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THE

CONSTITUTIONAL HISTORY

OF

NEW YORK

FROM THE BEGINNING OF THE COLONIAL PERIOD TO THE YEAR 1905, SHOWING THE ORIGIN, DEVELOPMENT, AND JUDICIAL CONSTRUCTION OF THE CONSTITUTION

By CHARLES Z. LINCOLN

Member of the New York Constitutional Convention of 1894, and for Six Years (1895-1900), Chairman of the Statutory Revision Commission and Legal Adviser to Governors Morton, Black, and Roosevelt

IN FIVE VOLUMES

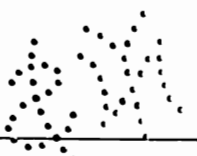
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GENERAL PREFACE.

Soon after the termination of my official service as legal adviser to the governor, and as chairman of the Statutory Revision and Code Commissions, which event occurred on the 31st day of December, 1900, at the close of Governor Roosevelt's administration, I began to gather materials for a history of the Constitution of New York. During my six years in office, constitutional questions were frequently presented which required an immediate answer, but which could not be answered without a careful study of the Constitution, its judicial interpretation, and the genesis and historical development of the particular provision under consideration. It often became necessary to search the records of constitutional conventions, commissions, legislative proceedings, and other sources of information which might offer any explanation of the reason underlying the provision in question, and of its intended scope and application. It was not always practicable to make a thorough examination without more time than was possible during a session of the legislature; therefore my conclusions were sometimes not satisfactory to myself, and in some cases they probably would have been modified if I had been able to find the root of the matter.

I am not aware that any attempt has hitherto been made to write a history of our Constitution. I think every student of this instrument must keenly appreciate the lack of such a history. There is not only no history of the Constitution, showing its origin, evolution, development, and interpretation, but I was surprised to find that few of the great subjects included in the Constitu-

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tion had received any special historical consideration. So, on retiring to private life after six years spent in a responsible, but peculiarly congenial, official position, I thought I might render a service to my successors by writing a history of our fundamental law. While engaged in this work I have often wished that the results of my study had been available to me at a time when so many questions were not, as they are now, largely academic, but required immediate and practical solution.

My studies have necessarily covered a wide field, and I have tried to set in order the various elements of our constitutional history in their appropriate relations to one another, so that the reader may readily appreciate the continuity and the unity of our constitutional system. This has required a study not only of the text of the Constitutions and other documents and records, but also of social, political, and commercial conditions out of which have developed the principles which are now embodied in the Constitution. I have therefore studied men as well as measures, and have tried to discover the motives which prompted particular constitutional provisions. I have endeavored to put myself in the place of these men, and appreciate their point of view. One result of this method of studying the subject has been to give the book in many of its parts a personal quality. As I have studied the debates of constitutional conventions, executive messages, documents, reports of committees, petitions to the legislature, judicial opinions, biographies and histories, I have come to feel a personal acquaintance with many men who have made New York great,—have learned somewhat of their mental processes, the scope of their moral perceptions, and their ideals and purposes,—and have become accustomed to expect from them an expression of opinion consistent with their habits of thought and their attitude in relation to important principles of government. Thus in considering great problems of consti-

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tutional reform, I naturally turned to certain leaders, to ascertain their opinions or impressions of the proposed policy.

A study of the Constitution may, from some points of view, be deemed dry and uninteresting; but when it is remembered that the constitution of a free people represents in outline the beliefs, the sentiments, the enthusiasms, and the policies which the people themselves approve and illustrate in the various relations of daily life, the Constitution becomes a thing of life, activity, and power. It has a spirit which expresses itself in various forms and by numerous avenues, and, reading between the lines, and beyond the cold letter of the instrument, we discover the struggles, the hopes, the aspirations, the defeats,—often only temporary,—and the final successes of a sovereign people, fully sensible of their opportunities and responsibilities as exponents of the results of a broad and free civilization.

After the larger part of the book had been written, I found, in the Albany Argus, a sentiment which closely accords with my own view of the proper scope of a general work on history. This writer says that "history is most useful and most intelligible when it shows accurately the course of events, the motives underlying them, and the people who shaped them." I have tried to apply this rule in the present work,—to state every fact with all possible accuracy, to discover the motive and purpose of each proposed constitutional reform, and to present a view of the men who shaped the Constitution, so far as this was practicable from reported speeches and other documents purporting to contain a statement of their opinions and intentions.

Plan of the Work.

I have already referred to the continuity of our constitutional history, and I believe that no student of the

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following pages can fail to be impressed by its unity. Several features of our constitutional system are very old, and have been prominent in our history from the beginning. We find them in all our Constitutions, even reaching far back into the colonial period; and the elements of our political organization appear to-day in substantially the same form as when Dutch and English colonists began laying in New York the foundations of a new civil society. At the outset of my studies it became necessary to determine whether our history should be treated topically, developing each subject independently from the beginning, or whether a chronological order should be observed, including a separate consideration of each constitutional period. Each constitutional convention marks either the beginning or close of a distinct period, culminating in a new Constitution, intended to embody the latest views of constitutional government, including principles which had been modified by constitutional revision during the preceding period.

Each plan has its advantages. By the topical arrangement it is possible to present a connected view of a subject, from its inception to the result as expressed in the latest constitutional provision; and all aspects of its development may be presented in their natural and chronological order. But, as already suggested, each convention or popular movement for constitutional reform is distinctive. Each convention or commission is composed, for the most part, of a new body of men, often with opinions concerning public affairs quite different from those entertained by their predecessors. These opinions are often based on new experience, and we therefore naturally expect to find in each convention propositions for reform which are here presented for the first time.

Thus it will be observed that the Convention of 1801 was called primarily to construe and determine the powers of the Council of Appointment. It therefore

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represented a peculiar political movement, and is unique in our constitutional history. So, the Convention of 1821 was the result of a movement for general constitutional revision. It was called at a time when many states were reconstructing their constitutional systems, and making new Constitutions to take the place of those under which state governments had been organized at the beginning of the Revolution. This convention marked a distinct stage of constitutional development, and its history cannot be repeated. The same remark might be made of the Convention of 1846, which illustrated the reaction against centralized power; and its work was especially significant in the restraints imposed on legislative authority. The Convention of 1867 came soon after the close of the great Civil War, which had compelled men to take new views of Federal authority, and the extent and limitations of the powers possessed by the states. This convention's reconstruction of the judicial system marked a distinct advance in the development of that department of government, and was the crowning feature of its work. The Convention of 1894 was held at a time when it was believed that legislative reorganization, canals, and the judiciary demanded serious attention and possible modifications to meet conditions which could not have been anticipated by earlier constitution-makers. So, the Commissions of 1872 and 1890 represented distinct movements,—the first having been called to consider a general revision deemed necessary because of the failure of a part of the work of the Convention of 1867, and the second, the Commission of 1890, having been charged with the express duty of proposing a plan for the reorganization of the judiciary. Each intervening period between general conventions has been marked by agitation in favor of particular reforms, some of which were adopted in fragments, while others were postponed for consideration by regular conventions.

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These periodical movements for constitutional reform seemed to demand separate treatment, and I have therefore adopted the general plan of considering each period or movement by itself. This makes it possible to describe, wherever practicable, the preliminary agitation leading up to a convention or other organized movement for revision, and also makes it possible to present the names, and more distinctively the work, of the men who have been chiefly influential in producing the results accomplished during the several periods.

But a topical treatment has also been applied in many instances. It has been my purpose to give a brief historical sketch of each subject immediately preceding its inclusion in the Constitution; but, for practical reasons, this rule could not always be followed. Sometimes these historical notes seemed most appropriate in discussing the work of a particular convention; but, in several instances, it seemed most desirable to present them in connection with the annotated Constitution, in the fourth volume. Both plans have therefore, to some extent, been combined; and while distinct periods have, in general, been considered in separate chapters, many subjects have been treated topically. Thus, the reader will find special articles on Agricultural Leases, Apportionment, Banking and Currency, Bill of Rights, Bi-partisan Election Boards, Canals, Civil Service, Cornell University, Corporations, Education, Enacting Clause, Executive Department, Forest Preserve, Free Canals, Home Rule, Indian Lands, Judiciary, Legislature, Limiting State Debts, Lotteries, Militia, Prison Labor, State Aid to Private Enterprise, Suffrage (including woman suffrage), Thirty-day Period, and several other subjects less fully. These sketches and historical notes will be found, for the most part, in the first three volumes; but, as already suggested, notes on important historical subjects are presented in the fourth volume.

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Our constitutional history includes not only what legislatures, conventions, and commissions have presented for popular consideration, but also judicial interpretation,—the two together constituting the whole body of our history, both formative and judicial. Judicial decisions constitute the history of construction, while the other matter is the history of constitutional formation. Historical matter has been freely presented in the judicial notes, and I have endeavored to use enough of each decision to show the question involved, and the views of the court concerning it. The fourth volume is intended specifically for use in ascertaining the judicial construction which has been applied to the Constitution; but, in many instances, the reader will doubtless find it necessary to consult earlier parts of the work for the history of existing constitutional provisions.

I think special attention should be directed to the tables of statutes which have received judicial interpretation on constitutional grounds. From the beginning of my studies I made notes showing the construction given to particular statutes, and have collected and arranged these statutes in tables, which may be found in the fifth volume. I have made no separate search for such statutes, but have endeavored to include in the list all statutes which have been directly construed by the courts. I think the tables will be found to include most of the statutes involving important constitutional questions. I believe no attempt has hitherto been made to present the statutes in this form, and it is hoped that the tables will be found useful by judges, lawyers, legislators, and others who may wish to ascertain whether the validity of a particular statute has been challenged on constitutional grounds.

It was my original plan to present in an appendix all the Constitutions and amendments heretofore adopted in the state, and also other documents of a similar charac-

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ter, including Magna Charta, the New York Charter of Liberties, the Declaration of Independence, the Articles of Confederation, and the Federal Constitution and Amendments, thus enabling the reader to consult, in their regular chronological order, all these great political documents from Magna Charta, in 1215, to the amendment of 1901. On further consideration it seemed more appropriate to place these documents at the beginning of the book. I then wrote the introductory note on the Constitutions of New York, presenting there, in as compact a form as seemed practicable, a preliminary sketch of the development of our constitutional system, from the beginning of the colonial period to the latest amendment. Several subjects appearing here only in outline had already been considered in detail in various chapters, while other subjects have been developed here more fully than elsewhere,—particularly the description of the Constitution of the colony, as expressed in royal commissions and instructions, and the situation which existed during the interregnum caused by the Revolutionary War. Our history is a unit, and I have tried to make the book a unit; therefore the reader need not be surprised to find the earliest as well as the latest history in any part of the work. This arrangement follows the plan already outlined, by which subjects are considered according to their natural development.

Sources of Information.

In many respects, and from many points of view, the sources of information are ample. The records of conventions, legislatures, and commissions are accessible, and, for the most part, these records have been printed, and may be easily examined. Modern legislative and convention records are so well arranged and so fully indexed that it is not difficult to study specific subjects, and

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glean from them such information as may be desirable in preparing a history of the Constitution. Some of the earlier records, however, were not so carefully preserved, and it has therefore been necessary to examine many other sources of information to discover not only what was actually done, but especially the motives which prompted action in a particular instance.

The Colonial Documents, edited by Dr. Edmund B. O'Callaghan, and published by the state under an act passed in 1849, have been freely used in studying the history of the colonial period. I have also used Dr. O'Callaghan's History of New Netherland, published in 1846, Mr. Brodhead's History of New York, the records of the legislature, and of the executive and legislative council during the colonial period, and all other sources of information that seemed available, for the purpose of discovering the facts relating to our earlier history.

The colonial constitutional policy at the beginning of the Revolution, so far as specifically expressed in documents issued by the English government, is found in Governor Tryon's commission and the accompanying instructions received by him on his appointment in 1771; but, so far as I have been able to discover, these documents have not heretofore been published. They will be found at the end of the third volume of this work, except that several paragraphs of the instructions containing detailed commercial regulations have been omitted, for the reason that they have no special constitutional or political significance. I found a manuscript copy of the commission in the State Library, but was unable to find a copy of the instructions in this country. I therefore wrote to Hon. Joseph H. Choate, then American Ambassador to Great Britain, requesting his assistance in procuring a copy of the instructions, which are preserved in the archives of the English government. As a result I obtained a manuscript

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copy of the instructions, from which I have made such extracts as seemed pertinent in considering various subjects. After using these instructions the document was deposited in the State Library.

The draft of the proposed Constitution submitted to the Convention of 1777 has not hitherto been published, so far as I have been able to discover. The original draft and also the second draft will be found in the second chapter, relating to the work of the first constitutional convention. The records of the colonial executive council have not yet been published, but in several instances have been consulted during the preparation of this work. I was also permitted to examine the papers of the late John Jay, which are now in the custody of his great-grandson, Mr. William Jay, of New York.

Executive messages covering the entire history of the state, legislative and convention journals, public documents, newspapers and other periodicals, histories and biographies, correspondence, debates and various discussions in and out of public bodies, have been studied and used for the purpose of ascertaining facts and determining the history and reason of various constitutional provisions, enactments, and other declarations having a direct or indirect relation to our constitutional history. It has been impracticable to give references to all the authorities consulted, but I believe I am justified in saying that every fact stated in the book is sustained by sufficient evidence, and in most instances the reader will have little difficulty in tracing subjects to their source.

Acknowledgments.

My studies have taken a wide range, and have required the examination of a large mass of materials. The preparation of the work involved a process of selection, and in

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many instances it has not been easy to choose between materials finally used and others equally important which have been laid aside. For the most part, the sources of information, in addition to my private library, have been found in the State Library, in the records of the office of the Secretary of State, the Comptroller's office, the University, and the Department of Public Instruction. I also visited the principal public libraries in New York, where I was afforded every possible facility for making the desired researches.

While studying the first Constitution and the work of the convention that framed it, I learned that John Jay's papers were still in existence, and were in the possession of his great-grandson, Mr. William Jay, of New York. Mr. Jay very kindly permitted me to examine these papers for the purpose of discovering any manuscripts relating to the first Constitution, or the organization of the state government. In making this examination I was assisted by Prof. Henry P. Johnston, of the College of the City of New York, who had recently edited John Jay's letters and public papers, in four volumes, and who was therefore familiar with the manuscripts. I take this opportunity of expressing my obligation to Mr. Jay and Prof. Johnston for the rare pleasure of examining the papers of the great patriot who performed such distinguished service in laying the foundations of our government.

The State Library is, however, the great storehouse of materials relating to any part of our state history. Its resources are almost inexhaustible, and I think it should be said here that the people of the state cannot too highly appreciate the services of those who have collected and arranged the rich treasures of this great institution. It is hoped that the condition of public affairs will soon warrant the legislature in providing for the erection of a

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new building, in which the resources of the library may be made more available for public use. The library is especially rich in its collection of books, documents, and unpublished manuscripts relating to early colonial and state history, as well as in all branches of literature, both general and historical. Very rarely have I failed to find in the library the information I desired. At the beginning of my studies the resources of the library were placed at my disposal, and I was offered all possible assistance in collecting the materials needed for this work. Mr. J. Russell Parsons, then secretary of the University, and now consul-general at Mexico, gave the most ample directions concerning the use of the library for my purpose, supplementing these directions by his personal attention in many instances. Mr. Melvil Dewey, director of the State Library, who is in immediate charge of the institution, has, from the first, manifested great interest in my work, and has granted every possible favor in the examination of sources of information. The library contains many rare books and manuscripts, some of which cannot be duplicated, and which obviously cannot be loaned. My examination of them was made as easy as possible. I wish most cordially to express my appreciation of the courtesies accorded to me by Mr. Parsons and Mr. Dewey.

A study of a subject which has occupied nearly four years and a half necessarily required frequent visits to the State Library, and the assistance of the library staff in finding and examining books and manuscripts. I very gratefully acknowledge my obligation to the members of the staff for their efficiency, patience, and skill in responding to my numerous requests for information concerning specific topics connected with my work, and I take special pleasure in mentioning Mr. Dunkin V. R. Johnston, reference librarian, and his assistant, Mr. George G.

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Champlin, Jr., and also Mr. Judson T. Jennings, former assistant reference librarian, now superintendent of the Carnegie Free Library at Duquesne, Pa.

My researches in the Department of Genealogy and History required special service, which was very satisfactorily rendered by Miss Mary A. Smith, now of La Crosse, Wis., Miss May C. Nerney, and Miss Charlotte J. Van Peyma, assistants in this department.

One of the most interesting places in the State Library is the manuscript room, in which are preserved numerous documents and manuscripts relating to some aspect of our history, many of which have not yet been published. A large part of the unpublished records of the legislature is also deposited here. I had frequent occasion to examine the treasures of this room while searching for information which had not yet appeared in print. My efforts would often have been fruitless without the aid of Mr. Arnold J. F. Van Laer, archivist, and of his assistant, Mr. Peter Nelson, who freely used their expert knowledge in deciphering obscure manuscripts, and enabling me to reach correct results in my examination of ancient documents.

But the Law Library was my chief place of resort while pursuing these studies. Mr. Stephen B. Griswold, who, for thirty-six years, was in charge of this institution, and who has seen the larger part of its growth and development, took a lively interest in the work, and afforded me every possible opportunity to examine books and documents in his department. Mr. Griswold resigned in October, 1904, and Mr. William B. Cook, Jr., the present acting librarian, has continued the policy of his predecessor so far as my relations to the library are concerned. Since the beginning of my studies, he and the other assistants, Mrs. Ellen F. Coe, Mr. Martin F. Lynch, and Mr. Arthur J. Smith, have very cordially rendered every

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possible service in my researches among the documents relating to our constitutional history.

The Comptroller's office is a mine of information relating to our financial history, and the student must frequently examine the records of that office if he would intelligently study the subject of state finances. This is especially true as to canals, education, taxation, charities, prisons, and the forest preserve. Mr. Willis E. Merriman, second deputy comptroller, whose long experience in the office makes him an authority on all questions relating to state finance, gave his personal attention to matters on which I desired information, often making special computations to determine results not elucidated in the published reports. In addition to these general financial matters, Mr. William G. Schaible, chief clerk of the Bureau of Canal Affairs, rendered very valuable aid in enabling me to obtain information concerning special subjects under the supervision of his department.

The office of the Secretary of State is the general depository of records relating to state affairs, except those affecting particular departments. All the Constitutions, amendments, and statutes are deposited in that office, and its archives also contain many other documents of great importance in our history. I often had occasion to make inquiries there for specific information. While studying the subject of education, I naturally sought information, particularly relating to statistical matters, at the office of the Regents, and also in the Department of Public Instruction. The results of my inquiries appear for the most part in the article on education, in the third volume. The recent consolidation of the two departments is considered in a note on the University (article 9, § 2), in the fourth volume. I take pleasure in acknowledging the courtesy and prompt attention of the office staff in these departments, and also in the office of the Secretary of State, in responding to my requests.

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But the aid that I have received during the progress of the work has not all been rendered by persons in public departments. I have frequently sought information from private sources, and my requests have uniformly received prompt consideration. It would be impracticable to mention here all the sources from which I have received aid during my studies, and I can only say that I am very grateful to every person who has, in any way, contributed to the accomplishment of my desire to write a history of the Constitution which should be not only accurate in its statements of fact, but which should also acquaint the reader with the men who made that history, and the motives that actuated them. Special mention should, however, be made of the service rendered by my son, Mr. LeRoy A. Lincoln, now of Buffalo, N. Y., who assisted me in making the preliminary examination of judicial decisions to be used in this work. I am also under peculiar obligations to the publishers and the readers in their office for their valuable suggestions and their untiring vigilance in reading proof and otherwise perfecting the book during its progress through the press.

Finally, I take great pleasure in expressing my most sincere appreciation of the faithful and intelligent service rendered by my stenographer, Miss Marguerite Elizabeth Griffin, of Albany, N. Y.

C. Z. L.

ALBANY, N. Y.
SEPTEMBER 1, 1905.

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PREFACE.

This volume includes a general summary of our entire constitutional history, as expressed in the Introduction, and also a more particular view of constitutional development to the end of the first constitutional period, closing with the adoption of the Constitution of 1821. The subjects treated here are specifically the Colonial Period, the First Constitution, the Convention of 1801, and the Second Constitution. Amendments to the second Constitution will be found in the second volume, for the reason that they were made during the second constitutional period, which began in 1823, and closed in 1847. It has already been pointed out in the general preface that some parts of our history which chronologically might have been placed in the first volume are included in subsequent volumes because of their relation to specific topics which have there received particular consideration for the first time. It is hoped that the Index and Table of Contents will afford ready access to these subjects.

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CHAPTER I.

The Colonial Period.

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INTRODUCTION.

The Constitutions of New York.

The sources of our constitutional history are in old-world institutions. The principal and most familiar features of our Constitutions, so far as they are fundamental in character, are, in the main, institutions of the Netherlands or of England, transplanted to the new world, and modified to adapt them to changes incident to colonial conditions. The powers, customs, and traditions of organized society, developing through centuries of fluctuating experience, have been crystallized in our written Constitutions. An examination of our history from the beginning of the colonial period clearly demonstrates the proposition that our Constitution is not a creation, but a growth. Long before it found expression in written forms embodying a statement of principles deemed essential to organized government, constitutional liberty was slowly developing out of the daily needs and experiences of society. It is a natural incident of colonization that the colonists carry with them to their new home the social customs and forms of government with which they are familiar; and if the colony goes with the sanction or under the patronage of the home government, that government imposes its own authority on the new community, and seeks to foster there the customs and principles which have

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molded its own structure. These characteristics have marked colonization from the beginning of history; and the settlement of New York by the Dutch and English immigrants was no exception to the general rule. Dutchmen were Dutchmen still and Englishmen were Englishmen still after they crossed the ocean and began laying the foundations of a new society in a new world. This society was not at first new, but the settlers were a long distance from home, and communication with the old world was not easy or frequent; hence, they were compelled to rely upon their own resources for protection against the adverse forces, seen and unseen, with which they were surrounded. This situation naturally produced independence in opinion and in conduct; and while they were loyal to the home government, they protested against the constraints which that government sometimes imposed upon the colonies, and against a too parental administration. They knew they were freemen and entitled to the rights of freemen in the countries from which they came, and they insisted upon the same rights in their new home; consistently resisted all attempts to restrict those rights; and persistently protested against the exercise of arbitrary power by governors who were sent out to administer colonial affairs. They rejected any form of personal government in a community composed of freemen. Out of these general conditions, modified from time to time to meet peculiar needs, came the customs, policies, statutes, and ordinances which together made the Constitution of the colony. This Constitution was always subject to some modification at the instance of the home government; but, by the middle of the colonial period, the general principles of constitutional government now deemed so essen-

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tial—namely, a legislative, an executive, and a judicial department, each substantially independent of the other—had become firmly established, and after the revival of the assembly, in 1691, no question seems to have been raised as to the perpetuity or general characteristics of these features of colonial government.

Our colonial history is naturally divided into three periods, of unequal length:

First, the original Dutch period, from the discovery of Manhattan, by Henry Hudson, in 1609, to the English conquest, in 1664,—fifty-five years.

Second, the period covered by the proprietary government of the Duke of York,—from 1664 to 1685,—when the Duke became King. This was practically twenty-one years, though there was an interruption of nearly a year during parts of the years 1673 and 1674, when the Dutch regained and held possession of the colony.

Third, the period during which New York was a royal province, beginning on the accession of the Duke of York to the throne of England, in February, 1685, and continuing until the Revolution. This period closed with 1775, and therefore covers ninety-one years.

These periods will now be considered in their order

Early Dutch Charters.

These charters sometimes conferred mere trading privileges, without any governmental features, but in some instances the recipients of the charters were vested with large and even extraordinary powers of government, and they became governmental agencies in the settlement of the colony and the adminis-

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tration of its affairs. The powers of government thus expressed in charters were of the same general character as the powers expressed in modern constitutions, and related to all the departments into which a government is now usually divided. These charters, therefore, became, in a very practical sense, the Constitutions of the colony.

DUTCH WEST INDIA COMPANY, 1621.

The first and most conspicuous instance of this class during the Dutch period was the charter granted to the Dutch West India Company, which bore date the 3d of June, 1621, and was to be in effect from the first day of the following July. The charter created primarily a business corporation for the purpose, as expressed, of promoting "navigation, trade, and commerce" in Africa, the West Indies, and parts of America, including what is now New York. It established a commercial monopoly for twenty-four years. But the charter went far beyond the ordinary necessities of a business corporation. It was the repository of political power, and became, in distant lands, the direct representative of the States General of the United Netherlands. This delegation of authority was expressed in the following provision:

"That moreover, the aforesaid company may, in Our name and authority, within the limits herein before prescribed, make contracts, engagements, and alliances, with the princes and natives of the countries comprehended therein, and also build any forts and fortifications there, to appoint and discharge governors, people for war, and officers of justice, and other public officers, for the preservation of the places, keeping good order, police, and justice, and in like manner for the promoting of trade; and again,

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others in their places to put, as they, from the situation of their affairs, shall see fit; moreover, they may advance the peopling of fruitful and unsettled parts, and do all that the service of these countries, and the profit and increase of trade, shall require; and the company shall successively communicate and transmit to Us such contracts and alliances as they shall have made with the aforesaid princes and nations; and likewise the situations of the fortresses, fortifications, and settlements by them taken."

The authority thus conferred was not, however, exclusive, but the company's acts in the exercise of it were subject to approval by the home government. The charter proceeds:

"Saving, that they having chosen a governor-in-chief, and prepared instructions for him, they shall be approved, and a commission given by Us: And that further, such governor-in-chief, as well as other deputy governors, commanders, and officers, shall be held to take an oath of allegiance to Us and also to the company."

The charter further provides:

"And if it should be necessary, for the establishment, security, and defense of this trade, to take any troops with them, We will, according to the constitution of this country, and the situation of affairs, furnish the said company with such troops, provided they be paid and supported by the company.

"Which troops, besides the oath already taken to Us and to his Excellency, shall swear to obey the commands of the said company, and to endeavor to promote their interest to the utmost of their ability."

The government agreed to protect the company, furnish it a subsidy of one million guilders, and pro-

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vide naval assistance in case of need; it also guaranteed to the company the undisturbed enjoyment of the "privileges, freedoms, and exemptions" conferred by the charter.

Controversies having arisen between the English and the Dutch as to the right to make settlements in Connecticut and on Long Island, the States General, on the 23d of January, 1664,—only a few months before the English conquest of New York,—issued an order describing and confirming the charter granted to the Dutch West India Company in 1621, and declaring that, by the charter, the company "was and is still empowered to establish colonies and settlements on lands unoccupied by others," within the limits of the territory assigned to it.

FREEDOMS AND EXEMPTIONS, 1629.

The Assembly of XIX. issued, in June, 1629, a charter of "Freedoms and Exemptions," which was ratified by the States General, conferring special privileges and powers on "all patroons, masters, or private persons who will plant colonies in New Netherland." It contained numerous details relative to colonization, but which are not especially pertinent here. The patroons, within the territory assigned to them, were vested "with the chief command and lower jurisdictions," and it was further provided that, "in case any one should, in time, prosper so much as to found one or more cities, he shall have power and authority to establish officers and magistrates there, and to make use of the title of his colony, according to his pleasure and to the quality of the persons;" but from "all judgments given by the courts of the patroons for

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upwards of fifty guilders," an appeal was allowed "to the company's commander and council in New Netherland." Settlers were to receive "instructions in order that they may be ruled and governed conformable to the rule of government made, or to be made, by the Board of Nineteen, as well in the political as in the judicial government." The charter also contained provisions for the encouragement of religion and education.

FREEDOMS AND EXEMPTIONS, 1640.

In July, 1640, a new charter of "Freedoms and Exemptions" was granted, which contained numerous provisions not found in the original charter of 1629. By the new charter the patroons were vested with "high, low, and middle jurisdiction." Municipal authority was specified to be exercised in "towns," instead of in "cities," as provided by the original charter, with the important addition that if settlements grew to such an extent "as to be accounted towns, villages, or cities, the company shall give orders respecting the subaltern government, magistrates, and ministers of justice, who shall be nominated by the said towns and villages in a triple number of the best qualified, from which a choice and selection is to be made by the governor and council; and those shall determine all questions and suits within their district." Thus, the company reserved to itself a large measure of municipal supervision. An appeal from local courts to the governor and council was allowed from "definitive judgments" for an amount "exceeding one hundred guilders, or from such as entail infamy, also from all sentences pronounced in matters criminal,

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on ordinary prosecution, conformable to the custom" of the Netherland.

There was no religious toleration in this charter; on the contrary, it provided that "no other religion shall be publicly admitted in New Netherland except the Reformed, as it is at present preached and practised by public authority in the United Netherlands; and for this purpose the company shall provide and maintain good and suitable preachers, schoolmasters, and comforters of the sick." A liberal policy on this subject had been suggested in the articles relating to colonization, proposed in 1638, from which I have quoted in the chapter on the Colonial Period, but which were not approved by the States General. One article provided for the established church, but expressly declared that it was not intended as a restraint upon the conscience of any person.

Each settlement on a river, bay, or island was permitted to designate a deputy, once in two years, who should annually report to the governor and council, and assist them in promoting the interests of such settlement. This was home rule. The company reserved to itself the right of mintage, laying out highways, "erecting forts, making war and peace, together with all wildernesses, founding of cities, towns, and churches, retaining the supreme authority, sovereignty, and supremacy, the interpretation of all obscurity which may arise out of this grant, with such understanding, however, that nothing herein contained shall alter or diminish what has been granted heretofore to the patroons in regard to high, middle, and low jurisdiction."

The comprehensive authority vested in the Dutch West India Company was clearly expressed in the following provisions relating to the powers of the gov-

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ernor and council, in whom were combined the executive, legislative, and judicial departments of the colonial government:

"The Company shall, accordingly, appoint and keep there a Governor, competent Councillors, Officers and other Ministers of Justice for the protection of the good and the punishment of the wicked; which Governor and Councillors, who are now, or may be hereafter, appointed by the Company, shall take cognizance, in the first instance, of matters appertaining to the freedom, supremacy, domain, finances and rights of the General West India Company; of complaints which any one (whether stranger, neighbor, or inhabitant of the aforesaid country) may make in case of privilege, innovation, desuetude, customs, usages, laws or pedigrees; declare the same corrupt or abolish them as bad, if circumstances so demand; of the cases of minor children, widows, orphans, and other unfortunate persons, regarding whom complaint shall first be made to the Council holding prerogative jurisdiction in order to obtain justice there; of all contracts or obligations; of matters pertaining to possession of benefices, fiefs, cases of *læsæ majestatis,* of religion and all criminal matters and excesses prescribed and unchallenged, and all persons, by prevention, may receive acquittance from matters there complained of; and generally take cognizance of, and administer law and justice in, all cases appertaining to the supremacy of the Company."

The patroon system established by the foregoing charters of "Freedoms and Exemptions" had a marked but not always beneficial influence in the development of New York. Some aspects of this peculiar land system are considered in the preliminary article on Agricultural

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Leases, in the chapter on the Third Constitution, in the second volume of this work.

FREEDOMS AND EXEMPTIONS, 1650.

In May, 1650, a revised charter of "Freedoms and Exemptions" was approved by the States General. In most respects it is identical with the charter of 1640, and the additions do not introduce any changes of principle.

DUTCH DIRECTORS AND COUNCILS.

The chief executive officer of the colony during the Dutch period was officially known as the director, but was sometimes designated as the director general, the commander, or the governor. He was vested with extraordinary powers, and might, and often did, exercise arbitrary authority, independent of the council, with which he was supposed to act. It is a curious and noteworthy fact that this colonial officer should have been clothed with such irresponsible authority by a government which would not have tolerated it for a moment in its own country.

I have not had access to the commissions issued to the earlier Dutch governors. The only commission I have been able to find is the one issued to Peter Stuyvesant on the 28th of July, 1646. It was issued by the States General at the request of the Dutch West India Company. Only about twenty years had elapsed since the beginning of organized government in the colony, under Peter Minuit, who came to New Netherland as director in the spring of 1626, though he was not the first who bore this title. We may probably, therefore, reasonably as-

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sume that Stuyvesant's commission was substantially in the form used in previous cases. Stuyvesant was the last of the Dutch governors, and held office through a period of eighteen years, until the English conquest, in 1664. His administration, therefore, covers nearly half of the period of actual Dutch administration in the colony. The commission appointed Stuyvesant director in New Netherland and other countries which need not here be named. His general powers and duties were expressed in the provision that he was "to administer, with the council as well now as hereafter appointed with him, the said office of director, both on water and on land, and in said quality, to attend carefully to the advancement, promotion, and preservation of friendship, alliances, trade, and commerce; to direct all matters appertaining to traffic and war, and to maintain, in all things there, good order for the service of the United Netherlands and the General West India Company; to establish regularity for the safeguard of the places and forts therein; to administer law and justice, as well civil as criminal; and, moreover, to perform all that concerns his office and duties in accordance with the charter, and the general and particular instructions herewith given, and to be hereafter given him."

Dr. O'Callaghan, in his History of New Netherland, 1846, vol. 1, p. 244, thus summarizes the director's powers:

"Though a servant himself of the West India Company, nominated by the Assembly of the XIX., and commissioned by the States General, the Director was in fact absolute in New Netherland, and beyond all control within the colony. As representative of the sovereign authority, he extinguished Indian titles to land, and sanctioned all purchases from the aborigines. No contracts, engagements, transfers, bargains, nor sales were

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valid, except such as were passed before and written by his secretary. He erected courts; appointed, either directly or indirectly, all public officers, except such as came out with commissions from Holland; made laws; issued ordinances; incorporated towns; imposed taxes; levied fines; inflicted penalties; and could affect the value of any man's property at a moment, by raising or lowering the value of wampum, which constituted the chief currency at this period of the country. He not only acted in an executive and legislative, but also in a judicial, capacity. He decided all civil and criminal questions without the intervention of a jury, such an institution being unknown in the province; and before him were brought all appeals from inferior courts. When we add to this the fact that all such municipal regulations as circumstances demanded emanated from him and his council, we cannot be surprised to learn that many things were left undone which ought to be attended to; that many things were performed which might better have been left undone; and that dissatisfaction necessarily prevailed among the sturdy sons of that republic, who ever evinced a lively and honorable jealousy of despotic power."

The council was, at least in theory, a constituent part of the government. The governor was required to act with the council, but he seems to have ignored its advice or authority in many cases and acted on his own judgment, sometimes in an arbitrary manner. This subject is considered in several aspects in the chapter on the Colonial Period. The actual relation of the council to the government, as viewed by many citizens during Stuyvesant's administration, is clearly pointed out in notes to a remonstrance dated December 11, 1653, presented to the Director by a convention of delegates from different parts of the colony, which met in New Amsterdam

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on the 10th to consider various aspects of colonial affairs. Explaining the charge in the remonstrance that there was danger of the establishment of an arbitrary government, the notes state that "the entire government of this country is directed and controlled exclusively according to the pleasure and caprice of Director Stuyvesant or one or two of his favorite sycophants; in divers cases decisions were given without the knowledge, yea, frequently without summoning, his adjoined councilors, who have no further power to decide except as the Director permits them, his will being a law absolute, whereby everything is controlled." Director Stuyvesant replied to the remonstrance on the 12th, treating the charge of establishing an arbitrary government as applicable to the council as well as to himself, and asserting his and their authority under the commission and orders of their superiors. The notes or specifications, amplifying the remonstrance, bear date the 30th of December, eighteen days after the Director's reply to a remonstrance which did not specifically charge him with ignoring the council. This charge seems to be sustained by the facts of history, but in this arbitrary exercise of power Stuyvesant was not the first offender. He followed in the footsteps of his predecessors in office, all of whom apparently regarded the council as an encumbrance, and ignored it as much as possible.

In the powers delegated to the governor and council, which powers were, at least in form, executive, legislative, and judicial, we find the original of the general division of power among the three departments of the state government under the Constitution. The powers thus delegated to a few men seem and were extremely arbitrary. The States General had undertaken the task of settling Holland's part of the new world by means of a great corporation, which was made a governmental

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agency. It did not seem practicable to transplant to America all the political rights and institutions which were enjoyed at home, and the situation was doubtless influenced by the fact that the primary object of the company was commercial rather than political; but the two objects were necessarily combined, because commercial growth would not be practicable without inhabitants in sympathy with the general purposes of the corporation, and loyal to home institutions; therefore the company was given authority to establish government in all its aspects, and to administer public affairs substantially in the same manner and to the same extent as the States General might have done if personally present. However objectionable this method of governing a new colony may now seem to us, I think it is not too much to say that, at least in theory, it was practicable and suited to existing conditions. There was government enough, and if it had been fairly administered, in the spirit with which it was evidently established, the colony might have been spared many painful experiences, and its growth and development would not have been retarded, as now seems clear, by the unfortunate policies adopted and enforced by the officers sent out to administer its affairs. The council was evidently intended to be a co-ordinate branch of government; and while it did not reach the fulfilment of its mission during the earlier years of its existence, it is worth while to remember that this part of the Dutch colonial administration was continued without material change under English rule, and soon came to occupy a double relation to the government; namely, as the executive council, associated with the governor in ordinary affairs, and also as a part of the colonial legislature, developing into the senate under the state Constitution.

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The Duke of York

The evolution of colonial affairs now brings us to the proprietary government of the Duke of York, and a change of sovereignty of the Netherlands to England. We have little to do here with the controversies between the two nations which led to this result, and our interest in it lies in the fact that it changed the course of constitutional development in the colony. The conquest of New Netherlands by the English, in 1664, was only the culmination of a dispute which had continued many years, and the final consummation of ancient English claims to the territory. England's claims reach back as far as 1498, when Jean and Sebastian Cabot sailed along the Atlantic coast and claimed for England all the land they saw. But this claim lay dormant many years, awaiting the time for colonization, and more than a century passed before the world saw English settlements firmly established in America.

Omitting many details, suffice it to say that on the 10th of April, 1606, King James I. of England granted a charter to Sir Thomas Gates and others, authorizing them to "deduce a colony . . . into that part of America commonly called Virginia, and other parts and territories in America, either appertaining unto us, *or which are not now actually possessed by any Christian Prince or People,*" all along the sea coasts, between the 34th and 45th degrees of north latitude, including the mainland and islands within one hundred miles. This embraced practically all the coast between Cape Fear and Nova Scotia. The patentees were divided into two companies; one, known as the London Company, was authorized to make settlements between the 34th and 41st degrees of latitude; and the second, known as the Plymouth Company, was authorized to make settlements

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between the 38th and 45th degrees. It will be observed that the two grants overlapped each other three degrees, between the 38th and 41st degrees, but the charter contained provisions intended to prevent any collision between the two companies. The general charter embraced territory now within the state of New York.

Captain Henry Hudson's discovery of New York Bay in September, 1609, his exploration of the river which now bears his name, and his examination of adjacent lands, was the foundation for the Dutch claim to what was afterwards known as New Netherland. This country was within the territorial limits embraced in the Virginia charter granted by King James, but it was not occupied by Europeans, and was therefore said to be within the exception specified in the Virginia charter, namely, that it was not then actually "possessed by any Christian Prince or People." The English consistently resisted this interpretation, and apparently on every occasion asserted English dominion over this part of the Atlantic coast, under the charter of 1606. Thus we are told that Captain Argal of Virginia visited Manhattan Island in November, 1613, found there a Dutch settlement of four houses, and compelled Hendrick Corstiaensen, the leader of the settlement, to acknowledge the sovereignty of the King of England and of the governor of Virginia, and also exacted from him an agreement to pay tribute.

Again, in 1621, after the incorporation of the Dutch West India Company and other active preparation in Holland for the colonization of the territory about New York Bay, several members of the Plymouth Company presented a remonstrance to the English government against this projected Dutch movement, whereupon the King directed the English ambassador to the Netherlands to protest against it, alleging that English sover-

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eigns had, "for many years since, taken possession of the whole precinct, and inhabited some parts of the north of Virginia, by us called New England, of all which countries his Majesty hath, in like manner, some years since, by Patent, granted the quiet and full possession unto particular persons." This protest seems to have produced no effect, for, as already shown herein, Dutch colonization was continued and encouraged, and a permanent government established in New Netherland. The controversy was renewed in 1632, in consequence of the detention in England of a Dutch ship trading with New Netherland. At this time it was claimed by the Dutch West India Company that by reason of lapses or otherwise the English had lost the right, if they ever possessed it, to the territory between the 39th and 41st degrees of latitude. The English denied this, claiming the territory "by first discovery, occupation, and the possession which they have taken thereof, and by the concessions and letters patent they have had from our Sovereigns, who were, for the above reasons, the true and legitimate proprietors thereof in those parts."

The English continued to assert their claims, and in vindication thereof encouraged English settlements in what is now Connecticut, and on the eastern end of Long Island. The Dutch regarded these settlements as encroachments on their territory, and protested against them. There were frequent negotiations by colonial authorities relating to boundaries, but there is no evidence that the English government ever relinquished or seriously modified its claim to the territory of New Netherland. On the contrary, this claim was asserted in the most positive manner by the charter granted on the 12th of March, 1664, by King Charles II. to his brother James, Duke of York. This charter included the territory then occupied and claimed by the Dutch

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within the limits of the present state of New York. It was a conveyance to the Duke, his heirs and assigns, of the territory described therein, to be held to his and their "only proper use and behoofe," in "free and common soccage," with an annual tribute of forty beaver skins.

POWERS CONFERRED BY THE CHARTER.

The Duke is described in one of the documents of the period as the first proprietor of New York. The charter vested in him what is known as a proprietary government. It granted to him, "his heirs, Deputyes, Agents, Commissioners and assigns . . . full and absolute power and Authority to Correct, punish, pardon, Governe and Rule all such the Subjects of Us Our Heires and Successors, as shall from time to time adventure themselves into any the parts or places aforesaid, or that shall or doe at any time hereafter, Inhabite within the same, according to such Lawes, Orders, Ordinances, Directions, and Instruments, as by Our said Dearest Brother, or his Assignes, shall be established, And in defect thereof in Cases of necessity, according to the good discretions of his Deputyes, Commissioners, Officers or Assignes respectively, as well in all Causes and matters Capitall and Criminall, as Civill, both Marine and others, Soe alwayes, as the said Statutes, Ordinances & proceedings be not contrary to, but as neare as conveniently may be Agreeable to the Lawes Statutes & Government of this Our Realme of England."

Appeal.—"And Saving and reserving to us, Our heirs and Successors the receiving hearing and determining of the Appeale and Appeales of all or any person or persons, of, in, or belonging to the Territoryes or Islands

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aforesaid, in or touching any Judgment or Sentence to be there made or given."

Officers.—"And further, that it shall and may be Lawfull, to & for our said Dearest Brother, his heires and Assignes by these presents, from time to time, to nominate, make, constitute, ordaine and confirme by such name or names, Stile, or Stiles as to him, or them shall seeme good, and likewise to revoke discharge, Change and Alter, as well all and Singular Governors Officers & Ministers which hereafter shall be by him or them, thought fitt and needfull to be made or used within the aforesaid parts & Islands."

Ordinances.—"And also to make Ordain, and Establish all manner of Orders, Lawes, directions Instructions, formes and Ceremonyes of Government and Magistracy fitt and Necessary for and concerning the Government of the Territoryes and Islands aforesaid so always as the same be not contrary to the Lawes and Statutes of this Our Realme of England, but as neare as may bee Agreeable thereunto And the same at all times hereafter to put in Execution, or abrogate, revoke or Change not only within the precincts of the said Territoryes, or Islands, but also upon the Seas in going and coming to and from the same, as hee or they in their good discretions, shall thinke to be fittest for the good of the Adventurers, and Inhabitants there."

Martial law.—"That such Governors Officers and Ministers, as from time to time shall be Authorized, and appointed in manner and forme aforesaid, shall and may have full power and Authority, to use and Exercise Marshall law, in Cases of Rebellion, Insurreccon and Mutinie, in as large and Ample manner as our Lieutenants in our Countyes within Our Realme of England, have, or ought to have by force of their Com-

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mission of Lieutenancy, or any Law or Statute of this our Realme."

Regulation of trade.—"That it shall and may be Lawfull, to and for the said James Duke of Yorke his heires and Assignes, in his or their discretions from time to time, to admitt such, and so many person and persons to Trade and Traffique unto and within the Territoryes and Islands, aforesaid, and into every or any part & parcell thereof, and to have possesse and Enjoy, any Lands, or hereditaments in the parts and places aforesaid, as they shall think fitt according to the Lawes, orders, Constitutions, and Ordinances, by Our said Brother, his heires Deputyes Commissioners and Assignes, from time to time to be made and established, by vertue of, and according to the true intent and meaning of these presents and under such conditions, Reservations and Agreements as Our said Brother, his heires or Assignes shall set downe, Order, direct, and appoint and not otherwise, as aforesaid."

The charter also provided for the encouragement of colonization, and conferred all needed powers of military defense. The Duke having received a conveyance of the territory, the next step was to get possession of it. This he proceeded at once to do, and sent an armed fleet to New Netherland for that purpose. Governor Stuyvesant surrendered to the English on the 27th of August, 1664. The Articles of Capitulation contained liberal provisions relative to the rights and privileges of the Dutch settlers. Several of these provisions are quoted at length in the chapter on the Colonial Period. The new government was at once instituted under the authority of the Duke of York, which continued with only a temporary interruption until the Duke became King James II. by the death of King Charles II., in February, 1685.

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It may be observed here that there was some similarity between the powers conferred on the Duke of York by this charter, and the powers conferred on the Dutch West India Company by its charter of 1621. The Duke has been called the first proprietor of New York, and his government is known as a proprietary government. This is doubtless true because, in general terms, the charter was equivalent to a conveyance of land conferring on him the right of possession, control, and government, subject only to the limitation that the government must be consistent with the laws of England. But the charter did not carry with it a transfer of sovereignty; that was reserved to the Crown by the provision for tribute, by the right of appeal, and by other incidental provisions. I think the powers conferred on the Dutch West India Company by its charter were essentially proprietary. It received a grant of territory with the right to exercise extraordinary, if not always exclusive, jurisdiction over it, and it was expressly charged with the duty of establishing settlements and colonizing the territory. As interpreted by the order of the States General bearing date January 23, 1664, from which I have already quoted, the company was "empowered to establish colonies and settlements on lands unoccupied by others," and establish and maintain government therein. The States General retained sovereignty by several provisions similar to those included in the Duke's charter, among them one requiring the company's officers to take an oath of allegiance, not only to the company, but to the home government; another, requiring commissions to the chief officers to be issued by the States General, and another, giving the right of appeal from colonial tribunals to the home government. The "Freedoms and Exemptions" of 1629 and of 1650 indicate the same

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general policy of conferring on the company the proprietary control of the colony, subject to the limitations already suggested. From a merely administrative point of view, it may fairly be said that, by the charter to the Duke and the possession of the colony which he soon afterward acquired by conquest, the colony ceased to be the property of a Dutch corporation, and became the property of an English duke.

FORM OF GOVERNMENT.

The Duke of York might have come to his new possessions and might there have established a government under his personal direction, with himself as chief executive; but he elected to administer his government through governors, councils, and other officers appointed by himself. These appointments were held during his pleasure, and he seems to have maintained a careful personal supervision of colonial affairs. This is manifest from the official correspondence of the period, and is particularly illustrated by the code known as the Duke's Laws, which the Duke caused to be promulgated in the colony on the 1st of March, 1665. He found an organized government, and by the Articles of Capitulation local officers were continued until the customary time for new elections.

Colonel Richard Nicolls, who was placed in charge of the expedition to reduce New Netherland, under the Duke's charter, brought with him a commission as deputy governor, and assumed the duties of that office after the capitulation. The commission, dated April 2, 1664, recited the substance of the Duke's charter, and appointed Nicolls "to perform and execute all and every the powers which are, by the said letters patent, granted"

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unto the Duke, to be executed by his "Deputy, Agent, or Assignes." The inhabitants of the new territory were required to give obedience to the deputy governor "in all things, according to the tenor of His Majesty's said Letters Patents," and Nicolls was commanded to obey such instructions as he might, from time to time, receive from the Duke. The commission was accompanied by a set of instructions concerning the details of administration. I have not had access to this document, which seems to have been lost, and I am therefore unable to state the provisions contained in it. This commission and the accompanying instructions continued a custom initiated by the Dutch, and which was followed during the remainder of the colonial period. The general authority of the governor was expressed in a commission, and his powers were amplified, sometimes with considerable detail, in the instructions. In many subsequent appointments both documents have been preserved, and we are therefore able to study the scope of the authority conferred on the governor and other colonial officers, and ascertain the kind of government instituted, and the methods of administration.

On the 1st of July, 1674, following the re-establishment of the Duke's authority after a temporary re-occupation of the territory by the Dutch, a commission was issued to Edmund Andros, who was thereby appointed to be the Duke's "lieutenant and governor;" otherwise the commission is substantially in the same form as that issued to Colonel Nicolls. Andros received instructions concerning his administration, embracing many prudential regulations, and also others of a fundamental character. The governor was recommended to continue existing courts of justice, and was vested with the power of appointment of new officers and magistrates. The governor was required to appoint a council

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of not more than ten members, who were to be inhabitants of the colony, with whom he was commanded to consult on all extraordinary occasions relating to the Duke's service and the good of the country. The councilors were to hold office during the Duke's pleasure, and they and all other officers and magistrates were required to take an oath of allegiance to the King and an oath of fidelity to the Duke.

The Articles of Capitulation of 1664 contained a provision that "the Dutch here shall enjoy the liberty of their consciences in Divine worship and church discipline." The Dutch were Protestants and were required to maintain the reformed religion, and the "Freedoms and Exemptions" of 1640 declared that no other religion should be publicly admitted in New Netherland. This was evidently not construed as excluding adherents of other religious faiths, for it seems clear that there were many such persons in the colony at a time when the law recognized the established church only. All persons, without regard to their religious faith, were welcome in the colony, and their rights of conscience were respected. The Duke of York, who had recently become a Roman Catholic, made, in the instructions to Governor Andros, the following provision for religious toleration:

"You shall permit all persons of what religion soever, quietly to inhabit within the precincts of your jurisdiction, without giving them any disturbance or disquiet whatsoever, for or by reason of their differing opinions in matter of religion; provided they give no disturbance to the public peace, nor do molest or disquiet others in the free exercise of their religion."

The reader cannot fail to mark the spirit of this provision, and to note its similarity with the provision incorporated in the first state Constitution and which

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still continues as the guaranty of religious liberty. The provision is also quite similar to that contained in the Charter of Liberties of 1683, the full text of which appears in a subsequent part of this Introduction, and also in the new Charter of Liberties of 1691; but there a proviso was added that "nothing herein mentioned or contained shall extend to give liberty for any persons of the Romish religion to exercise their manner of worship contrary to the laws and statutes of their majesties kingdom of England." In the chapter on the Colonial Period I have called attention to the fact that the proviso relating to Catholics was not in the charter as it came from the assembly, but was added while the bill was pending in the legislative council.

All legal process was required to be in the King's name.

The governor and council constituted the colonial legislature until the assembly was created in 1683. It seems that immediately after the accession of Andros as governor the people of the colony demanded a legislative assembly. In letters transmitted near the end of the year 1674 Andros communicated this demand to the Duke, who replied in the following April, denying the request, for the reason, among other things, that it was inconsistent with the form of government established in the colony, and not necessary "for the ease or redress of any grievance that may happen."

September 30, 1682, Thomas Dongan was appointed governor of New York, and received instructions dated the 27th of the following January, which show a marked advance in ideas concerning constitutional government. The Duke's views had evidently experienced a material change since the appointment of Andros, in 1674. I note some of the more important provisions in the Dongan instructions.

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The council was continued with somewhat enlarged powers. The governor was required to consult the council in matters relating to public affairs, and its members were to have "freedom of debates and vote in all affairs of public concern." The governor was given power to suspend a councilor for good cause, and was required to report the suspension, with the findings on which it was made, to the Duke, for his final action.

The governor was directed to issue writs of election for an assembly of not more than eighteen members. This subject is considered at length in the chapter on the Colonial Period, in this first volume, and in the article on Apportionment in the chapter on the Constitution of 1894, in the third volume. The first assembly met on the 17th of October, 1683.

General laws were to be made "indefinite and without limitation of time," but temporary laws might be limited in duration. Laws impairing the Duke's revenue could not be passed without his special leave or command.

The governor was prohibited from removing any colonial officer without good cause; he was also prohibited from executing any local office by himself or his deputy, and no person could execute more than one office by a deputy.

The 39th article of Magna Charta was expressed in the following form:

"And I do hereby require and command you that no man's life, member, freehold, or goods, be taken away or harmed in any of the places under your government but by established and known laws not repugnant to but as nigh as may be agreeable to the laws of the Kingdom of England."

The efficiency of the civil service was guarded by the provision that "none be admitted to public trust and employment whose ill fame and conversation may bring

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scandal thereupon." Perhaps this idea was borrowed from article 45 of Magna Charta, in which King John promised not to make "Justiciaries, Constables, Sheriffs, or Bailiffs, excepting of such as know the laws of the land, and are well disposed to observe them."

The governor might, with the advice of the council, take such action as he might deem proper in matters not specifically included in the instructions, reporting thereon to the Duke for his approval; but the governor could not engage in or declare war without the Duke's knowledge and particular commands therein.

The governor was required to get a law passed, if possible, fixing the qualifications of jurors.

The governor, with the advice of the council, was authorized to establish such courts of justice as might be deemed proper "for adjudging and determining all matters, civil and criminal," making them, so far as practicable, conformable to the courts of England. The erection of courts was to be subject to the Duke's approval, but they were authorized to act until he signified his pleasure to the contrary.

The governor was authorized to make grants of public land at a yearly rent and service to be reserved to the Duke and his heirs, and to be fixed by the governor and council.

The governor was authorized to pardon or remit fines, also to "pardon and remit all manner of crimes before or after conviction" except high treason and murder, and in these cases he was given the power of reprieve, awaiting the Duke's final action.

The governor and council were required to provide for the erection of needed custom houses, and also to maintain an adequate force of militia.

The governor was prohibited from levying or collect-

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ing any customs or imposts except as authorized by statute, to be enacted by the legislature.

The governor was directed to purchase additional tracts of Indian lands, and also report to the Duke concerning the propriety of granting to the city of New York privileges and immunities not enjoyed by other parts of the Duke's territories.

The deputy governor was authorized to act in case of the absence or inability of the governor.

Other parts of the instructions related more especially to administrative details.

Here was a complete outline of a constitution. It provided for legislative, executive, and judicial departments of the government, with several provisions relating to personal rights and limitations of power. So far as I have been able to discover, the plan of government here outlined has no parallel in any earlier colonial document. All our state Constitutions are constructed upon the same general plan, differing in detail, and amplified in many particulars to meet modern conditions. It is worth while to remember that the essential principles of Dutch and English liberty, including a parliamentary form of government, were established under a policy of which commercialism was the most conspicuous characteristic. The Dutch West India Company was distinctively a commercial corporation, yet it was charged with the duty of colonizing a portion of the new world and of establishing within its territory laws, social and political institutions, and policies of administration, which were to be of such a high character that they would attract immigration, encourage investments, and at the same time promote the general welfare of a community intended to be in America what its name implied,—a New Netherland. The Duke of York had been assured that his American possessions

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might reasonably yield him an annual revenue of thirty thousand pounds sterling. He was desirous of reimbursing himself for large outlays in establishing his government, and also wished to receive the revenue which a prosperous colony promised; and while the business side of his policy cannot be overlooked, it must be conceded that the instructions to his governors are marked by a sincere desire to foster in America the institutions which had so largely contributed to England's greatness.

Royal Commissions and Instructions.

We come now to the last period of colonial history. By the death of Charles II., in February, 1685, his brother, the Duke of York, became James II. of England, and his title as proprietor of New York was merged in his higher title as king. New York thereupon ceased to be a proprietary colony, and became a royal province. The attitude of James toward the colony was necessarily changed, and he was obliged to consider his American possessions from the point of view of the reigning sovereign.

June 10, 1686, King James issued a new commission to Governor Dongan, who, in this commission, was called "captain general and governor in chief,"—a title which was continued through the remainder of the colonial period. No provision was made for an assembly, but the governor and council were vested with general legislative and executive powers. The council was to be composed of seven members. This commission, like its predecessor of 1682, conferred on the governor and council power to erect courts and appoint judges. Appeals involving large amounts were authorized to the governor and council, and afterwards to the King. The

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pardoning power conferred by the previous commission was continued substantially in the same form. Provision was made for continuing the government in case of the governor's absence or inability to act, and, in the absence of the governor or his substitute, the government was, for the time being, to devolve upon the council. Other provisions are substantially repetitions of the former commission. The new commission calls New York a province. The instructions accompanying this commission contained only directions and requirements relating to navigation and the enforcement of English navigation laws.

Governor Dongan was superseded by Sir Edmund Andros, who, on the 7th of April, 1688, received a commission as captain general and governor in chief of a new domain, including what is now New England, New York, and East and West Jersey. The commission repeated in large part the provisions contained in the Dongan commission of 1686. It vested legislative and executive power in the governor and council, and provided for details of administration much like its predecessor. It provided for a lieutenant governor, which, I believe, is the first time this office is named in any colonial commission. The instructions accompanying the commission contained one provision which enunciated a principle quite contrary to a provision of our Constitution which guarantees a free press. The instructions say that "forasmuch as great inconvenience may arise by the liberty of printing within our said Territory, under your government, you are to provide by all necessary orders, that no person keep any printing press for printing, nor that any book, pamphlet, or other matter whatsoever be printed without your especial leave and license first obtained."

December 11, 1688, nine months after this proposed

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combination of colonial interests under the administration of Governor Andros, James abandoned the English throne and was succeeded by William and Mary. November 14, 1689, the new government appointed Henry Sloughter to be captain general and governor in chief of the province of New York. The commission, which bears date January 4, 1690, conforms generally to commissions issued to previous governors, but it contains some exceptions which should be noted. It revived the assembly, and established that branch of government upon a lasting foundation. The governor, council, and assembly were together to constitute the legislature, and had power to enact all statutes relating to the colony. The governor was given an absolute veto on all laws, and any laws approved by him were still subject to veto by the Crown. The governor might adjourn, prorogue, or dissolve the assembly.

The instructions to Governor Sloughter which accompanied his commission contained the following provisions relating to religion and education:

"You shall take care that God Almighty be devoutly and duly served throughout your Government, The Book of Common Prayer as it is now established, read each Sunday and Holy Day, and the blessed Sacrament administered according to the rites of the Church of England."

Church appointments were to be made subject to the approval of the Bishop of London, who was given ecclesiastical jurisdiction in the province.

"You are to permit a liberty of Conscience to all Persons (except Papists) so they be contented with a quiet and Peaceable enjoyment of it, not giving offense or scandall to the Government."

This provision relating to religious toleration appears in subsequent instructions to colonial governors, and is

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repeated in the instructions to Governor Tryon, which bear date February 7, 1771. It was therefore in force at the beginning of the Revolution, and was the rule of the colony on this subject when the first state Constitution was framed, in 1777. The instructions to Governor Sloughter continue:

"You are, with the assistance of our Council, to find out the best meanes to facilitate and encourage the conversion of Negroes and Indians to the Christian Religion.

"We do further direct that no School master be henceforth permitted to come from England & to keep school within our Province of New York without a License of the said Bishop of London and that no other Person now there, or that shall come from other parts be admitted to keep school without your License first had."

The instructions repeated the civil service provision contained in the Dongan instructions of 1683, and also provided that councilors and the other principal colonial officers should be "men of estate and ability and not necessitous people or much in debt. And that they be persons well affected to our government." This imposed a property qualification which was continued as to many officers during the colonial period and under the state government until abolished by the amendment of 1845. A property qualification is still imposed by statute in many cases, especially as to municipal officers.

The instructions repeated the prohibition against a free press which has already been quoted from the Andros instructions of 1688. The instructions also prohibited any change of value in current coin, either domestic or foreign, without the royal approval.

The form of government provided by Governor Sloughter's commission and instructions continued without substantial change in its essential features through

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the remainder of the colonial period, which, for all practical purposes, except as to the southern portion of the province, closed in 1775. Many governors held office in the province during this period, all of whom received commissions and instructions conforming in general to those issued to Governor Sloughter; it would therefore be needless repetition to give even a synopsis of these commissions and instructions here. Some of the instructions were brief, some quite prolix, one set including nearly one hundred articles. The amplifications were usually incident to the development of English commercial interests, to the additional subjects requiring executive attention, and to the inclusion of Connecticut as a part of the military jurisdiction of the governor of New York. These commissions and instructions, with additional special instructions frequently communicated to the governor, constituted the form or frame of government, or what was known in the official correspondence of the time as the Constitution of the colony. This term is often used in official documents and correspondence, and manifestly refers to the framework of local government, including not only the specific powers conferred by the commissions and instructions, but also the implied powers expressed through colonial legislation, and customs and forms of procedure which were the result of many years of experience in administering colonial affairs.

William Tryon became governor of New York on the 9th of July, 1771, and continued to hold office until the 23d of March, 1780, when he was succeeded by James Robertson. Tryon was the last colonial governor who exercised actual jurisdiction over the whole province. I have recounted in the first and second chapters of this work some of the features which interrupted the course of orderly government in New York, developing

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into independence, the separation of the province, and the erection of state government. The colonial period closed during Governor Tryon's administration, but he continued to be governor nearly three years after the adoption of the state Constitution, although his jurisdiction was confined to a very small part of the state. Indeed, civil jurisdiction was practically suspended; for when he went out of office, in 1780, the province was and had been for some time under martial law, with Sir Henry Clinton in chief command.

Treating the governor's commission and the accompanying instructions as elements of a constitution, we are able to examine, at least in part, the theory of constitutional government in New York immediately before the erection of the new state. A manuscript copy of Governor Tryon's commission may be found in the New York State Library, in volume 4 of Commissions. In its general outlines this commission conforms to the commissions issued to previous governors, beginning with the commission issued to Governor Sloughter in 1690, after the abdication of King James and the accession of William and Mary. It therefore stands as the last expression of the royal will concerning government in New York prior to the Revolution. Governor Tryon took the oath of office July 9, 1771. Five years later, on the anniversary of this day, July 9, 1776, the Provincial Congress of New York ratified the Declaration of Independence, and assumed the administration of public affairs, except as to those portions of the province actually occupied by the British army.

I have elsewhere expressed the opinion that Governor Tryon was one of the ablest executives New York had during the entire colonial period. He was governor of North Carolina several years before his appointment to New York. His long official service enabled him to

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acquire an extensive and accurate knowledge of public affairs. He was therefore peculiarly qualified to answer the question

"WHAT IS THE CONSTITUTION OF THE GOVERNMENT?"

which, with twenty-one other questions (including one applicable only to West Florida), was propounded by the home government to the governors of the American colonies in a document which bears date July 5, 1773, and which required detailed information concerning various aspects of colonial affairs. Governor Tryon replied for New York on the 11th of June, 1774, in a document which will well repay perusal by every student of our history. Several extracts from his answer to the foregoing question are made in different parts of this work, but for convenience it is given here in full. It contains a summary of the powers conferred upon him, and a description of several features of colonial government, many of which originated in colonial legislation.

Governor Tyron says:

"By the Grants of this Province and other Territories to the Duke of York in 166$\frac{3}{4}$ and 1674, the powers of Government were vested in him, and were accordingly exercised by his Governors until he ascended the Throne when his Rights as Proprietor merged in his Crown, and the Province ceased to be a charter Government.

"From that time it has been a Royal Government, and in its constitution nearly resembles that of Great Britain and the other Royal Governments in America. The Governor is appointed by the King during his Royal Will and pleasure by Letters Pattent under the Great Seal of Great Britain with very ample Powers.—He

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has a Council in Imitation of His Majesty's Privy Council.—This Board when full consists of Twelve Members who are also appointed by the Crown during Will and Pleasure; any three of whom make a Quorum. —The Province enjoys a Legislative Body which consists of the Governor as the King's Representative; the Council in place of the House of Lords, and the Representatives of the People, who are chosen as in England: Of these the City of New York sends four.—All the other Counties (except the New Counties of Charlotte and Gloucester as yet not represented) send Two—The Borough of Westchester, The Township of Schenectady and the three manors of Renselaerswyck, Livingston and Cortlandt each send one; in the whole forming a Body of Thirty one Representatives.

"The Governor by his commission is authorized to convene them with the advice of the Council, and adjourn, prorogue or dissolve the General Assembly as he shall judge necessary.

"This body has not power to make any Laws repugnant to the Laws and Statutes of Great Britain. All Laws proposed to be made by this Provincial Legislature, pass thro' each of the Houses of Council and Assembly, as Bills do thro' the House of Commons and House of Lords in England, and the Governor has a Negative voice in the making and passing all such Laws. Every law so passed is to be transmitted to His Majesty under the Great Seal of the Province, within three Months or sooner after the making thereof and a Duplicate by the next Conveyance, in order to be approved or disallowed by His Majesty; And if His Majesty shall disallow any such Law and the same is signified to the Governor under the Royal Sign Manual or by Order of his Majesty's Privy Council, from thenceforth such law be-

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comes utterly void.—A law of the Province has limited the duration of the Assembly to seven years.

"The Common Law of England is considered as the Fundamental law of the Province and it is the received Doctrine that all the Statutes (not local in their Nature, and which can be fitly applied to the circumstances of the Colony) enacted before the Province had a Legislature, are binding upon the Colony; but that Statutes passed since do not affect the Colony, unless by being specially named, such appears to be the Intention of the British Legislature.

"The Province has a Court of Chancery in which the Governor or Commander in Chief sits as Chancellor, and the Practice of the Court of Chancery in England is pursued as closely as possible. The Officers of this Court consist of a Master of the Rolls newly created.—Two Masters.—Two Clerks in Court.—A Register.—An Examiner, and a Serjeant at Arms.

"Of the Courts of Common Law the Chief is called the Supreme Court.—The Judges of which have all the Powers of the King's Bench, Common Pleas & Exchequer in England. This Court sits once in every three months at the City of New York, and the practice therein is modell'd upon that of the King's Bench at Westminster.—Tho' the Judges have the powers of the Court of Exchequer they never proceed upon the Equity side.—The Court has no Officers but one Clerk, and is not organized or supplied with any Officers in that Department of the Exchequer, which in England has the care of the Revenue.—The Judges of the Supreme Court hold their Offices during the King's Will & Pleasure and are Judges of Nisi prius of Course by Act of Assembly, & annually perform a Circuit thro' the Counties. The Decisions of this Court in General are final unless where the value exceeds £300 Sterling, in which case

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the subject may be relieved from its errors only by an Application to the Governor and Council, and where the value exceeds £500 Sterling an appeal lies from the Judgment of the latter to His Majesty in Privy Council.

"By an Act of the Legislature of the Province suits are prohibited to be brought in the Supreme Court where the value demanded does not exceed £20 Currency.

"The Clerk's office of the Supreme Court, has always been held as an appendage to that of the Secretary of the Province.

"There is also in each County an Inferior Court of Common Pleas, which has the cognizance of all Actions real, personal and mixed, where the matter in demand is above £5 in value.—The practice of these Courts is a mixture between that of the King's Bench and Common Pleas at Westminster.—Their errors are corrected in the first Instance by Writ of Error brought into the Supreme Court; and the Judges hold their Offices during pleasure.—The Clerks of these Courts also hold their offices during pleasure and are appointed by the Governor, except the Clerk of Albany who is appointed under the King's mandate.

"Besides these Courts the Justices of peace are by Act of Assembly empowered to try all causes to the Amount of £5 currency, (except where the Crown is concerned, or where the Title to Lands shall come into Question;—and Actions of Slander), but the parties may either of them demand a Jury of Six Men.—If wrong is done to either party, the person injured may have a Certiorari from the Supreme Court, tho' the remedy is very inadequate.

"The Courts of Criminal Jurisdiction are Correspondent to those in England.—The Supreme Court exercises it in the City of New York, as the King's Bench does at Westminster.—The Judges when they go the Circuit

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have a Commission of Oyer and Terminer and General Gaol Delivery; and there are Courts of Sessions held by the Justices of the Peace; the powers of which and their proceeding correspond with the like Courts in England.—The Office of Clerk of Sessions, is invariably connected with that of the Clerk of the Inferior Court of Common Pleas in the respective counties.

"By acts of the Provincial Legislature the Justices of the Peace have an extraordinary Jurisdiction with respect to some offences by which any three Justices, (one being of the Quorum, where the Offender does not find Bail in 48 Hours after being in the custody of the Constable, may try the party without any * or a Jury, for any Offence under the Degree of Grand Larceny; and inflict any punishment for these small offences at their Discretion, so that it exceeds not to Life or Limb.—And any three Justices of the Peace (one being a Quorum) and Five Freeholders have power without a Grand or Petty Jury to proceed against and try in a Summary Way, Slaves offending in certain cases, and punish them even with Death.

"The Duty of His Majesty's Attorney General of the Province, is similar to the Duty of that Officer in England, and the Master of the Crown Office: He is appointed by the Crown during pleasure, and His Majesty has no Sollicitor General nor Council in the Province, to assist the Attorney General upon any Occasion.

"There are two other Courts in the Province. The Court of Admiralty which proceeds after the Course of the Civil Law in matters within its Jurisdiction, which has been so enlarged by divers statutes, as to include almost every breach of the Acts of Trade.—From this Court an appeal lies to a Superior Court of Admiralty, lately Established in North America by statute; before

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this Establishment an appeal only lay to the High Court of Admiralty of England.

"The Prerogative Court concerns itself only on the Probate of Wills in matters relating to the Administration of the Estates of Intestates and in granting Licenses of Marriage. The Governor is properly the Judge of this Court but it has been usual for him to Act in general by a Deligate.

"The Province is at present divided into fourteen Counties, viz., The City and County of New York—The County of Albany—Richmond (which comprehends the whole of Staten Island) King's, Queen's and Suffolk (which include the whole of Nassau or Long Island.) Westchester, Dutchess, Ulster, Orange, Cumberland, Gloucester, Charlotte and Tryon.—For each of these Counties a Sheriff and one or more Coroners are appointed by the Governor, who hold their offices during pleasure.

"As to the Military power of the Province, the Governor for the time being is the Captain General and Commander in Chief and appoints all the Provincial Military Officers during pleasure."

In addition to the foregoing statement it appears from Governor Tryon's commission that the province had a lieutenant governor who might succeed to the governorship in cases similar to those provided for under our state Constitutions. The governor had power to suspend the lieutenant governor and also members of the council. The pardoning power was vested in the governor except as to treason and murder, which could only be pardoned by the Crown. The colonial government was authorized to erect forts and other means of defense, and establish and maintain a militia. Public money was to be paid out only on the governor's warrant, approved by the council. This provision may be found in many

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previous commissions. A provision for a temporary gubernatorial succession was continued from former commissions. In case of a vacancy in the office of governor and lieutenant governor, or the absence or inability of these officers to act, the eldest councilor whose name was first placed in the instructions, and who, at the time of the vacancy, was residing in the colony, was to assume and exercise the executive office until the vacancy should be filled. The commission gave the governor little opportunity for the exercise of arbitrary power, for it was expressly provided that he should administer public affairs according to the terms of the commission and the instructions, and also "according to such reasonable laws and statutes as are now in force or hereafter shall be made and agreed upon" by the colonial legislature. The commission contains several details of an administrative character which need not be noticed here.

This brings us to the close of the colonial period, and we find a constitutional form of government which was continued without material change in the first state Constitution.

The Interregnum.

Constitutional government in New York, as understood and explained by Governor Tryon in the foregoing statement, was, of course, interrupted by the Revolution, which put an end to existing conditions and required the creation of a new form of government. It already appears that Governor Tryon took office in July, 1771. He found an organized government which had continued without substantial change for eighty years,—since the revival of the assembly in 1691. Governor Tryon found an assembly which had been chosen under writs of election issued January 14, 1769, and returnable

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February 14. The limit of an assembly was then seven years. August 7, 1771, the Governor submitted to the council the question whether the present assembly should be continued or dissolved. The council unanimously recommended that it be continued. No new assembly was chosen during Governor Tryon's administration. The last legislation by this assembly was enacted on the 3d of April, 1775. The assembly was prorogued at different times, but did not meet again.

On the 23d of December, 1775, Governor Tryon submitted to the council the question of dissolving the assembly, and on the 26th a majority of the council recommended its dissolution and the election of a new assembly, but the Governor said that he had communicated with the chief justice on the subject, and had been advised by him that it was inexpedient to dissolve the assembly at this time. Several prorogations followed, the last being to April 17, 1776. This was past the limit of seven years fixed by the law for the existence of an assembly. The failure to prorogue the assembly from April 17 caused its dissolution. Governor Tryon notes this circumstance in a letter to Lord Germain, dated the 18th of April, 1776, and, in explanation, says the council, by whose advice it was prorogued to the 17th inst., had not been permitted to wait on him, agreeable to his summons, in order to advise concerning the further prorogation of it. The dissolution of the assembly suspended the legislative power of the province, and it was not revived. Governor Tryon evidently did not deem it expedient to call another assembly. The majority of the late assembly had adhered to the cause of the King, and had opposed the movement for independence; but it is quite probable that if a new election had been ordered the patriots would have controlled the new assembly. A few weeks after the dissolution of the assembly, July

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4, 1776, the colonies were declared to be free and independent states; and on the 9th this action was ratified by the New York convention. From that time until the British evacuation, in November, 1783, New York was under two governments: the city of New York and some adjacent territory, being actually occupied by the British army, continued under the colonial government, which was administered by Governor Tryon and his successor under such limitations as were imposed by the fact that it had no legislature, and that it was under martial law.

Civil authority was practically suspended. Governor Tryon mentions this in one of his letters, and says that his official functions have been materially circumscribed by the situation incident to military government. The functions of the executive council were likewise rendered substantially dormant during this period, for the same reason. The southern part of the state, including the counties of Westchester, New York, Richmond, Kings, Queens, and Suffolk, were under British dominion after the arrival of the army in the summer of 1776. In the chapter on the First Constitution it has been noted that the Fourth Provincial Congress was called to meet in New York early in July, 1776, but it was not deemed prudent to meet there on account of the approach of the enemy's forces, and for that reason the first meeting of this congress was held at White Plains. The southern portion of the state remained under British control until the close of the war. The official correspondence of the period shows that the people quite readily acknowledged the situation in which they were placed, and either because of the presence of the army, or for other reasons, a large number of citizens took the oath of allegiance to the Crown. Governor Tryon, in a letter to his government dated February 11, 1777, says that 3,020 citizens

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of the city of New York had taken the oath of allegiance, and that, in his opinion, not more than one hundred had failed to take the oath. According to the census of 1771 New York had 5,083 white males between 16 and 60,—the military age,—the whole population being 18,726 whites and 3,137 blacks. There must have been a numerous migration from the city in consequence of the Revolution, if there were only about 3,000 citizens left at the beginning of the year 1777. We know that many left the city and remained away until the close of the war, including prominent citizens like John Jay, James Duane, Robert Harpur, John Morin Scott, Isaac Roosevelt, and others who were actively engaged in the service of the new state. Similar action relating to oaths of allegiance was taken in the Long Island counties. Governor Tryon also reported, on the 15th of February, 1777, that at his instance a paper was being signed by the inhabitants of the city revoking and annulling "all powers and authorities of Congress, Committees, and Conventions over them." This was done, he said, so that the delegates from New York to the Provincial Convention and to the Continental Congress could no longer pretend that they were representing the people of the city.

The instructions to Governor Robertson, who took office March 23, 1780, informed him that Sir Henry Clinton had power to restore to peace the whole or any part of the province, if he should judge it fitting, in which case the civil Constitution should revive and the Governor's civil authority become competent under his commission. The Governor was admonished to appoint to office only persons of assured loyalty. The calling of an assembly, on the restoration of civil authority, was left to the discretion of the Governor and council. The instructions further say "that it is the King's wish to give

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that proof to the inhabitants of New York, and of all the other provinces, that it is not His Majesty's intention to govern America by military law, but to allow them all the benefits of a local legislature, and their former Constitution." But martial law was continued and civil authority was not restored.

