qualification of	6	2
when and how elected	6	3
subject to indictment and removal	4	36
to give bond and security	6	9
Courts, circuit, in each county established	4	16
jurisdiction of, as now established	4	17
right of appeal from decisions of	4	18
holding of, shall be provided for by law when the judge is ab-		
sent or incompetent to preside	4	28
county, to be established, when composed of	4	29
county, judges of elected, term of office four years, compen-		
sation fixed by law	4	30
county, jurisdiction of, regulated by law	4	33
Louisville chancery, subject to repeal, and its jurisdiction to		
enlargement—qualification of its officers	4	40
city court of Louisville, of Lexington, and other police courts,		
to remain with present powers and jurisdictions	4	41
Courts, officers of, elected, term of office, and qualification fixed . . .	4	41
Education, common school fund defined	11	1
to be held inviolate for the purpose of sustaining a system		
of common schools	11	1
common school fund, interest and dividends of, and cer-		
tain other sums, to be appropriated only in aid of com-		
mon schools	11	1
what shall be done with balance of interest of the year 1848		
and other sums raised for school purposes	11	1
interest of school fund to be paid	11	1
each county entitled to a proportion of income	11	1

	ART.	SEC.
Elections, for Representatives for the several counties, shall be held at the places of holding their respective courts, and in the election precincts	2	5
for county not to be held in any city or town entitled to separate representation	2	5
contested, for Governor and Lieutenant Governor, to be determined by the General Assembly	3	24
first under the Constitution, for Governor, Lieutenant Governor, etc., to be held on first Monday in August, 1851 . .	3	26
for circuit judges, when held	4	20
what returns of to be made to Secretary	8	14
by viva voce, except dumb persons	8	15
between what hours to be held	8	16
certain contested, General Assembly shall regulate trial of .	8	24
returns of by proper officers to be regulated by the General Assembly	8	25
Electors, qualifications of, and where shall vote	2	8
when privileged from arrest, except for treason, felony, breach or surety of the peace	2	9
qualified to vote for judges	4	21
Ex post facto law not to be made	13	20
Government, seat of, shall continue in Frankfort until removed by law	9	1
two-thirds of all the members elected to both Houses required to remove	9	1
Governor, term of office, when and where elected, in case of a tie, to be determined by lot, as the General Assembly may direct	3	2
ineligible for four years after the expiration of his term of office	3	3
qualifications of	3	4
when to commence and terminate the duties of his office . .	3	5
who shall not be	3	6
compensation of	3	7
military powers and privileges of	3	8
shall have power to grant commissions to fill vacancies . . .	3	9
powers of, to grant remissions, reprieves and pardons . . .	3	10
may require information in writing from any officer of the Executive department	3	11
shall give information to the General Assembly, and recommend measures	3	12
when and where may convene the General Assembly, and when adjourn the two Houses thereof	3	13
shall take care that the laws be faithfully executed	3	14
orders, resolutions and votes to be approved by	3	23
may pardon any one who shall have participated in a duel .	8	21
shall commission Auditor, Register, Treasurer, President of the Board of Internal Improvement, Superintendent of Public Instruction and other officers	8	25
when shall have power to fill vacancies in certain offices . .	8	26

	ART.	SEC.
Governor, Lieutenant, term of office, qualifications of, how elected . .	3	15
Lieutenant, to be Speaker of the Senate	3	16
Lieutenant, when he shall exercise the power and authority of Governor	3	17
when a special election for shall take place	3	18
Lieutenant, compensation of	3	19
Habeas corpus, not to be suspended unless in cases of rebellion or in- vasion	13	18
Impeachment, House of Representatives to have sole power of	5	1
in case of, Senate to try	5	2
shall be on oath	5	2
two-thirds of, must concur to convict	5	2
who liable to	5	3
judgment in case of, limited	5	3
Internal Improvement, president of the board of, to be elected, term of office, time and manner of election of . . .	8	23
board of, may be abolished, or the office of president thereof	8	23
Jailer, for each county, to be elected	6	1
qualifications of	6	2
when and how elected	6	3
to give bond and security	6	9
subject to indictment and removal	4	36
Judges, circuit, qualifications of	4	22
circuit, term of office fixed	4	23
circuit, commissioned by Governor—how removed	4	23
circuit, compensation of, fixed by law	4	25
how a vacancy in the office of circuit judge shall be filled . . .	4	26
county court, when elected, first term of office fixed	4	31
county court, qualifications of	4	32
subject to indictment and removal	4	36
Judicial, districts, when changed	4	27
power, may be vested in mayors of cities, police judges and trustees of towns	4	41
Justices of the peace, to be elected, term of office, jurisdiction and qualifications of	4	34
commissioned by the Governor	4	35
subject to indictment for malfeasance or mis- feasance, and upon conviction, to be removed,	4	36
may sit at the court of claims and assist in lay- ing the county levy	4	37
Laws, no one passed by General Assembly shall relate to more than one subject, to be expressed in the title	2	37
shall not be suspended unless by General Assembly, or its au- thority	13	16
in force, not inconsistent with this Constitution, not to be af- fected thereby (schedule)		1
relative to certain officers, to remain in force, though contrary to this Constitution (schedule)		3
Legislative power vested in General Assembly	2	1
[See Representatives, Senate and General Assembly.]		