The temper of the English people, and their opinion concerning the probable outcome of the struggle with the colonies, is clearly shown by the action of the House of Commons early in 1782, in relation to the war. February 27 the House of Commons voted an address to the King, reciting, among other things, that, in the judgment of the House, "the further prosecution of offensive war on the continent of North America, for the purpose of reducing the revolted colonies to obedience by force, will be the means of weakening the efforts of this country against her European enemies; tends, under the present circumstances, dangerously to increase the mutual enmity so fatal to the interests both of Great Britain and America; and, by preventing a happy reconciliation with that country, to frustrate the earnest desire graciously expressed by His Majesty, to restore the blessings of public tranquillity." The King made a favorable reply, which was presented to the House on the 4th of March, whereupon the House adopted the following:

"That, after the solemn declaration of the opinion of this House, in their humble address, presented to His Majesty on Friday last, and His Majesty's assurance of his gracious intention, in pursuance of their advice, to take such measures as shall appear to His Majesty to be most conducive to the restoration of harmony between Great Britain and the revolted colonies, so essential to the prosperity of both, this House will consider as enemies to His Majesty and this country, all those who shall endeavor to frustrate His Majesty's paternal

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care for the ease and happiness of his people, by advising, or by any means attempting, the further prosecution of offensive war on the continent of North America, for the purpose of reducing the revolted colonies to obedience by force."

Subsequently Governor Robertson sought, on two occasions, to re-establish civil authority. The first was on the 21st of March, 1782, at which time he probably had not received information of the action of the House of Commons, practically terminating the war. He presented to the council a written communication, in which he said that soon after the Governor assumed his office the commander in chief had declared that he judged the "restoration of civil government would be prejudicial to His Majesty's service, and impede the progress of his arms, the subduing of the rebellion being the first object;" but that since the surrender at Yorktown the commander in chief had intimated that he would no longer oppose the revival of civil government, and the Governor therefore submitted to the council the question whether the restoration of civil government was advisable under existing circumstances. The council, Chief Justice Smith dissenting, expressed the opinion that they did not consider that "the eligible moment for the restoration of civil government." On the 4th of May following Governor Robertson laid before the council the foregoing resolves of the House of Commons and the King's action thereon, and informed the council that he had been appointed commander in chief of the King's forces in America, and that he could, "without soliciting the consent of any other person, make the suppression of civil government in this province cease," and was ready to take this measure if it should be approved by the council. The council, Chief Justice Smith again dissenting, replied that, in their judgment, "no good consequence to the King's interest

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or to the happiness of the people can arise from the restoration of civil government at this time and under the present circumstances."

The wisdom of the council's action on the proposition to restore civil government seems very clear. The war was practically over, peace negotiations had already begun, and independence was an assured fact. The people in that part of the state north of Westchester county were enjoying a real republican government, fully organized in all its departments, state and local, which had been in operation since early in September, 1777, and it was therefore impracticable to try to re-establish the old colonial form of government, which, at most, could be put into operation only in the city of New York and vicinity. While the members of the council were undoubtedly loyal, they must have become convinced, by the course of events, that colonial government, as it existed prior to the Revolution, could not be restored; they therefore wisely determined to live under martial law a little longer and wait for the peace with independence which must soon come, after which the state government already organized would be extended over the territory then under British control. The people in the northern part of the state had six years more of real constitutional government than their neighbors in the city of New York and vicinity. Provisional articles for a treaty of peace were signed on the 30th of November, 1782, and the definitive treaty was signed on the 3d of September, 1783.

The last session of the state legislature prior to the definitive treaty of peace was held at Kingston, and adjourned in March, 1783, to meet again at a time and place to be specified in a proclamation to be issued by the Governor for that purpose. The British evacuated New York on the 25th of November, 1783, and on the

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same day General Washington, with a detachment of the American army, entered the city. He was accompanied by Governor George Clinton, who at once assumed civil authority. On the 9th of December following the Governor issued a proclamation convening the legislature in the city of New York on the 6th of January, 1784. A quorum was not present until the 21st. The legislature was then organized, and Governor Clinton delivered the customary speech in the presence of both houses. Referring to the close of the war, he said:

"By the favor of Divine Providence, the seal is put to our independence; our liberties are established on the firmest basis; and freedom in this district seems to derive additional luster from the objects which remind us of the despotism that so lately prevailed. . . . While we survey the ruins of this once flourishing city, and its vicinity, while we sympathize in the calamities which have reduced so many of our virtuous fellow citizens to want and distress, and are anxiously solicitous for means to repair the wastes and misfortunes which we lament, how ought our hearts to overflow with love and gratitude to our adorable Creator, through whose gracious interposition bounds have been set, and probably forever, to such scenes of horror and devastation." Commenting on the relations to the state which the people had assumed under the new form of government, Governor Clinton says that "though fear may support a despotism, and a hereditary nobility uphold the throne of a limited monarch, nothing but good faith and public virtue can give authority or credit to a free republic."

When the British moved out, the New York state government moved in, and after more than seven years civil authority under a written constitution was established in all parts of the state. Thus ended British rule in New

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York, and thus ended a long interregnum during which constitutional government was in abeyance.

We turn now to the part of the state in which independence was asserted and established. Here the interval between the suspension of civil power in the colony, and the establishment of a state government under the new Constitution, was comparatively short. Martial law, which was in force in the southern part of the state, obviously could not reach beyond the range of British military operations; hence it had no application in that part of the state under the immediate control of the patriot convention and army. The dissolution of the colonial assembly in April, 1776, was not of itself a serious interruption of civil government, because another assembly might have been chosen and legislative power might have been re-established. The higher courts were closed as a result of martial law, and the powers of the judges were temporarily suspended. The Governor, who, by reason of his appointment and relations to the Crown, could not have been expected to sympathize with the movement for independence, did not attempt to exercise executive functions even where martial law was not in force. Therefore, to prevent anarchy, it became necessary to institute the best government that seemed then available. This new government was administered for the time being by a congress or convention composed of deputies chosen from various parts of the state not under British control, and this convention, for more than a year, assumed and exercised large executive, legislative, and judicial powers. This subject is considered in the second chapter, and needs little further attention here.

A congress, called a convention, met in the city of New York on the 22d of May, 1775. It was chosen for the purpose of considering subjects relating to the welfare of the country in view of the impending struggle for

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independence. It acted in conjunction with the Continental Congress, but chiefly devoted its energies to military preparations. This congress continued in session until November 4, 1775, with some intermediate adjournments, during which a committee of safety, created by the congress, acted in its place and performed certain specified functions. This congress directed the election of a new congress, to meet on the 14th of November, 1775, but it was not organized until the 6th of December. It adjourned May 13, 1776. According to the journal of this congress resolutions were adopted on the 11th of March, 1776, directing the election of a new congress, to meet on the 14th of May, but the resolutions are not entered in the journal, and diligent search has failed to discover a copy of them. In April, 1776, elections were held in accordance with the directions contained in these resolutions, and deputies were chosen to constitute a new congress, to meet on the 14th of May, 1776. It was organized on the 22d of May and adjourned on the 30th of June. The deputies to the two previous congresses had been chosen for the term of six months, but the deputies to this congress were chosen for one year. The short duration of this congress is due to its decision concerning its own powers under a resolution of the Continental Congress, which had been adopted after this provincial congress was elected, but before it met. The Continental Congress, on the 10th of May, adopted a resolution recommending that a regular government be established in each state. The New York Provincial Congress, which was organized on the 22d of May, 1776, decided that it had no power to erect a state government, and therefore determined to go back to the people for the requisite authority. Another election was accordingly ordered, which was held in June, for a new congress, which was directed to meet on the 8th of July. This

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congress was organized on the 9th of July, 1776, at White Plains, and on the same day ratified the Declaration of Independence. The next day it changed its name from "The Provincial Congress of the Colony of New York" to the "Convention of the Representatives of the State of New York." By the recent election the Convention had received authority sufficient to administer some kind of government while it was preparing a written constitution. The history of this period will be found in the chapter on the First Constitution, where I have quoted the resolutions of the Convention providing for a temporary government.

Government during the interval before the adoption of the Constitution was administered sometimes by a convention, and sometimes by committees and councils of safety. There was little ordinary governmental administration. The Convention could do little, and had little to do beyond conducting necessary military operations, either directly, on behalf of the state, or in conjunction with the Continental Congress. It did, however, borrow large sums of money and issue bills of credit, and pledged the faith of the new state for their payment. The principal business of this Convention and of the government which it organized was war for the purpose of actually accomplishing the independence which had been declared.

The Constitution was adopted on the 20th of April, 1777, and went into operation immediately. On the 8th of May following the Convention adopted an ordinance for the purpose of establishing the new government. The text of this ordinance will be found in the second chapter. The extraordinary powers possessed and exercised by the first convention were manifested in a peculiar manner by the election by the Convention itself of members of assembly and the senate from that part of

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the state then under British control. This was deemed necessary for the purpose of organizing the new government. Elsewhere elections were held for members of both branches of the legislature, and also for governor and lieutenant governor. The senate was organized on the 9th, and the assembly on the 10th, of September, 1777. The judges of the supreme court and various state and county officers had already been appointed by the Convention. The new government was necessarily limited in its territorial jurisdiction, owing to the British occupancy of the southern part of the state. The formal organization of the legislature terminated the interregnum caused by the suspension of the colonial government.

State Constitutions.

The history of the state Constitutions will be found in subsequent parts of this work. The text of the Constitutions and of various amendments is given in the Introduction. I have tried to give every constitutional provision that has ever been in force in this state, and present it in its appropriate relation to other parts of our constitutional system. Little need be said here concerning these constitutional provisions, but it may be profitable to mention each Constitution and amendment in its chronological order, with a brief note concerning its general features.

1777. The First Constitution.

The framers of this instrument were familiar with constitutional government on the English basis. They had lived under a colonial government which possessed ample powers, with an assembly chosen by

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the people, with officers who were, for the most part, selected from their own number, and under which the people possessed a degree of independence which substantially relieved them from direct obligation to the Crown, so far, at least, as concerned the ordinary needs and functions of society. All the essential elements of government existed in the colony, and the constitution-makers found there all the forms of government needed for a new state. But it became necessary to adapt some of the old forms to new conditions. The people, having declared their own sovereignty, were entitled to select the chief executive, who, under the former system, had been commissioned by sovereign authority. It also became necessary to modify the parliamentary system, and as a result of this process of reconstruction the House of Lords and the Colonial Council became the state senate. The Constitution was brief, but it described all the necessary elements of government. Many things were doubtless taken for granted, and existing forms and policies of administration were continued without being specifically defined.

The English Constitution is largely based upon statute law, combined with judicial decisions, customs, forms of procedure, and policies of administration. These elements together make up the unwritten Constitution. I have already quoted Governor Tryon's statement in relation to the colonial Constitution, in which the common law and statutes are expressly mentioned as elements of the constitutional system. Nothing in the first Constitution evinces a higher degree of wisdom than article 35, which continued in force in the new state the English common and statute law, and the legislation of the colony, so far as they were applicable under the new form of government. This transferred to the new state the English and colonial legal systems, which were really

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constitutional systems, and English constitutional government, so far as applicable in a republic, became the inheritance of the new state. This transfer carried with it powers of government and details of administration which, with the new forms established by the Constitution, enabled the statesmen of that period to carry on the new government almost as smoothly as if the Revolution had not occurred.

Amendments.

1801. Five amendments were adopted by the Convention of 1801, four of which related to the reorganization of the legislature, and one construed article 23, relating to the powers of the Council of Appointment.

1821. THE SECOND CONSTITUTION.

The previous Constitution and amendments were carefully revised, and a new Constitution was adopted, more scientific in its arrangement, and more elaborate in its details, than its revolutionary predecessor.

Amendments.

1826. The suffrage article was amended by abrogating all property qualifications, except as to colored voters.

1826. The method of choosing justices of the peace was changed from appointment by judges of the county court and boards of supervisors to an election by the people of the towns.

1833. Authorizing a reduction of the duty on salt.

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1833. For the election of the mayor of New York by the people.

1835. Relating to duties on goods sold at auction.

1839. Providing for the election of mayors in all cities.

1845. Abrogating property qualifications of public officers.

1845. Regulating the procedure on the removal of judicial officers.

1846. THE THIRD CONSTITUTION.

Many of the provisions in previous Constitutions and amendments were continued, but many new subjects were included, and the whole constitutional system of the state was revised and enlarged. A large part of this Constitution is still in force. Its detail may be studied from the text, which appears in a subsequent part of the Introduction.

Amendments.

1854. Providing for canal revenues, expenditures, and sinking fund.

1864. Authorizing absent soldiers and sailors to vote in time of war.

1867. A constitutional convention met this year and continued its labors until the spring of 1868. It proposed a complete Constitution, which was submitted to the people at the November election in 1869. The Constitution was all rejected except the judiciary article. The rejected part of this Constitution will be found at the end of the chapter on the Convention of 1867.

1869. The judiciary article proposed by the Convention of 1867.

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1872. Relating to the commission of appeals.

1874. A series of amendments proposed by the Commission of 1872, with some modifications by the legislature of 1873. The amendments were included in thirty-four sections, and embraced many new provisions, some of which had been recommended by the Convention of 1867. The amendments related to qualifications of voters, bribery at elections, assembly apportionment, compensation, powers of the legislature, boards of supervisors, private and local laws, official term and compensation of governor and lieutenant governor, executive consideration of bills, the thirty-day period, canal expenditures, revenues, and sinking funds, extra compensation, savings banks, state aid, limitation of municipal aid, compensation of constitutional officers, oath of office, bribery (new article), and time when amendments take effect.

1876. Creating the office of superintendent of public works, defining his powers and duties, and abolishing the office of canal commissioner.

1876. Creating the office of superintendent of state prisons, defining his powers and duties, and abolishing the office of inspector of state prisons.

1879. Providing for an additional justice of the supreme court in the second judicial district.

1880. Authorizing judges of the city court of Brooklyn to be detailed for service in the supreme court in Kings county.

1880. Providing for judicial pensions.

1882. Providing for an additional general term of the supreme court, and for additional justices in several districts.

1882. Abolishing canal tolls.

1882. Authorizing taxation for the payment of the canal debt.

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1882. Including the Black River canal in the prohibition against disposing of the canals.

1884. Limiting and regulating municipal indebtedness.

1888. Providing for a second division of the court of appeals.

1894. Authorizing an additional county judge in Kings county. A similar provision was included in the Constitution of 1894, which, by its terms, superseded the independent amendment.

1894. THE FOURTH CONSTITUTION.

A general revision proposed by the Convention of 1894, and including several distinct amendments. These relate to drainage of agricultural land, poolselling, code commissioners (abrogating provisions relating to this subject), actions to recover damages for injuries causing death, qualifications of voters, bribery at elections, inmates of public institutions, registration of voters, manner of voting, bi-partisan election boards, structure of legislature and apportionment of members, temporary president of senate, manner of passing bills, riders on appropriation bills, prison labor, official term of governor and lieutenant governor, gubernatorial succession (adding the speaker of the assembly), changing time of election of state officers to even numbered years, civil service, reorganization of judicial system (article revised), forest preserve, canal improvement, liability of stockholders of banks, regulation of municipal indebtedness, state board of charities, state commission in lunacy, state commission of prisons, charitable institutions, common schools, regents of the university, sectarian aid, coroners (constitutional office abolished), terms of county officers in New York and Kings and in any county conterminous with a

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city, annual meeting of legislature, militia (article revised), city laws, elections in certain cities, free passes, and constitutional amendments and conventions.

Amendments.

1899. Excepting counties in Greater New York from the provision requiring a board of supervisors in each county.

1899. Providing for relief of the court of appeals by the appointment of justices of the supreme court to serve therein.

1899. Authorizing additional justices in the appellate division of the supreme court.

1899. Relating to indebtedness of counties in Greater New York.

1901. Prohibiting special laws exempting property from taxation.

The National Constitution.

A study of the Constitution of the United States is not within the scope of this work, but it must receive some attention for the obvious reason that every state is a part of the Federal system, and subject to the Federal Constitution. The subordination of the states to the Federal Constitution is declared in the provision, article 6, § 2, that

"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

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judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

Therefore every state Constitution and every state statute must be tested by its provisions. Neither the legislature of a state, nor the people themselves, in their collective capacity, can enact any law or constitutional provision which will not bear this test. The fourth volume contains numerous references to judicial decisions, state and Federal, in which New York statutes are tested by the Federal Constitution. Notes of such decisions are indispensable in a constitutional history which aims to consider all aspects of constitutional construction made necessary by the action of the state, either through its legislature or directly by the people. The Federal Constitution and the amendments to it are given in the Introduction, with notes showing the action of New York in relation to each of them.

The same course has been followed in relation to the Articles of Confederation. New York joined the movement for independence at its inception, and adhered to the cause without interruption until the object sought was finally consummated by the creation of a new nation. New York was a willing member of the Confederation, and promptly ratified the articles intended to provide a scheme of union and some provision for an effective administration. The state even went farther, and when it became manifest that the approval of the Articles of Confederation by all the states could not be secured without great delay, New York consented to be bound by them without such unanimous approval. By the notes on this subject, taken in connection with the notes showing the action of the state on the Federal Constitution and amendments, and the judicial decisions collated in the

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fourth volume, I have tried to present a complete view of the history of the state, so far as it relates to the national constitutional system.

Conclusion.

New York is almost old enough to have ancient history. Two hundred and eighty years elapsed between the first positive written directions concerning government in the colony, which were contained in the Dutch West India Company's charter of 1621, and the latest constitutional amendment, which was adopted in 1901. Of this long period one hundred and fifty-six years are covered by the time prior to the adoption of the first state Constitution, and the remaining one hundred and twenty-four years are included in the time subsequent to the adoption of that instrument, and prior to the latest amendment.*

But our constitutional history is older than the charter to the Dutch West India Company. English legal writers say that Magna Charta is the basis of the English Constitution. As the basis of that Constitution it became the basis of the colonial Constitution, and later of the state Constitution. An examination of that great charter, which follows (page 64), will show that, while many of its provisions were temporary, many others were fundamental, and have endured, either in form or in principle, through all subsequent developments of popular government. The chief feature of that instrument, so far as modern political institutions are concerned, is the 39th article, which protects citizens in the enjoyment of their private rights. The Duke of York expressly imposed on Governor Dongan, in 1682, the duty of observing this provision, and it was incorporated in the Char-

*See volume IV. for amendments submitted in 1905.

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ter of Liberties of 1683 and also in the new charter of 1691. It has had a place in all our state Constitutions, and it may be called the connecting link between constitutional liberty, as now enjoyed in 1905, and the liberty granted by a reluctant king to the people of England in 1215.

Various aspects of colonial constitutional history are presented in different parts of this work, in connection with specific subjects, but such a presentation is necessarily fragmentary. I have therefore sought to give, as briefly as seemed practicable, a statement of the principles and rules which constituted the colonial Constitution, with sufficient elucidation to show the relations of different sovereigns, governments, and public officers to the subject. It is believed that, with the foregoing synopsis, and the charters, Constitutions, and amendments which follow this note, the reader will be able easily to trace the various steps that have marked the progress of constitutional government in New York.

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MAGNA CHARTA.

The Great Charter of English Liberties, which, for nearly seven centuries, has been the foundation of the free institutions we now enjoy, may appropriately be given the place of honor in a work devoted to a study of the principles which underlie and regulate the government of the greatest of American states. Many books have been written on Magna Charta, and it has been a fruitful source of speculation and discussion, and the occasion of the most profound study and research. It has engaged the attention of great jurists like Blackstone and Coke, and of statesmen, historians, and essayists almost without number. It possesses a fascinating interest which cannot fail to arouse the enthusiasm of every thoughtful student of political and social institutions. It is not my purpose to present here a history of Magna Charta, but it seems proper to refer to a few facts which may be of interest to the reader as a prelude to the document itself.

It is a matter of common knowledge that the Charter was granted by King John as the result of a long controversy between himself and the barons of England, involving royal encroachments on one side, and on the other numerous and comprehensive demands for a larger measure of popular liberty. While these demands were presented and enforced by the barons, they were sustained by the people themselves, and the barons were only the instruments or agents of the people in procuring the liberties guaranteed by the Charter. Without going into detail concerning the protracted negotiations between the King and the barons, it is sufficient to say here that soon after Easter, in the year 1215, the barons presented to the King their demands in the form of articles, to which they

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required the King's assent. These Articles are given below, preceding the Charter. While they were in complete form, they were apparently intended only as a rough draft or as heads for a charter. The King rejected the Articles, and refused to accede to the demands made by the barons. The barons thereupon declared war, and marched upon London, arriving there May 24, 1215. Events hastened rapidly, and on the 5th of June, 1215, the King by appointment met the barons at Runnymede (council meadow), a large tract of meadow land between Staines and Windsor, and here, on the 15th, granted the Great Charter which had been prepared by the barons and was there presented to the King. It amplified and stated in more elaborate language the demands contained in the Articles. The Articles and the Charter are preserved in the British Museum in London.

It seems that several copies or drafts of the Charter were made at or about the time it was granted, and there appear to be some differences in these copies. The English Record Commission, which was charged, among other things, with the duty of examining early English documents and records, in the appendix to its report submitted to Parliament June 2, 1812, gives an interesting account of its researches in connection with the great charters of England, and it is there stated that a subcommission visited every place where it appeared that any of the ancient records were preserved. The commissioners say that they have published all the charters, and that the collection thus presented is as complete as the most careful examination could produce, and much more complete than any other which had then been published, not excepting Sir William Blackstone's collection, which the commissioners say was imperfect in several particulars. The commissioners express the opinion that the charter

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found in Lincoln Cathedral is the most authentic. I quote from the report:

"In Lincoln Cathedral, an original of the Great Charter of Liberties, granted by King John, in the seventeenth year of his reign, is preserved in a perfect state. This Charter appears to be of superior authority to either of the two Charters of the same date, preserved in the British Museum. From the contemporary indorsement and the word *Lincolnia* on the folds of the Charter, this may be presumed to be the Charter transmitted by the hands of Hugh, the then Bishop of Lincoln, who is one of the Bishops named in the introductory clause; it is observable that several words and sentences are inserted in the body of this Charter, which, in both the Charters preserved in the British Museum, are added by way of notes for amendment, at the bottom of the Instrument."

Mr. Richard Thomson, an eminent English antiquary, who published an exhaustive work on Magna Charta in 1829 under the patronage of the Earl of Spencer, follows the Commission. On these authorities, including the opinion of the Record Commission, which is official, I am justified, I think, in using the Lincoln draft in this work, and have therefore adopted Mr. Thomson's translation of the Articles and of the Charter.

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TRANSLATION OF THE ARTICLES OF THE GREAT CHARTER OF LIBERTIES, UNDER THE SEAL OF KING JOHN.

[The Roman numerals which are placed against each of the following articles divide them into forty-nine distinct heads, for the convenience of reference. The Arabic figures, which are also placed at the commencement of each article, refer to that chapter of King John's Great Charter in which the contents of every division are to be found. The same rule is also to be observed in the numbers of reference, from the Charter back to the original Articles.]

These are the particulars of what the Barons petition, and our Lord the King grants.

I. (2) After the death of an Ancestor, the Heir of full age shall have his inheritance by the ancient Relief, as expressed in the Charter.

II. (3) An Heir who is under age, and who is in guardianship, when he comes to age shall have his inheritance without Relief or Fine.

III. (4) The Keeper of an Heir's land shall take only reasonable issues, customs, and services, without destruction or waste of the men or goods; and if the Keeper of such land shall make destruction or waste, he shall be dismissed from that guardianship; (5) and the Keeper shall maintain the houses, parks, fish-ponds, mills, and other things which belong to the land, or to the rents thereof; (6) and that Heirs shall be married without disparagement, so that it be by the advice of them that are nearest of kin.

IV. (7) No Widow shall give any thing for her Dower or Marriage, after the decease of her husband: but she may remain within his house for forty days after

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his death; and within that term they shall be assigned her, and she shall have in the same place her Dower, and her Marriage-portion, and her Inheritance.

V. (9) The King nor his Bailiffs shall not seize upon any land for debt while there are sufficient goods of the Debtor's; nor shall the Securities of a Debtor be distressed, so long as the principal Debtor be solvent: but if the principal Debtor fail in payment, the Securities, if they be willing, shall have the lands of the Debtor until they shall be repaid; unless the principal Debtor can show himself to be acquitted thereof from the Securities.

VI. (15) The King shall not grant to any of his Barons, that he shall take aid of his Free-men, unless it be for the redeeming of his own body, for the making of his eldest son a Knight, and once for marrying his eldest daughter; and this shall be done by a reasonable aid.

VII. (16) No one shall do more service for a Knight's-fee than that which is due from thence.

VIII. (17, 18) That Common Pleas shall not follow the Court of our Lord the King, but shall be assigned to any certain place; and that recognitions shall be taken in their same Counties in this manner: that the King shall send two Justiciaries four times in the year, who, with four Knights of the same County, elected by the people thereof, shall hold Assizes of Novel Disseisin, Morte d'Ancestre, and Last Presentation; nor shall any be summoned for this, unless they be Jurors, or of the two parties.

IX. (20) That a Free-man shall be amerced for a small fault according to the degree of the fault; and for a greater crime according to it's magnitude, saving to him his Contenement; a Villian also shall be amerced in the same manner, saving his Wainage; and a Merchant

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in the same manner, saving his Merchandise; by the oath of faithful men of the neighborhood.

X. (22) That a Clerk shall be fined according to his Lay-fee in the manner aforesaid, and not according to his Ecclesiastical benefice.

XI. (23) No Town shall be amerced for the making of Bridges for river's banks, unless they shall of right have been anciently accustomed to do so.

XII. (35) That the Measure of Corn, Wine, the breadth of cloth, and other things be amended; and the same of Weights.

XIII. (19) That the Assizes of Novel Disseisin and Morte d'Ancestre be shortened, and made like to other Assizes.

XIV. (24) That no Sheriff shall, of himself, enter into Pleas belonging to the Crown, without the Crown's authority; (25) and that Counties and Hundreds shall be at the Ancient Ferme without increase, unless they be the Manors of our Lord the King.

XV. (26) If any who hold of the King shall die, although a Sheriff or other Officer of the King shall seize and register his goods by the view of lawful men, yet nothing shall be removed until it be fully known if he owed any thing, and his debts to our Lord the King shall be cleared; then, when the whole of the King's debts are paid, the remainder shall be given up to his executors, to do according to the will of the deceased; and if he should not owe any thing to the King, all the goods of the deceased shall be restored.

XVI. (27) If any Free-man shall die intestate, his goods shall be distributed by his nearest of kindred and his friends, and by the view of the Church.

XVII. (8) No Widow shall be obliged to marry while she is willing to live without an husband; so that she will give security that she will not marry without the

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consent of the King, if she hold of the King, or that of the Lord of whom she does hold.

XVIII. (28) No Constable nor other Officer shall take corn or other goods, unless he shall presently render payment; or unless he can have respite by the will of the seller.

XIX. (29) No Constable can distrain any Knight to give money for Castle-guard, if he be willing to keep it in his own Person, or by any other true man, if he shall not be able to do so by any reasonable cause; and if the King shall have sent him into the Army, he shall be free from Castle-guard for that space of time.

XX. (30) No Sheriff nor Bailiff of the King nor any other, shall take horses or carts of any Free-man, for carriage, unless it be by his own will.

XXI. (31) Neither the King nor his Bailiffs shall take another man's timber for castles or for any other uses, unless it be by the will of him to whom the timber was belonging.

XXII. (23) The King shall not hold the lands of them that have been convicted of felony, more than one year and one day, and then he shall give them up to the Lord of the fee.

XXIII. (33) That all Wears for the time to come shall be destroyed in the Rivers of Thames and Medway, and throughout all England.

XXIV. (34) No Writ called *Precipe,* shall for the future be granted to any one of any tenement, whereby a Free-man may lose his cause.

XXV. (52) If any one have been dispossessed or deprived by the King without judgment of his lands, his liberties, or his rights, they shall immediately be restored; and if any contention should arise upon that subject, then shall it be decided by the judgment of twenty-five Barons; and that those who were disseised

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by the Kings our Father or our Brother, shall have right without delay, according to the judgment of their Peers in the King's Courts; and if the King oweth any thing he shall have until the common term of the Crusaders, and then the Archbishop and Bishops shall cause justice to be done, and a certain day to be named for the debt being cleared.

XXVI. (36) Not any thing shall be given for a Writ of Inquisition of life or limb, but it shall be granted freely, without price, and not be denied.

XXVII. (37) If any hold of the King by Fee-farm, by Socage, or by Burgage, and of another by Knight's-service, our Lord the King shall not have the custody of the other's Knight's-Fee, by reason of the Socage or Burgage nor will We hold the custody of the Burgage, Socage, or Fee-farm;—and that a Free-man shall not loose his Knight's-fee by reason of Petit-Sergeantry, such as of them that hold another tenement by giving for it knives, arrows, or the like.

XXVIII. (38) No Bailiff can put any one to his Law upon his single accusation, without sufficient witnesses.

XXIX. (39) No Free-man's body shall be taken, nor imprisoned, nor disseised, nor outlawed, nor banished, nor in any ways be damaged, nor shall the King send him to prison by force, excepting by the judgment of his Peers and by the Law of the land.

XXX. (40) No right shall be sold, delayed, or denied.

XXXI. (41) That Merchants shall have safety to go and come, buy and sell, without any evil tolls, but by ancient and honest customs.

XXXII. (12) No Scutage nor aid shall be imposed on the Kingdom, excepting by the Common Council of the Kingdom; unless it be to redeem the King's body, to make his eldest son a Knight, and once to marry his

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eldest daughter; and that to be a reasonable aid:—and in like manner shall it be concerning the *Taillage* and aids of the City of London; and of other Cities, which from this time shall have their liberties; and that the City of London shall fully have all its liberties and free customs, as well by water as by land.

XXXIII. (42) That it shall be lawful for any one to go out of the Kingdom and return again, saving his allegiance to our Lord the King, unless in time of war, by some short space for the common benefit of the Kingdom.

XXXIV. (10) If any one have borrowed any thing of the Jews, more or less, and shall die before they have cleared that debt, there shall be no interest paid for that debt so long as the Heir is under age, of whomsoever he may hold; and if the debt shall fall into the King's hands, the King shall take only the chattel which is contained in the Charter.

XXXV. (11) If any one die indebted to the Jews, his Wife shall have her Dower; and if he shall have left children, they shall have necessaries provided for them according to his tenement, and out of the residue the debt shall be paid, saving the service of the Lords. (5) In like manner shall it be with other debts, and that guardians of land shall give to the Heir when he shall come to full age, his land stocked according to what the same can reasonably bear, and the land shall require, with ploughs and carriages.

XXXVI. (43) If any man hold of us any Escheat, such as the Honour of Wallingford, Nottingham, Bologne, or Lancaster, or of any other Escheats which are in the King's hands and are Baronies, and dies, his Heir shall not give any other Relief nor do to the King any other service than he would do to the Baron; and that

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the King shall hold it in the same manner as if the Baron held it.

XXXVII. (55) That Fines which are made for Dowers, the Marriages of Heirs, and unjust amerciaments against the Law of the land, shall be either entirely forgiven, or else left to be decided by the judgment of the twenty-five Barons, or by the decision of the greater part of them, with one Archbishop and others whom he shall be willing to call with him; but so, that if any one or any of the twenty-five shall be concerned in the cause, they shall be removed, and others be substituted in their places by the remainder of the twenty-five.

XXXVIII. (49) That the Hostages and engagements which were given to the King as security shall be delivered up.

XXXIX. (44) That they who dwell without the Forest shall not appear before the Justiciaries of the Forests upon a common summons, unless they are impleaded or are securities; (48) and that irregular customs of Forests and of Foresters, and Warrenners, and Sheriffs, and Keepers of Rivers, shall be amended by twelve Knights of the same Shire, who ought to be elected by true men of the same Shire.

XL. (50) That the King shall remove from his Bailiwicks the relations and all the followers of Gerard de Athyes, so that for the future they shall not hold a Bailiwick; they are namely, Engelard, Andrew, Peter, and Gyon de Chancell, Gyon de Cygony, Matthew de Martin, and his brother, and Walter, his nephew, and Philip Mark.

XLI. (51) That the King shall remove all Foreign Knights, Stipendiaries, Crossbowmen, Infringers, and Servitors who came with horses and arms to the injury of the kingdom.

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XLII. (45) That the King shall make Justiciaries, Sheriffs, and Bailiffs of such as know the Law of the Land, and are disposed duly to observe it.

XLIII. (46) That Barons who have founded Abbies, and hold them by Charters from the King, or by ancient tenure, shall have the custody of them when they shall be vacant.

XLIV. (56) If the King have diseised or dispossessed the Welsh of lands or liberties, or other things in England or in Wales, they shall immediately, without plea, be restored; and if they were disseised or dispossessed of their English tenements by the King's father or brother, without judgment of their Peers, he shall, without delay, do them justice according to the manner of justice in England; for their English tenements according to the English Law, for their Welsh tenements according to the Law of Wales, and for tenements in the Marches according to the Law of the Marches; the same shall the Welsh do to the King and to his subjects.

XLV. (58) That the King shall give up the son of Llewellin; and moreover all the Hostages of Wales, and the engagements which they have entered into for the security of the peace.

XLVI. (59) That the King shall treat with the King of Scots, on the restoring of his Hostages, and his rights and liberties, according to the same form as he shall do with the Barons of England, unless it ought to be otherwise by the engagements which the King hath entered into, and this shall be decided by the judgment of the Archbishop, and others, whom he shall think proper to call with him.

XLVII. (47) And all Forests which have been afforested by the King in his time, shall be disforested,

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and the same shall be done with rivers which have been fenced by the King himself.

XLVIII. (60) All the aforesaid customs and liberties which the King hath conceded are to be holden in the Kingdom, as much as belongs to him; therefore all his subjects of the realm, as well Ecclesiastics as Laity, shall observe them, inasmuch as they are concerned, from themselves towards their dependants.

XLIX. (61) This is the form of security for the observance of the peace and liberties between the King and the Kingdom. That the Barons may elect twenty-five Barons of the Kingdom, whom they will, who shall take care with all their might to hold and observe, and cause to be observed, the peace and liberties which our Lord the King hath conceded, and by his Charter hath confirmed; so that, namely, if the King or the Justiciaries or Bailiffs of the King, or any of his Ministers shall in any case fail in the performance of them towards any person, or shall break through these Articles of peace and security, and the offense be notified to four Barons of the aforesaid five and twenty, they, the four Barons, shall go to our Lord the King, or to his Justiciary, if the King shall be out of the Kingdom, and, laying open the grievance, shall petition to have it redressed without delay; and if the King shall not amend it, or his Justiciary shall not amend it for him, if the King shall be out of the Kingdom, within a reasonable time, determined upon in the aforesaid Charter,—the four Barons shall refer the case to the remainder of the twenty-five, and they, the twenty-five, with the whole community of the land, shall distrain and distress the King by all the means which they can; that is to say, by taking his Castles, Lands, Possessions, and in every other manner which they can, until amendment shall be made according to their decision, saving the persons of

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the King and Queen and of their children, and when the grievance shall be redressed, they shall obey our Lord the King as before; and whosoever of the Kingdom is willing, may swear to obey the orders of the aforesaid five and twenty Barons, and harrass the King with them to the extent of his power, and the King shall give public and free leave to any to swear to them that are willing to swear; and he shall not prohibit any from swearing; also, all those of the land who of themselves and of their own accord will not swear to join with the five and twenty Barons, to distrain and distress the King, the King shall make them swear to the same such as is aforesaid, by his command. Also, if any of the aforesaid five and twenty Barons shall die or remove from the land, or by any other way be prevented from putting the things aforesaid into execution, the five and twenty may elect another in his place, by their own decision, who shall be sworn in a similar way with the rest. Also in all things that are committed to the charge of these five and twenty Barons, if, when they be all assembled, and between themselves they should disagree upon anything, or some of them when called cannot or will not come, whatever be agreed upon by the greater part, shall be as firm and valid as if all the five and twenty had given their consent; and the aforesaid five and twenty shall swear that all the aforesaid they will faithfully observe, and will cause to be observed, with their whole power. (63) Moreover, the King shall make them secure by the engagements of the Archbishops and Bishops, and of Master Pandulph, that he will not procure from our Lord the Pope any thing by which any part of this Covenant shall be revoked or lessened, and if any such thing be obtained, let it be considered as null and void.

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MAGNA CHARTA,
OR
THE GREAT CHARTER OF KING JOHN,

GRANTED JUNE 15TH, A. D. 1215.
IN THE SEVENTEENTH YEAR OF HIS REIGN.

(Translated from the original, preserved in the archives of Lincoln Cathedral.)

[NOTE.—The original is not in paragraphs. For convenience of reference the charter is here presented in paragraphs, to each of which I have prefixed a title. C. Z. L.]

[Introduction.]—John, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Earl of Anjou, to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to all Bailiffs, and his faithful subjects,—Greeting. Know ye, that We, in the presence of God, and for the salvation of our own soul, and of the souls of all our ancestors, and of our heirs, to the honour of God, and the exaltation of the Holy Church and amendment of our Kingdom, by the counsel of our venerable fathers, Stephen, Archbishop of Canterbury, Primate of all England, and Cardinal of the Holy Roman Church, Henry, Archbishop of Dublin, William of London, Peter of Winchester, Joceline of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, and Benedict of Rochester, Bishops; Master Pandulph, our Lord the Pope's Subdeacon and familiar, Brother Almeric, Master of the Knights-Templars in England, and of these noble persons, William Mareschal, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William,

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Earl of Arundel, Alan de Galloway, Constable of Scotland, Warin Fitz-Gerald, Hubert de Burgh, Seneschal of Poictou, Peter Fitz-Herbert, Hugh de Nevil, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip de Albiniac, Robert de Roppel, John Mareschal, John Fitz-Hugh, and others our liegemen; have, in the First place, granted to God, and by this present Charter, have confirmed, for us and our heirs forever:—

(I.) **[English church to be free.]**—That the English Church shall be free, and shall have her whole rights and her liberties inviolable; and we will this to be observed in such a manner, that it may appear from thence, that the freedom of elections, which was reputed most requisite to the English Church, which we granted, and by our Charter confirmed, and obtained the Confirmation of the same, from our Lord Pope Innocent the Third, before the rupture between us and our Barons, was of our own free will; which Charter we shall observe, and we will it to be observed with good faith, by our heirs forever.

(II.) **[Liberties granted.]**—We have also granted to all the Freemen of our Kingdom, for us and our heirs for ever, all the underwritten Liberties, to be enjoyed and held by them and by their heirs, from us and from our heirs.

(II.1) **[Relief of heirs under military service.]**—If any of our Earls or Barons, or others who hold of us in chief by military service, shall die, and at his death his heir shall be of full age, and shall owe a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an Earl, a whole Earl's Barony for one hundred pounds; the heir or heirs of a Baron for a whole Barony, by one hundred pounds; the heir or heirs of a Knight, for a whole Knight's Fee, by

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one hundred shillings at most; and he who owes less shall give less, according to the ancient custom of fees.

(III.2) **[Relief for minors or wards.]**—But if the heir of any such be under age, and in wardship, when he comes to age he shall have his inheritance without relief and without fine.

(IV.3) **[Warden's duties over minor's lands regulated.]**—The warden of the land of such heir who shall be under age shall not take from the lands of the heir any but reasonable issues, and reasonable customs, and reasonable services, and that without destruction and waste of the men or goods; and if we commit the custody of any such lands to a Sheriff, or any other person who is bound to us for the issues of them, and he shall make destruction or waste upon the ward-lands, we will recover damages from him, and the lands 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 have assigned them. And if we shall give or sell to any one the custody of any such lands, and he shall make destruction or waste upon them, he shall lose the custody; and it shall be committed to two lawful and discreet men of that fee, who shall answer to us in like manner as it is said before.

(V.) **[Warden to maintain property.]**—But the warden, as long as he hath the custody of the lands, shall keep up and maintain the houses, parks, warrens, ponds, mills, and other things belonging to them, out of their issues; (35) and shall restore to the heir when he comes of full age, his whole estate, provided with ploughs and other implements of husbandry, according as the time of Wainage shall require, and the issues of the lands can reasonably afford.

(VI.3) **[Marriage of heirs.]**—Heirs shall be married without disparagement, so that before the marriage

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be contracted, it shall be notified to the relations of the heir by consanguinity.

(VII.4.) **[Widow's dower.]**—A widow, after the death of her husband, shall immediately, and without difficulty, have her marriage and her inheritance; nor shall she give anything for her dower, or for her marriage, or for her inheritance, which her husband and she held at the day of his death; and she may remain in her husband's house forty days after his death, within which time her dower shall be assigned.

(VIII.17.) **[Widow's remarriage.]**—No widow shall be distrained to marry herself, while she is willing to live without a husband; but yet she shall give security that she will not marry herself without our consent, if she hold of us, or without the consent of the lord of whom she does hold, if she hold of another.

(IX.5) **[Debtor's privileges; surety's rights.]**—Neither we nor our Bailiffs will seize any land or rent for any debt, while the chattels of the debtor are sufficient for the payment of the debt; nor shall the sureties of the debtor be distrained, while the principal debtor is able to pay the debt: and if the principal debtor fail in payment of the debt, not having wherewith to discharge it, the sureties shall answer for the debt; and if they be willing, they shall have the lands and rents of the debtor, until satisfaction be made to them for the debt which they had before paid for him, unless the principal debtor can shew himself acquitted thereof against the said sureties.

(X.34) **[Debts to Jews.]**—If any one hath borrowed any thing from the Jews, more or less, and die before that debt be paid, the debt shall pay no interest so long as the heir shall be under age, of whomsoever he may hold; and if that debt shall fall into our hands,

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we will not take any thing except the chattel contained in the bond.

(XI.35) **[Dowress preferred to Jewish creditor.]**—And if any one shall die indebted to the Jews, his wife shall have her dower and shall pay nothing of that debt; and if children of the deceased shall remain who are under age, necessaries shall be provided for them, according to the tenement which belonged to the deceased; and out of the residue the debt shall be paid, saving the rights of the lords (*of whom the lands are held*). In like manner let it be with debts owing to others than Jews.

(XII.32) **[Aids and scutages regulated.]**—No scutage nor aid shall be imposed in our kingdom, unless by the common council of our kingdom; excepting to redeem our person, to make our eldest son a knight, and once to marry our eldest daughter, and not for these, unless a reasonable aid shall be demanded.

(XIII.) **[Municipal liberties guaranteed.]**—In like manner let it be concerning the aids of the City of London. And the City of London should have all it's ancient liberties, and it's free customs, as well by land as by water. Furthermore, we will and grant that all other Cities, and Burghs, and Towns, and Ports, should have all their liberties and free customs.

(XIV.) **[Council for aids and scutages to be summoned.]**—And also to have the common council of the kingdom, to assess and aid, otherwise than in the three cases aforesaid; and for the assessing of scutages, we will cause to be summoned the Archbishops, Bishops, Abbotts, Earls, and great Barons, individually, by our letters. And besides, we will cause to be summoned in general by our Sheriffs and Bailiffs, all those who hold of us in chief, at a certain day, that is to say at the distance of forty days, (*before their meeting,*) at the

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least, and to a certain place; and in all the letters of summons, we will express the cause of the summons; and the summons being thus made, the business shall proceed on the day appointed, according to the counsel of those who shall be present, although all who had been summoned have not come.

(XV.6) **[Aids from freemen regulated.]**—We will not give leave to any one, for the future, to take an aid of his own free-men, except for redeeming his own body, and for making his eldest son a knight, and for marrying once his eldest daughter; and not that unless it be a reasonable aid.

(XVI.7) **[Knight service regulated.]**—None shall be distrained to do more service for a Knight's-Fee, nor for any other free tenement, than what is due from thence.

(XVII.8) **[Common pleas not to follow King's court.]**—Common Pleas shall not follow our court, but shall be held in any certain place.

(XVIII.) **[Certain judicial proceedings regulated.]**—Trials upon the Writs of *Novel Disseisin,* of *Mort d'Ancestre* (death of the ancestor), and *Darrein Presentment* (last presentation), shall not be taken but in their proper counties, and in this manner: We, or our Chief Justiciary, if we are out of the kingdom, will send two Justiciaries into each county, four times in the year, who, with four knights of each county, chosen by the county, shall hold the aforesaid assizes, within the county, on the day, and at the place appointed.

(XIX.13) **[Assizes must hear all causes.]**—And if the aforesaid assizes cannot be taken on the day of the county-court, let as many knights and freeholders, of those who were present at the county-court, remain

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behind, as shall be sufficient to do justice, according to the great or less importance of the business.

(XX.9) **[Amerciaments to be reasonable.]**—A free-man shall not be amerced for a small offense, but only according to the degree of the offence; and for a great delinquency, according to the magnitude of the delinquency, saving his contenement; a Merchant shall be amerced in the same manner, saving his merchandise, and a villain shall be amerced after the same manner, saving to him his Wainage, if he shall fall into our mercy; and none of the aforesaid amerciaments shall be assessed, but by the oath of honest men of the vicinage.

(XXI.) **[Amerciament of Barons and Earls.]**—Earls and Barons shall not be amerced but by their Peers, and that only according to the degree of their delinquency.

(XXII.10) **[Amerciament of clerks.]**—No Clerk shall be amerced for his lay-tenement, but according to the manner of the others as aforesaid, and not according to the quantity of his ecclesiastical benefice.

(XXIII.11) **[No distraint for new bridges or embankments.]**—Neither a town nor any person shall be distrained to build bridges or embankments, excepting those which anciently, and of right, are bound to do it.

(XXIV.14) **[Crown pleas not to be held by certain officers.]**—No Sheriff, Constable, Coroners, nor other of our Bailiffs, shall hold pleas of our crown.

(XXV.) **[Certain ancient rents preserved.]**—All Counties, and Hundreds, Trethings, and Wapentakes, shall be at the ancient rent, without any increase, excepting in our Demesne-manors.

(XXVI.15) **[Crown debts preferred against deceased holder of lay-fee.]**—If any one holding of us a lay-fee dies, and the Sheriff or our Bailiff shall show our

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letters-patent of summons concerning the debt which the defunct owed to us, it shall be lawful for the Sheriff or our Bailiff to attach and register the chattels of the defunct found on that lay-fee, to the amount of that debt, by the view of lawful men, so that nothing shall be removed from thence until our debt be paid to us; and the rest shall be left to the executors to fulfil the will of the defunct; and if nothing be owing to us by him, all the chattels shall fall to the defunct, saving to his wife and children their reasonable shares.

(XXVII.16) **[Distribution of intestate freeman's estate.]**—If any free-man shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by the view of the Church, saving to every one the debts which the defunct owed.

(XXVIII.18) **[Taking personal property by certain officers regulated.]**—No Constable nor other Bailiff of ours shall take the corn or other goods of any one, without instantly paying money for them, unless he can obtain respite from the free will of the seller.

(XXIX.19) **[Castle-guard regulated.]**—No Constable (*Governor of a Castle*) shall distrain any Knight to give money for castle-guard, if he be willing to perform it in his own person, or by another able man, if he cannot perform it himself, for a reasonable cause; and if we have carried or sent him into the army, he shall be excused from castle-guard, according to the time that he shall be in the army by our command.

(XXX.20) **[Freeman's carts or horses not to be taken without his consent.]**—No Sheriff nor Bailiff of ours, nor any other person shall take the horses or carts of any free-man, for the purpose of carriage, without the consent of the said free-man.

(XXXI.21) **[Wood not to be taken without owner's consent.]**—Neither we, nor our Bailiff's, will take

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another man's wood, for our castles or other uses, unless by the consent of him to whom the wood belongs.

(XXXII.22) **[Convicts' lands.]**—We will not retain the lands of those who have been convicted of felony, excepting for one year and one day, and then they shall be given up to the lord of the fee.

(XXXIII.23) **[Dams to be removed from navigable streams.]**—All kydells (*weirs*) for the future shall be quite removed out of the Thames, and the Medway, and through all England, excepting upon the sea-coast.

(XXXIV.24) **[Præcipe against freemen regulated.]**—The writ which is called *Præcipe*, for the future shall not be granted to any one of any tenement, by which a free-man may lose his court.

(XXXV.12) **[Weights and measures to be uniform.]**—There shall be one measure of wine throughout all our kingdom, and one measure of ale, and one measure of corn; namely, the quarter of London; and one breadth of dyed cloth, and of russets, and of halberjects; namely, two ells within the lists. Also it shall be the same with weights as with measures.

(XXXVI.26) **[Inquisition of life or limb to be free.]**—Nothing shall be given or taken for the future for the Writ of Inquisition of life or limb; but it shall be given without charge, and not denied.

(XXXVII.27) **[Custody of certain heirs regulated.]**—If any hold of us by Fee-Farm, or Socage, or Burgage, and hold land of another by Military Service, we will not have the custody of the heir, nor of his lands, which are of the fee of another, on account of that Fee-Farm, or Socage, or Burgage; nor will we have the custody of the Fee-Farm, Socage, or Burgage, unless the Fee-Farm owe Military Service. We will not have the custody of the heir, nor of the lands of any one,

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which he holds of another by Military Service, on account of any Petty-Sergeantry which he holds of us, by the service of giving us daggers, or arrows, or the like.

(XXXVIII.28) **[Defendant's rights.]**—No Bailiff, for the future, shall put any man to his law, upon his own simple affirmation, without credible witnesses produced for that purpose.

(XXXIX.29) **[Freemen's rights protected.]**—No freeman shall be seized, or imprisoned, or dispossessed, or outlawed, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land.

(XL.30) **[Right and justice freely and promptly given.]**—To none will we sell, to none will we deny, to none will we delay, right or justice.

(XLI.31) **[Foreign merchants protected.]**—All Merchants shall have safety and security in coming into England, and going out of England, and in staying and in travelling through England, as well by land as by water, to buy and sell, without any unjust exactions, according to ancient and right customs, excepting in the time of war, and if they be of a country at war against us; and if such are found in our land at the beginning of a war, they shall be apprehended without injury of their bodies and goods, until it be known to us, or to our Chief Justiciary, how the Merchants of our country are treated who are found in the country at war against us; and if ours be in safety there, the others shall be in safety in our land.

(XLII.33) **[Free travel permitted.]**—It shall be lawful to any person, for the future, to go out of our kingdom, and to return, safely and securely, by land or by water, saving his allegiance to us, unless it be in time of war, for some short space, for the common good of

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the kingdom; excepting prisoners and outlaws, according to the laws of the land, and of the people of the nation at war against us, and Merchants, who shall be treated as it is said above.

(XLIII.36) **[Duty of heirs of escheated lands.]**—If any hold of any escheat, as of the Honour of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which are in our land, and are Baronies, and shall die, his heirs shall not give any other relief, nor do any other service to us, than he should have done to the Baron, if that Barony had been in the hands of the Baron; and we will hold it in the same manner that the Baron held it.

(XLIV.39) **[Jurisdiction of forest courts limited.]**—Men who dwell without the forest, shall not come, for the future, before our Justiciaries of the Forest on a common summons; unless they be parties in a plea, or sureties for some person or persons who are attached for the Forest.

(XLV.42) **[Officers to be competent.]**—We will not make Justiciaries, Constables, Sheriffs, or Bailiffs, excepting of such as know the laws of the land, and are well disposed to observe them.

(XLVI.43) **[Custody of certain vacant abbies.]**—All Barons who have founded Abbies, which they hold by charters from the Kings of England, or by ancient tenure, shall have the custody of them when they become vacant, as they ought to have.

(XLVII.47) **[Certain forests and water-banks to be abandoned.]**—All Forests which have been made in our time, shall be immediately disforested; and it shall be done so with Water-banks which have been taken or fenced in by us during our reign.

(XLVIII.39) **[Inquiry concerning forests and water-banks.]**—All evil customs of Forests and War-

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rens, and of Foresters and Warreners, Sheriffs and their officers, Water-banks and their keepers, shall immediately be inquired into by twelve Knights of the same county, upon oath, who shall be elected by good men of the same county; and within forty days after the inquisition is made, they shall be altogether destroyed by them, never to be restored; provided that this be notified to us before it be done, or to our Justiciary, if we be not in England.

(XLIX.38) **[Hostages and charters to be restored.]**—We will immediately restore all hostages and charters, which have been delivered to us by the English, in security of the peace and of their faithful service.

(L.40) **[Certain persons to be removed from their bailiwicks.]**—We will remove from their bailiwicks the relations of Gerard de Athyes, so that, for the future, they shall have no bailiwick in England; Engelard de Cygony, Andrew, Peter, and Gyone de Chancell, Gyone de Cygony, Geoffrey de Martin, and his brothers, Philip Mark, and his brothers, and Geoffrey, his nephew, and all their followers.

(LI.41) **[Certain knights and others to be removed out of the kingdom.]**—And immediately after the conclusion of the peace, we will remove out of the kingdom all foreign knights, cross-bowmen, and stipendiary soldiers, who have come with horses and arms to the molestation of the kingdom.

(LII.25) **[Restoration of certain estates.]**—If any have been disseised or dispossessed by us, without a legal verdict of their peers, of their lands, castles, liberties, or rights, we will immediately restore these things to them; and if any dispute shall arise on this head, then it shall be determined by the verdict of the twenty-five Barons, of whom mention is made below, for the

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security of the peace. Concerning all those things of which any one hath been disseised or dispossessed, without the legal verdict of his peers by King Henry our father, or King Richard our brother, which we have in our hand, or others hold with our warrants, we shall have respite, until the common term of the Croisaders, excepting those concerning which a plea had been moved, or an inquisition taken, by our precept, before taking the Cross; but as soon as we shall return from our expedition, or if, by chance, we should not go upon our expedition, we will immediately do complete justice therein.

(LIII.) **[Provisions concerning certain forests, wardships, and abbies.]**—The same respite will we have, and the same justice shall be done, concerning the disforestation of the forests, or the forests which remain to be disforested, which Henry our father, or Richard our brother, have afforested; and *the same* concerning the wardship of lands which are in another's fee, but the wardship of which we have hitherto had, occasioned by any of our fees held by Military Service; and for Abbies founded in any other fee than our own, in which the Lord of the fee hath claimed a right; and when we shall have returned, or if we shall stay from our expedition, we shall immediately do complete justice in all these pleas.

(LIV.) **[Woman's right of appeal limited.]**—No man shall be apprehended or imprisoned on the appeal of a woman, for the death of any other man than her husband.

(LV.37) **[Unjust fines and amerciaments to be remitted.]**—All fines that have been made by us unjustly, or contrary to the laws of the land; and all amerciaments that have been imposed unjustly, or contrary to the laws of the land, shall be wholly remitted,

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or ordered by the verdict of the twenty-five Barons, of whom mention is made below, for the security of the peace, or by the verdict of the greater part of them, together with the aforesaid Stephen, Archbishop of Canterbury, if he can be present, and others whom he may think fit to bring with him; and if he cannot be present, the business shall proceed, notwithstanding, without him; but so, that if any one or more of the aforesaid twenty-five Barons have a similar plea, let them be removed from that particular trial, and others, elected and sworn by the residue of the same twenty-five, be substituted in their room, only for that trial.

(LVI.44) **[Welshmen's rights to be restored.]**—If we have disseised or dispossessed any Welshmen of their lands, or liberties, or other things, without a legal verdict of their peers, in England or in Wales, they shall be immediately restored to them; and if any dispute shall arise upon this head, then let it be determined in the Marches by the verdict of their peers; for a tenement of England, according to the law of England; for a tenement of Wales, according to the law of Wales; for a tenement of the Marches, according to the law of the Marches. The Welsh shall do the same to us and to our subjects.

(LVII.) **[Restoration of Welsh property taken by former Kings.]**—Also concerning those things of which any Welsh-man hath been disseised or dispossessed without the legal verdict of his peers, by King Henry our father, or King Richard our brother, which we have in our hand, or others hold with our warrant, we shall have respite, until the common term of the Croisaders, excepting for those concerning which a plea had been moved, or an inquisition made, by our precept, before our taking the Cross. But as soon as we shall return from our expedition, or if, by chance, we should not

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go upon our expedition, we shall immediately do complete justice therein, according to the laws of Wales, and the parts aforesaid.

(LVIII.45) **[Certain hostages to be released.]**—We will immediately deliver up the son of Llewelin, and all the hostages of Wales, and release them from their engagements which were made with us, for the security of the peace.

(LIX.46) **[Scotch King's rights to be restored.]**—We shall do to Alexander, King of Scotland, concerning the restoration of his sisters and hostages, and his liberties and rights, according to the form in which we act to our other Barons of England, unless it ought to be otherwise by the charters which we have from his father William, the late King of Scotland; and this shall be by the verdict of his peers, in our court.

(LX.48) **[Customs and liberties, continued.]**—Also all these customs and liberties aforesaid, which we have granted to be held in our kingdom, for so much of it as belongs to us, all our subjects, as well clergy as laity, shall observe towards their tenants as far as concerns them.

(LXI.49) **[Twenty-five barons appointed to enforce charter.]**—But since we have granted all these things aforesaid, for God, and for the amendment of our kingdom, and for the better extinguishing the discord which has arisen between us and our Barons, we, being desirous that these things should possess entire and unshaken stability for ever, give and grant to them the security underwritten; namely, that the Barons may elect twenty-five Barons of the kingdom, whom they please, who shall, with their whole power, observe, keep, and cause to be observed, the peace and liberties which we have granted to them, and have confirmed by this our present charter, in this manner: that is to say, if we,

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or our Justiciary, or our bailiffs, or any of our officers, shall have injured any one in anything, or shall have violated any article of the peace or security, and the injury shall have been shown to four of the aforesaid twenty-five Barons, the said four Barons shall come to us, or to our Justiciary if we be out of the kingdom, and making known to us the excess committed, petition that we cause that excess to be redressed without delay. And if we shall not have redressed the excess, or, if we have been out of the kingdom, our Justiciary shall not have redressed it within the term of forty days, computing from the time when it shall have been made known to us, or to our Justiciary if we have been out of the kingdom, the aforesaid four Barons shall lay that cause before the residue of the twenty-five Barons; and they, the twenty-five Barons, with the community of the whole land, shall distress and harass us by all the ways in which they are able; that is to say, by the taking of our castles, lands, and possessions, and by *any* other means in their power, until the excess shall have been redressed, according to their verdict; saving *harmless* our person, and *the persons* of our Queen and children; and when it hath been redressed, they shall behave to us as they have done before. And whoever of our land pleaseth may swear that he will obey the commands of the aforesaid twenty-five Barons, in accomplishing all the things aforesaid, and that with them he will harass us to the utmost of his power; and we publicly and freely give leave to every one to swear who is willing to swear; and we will never forbid any to swear. But all those of our land, who, of themselves, and of their own accord, are unwilling to swear to the twenty-five Barons, to distress and harass us *together* with them, we will compel them by our command, to swear as aforesaid. And if any one of the twenty-five Barons shall

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die, or remove out of the land, or in any other way shall be prevented from executing the things above said, they who remain of the twenty-five Barons shall elect another in his place, according to their own pleasure, who shall be sworn in the same manner as the rest. In all those things which are appointed to be done by these twenty-five Barons, if it happen that all the twenty-five have been present, and have differed in their opinions about any thing, or if some of them who had been summoned, would not, or could not be present, that which the greater part of those who were present shall have provided and decreed shall be held as firm and as valid as if all the twenty-five had agreed in it; and the aforesaid twenty-five shall swear that they will faithfully observe, and, with all their power, cause to be observed, all the things mentioned above. And we will obtain nothing from any one, by ourselves, nor by another, by which any of these concessions and liberties may be revoked or diminished. And if any such thing shall have been obtained, let it be void and null; and we will never use it, neither by ourselves nor by another.

(LXII.) **[General amnesty.]**—And we have fully remitted and pardoned to all men, all the ill-will, rancour, and resentments which have arisen between us and our subjects, both clergy and laity, from the commencement of the discord. Moreover, we have fully remitted to all the clergy and laity, and as far as belongs to us, have fully pardoned all transgressions committed by occasion of the said discord, from Easter, in the sixteenth year of our reign, until the conclusion of the peace. (49) And, moreover, we have caused to be made to them testimonial letters-patent of the Lord Stephen, Archbishop of Canterbury, the Lord Henry, Archbishop of Dublin, and of the aforesaid Bishops, and of Master

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Pandulph concerning this security, and the aforesaid concessions.

(LXIII.) **[Charter rights guaranteed forever.]**—Wherefore, our will is, and we firmly command that the Church of England be free, and that the men in our kingdom have and hold the aforesaid liberties, rights, and concessions, well and in peace, freely and quietly, fully and entirely, to them and their heirs, of us and our heirs, in all things and places, for ever as is aforesaid. It is also sworn, both on our part, and on that of the Barons, that all the aforesaid shall be observed in good faith, and without any evil intention. Witnessed by the above, and many others. Given by our hand in the Meadow which is called Runningmead, between Windsor and Staines, this 15th day of June, in the 17th year of our reign.

(SEAL.)

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CHARTER OF LIBERTIES AND PRIVILEGES, 1683.

[Passed by the first New York legislature, October 30, 1683. A sketch of this charter and of its successor, the charter of 1691, will be found in the chapter on the Colonial Period. For convenience of reference I have prefixed a title and number to each paragraph of the charter. I have also added explanatory notes showing the origin and subsequent continuance of various provisions.]

FFOR The better Establishing the Government of this province of New Yorke and that Justice and Right may be Equally done to all persons within the same
BEE It Enacted by the Governour Councell and Representatives now in General Assembly mett and assembled and by the authority of the same.

[The preamble states the general purpose of the charter, and is quite similar, at least, in spirit, to the preamble to our Constitutions. A sketch of the enacting clause, showing its evolution from early parliamentary forms, will be found in the fourth volume, in a note to article 3, § 14, of the Constitution, which prescribes the form of the enacting clause.]

1. **[Supreme legislative authority.]**—THAT The Supreme Legislative Authority under his Majesty and Royall Highnesse James Duke of Yorke Albany &c Lord proprietor of the said province shall forever be and reside in a Governour, Councell, and the people mett in Generall Assembly.

[The principle of this paragraph, with modifications, appears in the Constitution of 1777, § 2; 1821, art. 1, § 1; 1846, art. 3, § 1; 1894, art. 3, § 1. The phrase "supreme legislative authority" appears in the first Constitution as "supreme legislative power," and in subsequent Constitutions as "legislative power." The governor was also made a constituent part of the legislature. In the chapter on the first Constitution I have noted the fact that the convention which framed that instrument once adopted a similar provision, but afterwards the plan was abandoned.]

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2. **[Governor and council.]**—THAT The Exercise of the Cheife Magistracy and Administracon of the Government over the said province shall bee in the said Governour assisted by a Councell with whose advice and Consent or with at least four of them he is to rule and Governe the same according to the Lawes thereof.

[The executive power of the colony was thus vested in a governor and council. This power had already existed many years and was continued through the colonial period. A similar provision was proposed in the convention which framed the first Constitution, and so far as the appointment of officers was concerned was in fact established by that instrument through the provision for a council of appointment, composed of the governor and four senators, which possessed the absolute power of appointment and removal of nearly all officers, both civil and military.]

3. **[Council to act in governor's absence.]**—THAT In Case the Governour shall dye or be absent out of the province and that there be noe person within the said province Comissionated by his Royall Highnesse his heires or Successours to be Governour or Comander in Cheife there That then the Councell for the time being or Soe many of them as are in the Said province doe take upon them the Administracon of the Governour and the Execucon of the Lawes thereof and powers and authorityes belonging to the Governour and Councell the first in nominacon in which Councell is to preside untill the said Governour shall returne and arrive in the said province againe, or the pleasure of his Royall Highnesse his heires or Successours Shall be further knowne.

[This paragraph, which was intended to provide for continuing the government whenever the office of governor should become actually or constructively vacant, appears in substance in several commissions issued to governors during the colonial period. This subject has been treated at some length in the fourth volume, in notes to §§ 6 and 7 of article 4 of the Constitution of 1894.]

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4. [General assembly, when to meet.]—THAT According to the usage Custome and practice of the Realme of England a sessions of a Generall Assembly be held in this province once in three yeares at least.

[An assembly which could not meet would be of little value as a part of the governmental machinery, or as a means of protection against royal encroachments; hence it was important to provide for frequent meetings of the legislature. Afterwards the people of the colony insisted upon annual meetings of the legislature, and annual appropriations. This subject is further considered in the chapter on the Colonial Period, and also in the article in the third volume on apportionment during the Colonial Period. The present Constitution requires annual meetings of the legislature.]

5. [Right of suffrage; qualifications of voters.]—THAT Every ffreeholder within this province and ffreeman in any Corporacon Shall have his free Choise and Vote in the Electing of the Representatives without any manner of constraint or Imposicon. And that in all Eleccons the Majority of Voices shall carry itt and by freeholders is understood every one who is Soe understood according to the Lawes of England.

[This provision was continued with some statutory modifications during the Colonial Period, and was substantially incorporated in the first Constitution (1777) §§ 7 and 10, and Const. 1821, art. 2, § 1. The property qualification, except as to colored voters, was abrogated by the amendment of 1826. See Constitution of 1846, art. 2, § 1, including amendments of 1864 and 1874, and the Constitution of 1894, art. 2, § 1, for subsequent and existing provisions on this subject.]

6. [Representatives, how apportioned.]—THAT The persons to be Elected to sitt as representatives in the Generall Assembly from time to time for the severall Cittyes townes Countyes Shires or Divisions of this province and all places within the same shall be according to the proporcon and number hereafter Expressed that is to say for the Citty and County of New Yorke four, for the County of Suffolke two, for Queens County two, for Kings County two, for the County of

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Richmond two for the County of West Chester two, for the County of Ulster two for the County of Albany two and for Schenectade within the said County one for Dukes County two, for the County of Cornwall two and as many more as his Royall Highnesse shall think fitt to Establish.

[This subject is considered elsewhere in this volume, and also in detail in the article on colonial apportionment in the third volume. Provisions relating to the same subject will be found in the Constitution of 1777, § 4; 1821, art. 1, § 7; 1846, art. 3, § 5; and 1894, art. 3, § 5.]

7. **[General assembly, how constituted.]**—THAT All persons Chosen and Assembled in manner aforesaid or the Major part of them shall be deemed and accounted the Representatives of this province which said Representatives together with the Governour and his Councell Shall forever be the Supreame and only Legislative power under his Royall Highnesse of the said province.

[See note to par. 1.]

8. **[Sessions of General Assembly.]**—THAT The said Representatives may appoint their owne Times of meeting dureing their sessions and may adjourne their house from time to time to such time as to them shall seeme meet and convenient.

[This made the assembly independent of the governor and council in the transaction of its ordinary business, including the power of adjournment. The first Constitution contained a provision, which has been continued in subsequent Constitutions, prohibiting the adjournment by either House for more than two days without the consent of the other; but the colonial assembly was not, in this respect, subject to the control of the governor and council. They formed the executive branch of the government and were a continuing authority, not chosen by the people, and it would have been a serious limitation on the power of the people if their representatives had been made subject to executive control.]

9. **[Assembly may determine qualifications and election of members.]**—THAT THE said Represent-

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atives are the sole Judges of the Qualificacons of their owne members, and likewise of all undue Eleccons and may from time to time purge their house as they shall see occasion dureing the said sessions.

[This was the assertion of an ancient parliamentary privilege and it has been continued in all our Constitutions. Const. 1777, § 9; 1821, art. 1, § 3; 1846, art. 3, § 10; 1894, art. 3, § 10.]

10. **[Immunities of members.]**—THAT Noe member of the general Assembly or their servants dureing the time of their Sessions and whilest they shall be goeing to and returning from the said Assembly shall be arrested sued imprisoned or any wayes molested or troubled nor be compelled to make answere to any suite, Bill, plaint, Declaracon or otherwise, (Cases of High Treason and felony only excepted) provided the number of the said servants shall not Exceed three.

[This was another ancient privilege which was as necessary for members of the assembly as for members of the House of Commons. The present provision on this subject is found in the legislative law, § 2, which prohibits the arrest of members of the legislature on civil process, except in certain extraordinary cases. See, as to Congress, Articles of Confederation, art. 5.]

11. **[Laws must be approved by governor and council.]**—THAT All bills agreed upon by the said Representatives or the Major part of them shall be presented unto the Governour and his Councell for their Approbacon and Consent All and Every which Said Bills soe approved of Consented to by the Governour and his Councell shall be Esteemed and accounted the Lawes of the province, Which said Lawes shall continue and remaine of force untill they shall be repealed by the authority aforesaid that is to say the Governour Councell and Representatives in General Assembly by and with the Approbacon of his Royal Highnesse or Expire by their owne Limittacons.

[This specifically made the governor and council component parts of the legislature. See note to par. 1.]

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12. **[Elections for vacancies in assembly.]**—THAT In all cases of death or removall of any of the said Representatives The Governour shall issue out Summons by Writt to the Respective Townes Cittyes Shires Countryes or Divisions for which he or they soe removed or deceased were Chosen willing and requireing the ffreholders of the Same to Elect others in their place and stead.

[The present provision relating to elections to fill vacancies in the office of a senator or member of assembly will be found in the election law, § 4. The governor's proclamation in such a case is a substitute for the writ of election required by the foregoing paragraph.]

13. **[Freemen's rights.]**—THAT Noe freeman shall be taken and imprisoned or be disseized of his ffrehold or Libertye or ffree Customes or be outlawed or Exiled or any other wayes destroyed nor shall be passed upon adjudged or condemned But by the Lawfull Judgment of his peers and by the Law of this province. Justice nor Right shall be neither sold denyed or deferred to any man within this province.

[The first part is from the famous 39th article of Magna Charta. Gilbert Livingston presented it in a more modern form to the convention which framed the first Constitution, and it appears as § 13 of that instrument and has been continued in the Constitution of 1821, art. 7, § 1; 1846, art. 1, § 1; and in Const. 1894, art. 1, § 1. The last sentence of the paragraph is from article 40 of Magna Charta.]

14. **[When aids and other burdens not to be levied.]**—THAT Noe aid, Tax, Tallage, Assessment, Custome, Loane, Benevolence or Imposicon whatsoever shall be layed assessed imposed or levyed on any of his Majestyes Subjects within this province or their Estates upon any manner of colour or pretence but by the act and Consent of the Governour Councell and Represent-

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atives of the people in Generall Assembly mett and Assembled.

[This provision is borrowed in substance from the English Petition of Rights of 1628, a sketch of which will be found in the article on the Bill of Rights in the chapter on the Convention of 1821.]

15. **[Due process of law.]**—THAT Noe man of what Estate or Condicon soever shall be putt out of his Lands or Tenements, nor taken, nor imprisoned, nor disherited, nor banished nor any wayes distroyed without being brought to Answere by due Course of Law.

[This is from the statute 28 Edward III. (1354). The provision also appears in the English Petition of Rights, 1628, and in other English declarations relating to the rights of freemen. This subject is considered in the article on Due Process of Law in the fourth volume in a note to article 1, § 6.]

16. **[Amerciaments to be reasonable.]**—THAT A ffreeman Shall not be amerced for a small fault, but after the manner of his fault and for a great fault after the Greatnesse thereof Saveing to him his freehold, And a husbandman saveing to him his Wainage and a merchant likewise saveing to him his merchandize And none of the said Amerciaments shall be assessed but by the oath of twelve honest and Lawfull men of the Vicinage provided the faults and misdemeanours be not in Contempt of Courts of Judicature.

[This paragraph is based on article 20 of Magna Charta. The constitutional provision, article 1, § 5, prohibiting excessive fines, expresses the principle of this paragraph, to which should probably be added statutes providing for exemptions from execution, which embody the same idea, but in a different form.]

17. **[Trial by jury.]**—ALL Tryalls shall be by the verdict of twelve men, and as neer as may be peers or Equalls And of the neighbourhood and in the County Shire or Division where the fact Shall arise or grow Whether the Same be by Indictment Infermacon Dec-

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laracon or otherwise against the person Offender or Defendant.

[The right of trial by jury, intended to be secured by this provision, was reasserted in the revived Charter of Liberties of 1691, and was one of the fundamental rights enjoyed during the colonial period. It has been preserved in all our Constitutions,—1777, § 41; 1821, art. 7, § 2; 1846, art. 1, § 2; 1894, art. 1, § 2. Additional notes on this subject will be found in the article on Trial by Jury in the fourth volume.]

18. **[Indictment and trial in criminal cases.]**—THAT In all Cases Capitall or Criminall there shall be a grand Inquest who shall first present the offence and then twelve men of the neighbourhood to try the Offender who after his plea to the Indictment shall be allowed his reasonable Challenges.

[This subject is considered in a note to article 1, § 6, in the fourth volume. The provision requiring an indictment in important criminal cases was not included in the first Constitution, and the subject was therefore left to legislative discretion. The New York Bill of Rights of 1787, § 3, required an indictment in these cases, and the provision was incorporated in the Constitution of 1821, art. 7, § 7. See also, Const. 1846, art. 1, § 6; 1894, art. 1, § 6.]

19. **[Bail.]**—THAT In all Cases whatsoever Bayle by sufficient Suretyes Shall be allowed and taken unlesse for treason or felony plainly and specially Expressed and menconed in the Warrant of Committment provided Alwayes that nothing herein contained shall Extend to discharge out of prison upon bayle any person taken in Execucon for debts or otherwise legally sentenced by the Judgment of any of the Courts of Record within the province.

[This paragraph seems to have been based upon the statute 23 Henry VI., chap. 9 (1445), which imposed on sheriffs the duty of taking bail. The general policy of this paragraph has been continued in various state statutes which need not here be cited, except the Code of Criminal Procedure, which contains detailed provisions on this subject. Another aspect of the subject appears in the constitutional provision, article 1, § 5, which prohibits excessive bail.]

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20. [Martial law regulated.]— THAT Noe Comissions for proceeding by Marshall Law against any of his Majestyes Subjects within this province shall issue forth to any person or persons whatsoever Least by Colour of them any of his Majestyes Subjects bee destroyed or putt to death Except all such officers persons and Soldiers in pay throughout the Government.

[This is evidently taken from a similar provision in the English Petition of Rights of 1628. The colonists, like their English neighbors, were evidently afraid of military power, and jealous of their civil rights, which were supposed to be sufficiently guarded by Magna Charta. In notes to the militia article in the fourth volume I have cited decisions in which the courts assert the broad principle that civil judicial tribunals may review the proceedings of the military department, at least so far as relates to questions of jurisdiction, and will protect the citizen against an unconstitutional exercise of military authority.]

21. [Land to be deemed estate of inheritance.]— THAT From hence forward Noe Lands Within this province shall be Esteemed or accounted a Chattle or personall Estate but an Estate of Inheritance according to the Custome and practice of his Majestyes Realme of England.

[This paragraph asserts a well settled rule relating to real property, which is of great importance in a community free from the limitations and burdens of the feudal system. Early state statutes expressed the same rule, and abolished feudal tenures. These subjects were included in the Constitution of 1846, and appear as §§ 11 and 12 of article 1 in the Constitution of 1894. The latter section declares all lands to be allodial.]

22. [Execution against property regulated.]— THAT Noe Court or Courts within this province have or at any time hereafter Shall have any Jurisdiccon power or authority to grant out any Execucon or other writt whereby any mans Land may be sold or any other way disposed off without the owners Consent provided Alwayes That the issues or meane proffitts of any mans Lands shall or may be Extended by Execucon or other-

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wise to satisfye just debts Any thing to the Contrary hereof in any wise Notwithstanding.

[This seems to be a corollary to the last paragraph. It prohibited a sale of the debtor's land without his consent, and limited a creditor's remedy to the issues and mean profits of the land. This land policy was too rigid for a commercial people, and has since given place to statutory provisions by which a debtor's land may be sold for the payment of his debts.]

23. **[Married woman's deed.]**—THAT Noe Estate of a feme Covert shall be sold or conveyed But by Deed acknowledged by her in Some Court of Record the Woman being secretly Examined if She doth it freely without threats or Compulsion of her husband.

[This rule continued in force until abrogated by statute in 1879.]

24. **[Conveyance by will.]**—THAT All Wills in writeing attested by two Credible Witnesses shall be of the same force to convey Lands as other Conveyances being registered in the Secretaryes Office within forty dayes after the testators death.

[This rule as to witnesses is still in force.]

25. **[Dower.]**—THAT A Widow after the death of her husband shall have her Dower And shall and may tarry in the Cheife house of her husband forty dayes after the death of her husband within which forty dayes her Dower shall be assigned her And for her Dower shall be assigned unto her the third part of all the Lands of husband dureing Coverture, Except shee were Endowed of Lesse before Marriage.

[This is substantially the present law.]

26. **[Alienation of lands to be free.]**—THAT All Lands and Heritages within this province and Dependencyes shall be free from all fines and Lycences upon Alienacons, and from all Herriotts Ward Shipps Liveryes primer Seizins yeare day and Wast Escheats and forfeitures upon the death of parents and Ancestors

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naturall unaturall casuall or Judiciall, and that forever; Cases of High treason only Excepted.

[Fines and other restraints on alienation were prohibited by statute in the early history of the state, and the prohibition was incorporated in the Constitution of 1846.]

27. **[Religious toleration.]**—THAT Noe person or persons which professe ffaith in God by Jesus Christ Shall at any time be any wayes molested punished disquieted or called in Question for any Difference in opinion or Matter of Religious Concernment, who doe not actually disturb the Civill peace of the province, But that all and Every such person or persons may from time to time and at all times freely have and fully enjoy his or their Judgments or Consciencyes in matters of Religion throughout all the province, they behaveing themselves peaceably and quietly and not useing this Liberty to Lycentiousnesse nor to the Civill Injury or outward disturbance of others provided Alwayes that this liberty or any thing contained therein to the Contrary shall never be Construed or improved to make void the Settlement of any publique Minister on Long Island Whether Such Settlement be by two thirds of the voices in any Towne thereon which shall alwayes include the Minor part Or by Subscripcons of perticuler Inhabitants in Said Townes provided they are the two thirds thereon Butt that all such agreements Covenants and Subscripcons that are there already made and had Or that hereafter shall bee in this Manner Consented to agreed and Subscribed shall at all time and times hereafter be firme and Stable And in Confirmacon hereof It is Enacted by the Governour Councell and Representatives; That all Such Sumes of money soe agreed and Consented to or Subscribed as aforesaid for maintenance of said Publick Ministers by the two thirds of any Towne on Long Island Shall alwayes include

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the Minor part who shall be regulated thereby And also Such Subscripcons and agreements as are before menconed are and Shall be alwayes ratified performed and paid, And if any Towne on said Island in their publick Capacity of agreement with any Such minister or any perticuler persons by their private Subscripcons as aforesaid Shall make default deny or withdraw from Such payment Soe Covenanted to agreed upon and Subscribed That in Such Case upon Complaint of any Collector appointed and Chosen by two thirds of Such Towne upon Long Island unto any Justice of that County Upon his hearing the Same he is hereby authorized impowered and required to issue out his warrant unto the Constable or his Deputy or any other person appointed for the Collection of said Rates or agreement to Levy upon the goods and Chattles of the Said Delinquent or Defaulter all such Sumes of money Soe covenanted and agreed to be paid by distresse with Costs and Charges without any further Suite in Law Any Lawe Custome or usage to the Contrary in any wise Notwithstanding.

PROVIDED Alwayes the said sume or sumes be under forty shillings otherwise to be recovered as the Law directs.

AND WHEREAS All the Respective Christian Churches now in practice within the City of New Yorke and the other places of this province doe appeare to be priviledged Churches and have beene Soe Established and Confirmed by the former authority of this Government BEE it hereby Enacted by this Generall Assembly and by the authority thereof That all the Said Respective Christian Churches be hereby Confirmed therein And that they and Every of them Shall from henceforth forever be held and reputed as priviledged Churches and Enjoy all their former freedomes of their

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Religion in Divine Worshipp and Church Discipline And that all former Contracts made and agreed upon for the maintenances of the severall ministers of the Said Churches shall stand and continue in full force and virtue And that all Contracts for the future to be made Shall be of the same power And all persons that are unwilling to performe their part of the said Contract Shall be Constrained thereunto by a warrant from any Justice of the peace provided it be under forty Shillings Or otherwise as this Law directs provided allsoe that all Christian Churches that Shall hereafter come and settle with in this province shall have the Same priviledges.

[The first part of this paragraph was included in substance in § 38 of the Constitution of 1777, which has since been continued without change, except that a provision relating to the competency of witnesses was added in 1846. Notes on this provision will be found in the fourth volume.]

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THE DECLARATION OF INDEPENDENCE, 1776.

[The Declaration was adopted by the Continental Congress on the 4th of July, 1776, and on the 9th of the same month was ratified by the New York Provincial Congress, which afterwards framed the first state Constitution. The entire Declaration was made a part of the preamble to that instrument, which was adopted April 20, 1777. On the 18th of January, 1777, the Continental Congress directed an authenticated copy of the Declaration to be transmitted to each state for record.]

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident,—that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a

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long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these Colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws, the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature,—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected, whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State re-

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maining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitutions and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

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For transporting us beyond seas to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated

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petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these Colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, *free and independent States;* that they are absolved from all allegiance to the British crown, and that all political connexion between them and the State of Great Britain, is and ought to be totally dissolved; and that, as *free and independent States,* they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which *independent States* may of right do. And for the support of this declaration, with a firm re-

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liance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honour.

JOHN HANCOCK.

GEORGIA.

Button Gwinnett.
Lyman Hall.
Geo. Walton.

NORTH CAROLINA.

Wm. Hooper.
Joseph Hewes.
John Penn.

SOUTH CAROLINA.

Edward Rutledge.
Thos. Heyward, junr.
Thomas Lynch, junr.
Arthur Middleton.

MARYLAND.

Samuel Chase.
Wm. Paca.
Thos. Stone.
Charles Carroll of Carrollton.

VIRGINIA.

George Wythe.
Richard Henry Lee.
Th. Jefferson.
Benjan. Harrison.
Thos. Nelson, Jr.
Francis Lightfoot Lee.
Carter Braxton.

PENNSYLVANIA.

Robt. Morris.
Benjamin Rush.
Benja. Franklin.
John Morton.
Geo. Clymer.
Jas. Smith.
Geo. Taylor.
James Wilson.
Geo. Ross.

DELAWARE.

Cæsar Rodney.
Geo. Read.
Tho. M'Kean.

NEW YORK.

Wm. Floyd.
Phil. Livingston.
Fran's Lewis.
Lewis Morris.

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NEW JERSEY.

Richd. Stockton.
Jno. Witherspoon.
Fras. Hopkinson.
John Hart.
Abra. Clark.

NEW HAMPSHIRE.

Josiah Bartlett.
Wm. Whipple.
Matthew Thornton.

MASSACHUSETTS BAY.

Saml. Adams.
John Adams.
Robt. Treat Paine.
Elbridge Gerry.

RHODE ISLAND AND PROVIDENCE, &C.

Step. Hopkins.
William Ellery.

CONNECTICUT.

Roger Sherman.
Saml. Huntington.
Wm. Williams.
Oliver Wolcott.

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ARTICLES OF CONFEDERATION, 1778.

On the 17th of November, 1777, the Continental Congress submitted to the several states proposed Articles of Confederation which had been adopted on the 15th, accompanied by an eloquent and impressive appeal to the legislatures to take immediate action. The Articles are described as "a plan of confederacy for securing the freedom, sovereignty, and independence of the United States." New York ratified the Articles on the 6th of February, 1778. On the 9th of July, 1778, the Articles were ratified by the delegates in Congress from New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, Pennsylvania, Virginia, and South Carolina. North Carolina had ratified the Articles, but that state and Georgia were not then represented in Congress. The delegates from New Jersey, Delaware, and Maryland had not then been authorized to sign the Articles. Maryland, which was the last state to act, ratified the Articles on the 30th of January, 1781, and the delegates from that state signed them on the 1st of March following. This completed the ratification.

The ratification by New York, in 1778, was subject to the approval of the Articles by all the other states; but on the 23d of October, 1779, a supplemental act was passed, dispensing with such unanimous approval so far as New York was concerned, and authorizing its delegates in Congress to join with the delegates from so many of the other states as might be judged "proper and competent for mutual defense and permanent security." It is a noteworthy fact that when the Articles were finally ratified by all the states, March 1, 1781, the Revolutionary War was nearly over. Corn-

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wallis surrendered in October following, and there was little actual war after that time, although two years more elapsed before peace was finally consummated. The student of the Federal Constitution cannot fail to observe that many provisions in the Articles appear again in the Constitution, sometimes in substance, but often in the same language used here. While the Articles were conceded to be inadequate, the problem of uniting the states was an exceedingly difficult one, and it is a high tribute to the wisdom and patriotism of the statesmen of that period that they were able to maintain even the semblance of a government under such unfavorable conditions. The Articles appear to be dated July 9, 1778. This is the date on which a majority of the delegates signed them; but, as already pointed out, nearly three years elapsed before the ratification became complete. For the reader's convenience I have prefixed a title to each article.

ARTICLES OF CONFEDERATION, &c.

TO ALL TO WHOM THESE PRESENTS SHALL COME,

We, the undersigned, Delegates of the States affixed to our names, send greeting:

WHEREAS The Delegates of the United States of America in Congress assembled did, on the fifteenth day of November, in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the independence of America, agree to certain articles of confederation and perpetual union between the states of New Hampshire, Massachusetts Bay, Rhode-Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware,

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Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, *viz.:*

Articles of Confederation and perpetual Union between the States of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Art. 1. [New nation named.]—The style of this confederacy shall be "The United States of America."

Art. 2. [State sovereignty reserved.]—Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled.

Art. 3. [Purpose of confederation.]—The said states hereby severally enter into a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon, them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Art. 4. [Privileges and immunities of citizens; fugitives from justice; judgments conclusive in other states.]—The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein

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all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state to any other state, of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction, shall be laid by any state on the property of the United States or either of them.

If any person guilty of or charged with treason, felony, or other high misdemeanor, in any state, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the state from which he fled, be delivered up, and removed to the state having jurisdiction of his offense.

Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

Art. 5. [Congress, how constituted; privileges of members.]—For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state to recall its delegates or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No state shall be represented in Congress by less than two nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

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Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from and attendance on Congress, except for treason, felony, or breach of the peace.

Art. 6. [Treaties regulated; treaty imposts protected; state naval and military forces limited; militia; war by state regulated.]—No state, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with, any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties al-

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ready proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in Congress assembled for the defense of such state or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of delay till the United States in Congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

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Art. 7. [Military officers, how appointed.]—When land forces are raised by any state for the common defense, all officers of or under the rank of colonel shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct; and all vacancies shall be filled up by the state which first made the appointment.

Art. 8. [Military expenses, how apportioned.]—All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in Congress assembled.

Art. 9. [Powers of Congress.]—The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article; of sending and receiving ambassadors; entering into treaties and alliances; provided, that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and

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in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal, in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures; provided, that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties, by their lawful agents, who shall then be directed to appoint by joint consent commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges, who shall hear

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the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each state, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear, or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings, being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward;" provided also that no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more states, whose jurisdiction as they may respect such lands and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before pre-

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scribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians not members of any of the states; provided that the legislative right of any state within its own limits be not infringed or violated; establishing and regulating postoffices from one state to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee to sit in the recess of Congress, to be denominated "a committee of the states;" and to consist of one delegate from each state, and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States, under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money

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or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any state should not raise men or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped, in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same; in which case they shall raise, officer, clothe, arm, and equip, as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States or any

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of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy unless nine states assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as, in their judgment, require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

Art. 10. [Powers of recess committee.]—The committee of the states, or any nine of them, shall be authorized to execute in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine states, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the Congress of the United States assembled is requisite.

Art. 11. [Canada may join Union.]—Canada ac-

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ceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this union; but no other colony shall be admitted into the same unless such admission be agreed to by nine states.

Art. 12. [Prior public debts secured.]—All bills of credit emitted, moneys borrowed, and debts contracted, by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

Art. 13. [Effect of articles; amendments.]—Every state shall abide by the determination of the United States in Congress assembled, on all questions which, by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislature of every state.

And whereas it has pleased the Great Governor of the world to incline the hearts of the legislatures we respectfully represent in Congress, to approve of and to authorize us to ratify the said articles of confederation and perpetual union: KNOW YE, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained; and we do further solemnly plight and engage

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the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions which, by the said confederation, are submitted to them; and that the articles thereof shall be inviolably observed by the states we respectively represent; and that the union shall be perpetual.

In witness whereof, we have hereunto set our hands, in Congress. Done at Philadelphia, in the state of Pennsylvania, the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

On the part and behalf of the state of New-Hampshire.

Josiah Bartlett, John Wentworth, Jun., Aug. 8, 1778.

On the part and behalf of the state of Massachusetts Bay.

John Hancock, Francis Dana,
Samuel Adams, James Lovell,
Elbridge Gerry, Samuel Holten.

On the part and in behalf of the state of Rhode-Island and Providence Plantations.

William Ellery, John Collins.
Henry Marchant,

On the part and behalf of the state of Connecticut.

Roger Sherman, Titus Hosmer,
Samuel Huntington, Andrew Adams.
Oliver Wolcott,

On the part and behalf of the state of New-York.

Jas. Duane, Wm. Duer,
Fra. Lewis, Gouv. Morris.

On the part and in behalf of the state of New-Jersey.

Jno. Witherspoon, Nat. Scudder, Nov. 26, 1778.

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On the part and behalf of the state of Pennsylvania.

Robt. Morris,
Daniel Roberdeau,
Jona. Bayard Smith,
William Clingan,
Joseph Reed, 22d July, 1778.

On the part and behalf of the state of Delaware.

Tho. M'Kean, Feb. 13, 1779.
John Dickinson, May 5th, 1779.
Nicholas Van Dyke.

On the part and behalf of the state of Maryland.

John Hanson, March 1, 1781.
Nathaniel Carroll, do.

On the part and behalf of the state of Virginia.

Richard Henry Lee,
John Banister,
Thomas Adams,
Jno. Harvie,
Francis Lightfoot Lee.

On the part and behalf of the state of North-Carolina.

John Penn, July 21st, 1778.
Corns. Harnett,
Jno. Williams.

On the part and behalf of the state of South-Carolina.

Henry Laurens,
William Henry Drayton,
Jno. Mathews,
Richard Hutson,
Thos. Heyward, Jun.

On the part and behalf of the state of Georgia.

Jno. Walton, 24th July, 1778.
Edwd. Telfair,
Edwd. Langworthy.

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THE CONSTITUTION OF THE UNITED STATES, 1787.

The weakness of the Articles of Confederation was generally conceded almost from their inception; and it became evident, even before they were ratified, that they did not provide a bond of union sufficient for a new nation with such unexampled possibilities. As early as 1780 Alexander Hamilton advocated a convention of all the states for the purpose of reforming the evils of the existing government, and the subject became a matter of public discussion soon after the articles had been finally ratified.

The legislature of New York took up the subject in the summer of 1782; and on the 20th of July, the state senate passed an important series of resolutions relating to the "state of the Nation," reciting, among other things, that "in the opinion of this legislature, the radical source of most of our embarrassments is the want of sufficient power in Congress to effectuate that ready and perfect coöperation of the different states, on which their immediate safety and future happiness depends; that experience has demonstrated the Confederation to be defective in several essential points, particularly in not vesting the Federal government either with a power of providing revenue for itself, or with ascertained and productive funds, secured by a sanction so solemn and general as would inspire the fullest confidence in them, and make them a substantial basis of credit; that these defects ought to be, without loss of time, repaired, the powers of Congress extended, a solid security established for the payment of debts already incurred, and competent means provided for future credit, and for supplying the current demands of the war. That it

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appears to this legislature that the foregoing important ends can never be attained by partial deliberations of the states, separately; but that it is essential to the common welfare that there should be, as soon as possible, a conference of the whole on the subject; and that it would be advisable for this purpose, to propose to Congress to recommend, and to each state to adopt, the measure of assembling a general convention of the states, especially authorized to revise and amend the Confederation, reserving a right to the respective legislatures to ratify their determinations."

The resolutions were concurred in the next day by the assembly, and on the 22d the governor was requested to transmit copies to Congress and to each state executive. New York was not alone in appreciating the defects of the Confederation, but I believe this was the earliest legislative action recommending a general convention to revise the form of government.

In January, 1786, Virginia initiated a movement for a convention of delegates from the several states to consider important questions relating to trade and commerce. New York joined in this movement, but a majority of the states did not, and the convention was therefore unable to accomplish its primary purpose. It reported the situation to Congress, expressing the opinion in substance that the Confederation was inefficient, and that it was necessary to devise "such farther provisions as shall render the same adequate to the exigencies of the Union," and recommending a convention to frame a new constitution. Congress concurred in this view, and on the 21st of February, 1787, adopted a resolution recommending a general convention "for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alterations and provisions therein

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as shall, when agreed to in Congress, and confirmed by the states, render the Federal Constitution adequate to the exigencies of government, and the preservation of the Union," and fixed the second Monday of May as the day for holding the convention. The resolution thus adopted was presented by the delegates from Massachusetts, and the preamble referred particularly to the action of New York in reference to a convention.

The convention was organized in Philadelphia on the 25th of May, 1787, by the election of George Washington as president, and William Jackson as secretary. The convention adjourned on the 17th of September. It transmitted the constitution to Congress, with the recommendation that it be submitted to conventions chosen by the people in the several states, and that it be put in operation upon receiving the assent of nine states. Congress approved this action, and conventions were accordingly held for the purpose of considering the new constitution. It was ratified by the states in the following order: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790.

PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, ensure 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:

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ARTICLE I.

Section 1.

1. **[Legislative power.]**—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.

Section 2.

1. **[House of Representatives; qualification of electors.]**—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.

2. **[Qualifications of representative.]**—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.

3. **[Apportionment of representatives and taxes.]**—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. 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

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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.

4. **[Vacancies.]**—When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. **[Powers of House; speaker and officers; impeachment.]**—The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION 3.

1. **[Senate.]**—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.

2. **[Classification; vacancies.]**—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.

3. **[Qualifications of senator.]**—No person shall be a senator who shall not have attained to the age of thirty

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years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. **[President of the Senate.]**—The Vice President of the United States shall be president of the Senate, but shall have no vote unless they be equally divided.

5. **[Officers of the Senate.]**—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. **[Trial of impeachments.]**—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.

7. **[Judgment in cases of impeachment.]**—Judgment, in cases 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.

Section 4.

1. **[Senators and representatives, how elections regulated.]**—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 alter such regulations, except as to the places of choosing senators.

2. **[Annual session of Congress.]**—The Congress shall assemble at least once in every year; and such

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meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

SECTION 5.

1. **[General powers.]**—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.

2. **[Rules; punishment of members.]**—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.

3. **[Journals; yeas and nays.]**—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, at the desire of one fifth of those present, be entered on the journal.

4. **[Adjournments.]**—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.

1. **[Compensation; privileges.]**—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 ses-

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sion 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.

2. **[Members not to hold certain offices.]**—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.

SECTION 7.

1. **[Revenue bills.]**—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.

2. **[President's action on bills; repassage.]**—Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes 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 objections, 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 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

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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. **[Concurrent resolutions, President's approval.]**—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 re-passed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

[Powers of Congress.]—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;

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6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish postoffices and postroads;

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 law 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;

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

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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, dockyards, and other needful buildings; and

18. To make all 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.

SECTION 9.

1. **[Slave trade.]**—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.

2. **[Habeas corpus.]**—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.

3. **[Ex post facto law.]**—No bill of attainder or *ex post facto* law shall be passed.

4. **[Direct taxes.]**—No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. **[State exports.]**—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. **[Appropriations; statement and account.]**—No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular

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statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. **[Titles of nobility and presents from foreign state.]**—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 any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

1. **[State not to exercise certain powers.]**—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.

2. **[Congress may authorize exercise of certain powers by states.]**—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.

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ARTICLE II.

Section 1.

1. **[President and Vice President.]**—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:

2. **[Election.]**—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. **[Election of President and Vice President.]**—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

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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. **[Time of choosing electors.]**—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. **[Qualifications of President.]**—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.

6. **[Vice President to serve in case of vacancy.]**—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.

7. **[Compensation.]**—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

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receive, within that period, any other emolument from the United States, or any of them.

8. **[Oath of Office.]**—Before he enter on the execution of his office, he shall take the following oath or affirmation:

"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. **[President's general powers.]**—The President shall be commander-in-chief of the Army and Navy of the United States, and 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 offenses against the United States, except in cases of impeachment.

2. **[Treaties; nominations.]**—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.

3. **[President to fill vacancies.]**—The President

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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.

1. **[President's general duties.]**—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 adjournment, 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.

SECTION 4.

1. **[Removal on impeachment.]**—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.

1. **[Judiciary; tenure; compensation.]**—The judicial power of the United States shall be vested in one supreme court, and in such inferior 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,

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which shall not be diminished during their continuance in office.

SECTION 2.

1. **[Jurisdiction.]**—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 or 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 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. **[Supreme court.]**—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. **[Jury trial regulated.]**—The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials 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.

SECTION 3.

1. **[Treason.]**—Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

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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.

2. **[Punishment of treason.]**—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. **[Faith and credit among states.]**—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. **[Privileges and immunities of citizens.]**—The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. **[Fugitives from justice.]**—A person charged in any state, with treason, felony, or other crime, who shall flee from justice and be found in another 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.

3. **[Fugitives from labor.]**—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.

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SECTION 3.

1. **[New states.]**—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 legislatures of the states concerned as well as of the Congress.

2. **[Territories.]**—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.

1. **[Republican form of government; protection of states.]**—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. **[Amendments.]**—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

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prior to the year one thousand eight hundred and eight shall 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. **[Debts under the confederation.]**—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. **[Supreme law.]**—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. **[Oath of office; no religious test.]**—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.

ARTICLE VII.

1. **[Ratification.]**—The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand

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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.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE.
John Langdon,
Nicholas Gilman.

MASSACHUSETTS.
Nathaniel Gorham,
Rufus King.

CONNECTICUT.
Wm. Saml. Johnson,
Roger Sherman.

NEW YORK.
Alexander Hamilton.

NEW JERSEY.
Wil. Livingston,
David Brearley,
Wm. Paterson,
Jona. Dayton.

PENNSYLVANIA.
B. Franklin,
Thomas Mifflin,
Robt. Morris,
Geo. Clymer,
Thos. Fitzsimmons,
Jared Ingersol,
James Wilson,
Gouv. Morris.

DELAWARE.
Geo. Read,
Gunning Bedford, Jr.,
John Dickinson,
Richard Basset,
Jaco. Broom.

MARYLAND.
James McHenry,
Dan. of St. Thos. Jenifer,
Danl. Carroll.

VIRGINIA.
John Blair,
James Madison, Jr.

NORTH CAROLINA.
Wm. Blount,
Rich'd Dobbs Spaight,
Hu. Williamson.

SOUTH CAROLINA.
J. Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.
William Few,
Abr. Baldwin.

Attest: WILLIAM JACKSON, *Secretary.*

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AMENDMENTS TO FEDERAL CONSTITUTION.

There were wide differences of opinion concerning the new Constitution, and in many quarters its adoption was vigorously opposed. Several states ratified it with the express understanding that amendments should be immediately proposed by Congress to cure defects and supply omissions which were deemed vital to the success of the new government about to be established. In many cases the conventions proposed specific amendments, and instructed the representatives from such states in Congress to endeavor to procure their submission to the states for their consideration. So many states joined in this movement that its success, so far as Congress was concerned, was practically assured. The first Congress assembled on the 4th of March, 1789, and soon afterwards began the consideration of propositions to amend the Constitution. The subject was considered with great care, not only as to the substance of the amendments, but also as to their form and language. The result was a series of amendments, constituting, in substance, a national Bill of Rights, and which will long stand as models of constitutional expression.

On the 25th of September, 1789, Congress passed a resolution requesting the President to submit to the executives of the several states twelve amendments to the Constitution. All were ratified except two; one of these provided that "after the first enumeration, required by the first article of the Constitution, there shall be one representative for every 30,000, until the number shall amount to 100; after which, the proportion shall be so regulated by Congress that there shall be not less than 100 representatives, nor less than one representative for every 40,000 persons, until the number of representatives

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shall amount to 200; after which, the proportion shall be so regulated by Congress that there shall not be less than 200 representatives, nor more than one representative for every 50,000 persons;" and the other, that "no law varying the compensation for the services of the senators and representatives shall take effect until an election of representatives shall have intervened."

February 27, 1790, the New York legislature ratified eleven of the amendments, including the first, relative to apportionment in the House of Representatives, but rejected the second, relating to the compensation of members of Congress. Virginia ratified the amendments on the 15th of December, 1791. This was the eleventh state, and made the three fourths required by the Constitution. The ratification was therefore complete, and the ten amendments were in effect from that date.

The following is the resolution proposing these amendments:

CONGRESS OF THE UNITED STATES.

Begun and held at the city of New York on Wednesday, the 4th of March, 1789.

The convention of a number of states having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and, as extending the ground of public confidence in the government, will best insure the beneficent ends of its institution:

Resolved, By the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both houses concurring, that the following articles be proposed to the legislatures of the several states as amendments to the Constitution of the United States; all or any of which articles, when ratified by

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three fourths of the said legislatures, to be valid to all intents and purposes, as part of the said Constitution, namely:

ARTICLE I.

1. **[Religious toleration; speech and press to be free; right of petition.]**—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.

ARTICLE II.

1. **[People may keep arms.]**—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.

ARTICLE III.

1. **[Quartering of soldiers limited.]**—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.

ARTICLE IV.

1. **[Unreasonable searches and seizures.]**—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.

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ARTICLE V.

1. **[Indictment; twice in jeopardy; personal and property rights.]**—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.

ARTICLE VI.

1. **[Accused entitled to speedy and impartial trial.]**—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.

ARTICLE VII.

1. **[Trial by jury preserved.]**—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 reëxamined in any court of the United States, than according to the rules of the common law.

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ARTICLE VIII.

1. **[Bail, fines, and punishments to be reasonable.]**—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

1. **[Rights reserved to people.]**—The enumeration, in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

1. **[States reserve certain powers.]**—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.

ARTICLE XI.

1. **[Judicial power limited.]**—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.

[This amendment was passed by the Senate in January, and by the House of Representatives in March, 1794, and by joint resolution adopted on the 12th of March, 1794, the President was requested to transmit the amendment to the executives of the several states. New York acted promptly, ratifying the amendment on the 27th of March, 1794, but it seems that some of the other states were slow to act. On the 8th of January, 1798, President John Adams informed Congress that the amendment had been adopted by three fourths of the states, and that it might therefore "be declared to be a part of the Constitution of the United States."]

ARTICLE XII.

1. **[Election of President and Vice President.]**—The electors shall meet in their respective states, and

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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 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. 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

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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. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

[Congress on the 12th of December, 1803, requested the President to submit the amendment to the several states, and on the 25th of September, 1804, it was declared to have been ratified by the requisite number of states. New York ratified the amendment February 11, 1804.

The original provision relating to the election of President and Vice President will be found in art. 2, § 1, subd. 3.]

ARTICLE XIII.

1. **[Slavery prohibited.]**—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. **[Enforcement.]**—Congress shall have power to enforce this article by appropriate legislation.

[A resolution was adopted by Congress on the 1st of February, 1865, submitting this amendment to the legislatures of the several states. On the 18th of December, 1865, William H. Seward, Secretary of State, certified that the amendment had been ratified by 27 out of 36 states, and that, having received the assent of three fourths of all the states, the amendment had "become valid, to all intents and purposes, as a part of the Constitution of the United States." New York ratified the amendment April 22, 1865.]

ARTICLE XIV.

1. **[Rights of citizens.]**—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

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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. **[Representation in Congress.]**—Representatives shall be apportioned among the several states according to their respective numbers, counting the 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. **[Disabilities of persons engaging in rebellion.]**—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. **[Public debts confirmed, certain claims not to be paid.]**—The validity of the public debt of the United

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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. **[Enforcement of article.]**—The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[A resolution submitting the 14th Amendment to the several states was adopted by Congress on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted a concurrent resolution reciting that the amendment had been ratified by more than three fourths of the states, and directing the Secretary of State to promulgate the amendment. On the 28th of July following, the Secretary, Mr. Seward, made a certificate promulgating the amendment, as required by the act of 1818 and the preceding resolution of Congress. A concurrent resolution ratifying the 14th Amendment was passed by the New York senate on the 3d of January, 1867, and by the assembly on the 10th. All previous ratifications had been by statute.

Section 2 of this article, relating to apportionment of representatives in Congress, should be read in connection with subd. 3, § 2, of art. 1 of the Constitution.]

ARTICLE XV.

1. **[Right of suffrage protected.]**—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. **[Enforcement.]**—The Congress shall have power to enforce this article by appropriate legislation.

[This amendment was submitted to the states by a congressional resolution adopted February 27, 1869. On the 30th of March, 1870, Hamilton Fish, Secretary of State, certified that the amendment had

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received the assent of three fourths of all the states, and had therefore become a part of the Constitution. A concurrent resolution ratifying the amendment was passed by the New York assembly on the 17th of March, 1869, and by the senate on the 14th of April following.

The action of New York on this amendment presents an interesting item of history, and shows the severe political tension which existed during the period immediately after the close of the Civil War. This subject is noted in the chapter on the Convention of 1867, in connection with its discussions concerning the status of colored voters.

The 14th Amendment, as stated in the preceding note, was ratified by the legislature of 1867. The Republicans had a large majority in both branches of that legislature. In the senate, which was elected in 1865, a few months after the close of the War, there were only 5 Democrats out of a total of 32 senators. In the assembly of 1867, which was elected in 1866, there were 82 Republicans and 46 Democrats. The vote on the resolution ratifying the 14th Amendment was 23 to 3 in the senate, and 71 to 36 in the assembly. The 15th Amendment came up for consideration in a legislature in which political representation was much more nearly equal. A marked political change had occurred since the election of 1865. The senate chosen in 1867 had 17 Republicans and 15 Democrats, and it was this senate which, in 1869, ratified the 15th Amendment by a vote of 17 to 15. In the assembly of 1869 there were 73 Republicans and 55 Democrats, and this assembly ratified the 15th Amendment by a vote of 72 to 47.

The Constitution proposed by the Convention of 1867 was submitted to the people at the general election in 1869. It met the organized, but not unanimous, opposition of the Democratic party, which, in its state platform, had declared against the proposed Constitution. This subject is considered at some length in the conclusion to the chapter on the Convention of 1867. It will be remembered that the proposition to continue the property qualifications of colored voters was submitted separately at this election, and was approved by a majority of 32,601 votes. Thus, notwithstanding the ratification of the 15th Amendment by the legislature in the spring of 1869, the people, in November, voted to continue the established policy of the state, which denied equal suffrage to colored persons. The Democratic State Convention, held on the 22d of September, 1869, not only declared against the new state Constitution, but specifically condemned the 15th Amendment which had already been ratified by New York. The platform asserted that the amendment had been proposed "in a spirit of contempt of the people and of the right of the states to regulate the elective franchise," and was "intended to place the question of suffrage in the hands of the central powers, and by debasing to demoralize the representative system."

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As a result of the election of 1869 the political situation in the legislature was reversed. The senate was changed from 17 Republicans and 15 Democrats to 17 Democrats and 15 Republicans, and the assembly was changed from 73 Republicans and 55 Democrats to 72 Democrats and 56 Republicans. The party which had opposed the 15th Amendment in the preceding legislature being now in control of that body, attempted to rescind the action by which the amendment had been adopted. This action was taken promptly. At the opening of the session on the 4th of January, 1870, William M. Tweed introduced in the senate a resolution to rescind the action taken by the legislature of 1869, ratifying the amendment. The preamble to the resolution, after stating such prior action, recited that the amendment had not been ratified by three fourths of the states, and that the state of New York desired to withdraw its consent to such ratification. The resolution thereupon declared that the preceding concurrent resolution ratifying the amendment "be and it hereby is repealed, rescinded, and annulled," and that the legislature "refuses to ratify the above recited proposed 15th Amendment to the Constitution of the United States, and withdraws absolutely any expression of consent heretofore given thereto, or ratification thereof." This resolution was adopted by both branches of the legislature on the 5th of January, 1870,—in the senate by a vote of 16 to 13, and in the assembly by a vote of 69 to 56. In the certificate promulgating the amendment, Mr. Fish includes New York among the ratifying states. Referring to the action taken by the legislature of 1870, the Secretary says in the certificate that it "appears from an official document on file in this department that the legislature of the state of New York has since passed resolutions claiming to withdraw the said ratification of the said amendment which had been made by the legislature of that state, and of which official notice had been filed in this department."

According to the certificate the ratification was complete without New York.]

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THE FIRST CONSTITUTION OF NEW YORK, 1777.

[GENERAL NOTE.—The first Constitution was adopted on the 20th of April, 1777, by a convention of delegates vested with authority to establish a state government. That day thus became the birthday of the state, and it was so declared by the supreme court in *Jackson ex dem. Russell* v. *White* (1822) 20 Johns. 313. The Constitution was not submitted to the people for ratification, but took effect immediately upon its adoption by the Convention. A sketch of this Constitution and of the convention which framed it will be found in the first volume of this work. This Constitution continued in force until December 31, 1822, when it was superseded by the Constitution framed by the Convention of 1821. The first Constitution was in force forty-five years, but it received little judicial attention. The scarcity of judicial decisions in which the Constitution was considered during this period is chiefly due to the fact that legislative bills were, before they could become laws, subjected to the scrutiny and criticism of the Council of Revision, composed of the governor, the chancellor, and the judges of the supreme court. These high judicial officers having already determined the constitutionality of laws it was hardly worth while afterwards to attack a statute on this ground. This situation doubtless accounts for the scarcity of constitutional questions during this part of our judicial history. Some observations have been made in these volumes on the value of this provision in the first Constitution as a means of reducing litigation concerning constitutional questions.

Judicial decisions relating to provisions which have been continued in the Constitution of 1894 will be found in notes to that instrument. A few decisions, which related only or chiefly to provisions in the first Constitution which were afterwards abrogated, are cited in notes to this Constitution.]

IN CONVENTION OF THE REPRESENTATIVES OF THE STATE OF NEW YORK.

KINGSTON, 20th April, 1777.

WHEREAS, The many tyrannical and oppressive usurpations of the King and Parliament of Great Britain, on the rights and liberties of the people of the American colonies, had reduced them to the necessity of introducing a government by congresses and committees, as tem-

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porary expedients, and to exist no longer than the grievances of the people should remain without redress.

AND WHEREAS, The congress of the colony of New York did, on the thirty-first day of May, now last past, resolve as follows, *viz.:*

"Whereas the present government of this colony, by congress and committees, was instituted while the former government, under the Crown of Great Britain, existed in full force; and was established for the sole purpose of opposing the usurpation of the British Parliament, and was intended to expire on a reconciliation with Great Britain, which it was then apprehended would soon take place, but is now considered as remote and uncertain.

"And whereas many and great inconveniences attend the said mode of government by congress and committees, as, of necessity, in many instances, legislative, judicial, and executive powers have been vested therein, especially since the dissolution of the former government by the abdication of the late governor, and the exclusion of this colony from the protection of the King of Great Britain.

"And whereas the Continental Congress did resolve as followeth, to wit:

" 'Whereas his Britannic majesty, in conjunction with the lords and commons of Great Britain, has, by a late act of Parliament, excluded the inhabitants of these united colonies from the protection of his crown. And whereas, no answers whatever to the humble petition of the colonies for redress of grievances and reconciliation with Great Britain has been, or is likely to be, given, but the whole force of that kingdom, aided by foreign mercenaries, is to be exerted for the destruction of the good people of these colonies. And whereas it appears absolutely irreconcilable to reason and good conscience for

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the people of these colonies now to take the oaths and affirmations necessary for the support of any government under the crown of Great Britain, and it is necessary that the exercise of every kind of authority under the said crown should be totally suppressed, and all the powers of government exerted under the authority of the people of the colonies, for the preservation of internal peace, virtue, and good order, as well as for the defense of our lives, liberties, and properties, against the hostile invasions and cruel depredations of our enemies:

" 'Therefore,

" '*Resolved,* That it be recommended to the respective assemblies and conventions of the united colonies, where no government sufficient to the exigencies of their affairs has been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.'

"And whereas doubts have arisen, whether this congress are invested with sufficient power and authority to deliberate and determine on so important a subject as the necessity of erecting and constituting a new form of government and internal police, to the exclusion of all foreign jurisdiction, dominion, and control whatever. And whereas it appertains of right solely to the people of this colony to determine the said doubts: Therefore,

"*Resolved,* That it be recommended to the electors in the several counties in this colony, by election in the manner and form prescribed for the election of the present congress, either to authorize (in addition to the powers vested in this congress) their present deputies, or others in the stead of their present deputies, or either of them, to take into consideration the necessity and

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propriety of instituting such new government as in and by said resolution of the continental congress is described and recommended. And if the majority of the counties, by their deputies in provincial congress, shall be of opinion that such new government ought to be instituted and established, then to institute and establish such a government as they shall deem best calculated to secure the rights, liberties, and happiness of the good people of this colony; and to continue in force until a future peace with Great Britain shall render the same unnecessary; And,

"*Resolved,* That the said elections in the several counties ought to be had on such day, and at such place or places, as by the committee of each county respectively shall be determined. And it is recommended to the said committees to fix such early days for the said elections as that all the deputies to be elected have sufficient time to repair to the city of New York by the second Monday in July next; on which day all the said deputies ought punctually to give their attendance.

"And whereas the object of the foregoing resolutions is of the utmost importance to the good people of this colony.

"*Resolved*, That it be, and it is hereby earnestly recommended to the committees, freeholders, and other electors in the different counties in this colony, diligently to carry the same into execution."

AND WHEREAS, The good people of the said colony, in pursuance of the said resolution, and reposing special trust and confidence in the members of this convention, have appointed, authorized, and empowered them for the purposes, and in the manner, and with the powers in and by the said resolve specified, declared, and mentioned.

AND WHEREAS, The delegates of the United American States, in general congress convened, did, on the fourth

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day of July now last past, solemnly publish and declare, in the words following, *viz.:*

[Here follows the Declaration of Independence, which appears in a separate form in a previous part of this volume.]

AND WHEREAS, This convention, having taken this declaration into their most serious consideration, did, on the ninth day of July last past, unanimously resolve that the reasons assigned by the Continental Congress for declaring the united colonies free and independent states are cogent and conclusive; and that, while we lament the cruel necessity which has rendered that measure unavoidable, we approve the same, and will, at the risk of our lives and fortunes, join with the other colonies in supporting it.

By virtue of which several acts, declarations, and proceedings, mentioned and contained in the afore-recited resolves or resolutions of the general congress of the United American States, and of the congresses or conventions of this state, all power whatever therein hath reverted to the people thereof, and this convention hath, by their suffrages and free choice, been appointed, and, among other things, authorized to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this state, most conducive of the happiness and safety of their constituents in particular, and of America in general:

I. [People the only source of authority.]—This convention, therefore, in the name and by the authority of the good people of this state, DOTH ORDAIN, DETERMINE, AND DECLARE, That no authority shall, on any pretense whatever, be exercised over the people or members of this state, but such as shall be derived from and granted by them.

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II. [Legislative power vested in senate and assembly.]—This convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, That the supreme legislative power within this state shall be vested in two separate and distinct bodies of men: the one to be called the assembly of the state of New York; the other to be called the senate of the state of New York: who, together, shall form the legislature, and meet once, at least, in every year for the despatch of business.

[Const. 1821, art. 1, § 1; 1846 and 1894, art. 3, § 1.]

III. [Council of Revision.]—AND WHEREAS, Laws inconsistent with the spirit of this Constitution, or with the public good, may be hastily and unadvisably passed: BE IT ORDAINED, That the governor, for the time being, the chancellor, and the judges of the supreme court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature. And for that purpose shall assemble themselves, from time to time, when the legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration under any pretense whatever. And that all bills which have passed the senate and assembly shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this state, that they return the same, together with their objections thereto in writing, to the senate or house of assembly, in whichsoever the same shall have originated, who shall enter the objections set down by the council, at large, in their minutes, and proceed to reconsider the said bill. But if, after

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such reconsideration, two thirds of the said senate or house of assembly shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and, if approved by two thirds of the members present, shall be a law.

And in order to prevent any unnecessary delays,

BE IT FURTHER ORDAINED, That if any bill shall not be returned by the council within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable, in which case the bill shall be returned on the first day of the meeting of the legislature, after the expiration of the said ten days.

[Council of Revision abolished by Constitution of 1821, and veto power conferred on governor. Const. 1821, art. 1, § 12; 1846 and 1894, art. 4, § 9.]

IV. [Assembly, how constituted.]—That the assembly shall consist of at least seventy members, to be annually chosen in the several counties, in the proportions following, *viz.:*

For the city and county of New York	Nine.
The city and county of Albany	Ten.
The county of Dutchess	Seven.
The county of Westchester	Six.
The county of Ulster	Six.
The county of Suffolk	Five.
The county of Queens	Four.
The county of Orange	Four.
The county of Kings	Two.
The county of Richmond	Two.

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*The county of Tryon.....Six.
*The county of Charlotte.....Four.
†The county of Cumberland.....Three.
†The county of Gloucester.....Two.

[See amendment of 1801; Const. 1821, art. 1, § 2; 1846 and 1894, art. 3, § 2.]

V. [Census; reapportionment of assembly.]—That as soon as the expiration of seven years, subsequent to the termination of the present war, as may be, a census of the electors and inhabitants in this state shall be taken, under the direction of the legislature. And if, on such census, it shall appear that the number of representatives in assembly from the said counties is not justly proportioned to the number of electors in the said counties respectively, that the legislature do adjust and apportion the same by that rule. And further, that once in every seven years, after the taking of the said first census, a just account of the electors resident in each county shall be taken; and if it shall thereupon appear that the number of electors in any county shall have increased or diminished one or more seventieth parts of the whole number of electors, which, on the said first census, shall be found in this state, the number of representatives for such county shall be increased or diminished accordingly; that is to say, one representative for every seventieth part, as aforesaid.

[Am. 1801; Const. 1821, art. 1, §§ 6 and 7; 1846 and 1894, art. 3, §§ 4 and 5. See article on Apportionment, volume 3.]

VI. [Experiment in elections by ballot.]—AND WHEREAS, An opinion hath long prevailed among divers

*Names changed, and the territory of which they consisted divided into several counties.
†Ceded to Vermont.

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of the good people of this state, that voting at elections by ballot would tend more to preserve the liberty and equal freedom of the people than voting *viva voce:* to the end, therefore, that a fair experiment be made, which of those two methods of voting is to be preferred:

BE IT ORDAINED, That as soon as may be, after the termination of the present war between the United States of America and Great Britain, an act or acts be passed by the legislature of this state, for causing all elections thereafter to be held in this state for senators and representatives in assembly, to be by ballot, and directing the manner in which the same shall be conducted.

AND WHEREAS, It is possible that, after all the care of the legislature in framing the said act or acts, certain inconveniences and mischiefs, unforeseen at this day, may be found to attend the said mode of electing by ballot:

IT IS FURTHER ORDAINED, That if, after a full and fair experiment shall be made of voting by ballot aforesaid, the same shall be found less conducive to the safety or interest of the state than the method of voting *viva voce,* it shall be lawful and constitutional for the legislature to abolish the same: *Provided,* Two thirds of the members present in each house, respectively, shall concur therein. And further, that during the continuance of the present war, and until the legislature of this state shall provide for the election of senators and representatives in assembly, by ballot, the said election shall be made *viva voce.*

[Const. 1821, art. 2, § 4; 1846 and 1894, art. 2, § 5.]

VII. [Qualifications of voters.]—That every male inhabitant of full age, who shall have personally resided within one of the counties of this state for six months immediately preceding the day of election, shall, at such

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election, be entitled to vote for representatives of the said county in assembly; if, during the time aforesaid, he shall have been a freeholder, possessing a freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to this state: *Provided always,* That every person who is now a freeman of the city of Albany, or who was made a freeman of the city of New York, on or before the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, and shall be actually and usually resident in the said cities respectively, shall be entitled to vote for representatives in assembly within his said place of residence.

[Consts. 1821, 1846, and 1894, art. 2, § 1.]

VIII. [Voters' oath of allegiance.]—That every elector, before he is admitted to vote, shall, if required by the returning officer or either of the inspectors, take an oath, or if of the people called Quakers, an affirmation, of allegiance to the state.

[Abrogated by Constitution of 1821.]

IX. [Powers of assembly.]—That the assembly thus constituted shall choose their own speaker, be judges of their own members, and enjoy the same privileges, and proceed in doing business, in like manner as the assemblies of the colony of New York of right formerly did; and that a majority of the said members shall, from time to time, constitute a house to proceed upon business.

[Const. 1821, art. 1, § 3; 1846 and 1894, art. 3, § 10.]

X. [Senate, how constituted.]—And this convention doth further, in the name and by the authority

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of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, That the senate of the state of New York shall consist of twenty-four freeholders, to be chosen out of the body of the freeholders, and that they be chosen by the freeholders of this state possessed of freeholds of the value of one hundred pounds, over and above all debts charged thereon.

[Am. 1801; Const. 1821, art. 1, § 2; 1846 and 1894, art. 3, § 2. Article on Apportionment, in the third volume.]

XI. [Senators' term and classification.]—That the members of the senate be elected for four years, and immediately after the first election, they be divided by lot into four classes, six in each class, and numbered, one, two, three, four; and that the seats of the members of the first class shall be vacated at the expiration of the first year; the second class the second year; and so on continually, to the end that the fourth part of the senate, as nearly as possible, may be annually chosen.

[Am. 1801; Const. 1821, art. 1, § 5; 1846 and 1894, art. 3, § 3.]

XII. [Senate districts.]—That the election of senators shall be after this manner: that so much of this state as is now parcelled into counties, be divided into four great districts: the southern district to comprehend the city and county of New York, Suffolk, Westchester, Kings, Queens, and Richmond counties; the middle district to comprehend the counties of Dutchess, Ulster, and Orange; the western district, the city and county of Albany, and Tryon county; and the eastern district, the counties of Charlotte, Cumberland, and Gloucester. That the senators shall be elected by the freeholders of the said districts, qualified as aforesaid, in the proportions following, to wit: in the southern district, nine; in the middle district, six; in the western district, six;

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and in the eastern district, three. AND BE IT ORDAINED, That a census shall be taken as soon as may be, after the expiration of seven years from the termination of the present war, under the direction of the legislature; and if, on such census, it shall appear that the number of senators is not justly proportioned to the several districts, that the legislature adjust the proportion, as near as may be, to the number of freeholders, qualified as aforesaid, in each district. That when the number of electors within any of the said districts shall have increased one twenty-fourth part of the whole number of electors which, by the said census, shall be found to be in this state, an additional senator shall be chosen by the electors of such district. That a majority of the number of senators, to be chosen as aforesaid, shall be necessary to constitute a senate sufficient to proceed upon business; and that the senate shall, in like manner with the assembly, be the judges of its own members. AND BE IT ORDAINED, That it shall be in the power of the future legislatures of this state, for the convenience and advantage of the good people thereof, to divide the same into such further and other counties and districts as shall to them appear necessary.

[Am. 1801; Const. 1821, art. 1, § 5; 1846 and 1894, art. 3, § 3.]

XIII. [Rights of citizens.]—And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, That no member of this state shall be disfranchised, or deprived of any rights or privileges secured to the subjects of this state by this Constitution, unless by the law of the land, or the judgment of his peers.

[Magna Charta, chap. 39; Const. 1821, art. 7, § 1; 1846 and 1894, art. 1, § 1.]

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XIV. [Limitation of adjournment.]—That neither the assembly nor the senate shall have power to adjourn themselves for any longer time than two days, without the mutual consent of both.

[Const. 1821, art. 1, § 4; 1846 and 1894, art. 3, § 11.]

XV. [Conference of two houses; executive sessions.]—That, whenever the assembly and senate disagree, a conference shall be held in the presence of both, and be managed by committees, to be by them respectively chosen by ballot. That the doors, both of the senate and assembly, shall at all times be kept open to all persons, except when the welfare of the state shall require their debates to be kept secret. And the journals of all their proceedings shall be kept in the manner heretofore accustomed by the general assembly of the colony of New York; and, except such parts as they shall, as aforesaid, respectively determine not to make public, be, from day to day, if the business of the legislature will permit, published.

[Conference provision abrogated by Const. 1821. Remainder of section substantially continued in Const. 1821, art. 1, § 4; 1846 and 1894, art. 3, § 11.]

XVI. [Limitation of number of members.]—It is, nevertheless, provided, that the number of senators shall never exceed one hundred, nor the members of assembly three hundred; but that, whenever the number of senators shall amount to one hundred, or of the assembly to three hundred, then, and in such case, the legislature shall, from time to time, hereafter, by laws for that purpose, apportion and distribute the said one hundred senators and three hundred representatives among the great districts and counties of this state, in proportion

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to the number of their respective electors, so that the representation of the good people of this state, both in the senate and assembly, shall forever remain proportionate and adequate.

[Am. 1801.]

XVII. [Governor; qualification and term.]—And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, That the supreme executive power and authority of this state shall be vested in a governor; and that, statedly, once in every three years, and as often as the seat of government shall become vacant, a wise and discreet freeholder of this state shall be, by ballot, elected governor, by the freeholders of this state, qualified, as before described, to elect senators, which elections shall be always held at the times and places of choosing representatives in assembly for each respective county; and that the person who hath the greatest number of votes within the said state shall be governor thereof.

[Const. 1821, art. 3, § 1; 1846 and 1894, art. 4, § 1.]

XVIII. [Governor's general powers.]—That the governor shall continue in office three years, and shall, by virtue of his office, be general and commander in chief of all the militia, and admiral of the navy, of this state; that he shall have power to convene the assembly and senate on extraordinary occasions; to prorogue them from time to time, provided such prorogation shall not exceed sixty days in the space of any one year; and, at his discretion, to grant reprieves and pardons to persons convicted of crimes other than treason or murder, in which he may suspend the execution of the sentence until

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it shall be reported to the legislature, at their subsequent meeting, and they shall either pardon or direct the execution of the criminal, or grant a further reprieve.

[Const. 1821, art. 3, § 4; 1846 and 1894, art. 4, §§ 4, 5; 1821, art. 3, § 5; 1846 and 1894, art. 4, § 5.]

XIX. [Governor's duties.]—That it shall be the duty of the governor to inform the legislature, at every session, of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare, and prosperity; to correspond with the Continental Congress, and other states; to transact all necessary business with the officers of government, civil and military; to take care that the laws are faithfully executed, to the best of his ability; and to expedite all such measures as may be resolved upon by the legislature.

[Const. 1821, art. 3, § 4; 1846 and 1894, art. 4, § 4.]

XX. [Lieutenant governor; qualification and term.]—That a lieutenant governor shall, at every election of a governor, and as often as the lieutenant governor shall die, resign, or be removed from office, be elected in the same manner with the governor, to continue in office until the next election of a governor; and such lieutenant governor shall, by virtue of his office, be president of the senate, and upon an equal division, having a casting vote in their decisions, but not vote on any other occasion.

And in case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the lieutenant governor shall exercise all the power and authority appertaining to the office of

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governor, until another be chosen, or the governor absent or impeached shall return, or be acquitted. *Provided,* That where the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall still continue in his command of all the military force of this state, both by sea and land.

[Election, Const. 1821, art. 3, § 3; 1846, 1894, art. 4, § 3; President of Senate, Const. 1821, art. 3, § 7; 1846, 1894, art. 4, § 7; Acting Governor, Const. 1821, art. 3, § 6; 1846, 1894, art. 4, § 6.]

XXI. [When president of senate to act as governor.]—That whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as president of the senate, the senators shall have power to elect one of their own members to the office of president of the senate, which he shall exercise *pro hac vice.* And if, during such vacancy of the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate shall, in like manner as the lieutenant governor, administer the government until others shall be elected by the suffrage of the people, at the succeeding election.

[Const. 1821, art. 3, § 7; 1846, 1894, art. 4, § 7.]

XXII. [State treasurer.]—And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, That the treasurer of this state shall be appointed by act of the legislature, to originate with the assembly.

Provided, That he shall not be elected out of either branch of the legislature.

[Const. 1821, art. 4, § 6; 1846, 1894, art. 5, § 1.]

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XXIII. [Officers, how appointed.]—That all officers other than those who, by this Constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council for the appointment of the said officers, of which the governor for the time being, or the lieutenant governor, or the president of the senate (when they shall respectively administer the government), shall be president, and have a casting voice, but no other vote, and, with the advice and consent of the said council, shall appoint all of the said officers; and that a majority of the said council be a quorum; AND FURTHER, The said senators shall not be eligible to the said council for two years successively.

[Construed in § 5, amendments of 1801. Abrogated and council abolished by Const. of 1821.

The general powers of the council were defined in *People* v. *Foot* (1821), 19 Johns. 58, where it was held that the council might appoint and remove officers at pleasure, and the legislature could not prescribe to the council the mode or manner of executing the constitutional trust reposed in them, and could not "inhibit the council from accepting a resignation and appointing a successor," nor require the council to inquire into the official conduct of an officer before accepting his resignation. The discretion vested in the council was unlimited, and could not be controlled by the legislature.]

XXIV. [Officers' commissions; terms of judicial officers.]—That all military officers be appointed during pleasure; that all commissioned officers, civil and military, be commissioned by the governor; and that the chancellor, the judges of the supreme court, and first judge of the county court in every county, hold their offices during good behavior, or until they shall have respectively attained the age of sixty years.

[Militia, Const. 1821, art. 4; 1846, 1894, art. 11. Judicial Officers, Const. 1821, art. 5, § 3; 1846, 1894, art. 6, § 4.]

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XXV. [When judge not to hold other office.]—That the chancellor and judges of the supreme court shall not, at the same time, hold any other office, excepting that of delegate to the general Congress, upon special occasions; and that the first judges of the county courts in the several counties shall not, at the same time, hold any other office, excepting that of senator, or delegate to the general Congress. But if the chancellor or either of the said judges be elected or appointed to any other office, excepting as is before excepted, it shall be at his option in which to serve.

[Const. 1821, art. 5, § 7; 1846, art. 6, § 8; 1894, art. 6, § 10.]

XXVI. [Sheriffs and coroners.]—That sheriffs and coroners be annually appointed; and that no person shall be capable of holding either of the said offices more than four years successively; nor the sheriff of holding any other office at the same time.

[Sheriffs, Const. 1821, art. 4, § 8; 1846, 1894, art. 10, § 1. Coroners, Const. 1821, art. 4, § 11; 1846, art. 10, § 1. Coroners omitted from Const. 1894.]

XXVII. [Registers, clerks, marshals, attorneys.]—AND BE IT FURTHER ORDAINED, That the register and clerks in chancery be appointed by the chancellor; the clerks of the supreme court, by the judges of the said court; the clerk of the court of probates, by the judge of the said court; and the register and marshal of the court of admiralty, by the judge of the admiralty. The said marshal, registers, and clerks to continue in office during the pleasure of those by whom they are to be appointed as aforesaid.

And all attorneys, solicitors, and counsellors at law, hereafter to be appointed, be appointed by the court, and licensed by the first judge of the court in which they

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shall respectively plead or practise; and be regulated by the rules and orders of the said courts.

[Court Clerks, Const. 1821, art. 4 § 9; 1846, art. 6, § 19. Judiciary Article, 1869, art. 6, § 20; 1894, art. 6, § 19. Attorneys, Const. 1846, art. 6, § 8.]

XXVIII. [Duration of office.]—AND BE IT FURTHER ORDAINED, That where, by this Constitution, the duration of any office shall not be ascertained, such office shall be construed to be held during the pleasure of the Council of Appointment: *Provided,* That new commissions shall be issued to judges of the county courts (other than to the first judge), and to justices of the peace, once at the least in every three years.

[Const. 1821, art. 4, § 16; 1846, 1894, art. 10, § 3.]

XXIX. [Certain town and county officers.]—The town clerks, supervisors, assessors, constables, and collectors, and all other officers, heretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of legislature.

That loan officers, county treasurers, and clerks of the supervisors, continue to be appointed in the manner directed by the present or future acts of the legislature.

[Const. 1821, art. 4, § 15; 1846, 1894, art. 10, § 2.]

XXX. [Congressional delegates, how chosen.]—That delegates to represent this state in the general Congress of the United States of America be annually appointed, as follows, to wit: The senate and assembly shall each openly nominate as many persons as shall be equal to the whole number of delegates to be appointed; after which nomination they shall meet together, and

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those persons named in both lists shall be delegates; and out of those persons whose names are not on both lists, one half shall be chosen by the joint ballot of the senators and members of assembly, so met together as aforesaid.

[Abrogated by Const. 1821.]

XXXI. [Enacting clause; writs in name of people.]—That the style of all laws shall be as follows, to wit: "Be it enacted by the people of the state of New York, represented in senate and assembly," and that all writs and other proceedings shall run in the name of the people of the state of New York, and be tested in the name of the chancellor, or chief judge of the court from whence they shall issue.

[Enacting clause omitted from Const. 1821; Const. 1846, art. 3, § 14; 1894, art. 3, § 14. Remainder of section abrogated by Const. of 1821.

The Supreme Court in *Dickenson* v. *Rogers* (1822), 19 Johns. 279, said that the provision in this section requiring writs to be "tested in the name of the chancellor or chief judge of the court from whence they shall issue" did not apply to a criminal warrant issued by a justice of the peace, and that a warrant issued in the name of a justice was valid.]

XXXII. [Court of impeachments; court of errors.]—And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, That a court shall be instituted for the trial of impeachments and the correction of errors, under the regulations which shall be established by the legislature, and to consist of the president of the senate for the time being, and the senators, chancellor, and judges of the supreme court, or the major part of them; except that when an impeachment shall be prosecuted against the chancellor, or either of the judges of the supreme court, the person so impeached

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shall be suspended from exercising his office, until his acquittal; and in like manner, when an appeal from a decree in equity shall be heard, the chancellor shall inform the court of the reasons of his decree, but shall not have a voice in the final sentence. And if the cause to be determined shall be brought up by writ of error, on a question of law, on a judgment in the supreme court, the judges of the court shall assign the reasons of such their judgment, but shall not have a voice for its affirmance or reversal.

[Const. 1821, art. 5, § 1. Court for correction of errors abolished in 1846. Court of impeachments, Const. 1846, art. 6, § 1; 1894, art. 6, § 13.

In *Clason* v. *Shotwell* (1814), 12 Johns. 31, the term "judgment" as used in this section was defined as "every final or definitive sentence or decision of the supreme court, by which the merits of a cause are settled or determined, although such sentence is not technically a judgment, or the proceedings are not capable of being enrolled so as to constitute what is technically called a record;" but it did not include interlocutory orders.

The courts named in this section were to be instituted "under regulations which shall be established by the legislature." The legislature accordingly passed an act on the 23d day of November, 1784, instituting such courts, and providing for their organization and procedure. Under this act the president of the senate could not vote except in case of a tie. This limitation was continued in the act of 1801, chap. 10, and by the revised laws of 1813. The limitation was omitted in the revision of 1828, and in January, 1829, the court for the correction of errors expressly declared that the president of the senate might express an opinion and vote on all questions. *Lieutenant-Governor's Claim* (1829), 2 Wend. 213, 216.]

XXXIII. [Impeachment by assembly.]—That the power of impeaching all officers of the state, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly; but that it shall always be necessary that two third parts of the members present shall consent to and agree in such impeachment. That, previous to the trial of every impeachment, the members of the said court shall respectively be sworn,

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truly and impartially to try and determine the charge in question, according to evidence; and that no judgment of the said court shall be valid unless it shall be assented to by two third parts of the members then present; nor shall it extend farther than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this state. But the party so convicted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment, according to the laws of the land.

[Const. 1821, art. 5, § 2; 1846, art. 6, § 1; 1894, art. 6, § 13.]

XXXIV. [Accused may have counsel.]—AND IT IS FURTHER ORDAINED, That in every trial on impeachment, or indictment for crimes or misdemeanor, the party impeached or indicted shall be allowed counsel, as in civil actions.

[Const. 1821, art. 7, § 7; 1846, 1894, art. 1, § 6.]

XXXV. [Common law continued.]—And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, That such parts of the common law of England, and of the statute law of England and Great Britain, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony on the 19th day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this state, subject to such alterations and provisions as the legislature of this state shall, from time to time, make concerning the same. That such of the said acts as are temporary shall expire at the times limited for their duration respectively. That all such parts of the said common law, and all such of the said

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statutes and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of Christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government, or prerogatives claimed or exercised by, the King of Great Britain and his predecessors, over the colony of New York and its inhabitants, or are repugnant to this Constitution, be and they hereby are, abrogated and rejected. And this convention doth further ORDAIN, That the resolves or resolutions of the congresses of the colony of New York, and of the convention of the state of New York, now in force, and not repugnant to the government established by this Constitution, shall be considered as making part of the laws of this state; subject, nevertheless, to such alterations and provisions as the legislature of this state may, from time to time, make concerning the same.

[Const. 1821, art. 7, § 13; 1846, art. 1, § 17; 1894, art. 1, § 16.]

XXXVI. [Royal grants and charters.]—AND BE IT FURTHER ORDAINED, That all grants of land within this state, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but that nothing in this Constitution contained shall be construed to affect any grants of land, within this state, made by the authority of the said King or his prèdecessors, or to annul any charters to bodies politic, by him or them, or any of them, made prior to that day. And that none of the said charters shall be adjudged to be void by reason of any nonuser or misuser of any of their respective rights or privileges, between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the publication of this Constitution. AND FURTHER,

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That all such of the officers, described in the said charters respectively, as, by the terms of the said charters, were to be appointed by the governor of the colony of New York, with or without the advice and consent of the council of the said King, in the said colony, shall henceforth be appointed by the council established by this Constitution for the appointment of officers in this state, until otherwise directed by the legislature.

[Const. 1821, art. 7, § 14; 1846, art. 1, § 18; 1894, art. 1, § 17.]

XXXVII. [Purchase of Indian lands limited.]—AND WHEREAS, It is of great importance to the safety of this state that peace and amity with the Indians within the same be at all times supported and maintained: AND WHEREAS, The frauds too often practiced towards the said Indians, in contracts made for their lands, have, in divers instances, been productive of dangerous discontents and animosities; BE IT ORDAINED, That no purchases or contracts for the sale of lands made since the 14th day of October, in the year of our Lord one thousand seven hundred and seventy-five, or which may hereafter be made with or of the said Indians, within the limits of this state, shall be binding on the said Indians, or deemed valid, unless made under the authority and with the consent of the legislature of this state.

[Const. 1821, art. 7, § 12; 1846, art. 1, § 16; 1894, art. 1, § 15.]

XXXVIII. [Religious toleration.]—AND WHEREAS, We are required, by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind; this convention doth further, in the name and by the authority of the good

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people of this state, ORDAIN, DETERMINE, AND DECLARE, That the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state to all mankind: *Provided,* That the liberty of conscience hereby granted shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

[Const. 1821, art. 7, § 3; 1846, 1894, art. 1, § 3.
The history of this section will be found in the chapter on the first Constitution.]

XXXIX. [Clergymen not eligible to office.]—AND WHEREAS, The ministers of the gospel are, by their profession, dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function; therefore, no minister of the gospel, or priest of any denomination whatsoever, shall, at any time hereafter, under any pretense or description whatever, be eligible to or capable of holding, any civil or military office or place within this state.

[Const. 1821, art. 7, § 4. Abrogated by Const. 1846.]

XL. [Militia.]—AND WHEREAS, It is of the utmost importance to the safety of every state that it should always be in a condition of defense; and it is the duty of every man who enjoys the protection of society, to be prepared and willing to defend it; this convention, therefore, in the name, and by the authority of the good people of this state, doth ORDAIN, DETERMINE, AND DECLARE, That the militia of this state, at all times hereafter, as well in peace as in war, shall be armed and disciplined, and in readiness for service. That all such of the inhabitants of this state (being of the people called Quakers) as, from scruples of conscience, may be averse

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to the bearing of arms, be therefrom excused by the legislature, and do pay to the state such sums of money, in lieu of their personal service, as the same may, in the judgment of the legislature, be worth. And that a proper magazine of warlike stores, proportioned to the number of inhabitants, be forever hereafter, at the expense of this state, and by acts of the legislature, established, maintained, and continued, in every county in this state.

[Const. 1821, art. 7, § 5; 1846, 1894, art. 11, § 1.]

XLI. [Trial by jury preserved.]—And this convention doth further ORDAIN, DETERMINE, AND DECLARE, in the name, and by the authority of the good people of this state, that trial by jury, in all cases in which it hath heretofore been used in the colony of New York, shall be established, and remain inviolate forever. And that no acts of attainder shall be passed by the legislature of this state, for crimes other than those committed before the termination of the present war; and that such acts shall not work a corruption of blood. AND FURTHER, That the legislature of this state shall, at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law.

[1821, art. 7, § 2; 1846, and 1894, art. 1, § 2.
The commissioners appointed under the act of 1797, chap. 51, to determine certain questions relating to lands in Onondaga county, did not constitute a court, within the meaning of this section. They were merely arbitrators, and were not required to proceed according to the course of the common law, or by jury trial. *Barker* v. *Jackson* (1826) 1 Paine, 559, Fed. Cas. No. 989.]

XLII. [Naturalization.] — And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, That it shall be in the discretion of the legislature to naturalize all such persons, and in such manner, as

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they shall think proper: *Provided,* all such of the persons so to be by them naturalized, as, being born in parts beyond sea, and out of the United States of America, shall come to settle in, and become subjects of, this state, shall take an oath of allegiance to this state, and abjure and renounce all allegiance and subjection to all and every foreign king, prince, potentate, and state, in all matters, ecclesiastical as well as civil. By order:

LEONARD GANSEVOORT, *Pres. pro. tem.*

[The subject of naturalization was included in the Federal Constitution (art. 1, § 8, subd. 4), and this provision in the state Constitution was thereby in effect abrogated. It has not been continued in subsequent state Constitutions. The subject was considered and the effect of the Federal Constitution and naturalization statutes declared in *Re Ramsden* (1857), 13 How. Pr. 429.]

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AMENDMENTS TO FIRST CONSTITUTION.

IN CONVENTION OF THE DELEGATES OF THE STATE OF NEW YORK.

ALBANY, October 27, 1801.

WHEREAS, The legislature of this state, by their act, passed the sixth day of April last, did propose to the citizens of this state, to elect by ballot delegates to meet in convention, "for the purpose of considering the parts of the Constitution of this state respecting the number of senators and members of assembly in this state, and with power to reduce and limit the number of them as the said convention might deem proper; and also for the purpose of considering and determining the true construction of the twenty-third article of the Constitution of this state relative to the right of nomination to office:

AND WHEREAS, The people of this state have elected the members of this convention, for the purposes above expressed; and this convention, having maturely considered the subjects thus submitted to their determination, do, in the name and by the authority of the people of this state, ORDAIN, DETERMINE, AND DECLARE:

I. [Assembly reorganized.]—That the number of the members of the assembly hereafter to be elected shall be one hundred, and shall never exceed one hundred and fifty.

[Const. 1777, art. 4; 1821, art. 1, § 2; 1846, art. 3, § 3; 1894, art. 3, § 2.]

II. [Apportionment of new assembly.]—That the legislature, at their next session, shall apportion the said one hundred members of the assembly among the several counties of this state, as nearly as may be, according to the number of electors which shall be found to be in each

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county by the census directed to be taken in the present year.

[Temporary. See, as to other provisions on the same subject, Const. 1777, art. 5; 1821, art. 1, § 7; 1846, 1894, art. 3, § 5.]

III. [Senate reorganized.]—That from the first Monday in July next, the number of the senators shall be permanently thirty-two, and that the present number of senators shall be reduced to thirty-two in the following manner, that is to say: The seats of the eleven senators composing the first class, whose time of service will expire on the first Monday in July next, shall not be filled up; and out of the second class the seats of one senator from the middle district, and of one senator from the southern district, shall be vacated by the senators of those districts belonging to that class, casting lots among themselves; out of the third class the seats of two senators from the middle district, and of one senator from the eastern district shall be vacated in the same manner; out of the fourth class the seats of one senator from the middle district, of one senator from the eastern district, and of one senator from the western district, shall be vacated in the same manner; and if any of the said classes shall neglect to cast lots, the senate shall, in such case, proceed to cast lots for such class or classes so neglecting. And that eight senators shall be chosen at the next election, in such districts as the legislature shall direct, for the purpose of apportioning the whole number of senators amongst the four great districts of this state, as nearly as may be, according to the number of electors qualified to vote for senators, which shall be found to be in each of the said districts by the census above mentioned; which eight senators, so to be chosen, shall form the first class.

[Temporary.]

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IV. [Future apportionments of legislature.]—That from the first Monday in July next, and on the return of every census thereafter, the number of the assembly shall be increased at the rate of two members for every year, until the whole number shall amount to one hundred and fifty; and that upon the return of every such census, the legislature shall apportion the senators and members of the assembly amongst the great districts and counties of this state, as nearly as may be, according to the number of their respective electors; *Provided,* that the legislature shall not be prohibited by anything herein contained, from allowing one member of assembly to each county, heretofore erected within this state.

[Assembly, Const. 1777, art. 5; 1821, art. 1, § 7; 1846, 1894, art. 3, § 5. Senate, Const. 1777, art. 12; 1821, art. 1, § 6; 1846, 1894, art. 3, § 4.]

V. [Council of appointment, powers construed.]—And this convention do further, in the name and by the authority of the people of this state, ORDAIN, DETERMINE, AND DECLARE, That by the true construction of the twenty-third article of the Constitution of this state, the right to nominate all officers, other than those who, by the Constitution, are directed to be otherwise appointed, is vested concurrently in the person administering the government of this state for the time being, and in each of the members of the Council of Appointment.

[Const. 1777, art. 23.]

By order,

A. BURR,

President of the Convention, and delegate from Orange County.

Attest: JAMES VAN INGEN,
JOSEPH CONSTANT, *Secretaries.*

[See the chapter on the Convention of 1801, and the article on the Council of Appointment, in the chapter on the Convention of 1821.]

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THE SECOND CONSTITUTION, 1821.

[NOTE.—This Constitution was framed by a convention which met on the 28th of August, and adjourned on the 10th of November, 1821. It was approved by the people at a special election held January 15, 16, and 17 following, and took effect December 31, 1822. It is often cited as the Constitution of 1822. Many of its provisions were continued in the Constitution of 1894, and the judicial construction of such provisions is therefore reviewed in notes to the latter Constitution. Cases relating to provisions not so continued have been noted here under appropriate sections.]

We, the people of the state of New York, acknowledging with gratitude the grace and beneficence of God, in permitting us to make choice of our form of government, do establish this constitution.

ARTICLE I.

Section 1. [Legislative power.]—The legislative power of this state shall be vested in a senate and an assembly.

[Const. 1777, art. 2; Am. 1801; 1846, 1894, art. 3, § 1.]

§ 2. [Senate and assembly, how constituted.]—The senate shall consist of thirty-two members. The senators shall be chosen for four years, and shall be freeholders. The assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

[Assembly, Const. 1777, art. 4; Am. 1801, § 1; 1846, 1894, art. 3, § 2. Senate, Const. 1777, art. 10; Am. 1801, § 3; 1846, 1894, art. 3, § 2.]

§ 3. [Special powers of two houses.]—A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the qualifications of its own

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members. Each house shall choose its own officers; and the senate shall choose a temporary president, when the lieutenant governor shall not attend as president, or shall act as governor.

[Const. 1777, art. 9; 1846, 1894, art. 3, § 10.]

§ 4. **[Journal of proceedings; public sessions; adjournments.]**—Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

[Const. 1777, art. 15; 1846, 1894, art. 3, § 11.]

§ 5. **[Senate districts.]**—The state shall be divided into eight districts, to be called senate districts, each of which shall choose four senators.

The first district shall consist of the counties of Suffolk, Queens, Kings, Richmond, and New York.

The second district shall consist of the counties of Westchester, Putnam, Dutchess, Rockland, Orange, Ulster, and Sullivan.

The third district shall consist of the counties of Greene, Columbia, Albany, Rensselaer, Schoharie, and Schenectady.

The fourth district shall consist of the counties of Saratoga, Montgomery, Hamilton, Washington, Warren, Clinton, Essex, Franklin, and St. Lawrence.

The fifth district shall consist of the counties of Herkimer, Oneida, Madison, Oswego, Lewis, and Jefferson.

The sixth district shall consist of the counties of Delaware, Otsego, Chenango, Broome, Cortland, Tompkins, and Tioga.

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The seventh district shall consist of the counties of Onondaga, Cayuga, Seneca, and Ontario.

The eighth district shall consist of the counties of Steuben, Livingston, Monroe, Genesee, Niagara, Erie, Allegany, Cattaraugus, and Chautauqua.

And as soon as the senate shall meet, after the first election to be held in pursuance of this Constitution, they shall cause the senators to be divided by lot, into four classes, of eight in each, so that every district shall have one senator of each class; the classes to be numbered, one, two, three, and four. And the seats of the first class shall be vacated at the end of the first year; of the second class, at the end of the second year; of the third class, at the end of the third year; of the fourth class, at the end of the fourth year; in order that one senator be annually elected in each senate district.

[Const. 1777, art. 12; 1846, 1894, art. 3, § 3.]

§ 6. **[Census; reapportionment of senators.]**—An enumeration of the inhabitants of the state shall be taken, under the direction of the legislature, in the year one thousand eight hundred and twenty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature, at the first session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers, and persons of colour not taxed; and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senate district.

[Const. 1777, art. 5; 1846, 1894, art. 3, §§ 4, 5.]

§ 7. **[Apportionment of members of assembly.]**—The members of the assembly shall be chosen by counties,

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and shall be apportioned among the several counties of the state, as nearly as may be, according to the numbers of their respective inhabitants, excluding aliens, paupers, and persons of colour, not taxed. An apportionment of members of assembly shall be made by the legislature, at its first session after the return of every enumeration; and when made, shall remain unaltered until another enumeration shall have been taken. But an apportionment of members of the assembly shall be made by the present legislature, according to the last enumeration taken under the authority of the United States, as nearly as may be. Every county heretofore established, and separately organized, shall always be entitled to one member of the assembly; and no new county shall hereafter be erected, unless its population shall entitle it to a member.

[Const. 1777, art. 5; 1846, 1894, art. 3, §§ 4, 5.]

§ 8. **[Bills may originate in either house.]**—Any bill may originate in either house of the legislature; and all bills passed by one house may be amended by the other.

[New. Consts. 1846, 1894, art. 3, § 13.]

§ 9. **[Compensation of members.]**—The members of the legislature shall receive for their services a compensation, to be ascertained by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the year in which it shall have been made. And no law shall be passed increasing the compensation of the members of the legislature beyond the sum of three dollars a day.

[New. Consts. 1846, 1894, art. 3, § 6.]

§ 10. **[Members not to receive civil appointment.]**—No member of the legislature shall receive any civil

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appointment from the governor and senate, or from the legislature, during the term for which he shall have been elected.