	ART.	SEC.
Militia, of whom to consist	7	1
certain officers of, by whom appointed	7	2
officers of, elected	7	3
Nobility, title of, shall not be granted	13	28
Oath, prescribed	8	1
to be taken by all officers and members of the bar	8	1
manner of, to suit conscience of deponent	8	7
may be administered by a judge or justice of the peace (schedule),		2
Officers, civil and military, where to reside	8	11
salaries of deductions for neglect of duty made by General Assembly	8	13
when to enter upon the discharge of their duties determined by the General Assembly	8	17
security for public, how may be relieved, determined by General Assembly	8	19
for towns and cities to be elected in such manner and for such time as prescribed by law	6	6
Office, right to hold any, of honor or profit forfeited by giving, accepting, or carrying a challenge	8	20
none to be hereditary or for a longer time than a term of years	13	28
none to be superseded by the adoption of this Constitution (schedule)		3
People, all free governments founded on authority of	13	4
right of, to alter, abolish or reform their government	13	4
Powers of government divided into three departments	1	1
no person or persons of one department to exercise any power belonging to another	1	2
Power, absolutely arbitrary exists not	13	2
all inherent in "THE PEOPLE"	13	4
Process, style of, shall be "The Commonwealth of Kentucky"	4	5
Prosecutions shall be carried on in name of the Commonwealth of Kentucky	4	5
how to conclude	4	5
Punishments, cruel, shall not be inflicted	13	17
Representatives, House of, a branch of legislative power	2	1
House of, term of service of members of, two years from day of general election	2	2
to be chosen on the first Monday in August every second year	2	3
qualifications of	2	4
number of, shall be apportioned among the ten several districts, according to the number of qualified voters in each	2	6
to be apportioned as near as may be among the counties, towns and cities of each district	2	6
rules to govern such appointment	2	6
House of, to choose its Speaker and other officers	2	7
to be elected under first apportionment after the adoption of this Constitution in 1851	2	11

	ART.	SEC.
Representatives, House of, number of members shall be one hundred . . .	2	13
Representation, separate, any city or town to be invested with privilege of, when such city or town hath a number of qualified voters equal to the ratio then fixed . . .	2	5
no city or town to be entitled to separate, unless the county in which it is situated shall, after separation, be entitled to one or more Representatives . . .	2	5
any city or town invested with privilege of separate, when its numbers shall entitle it to more than one Representative, shall be divided into Representative districts	2	5
said city or town in like manner to be divided into Senatorial districts	2	5
no ward or municipal division to be divided into such Senatorial or Representative districts, unless it be necessary to equalize the elective, Senatorial, or Representative districts	2	5
shall be equal and uniform in this Commonwealth, and regulated by the number of qualified voters therein	2	6
in 1850, again in 1857, and every eighth year thereafter, an enumeration of qualified voters to be taken	2	6
to secure uniformity and equality of, the State shall be laid off into ten districts	2	6
at every apportionment of, the State shall be laid off into thirty-eight Senatorial districts	2	14
one Senator to be elected by each district	2	15
when any city or town shall have right to, may have separate municipal courts	4	38
Recognizances, heretofore taken, to remain valid (schedule)		5
Register of the Land Office, elected for four years, duties prescribed by law	3	25
Rights, equality of, declared	13	1
of property, before and higher than constitutional sanction	13	3
of owner of slave to it, and the increase thereof	13	3
of people to alter their government	13	4
of all men to liberty of conscience in matters of religion	13	5
of conscience not to be interfered with	13	5
civil, not to be diminished or enlarged on account of religion,	13	6
of the citizen to equality and freedom of elections	13	7
to trial by jury	13	8
freedom of the press and speech	13	9
in prosecutions for libels, to give in evidence truth of matter published, jury in such case to determine the law and the facts	13	10
to be secure from unreasonable searches and seizures	13	11
when accused in criminal prosecutions, to be heard by himself and counsel	13	12
to demand the nature of accusation	13	12