[New. Consts. 1846, 1894, art. 3, § 7.]

§ 11. **[Disqualification of members.]**—No person, being a member of Congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, while a member of the legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

[New. Consts. 1846, 1894, art. 3, § 8.]

§ 12. **[Governor to approve bills.]**—Every bill which shall have passed the senate and assembly shall, before it become a law, be presented to the governor; 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 objections at large on their journal and proceed to reconsider it. If, after such reconsideration, two thirds of the members present 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 the members present, 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 governor 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

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it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

[Const. 1777, art. 3; 1846, 1894, art. 4, § 9.]

§ 13. **[Removals by legislature.]**—All officers holding their offices during good behavior may be removed by joint resolution of the two houses of the legislature, if two thirds of all the members elected to the assembly, and a majority of all the members elected to the senate, concur therein.

[New. Consts. 1846, 1894, art. 10, § 3.]

§ 14. **[Political year; meeting of legislature.]**—The political year shall begin on the first day of January; and the legislature shall, every year, assemble on the first Tuesday of January, unless a different day shall be appointed by law.

[New. Consts. 1846, 1894, art. 10, § 6.]

§ 15. **[Elections, when held.]**—The next election for governor, lieutenant governor, senators, and members of assembly shall commence on the first Monday of November, one thousand eight hundred and twenty-two; and all subsequent elections shall be held at such time, in the month of October or November, as the legislature shall, by law, provide.

[New. Consts. 1846, 1894, art. 3, § 9.]

§ 16. **[Commencement of official term after first election.]**—The governor, lieutenant governor, senators, and members of assembly, first elected under this Constitution, shall enter on the duties of their respective offices on the first day of January, one thousand eight

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hundred and twenty-three; and the governor, lieutenant governor, senators, and members of assembly, now in office, shall continue to hold the same until the first day of January, one thousand eight hundred and twenty-three, and no longer.

[New. Temporary, and abrogated by Const. 1846.]

ARTICLE II.

Section 1. [Qualifications of voters.]—Every male citizen of the age of twenty-one years, who shall have been an inhabitant of this state one year preceding any election, and for the last six months a resident of the town or county where he may offer his vote; and shall have, within the next year preceding the election, paid a tax to the state or county, assessed upon his real or personal property; or shall by law be exempted from taxation; or, being armed and equipped according to law, shall have performed, within that year, military duty in the militia of this state; or who shall be exempted from performing militia duty in consequence of being a fireman in any city, town, or village in this state; and also, every male citizen of the age of twenty-one years, who shall have been, for three years next preceding such election, an inhabitant of this state; and, for the last year, a resident in the town or county where he may offer his vote; and shall have been, within the last year, assessed to labor upon the public highways, and shall have performed the labor, or paid an equivalent therefor, according to law, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people; but no man of colour, unless he shall have been for three years a citizen of this state, and for one year next preceding any election, shall be seized and pos-

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sessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon; and shall have been actually rated, and paid a tax thereon, shall be entitled to vote at any such election. And no person of colour shall be subject to direct taxation unless he shall be seized and possessed of such real estate as aforesaid.

[Const. 1777, art. 7; 1846, 1894, art. 2, § 1. Property qualifications, except as to colored voters, were abrogated by the amendment of 1826.]

§ 2. **[Exclusion from right of suffrage.]**—Laws may be passed excluding from the right of suffrage persons who have been, or may be, convicted of infamous crimes.

[New. Consts. 1846, 1894, art. 2, § 2.]

§ 3. **[Registration of voters.]**—Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage, hereby established.

[New. Consts. 1846, 1894, art. 2, § 4.]

§ 4. **[Elections to be by ballot.]**—All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

[Const. 1777, art. 6; Consts. 1846, 1894, art. 2, § 5.]

ARTICLE III.

Section 1. [Governor and lieutenant governor; term of office.]—The executive power shall be vested in a governor. He shall hold his office for two years; and a lieutenant governor shall be chosen at the same time, and for the same term.

[Const. 1777, arts. 17, 20; 1846, 1894, art. 4, § 1.]

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§ 2. **[Qualifications of governor.]**—No person, except a native citizen of the United States, shall be eligible to the office of governor; nor shall any person be eligible to that office who shall not be a freeholder, and shall not have attained the age of thirty years, and have been five years a resident within this state; unless he shall have been absent during that time, on public business of the United States, or of this state.

[Const. 1777, art. 17; 1846, 1894, art. 4, § 2.]

§ 3. **[Governor and lieutenant governor, election of.]**—The governor and lieutenant governor shall be elected at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant governor shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant governor, the two houses of the legislature shall, by joint ballot, choose one of the said persons so having an equal and the highest number of votes, for governor or lieutenant governor.

[Time of election, Const. 1777, art. 17. Remainder of section new. Consts. 1846, 1894, art. 4, § 3.]

§ 4. **[Governor's general powers.]**—The governor shall be general and commander-in-chief of all the militia, and admiral of the navy of the state. He shall have power to convene the legislature (or the senate only), on extraordinary occasions. He shall communicate by message to the legislature at every session, the condition of the state; and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that

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the laws are faithfully executed. He 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.

[Const. 1777, art. 18; 1846, 1894, art. 4, § 4.]

§ 5. **[Governor may grant pardons and reprieves.]**—The governor shall have power to grant reprieves and pardons after conviction, for all offenses, except treason and cases of impeachment. Upon convictions for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the legislature, at its next meeting; when the legislature shall either pardon, or direct the execution of the criminal, or grant a farther reprieve.

[Const. 1777, art. 18; 1846, 1894, art. 4, § 5.]

§ 6. **[When lieutenant governor to act as governor.]**—In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor, for the residue of the term, or until the governor, absent or impeached, shall return, or be acquitted. But when the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall still continue commander-in-chief of all the military force of the state.

[Const. 1777, art. 20; 1846, 1894, art. 4, § 6.]

§ 7. **[When president of senate to act as governor.]**—The lieutenant governor shall be president of the senate, but shall have only a casting vote therein. If, during a vacancy of the office of governor, the lieutenant

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governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate shall act as governor until the vacancy shall be filled, or the disability shall cease.

[Const. 1777, art. 20; 1846, 1894, art. 4, § 7.]

ARTICLE IV.

Section 1. [Militia officers, how chosen.]—Militia officers shall be chosen or appointed as follows: Captains, subalterns, and noncommissioned officers shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions, by the written votes of the commissioned officers of the respective regiments, and separate battalions. Brigadier-generals, by the field officers of their respective brigades. Major-generals, brigadier-generals, and commanding officers of regiments or separate battalions, shall appoint the staff officers of their respective divisions, brigades, regiments, or separate battalions.

[Const. 1777, art. 24; 1846, 1894, art. 11, § 2.]

§ 2. [Governor to appoint certain militia officers.]—The governor shall nominate, and with the consent of the senate, appoint, all major-generals, brigade inspectors, and chiefs of the staff departments, except the adjutant-general and commissary-general. The adjutant-general shall be appointed by the governor.

[Const. 1777, art. 24; 1846, art. 11, § 3; 1894, art. 11, § 4.]

§ 3. [Legislature to regulate elections of militia officers.]—The legislature shall, by law, direct the

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time and manner of electing militia officers, and of certifying their elections to the governor.

[Const. 1777, art, 24; 1846, art. 11, § 4; 1894, art. 11, § 5.]

§ 4. **[Commissioned officers; how commissioned and removed.]**—The commissioned officers of the militia shall be commissioned by the governor, and no commissioned officer shall be removed from office unless by the senate, on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court-martial, pursuant to law. The present officers of the militia shall hold their commission, subject to removal, as before provided.

[New. Const. 1846, art. 11, § 5; 1894, art. 11, § 6.]

§ 5. **[Legislature may prescribe other modes of appointment and removal.]**—In case the mode of election and appointment of militia officers, hereby directed, shall not be found conducive to the improvement of the militia, the legislature may abolish the same, and provide by law for their appointment and removal, if two thirds of the members present in each house shall concur therein.

[New. Const. 1846, art. 11, § 6; 1894, art. 11, § 5.]

§ 6. **[State officers; how appointed.]**—The secretary of state, comptroller, treasurer, attorney-general, surveyor-general, and commissary-general shall be appointed as follows: The senate and assembly shall each openly nominate one person for the said offices respectively; after which, they shall meet together, and if they shall agree in their nominations, the person so nominated shall be appointed to the office for which he shall be nominated. If they shall disagree, the appointment shall be made by the joint ballot of the senators and members

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of assembly. The treasurer shall be chosen annually. The secretary of state, comptroller, attorney-general, surveyor-general, and commissary-general shall hold their offices for three years, unless sooner removed by concurrent resolution of the senate and assembly.

[Const. 1777, art. 23; 1846, art. 5, § 1; 1894, art. 5, § 1.]

§ 7. **[Governor to appoint judicial officers, except justices of the peace.]**—The governor shall nominate, by message, in writing, and with the consent of the senate, shall appoint, all judicial officers, except justices of the peace, who shall be appointed in manner following, that is to say: The board of supervisors in every county in this state shall, at such times as the legislature may direct, meet together; and they, or a majority of them so assembled, shall nominate so many persons as shall be equal to the number of justices of the peace to be appointed in the several towns in the respective counties. And the judges of the respective county courts, or a majority of them, shall also meet and nominate a like number of persons; and it shall be the duty of the said board of supervisors, and judges of county courts, to compare such nominations, at such time and place as the legislature may direct. And if, on such comparison, the said boards of supervisors and judges of county courts shall agree in their nominations, in all, or in part, they shall file a certificate of the nominations in which they shall agree, in the office of the clerk of the county; and the person or persons named in such certificates shall be justices of the peace. And in case of disagreement in whole, or in part, it shall be the farther duty of the said boards of supervisors, and judges respectively, to transmit their said nominations, so far as they disagree in the same, to the governor, who shall select from the said nominations, and appoint so many

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justices of the peace as shall be requisite to fill the vacancies.

Every person appointed a justice of the peace shall hold his office for four years, unless removed by the county court, for causes particularly assigned by the judges of the said court. And no justice of the peace shall be removed until he shall have notice of the charges made against him, and an opportunity of being heard in his defense.

[Const. 1777, art. 24; Amendment of 1826; Consts. 1846 and 1894, art. 10, § 2; 1894, art. 6, § 17.

In *People ex rel. Atty. Gen.* v. *New York* (1840), 25 Wend. 9, the court for the correction of errors by a tie vote affirmed the judgment of the supreme court that the term "judicial officers" did not include the mayor and aldermen of the city of New York, who, prior and subsequent to the adoption of the second Constitution, had exercised large judicial powers, and that they continued to be members of the county court notwithstanding the provision in this section requiring the governor to appoint judicial officers. See also *Colt* v. *People* (1842), 1 Park. Crim. Rep. 611, where it was held that 2 R. S. 204, § 28 (2 Edm. 213), making the mayor and aldermen of New York members of the court of oyer and terminer, was not a violation of the foregoing section. See also *People* v. *Colt* (1842), 3 Hill, 432.

In the exercise of the power of removal of justices of the peace, vested by this section of the Constitution in the county court, that court had a discretion whether it would hear a charge preferred against a justice. *Ex parte Johnson* (1824), 3 Cow. 371.]

§ 8. **[Sheriffs, clerks, and registers; election and removal.]**—Sheriffs and clerks of counties, including the register and clerk of the city and county of New York, shall be chosen by the electors of the respective counties, once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law to renew their security from time to time; and in default of giving such new security, their offices shall be

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deemed vacant. But the county shall never be made responsible for the acts of the sheriff; and the governor may remove any such sheriff, clerk, or register, at any time within the three years for which he shall be elected, giving to such sheriff, clerk, or register, a copy of the charge against him, and an opportunity of being heard in his defense, before any removal shall be made.

[Const. 1777, arts. 26, 28; 1846, 1894, art. 10, § 1.]

§ 9. **[District attorneys and clerks of courts; appointment and removal.]**—The clerks of courts, except those clerks whose appointment is provided for in the preceding section, shall be appointed by the courts of which they respectively are clerks; and district attorneys, by the county courts. Clerks of courts and district attorneys shall hold their offices for three years, unless sooner removed by the courts appointing them.

[Clerks of courts, Const. 1777, art. 27; 1846, art. 6, § 19. Judiciary Article, 1869, art. 6, § 20; 1894, art. 6, § 19. District attorney and clerks, Consts. 1846 and 1894, art. 10, § 1.

Under this section a district attorney must have been appointed by "the court of common pleas and the court of general sessions of the county for which the appointment is made" when both were holden for the transaction of business, and by judges appointed by the governor and senate. Justices of the peace, though members of the court for some purposes, could not participate in making such an appointment. An appointment by the common pleas after a final adjournment of the court of general sessions was held void. *People ex rel. Livingston* v. *Albany Common Pleas* (1837), 19 Wend. 27.

The power of the legislature to change the method of selecting clerks of courts was considered in *Warner* v. *People* (1845), 2 Denio, 272, 43 Am. Dec. 740, where it was held that the legislature could not create a new office for the performance of the same, or the principal part of the same, duties devolved on an existing office which was filled by an election by the people, and direct the appointment to be made in another manner. This case contains an interesting sketch by Chancellor Walworth of the origin of the office of county clerk. See also note to § 1 of article 10 of the Constitution of 1894.]

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§ 10. **[Mayors, how appointed.]**—The mayors of all the cities in this state shall be appointed annually, by the common councils of the respective cities.

[Const. 1777, art. 23. See amendments, 1833 and 1839.]

§ 11. **[Coroners, election and removal.]**—So many coroners as the legislature may direct, not exceeding four in each county, shall be elected in the same manner as sheriffs, and shall hold their offices for the same term, and be removable in like manner.

[Const. 1777, art. 26; 1846, art. 10, § 1; 1894, art. 10, § 2.]

§ 12. **[Masters, examiners, and registers in chancery.]**—The governor shall nominate, and, with the consent of the senate, appoint, masters and examiners in chancery, who shall hold their offices for three years, unless sooner removed by the senate, on the recommendation of the governor. The register and assistant registers shall be appointed by the chancellor, and hold their offices during his pleasure.

[Const. 1777, art. 27. The Constitution of 1846, art. 14, § 8, abolished these and other offices connected with the court of chancery.]

§ 13. **[Officers of other courts, how chosen.]**—The clerk of the court of oyer and terminer, and general sessions of the peace, in and for the city and county of New York, shall be appointed by the court of general sessions of the peace in said city, and hold his office during the pleasure of the said court: and such clerks and other officers of courts, whose appointment is not herein provided for, shall be appointed by the several courts, or by the governor, with the consent of the senate, as may be directed by law.

[New. Consts. 1846, 1894, art. 10, § 2.]

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§ 14. **[Justices' courts in New York.]**—The special justices, and the assistant justices, and their clerks, in the city of New York, shall be appointed by the common council of the said city; and shall hold their offices for the same term that the justices of the peace in the other counties of this state hold their offices, and shall be removable in like manner.

[New. Const. 1846, art. 6, § 14; 1894, art. 6, §§ 17, 18.]

§ 15. **[Other officers, how chosen.]**—All officers heretofore elective by the people shall continue to be elected; and all other officers whose appointment is not provided for by this constitution, and all officers whose offices may be hereafter created by law, shall be elected by the people, or appointed, as may by law be directed.

[Const. 1777, art. 29; 1846, 1894, art. 10, § 2.]

§ 16. **[Duration of offices not herein provided for.]**—Where the duration of any office is not prescribed by this Constitution, it may be declared by law: and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

[Const. 1777, art. 28; 1846, 1894, art. 10, § 3.]

ARTICLE V.

Section 1. **[Court of impeachment, and for correction of errors.]**—The court for the trial of impeachments and the correction of errors shall consist of the president of the senate, the senators, the chancellor, and the justices of the supreme court, or the major part of them; but when an impeachment shall be prosecuted against the chancellor or any justice of the supreme court, the person so impeached shall be suspended from

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exercising his office until his acquittal; and when an appeal from a decree in chancery shall be heard, the chancellor shall inform the court of the reasons for his decree, but shall have no voice in the final sentence; and when a writ of error shall be brought, on a judgment of the supreme court, the justices of that court shall assign the reasons for their judgment, but shall not have a voice for its affirmance or reversal.

[Const. 1777, art. 32; 1846, art. 6, § 1. Judiciary Article 1869; 1894, art. 6, § 13.

Under the Constitution of 1777, § 32, the legislature gave the lieutenant governor only a casting vote in this court, expressly declaring that he could not vote in any other case on any question to be determined by the court. See L. 1784-85, chap. 11, L. 1801, chap. 10, and 1 R. L. 1813, p. 135. January 12, 1829, Enos T. Throop, lieutenant governor and president of the senate, said, at the opening of the term of the court, that he believed he had the right, and that it was his duty to express his opinion and vote on all questions properly before the court; and he asked the court to declare his status and powers. Chancellor Walworth offered a resolution declaring, in effect, that the lieutenant governor possessed the right to express an opinion and vote on all questions. The chancellor presented an opinion in support of his resolution, reviewing the history of the constitutional provision relating to the composition of the court, and cited the statutes which had been passed under the first Constitution. He quoted from the revisers of 1828 the suggestion that the early legislation restricting to a casting vote the lieutenant governor's power as a member of the court was probably invalid, and called attention to the fact that the revised statutes omitted this limitation. The court adopted the chancellor's resolution by a vote of 23 to 5. *Lieutenant-Governor's Claim* (1829), 2 Wend. 213, 216.

A question somewhat similar arose in *Re Members of Court of Errors* (1830), 6 Wend, 158, where the court for the correction of errors adopted a resolution declaring in effect that the chancellor might decide or take part in the decision of a cause determined by him when sitting as a circuit judge. The legislature had, by the Revised Statutes, 2 R. S. 275 (2 Edm. 284, § 3), declared that "no judge of any appellate court, or of any court to which a writ of certiorari or of error shall be returnable, shall decide or take part in the decision of any cause or matter which shall have been determined by him when sitting as a judge of any other court," but in the chancellor's case this was deemed to be an unwarranted legislative limitation of the powers conferred by the Constitution on the mem-

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bers of the court for the correction of errors, and while in terms it would have prevented the chancellor from sitting in review of a decision made by him while acting as a circuit judge, the legislature could not thus add to the limitations of the chancellor's powers as prescribed in the Constitution.]

§ 2. **[Assembly may impeach civil officers.]**—The assembly shall have the power of impeaching all civil officers of this state for mal and corrupt conduct in office, and for high crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try and determine the charge in question, according to evidence; and no person shall be convicted without the concurrence of two thirds of the members present. Judgment, in cases of impeachment, shall not extend farther than the removal from office, and disqualification to hold, and enjoy, any office of honor, trust, or profit, under this state; but the party convicted shall be liable to indictment and punishment, according to law.

[Const. 1777, art. 33; 1846, art. 6, § 1; Judiciary Article of 1869, § 1; 1894, art. 6, § 13.]

§ 3. **[Chancellor and supreme court justices, official term.]**—The chancellor and justices of the supreme court shall hold their offices during good behavior, or until they shall attain the age of sixty years.

[Const. 1777, art. 24; 1846, art. 6, § 4; Judiciary Article of 1869, § 13; 1894, art. 6, §§ 4, 12. Court of chancery abolished by Constitution of 1846.]

§ 4. **[Supreme court, how constituted.]**—The supreme court shall consist of a chief justice and two justices, any of whom may hold the court.

[New. Const. 1846, art. 6; Judiciary Article of 1869; 1894, art. 6.]

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§ 5. **[Judicial circuits.]**—The state shall be divided, by law, into a convenient number of circuits, not less than four, nor exceeding eight, subject to alteration, by the legislature, from time to time, as the public good may require; for each of which a circuit judge shall be appointed, in the same manner, and hold his office by the same tenure, as the justices of the supreme court; and who shall possess the powers of a justice of the supreme court at chambers, and in the trial of issues joined in the supreme court; and in courts of oyer and terminer and gaol delivery. And such equity powers may be vested in the said circuit judges, or in the county courts, or in such other subordinate courts, as the legislature may by law direct, subject to the appellate jurisdiction of the chancellor.

[New. Judicial districts. Const. 1846, art. 6, § 2; Judiciary Article of 1869, § 6; 1894, art. 6, § 1.]

§ 6. **[County judges and recorders.]**—Judges of the county courts and recorders of cities shall hold their offices for five years, but may be removed by the senate, on the recommendation of the governor, for causes to be stated in such recommendation.

[Const. 1777, art. 24; 1846, art. 6, § 14; Judiciary Article of 1869, § 15; 1894, art. 6, § 14.]

§ 7. **[Chancellor and supreme court judges to hold no other office.]**—Neither the chancellor nor justices of the supreme court nor any circuit judge shall hold any other office or public trust. All votes for any elective office, given by the legislature or the people, for the chancellor or a justice of the supreme court or circuit judge, during his continuance in his judicial office, shall be void.

[Const. 1777, art. 28; 1846, art. 6, § 8; Judiciary Article of 1869, § 10; 1894, art. 6, § 10.]

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ARTICLE VI.

Section 1. [Official oath.]—Members of the legislature and all officers, executive and judicial, except such inferior officers as may by law be exempted, shall, before they enter on the duties of their respective offices, take and subscribe 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 the state of New York; and that I will faithfully discharge the duties of the office of according to the best of my ability.

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

[Const. 1846, art. 12; 1894, art. 13, § 1.]

ARTICLE VII.

Section 1. [Rights of citizens.]—No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

[Magna Charta, chap. 39; Const. 1777, art. 13; 1846, 1894, art. 1, § 1.]

§ 2. **[Trial by jury preserved.]**—The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever; and no new court shall be instituted, but such as shall proceed according to the course of the common law; except such courts of equity as the legislation is herein authorized to establish.

[Const. 1777, art. 41; 1846, 1894, art. 1, § 2.

In *Re Smith* (1833), 10 Wend. 449, it was held that the provision forbidding the creation of courts proceeding differently from the course of the common law refers to courts exercising the usual

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jurisdiction of courts of law, but proceeding by modes unknown to the common law; and does not prevent the legislature from providing for disciplinary proceedings against members of medical societies, and their expulsion under specified conditions.]

§ 3. **[Religious toleration.]**—The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state, to all mankind; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

[Const. 1777, art. 38; 1846, 1894, art. 1, § 3.]

§ 4. **[Clergymen not eligible to office.]**—AND WHEREAS, The ministers of the gospel are, by their profession, dedicated to the service of God, and the cure of souls, and ought not to be diverted from the great duties of their functions: therefore, no minister of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretense or description whatever, be eligible to, or capable of holding, any civil or military office or place within this state.

[Const. 1777, art. 39. Abrogated by Constitution of 1846.]

§ 5. **[Militia to be maintained; who may be excused from service.]**—The militia of this state shall, at all times hereafter, be armed and disciplined, and in readiness for service; but all such inhabitants of this state, of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, shall be excused therefrom by paying to the state an equivalent in money; and the legislature shall provide, by law, for the collection of such equivalent, to be esti-

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mated according to the expense, in time and money, of an ordinary able-bodied militia-man.

[Const. 1777, art. 40; 1846, 1894, art. 11, § 1.]

§ 6. **[Habeas corpus, when writ may be suspended.]**—The privilege of the writ of habeas corpus shall not be suspended unless when, in case of rebellion or invasion, the public safety may require its suspension.

[New. Consts. 1846, 1894, art. 1, § 4.]

§ 7. **[Rights of accused in criminal cases; taking private property for public use.]**—No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment; and in cases of the militia, when in actual service, and the land and naval forces in time of war, or which this state may keep, with the consent of Congress, in time of peace; and in cases of petit larceny, under the regulation of the legislature) unless on presentment or indictment of a grand jury; and in every trial on impeachment or indictment, the party accused shall be allowed counsel, as in civil actions. No person shall be subject, for the same offense, to be twice put in jeopardy of life or limb; nor shall he 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.

[New. Consts. 1846, 1894, art. 1, § 6.

This section did not give the accused before a court martial the absolute right to counsel, but the allowance of counsel was in the discretion of the court. *Rathbun* v. *Sawyer* (1836), 15 Wend. 451. By the Constitution of 1846 the provision in relation to counsel was extended, and included any trial in any court. Chief Judge Church in *People ex rel. Garling* v. *Van Allen* (1873), 55 N. Y. 31-35, suggests that this change was made in consequence of the decision in *Rathbun* v. *Sawyer,* that the accused before a court martial was not entitled to counsel.]

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§ 8. **[Freedom of speech and press; evidence in libel cases.]**—Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence, to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

[New. Consts. 1846, 1894, art. 1, § 8.]

§ 9. **[Two-thirds bills.]**—The assent of two thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or creating, continuing, altering, or renewing, any body politic or corporate.

[New. Appropriations. Const. 1846, art. 1, § 9; 1894, art. 3, § 20. Charter provisions abrogated by the Constitution of 1846.

The provision of this section requiring a two-thirds vote on the passage of a bill for the creation of a corporation has been omitted in subsequent constitutions; the decisions relating to this provision are therefore cited here. The provision was held by the supreme court not applicable to public corporations. *People* v. *Morris* (1835), 13 Wend. 325; *People ex rel. Lynch* v. *New York* (1841), 25 Wend. 680; *People* v. *Purdy* (1841), 2 Hill, 31; but the court for the correction of errors in *Purdy* v. *People* (1843), 4 Hill, 384, took a contrary view and held that it applied to all corporations, public and private. This rule was afterwards followed by the supreme court in *De Bow* v. *People* (1845), 1 Denio, 9, and in *Corning* v. *Greene* (1856), 23 Barb. 33.

Joint stock associations organized under the free banking law were held not subject to this constitutional provision. *Curtis* v. *Leavitt* (1853), 17 Barb. 309.

A corporation statute was presumed to have received the requisite

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two-thirds vote in the absence of any allegation to the contrary. *Buffalo & N. F. R. Co.* v. *Buffalo* (1843), 5 Hill, 209.

A two-thirds vote was not necessary on the passage of an act erecting a new county. *People* v. *Morrell* (1839), 21 Wend. 563.

The act of 1846, chap. 244, relating to a highway between the villages of Middleville and Herkimer, did not require a two-thirds vote. *Smith* v. *Helmer* (1849), 7 Barb. 416.]

§ 10. **[Common school funds; canals; salt springs.]** —The proceeds of all lands belonging to this state, except such parts thereof as may be reserved or appropriated to public use, or ceded to the United States, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, shall be and remain a perpetual fund; the interest of which shall be inviolably appropriated and applied to the support of common schools throughout this state. Rates of toll, not less than those agreed to by the canal commissioners, and set forth in their report to the legislature of the twelfth of March, one thousand eight hundred and twenty-one, shall be imposed on, and collected from, all parts of the navigable communications between the great western and northern lakes and the Atlantic ocean, which now are, or hereafter shall be, made and completed; and the said tolls, together with the duties on the manufacture of all salt, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen, and the duties on goods sold at auction, excepting therefrom the sum of thirty-three thousand, five hundred dollars, otherwise appropriated by the said act, and the amount of the revenue, established by the act of the legislature of the thirtieth of March, one thousand eight hundred and twenty, in lieu of the tax upon steamboat passengers, shall be and remain inviolably appropriated and applied to the completion of such navigable communications, and to the payment of the interest, and reimbursement of the cap-

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ital, of the money already borrowed, or which hereafter shall be borrowed, to make and complete the same. And neither the rates of toll on the said navigable communications, nor the duties on the manufacture of salt aforesaid, nor the duties on goods sold at auction, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen, nor the amount of the revenue, established by the act of March the thirtieth, one thousand eight hundred and twenty, in lieu of the tax upon steamboat passengers, shall be reduced or diverted, at any time before the full and complete payment of the principal and interest of the money borrowed, or to be borrowed, as aforesaid. And the legislature shall never sell or dispose of the salt springs belonging to this state, nor the lands contiguous thereto, which may be necessary, or convenient for their use, nor the said navigable communications, or any part or section thereof; but the same shall be and remain the property of this state.

[New. Const. 1846, art. 9, § 1; 1894, art. 9, § 3.
A person to whom salt lands were set apart under the Revised Statutes for the purpose of manufacturing salt thereon did not acquire an inheritable interest therein. *Newcomb* v. *Newcomb* (1855), 12 N. Y. 603.]

§ 11. **[Lotteries prohibited.]**—No lottery shall hereafter be authorized in this state; and the legislature shall pass laws to prevent the sale of all lottery tickets within this state, except in lotteries already provided for by law.

[New. Const. 1846, art. 1, § 10; 1894, art. 1, § 9.]

§ 12. **[Indian lands.]**—No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy-five, or which may hereafter be made, of or with the

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Indians in this state, shall be valid, unless made under the authority, and with the consent, of the legislature.

[Const. 1777, art. 37; 1846, art. 1, § 16; 1894, art. 1, § 15.]

§ 13. **[Common law continued.]**—Such parts of the common law and of the acts of the legislature of the colony of New York as together did form the law of the said colony on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the congress of the said colony, and of the convention of the state of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed, or altered, and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution, are hereby abrogated.

[Const. 1777, art. 35; 1846, art. 1, § 17; 1894, art. 1, § 16.]

§ 14. **[Royal grants and charters preserved.]**—All grants of land within this state, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this state, made by the authority of the said King or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority; or shall impair the obligation

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of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

[Const. 1777, art. 36; 1846, art. 1, § 18; 1894, art. 1, § 17.]

ARTICLE VIII.

Section 1. [Constitution, how amended.]—Any amendment or amendments to this Constitution may be proposed in the senate or assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen; and shall be published for three months previous to the time of making such choice; and, if in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two thirds of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment, or amendments to the people, in such manner, and at such time, as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of the Constitution.

[New. Const. 1846, art. 13, § 1; 1894, art. 14, § 1.]

ARTICLE IX.

Section 1. [Constitution, when to take effect.]—This Constitution shall be in force from the last day of December, in the year one thousand eight hundred and twenty-two. But all those parts of the same which

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relate to the right of suffrage, the division of the state into senate districts, the number of members of the assembly to be elected, in pursuance of this Constitution, the apportionment of members of assembly; the elections hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two, the continuance of the members of the present legislature in office until the first day of January, in the year one thousand eight hundred and twenty-three, and the prohibition against authorizing lotteries, the prohibition against appropriating the public moneys or property for local or private purposes, or creating, continuing, altering, or renewing any body politic or corporate, without the assent of two thirds of the members elected to each branch of the legislature,—shall be in force, and take effect, from the last day of February next. The members of the present legislature shall, on the first Monday of March next, take and subscribe an oath or affirmation, to support this Constitution, so far as the same shall then be in force. Sheriffs, clerks of counties, and coroners, shall be elected at the election hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two; but they shall not enter on the duties of their offices before the first day of January then next following. The commissions of all persons holding civil offices on the last day of December, one thousand eight hundred and twenty-two, shall expire on that day; but the officers then in commission may respectively continue to hold their said offices until new appointments, or elections, shall take place under this Constitution.

[New. Temporary.]

§ 2. **[Existing election laws applicable to first election.]**—The existing laws relative to the manner of

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notifying, holding, and conducting elections, making returns, and canvassing votes, shall be in force, and observed in respect to the elections hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two, so far as the same are applicable. And the present legislature shall pass such other and further laws as may be requisite for the execution of the provisions of this Constitution, in respect to elections.

[Temporary.]

Done in convention, at the Capitol in the city of Albany, the tenth day of November, in the year one thousand eight hundred and twenty-one, and of the independence of the United States of America, the forty-sixth. In witness whereof, we have hereunto subscribed our names.

DANIEL D. TOMPKINS,

President, and Delegate from the county of Richmond.

JOHN F. BACON,
SAMUEL S. GARDINER, } *Secretaries.*

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AMENDMENTS FROM 1821 TO 1846.

[See chapter on amendments to the second Constitution, vol. 2.]

1826. [Qualifications of voters.]—That so much of the first section of the second article of the Constitution as prescribes the qualifications of voters, other than persons of color, be and the same is hereby abolished, and that the following be substituted in the place thereof:

Every male citizen of the age of twenty-one years, who shall have been an inhabitant of this state one year next preceding any election, and for the last six months a resident of the county where he may offer his vote, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are or hereafter may be elective by the people.

[Colored voters were not affected by this amendment. See Const. 1777, art. 7; 1846, art. 2, § 1; Am. 1874; 1894, art. 2, § 1; 15th Amendment. The index should also be consulted for further references.]

1826. [Justices of the peace, how chosen and classified.]—That the people of this state, in their several towns, shall, at their annual election, and in such manner as the legislature shall direct, elect by ballot their justices of the peace; and the justices so elected in any town shall immediately thereafter meet together, and, in presence of the supervisor and town clerk of the said town, be divided by lot into four classes, of one in each class, and be numbered one, two, three, and four; and the office of number one shall expire at the end of the first year; of number two at the end of the second year; of number three at the end of the third year; and of number four at the end of the fourth year, in order that one justice may thereafter be annually elected;

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and that so much of the seventh section of the fourth article of the Constitution of this state as is inconsistent with this amendment, be abrogated.

[Const. 1846, 1894, art. 10, § 2; 1894, art. 6, § 17.
In *Ex parte Quackenbush* (1842), 2 Hill, 369, it was held that the legislature had no power to provide for the election of a justice of the peace except at an annual town meeting. This rule has since been changed; see Const. 1894, art. 6, § 17, which authorizes the election of justices of the peace not only at annual town meetings, but "at such other time and in such manner as the legislature may direct."]

1833. **[Election of mayor in New York.]**—At the end of the tenth section of the fourth article of the said Constitution, add the following words: "Except in the city of New York, in which the mayor shall be chosen annually by the electors thereof qualified to vote for the other charter officers of the said city, and at the time of the election of such officers."

[Const. 1777, art. 3; 1821, art. 4, § 10; Am. 1839; 1846 and 1894, art. 10, § 2; 1894, art. 12, § 3.]

1833. **[Duties on salt.]**—That the duties on the manufacture of salt, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen, and by the tenth section of the seventh article of the Constitution of this state, may at any time hereafter be reduced by an act of the legislature of this state; but shall not, while the same is appropriated and pledged by the said section, be reduced below the sum of six cents upon each and every bushel; and the said duties shall remain inviolably appropriated and applied as is provided by the said tenth section; and that so much of the said tenth section of the seventh article of the Constitution of this state as is inconsistent with this amendment be abrogated.

[Const. 1821, art. 7, § 10; Am. 1835.]

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1835. [Canals; duties on salt; auction sales.]—Whenever a sufficient amount of money shall be collected and safely invested for the reimbursement of such part as may then be unpaid of the money borrowed for the construction of the Erie and Champlain canals, the tenth section of the seventh article of the Constitution of this state, so far as it relates to the amount of duties on the manufacture of salt, and the amount of duties on goods sold at auction, shall cease and determine; and thereafter the duties on goods sold at auction, excepting therefrom the sum of thirty-three thousand five hundred dollars, otherwise appropriated by the act of the fifteenth of April, one thousand eight hundred and seventeen, and the duties on the manufacture of salt, shall be restored to the general fund.

[Const. 1821, art. 7, § 10; Am. 1833.]

1839. [Election of mayor.]—Mayors of the several cities in this state may be elected annually by the male inhabitants entitled to vote for members of the common council of such cities respectively, in such manner as the legislature shall by law provide; and the legislature may, from time to time, make such provision by law for the election of any one or more of such mayors; but until such provision be made by law, such mayor (excepting the mayor of the city of New York) shall be appointed in the manner now prescribed by the Constitution of this state; and so much of the tenth section of article fourth of the Constitution of this state as is inconsistent with this amendment is hereby abrogated.

[Const. 1777, art. 23; 1821, art. 4, § 10; Am. 1833; 1846 and 1894, art. 10, § 2; 1894, art. 12, § 3.]

1845. [Procedure on removal of judicial officers.]—No judicial officer shall be removed by the joint

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resolution of the two houses of the legislature, or by the senate, on the recommendation of the governor, unless the cause of such removal shall be entered on the journal of both houses, or of the senate, as the case may be; and such officer against whom the legislature or the senate may be about to proceed shall be served with notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either house shall act thereupon, and shall have an opportunity to be heard in his defense before any question shall be taken upon such removal; and the yeas and nays shall be entered upon the journals of the senate, or houses, as the case may be.

[Const. 1821, art. 1, § 13; 1846, art. 6, § 11; Judiciary Articles of 1869, art. 6, § 11; 1894, art. 6, § 11.]

1845. **[Abrogating property qualifications to office.]**—No property qualification shall be required to render a person eligible to or capable of holding any office or public trust in this state.

[Const. 1777, art. 10, 17; 1821, art. 1, § 2, art. 3, § 2. See note on this section in the chapter on the Amendments to the Constitution of 1821, vol. 2.]

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THE THIRD CONSTITUTION, 1846.

[This Constitution was framed by a convention which met in Albany on the 1st day of June, 1846, and adjourned, October 9, 1846. It was submitted to the people and approved at an election held November 3, 1846. A history of this Constitution will be found in the chapter on the Convention of 1846. The constitutional changes made between 1846 and 1894 follow under a separate head. Judicial decisions relating to provisions not continued in the Constitution of 1894 are noted here under the appropriate sections.]

WE, THE PEOPLE of the state of New York, grateful to Almighty God for our freedom, in order to secure its blessings, DO ESTABLISH THIS CONSTITUTION.

ARTICLE I.

Section 1. [Rights of citizens.]—No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.

[Magna Charta, chap. 39; Const. 1777, art. 13; 1821, art. 7, § 1; 1846, 1894, art. 1, § 1.]

§ 2. **[Trial by jury preserved.]**—The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever. But a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law.

[Const. 1777, art. 41; 1821, art. 7, § 2; 1894, art. 1, § 2.]

§ 3. **[Religious liberty.]**—The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state, to all mankind; and no person shall be

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rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

[Const. 1777, art. 38; 1821, art. 7, § 3; 1894, art. 1, § 3.]

§ 4. **[When writ of habeas corpus not to be suspended.]**—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 its suspension.

[Const. 1821, art. 7, § 6; 1894, art. 1, § 4.]

§ 5. **[Excessive bail, fines, and punishment prohibited; rights of witness.]**—Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

[New. Const. 1894, art. 1, § 5.]

§ 6. **[Rights of accused in criminal cases; taking private property for public use.]**—No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia, when in actual service; and the land and naval forces in time of war, or which this state may keep with the consent of Congress in time of peace; and in cases of petit larceny, under the regulation of the legislature), unless on presentment or indictment of a grand jury; and in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a wit-

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ness 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.

[Const. 1821, art. 7, § 7; 1894, art. 1, § 6.]

§ 7. **[Compensation for private property, how ascertained; private roads.]**—When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

[New. Const. 1894, art. 1, § 7.]

§ 8. **[Freedom of speech and press; evidence in libel cases.]**—Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

[Const. 1821, art. 7, § 8; 1894, art. 1, § 8.]

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§ 9. **[Two-thirds bills.]**—The assent of two thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

[Const. 1821, art. 7, § 9; 1894, art. 3, § 20.]

§ 10. **[Right to assemble and petition; divorces; lotteries prohibited.]**—No law shall be passed abridging the right of the people peaceably to assemble, and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery hereafter be authorized, or any sale of lottery tickets allowed within this state.

[New, except that lotteries were prohibited by Const. 1821, art. 7, § 11; 1894, art. 1, § 9.]

§ 11. **[Sovereignty in real property; escheats.]**—The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands, the title to which shall fail, from a defect of heirs, shall revert or escheat to the people.

[New. Const. 1894, art. 1, § 10.]

§ 12. **[Feudal tenures abolished.]**—All feudal tenures of every description, with all their incidents, are declared to be abolished, saving, however, all rents and services certain, which at any time heretofore have been lawfully created or reserved.

[New. Const. 1894, art. 1, § 11.]

§ 13. **[Absolute ownership of estates.]**—All lands within this state are declared to be allodial, so that, sub-

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ject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

[New. Const. 1894, art. 1, § 12.]

§ 14. **[Leases of agricultural lands limited.]**—No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

[New. Const. 1894, art. 1, § 13.]

§ 15. **[Restraints on alienation prohibited.]**—All fines, quarter sales, or other like restraints upon alienations, reserved in any grant of land hereafter to be made, shall be void.

[New. Const. 1894, art. 1, § 14.]

§ 16. **[Indian lands.]**—No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy-five, or which may hereafter be made, of or with the Indians, shall be valid unless made under the authority and with the consent of the legislature.

[Const. 1777, art. 37; 1821, art. 7, § 12; 1894, art. 1, § 15.]

§ 17. **[Common law continued.]**—Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the congress of the said colony, and of the convention of the state of New York, in force on the twentieth day of April, one thousand seven hundred and

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seventy-seven, which have not since expired, or been repealed, or altered, and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts or parts thereof as are repugnant to this Constitution, are hereby abrogated; and the legislature, at its first session after the adoption of this Constitution, shall appoint three commissioners, whose duty it shall be to reduce into a written and systematic code the whole body of the law of this state, or so much and such parts thereof as to the said commissioners shall seem practicable and expedient. And the said commissioners shall specify such alterations and amendments therein as they shall deem proper, and they shall at all times make reports of their proceedings to the legislature, when called upon to do so; and the legislature shall pass laws regulating the tenure of office, the filling of vacancies therein, and the compensation of the said commissioners; and shall also provide for the publication of the said code, prior to its being presented to the legislature for adoption.

[Const. 1777, art. 35; 1821, art. 7, § 13; 1894, art. 1, § 16.]

§ 18. **[Royal grants and charters preserved.]**—All grants of land within this state, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this state, made by the authority of the said King, or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants

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or charters since made by this state, or by persons acting under its authority, or shall impair the obligation of any debts contracted by this state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

[Const. 1777, art. 36; 1821, art. 7, § 14; 1894, art. 1, § 17.]

ARTICLE II.

Section 1. [Qualifications of voters.]—Every male citizen of the age of twenty-one years, who shall have been a citizen for ten days, and an inhabitant of this state one year next preceding any election, and for the last four months a resident of the county where he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elected by the people; but such citizen shall have been, for thirty days next preceding the election, a resident of the district from which the officer is to be chosen for whom he offers his vote. But no man of color, unless he shall have been for three years a citizen of this state, and for one year next preceding any election shall have been seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election. And no person of color shall be subject to direct taxation unless he shall be seized and possessed of such real estate as aforesaid.

[Const. 1777, art. 7; 1821, art. 2, § 1; 1894, art. 2, § 1. This section was amended in 1864 and in 1874.]

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§ 2. **[Exclusion from right of suffrage.]**—Laws may be passed, excluding from the right of suffrage all persons who have been or may be convicted of bribery, larceny, or of any infamous crime; and for depriving every person who shall make, or become directly or indirectly interested in, any bet or wager depending upon the result of any election, from the right to vote at such election.

[Const. 1821, art. 2, § 2; Am. 1874; 1894, art. 2, § 2.]

§ 3. **[Right of suffrage not affected by certain occupations and conditions.]**—For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

[New. Const. 1894, art. 2, § 3.]

§ 4. **[Registration of voters.]**—Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established.

[Const. 1821, art. 2, § 3; 1894, art. 2, § 4.]

§ 5. **[Elections to be by ballot.]**—All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

[Const. 1777, art. 6; 1821, art. 2, § 4; 1894, art. 2, § 5.]

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ARTICLE III.

Section 1. [Legislative power.]—The legislative power of this state shall be vested in a senate and assembly.

[Const. 1777, art. 2; 1821, art. 1, § 1; 1894, art. 3, § 1.]

§ 2. **[Senate and assembly, how constituted.]**—The senate shall consist of thirty-two members, and the senators shall be chosen for two years.

The assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

[Assembly, Const. 1777, art. 4; Am. 1801, § 1; 1821, art. 1, § 2; 1894, art. 3, § 2. Senate, Const. 1777, art. 10; Am. 1801, § 3; 1821, art. 1, § 2; 1894, art. 3, § 2.]

§ 3. **[Senate districts.]**—The state shall be divided into thirty-two districts, to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to thirty-two, inclusive.

District number one (1) shall consist of the counties of Suffolk, Richmond, and Queens.

District number two (2) shall consist of the county of Kings.

District number three (3), number four (4), number five (5), and number six (6), shall consist of the city and county of New York; and the board of supervisors of said city and county shall, on or before the first day of May, one thousand eight hundred and forty-seven, divide the said city and county into the number of senate districts to which it is entitled, as near as may be of an equal number of inhabitants, excluding aliens and persons of color not taxed, and consisting of convenient and contiguous territory; and no assembly district shall be divided in the formation of a senate district. The

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board of supervisors, when they shall have completed such division, shall cause certificates thereof, stating the number and boundaries of each district and the population thereof, to be filed in the office of the secretary of state, and of the clerk of the said city and county.

District number seven (7) shall consist of the counties of Westchester, Putnam, and Rockland.

District number eight (8) shall consist of the counties of Dutchess and Columbia.

District number nine (9) shall consist of the counties of Orange and Sullivan.

District number ten (10) shall consist of the counties of Ulster and Greene.

District number eleven (11) shall consist of the counties of Albany and Schenectady.

District number twelve (12) shall consist of the county of Rensselaer.

District number thirteen (13) shall consist of the counties of Washington and Saratoga.

District number fourteen (14) shall consist of the counties of Warren, Essex, and Clinton.

District number fifteen (15) shall consist of the counties of St. Lawrence and Franklin.

District number sixteen (16) shall consist of the counties of Herkimer, Hamilton, Fulton, and Montgomery.

District number seventeen (17) shall consist of the counties of Schoharie and Delaware.

District number eighteen (18) shall consist of the counties of Otsego and Chenango.

District number nineteen (19) shall consist of the county of Oneida.

District number twenty (20) shall consist of the counties of Madison and Oswego.

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District number twenty-one (21) shall consist of the counties of Jefferson and Lewis.

District number twenty-two (22) shall consist of the county of Onondaga.

District number twenty-three (23) shall consist of the counties of Cortland, Broome, and Tioga.

District number twenty-four (24) shall consist of the counties of Cayuga and Wayne.

District number twenty-five (25) shall consist of the counties of Tompkins, Seneca, and Yates.

District number twenty-six (26) shall consist of the counties of Steuben and Chemung.

District number twenty-seven (27) shall consist of the county of Monroe.

District number twenty-eight (28) shall consist of the counties of Orleans, Genesee, and Niagara.

District number twenty-nine (29) shall consist of the counties of Ontario and Livingston.

District number thirty (30) shall consist of the counties of Allegany and Wyoming.

District number thirty-one (31) shall consist of the county of Erie.

District number thirty-two (32) shall consist of the counties of Chautauqua and Cattaraugus.

[Const. 1777, art. 12; 1821, art. 1, § 5; 1894, art. 3, § 3.]

§ 4. **[Census; reapportionment of senators.]**—An enumeration of the inhabitants of the state shall be taken, under the direction of the legislature, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature, at the first session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and persons of color

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not taxed; and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senate district, except such county shall be equitably entitled to two or more senators.

[Const. 1777, art. 5; 1821, art. 1, § 6; 1894, art. 3, §§ 4, 5.]

§ 5. **[Apportionment of assembly.]**—The members of assembly shall be apportioned among the several counties of this state, by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and persons of color not taxed, and shall be chosen by single districts. The several boards of supervisors in such counties of this state as are now entitled to more than one member of assembly shall assemble on the first Tuesday of January next, and divide their respective counties into assembly districts, equal to the number of members of assembly to which such counties are now severally entitled by law, and shall cause to be filed in the offices of the secretary of state and the clerks of their respective counties, a description of such assembly districts, specifying the number of each district and the population thereof, according to the last preceding state enumeration, as near as can be ascertained. Each assembly district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and persons of color not taxed, and shall consist of convenient and contiguous territory; but no town shall be divided in the formation of assembly districts.

The legislature, at its first session after the return of every enumeration, shall reapportion the members of assembly among the several counties of this state, in manner aforesaid; and the boards of supervisors in such counties as may be entitled, under such reapportionment, to

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more than one member, shall assemble at such time as the legislature making such reapportionment shall prescribe, and divide such counties into assembly districts, in the manner herein directed; and the apportionment and districts so to be made shall remain unaltered until another enumeration shall be taken, under the provisions of the preceding section.

Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the assembly, and no new county shall hereafter be erected, unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, be entitled to a member.

[Const. 1777, art. 5; 1821, art. 1, § 7; Am. 1874; 1894, art. 3, §§ 4, 5.]

§ 6. **[Compensation of members.]**—The members of the legislature shall receive for their services a sum not exceeding three dollars per day, from the commencement of the session, but such pay shall not exceed in the aggregate three hundred dollars *per diem* allowance, except in proceedings for impeachment. The limitation as to the aggregate compensation shall not take effect until the year one thousand eight hundred and forty-eight. When convened in extra session by the governor, they shall receive three dollars per day. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting on the most usual route.

The speaker of the assembly shall, in virtue of his office, receive an additional compensation equal to one-third of his *per diem* allowance as a member.

[Const. 1821, art. 1, § 9; Am. 1874; 1894, art. 3, § 6.]

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§ 7. **[Members not to receive certain civil appointments.]**—No member of the legislature shall receive any civil appointment within this state, or to the Senate of the United States, from the governor, the governor and senate, or from the legislature, during the term for which he shall have been elected; and all such appointments, and all votes given for any such member, for any such office or appointment, shall be void.

[Const. 1821, art. 1, § 10; Am. 1874; 1894, art. 3, § 7.]

§ 8. **[Certain Federal officers disqualified as members.]**—No person being a member of Congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature; and if any person shall, after his election as a member of the legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

[Const. 1821, art. 1, § 11; Am. 1874; 1894, art. 3, § 8.]

§ 9. **[Time of elections.]**—The elections of senators and members of assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the legislature.

[Const. 1821, art. 1, § 15; 1894, art. 3, § 9.]

§ 10. **[Quorum; special powers of each house.]**—A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings and be the judge of the elections, returns, and qualifications of its own members; shall choose its own officers; and the senate shall choose a

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temporary president when the lieutenant governor shall not attend as president, or shall act as governor.

[Const. 1777, art. 9; 1821, art. 1, § 3; 1894, art. 3, § 10.]

§ 11. **[Journals; public sessions; adjournments.]**—Each house shall keep a journal of its proceedings and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

[Const. 1777, art. 15; 1821, art. 1, § 4; 1894, art. 3, § 11.]

§ 12. **[Privileges of members.]**—For any speech or debate in either house of the legislature the members shall not be questioned in any other place.

[New. Const. 1894, art. 3, § 2.]

§ 13. **[Bills may originate in either house.]**—Any bill may originate in either house of the legislature, and all bills passed by one house may be amended by the other.

[Const. 1821, art. 1, § 8; 1894, art. 3, § 13.]

§ 14. **[Enacting clause.]**—The enacting clause of all bills shall be "The People of the state of New York, represented in senate and assembly, do enact as follows," and no law shall be enacted except by bill.

[Const. 1777, art. 31; 1894, art. 3, § 14.]

§ 15. **[Manner of passing bills.]**—No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the legislature, and the

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question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

[New. Const. 1894, art. 3, § 15.]

§ 16. **[Private and local bills limited to one subject.]**—No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title.

[New. Const. 1894, art. 3, § 16.]

§ 17. **[Boards of supervisors may be vested with legislative powers.]**—The legislature may confer upon the boards of supervisors of the several counties of the state such further powers of local legislation and administration as they shall, from time to time, prescribe.

[New. Am. 1874; Const. 1894, art. 3, § 27.]

ARTICLE IV.

Section 1. [Governor and lieutenant governor; term of office.]—The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant governor shall be chosen at the same time and for the same term.

[Const. 1777, arts. 17, 20; 1821, art. 3, § 1; Am. 1874; 1894, art. 4, § 1.]

§ 2. **[Qualifications of governor.]**—No person, except a citizen of the United States, shall be eligible to the office of governor, nor shall any person be eligible to that office who shall not have attained the age of thirty years, and who shall not have been, five years next preceding his election, a resident within this state.

[Const. 1777, art. 17; 1821, art. 3, § 2; Am. 1874; 1894, art. 4, § 2.]

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§ 3. **[Election of governor and lieutenant governor.]**—The governor and lieutenant governor shall be elected at the times and places of choosing members of the assembly. The persons respectively having the highest number of votes for governor and lieutenant governor shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant governor, the two houses of the legislature, at its next annual session, shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor, or lieutenant governor.

[Const. 1777, art. 17; 1821, art. 3, § 3; 1894, art. 4, § 3.]

§ 4. **[Governor's general powers.]**—The governor shall be commander-in-chief of the military and naval forces of the state. He shall have power to convene the legislature (or the senate only) on extraordinary occasions. He shall communicate by message to the legislature, at every session, the condition of the state, and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services a compensation, to be established by law, which shall neither be increased nor diminished after his election, or during his continuance in office.

[Const. 1777, art. 18; 1821, art. 3; § 4; Am. 1874; 1894, art. 4, § 4.]

§ 5. **[Governor may grant pardons and reprieves.]**—The governor shall have the power to grant re-

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prieves, commutations, and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulation as may be provided by law relative to the manner of applying for pardons. Upon conviction of treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation, or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve.

[Const. 1777, art. 18; 1821, art. 3, § 5; 1894, art. 4, § 5.]

§ 6. **[When lieutenant governor to act as governor.]**—In case of the impeachment of the governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

[Const. 1777, art. 20; 1821, art. 3, § 6; 1894, art. 4, § 6.]

§ 7. **[Qualifications of lieutenant governor; when president pro tem. to act as governor.]**—The lieutenant governor shall possess the same qualifications of

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eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. If, during a vacancy of the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or he be absent from the state, the president of the senate shall act as governor until the vacancy be filled, or the disability shall cease.

[Const. 1777, art. 20; 1821, art. 3, § 7; 1894, art. 4, § 7.]

§ 8. **[Lieutenant governor's compensation.]**—The lieutenant governor shall, while acting as such, receive a compensation which shall be fixed by law, and which shall not be increased or diminished during his continuance in office.

[New. Am. 1874; Const. 1894, art. 4, § 8.]

§ 9. **[Legislature to present bills to governor for his action.]**—Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; 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 objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of the members present 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 all the members present, it shall become a law, notwithstanding the objections of the governor. But in all such cases, the votes of both houses shall be determined by ayes and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house, re-

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spectively. If any bill shall not be returned by the governor 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 legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

[Const. 1777, art. 3; 1821, art. 1, § 12; Am. 1874; 1894, art. 4, § 9.]

ARTICLE V.

Section 1. [State officers; election and compensation.]—The secretary of state, comptroller, treasurer, and attorney-general, shall be chosen at a general election, and shall hold their offices for two years. Each of the officers in this article named (except the speaker of the assembly) shall, at stated times, during his continuance in office, receive for his services a compensation, which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive, to his use, any fees or perquisites of office, or other compensation.

[Const. 1777, art. 23; 1821, art. 4, § 6; 1894, art. 5, §§ 1, 2.]

§ 2. **[State engineer and surveyor.]**—A state engineer and surveyor shall be chosen at a general election, and shall hold his office two years, but no person shall be elected to said office who is not a practical engineer.

[Const. 1777, art. 23; 1821, art. 4, § 5; 1894, art. 5, §§ 1, 2.]

§ 3. **[Canal commissioners.]**—Three canal commissioners shall be chosen at the general election which shall be held next after the adoption of this Constitution, one of whom shall hold his office for one year, one for

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two years, and one for three years. The commissioners of the canal fund shall meet at the capitol on the first Monday of January next after such election, and determine by lot which of said commissioners shall hold his office for one year, which for two, and which for three years; and there shall be elected annually, thereafter, one canal commissioner, who shall hold his office for three years.

[New. Abrogated in 1876.]

§ 4. **[State prison inspectors.]**—Three inspectors of state prisons shall be elected at the general election which shall be held next after the adoption of this Constitution, one of whom shall hold his office for one year, one for two years, and one for three years. The governor, secretary of state, and comptroller, shall meet at the capitol on the first Monday of January next succeeding such election, and determine by lot which of said inspectors shall hold his office for one year, which for two, and which for three years; and there shall be elected annually thereafter, one inspector of state prisons, who shall hold his office for three years; said inspectors shall have the charge and superintendence of the state prisons, and shall appoint all the officers therein. All vacancies in the office of such inspector shall be filled by the governor, till the next election.

[New. Abrogated in 1876.]

§ 5. **[Commissioners of land office and canal fund.]**—The lieutenant governor, speaker of the assembly, secretary of state, comptroller, treasurer, attorney-general, and state engineer and surveyor shall be the commissioners of the land office.

The lieutenant governor, secretary of state, comp-

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troller, treasurer, and attorney general shall be the commissioners of the canal fund.

The canal board shall consist of the commissioners of the canal fund, the state engineer and surveyor, and the canal commissioners.

[New. Const. 1894, art. 5, § 5.]

§ 6. **[Powers and duties of boards.]**—The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.

[New. Const. 1894, art. 5, § 6.]

§ 7. **[Suspension of treasurer.]**—**The treasurer** may be suspended from office by the governor, during the recess of the legislature, and until thirty days after the commencement of the next session of the legislature, whenever it shall appear to him that such treasurer has, in any particular, violated his duty. The governor shall appoint a competent person to discharge the duties of the office, during such suspension of the treasurer.

[New. Const. 1894, art. 5, § 7.]

§ 8. **[Certain offices abolished.]**—All offices for the weighing, gauging, measuring, culling, or inspecting any merchandise, produce, manufacture, or commodity whatever, are hereby abolished, and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the state in its property, revenue, tolls, or purchases, or of supplying the people with correct stand-

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ards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

[New. Const. 1894, art. 5, § 8.]

ARTICLE VI.

Section 1. [Assembly may impeach civil officers.]—The assembly shall have the power of impeachment, by the vote of the majority of all the members elected. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or a major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try the impeachment, according to the evidence; and no person shall be convicted without the concurrence of two thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust, or profit, under this state; but the party impeached shall be liable to indictment and punishment according to law.

[Const. 1777, art. 33; 1821, art. 5, § 2; Judiciary Article of 1869, § 1; 1894, art. 6, § 13.]

§ 2. **[Court of appeals.]**—There shall be a court of appeals, composed of eight judges, of whom four shall be elected by the electors of the state for eight years, and four selected from the class of justices of the

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supreme court having the shortest time to serve. Provision shall be made by law for designating one of the number elected as chief judge, and for selecting such justices of the supreme court, from time to time, and for so classifying those elected, that one shall be elected every second year.

[New. Judiciary Article of 1869. Const. 1894, art. 6, § 7.

Four members of this court were taken from the supreme court by regular process of selection and rotation, and it was inevitable that the court would occasionally be called upon to review the judgments rendered by such judges in the supreme court. Immediately on the organization of the new court a question arose as to the power of a justice of the supreme court to sit in review of his own decision, and in *Pierce* v. *Delamater* (1847) 1 N. Y. 17, the court of appeals unanimously decided that a justice of the supreme court who came into the court of appeals by operation of the constitutional provision might take part in the determination of causes brought up for review from a subordinate court of which he was a member, and in the decision of which he took part in the court below. A note at the end of the case states that Chief Justice Jewett, who had been a justice of the supreme court, Judge Ruggles, who had been a circuit judge, and Judge Jones, who had been a chief justice of the superior court of the city of New York, subsequently took part in reviewing their own decisions while sitting in the several courts which have just been mentioned.

The court of appeals also held in *McCarron* v. *People* (1855) 13 N. Y. 74, that a justice of the supreme court who had become a member of the court of appeals under the operation of this section might, while a member of the higher court, preside at a court of oyer and terminer.

The Constitution did not prescribe a quorum of the court and the power of the legislature to fix a quorum was considered in *Oakley* v. *Aspinwall* (1850) 3 N. Y. 547. The judiciary act of 1847, chap. 280, fixed the quorum at six; and in this case the court held that four judges, seven being present, could grant a motion for the reversal of a judgment.]

§ 3. **[Supreme court.]**—There shall be a supreme court, having general jurisdiction in law and equity.

[New. Const. 1821, art. 5, § 4; Judiciary Article of 1869, § 6; 1894, art. 6, § 1.]

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§ 4. **[Judicial districts.]**—The state shall be divided into eight judicial districts, of which the city of New York shall be one; the others to be bounded by county lines, and to be compact and equal in population, as nearly as may be. There shall be four justices of the supreme court in each district, and as many more in the district composed of the city of New York as may, from time to time, be authorized by law, but not to exceed in the whole such number in proportion to its population as shall be in conformity with the number of such judges in the residue of the state, in proportion to its population. They shall be classified so that one of the justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

[New. Judiciary Article of 1869, § 6; 1894, art. 6, § 1. The Constitution of 1821, art. 5, § 5, divided the state into judicial circuits.]

§ 5. **[Legislature may alter jurisdiction and proceedings in law and equity.]**—The legislature shall have the same powers to alter and regulate the jurisdiction and proceedings in law and equity as they have heretofore possessed.

[New. Judiciary Article of 1869, § 8; 1894, art. 6, § 3.]

§ 6. **[General and special term; circuits; oyer and terminer.]**—Provision may be made, by law, for designating, from time to time, one or more of the said justices, who is not a judge of the court of appeals, to preside at the general terms of the said court, to be held in the several districts. Any three or more of the said justices, of whom one of the said justices so designated shall always be one, may hold such general terms.

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Any one or more of the justices may hold special terms, and circuit courts, and any one of them may preside in courts of oyer and terminer in any county.

[New Judiciary Article of 1869, § 7; 1894, art. 6, § 2.

The court of appeals in *McCarron* v. *People* (1855) 13 N. Y. 74, held that a justice of the supreme court might preside in the court of oyer and terminer, though at the same time acting as a member of the court of appeals, under the operation of the Constitutional provision by which four judges of that court were periodically selected from the supreme court.

In *Real* v. *People* (1870) 42 N. Y. 270, the court of appeals held that § 8 of the new judiciary article (1869) took effect January 1, 1870, and that until that time a justice of the supreme court might, under the foregoing section, sit in the general term in review of a decision made by himself at a trial term, although such general term was held after the determination by the state board of canvassers of the result of the election at which the judiciary article was approved by the people. See also *Richter* v. *Poppenhausen* (1870) 42 N. Y 373.]

§ 7. **[Compensation of judges.]**—The judges of the court of appeals and justices of the supreme court shall severally receive, at stated times, for their services, a compensation, to be established by law, which shall not be increased or diminished during their continuance in office.

[New. Judiciary Article of 1869, §§ 13, 14; 1894, art. 6, § 12.]

§ 8. **[Judges to hold no other office.]**—They shall not hold any other office or public trust. All votes for either of them for any elective office (except that of justice of the supreme court or judge of the court of appeals) given by the legislature or the people shall be void. They shall not exercise any power of appointment to public office. Any male citizen, of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and

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ability, shall be entitled to admission to practice in all the courts of this state.

[Const. 1777, art. 28; 1821, art. 5, § 7; Judiciary Article of 1869, § 10; 1894, art. 6, § 10.

The judiciary act of 1847, chap. 280, § 75, provided for the admission of attorneys by the general term of the supreme court, and it was held in *Re Brewer* (1847) 3 How. Pr. 169, that this statute prescribed the only method of admission, and that county courts had no authority to admit attorneys.

The legislature of 1847 passed an act (chap. 470, § 46) providing that "any person of good moral character, although not admitted as an attorney, may manage, prosecute, or defend a suit for any other person, provided he is specially authorized for that purpose by the party for whom he appears, in writing or by personal nomination in open court." The supreme court in *McKoan* v. *Devries* (1848) 3 Barb. 196, held that this violated the provision of the foregoing section of the Constitution providing for the admission of attorneys.

The supreme court also held in *Matter of Law Graduates of the University of New York* (1860) 31 Barb. 353, that the act of 1860, chap. 187, which conferred on the faculty of law of the University of the City of New York the right to determine the qualifications of graduates as applicants for admission as attorneys, was a violation of the foregoing section of the Constitution.

But the court of appeals in *Re Cooper* (1860) 22 N. Y. 67 sustained another act of 1860, chap. 202, which conferred on the law committee of Columbia College power to examine and recommend graduates of the Columbia Law School for admission to the bar, and they were entitled to admission as attorneys on such recommendation, as evidenced by the diploma issued after such examination.

The term "citizen," as used in the last sentence of the section, was held to mean a citizen of this state, and a resident of another state had no absolute right to admission as an attorney in this state, though possessing all other requisite qualifications. *Re Henry* (1869) 40 N. Y. 560.]

§ 9. **[Legislature to classify judges and fix terms of court.]**—The classification of the justices of the supreme court, the times and place of holding the terms of the court of appeals, and of the general and special terms of the supreme court, within the several districts, and the circuit courts and courts of oyer and

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terminer, within the several counties, shall be provided for by law.

[New. Abrogated by Judiciary Article of 1869; as to appointment of terms, see Const. 1894, art. 6, § 2.]

§ 10. **[Testimony in equity cases.]**—The testimony in equity cases shall be taken in like manner as in cases at law.

[New. Judiciary Article of 1869, § 28; art. 6, § 3.]

§ 11. **[Removal of judges.]**—Justices of the supreme court and judges of the court of appeals may be removed by concurrent resolution of both houses of the legislature, if two thirds of all the members elected to the assembly and a majority of all the members elected to the senate concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace and judges and justices of inferior courts, not of record, may be removed by the senate on the recommendation of the governor; but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the journals.

[New. Const. 1821, art. 1, § 13; Am. 1845; Judiciary Article of 1869, § 11; 1894, art. 6, § 11.]

§ 12. **[Election of judges.]**—The judges of the court of appeals shall be elected by the electors of the state, and the justices of the supreme court by the electors of the several judicial districts, at such times as may be prescribed by law.

[New. Judiciary Article of 1869, art. 6, §§ 2 and 13; 1894, art. 6, §§ 1 and 7.]

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§ 13. **[Vacancies, how filled.]**—In case the office of any judge of the court of appeals or justice of the supreme court shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the governor until it shall be supplied at the next general election of judges, when it shall be filled by election, for the residue of the unexpired term.

[New in form. See 1821, art. 4, § 7; Judiciary Article of 1869, § 9; 1894, art. 6, §§ 4 and 8.

Under this section a vacancy in the office of justice of the supreme court must have been filled at the election next after the vacancy occurred, although too late to allow the secretary of state to give the statutory notice. *People ex rel. Davies* v. *Cowles* (1856) 13 N. Y. 350. The possible situation presented by this case, which might often be repeated, was one of the reasons which prompted the Convention of 1867 to recommend the three months' rule concerning vacancies, which was included in the Judiciary Article of 1869, and continued in the Constitution of 1894.]

§ 14. **[County judges and surrogates.]**—There shall be elected in each of the counties of this state, except the city and county of New York, one county judge, who shall hold his office for four years. He shall hold the county court and perform the duties of the office of surrogate. The county court shall have such jurisdiction, in cases arising in justices' courts, and in special cases, as the legislature may prescribe, but shall have no original civil jurisdiction except in such special cases.

The county judge, with two justices of the peace, to be designated according to law, may hold courts of sessions, with such criminal jurisdiction as the legislature shall prescribe, and perform such other duties as may be required by law.

The county judge shall receive an annual salary, to be fixed by the board of supervisors, which shall be neither increased nor diminished during his continuance in office.

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The justices of the peace, for services in courts of sessions, shall be paid a *per diem* allowance out of the county treasury.

In counties having a population exceeding forty thousand, the legislature may provide for the election of a separate officer to perform the duties of the office of surrogate.

The legislature may confer equity jurisdiction in special cases upon the county judge.

Inferior local courts of civil and criminal jurisdiction may be established by the legislature in cities; and such courts, except for the cities of New York and Buffalo, shall have an uniform organization and jurisdiction in such cities.

[Const. 1777, art. 24; 1821, art. 5, § 6; Judiciary Article of 1869, §§ 15, 19; 1894, art. 6, §§ 14, 15, 18.

The judiciary act of 1847, chap. 280, § 30, specified and defined the jurisdiction of county courts, enumerating a large number of cases. The supreme court, in *Beecher* v. *Allen* (1849) 5 Barb. 169, sustained the original action of assumpsit on a guaranty of a promissory note in the county court, and held that it was a "special case," within the foregoing section, and that this provision of the judiciary act was therefore valid.

The court of appeals in *Kundolf* v. *Thalheimer* (1855) 12 N. Y. 593, held that a county court had no jurisdiction of an original action for assault and battery, that such an action was not a "special case" within the foregoing section, and that the provision in the judiciary act already cited which purported to confer jurisdiction in such cases was void; and it was intimated in the same case that a county court had not jurisdiction of the ordinary common-law actions.

The jurisdiction of the county court in actions for the foreclosure of mortgages was denied in *Hall* v. *Nelson* (1856) 23 Barb. 88, and it was there held that the provision in the Code of Procedure, § 30, conferring such jurisdiction, was void. But the court of appeals in *Arnold* v. *Rees* (1858) 18 N. Y. 57, took a different view, and held that an action to foreclose a mortgage was a "special case" within the Constitution, and that the provision of the Code of Procedure, § 30, conferring jurisdiction on county courts in foreclosure actions, was valid.

The jurisdiction of the county court in partition cases was also sustained in *Doubleday* v. *Heath* (1857) 16 N. Y. 80. The general

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jurisdiction of the county court is now defined by the Constitution of 1894.

The provision in this section relating to the designation of justices of sessions received attention in *Nelson* v. *People* (1861) 23 N. Y. 293, where the court sustained an act (L. 1860, chap. 16) designating by name two persons to act as justices of sessions in Otsego county. The office of justice of sessions was abolished by the Constitution of 1894.]

§ 15. **[Special county judge and surrogate.]**—The legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability, or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

[New. Const. 1894, art. 6, § 16.]

§ 16. **[Reorganization of judicial districts.]**—The legislature may reorganize the judicial districts at the first session after the return of every enumeration under this Constitution, in the manner provided for in the fourth section of this article, and at no other time; and they may, at such session, increase or diminish the number of districts; but such increase or diminution shall not be more than one district at any one time. Each district shall have four justices of the supreme court; but no diminution of the districts shall have the effect to remove a judge from office.

[Const. 1821, art. 5, § 5; Judiciary Article of 1869, § 6; 1894, art. 6, § 1.]

§ 17. **[Justices of the peace.]**—The electors of the several towns shall, at their annual town meeting, and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring

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before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts, not of record, and their clerks, may be removed after due notice, and an opportunity of being heard in their defense by such county, city, or state courts as may be prescribed by law, for causes to be assigned in the order of removal.

[Const. 1777, art. 24; 1821, art. 4, § 7; Am. 1826; Judiciary Article of 1869, § 18; 1894, art. 6, § 17.]

§ 18. **[Local judicial officers.]**—All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the legislature may direct.

[Const. 1821, art. 4, § 14; Judiciary Article of 1869, §§ 18, 19; 1894, art. 6, §§ 17, 18.]

§ 19. **[Clerk of court of appeals; clerks of supreme court.]**—Clerks of the several counties of this state shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. A clerk of the court of appeals, to be *ex-officio* clerk of the supreme court, and to keep his office at the seat of government, shall be chosen by the electors of the state; he shall hold his office for three years, and his compensation shall be fixed by law, and paid out of the public treasury.

[Const. 1821, art. 4, § 9; Judiciary Article of 1869, § 20; 1894, art. 6, § 19.]

§ 20. **[Fees to judicial officers prohibited.]**—No judicial officer, except justices of the peace, shall receive, to his own use, any fees or perquisites of office.

[New, Judiciary Article of 1869, § 21; 1894, art. 6, § 20.]

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§ 21. **[Judgments of inferior courts may be removed to court of appeals.]**—The legislature may authorize the judgments, decrees, and decisions of any local inferior court of record, of original civil jurisdiction, established in a city, to be removed, for review, directly into the court of appeals.

[New. Judiciary Article of 1869, § 22.]

§ 22. **[Publication of statutes and decisions.]**—The legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as it may deem expedient. And all laws and judicial decisions shall be free for publication by any person.

[New. Judiciary Article of 1869, § 23; 1894, art. 6, § 21.]

§ 23. **[Tribunals of conciliation.]**—Tribunals of conciliation may be established, with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference, and agree to abide the judgment, or assent thereto, in the presence of such tribunal, in such cases as shall be prescribed by law.

[New. Abrogated by Judiciary Article of 1869.]

§ 24. **[Commissioners to revise procedure.]**—The legislature, at its first session after the adoption of this Constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify, and abridge the rules of practice, pleadings, forms and proceedings of the courts of record of this state, and to report thereon to the legislature, subject to their adoption and modification from time to time.

[New. Abrogated by Judiciary Article of 1869.]

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§ 25. **[Legislature to organize court of appeals; transfer of business of other courts.]**—The legislature, at its first session after the adoption of this Constitution, shall provide for the organization of the court of appeals, and for transferring to it the business pending in the court for the correction of errors, and for the allowance of writs of error and appeals to the court of appeals from the judgments and decrees of the present court of chancery and supreme court, and of the courts that may be organized under this Constitution.

[Temporary.]

ARTICLE VII.

Section 1. [Canal sinking fund.]—After paying the expenses of collection, superintendence, and ordinary repairs, there shall be appropriated and set apart, in each fiscal year, out of the revenues of the state canals, in each year, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of one million and three hundred thousand dollars, until the first day of June, one thousand eight hundred and fifty-five, and from that time, the sum of one million and seven hundred thousand dollars, in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the canal debt, as it existed at the time first aforesaid, and including three hundred thousand dollars, then to be borrowed, until the same shall be wholly paid; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

[New. Abrogated by Const. 1894.]

§ 2. **[Canal appropriations; state debts.]**—After complying with the provisions of the first section of this

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article there shall be appropriated and set apart out of the surplus revenues of the state canals in each fiscal year, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of three hundred and fifty thousand dollars, until the time when a sufficient sum shall have been appropriated and set apart, under the said first section, to pay the interest and extinguish the entire principal of the canal debt; and after that period, then the sum of one million and five hundred thousand dollars in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the general fund debt, including the debt for loans of the state credit to railroad companies, which have failed to pay the interest thereon, and also the contingent debt on state stocks loaned to incorporated companies which have hitherto paid the interest thereon, whenever, and as far as any part thereof may become a charge on the treasury or general fund until the same shall be wholly paid; and the principal and income of the said last-mentioned sinking fund shall be sacredly applied to the purpose aforesaid; and if the payment of any part of the moneys to the said sinking fund shall at any time be deferred, by reason of the priority recognized in the first section of this article, the sum so deferred, with quarterly interest thereon at the then current rate, shall be paid to the last-mentioned sinking fund as soon as it can be done consistently with the just rights of the creditors holding said canal debt.

[New. Abrogated by Const. 1894.]

§ 3. **[Canal revenues.]**—After paying the said expenses of superintendence and repairs of the canals, and the sums appropriated by the first and second sections of this article, there shall be paid out of the surplus revenues of the canals to the treasury of the state, on or before

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the thirtieth day of September in each year, for the use and benefit of the general fund, such sum, not exceeding two hundred thousand dollars, as may be required to defray the necessary expenses of the state; and the remainder of the revenues of the said canals shall, in each fiscal year, be applied in such manner as the legislature shall direct to the completion of the Erie canal enlargement and the Genesee Valley and Black River canals, until the said canals shall be completed.

If at any time after the period of eight years from the adoption of this Constitution, the revenues of the state, unappropriated by this article, shall not be sufficient to defray the necessary expenses of the government, without continuing or laying a direct tax, the legislature may, at its discretion, supply the deficiency in whole or in part from the surplus revenues of the canals, after complying with the provisions of the first two sections of this article for paying the interest and extinguishing the principal of the canal and general fund debt; but the sum thus appropriated from the surplus revenues of the canals shall not exceed annually three hundred and fifty thousand dollars, including the sum of two hundred thousand dollars provided for by this section for the expenses of the government, until the general fund debt shall be extinguished, or until the Erie canal enlargement and Genesee Valley and Black River canals shall be completed, and after that debt shall be paid, or the said canals shall be completed, then the sum of six hundred and seventy-two thousand five hundred dollars, or so much thereof as shall be necessary, may be annually appropriated to defray the expenses of the government.