	ART.	SEC.
Rights, to meet witnesses face to face	13	12
to have compulsory process for witnesses	13	12
to have a speedy public trial by an impartial jury of the vicin- age	13	12
to refuse to give evidence against himself	13	12
not to be deprived of life, liberty, or property, without due course of law	13	12
for any indictable offense, not to be proceeded against crim- inally by information, except in the land or naval forces, or militia, when in actual service, or by leave of court, for op- pression or misdemeanor in office	13	13
not to be twice jeopardized for the same offense	13	14
property not to be taken for public use without consent of rep- resentatives, and just compensation made	13	14
all courts shall be open, and redress given for any injury, and justice administered without sale, denial or delay	13	15
as debtor, to be free from prison after delivering up estate as prescribed by law, unless strong presumption of fraud	13	19
estate of such as destroy their own lives, shall descend or vest as in case of natural death	13	23
if any person be killed by casualty, no forfeiture shall accrue .	13	23
to assemble and petition	13	24
to bear arms in defense of himself and State	13	25
to forbid a soldier to be quartered in his house in time of peace	13	27
nor in time of war, but as prescribed by law	13	27
to emigrate, not to be prohibited	13	29
Secretary of State, when to convene the Senate	3	20
duties, term of office, how appointed	3	21
Senate, members to be chosen for four years	2	10
shall have power to choose its officers biennially	2	10
to be elected under first apportionment after the adoption of this constitution in 1851	2	11
members of, to be divided into two classes by lot, at the session of the General Assembly after first apportionment under this constitution	2	12
seats of first class to be vacated at the end of two years from the day of election, and those of the second class at the end of four	2	12
number of members of, shall be thirty-eight	2	13
qualification of members of	2	16
when members of, shall be elected	2	17
when Speaker of, shall be elected, and when he shall adminis- ter the government	3	18
Sheriffs, to be elected, term of office, re-eligible for second term, ineli- gible for succeeding term	6	4
time of electing fixed	6	4
qualifications of	6	2
to give bond and security	6	9
subject to indictment and removal	4	36

	ART. SEC.	
Slaves, General Assembly shall not emancipate, without owner's consent or compensation made	10	1
before emancipated, provision to be made for removal from the State	10	1
emigrants may bring with them	10	1
laws to be passed permitting owners to emancipate	10	1
General Assembly shall have power to prevent being brought into this State as merchandise	10	1
imported into the United States, after 1789—General Assembly may prevent being brought into this State	10	1
owners of, to treat them with humanity	10	1
may be sold for the benefit of certain owners	10	1
emancipated hereafter, refusing to leave the State, or having left, who shall return and settle in this State, to be deemed guilty of felony	10	2
in prosecutions of, for felony, no inquest by grand jury necessary	10	3
in prosecutions of, for felony, to have an impartial trial by jury	10	3
Suffrage, who shall be excluded from	8	4
free, to be supported by laws	8	4
right of, not forfeited by absence on business of this State or United States	8	12
Suits against the Commonwealth, General Assembly to direct where and how brought	8	6
Superintendent of Public Instruction, to be elected	11	2
term of office and salary to be fixed by law	11	2
Surveyor, county, to be elected, and term of office fixed	6	1
qualifications of	6	2
when and how elected	6	3
to give bond and security	6	9
subject to indictment and removal	4	36
Treason, defined	8	2
who shall not be convicted of	8	2
Treasurer, to be elected, term of office two years, duties of, prescribed by law	3	25
Treasury, money drawn from, only by appropriation	8	5
Virginia, what laws of, in force here	8	8
compact with, part of constitution	8	9

CONSTITUTION

OF

THE UNITED STATES.

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Section 1.

1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

See Sec. 1, Art. II, Constitution Kentucky, 1850.

Section 2.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

See Sec. 2, Art. II, Constitution Kentucky, 1850.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not when elected be an inhabitant of that State in which he shall be chosen.

See Sec. 4, Art. II, Constitution Kentucky, 1850.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

See Secs. 5, 6, Art. II, Constitution of Kentucky, 1850.

The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand; but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five, and Georgia, three.

See Sec. 31, Art. II,
Constitution of Ky.,
1850.

4. When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill up such vacancies.

See Sec. 7, Art. II,
Constitution of Ky.,
1850.

5. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

Section 3.

See Sec. 15, Art. II,
Constitution of Ky.,
1850.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

See Sec. 12, Art. II,
Constitution of Ky.,
1850.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

Sec. 16, Art. II,
Constitution of Ky.,
1850.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State from which he shall be chosen.

Sec. 16, Art. III,
Constitution of Ky.;
and Sec. 18, same,
1850.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

See Sec. 2, Art. V, Constitution of Ky., 1850.