[Superseded by amendment adopted in 1854. This latter amendment was superseded by an amendment adopted in 1882. Const. 1894, art. 7, § 9.

In the chapter from 1847 to 1867 a sketch has been given of the agitation which led to the enactment in 1851 of chapter 485 "to pro-

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vide for the completion of the Erie canal enlargement and the Genesee Valley and Black River canals," which, among other things, authorized a possible state debt of nine million dollars to be represented by canal revenue certificates. In *Newell* v. *People* (1852) 7 N. Y. 9, this act was held invalid because it violated the provisions of the canal article of the Constitution. A summary of this decision has been given in the sketch above cited and need not be repeated here. The act and the decision declaring it invalid led to the amendment of § 3 in 1854.

In the article on free canals, in the chapter on the period from 1874 to 1894, I have stated briefly the history of the policy under which tolls were imposed for the benefit of the canals on merchandise carried by railroads, and the abrogation of that policy by the repealing act of 1851. This statute (chap. 497) was considered by the court of appeals in *People* v. *New York C. R. Co.* (1862) 24 N. Y. 485, and it was there held that railroad tolls, while for the benefit of the canals, did not become a part of the canal revenues under the Constitution, and that the legislature was not prohibited from abolishing such tolls, although they were imposed by statutes in force when the Constitution of 1846 was adopted.]

§ 4. **[Enforcement of state claims against corporations.]**—The claims of the state against any incorporated company to pay the interest and redeem the principal of the stock of the state, loaned or advanced to such company, shall be fairly enforced, and not released or compromised; and the moneys arising from such claims shall be set apart and applied as part of the sinking fund provided in the second section of this article. But the time limited for the fulfillment of any condition of any release or compromise heretofore made or provided for may be extended by law.

[New. Abrogated by Const. of 1894.]

§ 5. **[Appropriations for deficiency in canal revenues.]**—If the sinking funds, or either of them, provided in this article, shall prove insufficient to enable the state, on the credit of such fund, to procure the means to satisfy the claims of the creditors of the state, as they become payable, the legislature shall, by equitable taxes,

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so increase the revenues of the said funds as to make them, respectively, sufficient perfectly to preserve the public faith. Every contribution or advance to the canals or their debt from any source other than their direct revenues shall, with quarterly interest, at the rates then current, be repaid into the treasury, for the use of the state, out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the said canal debt.

[New. Am. 1882; Abrogated by Const. 1894.]

§ 6. **[Canals not to be disposed of.]**—The legislature shall not sell, lease, or otherwise dispose of, any of the canals of the state, but they shall remain the property of the state, and under its management forever.

[New. Am. 1874; Am. 1882; Const. 1894, art. 7, § 8.]

§ 7. **[Salt springs not to be disposed of.]**—The legislature shall never sell or dispose of the salt springs belonging to this state. The lands contiguous thereto, and which may be necessary and convenient for the use of the salt springs, may be sold by authority of law, and under the direction of the commissioners of the land office, for the purpose of investing the moneys arising therefrom in other lands alike convenient; but by such sale and purchase the aggregate quantity of these lands shall not be diminished.

[New. Const. 1821, art. 7, § 10. Abrogated by Const. 1894.
Under this section the legislature had authority to appropriate parts of the salt lands for public highways, canals, or railroads; this was not a sale of lands within the meaning of the Constitution, and the 7th section of the act of 1848, chap. 344, authorizing the appropriation of such lands for railroad purposes, was held valid. *Parmalee* v. *Oswego & S. R. Co.* (1849) 7 Barb. 599.]

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§ 8. **[State moneys not to be expended without appropriation.]**—No moneys shall ever be paid out of the treasury of this state or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law, making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

[New. Const. 1894, art. 3, § 21.]

§ 9. **[No state aid to individuals or corporations.]**—The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation.

[New. Const. 1894, art. 7, § 1.]

§ 10. **[When state may contract debt.]**—The state may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

[New. Const. 1894, art. 7, § 2.]

§ 11. **[Debts for state defense.]**—In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or

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defend the state in war; but the money arising from the contracting of such debts shall be applied for the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

[New. Const. 1894, art. 7, § 3.]

§ 12. **[How other debts authorized.]**—Except the debts specified in the tenth and eleventh sections of this article, no debt shall be hereafter contracted by or on behalf of this state unless such debt shall be authorized by a law for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof.

No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election.

On the final passage of such bill in either house of the legislature, the question shall be taken by ayes and noes, to be duly entered on the journal thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability, which may have been contracted in pursuance of such law, shall remain in force and be irrepealable, and be annually collected until the proceeds thereof shall have

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made the provisions hereinbefore specified to pay and discharge the interest and principal of such debt and liability.

The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever.

No such law shall be submitted to be voted on within three months after its passage, or at any general election when any other law, or any bill, or any amendment to the Constitution, shall be submitted to be voted for or against.

[New. Am. 1854; Const. 1894, art. 7, § 4.]

§ 13. **[Tax law to state amount and object of tax.]**—Every law which imposes, continues, or revives a tax, shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

[By the amendments of 1874 this section became § 20 of article 3. New. Const. 1894, art. 3, § 24.]

§ 14. **[Three-fifths bills.]**—On the final passage, in either house of the legislature, of every act which imposes, continues, or revives a tax, or creates a debt or charge, or makes, continues, or revives any appropriation of public or trust money or property, or releases, discharges, or commutes any claim or demand of the state, the question shall be taken by ayes and noes, which shall be duly entered on the journals, and three fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

[By the amendments of 1874 this section became § 21 of article 3. New. Const. 1894, art. 3, § 25.]

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ARTICLE VIII.

Section 1. [Corporations, how formed.]—Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed.

[New. Const. 1821, art. 7, § 9; 1894, art. 8, § 1.]

§ 2. [Dues from corporations, how secured.]—Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

[New. Const. 1894, art. 8, § 2.]

§ 3. [Corporation defined.]—The term corporation, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons.

[New. Const. 1894, art. 8, § 3.]

§ 4. [Banking corporations.]—The legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

[New. Am. 1874; 1894, art. 8, § 4.]

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§ 5. **[Specie payments not to be suspended.]**—The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person, association, or corporation issuing bank notes of any description.

[New. Const. 1894, art. 8, § 5.]

§ 6. **[Registry of bills and notes.]**—The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

[New. Const. 1894, art. 8, § 6.]

§ 7. **[Liability of stockholders.]**—The stockholders in every corporation and joint-stock association for banking purposes, issuing bank notes or any kind of paper credits, to circulate as money, after the first day of January, one thousand eight hundred and fifty, shall be individually responsible, to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind contracted after said first day of January, one thousand eight hundred and fifty.

[New. Const. 1894, art. 8, § 7.]

§ 8. **[Preference of billholders.]**—In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

[New. Const. 1894, art. 8, § 8.]

§ 9. **[Incorporation of cities and villages.]**—It shall be the duty of the legislature to provide for the organi-

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zation of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations.

[New. Const. 1894, art. 12, § 1.]

ARTICLE IX.

Section 1. [Education funds preserved; how applied.]—The capital of the common-school fund, the capital of the literature fund, and the capital of the United States deposit fund shall be respectively preserved inviolate. The revenues of the said common-school fund shall be applied to the support of common schools; the revenues of the said literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made a part of the capital of the said common-school fund.

[Const. 1821, art. 7, § 10; 1894, art. 9, § 3.]

ARTICLE X.

Section 1. [Election and removal of certain county officers.]—Sheriffs, clerks of counties, including the register and clerk of the city and county of New York, coroners, and district attorneys shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law to renew their security from time to time; and in default of giving such new security,

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their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff.

The governor may remove any officer in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

[Const. 1777, arts. 26, 28; 1821, art. 4, § 8; 1894, art. 10, § 1.]

§ 2. **[Local officers, how chosen.]**—All county officers whose election or appointment is not provided for by this Constitution shall be elected by the electors of the respective counties, or appointed by the boards of supervisors or other county authorities, as the legislature shall direct. All city, town, and village officers whose election or appointment is not provided for by this Constitution shall be elected by the electors of such cities, towns, and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct.

[New in form. Const. 1777, arts. 22, 29; 1821, art. 4, § 15; Am. 1826, relative to justices of the peace; Am. 1833, 1839, relative to mayors; 1894, art. 10, § 2.]

§ 3. **[Duration of certain offices, how fixed.]**—When the duration of any office is not provided by this Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

[Const. 1777, art. 28; 1821, art. 4, § 16; 1894, art. 10, § 3.]

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§ 4. **[Legislature to prescribe time of elections.]**—The time of electing all officers named in this article shall be prescribed by law.

[New. Const. 1894, art. 10, § 4.]

§ 5. **[Vacancies.]** — The legislature shall provide for filling vacancies in office, and, in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

[New. Const. 1894, art. 10, § 5.]

§ 6. **[Political year and legislative term; opening of legislature.]**—The political year and legislative term shall begin on the first day of January, and the legislature shall, every year, assemble on the first Tuesday in January, unless a different day shall be appointed by law.

[New. Const. 1821, art. 1, § 14; 1894, art. 10, § 6.]

§ 7. **[Removal of officers.]**—Provision shall be made by law for the removal for misconduct or malversation in office, of all officers (except judicial) whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal.

[New. Const. 1894, art. 1, § 7.]

§ 8. **[Legislature may determine vacancies.]**—The legislature may declare the cases in which any office shall be deemed vacant, when no provision is made for that purpose in this Constitution.

[New. Const. 1894, art. 10, § 8.]

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ARTICLE XI.

Section 1. [Militia.]—The militia of this state shall, at all times hereafter, be armed and disciplined and in readiness for service; but all such inhabitants of this state, of any religious denomination whatever, as, from scruples of conscience, may be adverse to bearing arms, shall be excused therefrom upon such conditions as shall be prescribed by law.

[Const. 1777, art. 24; 1821, art. 7, § 5; 1894, art. 11, § 1.]

§ 2. **[Militia officers, how chosen.]**—Militia officers shall be chosen or appointed as follows: Captains, subalterns, and noncommissioned officers shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions by the written votes of the commissioned officers of the respective regiments and separate battalions; brigadier-generals and brigade inspectors by the field officers of their respective brigades; major-generals, brigadier-generals, and commanding officers of regiments or separate battalions shall appoint the staff officers to their respective divisions, brigades, regiments, or separate battalions.

[Const. 1777, art. 24; 1821, art. 4, § 1; 1894, art. 11, § 2.]

§ 3. **[Governor to appoint certain militia officers.]**—The governor shall nominate, and, with the consent of the senate, appoint, all major-generals and the commissary-general. The adjutant-general and other chiefs of staff departments, and the aide-de-camp of the commander-in-chief shall be appointed by the governor, and their commissions shall expire with the time for which the governor shall have been elected. The commissary-general shall hold his office for two years. He shall give

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security for the faithful execution of the duties of his office, in such manner and amount as shall be prescribed by law.

[Const. 1777, art. 24; 1821, art. 4, § 2; 1894, art. 11, § 4.]

§ 4. **[Election of militia officers.]**—The legislature shall, by law, direct the time and manner of electing militia officers, and of certifying their elections to the governor.

[Const. 1777, art. 24; 1821, art. 4, § 3; 1894, art. 11, § 5.]

§ 5. **[Commissioned officers; removal.]**—The commissioned officers of the militia shall be commissioned by the governor; and no commissioned officer shall be removed from office unless by the senate, on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court-martial, pursuant to law. The present officers of the militia shall hold their commissions, subject to removal, as before provided.

[New. Const. 1821, art. 4, § 4; 1894, art. 11, § 6.]

§ 6. **[Method of choosing militia officers may be changed.]**—In case the mode of election and appointment of militia officers hereby directed shall not be found conducive to the improvement of the militia the legislature may abolish the same and provide by law for their appointment and removal, if two thirds of the members present in each house shall concur therein.

[New. Const. 1821, art. 4, § 5; 1894, art. 11, § 5.]

ARTICLE XII.

Section 1. [Oath of office.]—Members of the legislature, and all officers, executive and judicial, except

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such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe 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 the state of New York; and that I will faithfully discharge the duties of the office of....., according to the best of my ability."

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

[Const. 1821, art. 6, § 1; Am. 1874: 1894, art. 13, § 1.]

ARTICLE XIII.

Section 1. [Constitution, how amended.]—Any amendment or amendments to this Constitution may be proposed in the senate and assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice; and if, in the legislature so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such times as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting there-

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on, such amendment or amendments shall become part of the Constitution.

[New. Const. 1821, art. 8, § 1; 1894, art. 14, § 1.]

§ 2. **[Constitutional conventions.]**—At the general election, to be held in the year eighteen hundred and sixty-six, and in each twentieth year thereafter, and also at such time as the legislature may by law provide, the question "Shall there be a convention to revise the Constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the legislature; and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a convention for such purpose, the legislature, at its next session, shall provide by law for the election of delegates to such convention.

[New. Const. 1894, art. 14, § 2.]

ARTICLE XIV.

Section 1. [First election of legislature under this Constitution.]—The first election of senators and members of assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty-seven.

The senators and members of assembly who may be in office on the first day of January, one thousand eight hundred and forty-seven, shall hold their office until and including the thirty-first day of December following, and no longer.

[Temporary.]

§ 2. **[First election of governor and lieutenant governor.]**—The first election of governor and lieu-

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tenant governor, under this Constitution, shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty-eight; and the governor and lieutenant governor in office when this Constitution shall take effect, shall hold their respective offices until and including the thirty-first day of December of that year.

[Temporary.]

§ 3. **[State officers continued until expiration of term.]**—The secretary of state, comptroller, treasurer, attorney-general, district attorneys, surveyor-general, canal commissioners, and inspectors of state prisons in office when this Constitution shall take effect, shall hold their respective offices until and including the thirty-first day of December, one thousand eight hundred and forty-seven, and no longer.

[Temporary.]

§ 4. **[First election of judges.]**—The first election of judges and clerk of the court of appeals, justices of the supreme court, and county judges, shall take place at such time, between the first Tuesday of April and the second Tuesday of June, one thousand eight hundred and forty-seven, as may be prescribed by law. The said courts shall, respectively, enter upon their duties on the first Monday of July, next thereafter; but the term of office of said judges, clerk, and justices, as declared by this Constitution, shall be deemed to commence on the first day of January, one thousand eight hundred and forty-eight.

[Temporary.]

§ 5. **[Transfer of business of certain courts.]**—On the first Monday of July, one thousand eight hundred

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and forty-seven, jurisdiction of all suits and proceedings then pending in the present supreme court and court of chancery, and all suits and proceedings originally commenced and then pending in any court of common pleas (except in the city and county of New York), shall become vested in the supreme court hereby established. Proceedings pending in courts of common pleas, and in suits originally commenced in justices' courts, shall be transferred to the county courts provided for in this Constitution, in such manner and form and under such regulations as shall be provided by law. The courts of oyer and terminer hereby established shall, in their respective counties, have jurisdiction on and after the day last mentioned of all indictments and proceedings then pending in the present courts of oyer and terminer, and also of all indictments and proceedings then pending in the present courts of general sessions of the peace, except in the city of New York, and except in cases of which the courts of sessions, hereby established, may lawfully take cognizance; and of such indictments and proceedings the courts of sessions, hereby established, shall have jurisdiction on and after the day last mentioned.

[Temporary.

The transfer of causes from the common pleas to the supreme court, which was effected by this section, included all cases in which any further judicial action was necessary, and not simply those which had proceeded to judgment when the provision went into operation on the first Monday of July, 1847. *O'Maley* v. *Reese* (1847) 1 Barb. 643.

An execution on a judgment of the common pleas prior to the last-named date was, after that date, properly issued out of the supreme court, and subsequent proceedings were properly had therein. An action is pending until the judgment therein is satisfied. *Wegman* v. *Childs* (1869) 41 N. Y. 159.]

§ 6. **[Chancellor and supreme court to complete certain business.]**—The chancellor and the present

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supreme court shall, respectively, have power to hear and determine any of such suits and proceedings ready, on the first Monday of July, one thousand eight hundred and forty-seven, for hearing or decision, and shall, for their services therein, be entitled to their present rates of compensation until the first day of July, one thousand eight hundred and forty-eight, or until all such suits and proceedings shall be sooner heard and determined. Masters in chancery may continue to exercise the functions of their offices in the court of chancery, so long as the chancellor shall continue to exercise the functions of his office, under the provisions of this Constitution.

And the supreme court hereby established shall also have power to hear and determine such of said suits and proceedings as may be prescribed by law.

[Temporary.]

§ 7. **[Governor to fill vacancies.]**—In case any vacancy shall occur in the office of chancellor or justice of the present supreme court previously to the first day of July, one thousand eight hundred and forty-eight, the governor may nominate, and by and with the advice and consent of the senate appoint, a proper person to fill such vacancy. Any judge of the court of appeals or justice of the supreme court, elected under this Constitution, may receive and hold such appointment.

[Temporary.]

§ 8. **[Certain judicial offices abolished.]**—The offices of chancellor, justice of the existing supreme court, circuit judge, vice chancellor, assistant vice chancellor, judge of the existing county courts of each county, supreme court commissioner, master in chancery, examiner in chancery, and surrogate (except as herein otherwise provided), are abolished from and after the first Monday

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of July, one thousand eight hundred and forty-seven (1847).

[Other sections provide for continuing certain courts for the purpose of completing their business, and for the transfer of causes to new courts. See § 6 as to continuance of business, and §§ 5 and 12 as to transfer of causes.]

§ 9. **[Incumbents of abolished offices eligible to new office.]**—The chancellor, the justices of the present supreme court, and the circuit judges, are hereby declared to be severally eligible to any office at the first election under this Constitution.

[Temporary.]

§ 10. **[County officers to continue until expiration of term.]**—Sheriffs, clerks of counties (including the register and clerk of the city and county of New York), and justices of the peace, and coroners, in office when this Constitution shall take effect, shall hold their respective offices until the expiration of the term for which they were respectively elected.

[Temporary.]

§ 11. **[Judicial officers may continue to receive certain fees.]**—Judicial officers in office when this Constitution shall take effect may continue to receive such fees and perquisites of office as are now authorized by law, until the first day of July, one thousand eight hundred and forty-seven, notwithstanding the provisions of the twentieth section of the sixth article of this Constitution.

[Temporary.]

§ 12. **[Local courts continued.]**—All local courts established in any city or village, including the superior court, common pleas, sessions, and surrogates' courts of

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the city and county of New York, shall remain until otherwise directed by the legislature, with their present powers and jurisdictions; and the judges of such courts and any clerks thereof, in office on the first day of January, one thousand eight hundred and forty-seven, shall continue in office until the expiration of their terms of office, or until the legislature shall otherwise direct.

[Temporary.

The provisions of this section relating to the jurisdiction of local courts was superseded by § 12 of the judiciary article of 1869. *Popfinger* v. *Yutte* (1886) 102 N. Y. 38, 6 N. E. 259.

Under § 12 of article 14 of the Constitution, the legislature has power to abolish courts held by justices of the peace in cities. Chapter 196, Laws of 1876, establishing the municipal court of the city of Rochester, and thereby, in effect, abolishing the office of justice of the peace in said city, is constitutional. *People ex rel. White* v. *Rochester* (1877) 5 N. Y. Week. Dig. 70.]

§ 13. **[When Constitution to take effect.]**—This Constitution shall be in force from and including the first day of January, one thousand eight hundred and forty-seven, except as herein otherwise provided.

[Temporary.]

Done in convention, at the capitol in the city of Albany, the ninth day of October, in the year one thousand eight hundred and forty-six, and of the independence of the United States of America the seventy-first.

In witness whereof, we have hereunto subscribed our names.

JOHN TRACEY,
President and delegate from the county of Chenango.

JAMES F. STARBUCK,
H. W. STRONG,
FR. SEGER,
} *Secretaries.*

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AMENDMENTS FROM 1846 TO 1894.

NOTE.—This period, covering forty-eight years, was prolific in constitutional suggestions and amendments. It included the Convention of 1867,—one of the greatest in the history of the state,—which proposed a new constitution; but it was all rejected except the judiciary article. The Constitutional Commission of 1872 was also held during this period. This followed a rejection of the work proposed by the Convention of 1867, and the Commission recommended, either in form or substance, many amendments which had already been proposed by that Convention. The same period also embraced the Judiciary Commission of 1890. Its attention was confined to a single article; and while its work bore no immediate fruit, it had a very manifest influence in shaping the judiciary article, as presented by the Convention of 1894. Besides these three formal and organized movements for constitutional revision there were scores of legislative amendments which never reached the people. A large number were, however, actually adopted, producing very important modifications of the Constitution. These amendments may be conveniently grouped under three heads; namely: A, The Judiciary Article of 1869; B, The Amendments of 1874; and C, Miscellaneous Amendments.

A. THE JUDICIARY ARTICLE OF 1869.

[This article, which was included in the Constitution proposed by the Convention of 1867, was submitted separately, and adopted in 1869. Several amendments to the article were adopted prior to the Constitution of 1894, and these will be found in group C, below. Such amendments are indicated in notes under appropriate sections in this article. Except as indicated therein, this article took effect January 1, 1870. *Real* v. *People*, 42 N. Y. 270; *Richter* v. *Poppenhausen*, 42 N. Y. 373; *People ex rel. Davis* v. *Gardner*, 45 N. Y. 812.]

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Section 1. [Assembly may impeach civil officers.]—The assembly shall have the power of impeachment, by a vote of the majority of all the members elected. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or a major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court. No judicial officer shall exercise his office after articles of impeachment against him shall have been preferred to the senate, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try the impeachment, according to the evidence; and no person shall be convicted without the concurrence of two thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under this state; but the party impeached shall be liable to indictment and punishment according to law.

[Const. 1777, art. 33; 1821, art. 5, § 2; 1846, art. 6, § 1; 1894, art. 6, § 13.]

§ 2. **[Court of appeals.]**—There shall be a court of appeals, composed of a chief judge and six associate judges, who shall be chosen by the electors of the state, and shall hold their office for the term of fourteen years from and including the first day of January next after their election. At the first election of judges under this Constitution, every elector may vote for the chief and only four of the associate judges. Any five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall

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have the appointment, with the power of removal, of its reporter and clerk, and of such attendants as may be necessary.

[Const. 1846, art. 6, § 2; 1894, art. 6, § 7.]

§ 3. **[Vacancies, how filled.]**—When a vacancy shall occur otherwise than by expiration of term, in the office of chief or associate judge of the court of appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the governor, by and with the advice and consent of the senate, if the senate shall be in session, or, if not, the governor alone, may appoint to fill such vacancy. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such case, the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

[Const. 1821, art. 4, § 7; 1846, art. 6, § 13; 1894, art. 6, §§ 4, 8.]

§ 4. **[Transfer of causes; commission of appeals.]**—Upon the organization of the court of appeals, under this article, the causes then pending in the present court of appeals shall become vested in the court of appeals hereby established. Such of said causes as are

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pending on the first day of January, eighteen hundred and sixty-nine, shall be heard and determined by a commission, to be composed of five commissioners of appeals, four of whom shall be necessary to constitute a quorum; but the court of appeals hereby established may order any of said causes to be heard therein. Such commission shall be composed of the judges of the present court of appeals, elected or appointed thereto, and a fifth commissioner, who shall be appointed by the governor, by and with the advice and consent of the senate; or, if the senate be not in session, by the governor; but in such case, the appointment shall expire at the end of the next session.

[New. Am. 1872. The second division of the court of appeals, performing practically the functions of a commission, was authorized by an amendment adopted in 1888.]

§ 5. **[Vacancies in commission.]**—If any vacancy shall occur in the office of the said commissioners, it shall be filled by appointment by the governor, by and with the advice and consent of the senate; or, if the senate is not in session, by the governor; but in such case, the appointment shall expire at the end of the next session. The commissioners shall appoint, from their number, a chief commissioner, and may appoint and remove such attendants as may be necessary. The reporter of the court of appeals shall be the reporter of said commission. The decisions of the commission shall be certified to, and entered and enforced, as the judgments of the court of appeals. The commission shall continue until the causes committed to it are determined, but not exceeding three years; and all causes then undetermined shall be heard by the court of appeals.

[New.]

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§ 6. **[Supreme court.]**—There shall be the existing supreme court, with general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as now is or may be prescribed by law; and it shall be composed of the justices now in office, who shall be continued during their respective terms, and of their successors. The existing judicial districts of the state are continued until changed pursuant to this section. Five of the justices shall reside in the district in which is the city of New York, and four in each of the other districts. The legislature may alter the districts, without increasing the number, once after every enumeration, under this Constitution, of the inhabitants of the state.

[Const. 1821, art. 5, § 4; 1846, art. 6, § 3; Am. 1879, 1888; 1894, art. 6, § 1.

In *De Hart* v. *Hatch* (1875) 6 Thomp. & C. 186, the court denied the power of the legislature, as expressed in Laws 1872, chap. 629, and Laws 1874, chap. 545, to authorize the transfer of causes from the supreme court to the marine court of the city of New York, on the grounds substantially that the supreme court is a court of general jurisdiction, which must be continuous to the end of a controversy, and could not be relinquished and transferred to another tribunal.]

§ 7. **[General and special terms; circuits; oyer and terminer.]**—At the first session of the legislature, after the adoption of this article, and from time to time thereafter, as may be necessary, but not oftener than once in five years, provisions shall be made for organizing, in the supreme court, not more than four general terms thereof, each to be composed of a presiding justice, and not more than three other justices, who shall be designated, according to law, from the whole number of justices. Each presiding justice shall continue to act as such during his term of office. Provisions shall be made by law for holding the general terms in

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each judicial district. Any justice of the supreme court may hold special terms and circuit courts, and may preside in courts of oyer and terminer, in any county.

[Const. 1846, art. 6, § 6; 1894, art. 6, § 2.

In *Smith* v. *People* (1872) 47 N. Y. 330, it was held that the organization of courts of oyer and terminer is within the control of the legislature, with the single exception that a justice of the supreme court must be a member of the court, and must preside.

The court of oyer and terminer was abolished by the Constitution of 1894, art. 6, § 6.]

§ 8. **[Judge not to sit in review of his own decisions; proceedings in law and equity.]**—No judge or justice shall sit, at a general term of any court, or in the court of appeals, in review of a decision made by him, or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and except as herein otherwise provided, the legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and equity that they have heretofore exercised.

[Const. 1846, art. 6, § 10; 1894, art. 6, § 3.]

§ 9. **[Vacancies in supreme court.]**—When a vacancy shall occur, otherwise than by expiration of term, in the office of justice of the supreme court, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until any vacancy shall be so filled, the governor, by and with the advice and consent of the senate, if the senate shall be in session, or if not in session, the governor, may appoint to fill such vacancy. Any such appointment shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

[Const. 1821, art. 4, § 7; 1846, art. 6, § 13; 1894, art. 6, §§ 4, 8.]

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§ 10. **[Judges not to hold any other office.]**—The judges of the court of appeals, and the justices of the supreme court, shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the legislature or the people, shall be void.

[Const. 1777, art. 28; 1821, art. 5, § 7; 1846, art. 6, § 8; 1894, art. 6, § 10.]

§ 11. **[Removal of judges.]**—Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the legislature, if two thirds of all the members elected to each house concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace and judges and justices of inferior courts not of record, may be removed by the senate, on the recommendation of the governor, if two thirds of all the members elected to the senate concur therein. But no removal shall be made, by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the charges against him, and shall have had an opportunity of being heard. On the question of removal, the yeas and nays shall be entered on the journal.

[Const. 1821, art. 1, § 13; Am. 1845; 1846, art. 6, § 11; 1894, art. 6, § 11.]

§ 12. **[Certain local courts continued.]**—The superior court of the city of New York, the court of common pleas for the city and county of New York, the superior court of Buffalo, and the city court of Brooklyn, are continued with the powers and jurisdiction they now severally have, and such further civil and criminal jurisdiction as may be conferred by law. The superior court of New York shall be composed of the six judges in

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office at the adoption of this article, and their successors. The court of common pleas of New York, of the three judges then in office and their successors, and three additional judges. The superior court of Buffalo, of the judges now in office, and their successors; and the city court of Brooklyn, of such number of judges, not exceeding three, as may be provided by law. The judges of said courts, in office at the adoption of this article, are continued until the expiration of their terms. A chief judge shall be appointed by the judges of each of said courts, from their own number, who shall act as such during his official term. Vacancies in the office of the judges named in this section, occurring otherwise than by expiration of term, shall be filled in the same manner as vacancies in the supreme court. The legislature may provide for detailing judges of the superior court and court of common pleas of New York to hold circuits and special terms of the supreme court in that city, as the public interest may require.

[New. Amended in 1880.

The legislature had no power to limit the jurisdiction possessed by the New York superior court at the adoption of this article, and therefore § 263, subd. 5, of the Code of Civil Procedure, was held void. *Popfinger* v. *Lutte* (1886) 102 N. Y. 38, 6 N. E. 259, and a like ruling was made as to subd. 7 of the same section in *Flynn* v. *Central R. Co.* (1894) 142 N. Y. 439, 37 N. E. 514. See this case again in (1891) 27 Abb. N. C. 31, 10 N. Y. Supp. 328. Subd. 2 of this section was held valid in *Gemp* v. *Pratt* (1877) 7 Daly, 197.

The legislature could not extend the territorial jurisdiction of these courts. *Landers* v. *Staten Island R. Co.* (1873) 53 N. Y. 450; *Hoag* v. *Lamont* (1875) 60 N. Y. 96.

The legislature could not authorize the superior court to send an action pending therein to the marine court. The superior court could not be authorized to relinquish the jurisdiction conferred upon it by the Constitution. *Alexander* v. *Bennett* (1875) 60 N. Y. 204.

The authority conferred on the marine court in relation to the enforcement of its executions (L. 1875, chap. 479) was held valid in *Feerick* v. *Connor* (1880) 11 N. Y. Week. Dig. 342.

The legislature had no power to authorize an appeal directly to the court of appeals from a judgment of the general term of the marine

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court of New York. When the judiciary article was adopted the court of common pleas had jurisdiction to review judgments of the marine court, and the legislature could not transfer this jurisdiction to another court. *Hutkoff* v. *Demorest* (1886) 103 N. Y. 377, 8 N. E. 899.

These courts were abolished by the Constitution of 1894.]

§ 13. **[Judges, how chosen; term of office.]**—Justices of the supreme court shall be chosen by the electors of their respective judicial districts. Judges of all the courts mentioned in the last preceding section shall be chosen by the electors of the cities respectively in which the said courts are instituted. The official terms of the said justices and judges who shall be elected after the adoption of this article shall be fourteen years from and including the first day of January next after their election. But no person shall hold the office of justice or judge of any court longer than until and including the last day of December next after he shall be seventy years of age.

[Const. 1821, art. 5, § 5; 1846, art. 6, §§ 4, 7; Am. in 1880, adding provision for judicial pension; 1894, art. 6, §§ 1–12.

The age limit prescribed by this section was held to apply to a county judge, but a county judge who was in office when the article took effect, January 1, 1870, was not affected by it, but might hold through the term for which he was chosen. *People ex rel. Davis* v. *Gardner* (1871) 45 N. Y. 812.]

§ 14. **[Compensation of judges.]**—The judges and justices hereinbefore mentioned shall receive for their services a compensation to be established by law, which shall not be diminished during their official terms. Except the judges of the court of appeals and the justices of the supreme court, they shall be paid, and the expenses of their courts defrayed, by the cities or counties in which such courts are instituted, as shall be provided by law.

[Const. 1846, art. 6, §§ 13, 14; 1894, art. 6, § 12.]

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§ 15. **[County courts.]**— The existing county courts are continued, and the judges thereof in office at the adoption of this article shall hold their offices until the expiration of their respective terms. Their successors shall be chosen by the electors of the counties for the term of six years. The county courts shall have the powers and jurisdiction they now possess, until altered by the legislature. They shall also have original jurisdiction in all cases where the defendants reside in the county and in which the damages claimed shall not exceed one thousand dollars; and also such appellate jurisdiction as shall be provided by law, subject, however, to such provision as shall be made by law for the removal of causes into the supreme court. They shall also have such other original jurisdiction as shall, from time to time, be conferred upon them by the legislature. The county judge, with two justices of the peace, to be designated according to law, may hold courts of sessions, with such criminal jurisdiction as the legislature shall prescribe, and he shall perform such other duties as may be required by law. His salary, and the salary of the surrogate when elected as a separate officer, shall be established by law, payable out of the county treasury, and shall not be diminished during his term of office. The justices of the peace shall be paid, for services in courts of sessions, a *per diem* allowance out of the county treasury. The county judge shall also be surrogate of his county; but in counties having a population exceeding forty thousand, the legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be the same as that of the county judge. The county judge of any county may preside at courts of sessions, or hold county courts, in any other county

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except New York and Kings, when requested by the judge of such other county.

[Const. 1777, art. 24; 1821, art. 5, § 6; 1846, art. 6, § 15; 1894, art. 6, §§ 14, 15, 18.

The new judiciary article took effect generally on the 1st of January, 1870. A county judge elected at the November election in 1869 for a term of four years, beginning on the 1st of January, 1870, was therefore in office when the new judiciary article took effect, and was entitled to continue in office for the term for which he was elected. *People ex rel. Davis* v. *Gardner* (1871) 45 N. Y. 812; *People ex rel. Clark* v. *Norton* (1871) 59 Barb. 169.]

§ 16. **[Special county judge and surrogate.]**—The legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability, or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

[Const. 1846, art. 6, § 15; 1894, art. 6, § 16.]

§ 17. **[People may determine that judges shall be appointed.]**—The legislature shall provide for submitting to the electors of the state, at the general election in the year eighteen hundred and seventy-three, two questions, to be voted upon on separate ballots, as follows: First, "Shall the offices of chief judge and associate judge of the court of appeals, and of justice of the supreme court, be hereafter filled by appointment?" If a majority of the votes upon the question shall be in the affirmative, the said officers shall not thereafter be elective, but, as vacancies occur, they shall be filled by appointment by the governor, by and with the advice and consent of the senate; or, if the senate be not in session, by the governor; but in such case, he shall nominate to the senate when next convened, and such appointment

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by the governor alone shall expire at the end of the session. Second, "Shall the offices of the judges, mentioned in sections twelve and fifteen of article six of the Constitution, be hereafter filled by appointment?" If a majority of the votes upon the question shall be in the affirmative, the said officers shall not thereafter be elective, but, as vacancies occur, they shall be filled in the manner in this section above provided.

[See the chapter on the Convention of 1867 for a sketch of this provision. The question was submitted to the people in 1873, and answered in the negative. New.]

§ 18. **[Justices of the peace.]**—The electors of the several towns shall, at their annual town meeting, and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace, and judges or justices of inferior courts, not of record, and their clerks, may be removed, after due notice and an opportunity of being heard, by such courts as may be prescribed by law, for causes to be assigned in the order of removal. Justices of the peace and district court justices shall be elected in the different cities in this state, in such manner, and with such powers, and for such terms, respectively, as shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of cities, or appointed by some local authorities thereof.

[Const. 1777, art. 24; 1821, art. 4, § 7; Am. 1826; 1846, 1894, art. 6, § 18.]

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§ 19. **[Inferior local courts.]**—Inferior local courts of civil and criminal jurisdiction may be established by the legislature; and, except as herein otherwise provided, all judicial officers shall be elected or appointed at such times, and in such manner, as the legislature may direct.

[Const. 1821, art. 4, § 41; 1846, art. 6, § 18; 1894, art. 6, §§ 17, 18.]

§ 20. **[Clerks of supreme court; clerk of court of appeals.]**—Clerks of the several counties shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. The clerk of the court of appeals shall keep his office at the seat of government. His compensation shall be fixed by law, and paid out of the public treasury.

[Const. 1821, art. 4, § 9; 1846, art. 6, § 19; 1894, art. 6, § 19.]

§ 21. **[Judges not to receive fees or practise as attorneys.]**—No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judge of the court of appeals, justice of the supreme court, or judge of a court of record in the cities of New York, Brooklyn, or Buffalo, practise as an attorney or counselor in any court of record in this state, or act as referee.

[Const. 1846, art. 6, § 20; 1894, art. 6, § 20.]

§ 22. **[Judgments of inferior courts may be removed to court of appeals for review.]**—The legislature may authorize the judgments, decrees, or decisions of any court of record of original civil jurisdiction, established in a city, to be removed for review, directly into the court of appeals.

[Const. 1846, art. 6, § 21.]

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§ 23. **[Publication of statutes; supreme court reporters.]**—The legislature shall provide for the speedy publication of all statutes, and also for the appointment by the justices of the supreme court designated to hold general terms, of a reporter of the decisions of that court. All laws and judicial decisions shall be free for publication by any person.

[Const. 1846, art. 6, § 22; 1894, art. 6, § 21.]

§ 24. **[First election of judges.]**—The first election of judges of the court of appeals, and of the three additional judges of the court of common pleas for the city and county of New York, shall take place on such day, between the first Tuesday of April and the second Tuesday in June next after the adoption of this article, as may be provided by law. The court of appeals, the commissioners of appeals, and the additional judges of the said court of common pleas, shall respectively enter upon their duties on the first Monday of July thereafter.

[New; temporary.]

§ 25. **[Certain officers to continue until expiration of term.]**—Surrogates, justices of the peace, and local judicial officers provided for in section sixteen, in office when this article shall take effect, shall hold their respective offices until the expiration of their terms.

[New; temporary.]

§ 26. **[Special sessions.]**—Courts of special sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law.

[Const. 1894, art. 6, § 23.]

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§ 27. **[Relief of surrogates' courts.]**—For the relief of surrogates' courts, the legislature may confer upon courts of record, in any county having a population exceeding four hundred thousand, the powers and jurisdiction of surrogates, with authority to try issues of fact by jury in probate causes.

[New.]

B. THE AMENDMENTS OF 1874.

[The Commission of 1872 reported numerous amendments to the legislature of 1873. Some were rejected, but the larger part were agreed to with some modifications. The legislature of 1874 omitted some provisions agreed to in 1873, and the final result was submitted to the people and adopted at the general election in November, 1874. Amendments to the provisions thus adopted are noted in group C, and in the Constitution of 1894.

It was evidently the intention of the Commission and the legislature to amend § 1 of article 3—"The legislative power of this state shall be vested in a senate and assembly"—by inserting "an" before "assembly." This word appears in the section as reported by the Commission, and as agreed to by the legislatures of 1873 and 1874, and the section is included in the statute submitting the amendments; but "an" was omitted in the engrossed copy of the amendments filed in the office of the secretary of state. The section there appears in its original form, without the amendment, and it was so submitted to the people, who therefore did not vote on the section in the form agreed to by the legislature.]

Art. 2, § 1. [Qualifications of voters.]—Every male citizen of the age of twenty-one years who shall have been a citizen for ten days and an inhabitant of this state one year next preceding an election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the

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vote of the people, provided that in time of war no elector in the actual military service of the state, or of the United States, in the Army or Navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

[Const. 1777, art. 7; 1821, art. 2, § 1; 1846, 1894, art. 2, § 1.]

Art. 2, § 2. [Bribery at elections.]—No person who shall receive, expect, or offer to receive, or pay, offer, or promise to pay, contribute, offer, or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered, or promised to pay, contributed, offered, or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The legislature, at the session thereof next after the adoption of this section, shall, and from

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time to time thereafter may, enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

[Const. 1821, art. 2, § 2; 1846, 1894, art. 2, § 2.]

Art. 3, § 5. [Assembly reapportionment.]—The assembly shall consist of one hundred and twenty-eight members, elected for one year. The members of assembly shall be apportioned among the several counties of the state, by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and shall be chosen by single districts. The assembly districts shall remain as at present organized, until after the enumeration of the inhabitants of the state, in the year eighteen hundred and seventy-five. The legislature, at its first session after the return of every enumeration, shall apportion the members of assembly among the several counties of the state, in manner aforesaid, and the board of supervisors in such counties as may be entitled under such apportionment to more than one member, except the city and county of New York, and in said city and county the board of aldermen of said city, shall assemble at such time as the legislature making such apportionment shall prescribe, and divide their respective counties into assembly districts, each of which districts shall consist of convenient and contiguous territory, equal to the number of members of assembly to which such counties shall be entitled, and shall cause to be filed in the offices of the secretary of state and the clerks of their respective counties a description of such districts, specifying the number of each district and the population thereof, according to the last preceding enumeration, as near as can be ascertained, and the apportionment and districts shall remain unaltered until another enumeration shall be made as herein provided.

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No town shall be divided in the formation of assembly districts. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the assembly, and no new county shall be hereafter erected, unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, be entitled to a member. But the legislature may abolish the said county of Hamilton, and annex the territory thereof to some other county or counties. Nothing in this section shall prevent division at any time of counties and towns, and the erection of new towns and counties by the legislature.

[New section. Const. 1777, art. 5; 1821, art. 1, § 7; 1846, 1894, art. 3, §§ 4, 5.]

Art. 3, § 6. [Compensation of members of legislature.]—Each member of the legislature shall receive for his services an annual salary of one thousand five hundred dollars. The members of either house shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting, once in each session, on the most usual route. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

[Const. 1821, art. 1, § 9; 1846, 1894, art. 3, § 6.]

Art. 3, § 7. [Member of legislature not eligible to certain appointments.]—No member of the legislature shall receive any civil appointment within this state,

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or the Senate of the United States, from the governor, the governor and senate, or from the legislature, or from any city government during the time for which he shall have been elected; and all such appointments and all votes given for any such member for any such office or appointment shall be void.

[Const. 1821, art. 1, § 10; 1846, 1894, art. 3, § 7.]

Art. 3, § 8. [Certain Federal and city officers disqualified as members.]—No person shall be eligible to the legislature who, at the time of his election, is, or within one hundred days previous thereto has been, a member of Congress, a civil or military officer under the United States, or any officer under any city government. And if any person shall, after his election as a member of the legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof shall vacate his seat.

[Const. 1821, art. 1, § 11; 1846, art. 3, § 8; 1894, art. 3, § 8.]

Art. 3, § 17. [Existing laws not applicable by reference.]—No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.

[New. Const. 1894, art. 3, § 17.]

Art. 3, § 18. [Private and local bills limited; street railroads.]—The legislature shall not pass a private or local bill in any of the following cases:

Changing the names of persons.

Laying out, opening, altering, working, or discontinu-

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ing roads, highways, or alleys, or for draining swamps or other low lands.

Locating or changing county seats.

Providing for changes of venue in civil or criminal cases.

Incorporating villages.

Providing for election of members of boards of supervisors.

Selecting, drawing, summoning, or impaneling grand or petit jurors.

Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing, or decreasing fees, percentage, or allowances of public officers during the term for which said officers are elected or appointed.

Granting to any corporation, association, or individual the right to lay down railroad tracks.

Granting to any private corporation, association, or individual any exclusive privilege, immunity, or franchise whatever.

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.

The legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which, in its judgment, may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad, be first obtained, or,

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in case the consent of such property-owners cannot be obtained, the general term of the supreme court, in the district in which it is proposed to be constructed, may, upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property-owners.

[New. Const. 1894, art. 3, § 18; Am. 1901.]

Art. 3, § 19. [Private claims not to be audited by legislature.]—The legislature shall neither audit nor allow any private claim or account against this state, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

[Const. 1894, art. 3, § 19.]

Art. 3, § 20. [Tax law to state amount and object of tax.]—Every law which imposes, continues, or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

[In the original Constitution of 1846 this section was § 13 of article 7. It was transferred to this article by the amendments of 1874. Const. 1894, art. 3, § 24.]

Art. 3, § 21. [Three-fifths bills.]—On the final passage, in either house of the legislature, of any act which imposes, continues, or revives a tax, or creates a debt or charge, or makes, continues, or revives any appropriation of public or trust money or property, or releases, discharges, or commutes any claim or demand of the state, the question shall be taken by yeas and nays, which

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shall be duly entered upon the journals, and three fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

[In the original Constitution of 1846 this section was § 14 of article 7. It was transferred to this article by the amendments of 1874. Const. 1894, art. 3, § 25.]

Art. 3, § 22. [Boards of supervisors.]—There shall be, in the several counties, except in cities whose boundaries are the same as those of the county, a board of supervisors, to be composed of such members, and elected in such manner, and for such period, as is or may be provided by law. In any such city the duties and powers of a board of supervisors may be devolved upon the common council or board of aldermen thereof.

[Const. 1894, art. 3, § 26; Am. 1899.]

Art. 3, § 23. [Powers of boards of supervisors.]—The legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the state such further powers of local legislation and administration as the legislature may, from time to time, deem expedient.

[This is a substitute, adopted in 1874, for § 17 in the original Constitution of 1846. Const. 1894, art. 3, § 27.]

Art. 3, § 24. [Extra compensation prohibited.]—The legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent, or contractor.

[Const. 1894, art. 3, § 28.]

Art. 3, § 25. [Statutory revision commission bills excepted from §§ 17 and 18.]—Sections seventeen

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and eighteen of this article shall not apply to any bill, or the amendments to any bill, which shall be reported to the legislature by commissioners who have been appointed pursuant to law to revise the statutes.

[Const. 1894, art. 3, § 23.]

Art. 4, § 1. [Governor and lieutenant governor.]—The executive power shall be vested in a governor, who shall hold his office for three years; a lieutenant governor shall be chosen at the same time, and for the same term. The governor and lieutenant governor elected next preceding the time when this section shall take effect shall hold office during the term for which they were elected.

[This amendment extends to three years the term of the governor and lieutenant governor, beginning with those elected in 1876. The term was again reduced to two years in 1894, art. 4, § 1. Const. 1777, art. 17, 20; 1821, art. 3, § 1; 1846; art. 4, § 1.]

Art. 4, § 2. [Qualifications of governor and lieutenant governor.]—No person shall be eligible to the office of governor or lieutenant governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years, next preceding his election, a resident of this state.

[Const. 1777, art. 17; 1821, art. 3, § 2; 1846, 1894, art. 4, § 2.]

Art. 4, § 4. [Governor's general powers; compensation.]—The governor shall be commander-in-chief of the military and naval forces of the state. He shall have power to convene the legislature (or the senate only) on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the governor may recommend for consideration. He shall communicate by message to the legislature, at every ses-

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sion, the condition of the state, and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall receive for his services an annual salary of ten thousand dollars, and there shall be provided for his use a suitable and furnished executive residence.

[Const. 1777, art. 18; 1821, art. 3, § 4; 1846, 1894, art. 4, § 4.]

Art. 4, § 8. [Lieutenant governor's compensation.]—The lieutenant governor shall receive for his services an annual salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee, or perquisite for any duty or service he may be required to perform by the Constitution or by law.

[Const. 1846, 1894, art. 4, § 8.]

Art. 4, § 9. [Executive consideration of bills; subsequent legislative action.]—Every bill which shall have passed the senate and assembly shall, before it becomes a law, 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, which shall enter the objections at large on the journal, and proceed to reconsider it. If, after such reconsideration, two thirds of the members elected to 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 the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases, the votes in both houses shall be determined

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by yeas and nays, and the names of the members voting 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, the same shall be a law in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within thirty days after such adjournment. If any bill presented to the governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If, on reconsideration, one or more of such items be approved by two thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

[Const. 1777, art. 3; 1821, art. 1, § 12; 1846, 1894, art. 4, § 9.]

Art. 7, § 3. [Canal revenues.]—As amended in 1854, further amended by adding at the end the following clause:

No extra compensation shall be made to any contractor; but if, from any unforeseen cause, the terms of any con-

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tract shall prove to be unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.

[Am. in 1882; Const. 1894, art. 7, § 9.]

Art. 7, § 6. [Canals not to be disposed of; expenditures and revenues.]—The legislature shall not sell, lease, or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, or the Cayuga and Seneca canal; but they shall remain the property of the state, and under its management forever. Hereafter the expenditures for collections, superintendence, ordinary and extraordinary repairs on the canals named in this section, shall not exceed, in any year, their gross receipts for the previous year. All funds that may be derived from any lease, sale, or other disposition of any canal, shall be applied in payment of the debt for which the canal revenues are pledged.

[Const. 1846, art. 7, § 6; Am. in 1882; 1894, art. 7, § 8.]

Art. 7, § 13. [State sinking funds to be kept separate.]—The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the state shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for the specific purpose for which it shall have been provided.

[New. Const. 1894, art. 7, § 5.]

Art. 7, § 14. [Restriction on allowance of claims against state.]—Neither the legislature, canal board, canal appraisers, nor any person or persons acting in behalf of the state, shall audit, allow, or pay any claim which, as between citizens of the state, would be barred

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by lapse of time. The limitation of existing claims shall begin to run from the adoption of this section; but this provision shall not be construed to revive claims already barred by existing statutes, nor to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claims duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

[New. Const. 1894, art. 7, § 6.]

Art. 8, § 4. [Savings banks.]—The legislature shall, by general law, conform all charters of savings banks, or institutions for savings, to a uniformity of powers, rights, and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

[Consts. 1846, 1894, art. 8, § 4.]

Art. 8, § 10. [No state aid to individuals or corporations.]—Neither the credit nor the money of the state shall be given or loaned to or in aid of any association,

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corporation, or private undertaking. This section shall not, however, prevent the legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the state for educational purposes.

[New. Const. 1846, art. 7, § 9; 1894, art. 8, § 9.]

Art. 8, § 11. [Municipal aid prohibited, except for public purposes.]—No county, city, town, or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association, or corporation, or become, directly or indirectly, the owner of stock in or bonds of any association or corporation, nor shall any such county, city, town, or village be allowed to incur any indebtedness, except for county, city, town, or village purposes. This section shall not prevent such county, city, town, or village from making such provision for the aid or support of its poor as may be authorized by law.

[Am. 1884; Const. 1894, art. 8, § 10; Am. 1899.]

Art. 10, § 9. [Constitutional officers not to receive extra compensation.]—No officer whose salary is fixed by the Constitution shall receive any additional compensation. Each of the other state officers named in the Constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use, any fees or perquisites of office or other compensation.

[New. Const. 1894, art. 10, § 9.]

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Art. 12, § 1. [Oath of office.]—Members of the legislature (and all officers, executive and judicial, except such inferior officers as shall be by law exempted) shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the state of New York, and that I will faithfully discharge the duties of the office of , according to the best of my ability;" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not, directly or indirectly, paid, offered, or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, declaration, or test shall be required as a qualification for any office of public trust.

[Const. 1821, art. 6, § 1; 1846, art. 12; 1894, art. 13, § 1.]

Art. 15, § 1. [Bribery of public officers.]—Any person holding office under the laws of this state, who, except in payment of his legal salary, fees, or perquisites, shall receive, or consent to receive, directly or indirectly, any thing of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any

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degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statutes in relation to the offense of bribery.

[New. Const. 1894, art. 13, § 2.]

Art. 15, § 2. [Bribery, how punished.]—Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it is tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony.

[New. Const. 1894, art. 13, § 3.]

Art. 15, § 3. [Accused a competent witness in his own behalf.]—Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

[New. Const. 1894, art. 13, § 4.]

Art. 15, § 4. [Delinquent district attorney may be removed from office.]—Any district attorney who shall fail faithfully to prosecute a person charged with the violation, in his county, of any provision of this article which may come to his knowledge, shall be removed from office by the governor, after due notice and an opportunity of being heard in his defense. The ex-

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penses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this state, within such county, or of receiving bribes by any such person in said county, shall be a charge against the state, and their payment by the state shall be provided for by law.

[New. Const. 1894, art. 13, § 6.]

Art. 16, § 1. [When amendments to take effect.]—All amendments to the Constitution shall be in force from and including the first day of January succeeding the election at which the same were adopted, except when otherwise provided by such amendments.

[New. Const. 1894, art. 14, § 2.]

C. MISCELLANEOUS AMENDMENTS.

[These amendments are arranged in the order of articles and sections, and according to the date of adoption, with references to prior or subsequent provisions on the same subject.]

ARTICLE II.

[SUFFRAGE.]

§ 1. 1864. [Qualifications of voters.]—The following provision, relating to the right of soldiers to vote while absent from home, was added:

Provided, That in time of war no elector in the actual military service of the United States, in the Army or Navy thereof, shall be deprived of his vote by reason of his absence from the state; and the legislature shall have power to provide the manner in which, and the time and places at which, such absent electors may vote, and

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for the canvass and returns of their votes, in the election districts in which they respectively reside, or otherwise.

[Am. of 1874; Const. 1894, art. 2, § 1.]

ARTICLE V.

[State Officers.]

§ 3. 1876. [Superintendent of public works.]—A superintendent of public works shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office until the end of the term of the governor by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed by law. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. He shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the state engineer and surveyor; subject to the control of the legislature, he shall make the rules and regulations for the navigation or use of the canals. He may be suspended or removed from office by the governor whenever, in his judgment, the public interest shall so require; but, in case of the removal of such superintendent of public works from office, the governor shall file with the secretary of state a statement of the cause of such removal, and shall report such removal, and the cause thereof, to the legislature at its next session.

The superintendent of public works shall appoint not more than three assistant superintendents, whose duties shall be prescribed by him, subject to modification by

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the legislature, and who shall receive for their services a compensation to be fixed by law. They shall hold their office for three years, subject to suspension or removal by the superintendent of public works, whenever, in his judgment, the public interest shall so require. Any vacancy in the office of any such assistant superintendent shall be filled, for the remainder of the term for which he was appointed, by the superintendent of public works; but in case of the suspension or removal of any such assistant superintendent by him, he shall at once report to the governor, in writing, the cause of such removal. All other persons employed in the care and management of the canals, except collectors of tolls, and those in the department of the state engineer and surveyor, shall be appointed by the superintendent of public works, and be subject to suspension or removal by him. The office of canal commissioner is abolished from and after the appointment and qualification of the superintendent of public works, until which time the canal commissioners shall continue to discharge their duties as now provided by law. The superintendent of public works shall perform all the duties of the canal commissioners, and board of canal commissioners, as now declared by law, until otherwise provided by the legislature. The governor, by and with the advice and consent of the senate, shall have power to fill vacancies in the office of superintendent of public works; if the senate be not in session, he may grant commissions which shall expire at the end of the next succeeding session of the senate.

[New. Const. 1894, art. 5, § 3.]

§ 4. 1876. **[Superintendent of state prisons.]**—A superintendent of state prisons shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office for five years, unless sooner

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removed; he shall give security in such amount, and with such sureties, as shall be required by law, for the faithful discharge of his duties; he shall have the superintendence, management, and control of state prisons, subject to such laws as now exist, or may hereafter be enacted; he shall appoint the agents, wardens, physicians, and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the clerk, subject to the approval of the same by the superintendent. The comptroller shall appoint the clerks of the prisons. The superintendent shall have all the powers and perform all the duties not inconsistent herewith, which have heretofore been had and performed by the inspectors of state prisons; and from and after the time when such superintendent of state prisons shall have been appointed and qualified the office of inspector of state prisons shall be and hereby is abolished. The governor may remove the superintendent for cause at any time, giving to him a copy of the charges against him, and an opportunity to be heard in his defense.

[New. Const. 1846, art. 5, § 4; 1894, art. 5, § 4.]

ARTICLE VI.

[Judiciary.]

§ 6. 1879. **[Supreme court.]**—There shall be the existing supreme court, with general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as now is or may be prescribed by law; and it shall be composed of the justices now in office, with one additional justice, to be elected as hereinafter provided, who shall be continued during their respective terms, and of their successors. The existing judicial

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districts of the state are continued until changed pursuant to this section. Five of the justices shall reside in the district in which is the city of New York, and five in the second judicial district, and four in each of the other districts. The legislature may alter the districts, without increasing the number, once after every enumeration, under this Constitution, of the inhabitants of the state.

[Judiciary Article of 1869, § 6; Am. 1888; 1894, art. 6, § 1.]

§ 6. 1888. **[Supreme court; adding the following paragraph providing for a second division of the court of appeals.]**—Whenever, and as often as there shall be such an accumulation of causes on the calendar of the court of appeals that the public interests require a more speedy disposition thereof, the said court may certify such fact to the governor, who shall thereupon designate seven justices of the supreme court to act as associate judges, for the time being, of the court of appeals, and to form a second division of said court, and who shall act as such until all the causes upon the said calendar at the time of the making of such certificate are determined, or the judges of said court, elected as such, shall certify to the governor that said causes are substantially disposed of, and on receiving such certificate, the governor may declare said second division dissolved, and the designation of justices to serve thereon shall thereupon expire. The second division of said court hereby authorized to be constituted shall be competent to determine any causes on said calendar which may be assigned to such division by the court composed of judges elected to serve in the court of appeals, and that court may, at any time before judgment, direct any of the causes so assigned to be restored to its calendar

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for hearing and decision. The rules of practice in both divisions shall be the same. Five members of the court shall be sufficient to form a quorum for said second division, and the concurrence of four shall be necessary to a decision. The judges composing said second division shall appoint from their number a chief judge of such division, and the governor may, from time to time, when, in his judgment, the public interest may require, change the designation of any justice of the supreme court to serve in such division, and may fill any vacancy occurring therein, by designating any justice of the supreme court to fill such vacancy. Said second division may appoint and remove a crier and such attendants as may be necessary. The judges composing said second division shall not, during the time of their service therein, exercise any of the functions of justices of the supreme court, nor receive any salary or compensation as such justices, but in lieu thereof shall, during such term of service, receive the same compensation as the associate judges of the court of appeals. They shall have power to appoint the times and places of their sessions, within this state, and the clerk and reporter of the court of appeals shall be clerk and reporter of said second division.

[Abrogated by the Constitution of 1894. See amendment of 1899 (§ 7, 1894) authorizing the appointment of supreme court justices to sit in the court of appeals in certain specified emergencies.]

§ 12. 1880. **[Local courts.]**—The superior court of the city of New York, the court of common pleas for the city and county of New York, the superior court of Buffalo, and the city court of Brooklyn, are continued with the powers and jurisdiction they now severally have, and such further civil and criminal jurisdiction as may be conferred by law. The superior court of New York shall be composed of the six judges in office at the adop-

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tion of this article, and their successors. The court of common pleas of New York, of the three judges then in office, and their successors, and three additional judges. The superior court of Buffalo, of the judges now in office, and their successors; and the city court of Brooklyn, of such number of judges, not exceeding three, as may be provided by law. The judges of said courts, in office at the adoption of this article, are continued until the expiration of their terms. A chief judge shall be appointed by the judges of each of said courts, from their own number, who shall act as such during his official term. Vacancies in the office of the judges named in this section, occurring otherwise than by expiration of term, shall be filled in the same manner as vacancies in the supreme court. The legislature may provide for detailing judges of the superior court and court of common pleas of New York to hold circuits and special terms of the supreme court in that city; for detailing judges of the city court of Brooklyn, to hold circuits and special terms of the supreme court in Kings county, as the public interest may require.

[Const. 1869, art. 6, § 12; 1894, art. 6, § 5.]

§ 13. 1880. **[Adding the following provision for judicial pension.]**—The compensation of every judge of the court of appeals, and of every justice of the supreme court, whose term of office shall be abridged pursuant to this provision, and who shall have served as such judge or justice ten years or more, shall be continued during the remainder of the term for which he was elected.

[The Constitution of 1894, art. 6, § 12, abrogated judicial pensions as to judges elected after January 1, 1894.]

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§ 28. 1872. **[Commission of appeals.]**—The court of appeals may order any of the causes, not exceeding five hundred in number, pending in that court at the time of the adoption of this provision, to be heard and determined by the commissioners of appeals, and the legislature may extend the term of service of the commissioners of appeals, not exceeding two years.

[New. Judiciary Article of 1869, § 4.]

§ 28. 1882. **[General terms; additional justices.]**—The legislature, at the first session thereof after the adoption of this amendment, shall provide for organizing the supreme court not more than five general terms thereof; and for the election at the general election next after the adoption of this amendment, by the electors of the judicial districts mentioned in this section respectively, of not more than two justices of the supreme court in addition to the justices of that court now in office in the first, fifth, seventh, and eighth, and not more than one justice of that court in the second, third, fourth, and sixth judicial districts. The justices so elected shall be invested with their offices on the first Monday of June next after their election.

[Judiciary Article of 1869, § 7; Const. 1894, art. 6, § 2, reorganizing the general term, and changing its name to appellate division. This section was erroneously numbered 28. That number had already been assigned to the amendment of 1872, relating to the commission of appeals.]

§ 32. 1894. **[Kings county court.]**—A new section providing for two county judges in Kings county was submitted to the people at the general election in 1894 and adopted; but the new Constitution adopted at the same time provided by article 6, § 14, for an additional county judge in Kings county, and, by operation of article

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14, § 3, the constitutional provision superseded the legislative amendment submitted at the same time; consequently this section did not go into effect.

ARTICLE VII.

[CANALS.]

§ 3. 1854. **[Canal revenues.]**—[The following substitute for the original § 3, article 7, was adopted February 15, 1854. It was abrogated by the adoption of another § 3, November 7, 1882.]

After paying the said expenses of collection, superintendence, and repairs of the canals, and the sums appropriated by the first and second sections of this article, there shall be appropriated and set apart, in each fiscal year, out of the surplus revenues of the canals, as a sinking fund, a sum sufficient to pay the interest, as it falls due, and extinguish the principal within eighteen years, of any loan made under this section; and if the said sinking fund shall not be sufficient to redeem any part of the principal at the stipulated times of payment, or to pay any part of the interest of such loans, as stipulated, the means to satisfy any such deficiency shall be procured on the credit of the said sinking fund. After complying with the foregoing provisions, there shall be paid annually out of said revenues, into the treasury of the state, two hundred thousand dollars to defray the necessary expenses of government. The remainder shall, in each fiscal year, be applied to meet appropriations for the enlargement and completion of the canals mentioned in this section, until the said canals shall be completed. In each fiscal year thereafter the remainder shall be disposed of in such manner as the legislature may direct, but shall at no time be anticipated or pledged for more than one year in advance. The legislature

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shall annually, during the next four years, appropriate to the enlargement of the Erie, the Oswego, the Cayuga and Seneca canals, and to the completion of the Black River and Genesee Valley canals, and for the enlargement of the locks of the Champlain canal, whenever, from dilapidation or decay, it shall be necessary to rebuild them, a sum not exceeding two millions two hundred and fifty thousand dollars. The remainder of the revenues of the canals, for the current fiscal year in which such appropriation is made, shall be applied to meet such appropriation; and if the same shall be deemed insufficient, the legislature shall, at the same session, provide for the deficiency by loan. The legislature shall also borrow one million and five hundred thousand dollars, to refund to the holders of the canal revenue certificates, issued under the provisions of chapter four hundred and eighty-five of the Laws of the year one thousand eight hundred and fifty-one, the amount received into the treasury thereon. But no interest, to accrue after July first, one thousand eight hundred and fifty-five, shall be paid on such certificates. The provisions of section twelve of this article, requiring every law for borrowing money to be submitted to the people, shall not apply to the loans authorized by this section. No part of the revenues of the canals, or of the funds borrowed under this section, shall be paid or applied upon or in consequence of any alleged contract made under chapter four hundred and eighty-five of the Laws of the year one thousand eight hundred and fifty-one, except to pay for work done or materials furnished prior to the first day of June, one thousand eight hundred and fifty-two. The rates of toll on persons and property transported on the canals shall not be reduced below those for the year one thousand eight hundred and fifty-two, except by the canal board, with the concurrence of the legislature. All

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contracts for work or materials on any canal shall be made with the person who shall offer to do or provide the same at the lowest price, with adequate security for their performance.

[Const. 1846, art. 7, § 3; Am. 1882.]

§ 3. 1882. **[Tolls abolished.]**—The first and second sections of this article having been fully complied with, no tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals, and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. The canal debt contracted under the section hereby amended, which, on the first day of October, eighteen hundred and eighty, amounted to eight million nine hundred and eighty-two thousand, two hundred dollars, shall continue to be known as the "canal debt, under article seven, section three of the Constitution;" and the sinking fund applicable to the payment thereof, together with the contributions to be made thereto, shall continue to be known as the "canal debt sinking fund," and the principal and interest of said debt shall be met as provided in the fifth section of this article. All contracts for work or materials on any canals shall be made with the person who shall offer to do or provide the same at the lowest price, with adequate security for their performance.

No extra compensation shall be made to any contractor; but if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive,

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the canal board may, upon the application of the contractor, cancel such contract.

[Const. 1894, art. 7, § 9.]

§ 5. 1882. **[Appropriations for deficiency in canal revenues.]**—There shall annually be imposed and levied a tax which shall be sufficient to pay the interest and extinguish the principal of the canal debt mentioned in the third section of this article, as the same shall become due and payable, and the proceeds of such tax shall, in each fiscal year, be appropriated and set apart for the sinking fund constituted for the payment of the principal and interest of the aforesaid debt. But the legislature may, in its discretion, impose for the fiscal year, beginning on the first day of October, eighteen hundred and eighty-three, a state tax on each dollar of the valuation of the property in this state which may by law then be subject to taxation, sufficient, with the accumulations of the sinking fund applicable thereto, to pay in full both the principal and interest of the canal debt before mentioned, and the proceeds of such tax shall be appropriated and set apart for the sinking fund constituted for the payment of the principal and the interest of said debt. In the event of such action by the legislature, then the legislature shall, under the law directing the assessment and levy of such tax, make such provision for the retirement of the canal debt as it shall deem equitable and just to the creditors of the state.

[Const. 1846, art. 7, § 5; abrogated in 1894.]

§ 6. 1882. **[Certain canals not to be disposed of.]**—The legislature shall not sell, lease, or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, or the Black

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River canal, but they shall remain the property of the state and under its management forever. All funds that may be derived from any lease, sale, or other disposition of any canal shall be applied in payment of the canal debt mentioned in the third section of this article.

[Const. 1846, art. 7, § 6; Am. 1874; 1894, art. 7, § 8.]

ARTICLE VIII.

[CORPORATIONS.]

§ 11. 1884. [Municipal corporations, powers regulated.]—No county, city, town, or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association, or corporation, or become, directly or indirectly, the owner of stock in or bonds of any association or corporation, nor shall any such county, city, town, or village be allowed to incur any indebtedness, except for county, city, town, or village purposes. This section shall not prevent such county, city, town, or village from making such provision for the aid or support of its poor as may be authorized by law.

No county containing a city of over one hundred thousand inhabitants, or any such city, shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No such county or such city whose present indebtedness exceeds ten per centum of the assessed

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valuation of its real estate subject to taxation shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained, in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water, but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants or any such city of this state, in addition to providing for the principal and interest of existing debt, shall not, in the aggregate, exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

[Am. 1874; Const. 1894, art. 8, § 10.]

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THE FOURTH CONSTITUTION, 1894.

[The Constitution was revised by a convention which met on the 8th day of May, 1894, and adjourned on the 29th of September, 1894. The following Constitution, proposed by this convention, was approved by the people at the general election on the 6th day of November, 1894. This Constitution will be found in the fourth volume, with notes of judicial decisions, and other notes of an explanatory or historical character. It it inserted here without notes, except references to other Constitutions, for the purpose of affording the reader a convenient opportunity to examine it in its original form and in its relations to previous constitutional development. The notes to the sections refer to corresponding provisions in other Constitutions or constitutional amendments. These provisions are not always identical, but relate to the same general subject. Matter in brackets is not in the original.]

PREAMBLE.

We, the people of the state of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this constitution.

ARTICLE I.

[BILL OF RIGHTS.]

Section 1. [Rights of citizens.]—No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

[Magna Charta, chap. 39; New York Charter of Liberties, 1683, par. 13; Const. 1777, art. 13; 1821, art. 7, § 1; 1846, art. 1, § 1.]

§ 2. [Trial by jury.]—The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the

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parties in all civil cases in the manner to be prescribed by law.

[Const. 1777, art. 41; 1821, art. 7, § 2; 1846, art. 1, § 2.]

§ 3. **[Religious toleration.]**—The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

[Const. 1777, art. 38; 1821, art. 7, § 3; 1846, art. 1, § 3.]

§ 4. **[When writ of habeas corpus not to be suspended.]**—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 its suspension.

[Const. 1821, art. 7, § 6; 1846, art. 1, § 4.]

§ 5. **[Excessive bail, fines, and punishments prohibited; rights of witness.]**—Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

[Const. 1846, art. 1, § 5.]

§ 6. **[Rights of accused in criminal cases; taking private property for public use.]**—No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in

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time of war, or which this state may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the legislature), unless on presentment or indictment of a grand jury; and in any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he 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.

[Const. 1821, art. 7, § 7; 1846, art. 1, § 6.]

§ 7. **[Compensation for private property, how ascertained; private roads; drainage.]**—When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited. General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches, and dykes upon the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes.

[Const. 1846, art. 1, § 7.]

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§ 8. **[Freedom of speech and press; evidence in libel cases.]**—Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

[Const. 1821, art. 7, § 8; 1846, art. 1, § 8.]

§ 9. **[Right to assemble and petition; divorces; lotteries prohibited.]**—No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or the sale of lottery tickets, poolselling, bookmaking, or any other kind of gambling hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

[Const. 1846, art. 1, § 10.]

§ 10. **[Sovereignty in real property; escheats.]**—The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands the title to which shall fail, from a defect of heirs, shall revert or escheat to the people.

[Const. 1846, art. 1, § 11.]

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§ 11. **[Feudal tenures abolished.]**—All feudal tenures of every description, with all their incidents, are declared to be abolished, saving, however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

[Const. 1846, art. 1, § 12.]

§ 12. **[Absolute ownership of estates.]**—All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

[Const. 1846, art. 1, § 13.]

§ 13. **[Leases of agricultural lands limited.]**—No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

[Const. 1846, art. 1, § 14.]

§ 14. **[Restraints on alienation prohibited.]**—All fines, quarter-sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made, shall be void.

[Const. 1846, art. 1, § 15.]

§ 15. **[Indian lands.]**—No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made, of, or with the Indians, shall be valid, unless made under the authority, and with the consent of, the legislature.

[Const. 1777, art. 37; 1821, art. 7, § 12; 1846, art. 1, § 16.]

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§ 16. **[Common law continued.]**—Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of the said colony, and of the convention of the state of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution, are hereby abrogated.

[Const. 1777, art. 35; 1821, art. 7, § 13; 1846, art. 1, § 17.]

§ 17. **[Royal grants and charters preserved.]**—All grants of land within this state, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this state, made by the authority of the said King or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

[Const. 1777, art. 36; 1821, art. 7, § 14; 1846, art. 1, § 18.]

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§ 18. **[Damages for injuries causing death.]**—The right of action now existing to recover damages for injuries resulting in death shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.

[New.]

ARTICLE II.

[SUFFRAGE.]

Section 1. [Qualification of voters.]—Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state one year next preceding an election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the state, or of the United States, in the Army or Navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

[Const. 1777, art. 7; 1821, art. 2, § 1; Am. 1826; 1846, art. 2, § 1; Am. 1864; Am. 1874.]

§ 2. **[Exclusion from right of suffrage.]**—No person who shall receive, accept, or offer to receive, or

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pay, offer, or promise to pay, contribute, offer, or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered, or promised to pay, contributed, offered, or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

[Const. 1821, art. 2, § 2; 1846, art. 2, § 2; Am. 1874.]

§ 3. [Right of suffrage not affected by certain occupations and conditions.]—For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, or institution wholly

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or partly supported at public expense or by charity; nor while confined in any public prison.

[Const. 1846, art. 2, § 3.]

§ 4. **[Registration of voters.]**—Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding state enumeration of inhabitants, voters shall be registered upon personal application only; but voters not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.

[Const. 1821, art. 2, § 3; 1846, art. 2, § 4.]

§ 5. **[Manner of voting.]**—All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.

[Const. 1777, art. 6; 1821, art. 2, § 4; 1846, art. 2, § 5.]

§ 6. **[Bi-partisan election boards.]**—All laws creating, regulating, or affecting boards or officers charged with the duty of registering voters, or of distributing ballots at the polls to voters, or of receiving, recording, or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards

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or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively, as the legislature may direct. Existing laws on this subject shall continue until the legislature shall otherwise provide. This section shall not apply to town meetings, or to village elections.

[New.]

ARTICLE III.

[THE LEGISLATURE.]

Section 1. [Legislative power.]—The legislative power of this state shall be vested in the senate and assembly.

[Const. 1777, art. 2; 1821, art. 1, § 1; 1846, art. 3, § 1.]

§ 2. [Senate and assembly, how constituted.]—The senate shall consist of fifty members, except as hereinafter provided. The senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The assembly shall consist of one hundred and fifty members, who shall be chosen for one year.

[Assembly, Const. 1777, art. 4; Am. 1801, § 1; 1821, art. 1, § 2; 1846, art. 3, § 2. Senate, Const. 1777, art. 10; Am. 1801, § 3; 1821, art. 1, § 2; 1846, art. 3, § 2.]

§ 3. [Senate districts.]—The state shall be divided into fifty districts, to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to fifty, inclusive.

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District number one (1) shall consist of the counties of Suffolk and Richmond.

District number two (2) shall consist of the county of Queens.

District number three (3) shall consist of that part of the county of Kings comprising the first, second, third, fourth, fifth, and sixth wards of the city of Brooklyn.

District number four (4) shall consist of that part of the county of Kings comprising the seventh, thirteenth, nineteenth, and twenty-first wards of the city of Brooklyn.

District number five (5) shall consist of that part of the county of Kings comprising the eighth, tenth, twelfth, and thirtieth wards of the city of Brooklyn, and the ward of the city of Brooklyn which was formerly the town of Gravesend.

District number six (6) shall consist of that part of the county of Kings comprising the ninth, eleventh, twentieth, and twenty-second wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth, fifteenth, sixteenth, and seventeenth wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third, twenty-fourth, twenty-fifth, and twenty-ninth wards of the city of Brooklyn, and the town of Flatlands.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth, twenty-sixth, twenty-seventh, and twenty-eighth wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York within and bounded by a line beginning at Canal street and the Hudson river, and

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running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street, and Jackson street, to the East river, and thence around the southern end of Manhattan island, to the place of beginning, and also Governor's, Bedloe's, and Ellis islands.

District number eleven (11) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the junction of Broadway and Canal street, and running thence along Broadway, Fourth street, the Bowery, and Third avenue, St. Mark's place, Avenue A, Seventh street, Avenue B, Clinton street, Rivington street, Norfolk street, Division street, Bowery, and Canal street, to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York lying north of districts numbers ten and eleven, and within and bounded by a line beginning at Jackson street and the East river, and running thence through Jackson street, Grand street, Division street, Norfolk street, Rivington street, Clinton street, Avenue B, Seventh street, Avenue A, St. Mark's place, Third avenue, East Fourteenth street to the East river, and along the East river, to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the Hudson river at the foot of Canal street, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery, and third avenue, Fourteenth street, Sixth avenue, West Fifteenth street, Seventh avenue, West Nineteenth street,

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Eighth avenue, West Twentieth street, and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York lying north of districts numbers twelve and thirteen, and within and bounded by a line beginning at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving place, East Nineteenth street, Third avenue, East Twenty-third street, Lexington avenue, East Fifty-third street, Third avenue, East Fifty-second street, and the East river, to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Sixth avenue, and running thence along Sixth avenue, West Fifteenth street, Seventh avenue, West Fortieth street, Eighth avenue, and the transverse road across Central park at Ninety-seventh street, Fifth avenue, East Ninety-sixth street, Lexington avenue, East Twenty-third street, Third avenue, East Nineteenth street, Irving place, and Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at Seventh avenue and West Nineteenth street, and running thence along West Nineteenth street, Eighth avenue, West Twentieth street, the Hudson river, West Forty-sixth street, Tenth avenue, West Forty-third street, Eighth avenue, West Fortieth street, and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York lying north of district number sixteen, and within and bounded by a line be-

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ginning at the junction of Eighth avenue and West Forty-third street, and running thence along West Forty-third street, Tenth avenue, West Forty-sixth street, the Hudson river, West Eighty-ninth street, Tenth or Amsterdam avenue, West Eighty-sixth street, Ninth or Columbus avenue, West Eighty-first street, and Eighth avenue, to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at the junction of East Fifty-second street and the East river, and running thence along East Fifty-second street, Third avenue, East Fifty-third street, Lexington avenue, East Eighty-fourth street, Second avenue, East Eighty-third street, and the East river, to the place of beginning; and also Blackwell's island.