7. Judgment in case of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

Sec. 3, Art. V, same.

Section 4.

1. The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or order such regulations, except as to the places of choosing Senators.

The Force Bill of 1800 rests for its authority upon the last clause of this section.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

See Sec. 16, Art. I, Constitution of Ky., 1792; Sec. 17, Art. II, 1796.

Section 5.

1. Each House shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Sec. 20, Art. II, Constitution of Ky., 1850.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Sec. 21 of same.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy, and the yeas and nays of the members of either House, on any question, shall,

Sec. 22 of same.

at the desire of one-fifth of those present, be entered on the journal.

Sec. 23 of same.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6.

Sec. 24, Art. II, Constitution of Ky., 1850; also Sec. 25 of same.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to or returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

Sec. 26 of same.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

Sec. 27, never had any parallel in the United States Constitution.

Section 7.

Sec. 30, Art. II, 1850.

1. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills.

Sec. 22, Art. III, Constitution of Ky., 1850. (Ex.)

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objection at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House

respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, except on a question of adjournment, shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. 23, Art. III,
Const. of Ky., 1850.

Section 8.

The Congress shall have power—

1. To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several States and with the Indian tribes:

4. To establish an uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post roads:

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the Supreme Court.

10. To define and punish piracies and felonies committed on the high seas, and offenses against the laws of nations:

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

This section, paragraphs 1 to 18, contains, in part, the concessions or grants of power from—"We, the people of the United States" (first paragraph, Const. of U. S.), and with Section 10, entire, is the power the United States has, and which the people of the States, by this concession, have not.

13. To provide and maintain a navy :

14. To make rules for the government and regulation of the land and naval forces :

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions :

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress :

17. To exercise exclusive legislation in all cases whatsoever, over such district, not exceeding ten miles square, as may, by cession of particular States, and the acceptance of Congress, become the Seat of Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings : and

18. To make laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

This, by all known principles, is a special and extra grant of power, forever to be strictly, and never liberally, construed under any plea of "necessity."

Section 9.

See Art. IX, Ky. Const., 1792, Art. VII, 1799, Art. X, 1850.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Last clause, Sec. 19, Art. XIII, Const. of Ky., 1850.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Sec. 20. Same.

3. No bill of attainder, or *ex post facto* law, shall be passed.

Sec. 6, Art. I, Const. of Ky., 1792.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Conceded by Par. 1, Sec. 8, Const. U. S. above.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation

of commerce or revenue to the ports of one State over those of another ; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the Treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Sec. 3, Art. VIII,
Const. of Ky., 1792.

Sec. 6, Art. VI, Con-
stitution, 1790.

7. No title of nobility shall be granted by the United States ; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign State.

Sec. 28, Art. XIII,
Const. Ky., 1850.

Section 10.

1. No State shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make anything but gold and silver coin ; a tender in payment of debts ; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

See Secs. 18 to 26,
Art. XII, Kentucky
Constitution 1792;
same, Art. X, 1799;
Secs. 20 to 28, Art.
XIII, 1850.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

Section 1.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows :

Much the same as Sec. 10, Art. I, Kentucky Constitution of 1792 and Sec. 2, Art. II of same.

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives, to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[3. The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.]

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

See (Executive) Constitution Kentucky, Sec. 4, Art. III, 1850.

6. In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may, by law, provide for the case of removal, death, resignation or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

See Sec. 17, Art. III, Constitution Kentucky, 1850.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

See Sec. 7, Art. III, Constitution Kentucky, 1850.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation :

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2.

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for all offenses against the United States, except in cases of impeachment.

See Sec. 8, Art. III, Constitution of Kentucky, 1850; also Sec. 10, same.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

See Constitution of Kentucky, 1792; Sec. 8, Art. II, and Sec. 9, Art. III, Constitution of Kentucky, 1799; also Sec. 10.

See Sec. 9, Art. III,
1850.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3.

See Secs. 12, 13, Art.
III, Constitution of
Kentucky, 1850.

1. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them; and, in case of disagreement between them, with respect to the time of adjournments, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

See Sec. 2, Art. VII,
Constitution of Ken-
tucky, 1850, as to
last clause.

Section 4.

1. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Section 1.

See Sec. 1, Art. IV,
Constitution of Ken-
tucky, 1850. Same
tenure as Kentucky
Constitutions, 1799,
1792.

1. The judicial power of the United States shall be vested in one Supreme Court, and in such interior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and Inferior Courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Section 2.

First clause, see Sec.
1, Art. IV, Consti-
tution of Kentucky,
1850.

1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more

States; between a State and citizens of another State; between citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations, as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may, by law, have directed.