District number nineteen (19) shall consist of that part of the county of New York lying north of district number seventeen, and within and bounded by a line beginning at West Eighty-ninth street and the Hudson river, and running thence along the Hudson river and Spuyten Duyvil creek around the northern end of Manhattan island; thence southerly along the Harlem river to the north end of Fifth avenue; thence along Fifth avenue, East One Hundred and Twenty-ninth street, Fourth or Park avenue, East One Hundred and Tenth street, Fifth avenue, the transverse road across Central park at Ninety-seventh street, Eighth avenue, West Eighty-first street, Ninth or Columbus avenue, West Eighty-sixth street, Tenth or Amsterdam avenue and West Eighty-ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York lying north of districts numbers eighteen and fifteen, and within and bounded by a line beginning at East Eighty-third street and the

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East river, running thence through East Eighty-third street, Second avenue, East Eighty-fourth street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth or Park avenue, East One Hundred and Nineteenth street to the Harlem river, and along the Harlem and East rivers, to the place of beginning; and also Randall's island and Ward's island.

All the above districts in the county of New York bounded upon or along the boundary waters of the county, shall be deemed to extend to the county line.

District number twenty-one (21) shall consist of that part of the county of New York lying north of districts numbers nineteen and twenty, within and bounded by a line beginning at East One Hundred and Nineteenth street and the Harlem river, and running thence along East One Hundred and Nineteenth street, Fourth or Park avenue, One Hundred and Twenty-ninth street, Fifth avenue and the Harlem river to the place of beginning; and all that part of the county of New York not hereinbefore described.

District number twenty-two (22) shall consist of the county of Westchester.

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia, and Putnam.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango, and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton, and Schoharie.

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District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady, and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Rensselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex, and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

District number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland, and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Chemung, Tompkins, and Schuyler.

District number forty-one (41) shall consist of the counties of Steuben and Yates.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush, and Webster, and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, six-

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teenth, seventeenth, and eighteenth wards of the city of Rochester, as at present constituted.

District number forty-four (44) shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden, and Wheatland, and the first, second, third, fifth, ninth, tenth, eleventh, fifteenth, nineteenth, and twentieth wards of the city of Rochester, as at present constituted.

District number forty-five (45) shall consist of the counties of Niagara, Genesee, and Orleans.

District number forty-six (46) shall consist of the counties of Allegany, Livingston, and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie comprising the first, second, third, sixth, fifteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, and twenty-fourth wards of the city of Buffalo, as at present constituted.

District number forty-eight (48) shall consist of that part of the county of Erie comprising the fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, and sixteenth wards of the city of Buffalo, as at present constituted.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth, eighteenth, and twenty-fifth wards of the city of Buffalo, as at present constituted; and all the remainder of the said county of Erie not hereinbefore described.

District number fifty (50) shall consist of the counties of Chautauqua and Cattaraugus.

[Const. 1777, art. 12; 1821, art. 1, § 5; 1846, art. 3, § 3.]

§ 4. **[Census; senate reapportionment.]**—An enumeration of the inhabitants of the state shall be taken under the direction of the secretary of state, during the

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months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter; and the said districts shall be so altered by the legislature at the first regular session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county than the population of a town or block therein adjoining such district. Counties, towns, or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one half of all the senators.

The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty; and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be

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given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

[Const. 1777, art. 5; Am. 1801, § 3; 1821, art. 1, § 6; 1846, art. 3, § 4.]

§ 5. **[Assembly apportionment.]**—The members of the assembly shall be chosen by single districts, and shall be apportioned by the legislature at the first regular session after the return of every enumeration among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios, according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders on the order thereof

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respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

Until after the next enumeration, members of the assembly shall be apportioned to the several counties as follows: Albany county, four members; Allegany county, one member; Broome county, two members; Cattaraugus county, two members; Cayuga county, two members; Chautauqua county, two members; Chemung county, one member; Chenango county, one member; Clinton county, one member; Columbia county, one member; Cortland county, one member; Delaware county, one member; Dutchess county, two members; Erie county, eight members; Essex county, one member; Franklin county, one member; Fulton and Hamilton counties, one member; Genesee county, one member; Greene county, one member; Herkimer county, one member; Jefferson county, two members; Kings county, twenty-one members; Lewis county, one member; Livingston county, one member; Madison county, one member; Monroe county, four members; Montgomery county, one member; New York county, thirty-five members; Niagara county, two members; Oneida county, three members; Onondaga county, four members; Ontario county, one member; Orange county, two members; Orleans county, one member; Oswego county, two members; Otsego county, one member; Putnam county, one member; Queens county, three members; Rensselaer county, three members; Richmond county, one member; Rockland county, one member; St. Lawrence county, two members; Saratoga county, one member; Schenectady county, one member; Schoharie county, one member; Schuyler county, one member; Seneca county, one member; Steuben county, two members; Suffolk county, two members; Sullivan county, one member; Tioga

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county, one member; Tompkins county, one member; Ulster county, two members; Warren county, one member; Washington county, one member; Wayne county, one member; Westchester county, three members; Wyoming county, one member, and Yates county, one member.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble on the second Tuesday of June, one thousand eight hundred and ninety-five, and at such times as the legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the secretary of state and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the last preceding enumeration; and such apportionment and districts shall remain unaltered until another enumeration shall be made, as herein provided; but said division of the city of Brooklyn and the county of Kings to be made on the second Tuesday of June, one thousand eight hundred and ninety-five, shall be made by the common council of the said city and the board of supervisors of said county, assembled in joint session. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts can-

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not be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest, number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any district contain a greater excess in population over an adjoining district in the same senate district than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens; but in the division of cities under the first apportionment, regard shall be had to the number of inhabitants, excluding aliens, of the election districts according to the state enumeration of one thousand eight hundred and ninety-two, so far as may be, instead of blocks. Nothing in this section shall prevent the division, at any time, of counties and towns, and the erection of new towns by the legislature.

An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

[Const. 1777, art. 5; 1821, art. 1, § 7; 1846, art. 3, § 5; Am. 1874.]

§ 6. **[Compensation of members.]**—Each member of the legislature shall receive for his services an annual

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salary of one thousand five hundred dollars. The members of either house shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

[Const. 1821, art. 1, § 9; 1846, art. 3, § 6; Am. 1874.]

§ 7. **[Members not to receive certain civil appointments.]**—No member of the legislature shall receive any civil appointment within this state, or the Senate of the United States, from the governor, the governor and senate, or from the legislature, or from any city government, during the time for which he shall have been elected; and all such appointments and all votes given for any such member for any such office or appointment shall be void.

[Const. 1821, art. 1, § 10; 1846, art. 3, § 7; Am. 1874.]

§ 8. **[Certain officers disqualified as members.]**—No person shall be eligible to the legislature who, at the time of his election, is, or within one hundred days previous thereto has been, a member of Congress, a civil or military officer under the United States, or an officer under any city government. And if any person shall, after his election as a member of the legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, or under any

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city government, his acceptance thereof shall vacate his seat.

[Const. 1821, art. 1, § 11; 1846, art. 3, § 8; Am. 1874.]

§ 9. **[Time of elections.]**—The elections of senators and members of assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the legislature.

[Const. 1821, art. 1, § 15; 1846. art. 3, § 9.]

§ 10. **[Quorum; special powers of each house.]**—A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns, and qualifications of its own members; shall choose its own officers; and the senate shall choose a temporary president to preside in case of the absence or impeachment of the lieutenant governor, or when he shall refuse to act as president, or shall act as governor.

[Const. 1777, art. 9; 1821, art. 1, § 3; 1846, art. 3, § 10.]

§ 11. **[Journals; public sessions; adjournments.]**—Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

[Const. 1777, art. 15; 1821, art. 1, § 4; 1846, art. 3, § 11.]

§ 12. **[Privileges of members.]**—For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.

[Const. 1846, art. 3, § 12.]

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§ 13. **[Bills may originate in either house.]**—Any bill may originate in either house of the legislature, and all bills passed by one house may be amended by the other.

[Const. 1821, art. 1, § 8; 1846, art. 3, § 13.]

§ 14. **[Enacting clause.]**—The enacting clause of all bills shall be "The People of the state of New York, represented in senate and assembly, do enact as follows," and no law shall be enacted except by bill.

[Const. 1777, art. 31; 1846, art. 3, § 14.]

§ 15. **[Manner of passing bills.]**—No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the governor, or the acting governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the state; nor shall any bill be passed or become a law except by the assent of a majority of the members elected to each branch of the legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal.

[Const. 1846, art. 3, § 15.]

§ 16. **[Private and local bills limited to one subject.]**—No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title.

[Const. 1846, art. 3, § 16.]

§ 17. **[Existing laws not applicable by reference.]**—No act shall be passed which shall provide that any

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existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.

[Am. 1874.]

§ 18. **[Private and local bills limited; street railroads.]**—The legislature shall not pass a private or local bill in any of the following cases:

Changing the names of persons.

Laying out, opening, altering, working, or discontinuing roads, highways, or alleys, or for draining swamps or other low lands.

Locating or changing county seats.

Providing for changes of venue in civil or criminal cases.

Incorporating villages.

Providing for election of members of boards of supervisors.

Selecting, drawing, summoning, or impaneling grand or petit jurors.

Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing, or decreasing fees, percentage, or allowances of public officers, during the term for which said officers are elected or appointed.

Granting to any private corporation, association, or individual any exclusive privilege, immunity, or franchise whatever.

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.

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The legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which, in its judgment, may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or, in case the consent of such property owners cannot be obtained, the appellate division of the supreme court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

[Am. 1874; Am. 1901.]

§ 19. **[Private claims not to be audited by legislature.]**—The legislature shall neither audit nor allow any private claim or account against the state, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

[Am. 1874.]

§ 20. **[Two-thirds bills.]**—The assent of two thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

[Const. 1821, art. 7, § 9; 1846, art. 1, § 9.]

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§ 21. **[Appropriation bills.]**—No money shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

[Const. 1846, art. 7, § 8.]

§ 22. **[Appropriation bills not to embrace other subjects.]**—No provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.

[New.]

§ 23. **[Commission bills excepted from certain sections.]**—Sections seventeen and eighteen of this article shall not apply to any bill, or the amendments to any bill, which shall be reported to the legislature by commissioners who have been appointed pursuant to law to revise the statutes.

[Am. 1874.]

§ 24. **[Tax law to state amount and object of tax.]**—Every law which imposes, continues, or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

[Const. 1846, art. 7, § 13.]

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§ 25. **[Three-fifths bills.]**—On the final passage, in either house of the legislature, of any act which imposes, continues, or revives a tax, or creates a debt or charge, or makes, continues, or revives any appropriation of public or trust money or property, or releases, discharges, or commutes any claim or demand of the state, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

[Const. 1846, art. 7, § 14.]

§ 26. **[Boards of supervisors.]**—There shall be in the several counties, except in cities whose boundaries are the same as those of the county, a board of supervisors, to be composed of such members, and elected in such manner, and for such period, as is or may be provided by law. In any such city the duties and powers of a board of supervisors may be devolved upon the common council or board of aldermen thereof.

[Am. 1874; Am. 1899.]

§ 27. **[Powers of boards of supervisors.]**—The legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the state such further powers of local legislation and administration as the legislature may, from time to time, deem expedient.

[Const. 1846, art. 3, § 17; Am. 1874.]

§ 28. **[Extra compensation prohibited.]**—The legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent, or contractor.

[Am. 1874.]

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§ 29. **[Prison labor regulated.]**—The legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several state prisons, penitentiaries, jails, and reformatories in the state; and on and after the first day of January, in the year one thousand eight hundred and ninety-seven, no person in any such prison, penitentiary, jail, or reformatory shall be required or allowed to work, while under sentence thereto, at any trade, industry, or occupation, wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given, or sold to any person, firm, association, or corporation. This section shall not be construed to prevent the legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state or any political division thereof.

[New.]

ARTICLE IV.

[The Executive.]

Section 1. [Governor and lieutenant governor; term of office.]—The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant governor shall be chosen at the same time, and for the same term. The governor and lieutenant governor elected next preceding the time when this section shall take effect shall hold office until and including the thirty-first day of December, one thousand eight hundred and ninety-six, and their successors shall be chosen at the general election in that year.

[Const. 1777, arts. 17, 20; 1821, art. 3, § 1; 1846, art. 4, § 1; Am. 1874.]

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§ 2. **[Qualifications of governor and lieutenant governor.]**—No person shall be eligible to the office of governor or lieutenant governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been, five years next preceding his election, a resident of this state.

[Const. 1777, art. 17; 1821, art. 3, § 2; 1846, art. 4, § 2; Am. 1874.]

§ 3. **[Election of governor and lieutenant governor.]**—The governor and lieutenant governor shall be elected at the times and places of choosing members of the assembly. The persons respectively having the highest number of votes for governor and lieutenant governor shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant governor, the two houses of the legislature, at its next annual session, shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor or lieutenant governor.

[Const. 1777, art. 17; 1821, art. 3, § 3; 1846, art. 4, § 3.]

§ 4. **[Governor's general powers; compensation.]**—The governor shall be commander-in-chief of the military and naval forces of the state. He shall have power to convene the legislature, or the senate only, on extraordinary occasions. At extraordinary sessions no subject shall be acted upon except such as the governor may recommend for consideration. He shall communicate by message to the legislature at every session the condition of the state, and recommend such matters to *it* as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as

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may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall receive for his services an annual salary of ten thousand dollars, and there shall be provided for his use a suitable and furnished executive residence.

[Const. 1777, art. 18; 1821, art. 3, § 4; 1846, art. 4, § 4; Am. 1874.]

§ 5. **[Pardons, reprieves, and commutations.]**—The governor shall have the power to grant reprieves, commutations, and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation, or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve.

[Const. 1777, art. 18; 1821, art. 3, § 5; 1846, art. 4, § 5.]

§ 6. **[When lieutenant governor to act as governor.]**—In case of the impeachment of the governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the disability shall cease.

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But when the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

[Const. 1777, art. 20; 1821, art. 3, § 6; 1846, art. 4, § 6.]

§ 7. **[Lieutenant governor to be president of senate; gubernatorial succession.]**—The lieutenant governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. If, during a vacancy of the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president of the senate shall act as governor until the vacancy be filled or the disability shall cease; and if the president of the senate, for any of the above causes, shall become incapable of performing the duties pertaining to the office of governor, the speaker of the assembly shall act as governor until the vacancy be filled or the disability shall cease.

[Const. 1777, art. 20; 1821, art. 3, § 7; 1846, art. 4, § 7.]

§ 8. **[Lieutenant governor's compensation.]**—The lieutenant governor shall receive for his services an annual salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee, or perquisite, for any duty or service he may be required to perform by the Constitution or by law.

[Const. 1846, art. 4, § 8; Am. 1874.]

§ 9. **[Governor's legislative powers.]**—Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor;

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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, which shall enter the objections at large on the journal, and proceed to reconsider it. If, after such reconsideration, two thirds of the members elected to 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 the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases the votes in both houses shall be determined by yeas and nays, and the names of the members voting 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, the same shall be a law in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within thirty days after such adjournment. If any bill presented to the governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If, on reconsideration, one or more of such items be approved by two thirds of the members elected to each house, the same shall be part of the law, notwithstanding the ob-

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jections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

[Const. 1777, art. 3; 1821, art. 1, § 12; 1846, art. 4, § 9; Am. 1874.]

ARTICLE V.

[State Officers; Civil Service.]

Section 1. [State officers, election and compensation.]—The secretary of state, comptroller, treasurer, attorney general, and state engineer and surveyor shall be chosen at a general election, at the times and places of electing the governor and lieutenant governor, and shall hold their offices for two years, except as provided in section two of this article. Each of the officers in this article named, excepting the speaker of the assembly, shall, at stated times during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of state engineer and surveyor who is not a practical civil engineer.

[Const. 1777, art. 23; 1821, art. 4, § 6; 1846, art. 5, §§ 1, 2.]

§ 2. [First election under this Constitution.]—The first election of the secretary of state, comptroller, treasurer, attorney general, and state engineer and surveyor, pursuant to this article, shall be held in the year one thousand eight hundred and ninety-five, and their terms of office shall begin on the first day of January following, and shall be for three years. At the general election in the year one thousand eight hundred and

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ninety-eight, and every two years thereafter, their successors shall be chosen for the term of two years.

[New. Temporary.]

§ 3. **[Superintendent of public works.]**—A superintendent of public works shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office until the end of the term of the governor by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed by law. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. He shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the state engineer and surveyor; subject to the control of the legislature, he shall make the rules and regulations for the navigation or use of the canals. He may be suspended or removed from office by the governor whenever, in his judgment, the public interest shall so require; but in case of the removal of such superintendent of public works from office, the governor shall file with the secretary of state a statement of the cause of such removal, and shall report such removal and the cause thereof to the legislature at its next session. The superintendent of public works shall appoint not more than three assistant superintendents, whose duties shall be prescribed by him, subject to modification by the legislature, and who shall receive for their services a compensation to be fixed by law. They shall hold their office for three years, subject to suspension or removal by the superintendent of public works, whenever, in his judg-

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ment, the public interest shall so require. Any vacancy in the office of any such assistant superintendent shall be filled, for the remainder of the term for which he was appointed, by the superintendent of public works; but in case of the suspension or removal of any such assistant superintendent by him, he shall at once report to the governor, in writing, the cause of such removal. All other persons employed in the care and management of the canals, except collectors of tolls, and those in the department of the state engineer and surveyor, shall be appointed by the superintendent of public works, and be subject to suspension or removal by him. The superintendent of public works shall perform all the duties of the former canal commissioners and board of canal commissioners, as now declared by law, until otherwise provided by the legislature. The governor, by and with the advice and consent of the senate, shall have power to fill vacancies in the office of superintendent of public works; if the senate be not in session, he may grant commissions which shall expire at the end of the next succeeding session of the senate.

[Am. 1876.]

§ 4. **[Superintendent of state prisons.]**—A superintendent of state prisons shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office for five years, unless sooner removed; he shall give security in such amount, and with such sureties, as shall be required by law for the faithful discharge of his duties; he shall have the superintendence, management, and control of state prisons, subject to such laws as now exist or may hereafter be enacted; he shall appoint the agents, wardens, physicians, and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the

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clerk, subject to the approval of the same by the superintendent. The comptroller shall appoint the clerks of the prisons. The superintendent shall have all the powers and perform all the duties not inconsistent herewith, which were formerly had and performed by the inspectors of state prisons. The governor may remove the superintendent for cause at any time, giving to him a copy of the charges against him, and an opportunity to be heard in his defense.

[Const. 1846, art. 5, § 4; Am. 1876.]

§ 5. **[Commissioners of the land office and canal fund; canal board.]**—The lieutenant governor, speaker of the assembly, secretary of state, comptroller, treasurer, attorney general, and state engineer and surveyor shall be the commissioners of the land office. The lieutenant governor, secretary of state, comptroller, treasurer, and attorney general shall be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund, the state engineer and surveyor, and the superintendent of public works.

[Const. 1846, art. 5, § 5.]

§ 6. **[Powers and duties of boards.]**—The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.

[Const. 1846, art. 5, § 6.]

§ 7. **[Suspension of treasurer.]**—The treasurer may be suspended from office by the governor, during the recess of the legislature, and until thirty days after the commencement of the next session of the legislature, whenever it shall appear to him that such treasurer has,

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in any particular, violated his duty. The governor shall appoint a competent person to discharge the duties of the office during such suspension of the treasurer.

[Const. 1846, art. 5, § 7.]

§ 8. **[Certain offices abolished.]**—All offices for the weighing, gauging, measuring, culling, or inspecting any merchandise, produce, manufacture, or commodity whatever, are hereby abolished; and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the state in its property, revenue, tolls, or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

[Const. 1846, art. 5, § 8.]

§ 9. **[Civil service.]**—Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the Army and Navy of the United States in the late Civil War, who are citizens and residents of this state, shall be entitled to preference in appointment and promotion without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section.

[New.]

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ARTICLE VI.

[JUDICIARY.]

§ 1. **[Supreme court; how constituted; judicial districts.]**—The supreme court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the state are continued until changed, as hereinafter provided. The supreme court shall consist of the justices now in office, and of the judges transferred thereto by the fifth section of this article, all of whom shall continue to be justices of the supreme court during their respective terms, and of twelve additional justices, who shall reside in, and be chosen by the electors of, the several existing judicial districts, three in the first district, three in the second, and one in each of the other districts; and of their successors. The successors of said justices shall be chosen by the electors of their respective judicial districts. The legislature may alter the judicial districts once after every enumeration under the Constitution, of the inhabitants of the state, and thereupon reapportion the justices to be thereafter elected in the districts so altered.

[Const. 1821, art. 5, § 4; 1846, art. 6, § 3; 1869, art. 6, § 6; Am. 1882, § 28.] See this section in vol. 4 for amendment of 1905.

§ 2. **[Appellate division.]**—The legislature shall divide the state into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the legislature may alter the judicial departments, but without increasing the number thereof. There shall be an appellate division of the supreme

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court, consisting of seven justices in the first department, and of five justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case.

From all the justices elected to the supreme court the governor shall designate those who shall constitute the appellate division in each department; and he shall designate the presiding justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other justices shall be designated for terms of five years, or the unexpired portions of their respective terms of office, if less than five years. From time to time, as the terms of such designations expire, or vacancies occur, he shall make new designations. He may also make temporary designations in case of the absence or inability to act of any justice in the appellate division. A majority of the justices designated to sit in the appellate division in each department shall be residents of the department. Whenever the appellate division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments, at a meeting called by the presiding justice of the department in arrears, may transfer any pending appeals from such department to any other department for hearing and determination. No justice of the appellate division shall exercise any of the powers of a justice of the supreme court, other than those of a justice out of court, and those pertaining to the appellate division or to the hearing and decision of motions submitted by consent of counsel. From and after the last day of December, one thousand eight hundred and ninety-five, the appellate division shall have the jurisdiction now exercised by the supreme court at its general terms, and by the general

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terms of the court of common pleas for the city and county of New York, the superior court of the city of New York, the superior court of Buffalo and the city court of Brooklyn, and such additional jurisdiction as may be conferred by the legislature. It shall have power to appoint and remove a reporter.

The justices of the appellate division in each department shall have power to fix the times and places for holding special and trial terms therein, and to assign the justices in the departments to hold such terms; or to make rules therefor.

[Const. 1846, art. 6, § 6; 1869, art. 6, § 7; Am. 1899.] See this section in vol. 4 for amendment of 1905.

§ 3. **[Judge not to sit in review of his own decision; proceedings in law and equity.]**—No judge or justice shall sit in the appellate division or in the court of appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

[Const. 1846, art. 6, § 10; 1869, art. 6, § 8.]

§ 4. **[Vacancies in supreme court.]**—The official terms of the justices of the supreme court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of justice of the supreme court, the same shall be filled for a full term, at the next general election, happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the governor, by and

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with the advice and consent of the senate, if the senate shall be in session, or, if not in session, the governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

[Const. 1821, art. 4, § 7; 1846, art. 6, § 13; 1869, art. 6, § 9.]

§ 5. **[Certain local courts abolished.]**—The superior court of the city of New York, the court of common pleas for the city and county of New York, the superior court of Buffalo, and the city court of Brooklyn, are abolished from and after the first day of January, one thousand eight hundred and ninety-six, and thereupon the seals, records, papers, and documents of or belonging to such courts, shall be deposited in the offices of the clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts shall be transferred to the supreme court for hearing and determination. The judges of said courts in office on the first day of January, one thousand eight hundred and ninety-six, shall, for the remainder of the term for which they were elected or appointed, be justices of the supreme court; but they shall sit only in the counties in which they were elected or appointed. Their salaries shall be paid by the said counties respectively, and shall be the same as the salaries of the other justices of the supreme court, residing in the same counties. Their successors shall be elected as justices of the supreme court by the electors of the judicial districts in which they respectively reside.

The jurisdiction now exercised by the several courts hereby abolished shall be vested in the supreme court. Appeals from inferior and local courts now heard in the court of common pleas for the city and county of New York and the superior court of Buffalo shall be heard

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in the supreme court in such manner and by such justice or justices as the appellate divisions in the respective departments which include New York and Buffalo shall direct, unless otherwise provided by the legislature.

[Judiciary Article, 1869, § 12; Am. 1880.]

§ 6. **[Circuit courts and courts of oyer and terminer abolished.]**—Circuit courts and courts of oyer and terminer are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All their jurisdiction shall thereupon be vested in the supreme court, and all actions and proceedings then pending in such courts shall be transferred to the supreme court for hearing and determination. Any justice of the supreme court, except as otherwise provided in this article, may hold court in any county.

[New.]

§ 7. **[Court of appeals.]**—The court of appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the state. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk, and attendants.

[Const. 1846, art. 6, § 2; 1869, art. 6, § 2.]

§ 8. **[Vacancies in court of appeals.]**—When a vacancy shall occur otherwise than by expiration of term, in the office of chief or associate judge of the court of appeals, the same shall be filled, for a full term, at the

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next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the governor, by and with the advice and consent of the senate, if the senate shall be in session, or, if not in session, the governor, may fill such vacancy by appointment. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such case, the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

[Const. 1821, art. 4, § 7; 1846, art. 6, § 13; 1869, art. 6, § 3.]

§ 9. **[Jurisdiction of court of appeals.]**—After the last day of December, one thousand eight hundred and ninety-five, the jurisdiction of the court of appeals, except where the judgment is of death, shall be limited to the review of questions of law. No unanimous decision of the appellate division of the supreme court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court shall be reviewed by the court of appeals. Except where the judgment is of death, appeals may be taken, as of right, to said court only from judgments or orders entered upon decisions of the appellate division of the supreme court, finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that, upon affirmance, judgment

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absolute shall be rendered against them. The appellate division in any department may, however, allow an appeal upon any question of law which, in its opinion, ought to be reviewed by the court of appeals.

The legislature may further restrict the jurisdiction of the court of appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved.

The provisions of this section shall not apply to orders made or judgments rendered by any general term before the last day of December, one thousand eight hundred and ninety-five, but appeals therefrom may be taken under existing provisions of law.

[New.]

§ 10. **[Judges not to hold any other office.]**—The judges of the court of appeals and the justices of the supreme court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the legislature or the people, shall be void.

[Const. 1777, art. 28; 1821, art. 5, § 7; 1846, art. 6, § 8; 1869, art. 6, § 10.]

§ 11. **[Removal of judges.]**—Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the legislature, if two thirds of all the members elected to each house concur therein. All other judicial officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the senate, on the recommendation of the governor, if two thirds of all the members elected to the senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals,

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nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal.

[Const. 1821, art. 1, § 13; Am. 1845; 1846, art. 6, § 11; 1869, art. 6, § 12.]

§ 12. **[Compensation; age limit.]**—The judges and justices hereinbefore mentioned shall receive for their services a compensation established by law, which shall not be increased or diminished during their official terms, except as provided in section five of this article. No person shall hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be seventy years of age. No judge or justice elected after the first day of January, one thousand eight hundred and ninety-four, shall be entitled to receive any compensation after the last day of December next after he shall be seventy years of age; but the compensation of every judge of the court of appeals or justice of the supreme court elected prior to the first day of January, one thousand eight hundred and ninety-four, whose term of office has been, or whose present term of office shall be, so abridged, and who shall have served as such judge or justice ten years or more, shall be continued during the remainder of the term for which he was elected; but any such judge or justice may, with his consent, be assigned by the governor, from time to time, to any duty in the supreme court while his compensation is so continued.

[Const. 1846, art. 6, § 7; 1869, art. 6, §§ 13, 14; Am. 1880.]

§ 13. **[Impeachments.]**—The assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The court for the trial of im-

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peachments shall be composed of the president of the senate, the senators or the major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor or lieutenant governor, the lieutenant governor shall not act as a member of the court. No judicial officer shall exercise his office after articles of impeachment against him shall have been preferred to the senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under this state; but the party impeached shall be liable to indictment and punishment according to law.

[Const. 1777, art. 33; 1821, art. 5, § 2; 1846, art. 6, § 1; 1869, art. 6, § 1.]

§ 14. **[County Courts.]**—The existing county courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms. In the county of Kings there shall be two county judges and the additional county judge shall be chosen at the next general election held after the adoption of this article. The successors of the several county judges shall be chosen by the electors of the counties for the term of six years. County courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only, where the defendants reside in the county, and in which the complaint demands judgment for a

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sum not exceeding two thousand dollars. The legislature may hereafter enlarge or restrict the jurisdiction of the county courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which the sum demanded exceeds two thousand dollars, or in which any person not a resident of the county is a defendant.

Courts of sessions, except in the county of New York, are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All the jurisdiction of the court of sessions in each county, except the county of New York, shall thereupon be vested in the county court thereof, and all actions and proceedings then pending in such courts of sessions shall be transferred to said county courts for hearing and determination. Every county judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A county judge of any county may hold county courts in any other county when requested by the judge of such other county.

[Const. 1777, art. 24; 1821, art. 5, § 6; 1846, art. 6, § 14; 1869, art. 6, § 15.]

§ 15. **[Surrogates' courts.]**—The existing surrogates' courts are continued, and the surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue to be fourteen years. Surrogates and surrogates' courts shall have the jurisdiction and powers which the surrogates and existing surrogates' courts now possess, until otherwise provided by the legislature. The county judge shall be surrogate of his county, except where a separate surrogate has been or

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shall be elected. In counties having a population exceeding forty thousand, wherein there is no separate surrogate, the legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be six years. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No county judge or surrogate shall hold office longer than until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of county judge or surrogate shall be filled in the same manner as like vacancies occurring in the supreme court. The compensation of any county judge or surrogate shall not be increased or diminished during his term of office. For the relief of surrogates' courts the legislature may confer upon the supreme court in any county having a population exceeding four hundred thousand, the powers and jurisdiction of surrogates, with authority to try issues of fact by jury in probate cases.

[Const. 1777, art. 24; 1821, art. 5, § 6; 1846, art. 6, § 14; 1869, art. 6, § 15.]

§ 16. **[Special county judge and surrogate.]**—The legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

[Const. 1846, art. 6, § 15; 1869, art. 6, § 16.]

§ 17. **[Justices of the peace.]**—The electors of the several towns shall, at their annual town meetings, or

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at such other time and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace, and judges or justices of inferior courts not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard, by such courts as are or may be prescribed by law. Justices of the peace and district court justices may be elected in the different cities of this state in such manner, and with such powers, and for such terms, respectively, as are or shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of such cities, or appointed by some local authorities thereof.

[Const. 1777, art. 24; 1821, art. 4, § 7; Am. 1826; 1846, art. 6, § 17; 1869, art. 6, § 18.]

§ 18. **[Inferior local courts.]**—Inferior local courts of civil and criminal jurisdiction may be established by the legislature, but no inferior local court hereafter created shall be a court of record. The legislature shall not hereafter confer upon any inferior or local court of its creation, any equity jurisdiction, or any greater jurisdiction in other respects than is conferred upon county courts by or under this article. Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the legislature may direct.

[Const. 1777, art. 24; 1821, art. 5, § 6; 1846, art. 6, § 14; 1869, art. 6, § 19.]

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§ 19. **[Clerks of courts.]**—Clerks of the several counties shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. The justices of the appellate division in each department shall have power to appoint and to remove a clerk, who shall keep his office at a place to be designated by said justices. The clerk of the court of appeals shall keep his office at the seat of government. The clerk of the court of appeals and the clerks of the appellate division shall receive compensation, to be established by law and paid out of the public treasury.

[Const. 1821, art. 4, § 9; 1846, art. 6, § 19; 1869, art. 6, § 20.]

§ 20. **[Certain judicial officers not to receive fees; eligibility.]**—No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judge of the court of appeals, or justice of the supreme court, or any county judge or surrogate hereafter elected in a county having a population exceeding one hundred and twenty thousand, practise as an attorney or counselor in any court of record in this state, or act as referee. The legislature may impose a similar prohibition upon county judges and surrogates in other counties. No one shall be eligible to the office of judge of the court of appeals, justice of the supreme court, or, except in the county of Hamilton, to the office of county judge or surrogate, who is not an attorney and counselor of this state.

[Const. 1846, art. 6, § 20; 1869, art. 6, § 21.]

§ 21. **[Publication of statutes; court reports.]**—The legislature shall provide for the speedy publication of all statutes, and shall regulate the reporting of the

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decisions of the courts; but all laws and judicial decisions shall be free for publication by any person.

[Const. 1846, art. 6, § 22; 1869, art. 6, § 23.]

§ 22. **[Local judicial officers, terms not abridged.]**—Justices of the peace and other local judicial officers provided for in sections seventeen and eighteen, in office when this article takes effect, shall hold their offices until the expiration of their respective terms.

[Temporary. Const. 1869, art. 6, § 25.]

§ 23. **[Courts of special sessions.]**—Courts of special sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law.

[Const. 1869, art. 6, § 26.]

ARTICLE VII.

[State Finance; Forest Preserve; Canals.]

Section 1. [State credit limited.]—The credit of the state shall not in any manner be given or loaned to or in aid of any individual, association, or corporation.

[Const. 1846, art. 7, § 9.]

§ 2. **[When state may contract debt.]**—The state may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

[Const. 1846, art. 7, § 10.]

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§ 3. **[Debts for state defense.]**—In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

[Const. 1846, art. 7, § 11.]

§ 4. **[How other debts authorized.]**—Except the debts specified in sections two and three of this article, no debts shall be hereafter contracted by or on behalf of this state, unless such debt shall be authorized by a law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either house of the legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may, at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable, and be annually

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collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on, within three months after its passage, or at any general election when any other law or any bill or any amendment to the Constitution shall be submitted to be voted for or against.

[Const. 1846, art. 7, § 12.] See this section in vol. 4 for amendment of 1905.

§ 5. **[Sinking funds.]**—The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the state shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for the specific purpose for which it shall have been provided.

[Am. 1874.]

§ 6. **[Claims barred by statute of limitations.]**—Neither the legislature, canal board, nor any person or persons acting in behalf of the state, shall audit, allow, or pay any claim which, as between citizens of the state, would be barred by lapse of time. This provision shall not be construed to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claim duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

[Am. 1874.]

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§ 7. **[Forest preserve.]**—The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold, or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed, or destroyed.

[New.]

§ 8. **[Certain canals not to be sold.]**—The legislature shall not sell, lease, or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, or the Black River canal; but they shall remain the property of the state and under its management forever. The prohibition of lease, sale, or other disposition herein contained shall not apply to the canal known as the Main and Hamburg street canal, situated in the city of Buffalo, and which extends easterly from the westerly line of Main street to the westerly line of Hamburg street. All funds that may be derived from any lease, sale, or other disposition of any canal shall be applied to the improvement, superintendence, or repair of the remaining portion of the canals.

[Const. 1846, art. 7, § 6; Am. 1874; Am. 1882.]

§ 9. **[Tolls prohibited; contracts.]**—No tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals, and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. All contracts for work or materials on

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any canal shall be made with the persons who shall offer to do or provide the same at the lowest price, with adequate security for their performance. No extra compensation shall be made to any contractor; but if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.

[Const. 1846, art. 7, § 3; Am. 1854; Am. 1874; Am. 1882.]

§ 10. **[Canal improvement.]**—The canals may be improved in such manner as the legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section four of this article, or the cost of such improvement may be defrayed by the appropriation of funds from the state treasury, or by equitable annual tax.

[New.] See this article in vol. 4 for amendments of 1905.

ARTICLE VIII.

[Corporations and Charities.]

Section 1. [Corporations, how formed.]—Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

[Const. 1821, art. 7, § 9; 1846, art. 8, § 1.]

§ 2. **[Dues of corporations, how secured.]**—Dues from corporations shall be secured by such individual

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liability of the corporators and other means as may be prescribed by law.

[Const. 1846, art. 8, § 2.]

§ 3. **[Corporation defined.]**—The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

[Const. 1846, art. 8, § 3.]

§ 4. **[Banking corporations.]**—The legislature shall, by general law, conform all charters of savings banks, or institutions for savings, to a uniformity of powers, rights, and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

[Const. 1846, art. 8, § 4; Am. 1874.]

§ 5. **[Specie payments not to be suspended.]**—The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension

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of specie payments by any person, association, or corporation, issuing bank notes of any description.

[Const. 1846, art. 8, § 5.]

§ 6. **[Registry of bills and notes.]**—The legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

[Const. 1846, art. 8, § 6.]

§ 7. **[Liability of stockholders.]**—The stockholders of every corporation and joint-stock association for banking purposes shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

[Const. 1846, art. 8, § 7.]

§ 8. **[Preference of billholders.]**—In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

[Const. 1846, art. 8, § 8.]

§ 9. **[No state aid to individuals or corporations.]**—Neither the credit nor the money of the state shall be given or loaned to or in aid of any association, corporation, or private undertaking. This section shall not, however, prevent the legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the state for educational purposes.

[Const. 1846, art. 7, § 9; Am. 1874; 1894, art. 7, § 1.]

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§ 10. **[Municipal aid prohibited, except for public purposes; indebtedness limited.]**—No county, city, town, or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association, or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town, or village be allowed to incur any indebtedness except for county, city, town, or village purposes. This section shall not prevent such county, city, town, or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city, subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained, in the taxes for the year when such certificates or revenue bonds are issued, and payable out of such taxes.

Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the bonds issued to provide the supply of water

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shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted. Whenever hereafter the boundaries of any city shall become the same as those of a county, the power of the county to become indebted shall cease; but the debt of the county at that time existing shall not be included as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this state, in addition to providing for the principal and interest of existing debt, shall not, in the aggregate, exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

[Am. 1874; Am. 1884.] See this section in vol. 4 for amendment of 1905.

§ 11. **[State board of charities; lunacy and prison commissions.]**—The legislature shall provide for a state board of charities, which shall visit and inspect all institutions, whether state, county, municipal, incorporated, or not incorporated, which are of a charitable, eleemosynary, correctional, or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the

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commissions hereinafter mentioned, but including all reformatories except those in which adult males convicted of felony shall be confined; a state commission in lunacy, which shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane (not including institutions for epileptics or idiots); a state commission of prisons which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors.

[New.]

§ 12. **[Commissioners, how appointed.]**—The members of the said board and of the said commissions shall be appointed by the governor, by and with the advice and consent of the senate; and any member may be removed from office by the governor for cause, an opportunity having been given him to be heard in his defense.

[New.]

§ 13. **[Existing laws continued.]**—Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the legislature. The visitation and inspection herein provided for shall not be exclusive of other visitation and inspection now authorized by law.

[New.]

§ 14. **[Maintenance of defectives and delinquents, institutions and inmates.]**—Nothing in this Constitution contained shall prevent the legislature from making

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such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town, or village from providing for the care, support, maintenance, and secular education, of inmates of orphan asylums, homes for dependent children, or correctional institutions, whether under public or private control. Payments by counties, cities, towns, and villages to charitable, eleemosynary, correctional, and reformatory institutions, wholly or partly under private control, for care, support, and maintenance, may be authorized, but shall not be required by the legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the state board of charities. Such rules shall be subject to the control of the legislature by general laws.

[New.]

§ 15. **[Commissioners continued in office.]**—Commissioners of the state board of charities and commissioners of the state commission in lunacy, now holding office, shall be continued in office for the term for which they were appointed, respectively, unless the legislature shall otherwise provide. The legislature may confer upon the commissions and upon the board mentioned in the foregoing sections any additional powers that are not inconsistent with other provisions of the Constitution.

[New.]

ARTICLE IX.

[EDUCATION.]

Section 1. [Common schools.]—The legislature shall provide for the maintenance and support of a system

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of free common schools, wherein all the children of this state may be educated.

[New.]

§ 2. **[University.]**—The corporation created in the year one thousand seven hundred and eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed, and its corporate powers, which may be increased, modified, or diminished by the legislature, shall be exercised, by not less than nine regents.

[New.]

§ 3. **[Education funds.]**—The capital of the common-school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of the said common-school fund shall be applied to the support of common schools; the revenue of the said literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made part of the capital of the said common-school fund.

[Const. 1821, art. 7, § 10; 1846, art. 9, § 1.]

§ 4. **[Sectarian aid prohibited.]**—Neither the state nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the

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control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

[New.]

ARTICLE X.

[Local Officers; General Provisions.]

Section 1. [Election and removal of certain county officers.]—Sheriffs, clerks of counties, district attorneys, and registers in counties having registers, shall be chosen by the electors of the respective counties, once in every three years, and as often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every two or four years, as the legislature shall direct. Sheriffs shall hold no other office and be ineligible for the next term after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The governor may remove any officer, in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

[Const. 1777, arts. 26, 28; 1821, art. 4, § 8; 1846, art. 10, § 1.]

§ 2. [Local officers, how chosen.]—All county officers whose election or appointment is not provided for by this Constitution shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town, and village officers,

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whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns, and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct.

[Const. 1777, arts. 22, 29; 1821, art. 4, § 15; Am. 1826, relative to election of justices of the peace; Am. 1833 and 1838, relative to mayors; 1846, art. 10, § 2.]

§ 3. **[Duration of certain offices, how fixed.]**—When the duration of any office is not provided by this Constitution it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

[Const. 1777, art. 28; 1821, art. 4, § 16; 1846, art. 10, § 3.]

§ 4. **[Legislature to prescribe time of elections.]**—The time of electing all officers named in this article shall be prescribed by law.

[Const. 1777, art. 29; 1821, art. 1, § 15, art. 4, §§ 10, 15; Am. 1826 (justices of peace); Ams. 1833, 1838 (mayors); 1846, art. 10, § 4; 1894, art. 12, § 3.]

§ 5. **[Vacancies.]**—The legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

[Const. 1846, art. 10, § 5; also provisions in this Constitution relative to particular offices.]

§ 6. **[Political year.]**—The political year and legislative term shall begin on the first day of January; and

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the legislature shall, every year, assemble on the first Wednesday in January.

[Const. 1821, art. 1, § 14; 1846, art. 10, § 6.]

§ 7. **[Removals.]**—Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal.

[Const. 1846, art. 10, § 7.]

§ 8. **[Legislature may determine vacancies.]**—The legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this Constitution.

[Const. 1846, art. 10, § 8.]

§ 9. **[Compensation.]**—No officer whose salary is fixed by the Constitution shall receive any additional compensation. Each of the other state officers named in the Constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use any fees or perquisites of office as other compensation.

[Am. 1874.]

ARTICLE XI.

[Militia.]

Section 1. [Militia, how constituted.]—All able-bodied male citizens between the ages of eighteen and

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forty-five years, who are residents of the state, shall constitute the militia, subject, however, to such exemptions as are now, or may be hereafter, created by the laws of the United States, or by the legislature of this state.

[Const. 1777, art. 24; 1821, art. 7, § 5; 1846, art. 11, § 1.]

§ 2. **[Active force, how enlarged.]**—The legislature may provide for the enlistment into the active force of such other persons as may make application to be so enlisted.

[New.]

§ 3. **[Organization and maintenance.]**—The militia shall be organized and divided into such land and naval, and active and reserve forces as the legislature may deem proper, provided, however, that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined, and ready for active service. And it shall be the duty of the legislature at each session to make sufficient appropriations for the maintenance thereof.

[New.]

§ 4. **[Governor to appoint certain militia officers.]**—The governor shall appoint the chiefs of the several staff departments, his aides-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the governor shall have been elected; he shall also nominate, and with the consent of the senate appoint, all major generals.

[Const. 1777, art. 24; 1821, art. 4, § 2; 1846, art. 11, § 3.]

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§ 5. **[Other officers, how chosen.]**—All other commissioned and noncommissioned officers shall be chosen or appointed in such manner as the legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two thirds of the members present in each house shall concur therein.

[Const. 1777, art. 24; 1821, art. 4, § 3; 1846, art. 11, §§ 4, 6.]

§ 6. **[Removals.]**—The commissioned officers shall be commissioned by the governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the sentence of a court martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more.

[Const. 1777, arts. 23, 24; 1821, art. 4, § 4; 1846, art. 11, § 5.]

ARTICLE XII.

[Cities and Villages.]

Section 1. [Organization; restriction of powers.]—It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations.

[Const. 1846, art. 8, § 9.] See this section in vol. 4 for amendment of 1905.

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§ 2. **[City laws; referendum.]**—All cities are classified according to the latest state enumeration, as from time to time made, as follows: The first class includes all cities having a population of two hundred and fifty thousand, or more; the second class, all cities having a population of fifty thousand and less than two hundred and fifty thousand; the third class, all other cities. Laws relating to the property, affairs, or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or, if the session of the legislature at which such bill was passed has terminated, to the governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same.

In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the legislature may provide for the concurrence of the legislative body in cities of the first class. The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as

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herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject, as are other bills, to the action of the governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject, as are other bills, to the action of the governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

[New.]

§ 3. **[City officers, when to be elected.]**—All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers elected before the first day of January, one thousand eight hundred and ninety-five, whose successors have not then been elected, which, under existing laws, would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers which, under

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existing laws, would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to any city of the third class, or to elections of any judicial officer, except judges and justices of inferior local courts.

[New.]

ARTICLE XIII.

[OFFICIAL OATH; BRIBERY; PASSES.]

Section 1. [Oath of office.]—Members of the legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the state of New York, and that I will faithfully discharge the duties of the office of , according to the best of my ability;" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not, directly or indirectly, paid, offered, or promised to pay, contributed, or offered or promised to contribute, any money, or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, dec-

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laration, or test shall be required as a qualification for any office of public trust.

[Const. 1821, art. 6, § 1; 1846, art. 12, § 1; Am. 1874.]

§ 2. **[Bribery of public officers.]**—Any person holding office under the laws of this state who, except in payment of his legal salary, fees, or perquisites, shall receive or consent to receive, directly or indirectly, anything of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offense of bribery.

[Am. 1874, art. 15, § 1.]

§ 3. **[Bribery, how punished.]**—Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it was tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony.

[Am. 1874, art. 15, § 2.]

§ 4. **[Witnesses.]**—Any person charged with receiving a bribe, or with offering or promising a bribe,

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shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

[Am. 1874, art. 15, § 3.]

§ 5. **[Passes.]**—No public officer, or person elected or appointed to a public office, under the laws of this state, shall, directly or indirectly, ask, demand, accept, receive, or consent to receive for his own use or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph, or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A person who violates any provision of this section shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the attorney general. Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person or officer or agent of a corporation, giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

[New.]

§ 6. **[District attorney's duty; expenses.]**—Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article, which may come to his knowledge, shall be removed from office by the governor, after

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due notice and an opportunity of being heard in his defense. The expenses which shall be incurred by any county in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this state, within such county, or of receiving bribes by any such person in said county, shall be a charge against the state, and their payment by the state shall be provided for by law.

[Am. 1874, art. 15, § 4.]

ARTICLE XIV.

[Amendments and Conventions.]

Section 1. [Legislative amendments.] — Any amendment or amendments to this Constitution may be proposed in the senate and assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, and the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice; and if in the legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people for approval in such manner and at such times as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next after such approval.

[Const. 1821, art. 8, § 1; 1846, art. 13, § 1.]

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§ 2. **[Conventions.]**—At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the legislature may by law provide, the question, "Shall there be a convention to revise the Constitution and amend the same?" shall be decided by the electors of the state; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then organized, shall elect three delegates at the next ensuing general election at which members of the assembly shall be chosen, and the electors of the state voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the members of the assembly. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal to be kept. The convention shall have the power to appoint such officers, employees, and assistants as it may deem necessary, and fix their compensation, and to provide for the printing of its documents, journal, and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election returns and qualifications of its members. In case of a vacancy, by death, resignation, or other cause, of any district delegate elected to the convention, such vacancy shall

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be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention shall be submitted to a vote of the electors of the state at the time and in the manner provided by such convention, at an election which shall be held not less than six weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment shall go into effect on the first day of January next after such approval.

[Const. 1846, art. 13, § 2; Am. 1874, art. 16, § 1.]

§ 3. **[Coincident legislative and convention amendments.]**—Any amendment proposed by a constitutional convention relating to the same subject as an amendment proposed by the legislature, coincidently submitted to the people for approval at the general election held in the year one thousand eight hundred and ninety-four, or at any subsequent election, shall, if approved, be deemed to supersede the amendment so proposed by the legislature.

[New.]

ARTICLE XV.

[When Constitution to Take Effect.]

Section 1. [Time of taking effect.]—This Constitution shall be in force from and including the first day

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of January, one thousand eight hundred and ninety-five, except as herein otherwise provided.

[New. Temporary.]

Done in convention at the Capitol in the city of Albany, the twenty-ninth day of September, in the year one thousand eight hundred and ninety-four, and of the independence of the United States of America the one hundred and nineteenth.

In witness whereof, we have hereunto subscribed our names.

JOSEPH HODGES CHOATE,
President and Delegate-at-Large.

CHARLES ELLIOTT FITCH,
Secretary.

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AMENDMENTS FROM 1894 TO 1904.

1899. **Art. 3, § 26. [Boards of supervisors.]**—There shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members, and elected in such manner, and for such period, as is or may be provided by law. In a city which includes an entire county, or two or more entire counties, the powers and duties of a board of supervisors may be devolved upon the municipal assembly, common council, board of aldermen, or other legislative body of the city.

[Am. 1874; Const. 1894, art. 3, § 26.]

1899. **Art. 6, § 2. [Appellate division.]**—The legislature shall divide the state into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population, as nearly as may be. Once every ten years the legislature may alter the judicial departments, but without increasing the number thereof. There shall be an appellate division of the supreme court, consisting of seven justices in the first department, and of five justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case. From all the justices elected to the supreme court the governor shall designate those who shall constitute the appellate division in each department; and he shall designate the presiding justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other justices shall be designated for terms of five years

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or the unexpired portions of their respective terms of office, if less than five years. From time to time, as the terms of such designations expire, or vacancies occur, he shall make new designations. A majority of the justices so designated to sit in the appellate division in each department shall be residents of the department. He may also make temporary designations in case of the absence or inability to act of any justice in the appellate division, or in case the presiding justice of any appellate division shall certify to him that one or more additional justices are needed for the speedy disposition of the business before it. Whenever the appellate division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments, at a meeting called by the presiding justice of the department in arrears, may transfer any pending appeals from such department to any other department, for hearing and determination. No justice of the appellate division shall exercise any of the powers of a justice of the supreme court, other than those of a justice out of court, and those pertaining to the appellate division or to the hearing and decision of motions submitted by consent of counsel. From and after the last day of December, eighteen hundred and ninety-five, the appellate division shall have the jurisdiction now exercised by the supreme court at its general terms and by the general terms of the court of common pleas for the city and county of New York, the superior court of the city of New York, the superior court of Buffalo and the city* of Brooklyn, and such additional jurisdiction as may be conferred by the legislature. It shall have power to appoint and remove a reporter. The justices of the appellate division in each department shall have power to fix the times and places for holding special and trial terms therein, and to assign

*Word "court" evidently omitted.

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the justices in the departments to hold such terms; or to make rules therefor.

[Const. 1894, art. 6, § 2. The amendment authorizes additional judges in the appellate division.] See this section in vol. 4 for amendment of 1905.

1899. **Art. 6, § 7. [Court of appeals.]**—The court of appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the state. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk, and attendants. Whenever and as often as a majority of the judges of the court of appeals shall certify to the governor that said court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the governor shall designate not more than four justices of the supreme court to serve as associate judges of the court of appeals. The justices so designated shall be relieved from their duties as justices of the supreme court and shall serve as associate judges of the court of appeals until the causes undisposed of in said court are reduced to two hundred, when they shall return to the supreme court. The governor may designate justices of the supreme court to fill vacancies. No justice shall serve as associate judge of the court of appeals except while holding the office of justice of the supreme court, and no more than seven judges shall sit in any case.

[Judiciary Article of 1869, § 2; Const. 1894, art. 6, § 7. The amendment adds provisions for the relief of the court.]

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1899. Art. 8, § 10. [Counties, cities and towns not to give or loan money or credit; limitation of indebtedness.]—No county, city, town, or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association, or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town, or village be allowed to incur any indebtedness except for county, city, town, or village purposes. This section shall not prevent such county, city, town, or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained, in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the

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bonds issued to provide the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted. Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within such city to become indebted shall cease, but the debt of the county, heretofore existing, shall not, for the purposes of this section, be reckoned as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this state, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

[Am. 1874; Am. 1884; Const. 1894, art. 8, § 10. The amendment relates to county indebtedness in the city of New York.] See this section in vol. 4 for amendment of 1905.

1901. **Art. 3, § 18. [Private and local bills limited; street railroads.]**—The legislature shall not pass a private or local bill in any of the following cases:

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Changing the names of persons.

Lay out, opening, altering, working, or discontinuing roads, highways, or alleys, or for draining swamps or other low lands.

Locating or changing county seats.

Providing for changes of venue in civil or criminal cases.

Incorporating villages.

Providing for election of members of boards of supervisors.

Selecting, drawing, summoning, or impaneling grand or petit jurors.

Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing, or decreasing fees, percentage, or allowances of public officers, during the term for which said officers are elected or appointed.

Granting to any corporation, association, or individual the right to lay down railroad tracks.

Granting to any private corporation, association, or individual any exclusive privilege, immunity, or franchise whatever.

Granting to any person, association, firm, or corporation, an exemption from taxation on real or personal property.

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.

The legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which, in its judgment, may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the

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condition that the consent of the owners of one half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the appellate division of the supreme court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

[Am. 1874; Const. 1894, art. 3, § 18. The amendment of 1901 added the paragraph relating to special tax exemption laws.]

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CHAPTER I.

The Colonial Period.

The colonial history of New York has often been written, and is easily accessible to the general reader. Historians have considered it from various points of view, and have apparently discovered all available sources of information which would aid in showing the inception, progress, and development of the colony. Unfortunately many records covering this early period are lost. De Witt Clinton fully appreciated the value of these early records, and in 1814, then being vice president of the New York Historical Society,—three years before he became governor,—he prepared a memorial to the legislature, stating the object of the society, its inability to procure, unaided, the invaluable and ample materials then accessible relating to our early history, and urging the legislature to render suitable assistance to the society in its efforts "to preserve the history of the state from oblivion;" but the legislature did not respond to this appeal. At that time the voluminous records of the Dutch West India Company were in existence, and would have been willingly presented to the state by the Dutch government, but when, in 1841, the state undertook to collect this information, it was found that the records had been sold at auction in 1821 by order of the government. We may conjecture how the keen historical instinct of a Macaulay, a Motley, or an Irving would have reveled in this mass of material, bringing from it a clear statement of the affairs of this great corporation, and

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incidentally the story of the early development of our commonwealth.

Enough remains, however, to show the evolution of the customs and principles which found a place in our first Constitution, and which became the basis of much of the governmental machinery of the state.

A history of the colony of New York is not within the scope of this work, but the following brief summary of the more important events will doubtless be found useful in tracing the development of our constitutional system.

1609, September 3. Captain Henry Hudson, an Englishman, in the Half Moon, a ship belonging to the Dutch East India Company, and carrying the Dutch flag, first entered New York bay. The next day he sailed up the river which now bears his name.

1610. Amsterdam merchants sent a shipload of goods to be used in trading with the Manhattan Indians for furs.

1611. The trading enterprise of the Dutch was greatly stimulated by the information acquired during the voyage of the preceding year.

1612. Residents of various cities in Holland applied to the States General for information concerning the new discoveries in America.

1613. Trading with the Indians continued. At this time there were four houses on Manhattan Island.

1614, March 27. The States General of the United Netherlands passed an ordinance authorizing the inhabitants of the United Netherlands to undertake the discovery of new "courses, havens, countries, and places," and giving to such discoverers the exclusive right to make four voyages to the places so discovered.

1614, October 11. Charter granted to several Amsterdam merchants and others, giving them the exclusive right to trade with the newly discovered countries, which

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then for the first time were called New Netherlands. The company was given the right to make four voyages within three years from January 1, 1615. This charter expired by its own limitation January 1, 1618.

1619. Subscriptions were opened for stock in a new corporation to be called the Dutch West India Company.

1620. The English government called the attention of the States General to the patents which James I. granted to the Plymouth and London companies, and to its broad jurisdiction, claiming, in substance, that the Dutch discoveries in America were within the jurisdiction conferred on these companies.

1621, June 3. A charter was granted to the Dutch West India Company. This gigantic corporation was invested with the most comprehensive administrative and judicial powers. The central power of the corporation was divided among five branches or Chambers representing the different cities in the Netherlands.

The Amsterdam Chamber was especially charged with the administration of the company's affairs in New Netherlands. The central power of the corporation was vested in an Assembly of XIX., composed of delegates from the several constituent cities. Among other things, the company was authorized "to appoint and remove governors, officers of justice, and other public officers, for the preservation of the places, keeping good order, police, and justice, in like manner for the promoting of trade." All officers were required to take an oath of allegiance to the company, and also to the States General.

1623. The Dutch West India Company began the colonization of New Netherlands. The affairs of the colony were under the supervision of Captain Cornelis Jacobsen May, the first Director appointed by the Amsterdam Chamber.

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1625. William Verhulst succeeded May as Director.

1626. Peter Minuit was appointed Director, and with him was associated a Council of Five. The members of the council were appointed by the Director, who, with such council, possessed all executive, legislative, and judicial powers; subject, however, to certain appellate jurisdiction of the Assembly of XIX., which jurisdiction was afterwards transferred to the Amsterdam Chamber. The will of the company, as expressed in its instructions, was to be the law of New Netherlands. Cases not provided for were to be governed by the Roman law, the imperial statutes of Charles V., and the edicts, resolutions, and customs of the Fatherland.

1629, June 7. Charter of Freedoms and Exemptions. Persons who would undertake to plant colonies of fifty souls were to be acknowledged as patroons, and given the possession and enjoyment of all lands lying within the limits of their settlements, "together with the fruits, rights, minerals, rivers, and fountains thereof; as also the chief command and lower jurisdiction, fishing, fowling, and grinding, to the exclusion of all others, to be holden from the company as a perpetual inheritance, without it ever devolving again to the company. . . . And in case anyone should in time prosper so much as to found one or more cities, he shall have power and authority to establish officers and magistrates there, and to make use of the title of his colony according to his pleasure and to the quality of the persons." Each colony was permitted to choose one deputy, "who shall give information concerning his colony to the commander and council." This charter is especially significant in our history, for it transplanted to the colony the feudal system, and established a policy of local administration whose effects continued many years.

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1638, August 30. An amended charter was proposed, which modified in many respects the provisions of the Charter of Freedoms and Exemptions of 1629. The new charter contained the following provision concerning religious worship:

"And, inasmuch as it is of the highest importance that, in the first commencement and planting of the population, proper order should be taken for public worship, according to the practice established by the government of this country, the same religion shall be taught and preached there, according to the Confession and Formularies of Unity here publicly accepted in the respective churches, with which everyone shall be satisfied and content; without, however, it being by this understood that any person shall be hereby, in any wise, constrained or aggrieved in his conscience; but each shall be free to live in peace and all decorum, provided he take care not to frequent any forbidden assemblies or conventicles, much less collect or get up any such; and abstain forthwith from all public scandals and offenses." The charter guaranteed "equal justice" to all inhabitants of the colony.

1638, March 28. William Kieft, the new Director, arrived at Fort Amsterdam. He reorganized the administration of the colony, but, for the purpose of retaining power, constituted a council of one member, giving this member one vote, and retaining two votes for himself.

1641, August 28. This date marks the beginning of representative government in the colony. The masters and heads of families met at Fort Amsterdam, in response to a summons from Director Kieft, to consider what action ought to be taken towards the Indians in consequence of the murder of Claes Smits by one of their number. The Director wished to take severe measures

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for the punishment of the Indians, but evidently was unwilling to take the entire responsibility of any movement for this purpose. He therefore sought the advice of the masters and heads of families. The population of Manhattan at this time was about 400.

At this meeting the assembly elected Twelve Select Men as their representatives to consider the matters submitted by the Director. These Twelve Men constituted the first representative body chosen in the colony, and their names should be preserved in our constitutional history. They were: Jacques Bentyn, Jan Dam, Hendrik Jansen, David Pietersen De Vries, Jacob Stoffels, Maryn Adriaesen, Abram Molenaer, Fredrik Lubbertsen, Joachim Pietersen, Gerrit Dircksen, George Papelje, and Abram Plank.

They objected to the Director's propositions, and his project was temporarily abandoned; but he soon renewed it, and after some delay obtained a reluctant consent to make war on the Indians.

The Twelve Men used the opportunity presented by their election to try to reform some abuses which had become apparent in the administration of the colony, and to secure for the people some share in the government. They noted the reduction of the council to one member, and the reservation of complete control by the Director, and they demanded that the council should be increased to five, and, to "save the land from oppression," four persons elected by the commonalty should act as councilors; two of these four should annually be replaced by two others to be chosen from the Twelve Men selected by the people. They reminded the Director that in the Fatherland each village had a Council of at least five schepens, and they demanded a continuance of these features of local administration in the colony.

The Director admitted the justice of some of the com-

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plaints presented by the Twelve Men, and promised to reform the council. In his reply to their memorial he took occasion to say that the Twelve Men had exceeded their authority, because they were chosen to consider only the question submitted by him relative to the course to be pursued towards the Indians.

1642, February 18. Director Kieft, apparently alarmed at the independent spirit manifested by the Twelve Men, issued a proclamation forbidding any further meetings without his authority, on the ground that such meetings "tend to dangerous consequences and to the great injury, both of the country, and of our authority."

The new popular movement was thus checked for the time, but the people were not discouraged. Another opportunity came soon, for the troubles of the colony compelled the Director to call on the people again.

1643, August. The Director again summoned the people to meet in the fort for the purpose of considering the affairs of the colony. He requested them to "elect five or six persons from among themselves, who should consider such propositions as the Director and council should lay before them."

The people declined to elect these men, but expressed their willingness to act on nominations made by the Director and council, reserving the right to reject any unsatisfactory nominations.

1643, September 13. The people chose a new representative body composed of eight men, "maturely to consider the propositions submitted to us here by the Director and council," and approving any action they might take in the premises.

1643, September 15. The Eight Men held their first meeting. This body continued in existence about a year, and made several attempts to consider various subjects

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concerning colonial affairs. The Director submitted to it various propositions affecting the administration, and it exercised some legislative powers.

1647, May 27. Kieft having been recalled, Peter Stuyvesant, "the last and most celebrated of the Dutch Governors," arrived at New Amsterdam.

1647. Director Stuyvesant, acting on the advice of the council, issued a proclamation to the people in the several parts of the colony, requesting them to choose eighteen men "from among the most honorable, reasonable, honest, and respectable of the colonists." From this number the Director and council were to select nine men, "as is customary in the Fatherland." This was the origin of the body known as the Nine Men. They were to assist the Director and council in their deliberations, "to the end of promoting the common welfare."

Stuyvesant called these men the "Tribunes of the People." Three were chosen from the merchants, three from the citizens, and three from the farmers.

1647, September 25. The Director General and council issued a proclamation or charter, containing the names of the Nine Men selected, and prescribing their duties.

The charter provided that the Nine Men, "as good and faithful interlocutors and trustees of the commonalty, shall endeavor to exert themselves to promote the honor of God, and the welfare of our dear Fatherland, to the best advantage of the company, and the prosperity of our good citizens: to the preservation of the pure Reformed Religion as it here, and in the Churches of the Netherlands, is inculcated."

Three of the number in regular rotation were to be admitted to the council and form a part of the court in civil causes.

The share in government which the people obtained by way of the Nine Men was very limited; but the crea-

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tion of the body was at least a concession to the people, and even the meager powers and jurisdiction conferred on this body marked an advance toward constitutional government by the people, which was sure to come.

By the charter the people themselves had no voice in selecting persons to fill vacancies, nor in the election of new members. This power was practically reserved to the Director General. After a few years, it seems that he neglected to fill vacancies, and in this manner suffered this representative body to become extinct. I have not been able to find any record of it after 1652.

1652, April 4. The Amsterdam Chamber made an order providing for the establishment of a municipal government in New Amsterdam, and recommended the election of one schout, two burgomasters, and five schepens.

1653, February 2. Director General Stuyvesant, in accordance with the order of the Amsterdam Chamber, established a city government in New Amsterdam. The Director, instead of permitting an election of the first city officers, appointed the burgomasters and schepens, and delegated the company's provincial schout to act also for the city. The new city, at the time of its incorporation, had a population of about 800, which in 1656 had increased to 1,000.

1653, November 25. In consequence of the troubles existing in the colony, two delegates from each of the towns of Flushing, Hempstede, Middleburgh, and Gravesend met at the City Hall to consider the condition of the colony, and devise some means of suppressing the existing disorders. Two representatives of the Director and council also appeared at this meeting, but the delegates from Long Island objected to their presence, and refused to sit with them.

Dr. O'Callagahan in his "History of New Nether-

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lands," volume 2, beginning at page 239, gives a very interesting account of this meeting, and the discussion connected with and resulting from it. From this account it appears that the English delegates from Long Island threatened to form a union among themselves for mutual protection, if the Director could not properly govern the colony. These delegates, in conference among themselves and with their Dutch neighbors in New Amsterdam, determined to call a general convention of delegates from all parts of the colony to meet on the 10th of December following. It seems that the Director objected to this meeting, but the delegates and others, with characteristic independence, said that they should meet on the day appointed, and "he might prevent it if he could."

On the 3d of December Director Stuyvesant took occasion to comment on the previous proceedings, among other things saying that the refusal of the delegates to associate with the representatives of the Director and council "smelt of rebellion." He also intimated that assemblies such as that held and the one proposed were "pregnant with evil."

The Director, however, consented to a meeting on the day appointed, to be held "under the direction of two members of the council, to agree on a remonstrance to the patroons on the actual condition of the country."

The delegates were chosen from the towns already named, and also from Breukelen, Amersfoort, Midwout, and Newtown.

1653, December 10. This convention was in many respects the most important yet held in the history of the colony. It asserted principles that were destined to grow and ultimately to find a place in the established policy of the colony and of the state.

The convention adopted a formal remonstrance to the

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Director and council and States General, setting forth the condition of the colony and the grievances of the colonists, and praying for immediate relief. The remonstrance was written by George Baxter, an Englishman, formerly secretary to the Director.

The remonstrance objected to "arbitrary government;" it denied the right of one or more men to arrogate to themselves "the exclusive power to dispose, at will, of the life and property of any individual;" it asserted the principle that "our consent, or that of our representatives, is necessarily required in the enactment of laws and orders" affecting the lives and property of the people.

The remonstrance also asserted that several officers were "acting without the consent or nomination of the people." Several other grievances were stated, but they do not concern us here.

The remonstrance was presented to the Director, who replied to it at length. He claimed, among other things, that the towns of Midwout, Breukelen, and Amersfoort "had no jurisdiction, and therefore were not entitled to send delegates," and that the meeting of the other delegates was illegal. He said that the Englishmen in the colony "actually enjoyed greater privileges than the New Netherland exemptions allow to any Dutchman." He said, further, "that in all affairs in which the country at large was interested the general ordinances have always been sanctioned by the qualified members of the whole province."

Concerning the choice of magistrates, the Director said that "the magistrates of New Amsterdam are proposed to the commonalty in front of the City Hall, by their names and surnames, each in his quality, before they are admitted or sworn into office. The question is then put, Does anyone object?" The names of militia officers are also submitted to their company before election.

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In reply the members of the convention vindicated the legality of the meeting "by appealing to the law of Nature, which authorizes all men to associate and convene together to protect their liberties and property."

The controversy did not end here, but was continued with special reference to matters of administrative detail and the general affairs of the colony, without involving the rights claimed by the people and denied by Stuyvesant. It was clear that the agitation resulting in this convention, and the remonstrance submitted by it, with the reply of the Director General, could not fail to strengthen the movement for representative government; and the sequel shows that, while the people gained little directly from this popular movement, they gained indirectly by the propagation of the doctrine of popular rights, and the discussion of the principles on which true government ought to be founded.

1664, April 10. Another convention was held at the City Hall in New Amsterdam, composed of representatives from twelve towns. It was convoked by the Director and council on the recommendation of the burgomasters and schepens, and its object was to consider the "unhappy situation of affairs and the menaces of the hostile Indians;" but, on account of the imminent danger of an attack by the English, the convention confined its attention principally to devising means for resisting the enemy.

1664, August 27, O. S. New Amsterdam surrendered to the English, and soon afterwards the name was changed to New York. The Articles of Capitulation contain some provisions that are pertinent to our subject. These provisions relate especially to personal rights, magistrates, freedom of conscience, quartering soldiers, and popular representation.

Article III. "All people shall still continue free denizens, and shall enjoy their lands, houses, goods, whereso-

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ever they are within this country, and dispose of them as they please."

IV. "If any inhabitant have a mind to remove himself, he shall have a year and six weeks from this day to remove himself, wife, children, servants, goods, and to dispose of his lands here."

VIII. "The Dutch here shall enjoy the liberty of their consciences in divine worship and church discipline."

X. "That the townsmen of the Manhattans shall not have any soldiers quartered upon them without being satisfied and paid for them by their officers, and that at this present, if the fort be not capable of lodging all the soldiers, then the burgomasters, by their officers, shall appoint some houses capable to receive them."

XVI. "All inferior civil officers and magistrates shall continue as now they are (if they please) till the customary time of new elections, and then new ones to be chosen by themselves, provided that such new chosen magistrates shall take the oath of allegiance to His Majesty of England, before they enter upon their office."

XXI. "That the town of Manhattans shall choose deputies, and those deputies shall have free voices in all publick affairs, as much as any other deputies."

1664, March 12. A patent was granted to James, Duke of York, embracing, with other territory, Long Island, Manhattan Island, and New Jersey. The character of the tenure is described as that "of our mannor of East Greenwich, in our county of Kent, in free and common soccage, and not *in capite* nor by knight service."

The Duke was also authorized to appoint and discharge governors, and other officers for the administration of provincial affairs, and also "to make, ordain, and establish all manner of orders, forms, and ceremonies of government and magistracy fit and necessary for and concerning the government of the territories and islands

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aforesaid," which, however, must be conformable to the law of England.

The Duke was vested with full governmental powers, but there was no provision establishing civil liberty of the people. Thus was inaugurated for New York a system of proprietary government which continued many years.

1665, February 28. The Hempstede convention. In response to a popular demand, Governor Nicolls called a convention of delegates to be chosen by the towns of Long Island and Westchester. New York and other parts of the province were omitted from this call, and were not represented in the convention.

The delegates, when assembled, were to give the governor "their advice and information in the settlement of good and known laws within this government." This convention was not vested with any legislative power, and was given authority only to ratify the orders of the Governor. It prepared an address to the Duke of York, which was so servile in its tone as to excite the wrath of the people, who even threatened personal violence against the delegates.

The principal work of this convention was the promulgation of the code known as the "Duke's Laws,"—a body of law compiled by Lord Chancellor Clarendon, principally from the laws and ordinances in force in other English colonies, with some new matter. There is little in this code which affects the development of constitutional government; but a few of its provisions are important.

On the subject of religious toleration it provided that "Sundays are not to be prophaned by Travellers, Labourers, or vicious Persons," and that "no congregations shall be disturbed in their private meetings in the time of prayer, preaching, or other divine service; nor shall any

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person be molested, fined, or Imprisoned for differing in Judgment in matters of Religion, who profess Christianity."

Popular government was limited to the election of eight overseers in each town, who were required to be "men of good fame and life, chosen by the plurality of voices of the freeholders in each town." Four overseers were to be elected each year.

The code also contained the following provision for local suffrage: "All votes in the private affaires of Particular Townes shall be given and Determined by the Inhabitants, freeholders, householders, and in matters committed to Arbitration, or att session, either as to Jureys in all cases or to Justices on the Bench, where the law is not cleare shall bee carried by the Major part of the Suffrages, The minor to be concluded by the vote of the Major."

It will be noted that the Duke's Laws relate principally to administrative detail, and contain very few provisions relating to the principles of government or popular rights. Some of these will be considered in subsequent chapters.

1665, June 12. Under the Articles of Capitulation the municipal government of New York had continued as it existed prior to the surrender. Governor Nicolls on this date issued a proclamation changing the local government, and instituting the offices of mayor, alderman, and sheriff, to take the place of those of schout, burgomaster, and schepen. He appointed five aldermen, three of whom, with the mayor, were authorized to administer the affairs of the city. They were given authority to apply the Duke's Laws, and also all "such peculiar laws as are or shall be thought convenient or necessary."

1669, November 9. A petition was presented to the court of assizes, signed by representatives of the principal towns, stating, in substance, that "at the surrender of

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the province they had been promised all the privileges of His Majesty's other English subjects in America; and they contended that participation in legislation was one of those privileges." This petition was not well received. The court referred it to the Governor, who considered it a seditious document, and ordered it burned by the public hangman.

1671. Governor Lovelace had a council of eight members, including the mayor and secretary of the province. Here was an opportunity for reasonable popular representation, and a means by which the people could bring their views to the attention of the Governor; but it is doubtful whether even this large council had much influence in actual administration.

1673, August 9. New York was retaken by the Dutch.

1674, February 19. Treaty of Westminster, by which New York was retransferred to the English. The transfer was directly to the English King, which doubtless had the effect to extinguish the title granted to the Duke of York, in 1664.

1674, June 29. Second patent to the Duke of York. It is substantially a repetition of the patent of 1664.

1674, November 10. Possession and sovereignty of New York were formally transferred by Anthony Colve, the Dutch governor, to Sir Edmund Andros, the new governor appointed by the Duke of York. Thus ended the Dutch dynasty in New York.

1675, April 6. The powers of government vested in the Duke of York, in both patents, were practically absolute, and in marked contrast with the policy adopted toward other colonies.

The people, cherishing the privileges that they had enjoyed in the Fatherland, both in the Netherlands and in England, and also because of the superior advantages which had been conferred on their neighbors, were dis-

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contented under the Andros government, and strenuously objected to the arbitrary power which he sought to enforce. Several early conventions have already been noted, and, while these conventions had failed to produce any substantial power, so far as actual participation in the government was concerned, they were not without fruit in the creation of an independent spirit, and a desire for a share in the administration of colonial affairs. The doctrine of "no taxation without representation" was already firmly established in the Netherlands, and the colonists considered this right a heritage which they were entitled to enjoy in their new home.

As the population of the province increased, and its business and political interests were enlarged, the agitation for representative government grew apace, and frequent attempts were made to secure this right. Governor Andros vigorously opposed all such attempts, treating them as seditious.

The demands for an assembly were communicated to the Duke, who also resisted them, and on this date (April 6) said:

"Touching Generall Assemblyes which the people there seem desirous of in imitacon of their neighbour colonies, I thinke you have done well to discourage any mocon of that kind, both as being not at all comprehended in your instructions nor indeed consistent with your forme of government already established, nor necessary for the ease or redresse of any grievance that may happen, since that may be as easily obtained, by any peticon or other address to you at their General Assizes (Which is once a year) where the same persons (as Justices) are usually present, who in all probability would be their Representatives if another constitution were allowed."