See Sec. 8, Art. XIII,
Constitution of Ken-
tucky, 1850.

Section 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

See Sec. 2, Art VIII,
Constitution of Ken-
tucky, 1850.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

ARTICLE IV.

Section 1.

1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in an-

Not provided for,
Constitution 1850,
1799, 1792.

other State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Abrogated by Art. XIII, Sec. 1; Art. XIV, Sec. 1; Art. XI, Sec. 1. Amendments to Constitution United States.

3. No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3.

See Virginia Compact in this book.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislature of the States concerned, as well of the Congress.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4.

See Bill of Rights, Art. XIII, Constitution of Kentucky, 1850. Also, Sec. 1, Art. I, same.

1. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive, when the Legislature cannot be convened, against domestic violence.

ARTICLE V.

1. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight, shall

See Sec. 9, Art. I, Constitution United States *here*. Secs. 14, 15, Art. II, Constitution of Kentucky, 1850.

in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

See Art. XIII, Secs. 2, 3, Constitution of Kentucky, 1850.

See Sec. 1, Art. VIII, Constitution of Kentucky, 1850; not provided for by Constitution of Kentucky, 1799, 1792.

Last clause see Sec. 5, Art. XIII, Constitution of Kentucky, 1850.

ARTICLE VII.

1. The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

New Hampshire was the ninth State to ratify, June 21, 1787, and Virginia the tenth, June 26, 1787.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

Vermont was admitted March 4, 1791. Kentucky, June 1, 1792.

GEORGE WASHINGTON, PRESIDENT,
and Deputy from Virginia.

New Hampshire—John Langdon, Nicholas Gilman.

Massachusetts—Nathaniel Gorham, Rufus King.

Connecticut—William Samuel Johnson, Roger Sherman.

New York—Alexander Hamilton.

New Jersey—William Livingston, David Brearly, William Patterson, Jonathan Dayton.

Pennsylvania—Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.

Delaware—George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom.

Maryland—James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll.

Virginia—John Blair, James Madison, Jr.

North Carolina—William Blount, Richard Dobbs Spaight, Hugh Williamson.

South Carolina—John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.

Georgia—William Few, Abraham Baldwin.

Attest: WILLIAM JACKSON, *Secretary*.

AMENDMENTS TO THE CONSTITUTION.

[The following Amendments were proposed at the first session of the First Congress of the United States, which was begun and held at the city of New York, on the 4th of March, 1789, and were adopted by the requisite number of States.—*First volume of the Laws of the United States, page 72.*]

ARTICLE I.

1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

See Secs. 5, 6, 7, 8, 9, 24, 30, Constitution of Ky., 1850; Sec. 4, Art. VIII, Constitution of Ky., 1850.

ARTICLE II.

1. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Art. VII, entire; Sec. 25, Art. XIII, Constitution of Ky., 1850.

ARTICLE III.

1. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

See Secs. 26 and 27, Art. XIII, Constitution of Ky., 1850.

ARTICLE IV.

1. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

See Sec. 11, Art. XIII, Constitution of Ky., 1850.

ARTICLE V.

1. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, 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; nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

See Sec. 22, Art. VIII; Sec. 8, Art. XIII, Constitution of Ky., 1850.

ARTICLE VI.

1. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Secs. 12, 13, 14, 15, Art. XIII, Constitution of Ky., 1850.

ARTICLE VII.

1. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules at the common law.

Sec. 8, Art. XIII, Constitution of Ky., 1850.

ARTICLE VIII.

Same as Sec. 16, Art. XIII, Constitution of Ky., 1850.

1. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

Bill of Rights, Art. XIII, Constitution of Ky., 1850, especially Secs. 1, 4, 30.

1. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

Bill of Rights, Art. XIII, Constitution of Ky., 1850.

1. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[The following Amendment was proposed at the second session of the Third Congress. It is printed in the Laws of the United States, 1 vol., p. 73, as article 11.]

ARTICLE XI.

1. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

[The three following sections were proposed as Amendments at the first session of the Eighth Congress. They are printed in the Laws of the United States as article 12.]

ARTICLE XII.

See Secs. 2, 3, Art. II, Constitution of United States, here; also Sec. 4, same. This article separates the ballots for President and for Vice-President.

1. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the Seat of the Government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have

such majority, then from the persons having the highest numbers not exceeding three, on the list of those voted for as President, the House of Representatives shall choose, immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the

The successions of other officers, in case of disability of the President and Vice-President; such as Secretary of State, etc., are now fixed by law.

See Art. IX, Constitution of Kentucky, 1792; Art. VII, 1799; Art. X, and also Secs. 2, 3, Art. XIII, 1850.