1676, January 28. The Duke, in another letter to

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Governor Andros, commenting on the subject of popular assemblies, said:

"I have formally writt to you touching assemblies in those countries and have since observed what several of your lattest letters hint about that matter. But unless you had offered what qualifications are usual and proper to such assemblies, I cannot but suspect they would be of dangerous consequence, nothing being more known than the aptness of such bodies to assume to themselves many privileges which prove destructive to, or very oft disturb, the peace of the government wherein they are allowed. Neither do I see any use of them which is not as well provided for, whilest you and your council govern according to the laws established (thereby preserving every man's property inviolate) and whilest all things that need redress may be sure of finding it either at the Quarter Sessions or by other legal and ordinary ways, or lastly by appeal to myself. But howsoever, if you continue of the same opinion, I shall be ready to consider of any proposals you shall send to that purpose."

This shows an inclination on the part of the Duke to relax his opinions concerning popular assemblies. He was at least willing to listen to any proposal on the subject.

1681, January 11. Governor Andros sailed for England in response to a request from the Duke of York, for the purpose of conferring with the Duke on the affairs of the colony. His departure was somewhat hasty, and he neglected to make a formal order continuing the customs duties. The New York merchants, taking advantage of this oversight, refused to pay duties on imports. William Dyer, the collector, attempted to collect the duties, apparently relying on the general provision in the instructions left by the Governor. The people, availing themselves of the absence of the Governor, assumed more

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liberty of conduct and of speech than they had been accustomed to exercise. Dyer was charged with high treason, and was indicted by the grand jury for "traitorously exercising regal power and authority over the King's subjects contrary to Magna Charta, the Petition of Right, and the Statutes of England." He was put on trial, but, on his questioning the authority of the court, the court decided to send him to England, to be proceeded against there according to the King's direction. This proceeding against Dyer, based on the Governor's omission to continue the customs duties, had a most significant political effect. It provoked great agitation in the colony, with much freedom of discussion of the discord and the unsettled condition which had resulted from Andros's administration, and led to a petition for an assembly.

The grand jury that indicted Dyer presented to the court of assizes the want of an assembly as a grievance against the government. A petition to the Duke of York was thereupon prepared, praying for an assembly as a constituent part of the colonial government.

1681, June 29. The petition to the Duke of York was prepared by the council of the province, the aldermen of New York, and the justices assembled at a special court of assizes held at the city of New York. The petitioners, after referring to the "great pressure and lamentable condition" of the colonists, and reciting that "the only remedy and ease of those burdens is that an assembly of the people may be established by free choice of the freeholders and inhabitants," say that "for many years past they have groaned under inexpressible burdens by having an arbitrary and absolute power used and exercised over them, by which a yearly revenue is exacted from us against our wills, and trade grievously burdened with undue and unusual customs imposed on the mer-

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chandise without our consent, our liberty and freedom inthraled, and the inhabitants wholly shut out and deprived of any share, vote, or interest in the government, to their great discouragement, and contrary to the laws, rights, liberties, and privileges of the subject; so that we are esteemed as nothing, and have become a reproach to the neighbors in other his Majesty's colonies, who flourish under the fruition and protection of his Majesty's unparalleled form and method of government in his realm of England, the undoubted birthright of all his subjects."

The petitioners then prayed that "for the redress and removal of the said grievances, the government of this your colony may for the future be settled and established, ruled, and governed by a governor, council, and assembly; which assembly to be duly elected and chosen by the freeholders of this Your Royal Highness' colony. . . . Which will give great ease and satisfaction to all His Majesty's subjects in this colony."

1682, September 30. Thomas Dongan appointed governor in New York.

1683, January 27. Instructions were issued to Governor Dongan concerning his administration.

These instructions mark the dawn of a new era in the colony. After forty-two years of agitation and struggle for representative government since Director Kieft asked the advice of the people in the Smits case, and after many haltings, fluctuations, and defeats, the people of the colony had won their cause; and the Duke, evidently deeming it futile longer to resist the progress of reform in his colony, yielded to the popular demand, and directed the new Governor to call an assembly of the people.

Governor Dongan, by these instructions, was directed, with the advice of the council, in the name of the Duke, to issue writs for the election of a general assembly, and

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to state in such writs that the Duke "had thought fit that there shall be a general assembly of the freeholders by the persons who they shall choose to represent them in order to consulting with themselves and the said council what laws are fit and necessary to be made and established for the good weal and government of the said colony and its dependencies and of all the inhabitants thereof." The writs were to be issued at least thirty days before the time fixed for the meeting, which was to be in New York.

The Duke, by these instructions, also directed the Governor to inform the assembly at its first meeting that "for the future it is my resolution that the said general assembly shall have free liberty to consult and debate among themselves all matters as shall be apprehended proper to be established for laws for the good government of the said colony of New York and its dependencies."

This grant conferred ample power on the assembly, and vested it with full legislative authority, subject to a veto by the Governor and the Duke. The Duke also promised by the instructions: "If such laws shall be propounded as shall appear to me to be for the manifest good of the country in general, and not prejudicial to me, I will assent unto and confirm them."

The instructions also gave to the Governor an absolute veto, for each law must have received his approval before being transmitted to the Duke for his confirmation. This made a double veto on the laws passed by the general assembly, and the assembly had no power to pass a bill over the veto. In this respect the assembly differed widely from the modern legislature, which, under the Constitution, has the absolute power of legislation, even against an executive veto, if two thirds of the members of each house favor the passage of the law. By these instructions the assembly had full power to pass such laws as it

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deemed best, but the laws, to be effectual, must have been approved by the Governor and also by the Duke.

The instructions contained the further provision that a law passed by the assembly and approved by the Governor should be "good and binding" until the Duke should notify the Governor of his disapproval, after which time such laws "shall cease and be null and void to all intents."

The instructions also gave the Governor power to adjourn and dissolve an assembly and call a new one at any time.

The instructions contained provisions relative to revenue bills, the time a law should be in force, and the tenure of office, but without involving any question of principle now under consideration, and also the following important provision, which states, in substance, the rights conferred by the famous 39th Article of Magna Charta:

"And I doe hereby require and command you that noe mans life, member, freehold, or goods, be taken away or harmed in any of the places under your government but by established and knowne laws not repugnant to, but as nigh as may be agreeable to, the laws of the Kingdome of England."

The importance of these instructions in the development of our constitutional history can scarcely be overestimated. The seeds of liberty had been planted in the colony long before the Duke of York became its owner, and it was inevitable that an absolute personal government must soon come to an end in a colony composed of such heterogeneous people, and working out a new destiny on the free soil, and breathing the free air of a new world. It was a place and a time eminently congenial to the development of free institutions, and the Duke could not hope to keep in subjection, either to his own will or the will of any governor, the political opin-

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ions, conduct, and personal rights of the people in a colony with a population that already numbered 15,000, and was rapidly increasing in political and commercial importance.

A proprietary government could not long be maintained in a colony with such a history and with such a future, and against the popular unrest necessarily produced by the form of the existing government and its method of administration, and also by the fact that its neighbors enjoyed the right of representative government.

1683, October 17. The first general assembly.—Seventeen of the eighteen delegates chosen under the governor's writ assembled at Fort James in the city of New York and organized the first assembly in accordance with the instructions issued by the Duke of York. It is greatly to be regretted that the journals of this assembly are lost. I have not been able to ascertain the names of all the delegates; their names are gone, and while we cannot accord to them here the fame they deserve by preserving their names in our history, their work, nevertheless, remains and will endure. From the laws passed by this assembly we learn that Mathias Nicolls was speaker, and John Spragge, who was also a member of the council, was clerk. The governor's council was a constituent part of the legislature, sustaining the relation to that body which the senate sustains to the modern legislature. The following were members of the council at this time: Anthony Brockholls, Frederick Flypsen, Stephen Van Courtland, Lucas Santen, John Spragge, and John Youngs.

It is said that the majority of the delegates to the assembly were Dutchmen, but both Dutch and English had long been familiar with the principles of popular government. It is a noteworthy fact that the great principles enunciated in the Charter of Liberties are drawn

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from the immortal Magna Charta, which had for nearly five centuries been the source and strength of English free institutions; yet these Dutchmen, no less zealous for liberty than their English neighbors, were willing to accept, adopt, and assert as their own, the rights of citizens as defined by the Great Charter.

The first assembly was not slow to appreciate its opportunity. The new legislature was a colonial parliament, differing from its great original in name and somewhat in organization; but it asserted and exercised the same general powers which had so long been possessed by its English prototype. It should not be forgotten as an item in our constitutional history that the first act of the first legislature was a charter intended to declare the principles that ought to be applied in the government of the colony, and these principles were to be applied to a proprietary government the same as in a royal province. The Duke of York was recognized as the proprietor, but his government was to be subject to the laws with which Englishmen had long been familiar. This charter, closely resembling our modern constitutions in form and substance, and containing many provisions which have been continued in those instruments, might properly be called the original constitution of New York. It established free parliamentary government in the colony a century before the independence of the new nation was acknowledged by England. This instrument is entitled "The Charter of Libertyes and priviledges granted by his Royall Highnesse to the Inhabitants of New Yorke and its dependencyes."

The assurances contained in the instructions to Governor Dongan led the assembly confidently to expect the approval of this law by the Duke, and if it had received his final confirmation it would have become the general charter of the colony as a result of the joint action of

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the Duke, the Governor, the council, and the assembly, thus combining and representing all the departments of government under the new policy.

This charter was passed by the assembly on the 30th of October, 1683. This day must forever remain one of the golden days in the history of New York. It marked a new departure in constitutional government, and it deserves to rank with that other famous day, almost a century later, when on April 20, 1777, the colony became a state, and adopted a new charter of liberties and privileges which we call the Constitution. The Charter of Liberties appears in full in another part of this work.

This charter and fourteen other laws passed by the assembly were formally published in front of the City Hall on the 7th of November, and were carried by Captain Mark Talbot to England for the Duke's confirmation. The Duke actually signed the charter October 4, 1684, but, while it was awaiting some technical formality, Charles II., on the 6th of February, 1685, died, and the Duke thereupon became King James II. of England. His accession to the throne changed his point of view, and he then concluded that the charter was too broad. His title of proprietor had become merged in his higher title as King. The experience of his immediate predecessors evidently led him to the conclusion that a colonial legislature, like the English Parliament, would be an inconvenient adjunct of government, and might interfere with the exercise of the royal prerogative.

Besides, the charter was drawn with reference to the proprietorship of the Duke of York, and acknowledged his authority as such proprietor. By becoming King he had ceased to be proprietor, and the charter was therefore inaccurate in form. This of itself was deemed a sufficient objection to its approval by the King. But in disposing of the matter the King made the significant observation

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that the words "The People met in General Assembly" were not in any other Constitution in America. This charter, therefore, stands as the pioneer among charters, or constitutions conferring on the people the right of representative government. This charter was vetoed by the King on the 3d of March, 1685. The assembly held another session in October, 1684. At the conclusion of this session it adjourned to meet in September, 1685.

1685, August 13. Governor Dongan issued a proclamation dissolving the assembly. This action was deemed necessary in consequence of the death of Charles. The question was raised whether by his death the assembly was not, *ipso facto*, dissolved, and whether it could sit again as a legally constituted legislative body. The Governor and council, after mature consideration, concluded to remove any doubt by formally dissolving the assembly, and issuing writs for the election of another.

1685, October 20. The second general assembly began its sessions. It passed six laws. At the close of the session this assembly adjourned to meet September 25, 1686; but on the 4th of September, 1686, Governor Dongan prorogued the assembly until March 25, 1687. But the assembly never met again, for on the 20th of January, 1687, it was dissolved by proclamation of the Governor.

1686, June 10. King James issued a new commission to Governor Dongan appointing him Captain General and Governor in Chief of the province of New York. The commission conferred on the Governor power, "with the advice and consent of the council, or the major part of them, to make, constitute, and ordain for the colony laws, statutes, and ordinances," which should conform as nearly as practicable to the laws and statutes of England. Such laws were to be sent to England within three months

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for the King's approbation. The council was to be composed of seven members.

The Governor and council were given power to impose taxes, raise revenue, establish courts, appoint officers, and, generally, to administer the affairs of the colony. No provision was made for an assembly, but the legislative power was vested in the Governor and council, subject to the King's approval. Here the King receded from his policy of a representative government, which he had inaugurated while Duke of York, and retained in his own hands the control of colonial affairs.

1686, December 9. Governor Dongan and his council held their first meeting under the new commission. They ordered that "all the branches of revenue, and all other laws that have been made since the year 1683, except such as His Majesty has repealed, remain and continue as they now are till further consideration."

The Governor and council constituted the only legislative body in the colony, and proceeded substantially according to the practice then observed in parliamentary bodies. The Governor presided, and a bill was read three times before final passage.

1688, April 7. The province of New York was annexed to New England by a commission issued by the King to Sir Edmund Andros, who was appointed Captain General and Governor in Chief. The powers of government and administration were substantially the same as those conferred on Governor Dongan by his commission of June 10, 1686.

1688, December 11. James II. fled from Whitehall and abandoned his throne.

1689, February 13. The English Crown was tendered to William and Mary and accepted by them. The executive power was vested in the King. "Thus for the third time a Dutchman reigned in New York."

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1689, November 14. Henry Sloughter was appointed Captain General and Governor in Chief of the province of New York, by a commission, substantially in the form used on the appointment of Governor Dongan. Governor Sloughter was authorized, with the advice and consent of the council, to call a general assembly, to be chosen and constituted substantially like the earlier assemblies.

The Governor, "by and with the advice and consent of the council and assembly, or the major part of them," was authorized to enact for the colony "laws, statutes, and ordinances" which should conform as nearly as practicable to the laws and statutes of England. The Governor was given a veto of all laws, and they were also subject to final confirmation by the Crown. Here we have a revival of the policy of representative assemblies, which had been inaugurated by the Duke of York in 1683, but which had been abandoned when the Duke became King.

1690, April 24. An assembly was held under a call issued by Jacob Leisler, who had taken possession of the government of the province after the abdication of King James. This assembly was doubtless an unauthorized body, for the right to hold assemblies had been in effect revoked by the second commission to Governor Dongan, and by the commission to Governor Andros on the annexation of the colony to New England. These commissions vested legislative power in the Governor and council. Besides, a new commission had been issued by the new English government to Henry Sloughter, as Governor of New York. He, alone, was authorized to call an assembly. The Leisler assembly passed one law at its first session.

1690, September 15. The Leisler assembly held another session, and passed two laws.

1691, March 19. Governor Sloughter arrived in New

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York, and immediately published his commission and proclaimed his authority. He ordered an election of a new assembly to meet on the 9th of April, 1691.

1691, April 9. A new assembly, called under the authority of the new English monarchy, met in the city of New York, and resumed the functions of representative government by the people, which had been interrupted during the reign of James II.

Thenceforth the assembly was a regular department of colonial government until the Revolution, when the assembly, without being regularly dissolved, ceased to exist, or, at least, to exercise its functions, after April 3, 1775. Its successor was the first assembly under the Constitution, which met at Kingston September 10, 1777.

1691, May 13. The new Charter of Liberties.—The first Charter of Liberties, passed October 30, 1683, had been at first approved by James as Duke of York, but later was disapproved by him as King. Under the reorganized English government of William and Mary the new colonial assembly, which seemed now to promise permanency, deemed it important to reassert the principles contained in the original charter. The change of the government and the new status of the colony towards the home government were indicated in the titles of the two statutes The first, 1683, is "The Charter of Libertyes and priviledges granted by His Royall Highnesse to the Inhabitants of New Yorke and its dependencyes." This, though in form a statute enacted by the colonial legislature, is really a grant of constitutional powers and privileges by the proprietor and lord of the colony. When the new statute of 1691 was passed the title of the proprietor had become merged in the Crown; so here we have "An Act Declaring What are the Rights and Privileges of Their Majestyes Subjects Inhabiting within

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Their Province of New York." This indicated a new relation, which was continued until the Revolution.

New York, from its condition as a Dutch commercial settlement under the jurisdiction and control of a foreign corporation, and then as a colony under an English lord proprietor, had become in the process of evolution a province of the English government; and the people of the province could exercise for themselves only such powers of local government and possessed only such privileges as were conferred on them by the Crown.

The bill for a new charter was introduced on the 27th of April, 1691, by the speaker, James Graham, one of the most distinguished men of the colony, was passed on the 8th of May, and sent to the council. On the 12th the council, Governor Sloughter presiding, amended the bill, reducing the required quorum in the council from seven to five, defining a freeholder, and adding the provision against Catholics. The bill in its final form was passed on the 13th of May.

The new charter is in many respects quite like its earlier prototype. The preamble to the act states that the representatives are "deeply sensible of their Matys most gratious favor in restoring to them the undoubted rights and privileges of Englishmen," by providing for "assemblies of the inhabitants, being freeholders," and vesting them with powers of local government, which is declared to be a "most excellent constitution," and one "much esteemed by our ancestors."

The act then recites that the "supreme legislative power and authority" shall be and reside in a governor and council appointed by the Crown, "and the people by their representatives, mett and convened in general assembly." The act provided for annual sessions of the assembly; it conferred the right to vote for representatives on "every freeholder within this province and freeman in any

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corporation;" a freeholder was defined to be one who had "fourty shillings P. Annum in freehold;" it contained an apportionment of members of future assemblies; it made the assembly the judge of the election and qualifications of its members; it exempted members from arrest during the session, and while going to and returning from the same; it provided for elections to fill vacancies in the office of representatives; it fixed the quorum in the council at five; it reasserted substantially the rights of citizens stated in the 39th and 40th Articles of Magna Charta, and also other provisions of that great instrument; it provided for a grand jury in criminal cases, and for a trial jury of twelve in all cases; it contained provisions against quartering soldiers, and also against commissions under martial law; it declared all lands "freehold and inheritance in free and common soccage according to the tenure of East Greenwich" in England; it made a conveyance by a married woman invalid, unless on a private examination she acknowledged that the conveyance was made "freely and without threats or compulsion of her husband;" it conferred religious liberty on those who "profess faith in God by Jesus Christ His only Son," excepting "persons of the Romish religion," "who were prohibited from exercising their manner of worship contrary to the laws and statutes" of England.

On the 16th of May the Governor, council, and assembly met at the fort and proceeded in a "solemn manner" to the City Hall, where the act, with others, was read and proclaimed.

Under Governor Sloughter's commission, authorizing an assembly and providing for local government by the people through a colonial legislature, this act became effectual on its approval by the Governor and council, but subject to its disapproval or repeal by the home government. The act was committed to the Lords of

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Trade for their consideration, who, on the 11th of May, 1697, reported adversely, objecting, among other things, that the act gave to the representatives "too great and unreasonable privileges during the sitting of the assembly;" also that the exemption from quartering soldiers was too broad. They also objected that the act contained "several large and doubtful expressions." (Perhaps these were the quotations from Magna Charta.) The Lords of Trade recommended that the act be repealed, and that a charter substantially like that recently granted to Virginia be proposed for New York and passed by the assembly.

While this act did not receive the royal assent, it was in force in the colony more than six years, and probably its repeal by the Crown did not materially affect any principle declared in it.

The Colonial Legislature.

"There is no new thing under the sun." Old things appear in new forms. Things which we call new are evolutions or variations from earlier forms, or the application of forces already existing, but hitherto unknown, or not understood. There is little actually new in our modern forms of government. They continue, often with very slight variations, conditions and methods which have long been in use. The genesis of our modern legislature is not hard to find. It is a lineal descendant of the colonial legislature, and the origin of that body is found far back in the history of organized society.

Under the new arrangement, inaugurated in 1691, the legislature took on the form which it has since retained, an elective senate under the Constitution being substituted for an appointive council. The assembly of 1905 is substantially the assembly of 1683; more numerous than its early predecessor and chosen by a constituency

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with broader qualifications, but illustrating in its selection the same general principles of representation. The first assembly was chosen primarily on the principle of locality, combined with the principle that the larger settlements were entitled to a larger representation. Thus, in the first assembly we find that Staten Island, Schenectady, and Pemaquid had one delegate each, Martha's Vineyard and Nantucket together one, Esopus, and each of the three ridings on Long Island, two each, Albany with Rensselaerwyck two, and New York with Harlem four, making eighteen in all.

These two principles of locality and population were, on the organization of the state and Federal governments, adopted as the most satisfactory principles of representation. In the state Constitution the county was made the unit of representation in the assembly, and in the Federal Constitution the state was made the unit of representation in the House of Representatives.

The early colonial legislative system, like that of to-day, was divided into three parts, namely, the governor, the council,—now the senate,—and the assembly. The council and the assembly sustained to each other practically the relations which exist now between the senate and assembly. The status of the governor in relation to legislation was somewhat different in the early days, for he then had an absolute veto on all legislation. No bill could become a law without his assent. The legislature had not then been vested, as it is now, with supreme legislative power, independent of any authority, within the limitations of the Constitution. The colonial governors possessed complete control over legislation. That condition has no parallel under our modern Constitution, except during the "thirty-day period" following the final adjournment of the legislature, during which time no bill can become a law without the governor's approval.

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At first, while the governor sat with the council, he passed on bills at a session of the council, the assembly not being present. After he discontinued sitting with the council, in consequence of the decision of the Lords of Trade in 1735, it was the custom for the governor to meet the council and assembly in joint session, and there consider the bills, and sign such as met his approval. After such approval, it was the custom for the governor, the council, and the assembly, and sometimes the mayor and common council of New York, to proceed in a "solemn manner" to the City Hall, in front of which the new laws were read and published. Copies were thereupon sent to the King for his approval.

For obvious reasons the relation of the King to legislation is omitted from our consideration in this examination of the colonial legislative system; for the King, although he had delegated to the governor, council, and assembly the power to make laws for the colony, and did not himself initiate legislation, reserved an absolute veto on all bills; and in practice, according to the records, he sometimes "repealed" laws, and from that time they had no effect.

The colonial council antedates English sovereignty in New York. Its existence began in 1626 under the administration of the Director General, Peter Minuit, who had a council of five. His successor, Van Twiller, had a council of four; the next Director, Kieft, reduced the council to one member; it was increased to six under Peter Stuyvesant, the last of the Dutch governors. Under the first English governor, Richard Nicolls, the council was composed of five members. From that time through the remainder of the colonial period the number varied. Governor Bellomont had a council of thirteen; some governors were authorized to have a council of ten members, others seven. In 1721 there were twelve members,

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in 1739, nine, and in 1767 the number was limited to twelve.

Members of the council usually received their appointment from the Crown, but the governors had a qualified right to fill vacancies. Governor Fletcher's commission authorized him to appoint members of the council, who held their office until disapproved by the Crown; but the Crown reserved the right to appoint in case of vacancy, and persons appointed by the Crown held in preference to those appointed by the governor. Governor Bellomont had the right of appointment, and also of nomination, in case of vacancy.

The instructions to Governor Sloughter, which accompanied his commission, directed him "to permit the members of our council to have and enjoy freedom of debate, and vote in all things to be debated of in council."

The functions of the council are thus defined by the attorney general and solicitor general in their opinion, dated January 15, 1735, concerning the governor's right to act as a member of the council: "The council sits in two capacities; namely, as one part of the legislature, and as a council to advise and assist in all political cases, and governors are restrained by their instructions not to act without the advice and consent of the majority of them."

This double function of the early colonial council has continued in our modern senate, and the provision in our Constitutions and statutes requiring the confirmation of executive appointments by the senate gives the senate jurisdiction in "political cases," with substantially the powers vested in its colonial predecessor. The phrase "by and with the advice and consent" of the senate, so often used in modern statutes and constitutions, has an ancient origin: it is found in the royal commissions issued to the colonial governors, who were permitted to act in certain cases only "by and with the advice and consent"

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of the council. The phrase also appears in the enacting clause of English statutes from a very early period, and in which clause the law is said to be enacted by the King "by and with the advice and consent" of Parliament. The framers of the first Constitution were familiar with this limitation on executive authority, and when the transition from the colony to the state was effected it was but natural that it should be continued under the new conditions by which the province became a sovereign state, combining all the powers, which before were divided between the colonial and home governments.

Members of the council were required to be freeholders, inhabitants of the province, "men of estate and ability, and not necessitous people, or much in debt." It will be noted that by the first Constitution members of the senate, which succeeded the colonial council, were also required to be freeholders and be chosen by freeholders.

At first, after the permanent establishment of a legislative system in 1691, under the Sloughter commission, the governor was deemed a member of the council, sitting with it, voting at his pleasure on any proposition, and also as its presiding officer, giving a casting vote in case of a tie. He thus had two votes as a member of the council; then, as governor, he acted on each bill, and so had, or might have had in some cases, three votes. It is said that this condition continued without question until 1733, when, in consequence of a controversy between Governor Cosby and some members of the council, the suggestion was made that he could not legally act as a member of the council. The matter was referred to the law officers of the home government, who, after consideration, decided that the governor should not "in any case sit and vote as a member of the council." This decision was rendered in 1735, and was duly communicated to the colonial government. Beginning with 1736 the governor did not

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sit with the council, and that body chose its own presiding officer, who was called the speaker. The chief justice was at first chosen speaker, but, the business of the court preventing his attendance, a rule was adopted that the oldest councilor present should preside at its sessions.

On the 21st of October, 1736, the common council of New York adopted a resolution tendering the use of the common council chamber for the legislative council, reciting "that the legislative council, while acting in a legislative capacity, are to act as a distinct body by themselves without the presence of the governor or commander-in-chief of this province." The resolution further recited that the assembly was already holding its meetings in the same building, and that if the council also held its meetings there "both houses of the legislature may have speedy recourse to each other."

A significant feature of this resolution is the use of the phrase "both houses of the legislature," treating the governor's council as a distinct and independent branch of the legislature.

After the decision, by the law officers of the home government, that the governor could not sit with the council while acting in a legislative capacity, the governor's relation to legislation became practically the same as that sustained by the governor under the Constitution, except that his approval was necessary in all cases before a bill could become a law. The council took the name of the "legislative council," but it acted also as an executive council, and was known in official correspondence of the period as "His Majesty's Council."

The council conducted its legislative business according to the usual parliamentary forms, and its journals—at least in outline—read much like the journals of modern legislative bodies. The council read bills three times, referred them to a general committee, practically a com-

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mittee of the whole, amended bills, and occasionally, but not often, proposed original bills. In 1705 the council sought to amend a money bill which had been passed by the assembly. The right of the council to make such amendments was denied by the assembly, which claimed exclusive jurisdiction of money bills, thus asserting an ancient right of the House of Commons. The question was submitted to the Lords of Trade, who, in 1706, informed the Governor that, in their opinion, the council had as much right as the assembly to originate money bills, or to amend such bills passed by the assembly. The controversy was renewed on the same grounds in 1710, with the same result; but the opinions expressed by the Lords of Trade did not affect the judgment of the assembly, nor its claim that it had exclusive power to originate and control money bills. The colonial records show that even as late as 1751 a money bill which was originated and passed by the council was rejected by the assembly because that body had the exclusive right "to begin all bills for raising and disposing of money."

The colonial legislature was a miniature Parliament. The governor, coming from England with the King's commission, represented the sovereign; the council was the House of Lords, and the assembly the House of Commons. The governor exercised in the colony, especially in relation to the legislature, substantially the prerogative of the King in relation to Parliament. The procedure on the organization of an assembly was very similar to that incident to the organization of a new House of Commons. The Encyclopædia Britannica (vol. 18, p. 311) gives the following description of the organization of Parliament:

"On the day appointed by royal proclamation for the meeting of a new Parliament, both Houses assemble in their respective chambers, when the Lords Commissioners

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for opening the Parliament summon the Commons to the bar, by the gentleman usher of the black rod, to hear the commission read. The Lord Chancellor then states that, when the members of both Houses shall be sworn, Her Majesty will declare the causes of her calling this Parliament; and, it being necessary that a Speaker of the House of Commons shall be first chosen, the Commons are directed to proceed to the appointment of a Speaker, and to present him, on the following day, for Her Majesty's royal approbation. The Commons at once withdraw to their own House and proceed to the election of their Speaker. The next day the Speaker-elect proceeds, with the House, to the House of Lords, and, on receiving the royal approbation, lays claim, in the accustomed form, on behalf of the Commons, 'to their ancient and undoubted rights and privileges.' The Speaker, now fully confirmed, returns to the House of Commons, and, after repeating his acknowledgments, reminds the House that the first thing to be done is to take and subscribe the oath required by law. Having first taken the oath himself, he is followed by other members, who come to the table to be sworn. The swearing of members in both Houses proceeds from day to day, until the greater number have taken the oath, or affirmation, when the causes of summons are declared by Her Majesty in person, or by commission in the 'Queen's speech.' This speech being considered in both Houses, an address in answer is agreed to, which is presented to Her Majesty by the whole House, or by 'the Lords with White Staves' in one House and Privy Councilors in the other."

The journal of the legislative council for April 9, 1691, when the first Sloughter assembly was organized, affords an interesting parallel to the organization of Parliament. The journal reads: "The Representatives appeared in their accustomed method and presented Mr. James Gra-

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ham their speaker, who, being approved of, desired their former Rights and Privileges, *viz.*, that none of their members nor their servants be arrested nor molested during the Sessions; that they may have freedom of accesse to his Excellency and Council when Occasion presents; that they may have liberty of speech and a favourable construction made upon all Debates that may arise amongst them, and for the removeall of all misunderstandings that a Committee of the Council may Joyne with a Comittee of their House to conferr on what matters may occurr, and this their demande may be approved by his Excellency and Council and entered in their Council book; which are allowed and approved of accordingly."

The journal of the Colonial Assembly shows, without exception, that on the organization of the legislature, following the election of a new assembly, from the first assembly, of 1691, to the last, in 1769, the speaker was approved by the governor, and the assembly demanded and received a confirmation of its ancient privileges. In this procedure the Colonial Assembly followed the ancient custom of the House of Commons.

It is not surprising that the governor, council, and assembly, with four centuries of parliamentary experience behind them, should have adopted the procedure of the home legislature, with which they were familiar, nor that they should have tried to reproduce in the city of New York some of the stately ceremonial of Westminster.

The journals of the colonial council and assembly show that on the day when the writs of election were returnable the governor, the council, and the assembly met together; the governor sometimes directed the assembly to choose a speaker and present him to the governor for his approval, and the speaker was sometimes chosen without such formal direction. The governor, after the approval

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of the speaker, made a speech in the presence of both houses concerning colonial affairs, and recommending such measures as he thought pertinent for the consideration of the legislature. A copy of this speech was delivered to each house and entered on its journal. The journals also show that the council and assembly usually gave formal consideration to the governor's speech, and presented an address, in reply to which the governor sometimes presented a formal answer.

The first speech of the governor that I have been able to find was made to the legislature in 1692. This speech, and subsequent speeches by the governor during the colonial period, do not differ materially in form from the modern messages transmitted to the legislature by the governor under the Constitution. The governor's speech will be considered again in the chapters on the first and second Constitutions, but it is worth noting here that the custom of making a speech to the legislature, initiated in 1691, continued one hundred and thirty-two years, when it was abolished by the second Constitution, which took effect December 31, 1822.

The formalities observed in that early period are indicated by an entry in the council journal, September 12, 1693, which informs us that the governor, in closing his speech addressing the assembly, said: "I leave these things before you for your consideration, which consists of but three heads: Your duty to God, your loyalty and affection to the best of Kings, and your own safety and defense. Soe, Gentlemen, you may withdraw to your house. I pray God to direct you to proceed in these things which are most consistent with conscience and honour."

"The representatives made a bow and withdrew."

Under the Dongan commission, which authorized the first assembly of 1683, the maximum number of members

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was fixed at eighteen, and writs were issued by the Governor for the election of this number. The commission to Governor Sloughter, under which the assembly of 1691 was called, did not fix or limit the number of members. This assembly was composed of seventeen representatives.

Governor Sloughter, by his commission, received authority to "adjourn, prorogue, and dissolve" the assembly at his discretion. The power of proroguing the House of Commons had already been exercised by English sovereigns for more than two centuries, and it was a familiar element of the parliamentary system. It was frequently exercised by the colonial governors, and the tenacity of habit, even in public affairs, is illustrated by the continuance of this feature of executive authority under the first Constitution. General George Clinton, the first Governor of the state, prorogued the first legislature twice before it actually met, but I find no instance of the exercise of this power afterwards, except once in 1812 by Governor Tompkins, and the authority to prorogue the legislature was discontinued by the second Constitution.

Under the commission issued to Governor Sloughter, the members of assembly were required to take "the oaths appointed by act of Parliament to be taken instead of the oaths of Allegiance and Supremacy, and the Test." The first oath referred to was prescribed by 1 William and Mary, c. 8 (1688 [9]), in the following form:

"I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to Their Majesties King William and Queen Mary; so help me God."

"I, A. B., do swear that I do from my heart abhor and detest and abjure, as impious and heretical, that damnable doctrine and Position, that Princes excommunicated or deprived by the Pope or any authority of the See of Rome may be deposed or murdered by their subjects, or any other whatsoever."

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"And I do declare, that no foreign Prince, Person, Prelate, State, or Potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. So help me God, etc."

This statute applied to all cases after the 1st of May, 1689.

The "Test" refers to the requirements of 25 Car. II., c. 2 (1672), by which no person was entitled to hold a public office unless he had "received the sacrament of the Lord's Supper according to the usage of the Church of England," and had also made a written declaration against the doctrine of transubstantiation. These oaths were continued during the colonial period.

On the organization of the first assembly, April 9, 1691, all the representatives took both oaths, except the two burgesses elected from Queens county, who, being Quakers, "made some scruple of taking the oaths, but were willing to sign the Test and engage to perform the Tenor of the oaths under the Penalty of Perjury." On their refusal to take the formal oath they were "dismissed."

The first Constitution contained no provision on the subject of official oaths, but in the second Constitution (1821) the official oath was prescribed with the additional provision, since continued, that "no other oath, declaration, or test shall be required as a qualification for any office of public trust."

A few general notes concerning the colonial period will close this part of our subject. The laws enacted by the colonial legislature were published and distributed in 1897 by the Statutory Revision Commission, under the authority of the state, and are accessible to all who may wish to study the legislation of this period. Incidentally, it should be noted, as an item in the transition from Dutch to English control, that in 1687 Governor Andros and his

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council, there being no assembly, enacted a law requiring all legal documents to be in the English language. The apparent need of legislative counsel appears from the request of the assembly in May, 1691, that the governor appoint the attorney general or some other fit person to draft bills for the assembly.

By an act passed in 1699, voters for members of assembly must have been freeholders three months before the test of the writ of election. In 1701 a statute was passed providing that any "Papist or Popish recusant" might be challenged by the sheriff or any candidate for assembly, and his vote excluded, unless he should take the oath and subscribe the test required of members of assembly. In 1737 a law was passed requiring annual meetings of the assembly, and fixing the maximum term of representatives at three years. This law also required the governor to issue writs for a new election within six months after a dissolution of an assembly. This act was repealed by the King November 30, 1738, without assigning any reason. In 1743 a law was passed fixing the term of representatives at seven years. In 1769 nonresident freeholders were given the right of suffrage the same as if they were residents, and were entitled to vote for representatives in assembly. By the same act representatives in the assembly must have resided at least six months in the district from which they were elected, and were further required to have been qualified freeholders for the same period. Voters in New York and Albany must have been freemen there at least three months before the election. In 1770 judges of the supreme court were declared ineligible as representatives in the assembly. This provision was by the statute based on the "ancient usage of Parliament," which excluded judicial officers from seats in the House of Commons.

The assembly, from a membership of eighteen in 1683,

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and seventeen as reorganized in 1691, gradually increased in numbers during the colonial period, but apparently not in proportion to the increase in population. The last colonial assembly had a membership of thirty-one. This number was evidently deemed too small for the new state, and the framers of the first Constitution therefore provided for a larger assembly, fixing the minimum number at seventy, and providing for a gradual increase to three hundred.

The Colonial Judiciary.

It has been said that the judicial system of the state of New York is a growth of the soil. It has been developed from small beginnings, and has a mixed Dutch and English origin. The system, which is the pride of the Empire state to-day, is the result of many struggles, much halting and uncertainty, and numerous compromises. The judicial system of any commonwealth is an index of its character, customs, and civilization. The rude judicial tribunals of the early colonial period were copied from those of European countries, with the modifications required by pioneer conditions and the necessary simplicity of provincial life. The development of those tribunals is an interesting study; and it will be profitable to trace briefly the growth of our judicial system from the earliest Dutch occupation of Manhattan Island, reserving for subsequent chapters a more detailed history of particular courts.

The colony of New Netherland was planted by the great West India Company, a commercial corporation of Holland. "It was exclusively intrusted with the administration of justice in the colonies it should establish, having the right to appoint officers of justice, to maintain order and police, and generally, in the language of the charter, to do all that the service of those countries might

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require." From the discovery of Manhattan Island by Captain Henry Hudson, in 1609, to 1623 no regular attempt had been made to establish a colony; but in the latter year the colony of New Netherland was formally organized, and a settlement was established at Manhattan, the present site of the city of New York. Whether under the administration of May, the first director, or that of his successor, Verhulst, any provision was made for judicial tribunals cannot now be determined. The number of the colonists was so small, and they were so fully occupied in providing for their immediate wants, that there could be little, if any, occasion for organizing courts.

Minuit came out as Governor in 1626, and "he had, to assist him, a council of five, who, with himself, were invested with all legislative and judicial powers, subject to the supervision and appellate jurisdiction of the Chamber at Amsterdam." There was also attached to the body an officer well known in Holland by the name of the "schout-fiscal." "He was a kind of an attorney general, uniting with the power of a prosecuting officer the executive duties of a sheriff." The administration of justice was left to this body—the governor, the council, and the schout-fiscal—during the six years of Minuit's incumbency and the four of his successor, Van Twiller,—that is, from 1626 to 1637. In what manner judicial proceedings were conducted is unknown. Records were kept under Van Twiller, but they are utterly lost.

William Kieft came out as governor in 1638, and he misgoverned the colony for nine years, ruling with a high hand, and retaining in his own hands the sole administration of justice. He was obliged to have a council, but he reduced it to one member, reserving two votes to himself. The administration of Kieft was so oppressive and tyrannical that he was constantly in trouble with his people,

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who demanded the establishment of the courts to which they had been accustomed in Holland. This agitation finally resulted in Kieft's recall. He was succeeded in 1647 by Peter Stuyvesant, who immediately established a court of justice with power to decide "all causes whatsoever," subject to appeal to the governor in certain cases.

The desire for popular government had manifested itself very strongly during Kieft's administration; and soon after Stuyvesant's arrival he found the sentiment so vigorous that he was obliged to make some concessions. He provided for the tribunal of the Nine Men to which I have already referred. "These Nine Men were to hold courts of arbitration weekly, and were to give advice to the Director and council in all matters submitted to them." As already stated, "three were taken from the merchants, three from the burghers, and three from the farmers. Thus was preserved and continued the system of municipal organization in the Netherlands." Three of their number attended in rotation upon every court day, to whom civil causes were referred as arbitrators. But there was constant collision between the Governor and the people. His government became insufferably oppressive. The colonists appealed to the home company, and after five years of struggle succeeded in procuring an order for the establishment in the colony of a municipal court of justice, to be composed of one schout, two burgomasters, and five schepens. A burgomaster was a kind of mayor; a schepen was an officer resembling an alderman; and a schout combined the functions of a sheriff and a district attorney. "On the 2d of February, 1653, Governor Stuyvesant issued a proclamation appointing as burgomasters Arent Van Hatten and Martin Krieger, and as schepens Paulus L. Van der Grist, Maximilian Van Gheel, Allard Anthony, Peter W. Cowenhoven, and William Beekman; Cornelius Van Tienhoven was schout,

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and Jacob Kip was clerk." The magistrates met on the 7th and gave notice that the court would meet at the City Hall "every Monday morning at 9 o'clock" for hearing and determining all disputes between parties as far as practicable. The City Hall not being in readiness on the following Monday, the next meeting took place four days afterwards at the fort, when the court was organized for the despatch of business, and the proceedings were opened with prayer. This court was called the "Worshipful Court of the Schout, Burgomasters, and Schepens." Stuyvesant did not like the court. He and the members of it were frequently in collision, and he sometimes contemptuously referred to it as "the little bench of justice;" but it seems to be well established that "the court was composed, in the main, of magistrates who were men of intelligence, independence, and high moral character, evincing an unswerving adherence to established rules and customs, sterling good sense, and a strong love of justice." The procedure in this court was simple and summary, and strongly resembles, in many respects, the procedure established for the Roman people by the law of the Twelve Tables. The court exercised unlimited civil and criminal jurisdiction, except the infliction of punishment in capital cases. When judgment was given against a defendant for a sum of money, time was given for payment,—usually fourteen days for the discharge of one half, and the remainder in a month. If he did not pay within the time fixed, proceedings were taken to levy on his goods, which were taken by the officer and detained six days subject to redemption; at the end of that time, if not redeemed, the property was sold at auction in a very peculiar manner. "The officer lighted a candle and the bidding went on while it was burning, and he who had offered the most at the extinction of the candle was declared the purchaser."

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The court did a general business, and was also a court of admiralty, and court of probate in taking proof of last wills and testaments and in appointing curators to take charge of the estates of widows and orphans. Some of its proceedings in the exercise of this branch of its jurisdiction will serve to illustrate how tenaciously the Dutch clung to old forms or legal ceremonies; as, when a widow, to relieve herself from certain obligations, desired to renounce her husband's estate, it is, in all such cases, recorded that the intestate's estate "has been kicked away by his wife with the foot," and that she had duly "laid the key on the coffin."

It is worthy of note that the origin of a fee bill for regulating, by a fixed and positive provision of law, the costs of attorneys and other public officers is to be traced to Stuyvesant. On the 25th of January, 1658, he issued a proclamation with a preamble reciting the abuses that had arisen, by reason of the conduct of certain officers in demanding excessive fees, and fixing, with detail, the fees thereafter to be charged. "It is then provided that the officers enumerated shall serve the poor gratis for God's sake, but may take from the wealthy the fees specified."

Courts of a similar character were established in other parts of the province. From all these local courts an appeal lay to the appellate court, composed of the Governor and council at New Amsterdam. These constituted the judicial tribunals of New Netherland until the colony passed into the hands of the English, which event occurred on the 6th of September, 1664, N. S. Col. Richard Nicolls, the first English Governor, immediately changed the name of the colony and city to New York, but no change was made in the courts until a later period.

The "Duke's Laws," promulgated March 1, 1665, provided for arbitrators, a court to be held by the constable and overseers, justices of the peace, courts of sessions,

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courts of oyer and terminer, and a court of assizes with appellate jurisdiction. Justices of the peace were commissioned for the various towns and were clothed with all the powers exercised by such officers in England. A local court was created in each town for the trial of actions of debt or trespass under £5. Six overseers, elected by the people, with a constable, or seven without him, constituted a quorum for the transaction of business; all questions were determined by a vote of the majority, and, if the overseers were evenly divided, the constable had the casting vote. In 1666 the number of overseers was reduced to four, and any two of them, with the constable, held the court; the town clerk was clerk of the court.

The province was divided into three ridings, known as the east, west, and north riding, and in each a court of sessions was established, which was held twice a year; that is, on the first, second, and third Wednesdays in March and the corresponding Wednesdays in June. The court of sessions was held by all the justices living in the riding. All actions at law, and all criminal cases, were tried before a jury. The jurors were drawn from the overseers, each town electing eight. "Seven jurors were impaneled for the trial of a cause, and the verdict of a majority was sufficient, except in capital cases, when the court might impanel twelve, which was uniformly done, and the twelve were required to be unanimous." This court had both civil and criminal jurisdiction. It was also a court of probate, and exercised the jurisdiction now intrusted to surrogates.

The highest tribunal in the province was the court of assize, or, as it was sometimes called, the general assizes. It was held once a year in the city of New York by the Governor and council and such of the justices of the peace as saw fit to attend it. This court had original ju-

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risdiction, civil, criminal, and equitable, and was the appellate court from the inferior tribunals.

In June, 1665, the court of burgomasters and schepens was abolished in the city of New York and a new court organized called the mayor's court, a title by which it was known for one hundred and forty-six years. The members of the court were the mayor, alderman, and sheriff. The change was more formal than real; "it was merely altering the burgomaster into a mayor, the schepen into an alderman, and the schout into a sheriff." The records were directed to be kept in English and Dutch, and a jury of twelve was required to be impaneled for the trial of civil causes.

There was no court of chancery, but matters in equity were heard in any of the courts organized in conformity to the Duke's Laws. On the 9th of August, 1673, the city was retaken by the Dutch, who immediately undertook to re-establish the former judicial tribunals; but they held the city only a little more than a year, when the English reconquered it and terminated the Dutch dynasty. The English courts were reorganized in 1674, and continued from that time, with various modifications, until 1685, when a momentous change occurred in the system of government. Dongan was appointed Governor in 1682. Upon the advice of William Penn, James, then Duke of York, yielded to numerous requests made by men of every rank in the province, and in 1683, ordered Governor Dongan to call an assembly.

In tracing the institutions of our state, Robert Ludlow Fowler, to whom I am indebted for many facts relating to the early courts, remarks: "Our present law is the result, modified by certain acidents, of all that which has been happening among the European residents of this territory since their sojourn here. It is the result of natural development, and not the result of political miracles,

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and, if it is looked on in any other light, it cannot be understood. . . . The acts of the first assembly are still discernible in the law of to-day, and some of the courts created then are still tribunals in the same jurisdiction, and precedents then are recognized still."

This assembly passed an act dividing the province into twelve counties. Its seventh act was entitled "An Act to Settle Courts of Justice." By this act four distinct tribunals were created,—"a petty court for the trial of small causes for every town; a court of sessions for each county; a court of oyer and terminer and general gaol delivery; and a court of chancery for the entire province." The court of assize was abolished. The fluctuation of the jurisdiction of courts in matters of equity cognizance will be observed when we recall the fact that the court of assize, which was the first English court of the province, possessed both law and equity jurisdiction like the present supreme court of the state. The court of oyer and terminer had both civil and criminal jurisdiction, and a term was required to be held in each county once every year.

I have already referred to the change in colonial affairs caused by the death of Charles II., the accession of the Duke of York to the throne in 1685 as James II., his abdication in 1688, and the accession of William and Mary in 1689. I have also referred to the appointment of Governor Sloughter, and the re-establishment of the Colonial Assembly, which began its first session April 9, 1691. The most important act of the assembly, for our present purpose, was the act reorganizing the judicial system of the colony. This was prepared by James Graham, the speaker of the assembly, and was introduced and passed on the 17th of April, 1691.

This act was regularly approved by the Governor and council, and became a law on the 6th of May, 1691. It

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appears as chapter 4, Laws of 1691, and will be found in vol. 1 of the Colonial Laws of New York as published by the Statutory Revision Commission. The act provided for a court of chancery, a supreme court, a court of common pleas, courts of sessions, and justices' courts.

Immediately upon the passage of this act the supreme court was organized, and Joseph Dudley was appointed chief justice, Thomas Johnson, second judge, and William Smith, Stephen Van Cortlandt, and William Pinhorne, associate judges. The act was to be in force only ten years, but it was re-enacted from time to time and continued by proclamations, and was in force, with some modifications, at the time of the Revolution and the organization of the state government in 1777.

The supreme court was at first composed of five judges. From 1701 to 1758, the number was three,—a chief justice and two associate justices. In the latter year a fourth was added. It may, perhaps, indicate somewhat the growth of the state to note that there are now seventy-six justices of the supreme court, besides the court of appeals, the various city and county courts, and the inferior local tribunals in towns and villages. The judicial machinery of the state has assumed vast proportions. It is said that in 1741 the duty of revising the laws in force, with notes and references, was assigned to Daniel Horsemanden, a justice of the supreme court, but on account of his advanced age this task was not performed. This is said to have caused the adoption of the principle of limiting the office of the judges to sixty years of age to avoid the inconvenience that might result from the infirmities of advanced age. This limitation has since been extended to the last day of December next after a judge shall be seventy years of age.

The state of New York formerly had a court of exchequer, originally created by Governor Dongan in 1685,

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discontinued in 1691, and reorganized as a branch of the supreme court in 1786, "for the better levying and accounting of fines, forfeitures, issues, amercements, and debts due to the people of the state." The court ceased to exist January 1, 1830. There was also a court of admiralty, which was discontinued upon the adoption of the Federal Constitution in 1789.

Growth of the Colony.

It is impracticable to present a table of the population of the colony at stated intervals. During the first half of the colonial period a census was not often taken; accurate statistics concerning this period are therefore not available, and, even when attempts were made to procure evidence of the number of inhabitants in the colony, the results were often quite imperfect, and do not afford a reliable basis for a computation of population. In its earlier years the colony had many fluctuations resulting from trouble with the natives, incompetent administration, and inadequate home support. Notwithstanding the irregular methods of obtaining this information, it is possible to give a quite reasonable estimate of the population of the colony at different times, and during the last half of the colonial period enumerations seem to have been conducted with considerable care. Sometimes a census was limited to particular localities, sometimes it included only men of military age, sometimes heads of families, and an occasional property census was taken. From various official sources, nearly all of which will be found in the colonial documents, I have prepared a statement showing the population at different times, either estimated or actually ascertained. The statement also shows some other facts bearing on the development of the colony.

1641. Manhattan had at this time about 400 inhabitants.

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1643. The population was estimated at 3,000. The unhappy condition of the colony appears from a statement by the Eight Men to the Assembly of XIX., dated October 24, 1643, in which they say: "The population is composed mainly of women and children; the freemen (exclusive of the English) are about 200 strong, who must protect by force their families now skulking in straw huts outside the fort."

1646. The population at this time was estimated at 1,000. This decline is said to have been due to the maladministration of Governor Kieft.

1647. The condition of the colony at this time is described by Governor Peter Stuyvesant in a report dated October 19, 1665, on the causes which led to the surrender of the colony to the English. He says that at the time of his accession as Director General in 1647, "the flat land was stripped of inhabitants to such a degree that, with the exception of the three English villages at Heemstede, New Flushing, and Gravesend, there were not fifty bouweries or planatations on it, and the whole province would not muster 250, at most 300, men capable of bearing arms."

1653. The city of New York was incorporated this year, and it then had a population of about 800.

1656. A census of the city of New York was taken which showed that there were then 120 houses and 1,000 inhabitants.

1667. Certain Dutch merchants presented to the States General a remonstrance in relation to trade with New Netherland which had recently been conquered by the English. The remonstrance describes the colony as a "healthy and fertile country," and "therefore well adapted and prepared to the support and easy subsistence of a multitude of families and many thousand souls, whereby, if peopled, it could be maintained and defended with a

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small force; having, already, two tolerably well-built enclosed towns, one open town, and fifteen villages, besides divers extensive colonies, bouweries, and planatations inhabited by more than 8,000 souls, consisting of about 1,500 families, all natives and subjects of this state, who went thither to gain a livelihood and to settle on the promise of being sustained and protected."

1673. The Dutch this year temporarily reconquered and reoccupied the colony, and during such reoccupation the authorities of New Orange, in a communication to the States General, estimated the good Dutch inhabitants with women and children at 6,000 or 7,000 souls. This, apparently, did not include the English.

1678. Governor Andros estimated the number of men capable of bearing arms at 2,000. According to the usual ratio adopted in the colony, this would indicate a population of about 10,000.

1688. Jacob Leisler and Abraham Gouverneir in a memorial relating to colonial affairs in 1688 estimated the population at 8,000 families, out of which there might be raised 12,000 fighting men. This estimate indicates a larger family ratio than is suggested in other estimates. The ordinary estimate of militia is one to five of the population. This would indicate a population of 60,000 in 1688, and, if accurate, shows a remarkable increase of population in ten years.

1689. September 16, 1696, Leisler and Gouverneir made another statement in which they estimated that in 1689 the militia amounted to 12,000 or 14,000 men, and that the colony then had 8,000 or 9,000 families.

1693. Governor Fletcher, speaking of the decline in the colony and the removal of many inhabitants to other provinces, says: "We do now muster 3,000 men in this province," making an estimated population of 15,000. This showed a wide variance between the estimates made

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by Leisler and Gouverneir in 1688, and, if both estimates are correct, indicates a remarkable loss of population in five years. But the Governor's estimate may refer only to the organized militia and not to the whole number of men of military age. It seems from a remark in Governor Fletcher's report that there had been a large migration from the colony to escape taxation, and that the people moved to other colonies which offered better inducements to settlers. Mr. Gouverneir in his memorial of 1696 attributes the unfortunate condition of affairs in part to the "oppression of the Governor."

1695. In November of this year the local government of New York sent Chidley Brook and W. Nicoll to England with an address to the Crown relating to colonial affairs. On the voyage they were captured by enemies, and threw the papers overboard; afterwards arriving in England, they prepared a short memorial relating to the object of their visit, in which they estimated that the colony then had 3,000 families, which probably indicated a population of at least 15,000.

1698. Attorney General Graham in a communication to Governor Bellomont, dated June 30, 1698, estimated that the colony then had at least 5,000 families.

1703. A general census was ordered in 1702, and also a separate census of militia, including male persons from fifteen to sixty years of age. The census was reported in 1703, and I believe this was the first regular census of the entire colony. According to this census the colony then had a population of 20,748.

1712, Another census was ordered, but it was not completed that year. Governor Hunter in a report dated the 12th of June, 1712, said he had been unable to obtain a complete census, "the people being deterred by a simple superstition and observation that the sickness followed upon the last numbering of the people." The records

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show, however, that the census was taken either that year or within the next two years in all the counties except Queens. Estimating Queens on the basis of population of 1703, a probable ratio of increase, the total population of the colony at this time was 28,395.

1723. The census showed a population of 34,393 whites and 6,171 negroes and slaves, making a total of 40,564.

1731. The census this year showed a population of 43,040 whites and 7,202 blacks, making a total of 50,242.

1737. Whites 51,496, blacks 8,941, total 60,437.

1746. In a census taken this year Albany county was omitted, the statement being made in the report that it could not be numbered on "account of the enemy." Applying to Albany county the ratio of increase shown in the remainder of the colony, the total population amounted to 62,823 whites and 11,095 blacks, making a total of 73,918.

1756. Whites 83,233, blacks 13,542, total 96,775.

1771. Whites 148,124, blacks 19,883, total 168,007.

1774. No census was taken this year. Governor Tryon in a report dated June 11, 1774, on the affairs of the colony, answered several questions propounded by the home government, in one of which he was asked to state the number of inhabitants. He replied by quoting the last census, taken in 1771; then on an assumed ratio of increase he estimated the number of whites in 1774 at 161,102, and blacks at 21,149, making a total population of 182,251. The Governor was also asked to give a reason for the increase of population. Replying to this question, he said: "The reasons commonly assigned for the rapid population of the colonies are doubtless the principal causes of the great increase in this province. The high price of labor and the plenty and cheapness of new land fit for cultivation, as they increase the means of subsistence, are strong additional incitements to mar-

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riage, and the people entering into that state more generally and at an earlier period of life than in Europe; the proportion of marriages and births so far exceeds that of populous countries that it has been computed the colonies double their inhabitants, by natural increase only, in twenty years. The increase in this colony has been nearly in the same proportion; but it cannot be denied that the accession to our numbers by emigrations from the neighboring colonies and from Europe has been considerable, though comparatively small compared with the number thus acquired by some of the southern colonies."

Governor Tryon's statement shows a prosperous condition of the colony, and his report is specially significant because apparently the last official communication relating to this subject prior to the Revolution. The impending conflict was rapidly drawing near, and the inquiry embraced in twenty-one questions submitted to him by the home government was clearly for the purpose of ascertaining colonial conditions, and especially the strength and resources of the people, who were already threatening resistence to the authority of the Crown. Colonial committees had already been appointed for general consultation, and a Continental Congress was about to meet in Philadelphia. The rapid movement of events clearly appears when we remember that scarcely ten months after Governor Tryon made his report, the war began at Lexington. The Governor's report is useful to us in forming an estimate of the strength of the colony at the beginning of the Revolution. In the same report he estimates the number of available militia at 32,000. It is impossible to deduce from the Governor's figures a satisfactory estimate of the military strength of the colony which might be available for supporting the patriot cause, for the reason that the loyalists must be deducted, and they constituted an unknown quantity.

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1790. The first Federal census was taken this year, and showed that New York had a population of 340,120. The last colonial census was in 1771, nineteen years before, and showed a population of 168,007. The Federal census showed an increase of 172,113, from which it appears that the population of the colony and state had more than doubled during the period including the Revolutionary War and the subsequent seven years of peace. The enumeration of electors under the first state Constitution will be found in the article on apportionment. During this period the Federal census furnished the only evidence relating to the population of the state. The first state census of inhabitants was taken in 1825.

Conclusion.

I have now traced our colonial history through its entire period, and have noted the principal incidents directly connected with the constitutional development of the colony. Much history and many interesting facts have necessarily been omitted here because not deemed pertinent at this time. In subsequent chapters I shall often have occasion to refer to colonial history for the purpose of showing the foundations of policies which have since been incorporated in the Constitution, and many topics which have been mentioned only briefly in this chapter will there be more fully elucidated. The history of this early time must ever attract the attention of the student who wishes to examine the political and social development of Dutch and English society during the last three centuries. The events of the colonial period, unfolding in sequences which seem to mark the regular evolution of society, inspired with new aspirations for popular liberty and representative government, must forever stand as high expressions of the faith, and courage, and mutual sympathy of the only nations which, at that time, had

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been touched and awakened by the new spirit of freedom. The Dutch and English ships that sailed into New York harbor brought the traditions, customs, and aspirations of two liberty-loving nations, and the Dutch and English governments transferred to New York, sometimes unwillingly, the free institutions which the colonists had so deeply cherished in the Fatherland. It was eighty-two years after Hudson discovered New York before constitutional government was permanently established, and this government continued eighty-four years under colonial conditions; the first Sloughter assembly, therefore, stands almost midway between the beginning and the end of the colonial period. Reforms do not go backwards, and once established, representative government could not be abandoned in New York.

The departments into which a free government is deemed most wisely divided—namely, the executive, the legislature with two branches, and an independent judiciary—had already existed eighty-six years when the people of New York determined to transform the colony into a state. They were, therefore, not called on to invent any new scheme of government. They took a form of government already in good working order, gave it a new name, and made the state.

Many interesting events occurred during the closing years of the colonial period, but they are so intimately interwoven with the events preceding and accompanying the Revolution that I have deemed it proper to consider them in the chapter on the first Constitution.

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CHAPTER II.

The First Constitution, 1777.

The first Constitution of any free people possesses a peculiar interest; especially is this true when, as in the case of New York, the Constitution is the outgrowth and culmination of more than a century of struggle for popular liberty.

Our first Constitution also excites additional interest from the circumstances surrounding its preparation; for it was not framed, as most of the later state Constitutions were framed, to accomplish a peaceful transition from a territorial condition to statehood, and where the authors, with research and deliberation, worked out a plan of government based on the best models. The framers of our first Constitution worked in the stress of war and revolution and without a model, except as they may possibly have derived assistance from Constitutions of other states, recently adopted, but under which there had been little, if any, actual experience. Neither was it framed by experienced men of mature years, but by young men reared in luxury, and who had not enjoyed the opportunities of public service and acquaintance with details of public affairs. John Jay, who is understood to have been the chief author of the Constitution, was only thirty years of age, Robert R. Livingston, one of his colleagues, was only twenty-nine, and Gouverneur Morris, the other, was only twenty-four, when they were appointed on the committee to frame a form of government; yet these wise young patriots exercised a controlling influence in preparing a

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Constitution which was the fundamental law of the state for forty-five years, and many of whose provisions have been continued without change in all subsequent Constitutions.

The first Constitution was framed, adopted, and put in operation by a congress, or convention, chosen by the people of the colony, and which, after three intermediate congresses, was the successor of the colonial legislature. The last Colonial Assembly was chosen under writs of election issued January 14, 1769, and returnable February 14. The assembly met for its first session April 4, 1769. It continued in session at different times until April 3, 1775, when it was prorogued until May 3, 1775. It was prorogued at different times afterwards until March 11, 1776, and then again till April 17, 1776, but it did not meet at that time, and never met after April 3, 1775. Events developing the Revolution were crowding each other rapidly during this period, and, in the absence of an assembly authorized to exercise legislative powers and attend to the affairs of the colony, the people assumed control, and at first by committees, and later through elected congresses, gradually worked out a plan of local administration of the colony, culminating in constitutional government.

This last Colonial Assembly missed a great opportunity. During the six years of its active existence the acts of the British government which led to the Revolution were from month to month becoming a source of serious irritation to the colonies, and in many quarters were exciting the active resistance of the people. It seems quite clear that the Tory tendencies of this assembly were too strong to permit it to become the efficient agency of the colony in the movement to resist the encroachments of the home government. This Tory sympathy in the assembly, combined with the strong Tory influence of the Governor,

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made it difficult, if not impracticable, for the assembly to seize and control a situation fraught with such deep interest to the colony. But the records show that there was a strong patriotic sentiment in the assembly, though apparently not strong enough to control it. This sentiment was strong enough, however, to excite the suspicions of the Governor, and to lead to the numerous prorogations which showed an unwillingness on his part to permit the assembly to meet and resume its ordinary functions.

A few incidents that occurred a short time before this assembly held its last session show the temper of its members, and the efforts made by the patriots to commit it to a policy of union with the other colonies in asserting the liberties of the people. These incidents also show that, while the patriots made a strong and influential faction, they were in a minority, and their efforts in behalf of colonial union and resistance were persistently opposed and defeated.

The first of these incidents occurred on the 26th of January, 1775, when Colonel Abraham Ten Broeck moved that the assembly "take into consideration the proceedings of the Continental Congress held at Philadelphia in the months of September and October last." No vote was taken on this motion, but the previous question moved thereon was lost by a vote of 10 to 11.

The following delegates voted in the affirmative:— Nathaniel Woodhull, Suffolk; Philip Schuyler, Albany; George Clinton, Ulster; Pierre Van Cortlandt, Cortlandt; Charles De Witt, Ulster; Philip Livingston, Livingston Manor; Zebulon Seaman, Queens; Abraham Ten Broeck, Rensselaerwyck; William Nicoll, Suffolk; Simon Boerum, Kings.

This little band of patriots stood firmly together for the cause they had espoused, and, when the assembly suf-

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fered an inglorious extinction, they joined the other patriots in carrying forward the work which soon culminated in the Revolution and independence. George Clinton became first governor of the state; Philip Schuyler was one of the chief military figures of the war; and Philip Livingston was a member of the committee of the Continental Congress appointed to draft the Declaration of Independence; Nathaniel Woodhull was president *pro tem.* of the First Provincial Congress, and president of the Second, Third, and Fourth Provincial Congresses, the latter of which framed and adopted the first Constitution. He was commissioned brigadier general in August, 1775, and died at New Utrecht, September 10, 1776, in consequence of wounds received from British troopers after he had surrendered his sword. Pierre Van Cortlandt was a member of the Second, Third, and Fourth Provincial Congresses, vice president of the latter, president of both councils of safety, member and president of the first senate, first lieutenant governor, which office he held for eighteen years, and was also vice chancellor. Abraham Ten Broeck was a member of each Provincial Congress, and was president of the Fourth a part of the time, and senator, member of assembly, mayor of Albany, and canal and prison commissioner. Charles De Witt was a member of the Third and Fourth Provincial Congresses, and in the latter was appointed a member of the committee on Constitution; he was also in the first Council of Safety, a delegate to the Continental Congress, and member of assembly.

But the efforts of the patriots in this assembly did not cease with the defeat already noted. On the 16th of February, 1775, Colonel Philip Schuyler moved to enter on the assembly journals various letters written by and to the committee of correspondence theretofore appointed by the assembly, including a letter from the committee to

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Edmund Burke, the agent of the colony at the court of Great Britain; and that these letters be published in the newspapers. This motion was defeated by a vote of 9 to 16.

Again, on the 17th of February, 1775, Colonel Nathaniel Woodhull moved that the thanks of the assembly be given to the delegates from the colony to the Continental Congress, held at Philadelphia, in the months of September and October, 1774. This motion was defeated by a vote of 9 to 15.

Another significant incident occurred on the 21st of February, when Philip Livingston moved that the thanks of the assembly be given to the merchants and other inhabitants of the colony for declining to receive the importation of goods from Great Britain, and for their firm adherence to the association entered into and recommended by the "Grand Continental Congress," held the previous year. The motion was lost by a vote of 10 to 15.

On the 23d of February, almost a month after the defeat of Colonel Ten Broeck's proposition, another effort was made to commit the assembly to the policy of colonial union. John Thomas of Westchester, who was not present when Colonel Ten Broeck's motion was made, moved that the sense of the assembly be taken on the necessity of appointing delegates for the colony to the Continental Congress, to be held on the 10th of May, 1775. The motion was lost by a vote of 9 to 17.

The action of the assembly on these propositions was sufficient to show that nothing could be expected from that body in support of the cause which so many of the colonies felt must be vigorously asserted and maintained.

But the people did not wait for action by the assembly. In May, 1774, the merchants of the city of New York organized a committee of fifty-one members "to consult

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on the measures proper to be pursued," and "to correspond with our sister colonies on all matters of moment." This committee addressed letters to various colonies, recommending a general congress of representatives of the colonies, to take action "for the security of our common rights." This seems to have been the first suggestion for such a congress. Anticipating that the other colonies would accept New York's suggestion, the Committee of Fifty-One recommended that delegates be chosen to the proposed congress. Delegates were accordingly elected by the people on the 28th of July, 1774.

The Continental Congress met at Philadelphia September 5, and, having taken the desired action for a union of the colonies, the New York Committee of Fifty-One felt that its purpose had been accomplished, and it was dissolved in November, 1774. It was succeeded by another committee, consisting of sixty members, called the Committee of Inspection. This committee in March, 1775, issued a call to the several counties in the colony to elect delegates to a Provincial Convention, to be held in New York on the 20th of April, 1775, for the purpose of choosing delegates to represent the colony in a Continental Congress to be held at Philadelphia on the 10th of May. This convention met accordingly at the Exchange in New York, on the day appointed, and selected delegates to the Continental Congress. It dissolved on the 22d of April.

On the 1st of May the Committee of Sixty was increased to one hundred, and reorganized as a Provisional War Committee. This committee requested the people of the several counties of the colony to elect delegates to a Provincial Congress, to meet in New York on the 22d of May, 1775, "to deliberate upon, and from time to time to direct, such measures as may be expedient for our common safety."

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This congress met at the time appointed at the Exchange in the city of New York. It is known as the First Provincial Congress, and it became substantially the successor of the Colonial Assembly, which had met for the last time on the 3d of the preceding April.

This congress, on the 18th of October, ordered an election of delegates by ballot, to constitute a new Provincial Congress, to meet November 14, 1775. The first congress adjourned on the 4th of November.

The second congress was organized on the 6th of December, and continued its sessions at different times until its final adjournment May 13, 1776.

In April, 1776, an election was held for delegates to constitute a new Provincial Congress, to meet on the 14th of May.

The Third Provincial Congress, owing to the failure of a sufficient number of members to attend, was not actually organized until May 22, 1776. It continued in session until June 30, 1776.

These congresses had no constitutional sanction, but were expedients resorted to by the people in a great emergency. The Colonial Assembly, which had existed as a component and essential part of colonial government for nearly a century, had been dissolved. Government by the people, in the manner so positively asserted in the Charter of Liberties, had apparently ceased, and the rights of the people had reverted to the people themselves. It should be noted as a significant fact, evincing the deepest patriotism and the most conservative self-poise, that in all this trying period, from the failure of real representative government in the old assembly to the institution of a regular form of government under the new state, there was no attempt by any committee or body of patriots to usurp the recognized rights of the people; but in all cases each delegation to the Continental

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Congress, and each Provincial Congress, was composed of men chosen, either directly by the people, or by representatives of the people elected for that specific purpose; and the government and administration of colonial affairs exercised by the several Provincial Congresses were strictly representative, and recognized to the fullest extent the right of popular self-government.

The people, at the suggestion of a large committee chosen by the people themselves at a public meeting, elected the First Provincial Congress. Subsequent Provincial Congresses were elected by the people on the recommendation of an existing congress; and it is worthy of note that in the space of only thirteen months four Provincial Congresses were elected. This shows a very frequent reference to the people for authority; and these elections, occurring at short intervals, afforded the people opportunity to express their views on public affairs by the election of delegates to the Provincial Congresses.

A striking instance of the jealous care with which popular rights were guarded, and the caution manifested in working out a plan for an independent state government, is shown by the action of the Third Provincial Congress in May, 1776, in providing for a new congress to be elected with express authority to form a new plan of government.

On the 10th of May, 1776, the Continental Congress adopted a resolution recommending that the respective assemblies and conventions of the United Colonies adopt such government as should best conduce to the happiness and safety of the people of the several colonies in particular, and of America in general. This resolution was communicated to the colonies, and was taken up for consideration by the New York Provincial Congress on the 24th of May. The journal informs us that Gouverneur Morris made a "long argument" on the proposition, and

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concluded with a motion for the appointment of a committee "to draw up a recommendation to the people of this colony for the choosing of persons to frame a government for the said colony." John Morin Scott opposed the motion in a "long argument," expressing the opinion that the existing congress had power to form a government, "or, at least, that it is doubtful whether they have not that power;" and that therefore, in his opinion, that point ought to be reserved, and a committee appointed to report on that matter. Thereupon Comfort Sands moved an amendment to Mr. Morris's motion, providing, in substance, for the appointment of a committee to take into consideration the resolutions of the Continental Congress on this subject, and report thereon with all convenient speed. Mr. Morris made another "long argument" in opposition to this motion, but it was adopted, and the following committee was appointed: John Morin Scott, John Haring, Henry Remsen, Francis Lewis, John Jay, Jacob Cuyler, and John Broome. May 27th the committee made the following report:

"That your committee are of opinion that the right of framing, creating, or new modeling civil government is, and ought to be, in the people.

"2dly. That, as the present form of government, by congress and committees in this colony, originated from, and so it depends on, the free and uncontrolled choice of the inhabitants thereof.

"3dly. That the said form of government was instituted while the old form of government still subsisted, and therefore is unnecessarily subject to many defects which could not then be remedied by any new institutions.

"4thly. That by the voluntary abdication of the late Governor Tryon, the dissolution of our assembly for want of due prorogation, and the open and unwarrant-

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able hostilities committed against the persons and property of the inhabitants of all the United Colonies in North America, by the British fleets and arms, under the authority and by the express direction and appointment of the King, Lords, and Commons of Great Britain, the said old form has become, *ipso facto,* dissolved; whereby it hath become absolutely necessary for the good people of this colony to institute a new and regular form of internal government and police, the supreme legislative and executive power in which should, for the present, wholly reside and be within this colony, in exclusion of all foreign and external power, authority, dominion, jurisdiction, and pre-eminence whatsoever.

"5thly. That doubts have arisen whether this congress are vested with sufficient authority to frame and institute such new form of internal government and police.

"6thly. That these doubts can and of right ought to be removed by the good people of this colony only.

"7thly. That until such new form of internal police and government be constitutionally established, or until the expiration of the term for which this congress was elected, this congress ought to continue in the full exercise of their present authority, and in the meantime ought to give the good people of each several respective county of this colony full opportunity to remove the said doubts, either by declaring their respective representatives in this congress, in conjunction with the representatives of the other counties, respectively competent for the purpose of establishing such new form of internal police and government, and adding to their number, if they shall think proper, or by electing others in the stead of the present members, or any or either of them, and increasing (if they should deem it necessary) the number of deputies from each county, with the like powers as are now vested

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in this congress, and with express authority to institute and establish such new and internal form of government and police as aforesaid.

"8thly. That, therefore, this House take same order to be publicly notified throughout the several counties in this colony, whereby the inhabitants of each county respectively, on a given day to be appointed in each of them respectively by this congress, for the purpose, may, by plurality of voices, either confirm their present representatives respectively in this congress in their present powers, and with express authority, in conjunction with the representatives in this congress for the other counties, to institute a new internal form of government and police for this colony, and suited to the present critical emergency, and to continue in full force and effect until a future peace with Great Britain shall render the same unnecessary, or elect new members for that purpose, to take seats in congress in the places of those members respectively who shall not be so confirmed,—the number to be capable of such addition or increase in each respective county, as aforesaid."

On the 31st of May the Third Provincial Congress, then sitting in New York, adopted the following preamble and resolutions:

"AND WHEREAS, Doubts have arisen whether this Congress are invested with sufficient power and authority to deliberate and determine on so important a subject as the necessity of erecting and constituting a new form of government and internal police, to the exclusion of all foreign jurisdiction, dominion, and control whatever:

"AND WHEREAS, It appertains, of right, solely to the people of this colony to determine the said doubt: Therefore

"*Resolved*, That it be recommended to the electors of the several counties in this colony, by election in the

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manner and form prescribed for the election of the present congress, either to authorize (in addition to the powers vested in this congress) their present deputies, or others in the stead of their present deputies, or either of them, to take into consideration the necessity and propriety of instituting such new government as in and by the said resolution of the Continental Congress is described and recommended. And if the majority of the counties by their deputies in Provincial Congress shall be of the opinion that such new government ought to be instituted and established, then to institute and establish such a government as they shall deem best calculated to secure the rights, liberties, and happiness of the good people of this colony, and to continue in force till a future peace with Great Britain shall render the same unnecessary. And

"*Resolved,* That the said elections in the several counties ought to be on such a day, and at such place or places, as by the committee of each county respectively shall be determined. And it is recommended to the said committees to fix such early days for the elections as that all the deputies to be elected have sufficient time to repair to the city of New York by the second Monday in July next, on which day all the said deputies ought punctually to give their attendance.

"AND WHEREAS, The object of the foregoing resolutions is of the utmost importance to the good people of this colony:

"*Resolved,* That it be, and it is, hereby earnestly recommended to the committees, freeholders, and other electors in the different counties of this colony, diligently to carry the same into execution.

"*Ordered,* That the foregoing resolutions be published in all public newspapers in this colony, and in handbills to be distributed in the counties."

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This action shows a clear purpose to form a government by a representative body of undoubted authority, and is a high illustration of wise and conservative statesmanship. It is quite probable that, if this third congress had itself acted on the recommendation of the Continental Congress, and had erected a state government, such a government would have been accepted and recognized by the people; but the delegates to this congress had not been commissioned for such a purpose and had no express authority to institute a permanent government. They therefore wisely determined to go back to the people and obtain full and specific authority for themselves, or other representatives, to organize a government with the very clearest title, because coming directly from the people. The people did not reserve the right to ratify the action of their representatives, but clothed them with full authority to frame, erect, and put in operation such a government as they might deem best suited to the interests of the colony. The congress thus chosen combined in itself and exercised the double function of a constitutional convention and a legislature. It administered the affairs of the colony, and at the same time instituted a new government with a written constitution.

A constitutional convention is the highest representative body known to a free people, and may create or alter the legislative department of the government. This congress exercised legislative powers, and at the same time instituted a new government, providing a new legislature to succeed itself, thereby surrendering at the earliest opportunity the authority which had been committed to it by the election held in June, 1776.

On the 30th of June, 1776, the third congress, apprehending an attack on New York by the British, adjourned to White Plains, to meet there on the 2d of July, and

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also directed that the fourth congress meet at the same place on Monday, the 8th of July. The third congress did not meet again after the 30th of June.

The Fourth Provincial Congress, which became the First Constitutional Convention, met at the court house in White Plains on the 9th of July, 1776. General Nathaniel Woodhull was chosen president, and John McKesson and Robert Benson secretaries. This was one of the most important bodies that ever assembled in this state. It had received a high commission from the people, namely, to institute an independent government in such form and with such component parts as might be best suited to the genius, the spirit, and the traditions of the colony.