See Secs. 5, 6, Art. II, Constitution of Kentucky, 1850.

whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States, nor any State, shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

5. The Congress shall have power to enforce by appropriate legislation, the provisions of this article.

ARTICLE XV.

See Sec. 3, Art. II, Constitution of Kentucky, 1850, as to free white male citizens.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

INDEX TO CONSTITUTION OF THE UNITED STATES.

	ART.	SEC.
Acts, records and judicial proceedings of each State entitled to faith and credit in other States	4	1
Amendments to the Constitution, how made	5	1
Attainder, bill of, prohibited	1	9
Attainder of treason, shall not work corruption of blood or forfeiture, except during the life of the person attainted . .	3	8
Bills, for raising revenue, shall originate in the House of Representatives	1	7
before they become laws, shall be passed by both Houses and approved by President; or, if disapproved, shall be passed by two-thirds of each House	1	7
not returned in ten days, unless an adjournment intervene, shall be considered as approved	1	7
Census, or enumeration to be made every ten years	1	2
Claims of the United States, or of the several States, not to be prejudiced by any construction of the Constitution	4	3
Citizens of each State shall be entitled to the privileges and immunities of citizens in the several States	4	2
Commerce, regulations respecting, to be equal and uniform	1	9
Congress, vested with legislative power	1	1
may alter the regulations of State Legislatures concerning elections of Senators and Representatives, except as to place of choosing Senators	1	4
shall assemble once every year	1	4
may provide for cases of removal of President and Vice-President	2	1
may determine the time of choosing electors of President and Vice-President	2	1
may invest the appointment of inferior officers in the President alone, in the courts of law, or the heads of departments	2	2
may from time to time establish courts inferior to Supreme Court	3	1
may, with one limitation, declare the punishment of treason, may prescribe the manner of proving the acts, records, and judicial proceedings of each State	4	1
the assent of, required to the formation of a new State within the jurisdiction of any other, or by the junction of two or more	4	3
may propose amendments to Constitution, or, on application, call a convention	5	1
the assent of, required to the admission of new States into the Union	4	3

	ART.	SEC.
Congress to lay, and collect duties on imposts and excises	1	8
to borrow money	1	8
to regulate commerce	1	8
to establish uniform laws of bankruptcy and naturaliza- tion	1	8
to coin money, regulate the value of coin, and fix a standard weights and measures	1	8
to punish counterfeiting	1	8
to establish post-offices and post roads	1	8
to authorize patents to authors and inventors	1	8
to constitute tribunals <i>inferior</i> to the Supreme Court	1	8
to define and punish piracies, felonies on the high seas, and offenses against the laws of nations	1	8
to declare war, grant letters of marque, and make rules con- cerning captures	1	8
to raise and support armies	1	8
to provide and maintain a navy	1	8
to make rules for the government of the army and navy	1	8
to call for the militia in certain cases	1	8
to organize, arm and discipline militia	1	8
to exercise exclusive legislation over ten miles square	1	8
to pass laws necessary to carry the enumerated powers into effect	1	8
to dispose of and make rules concerning the territory or other property of the United States	4	3
Constitution, formed by the people of the United States (Preamble)		
how amended	5	1
and the laws under it, and treaties, declared to be su- preme law	6	1
rendered operative by ratification of convention of nine States	7	1
Conventions for proposing amendments to the Constitution	5	1
Court, Supreme, its original and appellate jurisdiction	3	2
Courts, inferior to the Supreme Court, may be ordained by Con- gress	3	1
Crimes, persons accused of, fleeing from justice, may be demanded	4	2
Debts against the Confederation valid against the United States un- der this Constitution	6	1
Duties on exports prohibited	1	9
on imports and exports, imposed by States, shall inure to the United States Treasury	1	10
Elections of Senators and Representatives shall be prescribed by the State Legislatures as to time, place and manner	1	4
qualifications and return of members of Congress to be de- termined by each House	1	5
Electors of President and Vice-President, how chosen, and their du- ties (see 12th Amendment)	2	1
shall vote the same day throughout the United States	2	1
no Senator or Representative holding office under the United States shall serve as	2	1

	ART.	SEC.
Exports—see Tax	1	9
and imports, duties on by States, to be payable into the Treas- ury of the United States	1	10
Ex post facto law, none shall be passed	1	9
Habeas corpus, writ of, can only be suspended in cases of rebellion or invasion	1	9
Impeachment, all civil officers liable to	2	4
persons found guilty by, liable to indictment and pun- ishment for the offense	1	3
Importation of slaves, until prohibited, a duty authorized on after 1808	1	9
Judges shall hold their offices during good behavior	3	1
compensation of, shall not be diminished during continuance in office	3	1
Judicial power, vested in a Supreme Court, and Courts inferior . . .	3	1
the cases to which it extends	3	2
Jury trial shall be held in the <i>State</i> where the crime shall have been committed	3	2
if the crime have not been committed within a State, the trial shall be held at the place Congress shall have di- rected	3	2
Jury, trial by, <i>secured</i> in prosecutions for all <i>crimes</i> , except in cases of impeachment	3	2
and in suits at common law where the value in controversy shall exceed \$20, 7th Amendment		
Law, Supreme, the Constitution, the laws under it, and treaties de- clared to be	6	1
Legislative powers, vested in Congress—see Congress	1	1
Money to be drawn from the Treasury only by laws appropriating . .	1	9
Nobility, titles of, shall not be granted by the United States . . .	1	9
Officers of the Senate, except their President, shall be chosen by the Senate	1	3
civil, may be removed by impeachment	2	4
Order of one House, requiring the concurrence of the other—see Res- olution	1	7
Persons held to labor or service, their importation or migration into the United States may be prohibited after 1808	1	9
escaping from one State to another, shall be delivered up to those entitled to their service	4	2
Powers not delegated are reserved to the people, or, when not pro- hibited, to the States, 10th Amendment		
Legislative—see Congress	1	1
Executive—see President	2	1
Judicial—see Judicial	3	1
Presents, emoluments, office, or title from a foreign king, prince, or State; to persons holding offices of profit or trust prohibited . .	1	9
President of the United States vested with the executive power . . .	2	1
shall be chosen for four years	2	1
how elected	2	1
qualifications for	2	1

	ART.	SEC.
President of the United States, compensation of	2	1
shall take an oath of office	2	1
may be removed by impeachment	2	4
shall be commander-in-chief of army and navy	2	2
may require the written opinion of the heads of departments	2	2
may reprieve and pardon	2	2
may make treaties, with consent of Senate	2	2
may appoint to office, with consent of Senate	2	2
shall fill up vacancies happening dur- ing the recess of the Senate	2	2
shall give information to Congress, and recommend measures	2	3
may convene both Houses, or either House	2	3
may adjourn them in case of disagree- ment	2	3
shall receive ambassadors and public ministers	2	3
shall take care that the laws be faith- fully executed	2	3
shall commission all officers of the United States	2	3
in case of death, etc., shall devolve on the Vice-President and on such oth- er officer as may be provided by law	2	1
Property shall not be taken for public use without just compensation, 5th Amendment		
Quorum, what shall be for business	1	5
of States in choosing a President by the House of Represent- atives	2	1
Receipts and expenditures, accounts of, to be published	1	9
Representatives, House of, composed of members chosen every second year	1	2
qualifications of the electors of its members	1	2
qualifications of members	1	2
shall not exceed one for 30,000	1	2
shall choose their Speaker and other officers	1	2
shall have the power of impeachment	1	2
shall be the judge of the returns, elections and qual- ifications of its members	1	5
what shall be quorum of	1	5
any number may adjourn and compel the attendance of absentees	1	5
may determine the rules of proceeding	1	5
may punish or expel a member	1	5

	ART.	SEC.
Representatives shall keep a journal, and publish the same, except the parts requiring secrecy	1	5
shall not adjourn for more than three days, nor to any other place, without the consent of the Senate	1	5
one-fifth of, present, may require the yeas and nays	1	5
shall originate bills for raising revenue	1	7
shall receive a compensation, to be ascertained by law	1	6
privileged from arrest during attendance, and in going and returning, except in certain cases	1	6
shall not be questioned elsewhere for any speech or debate in the House	1	6
shall not be appointed to the offices created, or whose compensations shall have been increased during the time for which they are elected	1	6
can, whilst serving, hold no office under the United States	1	6
shall not serve as primary electors of President	2	1
Representatives and direct taxes apportioned according to numbers	1	2
Representation of a State, vacancies in, supplied until a new election by the executive authority thereof	1	2
Resolution, order or vote, requiring the concurrence of both Houses (except for an adjournment), shall be presented to the President, and undergo the formalities of bills	1	7
Rights of citizens declared to be—		AMENDMENTS.
liberty of conscience in matters of religion		1
freedom of speech and of the press		1
to assemble and petition		1
to keep and bear arms		2
to be exempt from the quartering of soldiers in any house, in time of peace, without the consent of the owner; and, in time of war, unless prescribed by law		3
to be secure from unreasonable searches and seizures		4
to be free, except in the army, navy and militia, from answering for a capital or otherwise infamous crime, unless on presentment or indictment of grand jury		5
not to be twice jeopardized for the same offense		5
nor to be compelled, in criminal cases, to be a witness against himself		5
not to be deprived of life, liberty or property without due course of law		5
private property shall not be taken for public use without just compensation		5
that the accused, in criminal prosecutions, shall enjoy the right of a speedy public trial by an impartial jury of the vicinage, and the means necessary for his defense		6
that, in all civil cases, facts tried by a jury shall only be re-examined according to the rules of the common law		7
in suits at common law, where value exceeds \$20, trial by jury (see Jury)		7

AMENDMENTS.

Rights of citizens declared to be—

that excessive bail shall not be required, excessive fines imposed nor cruel or unusual punishments inflicted	8
that the enumeration of certain rights shall not operate constructively against the retained rights	9

ART. SEC.

Senate of the United States, composed of two Senators from each State	1	3
how chosen, classed and terms of service	1	3
qualifications of members, thirty years of age, nine years a citizen, etc.	1	3
shall choose their officers, except the President	1	3
shall be judge of the elections, returns and qualifications of its members	1	5
what number shall be quorum	1	5
any number may adjourn and compel attendance of absentees, may punish or expel a member	1	5
may determine its rules	1	5
shall keep a journal and publish same, except parts requiring secrecy	1	5
shall not adjourn for more than three days, nor to any other place, without the consent of the House of Representatives	1	5
one-fifth of, present, may require the yeas and nays	1	5
may propose amendments to bills for raising revenue	1	7
shall try impeachments	1	3
their judgments only to extend to removal from and to disqualify for office	1	3
members of, shall receive a compensation to be ascertained by law	1	6
privileged from arrest	1	6
shall not be questioned elsewhere for any speech or debate in the House	1	6
shall not be appointed to offices of the United States created, or whose emoluments have been increased during the terms for which they were elected	1	6
Senators and Representatives, elections of, how prescribed	1	4
Senator shall not be an elector of President	2	1
Slaves (see persons held to service).		
States, prohibited from—		
entering into any treaty, alliance or confederation	1	10
granting letters of marque	1	10
coining money	1	10
emitting bills of credit	1	10
making anything a tender but gold and silver coin	1	10
passing bills of attainder, <i>ex post facto</i> laws, or laws impairing contracts	1	10
granting titles of nobility	1	10
laying imposts or duties on imports and exports for their own use	1	10
laying duties on tonnage without the consent of Congress	1	10
keeping troops or ships of war in time of peace	1	10

	ART.	SEC.
States, prohibited from—		
entering into any agreement or contract with another State		
or with a foreign power	1	10
engaging in war, unless actually invaded or in imminent		
danger	1	10
States, new, may be admitted into the Union	4	3
may be formed within the jurisdiction of others, or by		
the junction of two more, with the consent of Con-		
gress and the Legislatures concerned	4	3
States, Judges of, bound to consider treaties, the Constitution and		
the laws under it as supreme	6	1
States, majority of <i>all</i> , necessary to the choice of President	2	1
State, each, to be guaranteed republican form of government, pro-		
tected against invasion, and secured, upon application,		
against domestic violence	4	4
Tax, capitation or direct, shall be laid only in proportion to census . .	1	9
Tax on exports from a State prohibited	1	9
Taxes, direct, shall be apportioned according to representation	1	9
Territory or property belonging to United States Congress may make		
rules concerning	4	3
Test, religious, shall not be required	6	3
Treason defined	3	3
two witnesses or confession necessary for conviction	3	3
punishment of, may be prescribed by Congress, with one limi-		
tation	3	3
or other crime, persons charged with in one State, fleeing into		
another, shall, on demand, be delivered up	4	2
Treasury, money drawn from, only by appropriation	1	9
Treaties, the supreme law	6	1
Vacancies happening during recess of Senate may be filled temporarily		
by President	2	2
in representation in Congress, how filled	1	2
Vessels to enter, clear, and pay duties in <i>States</i> in which they arrive or		
depart from	1	9
Vice-President of the United States to be President of the Senate, ex-		
cept when exercising the office of President of the		
United States	1	3
how elected (and Twelfth Amendment)	2	1
qualification for, Twelfth Amendment		
shall, in certain cases, discharge the duties of President		
of the United States	2	1
may be removed by impeachment	2	4
Vote of one House requiring the concurrence of the other (see res-		
olution)	1	7
	AMENDMENTS.	
Warrants for searches and seizures, when and how they shall issue . . .	4	
Witness, in criminal cases, no one compelled to be against himself . .	5	
Thirteenth Amendment, slavery abolished		
Fourteenth Amendment, citizens and their rights, Representative ap-		
portionment, disability of persons engaged in		
the rebellion, and validity of public debt . .		
Fifteenth Amendment, right of impartial suffrage		