The names of the men who so wisely and patriotically performed this great duty should not be forgotten, for they were the pioneers in constitutional government in New York. It has not been easy to ascertain definitely the names of the representatives from the different counties of this congress. The journal of the congress is probably the best evidence of its membership, and this shows, presumably with accuracy, the attendance from day to day. In addition to this, local histories and other publications contain the names of persons said to have been representatives in the Provincial Congress at a period covered by the Fourth Provincial Congress, but whose names do not appear on its journal.

The following list contains the names of representatives as shown by the journal, and also the names of those who appear by other publications to have been members of this congress. The names in brackets do not appear in the journal.

Albany.—Abraham Ten Broeck (1, 2, 3); Robert Yates (1, 2, 3); Leonard Gansevoort (2, 3); Abraham Yates, Jun. (1, 2, 3); John

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Ten Broeck (3); John Tayler (3); Peter R. Livingston (2, 3); Robert Van Rensselaer (1, 2, 3); Matthew Adgate (3); John James Bleecker (2, 3); Jacob Cuyler (1, 2, 3).

Charlotte.—John Williams (1, 2, 3); Alexander Webster (3); George Smith (1); William Duer (3).

Cumberland.—Simeon Stevens (3); Joseph Marsh (3); John Sessions (3).

Dutchess.—Robert R. Livingston (3); Zephaniah Platt (1, 3); John Schenck (3); Jonathan Landon (1, 3); James Livingston (3); Henry Schenck (2, 3); Nathaniel Sackett (1, 3); Dr. Joseph Crane; Gilbert Livingston (1, 2, 3); Anthony Hoffman (1, 3); Cornelius Humphreys (2, 3); Mr. Hopkins.

[NOTE.—The name of Mr. Hopkins frequently appears in the journal of the Convention, but local histories do not include him in the list of delegates. I think the record kept by the secretary of the Convention justifies the inclusion of the name in this list.]

Gloucester.—Jacob Bayley (3); Peter Olcott.

Kings.—Theodorus Polhemus (1, 2, 3); Nicholas Covenhoven (1, 2, 3).

New York.—John Jay (3); James Duane (3); John Morin Scott (1, 2, 3); James Beekman (1, 2, 3); Daniel Dunscomb (3); Jacobus Van Zandt (1, 2, 3); Abraham Brashier (1, 2, 3); [Comfort Sands] (2, 3); Henry Remsen (3); Garrit Abeel (3); Robert Harper (3); Philip Livingston (3); Francis Lewis (3); Anthony Rutgers (2, 3); Isaac Stoutenbergh (2, 3); John Van Cortlandt (1, 2, 3); Thomas Randall (3); John Broome (3); Abraham P. Lott (3); Peter P. Van Zandt (3); Evert Bancker (2, 3); Isaac Roosevelt (1, 2, 3); William Denning (2, 3); [William Scott]; Robert Taylor.

Orange.—William Allison (1, 2, 3); Henry Wisner (3); Jeremiah Clarke (1, 2); Isaac Sherwood (3); Joshua H. Smith (3); John Harring (1, 2, 3); Archibald Little (3); David Pye (1, 3); Thomas Outwater (3).

Queens.—Jonathan Lawrence (1, 3); Samuel Townsend (1, 3); Cornelius Van Wyck (3); Waters Smith (3); Abraham Kettletas (3); James Townsend (3); Jacob Blackwell (1, 3); Benjamin Sands.

Richmond.—Not represented.

Suffolk.—William Smith (3); Thomas Tredwell (1, 2, 3); John Sloss Hobart (1, 2, 3); Matthias Burnet Miller; Ezra L'Hommedieu

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(1, 2, 3); Nathaniel Woodhull (1, 2, 3); Thomas Deering (3); David Gelston (2, 3); [David Hedges].

[NOTE.—The journal of the Committee of Safety (nominally composed of members of the Convention) shows that Mr. Nicoll, of Suffolk, attended, apparently as a member, at the morning session on the 6th of November, 1776. I do not find his name elsewhere in the journal, and am not aware of any other evidence of his connection with the Convention.]

Tryon.—William Harper (3); Volkert Veeder (3); Benjamin Newkirk (3); [George Smith]; Isaac Paris (2, 3); John Moore (1, 2, 3).

Ulster.—Christopher Tappen (1, 3); Matthew Rea (2, 3); Matthew Cantine (2, 3); Charles De Witt (3); Levi Pawling (3); Henry Wisner, Jr. (2, 3); George Clinton (3); Arthur Parks (3).

Westchester.—Pierre Van Cortlandt (2, 3); Gouverneur Morris (1, 3); Gilbert Drake (2, 3); Lewis Graham (1, 2, 3); Ebenezer Lockwood (2, 3); Lewis Morris (3); William Paulding (1, 2); Samuel Haviland (3); Benjamin Smith (3); Zebadiah Mills (3); Jonathan Platt (3); Jonathan Tompkins (3).

[NOTE.—According to the rough draft of the journal of the Committee of Safety, Col. Gil. Budd appeared as a delegate from this county on the 10th of September, 1776; but in the engrossed copy the name "Drake" seems to have been wrtiten over the name "Budd." I do not find the latter name in any list of delegates in the journal, nor in any local history.]

The list contains one hundred seven names besides the names of Mr. Nicoll and Mr. Budd, and the names in brackets. The figures in parenthesis opposite a name indicate membership in previous congresses. Of the one hundred seven actual delegates, twenty-three were members of all previous congresses, thirty-six served in the first congress, forty-two in the second, and ninety-eight in the third, leaving only six without previous service.

The re-election of such a large number of members of the third congress to the fourth was a significant expression of popular confidence, and indicated an intention on the part of the people to clothe their representatives with all the authority needed to administer the affairs of the colony, and erect a new state government.

In the interval between the adjournment of the Third Provincial Congress and the assembling of the fourth,

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the Continental Congress, at Philadelphia, had taken the decisive step for a separation of the colonies. The Declaration of Independence had been proclaimed on the 4th of July, and when the Fourth Provincial Congress met at White Plains on the 9th, almost its first business was to consider a letter received from the New York delegates in the Continental Congress, transmitting a copy of the Declaration. After full consideration of this momentous subject, a resolution, prepared by John Jay, was adopted unanimously, by which it was resolved "that the reasons assigned by the Continental Congress for declaring the United Colonies free and independent states are cogent and conclusive, and that, while we lament the cruel necessity which has rendered that measure unavoidable, we approve the same, and will, at the risk of our lives and fortunes, join with the other colonies in supporting it."

The next day, the 10th, the Provincial Congress adopted the following resolution:

"Resolved and Ordered, That the style and title of this House be changed from that of 'The Provincial Congress of the Colony of New York,' to that of 'The Convention of the Representatives of the State of New York.'"

On the same day the Convention fixed the 16th inst. as the time for considering the resolution of Congress relative to establishing independent state governments, and all the members were ordered to attend on that day.

The dual character of the functions with which this Convention had been clothed, namely, to administer the affairs of the state until a settled government could be organized, and in the meantime prepare a suitable plan for a permanent government, and the opinion entertained by the Convention that a written constitution was then of secondary importance, appears from the action of the

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Convention on the 16th of July, the time fixed to begin consideration of a plan of government, when a preamble was adopted reciting that, "whereas the present dangerous situation of this state demands the unremitted attention of every member of this Convention," followed by a resolution that "the consideration of the necessity and propriety of establishing an independent civil government be postponed until the 1st day of August next, and that in the meantime all magistrates and other officers of justice in this state who are well affected to the liberties of America be requested, until further orders, to exercise their respective offices, providing that all processes and other their proceedings be under the authority and in the name of the state of New York."

The status of residents was declared by the additional resolution that all persons abiding within the state of New York, and deriving protection from the laws of the same, owe allegiance to the said laws, and are members of the state, and the status of transients was declared by the provision that "all persons passing through, visiting, or making a temporary stay in the said state, being entitled to the protection of the laws during the time of such passage, visitation, or temporary stay, owe during the same time allegiance thereto." Treason was defined and made punishable as follows: "That all persons, members of or owing allegiance to this state, as before described, who shall levy war against the said state, within the same, or be adherent to the King of Great Britain or others the enemies of the said state within the same giving to him or them aid and comfort, are guilty of treason against the state, and, being thereof convicted, shall suffer the pains and penalties of death."

The Convention by another resolution "earnestly recommended to the general committees of the counties and the subcommittees of the districts of the several

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counties in this state immediately to apprehend and secure all such persons whose going at large at this time they shall deem dangerous to the liberties of this state; provided always that the parties arrested by the sub-committees have a right of appeal to the general county committee, who may recommit or discharge them as to them shall seem meet; and that the county committees report the steps they have taken in consequence of this resolution." These resolutions were considered by the supreme court in *Jackson ex dem. Russell* v. *White,* 20 Johns. 313, where a doubt was expressed "whether, until the adoption of our Constitution, treason could be committed against that imperfect and inchoate government which was called into existence by the necessity of the case, and was continued until the people could deliberate and settle down upon a plan of government calculated to secure and perpetuate their liberties."

The Convention, by these resolutions, asserted and proposed to exercise the highest powers of sovereignty, providing executive and judicial machinery for the enforcement of the ordinances which the Convention might adopt, reserving to itself full legislative power without any charter or specific commission defining the limitations of that power, exercising authority to establish judicial tribunals, borrow money, create debts, maintain order, prosecute the war, and at the same time, at its convenience, frame a plan for a permanent state government. History shows that the local committees which the foregoing resolution clothed with such large administrative and judicial powers actually exercised such powers, even to the extent of inflicting the death penalty on persons charged with disloyalty. This government, revolutionary in its inception and organization, self-created, and irresponsible except very indirectly to the people, who might overturn it and establish another in

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the same way, was the highest expression of the original sovereignty of a people engaged in a great struggle for independence; but this new government, maintained and enforced with wisdom, prudence, and self-restraint for fourteen months, was not continued from any love of power, but was terminated at the earliest possible moment; and, while more than nine months elapsed after the organization of the Convention before the adoption of the Constitution, they were months full of serious problems requiring constant attention, and of difficulties which taxed the wisdom of the patriots to its utmost limit. The government, such as it was, must be maintained; a written constitution could wait. But there was no intention to postpone unreasonably the task committed to the Convention by the people, and sixteen days later the Convention began the great work of

Making a Constitution.

On the 1st of August, in accordance with the resolution adopted on the 16th of July, Mr. Morris moved the appointment of a committee to take into consideration and report a plan for instituting and framing a new form of government. Mr. Adgate moved that the committee first prepare and report a bill of rights. After considerable debate this subject was included in the Morris resolution, by requiring the committee also to prepare a bill of rights "ascertaining and declaring the essential rights and privileges of the good people of this state, as a foundation for such form of government." The Convention then appointed a committee of thirteen, consisting of John Jay, John Sloss Hobart, William Smith, William Duer, Gouverneur Morris, Robert R. Livingston, John Broome, John Morin Scott, Abraham Yates, Henry Wisner, Sr., Samuel Townshend, Charles DeWitt, and

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Robert Yates. James Duane was added to the committee on the 28th of September.

The real character of the men who laid the foundations of the state, the deep, but not self-sufficient, spirit of patriotism that animated them, and their sincere and solemn appreciation of the great task committed to them could not have been more clearly shown than by the resolution adopted unanimously by the Convention on the 2nd of August, the next day after the appointment of the committee on the Constitution, directing that the 27th day of August "be kept throughout this state as a day of fasting, humiliation, and prayer to Almighty God for the imploring of His Divine assistance in the organization and establishment of a form of government for the security and perpetuation of the civil and religious rights and liberties of mankind, and to supplicate His farther protection in the war which now rages throughout America." The resolution was ordered published in all public newspapers throughout the state. A resolution was also unanimously adopted providing that three sermons "suitable to the occasion be preached on that day before the Convention," in the church at Harlem; and Reverend Mr. Schoonmaker of Harlem, Reverend Mr. Provoost of the county of Albany, and Reverend Dr. Rodgers of the city of New York were selected as the clergymen to perform this service.

The committee found little opportunity to write a constitution. In addition to the urgency of public affairs which demanded immediate attention, and the numerous difficulties which beset the Convention on all sides, it was subjected to the danger of attack and possible capture by the British. To avoid this, it became necessary for the Convention to move from place to place. It went from White Plains to Harlem, where its sessions were held in the church. It afterwards met successively at

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King's Bridge, Odell's in Phillipp's Manor, Fishkill, Poughkeepsie, and finally at Kingston, where the Constitution was adopted.

On the 16th of July a committee consisting of John Jay, Robert Yates, Christopher Tappen, Robert R. Livingston, Gilbert Livingston, and William Paulding, was appointed "to devise and carry into execution such measures as to them shall appear most effectual for obstructing the channel of Hudson's river or annoying the enemy's ships in their navigation of the said river." This committee at once began the performance of the duty assigned to it, and was necessarily absent from the Convention several weeks. On the 3d of August a letter was addressed by the Convention to John Jay, Robert R. Livingston, and Robert Yates, who were absent with the secret committee, informing them of their appointment as members of the committee on a constitution, requesting early action by the committee, and informing them that congress would expect their attendance on the 26th inst., when the plan of government was expected to be reported. On the 12th of August a letter was sent to Livingston and Jay informing them that the Convention thought it highly proper that they attend on the business of framing a new government, unless their presence was absolutely necessary in the secret committee. The next day, the 13th, the Convention concluded that it would be improper to call Mr. Jay and Mr. Yates from the secret committee, and Mr. Livingston was excused from the Convention for the purpose of attending that committee. On the same day, the 13th, Robert Yates, chairman of the secret committee, wrote to the Convention from Poughkeepsie: "Business grows upon our hands, and, if Messrs. Yates, Jay, and Livingston are recalled, there will not be a quorum of the committee left," and expressed the opinion that the business of the

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committee would not admit of their returning to the Convention by the 26th inst. The committee on plan of government did not report on the 26th as directed, and apparently had done nothing toward preparing a constitution.

On the 14th of September the Convention adopted a resolution directing the committee to report with all convenient speed. On the 28th of September the Convention began to show signs of impatience, and directed the committee to report a plan of government on or before the 12th of October, "and that the said committee may no longer be detained from that important business: Ordered, That the said committee sit every afternoon until they shall be ready to report." The committee did not report on the 12th. On the 14th of October Mr. Jay was appointed a member of a special committee to go to King's Bridge, and this, of course, prevented him from devoting his attention to the work of preparing a constitution. On the 15th of October the Convention resolved itself into a committee of safety under a resolution which authorized the committee to do any act which the Convention might do, "except forming a government." The Convention as such did not meet again until the 5th of December, and during this time no action could have been taken relative to forming a state government, except by the committee appointed for that purpose. There is no evidence that the committee did anything during that interval towards preparing a plan of government. The difficulties under which this convention labored clearly appear from the resolution of the 12th of November, notifying the committee of each county not in possession of the enemy that the Convention are now proceeding on the business of forming a system of government, and that it is necessary that the members give their attendance without delay.

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This attempt to bring in the absentees did not result in materially increasing the membership of the Convention, and it is a fact worth noting that the work of that body was usually transacted by less than one third of its members. The Convention met on the 5th of December, but according to the journal "the committee appointed to prepare the form of government, and sundry other members of the Convention having withdrawn," the remainder proceeded to business as a committee of safety. The next day the Convention met again, and, among other things, ordered that the "committee on government retire to consider that business." On the 12th of December Mr. Abraham Yates, chairman of the committee on government, gave notice that the committee "will report this day eight days," and requested Mr. McKesson, one of the secretaries of the Convention, to attend the committee and copy its report. According to this notice the report should have been presented on the 20th, but on that day the report of a draft of a form of government was postponed "until to-morrow," and on the 21st there was another postponement until "Monday next," the 23d, at which time Abraham Yates was given a leave of absence on account of ill-health.

On the 1st of March a motion by Mr. Morris directing the Constitution committee to sit the next day was rejected. On the 4th the committee was ordered "to meet this afternoon at 4 o'clock." On the 6th the Convention adopted a resolution offered by Leonard Gansevoort directing the committee on form of government to report on Wednesday next. On the 12th, in compliance with this resolution, the committee for preparing and reporting a form or plan of government brought in their report, which, according to the journal, was read by Mr. Duane in his place, and delivered in at the table where the same was again read. Abraham Yates, chairman of

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the committee, was not present, neither was Mr. Jay, and Mr. Duane was doubtless selected to present the report because of his position as one of the recognized leaders of the Convention. It was evidently the intention of the Convention to proceed at once to the consideration of the proposed constitution. It rejected Mr. Adgate's motion that the said plan of government lie on the table four days for the perusal of the members, and that they be at liberty to take copies thereof, and adopted a motion by Colonel DeWitt that the proposed plan of government lie on the table until the next morning, and that it then be taken into consideration. But, to facilitate preparation for such consideration, it was ordered, on motion of Robert R. Livingston, that "one of the secretaries attend in this room at 4 o'clock this afternoon with the said plan of government, and read it to any of the members who shall choose to attend."

Who was the author of the first Constitution? We are considering first things, and the beginnings of our institutions. The first Constitution was not only an important document viewed as a statement of principles underlying a new government, but it was a political instrument of high character, and our state to-day, with all its growth and development through a century and a quarter, still rests on the foundations laid by the statesmen of that early convention. It was a great instrument, and embodied in concrete form great ideas and great purposes. It represented political wisdom of a very high order, and was a radical departure in many respects from the functions and customs of government with which the Convention was familiar. Its principles and policies and methods of administration have proved beneficent far beyond the expectations of its authors. It was constructed in part from materials offered by the extended political experience which many members of

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the Convention possessed; but this experience was too limited for the exigencies of a new and independent government, and its framers were therefore compelled to put into proper written form ideas intended to provide methods of administration hitherto unknown; and we may fairly say of the result that it expresses a political inspiration born of great genius and animated by a prophetic vision which enabled the authors of the instrument to see, beyond the words they wrote, a commonwealth destined to occupy the place of primacy in a great nation. If it was a "time which tried men's souls," it was also a time which developed their highest talents. The journal of the Convention clearly shows that several members were active in suggesting provisions to be incorporated in the Constitution, but three men—John Jay, Robert R. Livingston, and Gouverneur Morris—were, more than all others, responsible for the instrument as a whole. It has been suggested that they acted as a subcommittee of the general committee on the Constitution. I find no direct evidence of this, but evidence is abundant that they were associated together in preparing and procuring the adoption of many important provisions. They usually, but not always, worked in harmony. They were apparently congenial spirits, and held frequent consultations together concerning various parts of the instrument. It seems equally clear that John Jay was the leader of the three, and, according to his biographers, he is entitled to the credit of the authorship of the first draft of the instrument. On this subject his son, William Jay, in his biography of John Jay, published in 1833 about five years after his father's death, says that he was chairman of the committee appointed to prepare a plan of government, "and its duty appears to have been assigned to him;" and he also says that the draft of the Constitution presented on the 12th of March was in his

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father's handwriting. I have sought diligently, but in vain, for this draft. There are two drafts in the Convention archives, but neither of them seems to be in Jay's handwriting. William Jay also informs us that, "for the purpose of framing the new form of government," his father "retired to some place in the country;" but the place is not named. How much aid Mr. Jay received from his colleagues on the committee does not appear. I have noticed with sufficient detail some of the incidents connected with the Convention's work which prevented the early framing and consideration of the Constitution, and also the items from the journal showing action by the Convention and the committee on this subject prior to the presentation of the proposed draft. John Jay's name appears first in the list of members of the committee on the Constitution, and according to the modern parliamentary rule he would have been its chairman. But it seems to have been the practice in this Convention for a committee to select its own chairman, and it appears from the journal that Abraham Yates was chairman of the committee, although he does not seem to have taken any active part in framing the Constitution. Probably Mr. Jay was the actual head of the committee. The journal also shows, as already noted, that Mr. McKesson, one of the secretaries, was asked to copy the report of the committee, and I think one of the drafts is in his handwriting. It also appears that the proposed Constitution was presented to the Convention and read by James Duane, and, according to the journal, Mr. Jay was not present at that time. It is not improbable, however, that Mr. Jay prepared a draft of a Constitution for the consideration of the committee, which was adopted, and, with its approval, presented by Mr. Duane. William Jay's statement on this subject ought to be conclusive, for his father lived fifty-two years after the Con-

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stitution was adopted, and the biographer had ample opportunity to ascertain the facts concerning the authorship of the Constitution. I have examined other sources of information, including the biographies of several of Jay's colleagues, and correspondence relating to the work of the Convention, but am unable to add to the information furnished by William Jay and the journal of the Convention. I am not disposed to dispute William Jay's statement that his father was substantially the author of the first Constitution. The facts disclosed by the journal show, I think, that other members of the committee participated in preparing the report, but this participation is not inconsistent with the suggestion that the draft on which the committee acted was written and submitted by Mr. Jay.

I find among the Convention manuscripts now in the State Library at Albany two papers purporting to be drafts of a proposed constitution. One of these, apparently the original, is indorsed "Dr. 1777 of Form of Government." There are several addenda to this draft marked for insertion at appropriate places. These are evidently afterthoughts, as they involve propositions not especially germane to the original provisions, but introduce new subjects. This original draft has numerous erasures, interlineations, and marginal notes, which show clearly the process of evolution through which the Constitution was passing, either during its actual consideration by the Convention, or in private discussion among the members. The other draft appears to be in many respects a corrected copy of the first, embracing changes indicated in the first by erasures, interlineations, and marginal notes, and also containing a copy of parts of the addenda to the first draft. I think this corrected draft is in Mr. McKesson's handwriting. The second draft also contains several paragraphs embracing new

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subjects not in the first draft or the addenda. It seems clear from the journal that, while the Constitution was under consideration, the discussion and the motions and amendments incident to the debate related to both drafts, although principally to the second, and probably for the reason already suggested,—that the second draft was made up from the first with corrections and additions. According to the record, the first draft was presented and read by Mr. Duane on the 12th of March, 1777. Neither of these drafts shows who presented it, but I do not think that either of them is in Mr. Jay's handwriting. It should be stated, however, that Carter & Stone's edition of the Debates of 1821 contains, in the appendix, an article from the New York "Columbian" over the signature of "Schuyler," concerning the adoption of the first Constitution, in which the statement is made that draft A "was chiefly or wholly drawn up by Mr. Jay, and is in his handwriting." The same writer says: "There were annexed to it addenda which I believe are chiefly in the handwriting of Mr. Duane, and were mostly framed by him." The journal does not show the presentation of the second draft. It was probably prepared and presented informally, and, by general consent, was used as the working model in constructing the Constitution.

For the purpose of showing the evolution of the Constitution, I have arranged both of these drafts so that the reader can obtain the original suggestion concerning each subject proposed to be included in the Constitution. I have called the first draft "A" and the second "B," and where practicable, in order to economize space, have put both forms together in one section, following the practice in printing legislative bills, treating "A" as the original form and "B" as an amendment. Words in brackets indicate parts of "A" that were excluded in "B;" words

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underscored were added in "B." This arrangement presents both forms, and both the original and amendments can be readily ascertained. The paragraphs as presented contained the usual introduction, "And this Convention doth further ordain, etc.," but these are omitted for obvious reasons. They appear in its final form, but here are not essential to show the provision actually proposed or adopted. For convenience I have prefixed a title to each paragraph. The votes taken during the discussion of the Constitution were by counties, and at the beginning of the debate Mr. Morris moved "that every member who shall dissent from his county, on any section or part of the said form or plan of government, have leave to enter his dissent with the reasons thereof, and that such reasons be entered at length in the minutes, but not published." The motion was lost by a vote of 11 to 22. Under the plan of voting by counties the journal shows only the names of those who voted in the negative. The journal shows that many propositions provoked long and apparently animated debates, but the debates were not reported, and the reasons for the action of the Convention or of individual delegates are not shown, except as they appear from the proposed amendments and provisions effected by them, with occasional brief notes by the secretary. The discussion on the proposed Constitution began on the day of its presentation, March 12, and continued until its adoption on the 20th of April. The following drafts and notes show the original form in which the Constitution was proposed and the amendments adopted, together with several additional paragraphs proposed in the Convention. These drafts are not entered in the journal of the Convention, and I think are now published for the first time. In them the New York statesmen of 1776 present an interesting view of their impressions

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concerning the proper scope and form of a written constitution.

(Territorial Limits of State.) This Convention do therefore and by the Authority of the good people of this State ordain determine and declare——here insert boundaries of the State of New York——that all the Lands and Territories included within the Lines and Boundaries of this State do belong and of Right appertain to the people and members thereof. And that they will to the utmost of their power maintain & defend their Title to and possession of the same, against any Kingdom or State which may attempt to deprive them of the same or any part thereof.

Not adopted.

I do not find any description of the state in the records of the Convention, and apparently this section did not receive any attention.

(People the Only Source of Authority.) A & B. That no authority [whatever] shall on any pretence or [domination] whatever [shall] be exercised over the people or members of this State but such as shall be derived from & granted by them.

Adopted without change.

(Legislative Power Vested in Senate and Assembly.) That [all legislative authority] the supreme legislative power within this State shall be vested in two distinct and separate [Bodies] Branches of men—the one to be called the General Assembly of Representatives of the State of New York—the other to be called the [Council] Senate of the State of New York—who together shall form & be called the Legislature of the State of New York, and meet [twice] once at the least in every year for the dispatch of Business.

The words in brackets were erased in the original

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and "senate," "branches" and "once" respectively substituted. The section appears in draft B as follows:

"They do further in the name and by the Authority of the good people of this State ordain determine and declare that the supreme legislative Power within this State shall be vested in two distinct and separate branches of Men—the one to be called the General Assembly of Representatives of the State of New York—the other to be called the Senate of the State of New York—who together shall form and be called the Legislature of the State of New York, and meet once at the least in every year for the dispatch of Business."

It seems clear, from the form in which this paragraph was originally presented, that the draftsmen intended to continue the council as a part of the legislature, thus preserving the legislative system which was established in the colony in 1691 and had continued without substantial change. This shows the tendency of the Convention to preserve existing forms. In the original draft "council" is erased and "senate" is written above it, but it does not appear when this change was made. It was evidently made before draft B was prepared, for that draft provided for a senate, and makes no mention of a council. Ten states—Connecticut, Delaware, Georgia, Maryland, New Hampshire, New Jersey, North Carolina, Pennsylvania, South Carolina, and Virginia—preceded New York in adopting a constitution, and in two states—Virginia and New Jersey—a constitution was adopted before the Declaration of Independence. It may fairly be presumed that the statesmen of New York were familiar with the other Constitutions. The close relations with the states, their intimate association in a great cause, the mingling of representatives of the people in the army and in the Continental Congress, as well as the means of communication afforded by the newspapers and

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mails, doubtless enabled the New York Convention to obtain early information of the proceedings in other states. How much other Constitutions influenced the action of the New York Convention, we do not know, and I refer to this subject now only for the purpose of calling attention to the structure of the legislature. The influence of colonial conditions and experiences is manifest in seven Constitutions, which provided for a council which in some cases was vested with legislative powers, and in others was limited to executive functions. In three—Virginia, Maryland, and North Carolina—one branch of the legislature was called a senate, Virginia being the first to give it this name, which was done by its Constitution adopted June 29, 1776. It seems clear that Thomas Jefferson first suggested this name for the upper branch of the legislature. While the Virginia convention was in session, Jefferson, then being in attendance at the Continental Congress at Philadelphia, prepared a draft of a form of government for Virginia, and sent it to Mr. Pendleton, president of the convention. This draft proposed a senate to be composed of senators appointed by the House of Representatives for terms of nine years, one third to go out of office every three years. When this proposed Constitution reached the convention a plan of government was already under consideration, and had been substantially agreed to in committee of the whole. This plan was based on a draft prepared by George Mason, in which the upper branch of the legislature was called the "upper house" without any specific designation, to be composed of twenty-four members. It was too late to consider Jefferson's Constitution as a whole, but his preamble was taken, and also some other parts not specified, which were used in amending the Mason draft. In view of the fact that the Mason draft did not propose a senate, and that Jefferson's draft did,

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and that the Constitution as adopted designated the higher branch of the legislature the senate as suggested by Jefferson, instead of an "upper house" as suggested by Mason, it seems reasonably certain that during the last few days of the consideration of the Constitution this provision, among others, was borrowed from the Jefferson draft, and became a part of the Constitution as adopted. The reader will find Jefferson's draft in Ford's "Writings of Thomas Jefferson," vol. 2, p. 9, and Mason's in Rowland's "Life of Mason," vol. 1, p. 444. It is not surprising that the author of the first draft presented to the New York Convention should have proposed to continue the council, which for eighty-five years had constituted a distinct branch of the colonial legislature with full legislative powers. Whether the Convention, in changing the designation of the highest branch of the legislature from the council to senate followed the three states already named, or whether, being familiar with the Athenian, Spartan, and Roman senates, they determined to follow the high examples of antiquity and create a legislative body of great dignity and power, with peculiar privileges vested in representatives chosen from a select body of citizens possessing qualifications not required in the more popular branch of the legislature, we are not informed, but it seems quite clear, from other proposed provisions to which I shall presently refer, that the authors of the proposed Constitution intended to establish two legislative branches or orders with different and very distinct qualifications.

While this section was under consideration Joshua H. Smith proposed that the legislature consist of three separate and distinct branches, intending to add the governor as the third branch, also giving the governor a negative on all laws passed by the senate and assembly. While this motion was pending Mr. Morris moved to add the

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following words at the end of the section: "Providing that the governor shall have no power to originate or amend any law, but simply to give his assent or dissent thereto." The Smith amendment, as modified by Mr. Morris, was adopted by a vote of 19 to 7. This made the governor a distinct part of the legislature, but without giving him any specific status in either branch. This arrangement was, perhaps, suggested by the condition which existed during the first half of the colonial legislative period, when the governor sat as a member of the council, voted on each bill, and also had a casting vote in case of a tie, and in addition to these two votes might finally veto the bill. In the chapter on the colonial period I have referred to the difficulties sometimes resulting from this peculiar condition and the change made in 1735, which deprived the governor of specific legislative functions, but without disturbing his veto power.

Mr. Jay, as already stated, was not present when the proposed Constitution was presented, and we do not find him in the Convention until the 17th. He was evidently not pleased with the Smith amendment, and on the 20th gave notice that he would move its reconsideration. Two weeks later the Convention retraced its steps, struck out the Smith amendment, and restored the section to its original form. No further change was made, except to eliminate the word "general" before "assembly," which was done just before the Constitution was adopted.

(Assembly, How Constituted.) A & B. That the General Assembly of Representatives of the State of New York shall always hereafter consist of at least Seventy Members, to be chosen in every County out of the Freeholders resident therein in proportion to the number of [taxables] electors in such county.

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The Convention rejected a proposition offered by General Scott, providing that each county should be entitled to representatives not less than the number it had in the last session of the Colonial Assembly, and that Cumberland and Gloucester should each be entitled to not less than two representatives, notwithstanding the erection of a new county. Mr. Duane proposed that the Convention apportion the representatives among the several counties. This was at first rejected, but later a committee was appointed on this subject, who reported in favor of an apportionment, which was accordingly made, and appears in § 4 as finally adopted.

(Assembly Districts.) A. That every County within this State shall be divided into as many Districts by the ensuing legislature as it sends Representatives containing as nearly as may be an equal number of Inhabitants—which Districts shall from time to Time be altered in any County when the number of Representatives in such county shall be encreased or diminished.

That all Elections for Representatives in general Assembly be made in every district annually by Ballot in such mode as the Legislature may prescribe. That every district chuse one person to represent the County out of the Freeholders who shall actually and in fact reside within such district; and that no persons shall have a right to vote for a Representative in any District but that in which he shall usually and in fact reside.

Marginal Note. "Agreed that the elections for representatives shall be by Counties at large as usual—but by ballot out of the freeholders resident in the county for which he is elected."

This subject was not included in draft B. The Convention does not seem to have given it any attention. It suggested an important change in the plan of assembly representation, but the Convention adhered to the method

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with which the colony had been familiar since 1683, and continued the plan of choosing members of assembly by counties. The development of this subject will be shown in subsequent chapters where it will appear that in 1847 —one hundred and sixty-four years after the assembly was established—its members were for the first time chosen by districts, and that the Convention of 1867 agreed to an amendment restoring county representation.

(Census; Reapportionment of Assembly.) B. And to the end that the ~~number of Taxables~~ Representation may always continue equal, be it ordained that once in every seven years a just account of all the ~~Taxables~~ Electors resident therein be taken in every County in such manner as some future Legislature shall direct. And if on such Account it shall appear that the number of ~~Taxables~~ Electors has encreased or diminished in any County one Seventieth part of the whole number of ~~Taxables~~ Electors now in the State, the Representation of that County shall encrease or diminish in the same proportion so that the Number of Representatives in General Assembly shall bear as nearly as may be the same proportion to the Inhabitants of this state as it does at this Time.

While this section was under consideration Mr. Jay moved that Richmond county should always have one representative in the assembly, for the reason that it could not be conveniently annexed to any other county. This motion was lost by a tie vote of 18 to 18. The Convention also rejected Mr. Morris's motion that "no county shall be left without at least one representative."

(Members of Assembly; How Chosen.) A (addendum) and B. And this Convention doth further ordain that all Elections for representatives in General Assembly shall be made by ballot in every county out of the Freeholders per-

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sonally residing in each respective county. That the laws in force in the colony of New York for regulating elections shall continue to have their full effect where they shall not be repugnant to the Constitution hereby established and until they shall be altered or repealed by a future legislature.

(Ballots.) And forasmuch as nothing is more essential to the security of a people than the freedom of elections, and it is of the utmost importance to prescribe such regulations as will most effectually guard against undue Influence, Partiality, Fraud or Corruption: This convention doth therefore ordain That every future election for Representatives of the State in general Assembly each elector shall vote by delivering to the sherif or returning officer a ticket tied up, containing the names of the persons for whom he gives his voice to be Representatives. That the sherif or returning officer shall number or cause to be numbered the said ticket.

(Poll Books.) That the sworn clerk shall enter the name of the elector and number of the ticket in the Poll Books, and therein designate whether the Elector votes as a freeman or Freeholder.

(Ballot Box.) That each ticket being thus numbered and entered shall be publicly put into a locked box thro a hole for that purpose, ~~so continuing until the~~

(Inspectors.) That every polling shall be thus carried on in the presence of a number of reputable Inspectors. That in the City and County of New York the several aldermen, assistants and assessors of the different wards shall ~~de~~ on the day of in every year assemble at the City Hall of the said city and there in the presence of the town clerk and Chamberlain elect by Ballot substantial freeholders and residents in the said City and County to be inspectors ~~for~~ of elections for representatives in General Assembly, and that the supervisors and assessors of every County, town, manor Burrough & precinct within this State at the yearly meeting of the supervisors of each respective County shall assemble together and there by ballot in the manner above directed & in the presence of the county treasurer chuse substantial Freeholders and actual residents

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of the places for which they shall be elected to be Inspectors of election for Representatives in their respective Counties. That the Ticketts at every such election for inspectors being all delivered in and put into such Box as aforesaid the Key of the Box shall be sealed up with the seals of supervisors and assessors or a majority of them in each respective County; and in the City of New York by the Aldermen assistants and assessors or the major part of them and kept by such ~~pers~~ one of them as they or the major part of them shall appoint and the box shall be lodged either with the county Treasurer or Clerk of the County. That until such election be made in the respective Counties the supervisors in each County and the Aldermen and assistants in the City of New York shall serve as Inspectors.

(Election of Inspectors.) That when any writ or precept shall issue for the Election of any one or more Representatives to serve in general assembly the Returning officer shall by public notices thro the County fix and notify the day of election upwards of Twenty and not more than days from the Time of issuing such notices and shall give at least sixteen days notice thereof to the County Treasurer and Clerk of the County who shall forthwith notify the Supervisors and assessors in ~~each~~ his respective county and the Aldermen assistants and assessors in the City of New York to assemble together at least eight days before the day of Election and the ~~Box containing And whereas by the method above prescribed to prevent a defect of proper inspectors for Elections of Representatives a number of Inspectors be elected every year. The Ballotts for Inspectors shall be publicly opened~~ said Electors of Inspectors being thus assembled the box containing the ballotts for Inspectors shall be publicly opened in the presence of the said electors and the ballots being counted the names of the persons found to be elected by a majority of votes to be inspectors shall by the Treasurer or Clerk of the County be certified to the returning officer of the City, County, Manor Burrough or Township in which such election is to be held who shall immediately notify such inspectors respectively of their ap-

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pointment and demand their attendance at the day and place of election.

(Poll Clerks.) That ~~on the first day of~~ the sherif or returning officer for every Election shall provide two or more proper clerks of the Poll with Books for that purpose.

(Oath of Election Officers.) That on the first day of each such election and before any ticket ~~or ballot~~ shall be received the sheriff or returning officer, each inspector present and each clerk of the polls shall be duly sworn by one of the judges of the supreme court for this State or one of the judges of the court of Common Pleas of the County in which such election shall be held not to discover the vote of any elector and well and truely to perform his ~~their respective~~ duty ~~faithfully~~ during that election faithfully and impartially without fear favor of affection according to the best of his skill and understanding.

(Election, How Conducted; Illiterate Voters.) That the returning officer in the presence of the inspectors shall proceed to receive the Tickets of the electors successively as they offer in the manner hereinbefore directed; and if any elector should be suspected of being unable to read and it shall be so found on trial by his oath or otherwise the ticket of such elector shall be opened and he shall name the person or persons for whom he gives his voice and if therein he differs from his ticket another Ticket shall be made for him agreeable to the vote he shall have given.

(Adjournments.) That when any such Election ~~shall~~ for a Representative or Representatives shall have begun the poll shall not be adjourned without the consent of at least a majority of the Inspectors present.

(Challenge.) That any Inspector at such Election may put or cause to be put to any suspected Elector the oath required in such cases by the present laws of this State; and the ticket of such Elector shall either be rejected or put into the box as the major part of the Inspectors shall determine thereon. That when any ~~Elector~~ Inspector shall doubt of the validity of the vote of any Elector he shall cause a minute to be affixed to his name in the poll Books and after

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any such election at the request of any Candidate or Inspector a list of all such names certified by the returning officer on his oath of office shall be made public and delivered to such candidate or Inspector for the purpose of a scrutiny; but for whom such Elector gave his voice shall not be divulged until the time and in the manner hereafter mentioned.

(Canvass.) That when the poll at any such Election shall be finally closed all the poll Books shall be immediately sealed up; and the Tickets shall be successively drawn out of the Box and opened in a public manner in the presence of the Inspectors or a major part of them ~~and~~ the returning officer and sworn clerks of the poll and discovery made by entering the Tickets successively in a Book who has the majority of Votes; and the said Tickets then respectively rolled up put into a Box locked up with the said Poll Books and the key thereof sealed up with the seals of the said returning officer Inspectors or a major part of them. And if upon opening the Tickets more than one shall be found to have been rolled up and included under one string they shall be rejected as void.

(Certificate of Result.) That the returning officer shall then prepare execute and cause to be executed and returned to the secretary of state proper Indentures of the person or persons elected for Representative or Representatives by a majority of votes taken in manner aforesaid.

(Assembly; Contested Elections; Examination of Ballots.) And this convention doth farther ordain that when the House of Representatives shall have allowed a scrutiny as to the seat of any Member the returning officer shall on notice thereof deliver to the Clerk of the General Assembly the Box containing the sealed poll Books and Tickets with the Key or Keys thereof sealed up ~~with his the said return~~ in manner aforesaid. And when it shall be adjudged that any person who polled as an Elector had not a right to vote, the poll Books shall be opened and the Ticket of such ~~Elector~~ person untied and discovery made for whom he voted. And when all the votes first adjudged to be

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illegal are discovered to the ~~House~~ General Assembly, the other Ticketts shall without examination be burnt in the Assembly Chamber while the speaker is in the chair.

(When Poll Books and Tickets to be Destroyed.) And in Case no scrutiny shall be demanded within forty days after the first meeting of any General Assembly at their stated times of meeting or on public summons the returning officer of each election shall cause the poll Books and Ticketts (after public notice thereof given) to be burnt, in the city of New York in the presence of the Aldermen or a major part of them and each other City, County, Manor, Burrough or Town having a Representation, in the presence of the supervisors or a major part of them at their next meeting after the expiration of the said forty days.

(Appointment of Inspectors to Fill Vacancies.) And in case of the decease or necessary absence of any Inspector at the time of any such election that the returning officer shall summon the Supervisor living nearest to the place of residence of such absent Inspector whose duty it shall be to attend such election in the place of such Absent Inspector.

The expense of the wages of clerks at such Election and of Boxes and Poll Books shall be defrayed by the inhabitants of the district ~~having a right to vote~~ for which such election shall have been held, to be assessed and raised as the other County or public charges of such district.

~~That the Election for Representatives shall be by the Counties at large as usual but by Ballot out of the Freeholders resident in the County for which he is elected.~~

The foregoing appears in the draft as one solid section, but for convenience of reference I have arranged it in paragraphs with appropriate headings. It will be observed that this scheme is quite like the modern election law, but the Convention was not prepared to adopt it, and apparently did not seriously consider it. While it was under consideration the provision for an election by ballot was, on motion of Mr. Morris, stricken out, and elections

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were required to be held according to the laws of the colony. April 5th, Mr. Jay offered the following substitute for the section:

"And whereas it hath been a prevailing opinion among the good people of this State, that the mode of election by ballot would tend more to preserve the liberty and equal freedom of the people than the manner of voting *viva voce*, and it is expedient that a fair experiment be made as to which of those methods of voting is to be preferred:

"Be it ordained, That as soon as may be after the expiration of the present war between the United States of America and Great Britain, an act or acts be passed by the Legislature of this State for causing all elections hereafter to be held in this State for senators and representatives in assembly to be by ballot and directing the manner in which the same shall be conducted.

"Be it further Ordained, That whenever thereafter the mode of voting by ballot, shall, on experience, appear to be attended with more mischief and less conducive to the safety or interests of this State than the method of voting *viva voce*, it shall be lawful and constitutional for the legislature of this State to abolish the same, providing two thirds of the members present in both houses shall concur therein; and further, that in the meantime all elections for senators and representatives in assembly be made *viva voce*, according to the laws of the colony of New York for regulating elections so far as the same may be consistent with this constitution or according to such laws as by the legislature of this state may for that purpose be enacted."

The Convention unanimously rejected Mr. Morris's motion to strike out the word "senators" whenever it occurred, so that the section would apply only to members of assembly. Gilbert Livingston's motion to strike out the proviso requiring a two-thirds vote of the legislature to restore voting *viva voce* was also rejected. The

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section was adopted by a vote of 33 to 3. On the 20th of April, the last day of the consideration of the Constitution, Mr. Yates moved to strike out the provision authorizing the legislature, after an experiment in voting by ballot, to restore *viva voce* voting, but the Convention was unwilling to change the section, and a motion for the previous question was carried by a vote of 18 to 12, which, by the rule then in force, precluded any vote on the Yates motion.

(Qualifications of Electors of Members of Assembly.) A & B. That every male Inhabitant of this State of & above the Age of Twenty-one years shall have a right to vote for Representatives in General Assembly in the [district] county in which he or they [actually] personally resides. Provided that he is a Freeholder in the County, or that he has resided therein for one year immediately preceding the said election and has been rated and actually paid [both] public [and] or County Taxes in the said County [within the said year] at least one year before the day of such election.

It will be observed that, under the original section, a voter must have been a freeholder, or must have resided in the county a year and paid both public and county taxes. The owner of taxed personal property would have been a voter under this provision, but the scope of the section was materially limited by several amendments. One offered by R. R. Livingston required a nonfreeholder to be, not only a resident, but to have rented a tenement, which was further modified on motion of Mr. Tredwell by requiring the tenement to be of the yearly value of 40s.; and the Convention also, by a vote of 18 to 12, adopted an amendment offered by Mr. Morris that the freehold owned by a voter must be worth £20. These amendments limited the qualifications of voters to owners or lessees of real property. The Convention adopted

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Philip Livingston's amendment reducing the required residence from one year to six months. Freemen in the cities of Albany and New York had been entitled to vote for members of assembly since 1691. Those who were not owners or lessees of real property would have been disfranchised under the foregoing amended section. To avoid this result Mr. Jay offered an amendment which was accepted, preserving the right of suffrage to persons who were then freemen in Albany, or who became freemen in New York on or before October 14, 1775.

(Voters' Oath of Allegiance.) A & B. That every elector shall if required [by any person having a Right to Vote] the returning officer or either of the election inspectors take an Oath, or if of the People called Quakers an Affirmation of Allegiance to the State.

Adopted without amendment.

(Powers of Assembly; Quorum.) A. That the General Assembly thus Constituted shall chuse their own Speaker, be judges of their own Members and proceed in doing Business in like manner as the former Assemblies of the Colony of New York did and that forty of the Members be a Quorum, which Quorum shall hereafter consist of an additional number in proportion to the additional number of representatives "which the legislature may in future direct."

B. That the General Assembly thus constituted shall chuse their own speaker, be judges of their own members, and proceed in doing business in like manner as the former Assemblies of the Colony of New York did; and that forty of the members shall constitute a House sufficient to proceed on Business; which number shall hereafter be encreased in proportion as nearly as possible to the additional number of Representatives which the Legislature may in future ~~direct~~ provide.

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This section was amended by adding after the word "members" the words "enjoy the same privileges," and after "New York" the words "of right." On motion of Mr. Morris all of the section after "did" was stricken out, and the following substituted, "and that a majority of the said members shall from time to time constitute a House sufficient to proceed upon business."

(Senate, How Constituted.) A. And this Convention do further ordain determine and declare ~~that the Burthen of supporting and defending this State does at all times rest principally on the freeholders thereof and therefore that they of right ought to have an ascendancy in the Legislature Wherefor this convention do ordain that~~ That the ~~council~~ senate of the State of New York shall consist of ~~Twenty four~~ wise and discreet freeholders (marg. note, "to be chosen out of the Body of Freeholders") and that they be chosen only by the Freeholders of this State, possessed of freeholds of the Value of £40 over and above all debts and incumbrances thereon.

That the said ~~council~~ senate be vested as aforesaid with legislative authority, and ~~with~~ that the Assent of the said ~~council~~ senate and General Assembly be essential to the enaction of Laws binding on the people of this State.

B. That the senate of the State of New York shall consist of Twenty-four ~~wise and discreet~~ freeholders to be chosen out of the body of the Freeholders. And that they be chosen ~~only~~ by the freeholders of this State possessed of Freeholds of the value of ~~forty~~ one hundred pounds over and above all Debts and Incumbrances thereon.

That the said Senate be vested as aforesaid with Legislative authority and that the assent of the said senate and General Assembly be essential to the enacting of laws binding on the people of this State.

The Convention rejected Robert Harper's motion to strike out the property qualification in draft B. On Mr.

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Jay's motion the word "charges" was substituted for "incumbrances." As finally adopted no property limit was fixed for senators, but they were required to be freeholders without regard to the value of the freehold owned by them; but they could be voted for only by persons owning a freehold worth £100 over and above all debts charged thereon. This required a much higher qualification for voters than for candidates.

(Senators, Term and Classification.) A. That the members of the ~~council~~ senate be elected for four years. That immediately after the first Election they be divided by Ballott into four classes, four in each class, and numbered, 1, 2, 3, 4. That the members of the first class vacate their seats at the Expiration of the first year, the Second Class the second year, and so on till a compleat rotation be had. Hence it will happen that after first Election ~~Counsellors~~ senators will annually be chosen.

B. That the members of the Senate be elected for four ~~one~~ years. That immediately after the first election they be divided by ~~ballot~~ lot in four classes ~~four~~ six in each class and numbered 1, 2, 3, 4. That the seats of the members of the first Class shall be vacated ~~their~~ seats at the expiration of the first year, of the second Class the second year, and so on till a compleat rotation be had.

According to the journal William Harper's motion to reduce the senatorial term from four years to one year was rejected "by a great majority." Draft B was substantially adopted, providing for a senate of twenty-four members divided into four classes with six in each class.

(Senators, How Chosen.) A. The election of ~~Counsellors~~ senators shall be after this manner:

The convention do ordain that this State be divided into four great districts of extent as near as may be to the number of Freeholders in this State and shall be extended or

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diminished in future as the number of Freeholders in them may encrease or diminish. That the several Counties of which each of the said great districts shall be composed do obtain the voices of their respective Freeholders for Counsellors in like manner and at the same time as for Representatives, and the County Clerks of each of the said Counties after receiving all the Ballotts of their little districts, shall together with two of the judges of the said respective counties meet at a place for that purpose to be by the legislature appointed and there examine the said Ballotts & the Judges aforesaid shall certify upon Oath to the Council the names of the Counsellors for that District for whom a plurality of voices shall appear.

And this convention do ordain that no freeholder shall be eligible to the office of ~~counsellor~~ senator in any other of the great districts than the one in which he shall usually and in Fact reside nor shall any Freeholder vote for ~~counsellors~~ senators in any other than the little District in which he shall usually and in fact reside—nor shall any Freeholder be capable of voting for a Counsellor, or be eligible to that office unless he shall previously have taken an oath of Allegiance to this State ~~and abjured all foreign authority whatsoever~~.

This paragraph was repeated in B, but seems to have been erased and the second paragraph below substituted for it as a marginal note.

A. (Addendum.) And this convention doth further ordain that the Election of Senators shall be after this manner. The Freeholders of each respective County within this State qualified to vote as aforesaid shall at every Election of Representatives in General Assembly also chuse by Ballot ~~double the number of Freeholders other~~ wise and discreet Freeholders double in number to the Representatives in General Assembly for their respective Counties Who shall be called Deputies for electing the Senate, but no Representative in General Assembly shall be eligible to the office

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of Deputy; and if it shall so happen that the Person chosen to be a representative shall at the same time have the greatest number of Suffrages as Deputy then he who shall have the next and greatest number not being a Representative in General Assembly shall be the Deputy. And this Convention doth further ordain that the Deputies being so chosen shall within days thereafter assemble at the Court House in or at such other place as shall hereafter be appointed by the Legislature and then proceed by Ballot and a majority of the Suffrages to elect the said twenty-four Senators, eighty-one of the said Deputies being always necessary to constitute a quorum and in order that the Representatives of the People in both Branches of the Legislature may be equal the Senators shall be taken out of the respective Cities and Counties in the proportion and manner following that is to say: From the City and County of Albany , from the County of Suffolk , from the County of Ulster , from the County of Dutchess , from the county of Westchester , from Queens County , from Kings County , from Orange County , from Richmond County , from Tryon County , from Charlotte County , from Gloucester County . ~~And this Convention doth ordain that of the said senators shall be chosen out of the Freeholders personally residing shall be chosen out of the Counties at all times be chosen out of the Freeholders actually and personally residing.~~

~~But after conferring on the Deputies a free conference respecting the persons and there proceed by Ballot to elect the said twenty four senators by a majority of suffrages eighty one members being necessary.~~

And this Convention doth ordain that the Election of Senators shall be conducted in the presence of the Chancellor ~~or one~~ two of the Judges of the Supreme Court who shall make a return of such Election ~~into the Chancery~~ under their hands and Seals into the Chancery where it shall remain until the succeeding meeting of the Legislature when the Chancellor or in case of his Death Sickness or Absence the

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Master of the Rolls shall . attend with the same in the House of Assembly in whose presence each of the Senators shall be duly qualified according to the Direction of this Constitution or of a future Legislature. And this Convention doth further ordain that Annually after the said first Election of Senators the Deputies for electing Senators shall in the same manner chuse Senators to succeed those who shall from time to time die remove resign or be displaced or who agreeable to the Rotation hereby established shall vacate their seats observing as an invariable Rule that the Senator chosen to supply any Vacancy shall be taken out of the County in which the Senator to whom he may be appointed to succeed personally resided. And this Convention doth further ordain that whenever a new County shall by Act of the Legislature be established and entitled to a Representative in General Assembly of members an additional Senator shall be elected out of such County in the same manner in all respects as other Senators are hereby directed to be chosen. And this convention doth further ordain that the Senators shall be eligible out of the Body of the Deputies or out of the Representatives in General Assembly or the body of Freeholders of the respective Counties.

This scheme apparently received no attention in the Convention. The idea seems to have been borrowed from the Maryland Constitution, which provided for the election of two delegates from each county, who were known as "electors of the senate." They were required to meet at the seat of government once in five years and choose fifteen senators. Both of these plans suggest the principle embraced in the method of choosing the President by electors, afterwards included in the Federal Constitution.

B. Marg. note. The election of Senators shall be after this manner. The state shall be divided into four great Districts; the Southern District to comprehend the City and

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County of New York, Suffolk, Westchester, Queens, Kings, and Richmond Counties. The Middle District to comprehend the Counties of Dutchess, Ulster and Orange. The Western District, city and county of Albany and Tryon county and the Eastern District the Counties of Charlotte, Cumberland and Gloucester. That the ~~Freeholders~~ Senators shall be elected by the Freeholders of the said Districts qualified as before described in the proportions following: in the Southern District nine; the Middle District six; the Western District six and the Eastern District Three. That ~~whenever~~ the number of Electors within any of the said Districts shall have increased one thousand which is extimated to be one-twenty-fourth part of the whole number of Electors now in this State an additional senator shall be chosen ~~within~~ by ~~such~~ the electors of such District. (and this rule shall be always observed whenever such an augmentation of Electors in any of the said Districts shall happen.) That thirteen members shall be necessary to constitute a senate capa sufficient to proceed upon Business; and that the senate shall be the judge of its own members ~~and shall have power~~

It seems from the journal that this paragraph was the only one on this subject considered by the Convention. Mr. Wisner proposed to increase the number of districts from four to fourteen, and to strike out the word "great," so that senators might be chosen by counties. This was the North Carolina plan of senate representation, but the journal tells us that it was rejected "by a great majority." The proposition by Robert Yates to divide the state into five districts instead of four received only three affirmative votes. The quorum was changed from thirteen to a majority, probably in view of the provision for additional senators under subsequent reapportionments. It will be observed that the section estimates the number of freeholders at 24,000, and provided for an additional senator for each additional one thousand freeholders. This was

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changed on motion of Mr. Morris by striking out the one thousand ratio, and providing for an additional senator on every increase of one twenty-fourth of the electors as shown by the latest enumeration. R. R. Livingston moved that, as soon as practicable after the close of the war, a census be taken, and the senate reapportioned on the basis of such enumeration. The Convention adopted an amendment offered by Philip Livingston that the census be taken seven years "after the close of the present war," and as thus modified the provision was included in § 12 as finally adopted.

(Political Rights Limited by Legislature Only.) A & B. That no person shall be disqualified to vote or to be elected, who is or shall be qualified in the manner herein described, unless by act of the Legislature of this State, any separate vote or resolution of either House notwithstanding who shall never by their votes create any such disqualifications, the people in this State being only fully represented in the whole Legislature; and consequently not to be otherwise bound than by acts of the whole Legislature.

Gilbert Livingston offered the following substitute for this section:

"That no member of this state shall be disfranchised or deprived of any of the rights or privileges secured to the subjects of this state by this Constitution unless by the law of the land and the judgment of his peers."

This was, in substance, the famous 39th Article of Magna Charta, and with the substitution of "or" for "and" in the last line, which was made on the motion of General Scott, the section was adopted, and has since been included in all our Constitutions, and, beginning with 1846, each Constitution has opened with this declaration of the citizen's rights.

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(Adjournments.) A. That neither the General Assembly of Representatives of the State of New York nor the council Senate of the State of New York shall respectively have power (marg. note, "to adjourn except from day to day without the mutual consent of both Houses").

B. That neither the General Assembly of Representatives of the State of New York, nor the Senate of the State of New York shall have power to adjourn for any longer time than two days ~~except from day to day~~ without the mutual consent of both Houses.

Form B was, in substance, adopted, and appears as § 14.

(Conference of the Two Houses.) A. That whenever the two Houses disagree a Conference shall be held in the presence of both Houses and be managed by committees to be ~~chosen~~ by them respectively chosen by Ballot, and that the doors of both Houses shall be open to all Persons except when the welfare of the State shall require their Debates to be kept secret and that ~~both Houses~~ the journals of the proceedings of both Houses shall be ~~published weekly~~ kept in the manner heretofore accustomed by the general assembly ~~in this State~~ and weekly published. ~~To sit on their own adjournments, provided they do not exceed a Week and that prorogations be made by the assent of both Houses but not a longer term than Six Months.~~

B. That whenever the two Houses disagree a Conference shall be held in the presence of both Houses and be managed by Committees to be by them respectively chosen by Ballot; and that the doors of both Houses shall be ~~kept~~ open to all persons, except when the welfare of the state shall require their debates to be kept secret. And the journals of the proceedings of both Houses shall be Kept in the manner heretofore accustomed by the General Assembly and except in the case aforesaid weekly published.

Both forms are quite similar, but draft B seems to have been used in the discussion. After an amendment by Mr.

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Jay giving the legislature discretion concerning the publication of its proceedings, and another by General Scott providing for a daily, instead of weekly, publication of such proceedings, the section was adopted and became § 15.

(Senate and Assembly, Number of Members.) B. Provided that the number of Senators shall never exceed 100 nor the Representatives in Assembly 300, and that whenever the number of Senators shall amount to 100 or the Representatives to 300 that then and in such case the Legislature shall have it in their power by law to settle from time to time the representation of this State in either of both Houses in such manner as will be most just and equal.

Draft B also contained the following provision as a marginal note, but which was apparently erased, and the foregoing provision substituted:

"That when the Senate of this State shall amount to one hundred members and the assembly shall consist of more than 500 Representatives a general convention of this State shall be convened in order to limit the number of members in either house to settle a just and equal representation of this state in the future."

The Convention rejected a substitute proposed by General Scott providing that on an increase of members in either house the proportion as established by the Constitution be continued without any reduction in the relative number. An amendment proposed by Mr. Jay was adopted, providing for an apportionment whenever the number of senators or members of assembly reached the constitutional limit. This provision appears at the end of § 16 as adopted.

(Executive.) A. And this convention doth further ordain ~~that that supreme executive power shall be vested~~

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~~in a Governor and Council of State~~ that a wise & discreet freeholder of this State be elected Governor by Ballot by the Freeholders of this State qualified as above to elect ~~counsellors~~ senators.

A. (Addendum.) That the supreme executive power shall be vested in a Governor and Council of State (marg. note, "~~and as often as the office of governor shall be vacant at the usual time and place of electing representatives in general assembly~~ that statedly once in every four years and as often as the seat of government shall become vacant") a wise and discreet Freeholder of this State shall be by Ballot elected Governor by the Freeholders. of this State qualified as before described to elect Senators (marg. note, "which election shall be always held at the times and places of choosing the Representatives in General Assembly for each respective County.")

B. That the ~~supreme~~ executive power and authority of this State shall be vested in a Governor and Council of State. That statedly once in every four years and as often as the seat of government shall become vacant a wise and discreet Freeholder of this State shall be by ballot elected Governor by the Freeholders of this State qualified as before described to elect Senators; which elections shall be always held at the Times and places of choosing the Representatives in General Assembly. for each respective County.

Draft B and the addendum to A are similar in principle. Both contemplate executive powers to be shared by the governor and a council, and both manifest an intention to deny the governor exclusive executive authority. The experience with the colonial governors was not calculated to induce the men who framed the Constitution to vest him with any considerable unrestrained authority. This is manifest, not only from these proposed provisions, but also from several others which will be considered in notes to subsequent sections. On motion of General Scott "supreme" was inserted before "executive," and,

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on motion of Mr. Adgate, the term of office was reduced from four years to three. As thus amended, draft A was adopted and appears as § 17.

(Governor, Term of Office.) A. That he shall ~~be~~ ex officio be a member and president of the council of ~~the state~~ State to be formed in the manner & for the purposes hereafter prescribed. That the governor so to be elected continue in office four years and have power to convene the legislature on extraordinary occasions. That he be general of the militia of this State and have power with the advice of the Council of State to grant Repriefs and Pardons except ~~in cases of Treason~~ for Treason & Murder in which cases he shall have power with the advice of the Council of State to suspend execution till the subsequent sessions of the legislature.

A. (Addendum.) That he shall continue in Office four years and shall ex officio be Captain General and Commander in Chief of all the militia and ~~the navy~~ and High Admiral of the Navy of this State (marg. note, "and preside at the Council of State") that he shall have Power with the advice of the Council of State to convene the General Assembly and Senate on extraordinary occasions and to grant Repriefs and Pardons except for Treason and Murder in which cases he may with the advice of the Council of State suspend the Execution of the Sentence until it shall be reported to the Legislature at their ~~next~~ Subsequent meeting and they shall either Pardon or direct the Execution of the criminal (marg. note, "or grant a further Reprief").

B. That he shall continue in office four years and shall ex officio be by virtue of his office Captain General and Commander in Chief of all the militia and High Admiral of the navy of this State ~~and preside at the Council of State~~. That he shall have power ~~with the advice of the Council of State to~~ convene the General Assembly and Senate on extraordinary occasions ~~to prorogue them for any time not exceeding sixty days~~ (marg. note, "to prorogue them from time to time provided such prorogation shall not exceed sixty days in the space of any one year. And upon the Recommendation

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of the Judges or Court before whom the criminal shall have been tried at his Discretion ~~except~~ to grant reprieves and pardons except in cases of" [marg. note ends]). ~~And to grant reprieves and pardons except for~~ Treason and Murder in which cases he may ~~with the advice of the Council of~~ State suspend the execution of the sentence until it shall be reported to the Legislature at their subsequent meeting; and they shall either pardon or direct the execution of the Criminal, or grant a further Reprieve.

In draft A we again discover the council of state, showing an evident intention to limit the powers of the governor. Mr. Tredwell objected to the governor's power to prorogue the legislature, but the Convention declined to strike it out. Draft B, with some verbal modifications, was adopted and appears as § 18.

(Governor, Duties of.) A. And that it shall be his duty at every session of the Legislature to inform them of his proceedings, and of the Condition of the State so far as may respect his department. And further that he shall be liable to be impeached for Mal & Corrupt Conduct in his office by the General Assembly provided three-fourths of the members present agree to such impeachment ~~and that the said Impeachments shall be tried by the council senate with the assistance of in conjunction with the chancellor and judges of the supreme court, agreeable to such laws as shall by the legislature be for that purpose enacted~~.

A. (Addendum.) That it shall be the duty of the Governor to inform the Legislature at every Session of his proceedings and of the Condition of the State so far as may respect his Department and to reccmmend such matters to their Consideration ~~as shall appear to him with the advice of the Council of State~~ to concern its good Government Welfare and Prosperity. And also to correspond with the Continental Congress and other States; transact all necessary Business with the Officers of Government civil and military; to take Care that the Laws are faithfully executed

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and to expedite all such measures as may be resolved upon by the Legislature. That he shall also have power with the advice of the Council of State and in the Recess of the Legislature to lay Embargoes or prohibit the Exportation of any Commodity for any time not exceeding thirty Days (marg. note, "and in Case any Emergency shall require an Embargo to be prolonged beyond the time above limited that then it shall be the Duty of the Governor to convene the Legislature and recommend it to the consideration") ~~that the Governor and Council of State shall appoint a Secretary of State shall officiate~~.

B. That it shall be the duty of the Governor to inform the Legislature at every Session of his proceedings and of the Condition of the State so far as may respect his department and to. recommend such matters to their consideration as shall appear to him to concern its good government, welfare and prosperity; and also to correspond with the Continental Congress and other States; transact all necessary business with the officers of Government civil and Military; to take care that the laws are faithfully executed; and to expedite all such measures as may be resolved upon by the Legislature.

Draft B was, in substance, adopted and became § 19.

(Council of State.) A. And this convention doth further ordain that once in every five years five wise and discreet Freeholders shall be chosen by the Joint Ballot by both Houses of Legislature as Counsellors of State three of whom to be a quorum to assist the Governor in exercising the Supreme executive Power; and to continue in office for the Term of five years; and all Vacancies by Removal of office Death Resignation or Absence from the State shall be supplied by the same authority. And this Convention doth further ordain that the Secretary of State shall officiate as Secretary of the Council of State and keep regular Journals of their Acts and Proceedings to which every Counsellor of State shall have free Access and the Privilege of entering his Dissent to any Resolution and the Reasons at large.

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Not in draft B. The idea of an executive council was doubtless inherited from the colonial period, and such a council had already been established by the Constitutions of several states. So far as it was intended to control or diminish the governor's authority its powers were vested in the Council of Appointment which was clothed with large executive functions, and, by construction, at first practical and later constitutional by the amendment of 1801, its members were given complete control of executive appointments. The provision in this paragraph making the secretary of state secretary of the council of state was followed, in substance, by the act of 1778 (chapter 12), which made the secretary of state *ex officio* clerk of the Council of Appointment. The limitation of the governor's veto power appears in the section creating the Council of Revision, which vested the joint veto power in the governor, the chancellor, and judges of the supreme court.

(Deputy Governor.) A. And this Convention doth further ordain that the ~~vice~~ president of the ~~council state~~ senate for the Time being shall be the Lieutenant or Deputy Governor of this State & ~~exercise all the authority not apportioned to the office of governor~~ but as such shall have no Authority except in Case of the Death, Removal, Resignation or Absence from the State of the governor and until another be chosen or the governor so absent return.

Not in B. The essential parts of this paragraph were included in the sections providing for a lieutenant governor and a president of the senate.

(Lieutenant Governor.) A. (Addendum.) And this Convention doth further ordain that at every Election of a Governor a Lieutenant Governor shall in the same manner be elected, who shall always ex officio be President of the

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Senate and in case of the Impeachment of the Governor or his Removal from Office, Death, Resignation or Absence from the State shall exercise all the Power and Authority pertaining to the office of Governor of this State until another shall be chosen or the Governor so absent shall return or be acquitted.

B. And this convention doth further ordain that at every election of a Governor a Lieutenant Governor shall in the same manner be elected who shall always by virtue of his office ~~ex officio~~ be president of the senate and upon an equal division have a casting voice in the ~~deliberations~~ Discussions; and in case of the Impeachment of the Governor or his removal from office, Death, Resignation or absence from the State ~~of the Governor~~ shall exercise all the power and authority appertaining to the office of Governor of this State until another shall be chosen or the Governor so absent or impeached shall return or be acquitted.

Draft A contained no provision for a lieutenant governor. In draft B the lieutenant governor was a constituent member of the senate to the extent that he could vote to dissolve a tie, which apparently would have given him the right to vote on a bill. The provision for a lieutenant governor appears as § 20.

(President of Senate.) A (addendum) & B. And whenever the Government shall be administered by the Lieutenant Governor, the Senators shall have power to elect one of their [Numbers] Members to the office of President of the Senate which he shall exercise during such Vacancy; [but] and if during such Vacancy of the office of Governor the Lieutenant Governor shall be impeached, displaced, resign or be absent from the State the [Council of State] President of the Senate shall [jointly] administer the Government and immediately issue a Proclamation for convening the Legislature at the End of thirty days, and at their meeting a Governor and Lieutenant Governor shall be appointed by Joint

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Ballot of both Houses to continue in Office until others shall be elected by the Suffrages of the People at the succeeding Election.

This provision is not in draft A, and does not seem to have elicited any serious discussion; it appears as § 21.

(State Treasurer, How Chosen.) A & B. That the Treasurer of this State shall be appointed by act of the Legislature [by the General assembly by Ballot & hold his office during their will and pleasure] to originate with the General Assembly provided that the (marg. note, "treasurer shall not be elected out of either Branch of the Legislature").

This provision appears as § 22.

(Officers, How Appointed.) A. And this convention doth further ordain that all other civil officers (and military) in this State shall be appointed in the manner following, viz.,

The governor for the Time being shall name to the Legislature such persons as he may deem qualified for the same, and the Legislature if they think proper may appoint them, if not the Governor shall continue to name others till he shall name such as may be agreeable to the Legislature; and in Case none of the first ~~six~~ four persons whom the governor may name shall be agreeable to the Legislature for any of the said offices, that then the legislature proceed to appoint without waiting for his further nomination.

B. And this convention doth farther ordain that all other civil officers in this State not heretofore eligible by the people ~~of the Colony of New York~~ shall be appointed in the manner following, viz.:

The Governor for the time being shall name to the Legislature such persons as he may deem qualified for the same and the Legislature if they think proper may appoint them, if not the Governor shall continue to name others till he shall name such as may be agreeable to the Legislature. And in case none of the first four persons whom the Governor may

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name should be agreeable to the Legislature for any of the said offices, that then the Legislature shall proceed to appoint without waiting for his further nomination.

After considerable discussion, Mr. Jay offered the following substitute:

"The General Assembly shall once in every year openly nominate and appoint one of the senators from each of the great districts which senators shall form a council for the appointment of the said officers, of which the governor for the time being or the lieutenant governor or president of the senate when they shall respectively administer the government shall be president and have a casting voice, but no other vote; and with the advice and consent of the said council shall appoint all the said officers, and that a majority of the said council be a quorum. And further that the same senators shall not be eligible to the same council for two years successively."

Later, on his motion, the speaker of the assembly was added as a member of the council. William Harper proposed to strike out the provision making the governor a member of the council, which would have left the sole power in the hands of the four senators. This was rejected by a vote of 12 to 27. Colonel De Witt's motion to add to the council one member of the assembly from each county was also rejected by the same vote. Mr. Wisner's motion to add one member of assembly to the council also met the same fate. On Robert Harper's motion the senators were made eligible for two successive years. On Mr. Jay's motion the section was amended by making it applicable to all civil officers whose appointment was not otherwise provided for by the Constitution, but later the word "civil" was stricken out. Robert Yates proposed a plan by which the senate and assembly would each nominate two persons, and from these four the gov-

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ernor would appoint one to the offices to be filled, except that the assembly was to furnish the governor a list of persons qualified for appointment as magistrates in each county, from which list he was to make his selection. This proposition, and also one by Mr. Tredwell, that all appointments be made by act of the legislature, was rejected. Robert R. Livingston proposed to increase the governor's power as a member of the council by giving him a vote on all questions, with the further provision that "on an equal division his shall be considered as the casting voice." This was rejected by a vote of 15 to 21. Mr. Morris moved that the words "and consent" be stricken out, with the intent that the governor may appoint as he pleases against the advice of the council, and appeal to the people. This was rejected by thirty-two negative votes. Mr. Tredwell's proposition, that the council be selected from the assembly instead of the senate, was also rejected by a vote of 2 to 34. On the 19th of April, on motion of R. R. Livingston, the provision making the speaker of the assembly a member of the council was stricken out, leaving the council composed of the governor and four senators chosen by the assembly. Jay was not then present, and did not attend the Convention again until several days after the Constitution was adopted.

The method of appointing officers was one of the most important matters considered by the Convention, and the plan finally adopted had a very significant influence on the political history of the state prior to the adoption of the second Constitution. The governor, lieutenant governor, senators, and members of assembly had been made elective by provisions already adopted. Most of the local officers were then elective by statute, and the provisions of this proposed section embraced a large number of offices, state as well as local, and prospective as well as

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those already in existence. The proposition shows that the time had not yet come for general popular elections, and it also shows the disinclination to vest the power of appointment in the governor. It was a curious mingling of executive and legislative functions, making the whole legislature practically an executive council. Mr. Platt's amendment to substitute the judges of the supreme court for the legislature was not less objectionable. We find an interesting commentary on the provision which led to the creation of a Council of Appointment, in the letter from Jay to Livingston and Morris, dated at Fishkill, April 29, 1777, nine days after the Constitution had been adopted, and before Jay returned to the Convention. In this letter Jay says that the plan of appointing officers by the governor and legislature was generally disapproved, that many other methods were devised by different members, that these and others suggested by himself were mentioned to the Convention, and that, while preferring the Platt amendment to the original clause, he thought a better method could be devised, and that he spent an evening with Livingston and Morris at their lodgings, in the course of which he, Jay, proposed the plan for the institution of the Council of Appointment, and that, after conversing on the subject, he, Livingston, and Morris agreed to bring it into the House the next day. It seems clear from this letter that Jay did not then know that the speaker had been eliminated from the council, for he refers to that provision as still a part of the section, remarking that it was adopted to "avoid the governor's having frequent opportunities of a casting vote." Jay's relations to this subject as Governor of the state twenty years afterwards, the trouble between himself and the other members of the council, resulting in the Convention of 1801, and the abolition of the council by the Conven-

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tion of 1821, will be considered in subsequent chapters. The section is number 23 in the Constitution as adopted.

(Officers to be Commissioned by Governor; Judicial Tenure.) A. That all Judges of Courts in this State, whether of Law, Equity or Admiralty hold their Offices during their good behavior or until they shall respectively have attained the age of Sixty-five years [or until the legislature shall think it expedient to remove them for incapacity to discharge the same].

A & B. That all military [and militia] officers shall be appointed by the Governor during pleasure [by and with the advice of the Council of State].

That all officers so to be appointed be commissioned by the Governor.

On Mr. Jay's motion the words, "all Judges of Courts, . . . whether of Law, Equity, or Admiralty," were stricken out, and the words, "the chancellor, the judges of the supreme court, and the first judge of the county court in every county," substituted. On Mr. Tredwell's motion the provision giving the governor power of appointment of all military officers was stricken out. It will be observed that the draft fixed the age limit at sixty-five years, but this limit was reduced to sixty years by the section (24) as adopted, but the journal does not show the change.

(Judges Not to Hold Other Office.) A & B. That none of the said judges shall [~~other than judges~~] ~~of inferior courts in the counties~~ hold any other office in this State together and at the same time with that of Judge, other than that of Delegate to the General Congress and if elected to any other office it shall be their election in which to serve.

This section was modified in form, but apparently without debate. It became § 25.

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(Sheriffs and Coroners.) A & B. That Sheriffs and Coroners be annually appointed provided that no person shall be eligible to either of the said offices for more than five years respectively [~~and that justices of the peace every three years. That all clerks of counties and courts be appointed every seven years. That the secretary of State be appointed every seven years~~].

The provision was added that the sheriff should hold no other office at the same time, and as thus modified the section was adopted and became § 26.

(County Treasurers; Town Officers.) A. That County treasurers, town clerks ~~of precincts or townships~~ assessors, supervisors, constables collectors be annually chosen, by Ballott by the Inhabitants of this State in such manner as the Legislature may direct.

That all other officers not hereinbefore named be appointed in such manner as the Legislature may direct.

Marg. note. "Commissioners & overseers of the highway, overseers of the poor, chamberlains of corporations, county treasurers, clerks of townships or highway supervisors, assessors, constables, collectors shall be elected or appointed in the manner heretofore accustomed until the legislature shall have prescribed a mode of such elections by ballot."

B. That County Treasurers, Town Clerks, Supervisors, Assessors, Constables and Collectors and all other officers heretofore eligible by the people shall continue to be appointed in the manner directed by the present or future acts of legislature.

This section, substantially from draft B, with some omissions and additions, became § 29.

(Delegates in Congress.) A & B. That delegates to represent this State in the general Congress of the American States be annually appointed by an act of the Legislature,

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without the nomination of the Governor, which shall originate in the [council] senate but be liable as all other acts are to the amendment of the general assembly below [~~as well with respect to names as anything else~~].

The Convention rejected an amendment offered by Mr. Tredwell providing that the seat of a member of the legislature should become vacant on his election to Congress. The substitute proposed by Mr. Morris was adopted, providing that "the senate and assembly shall each openly nominate as many persons as shall be equal to the whole number of delegates to be appointed, after which nomination they shall meet together, and those persons named in both lists shall be delegates; and out of those persons whose names are not on both lists, one half shall be chosen by the joint ballot of the senators and members of assembly so met together as aforesaid." This provision became § 30.

(Chancellor and Judges may sit in Senate.) A. marg. note. "That the judges of the supreme court & chancellor of this State sit ~~in~~ the ~~council of this State~~ senate to advise and deliberate, but not to vote on any question whatever."

B. That the Judges of the Supreme Court and Chancellor of this State shall sit in the senate to advise ~~and deliberate~~ but not to vote on any question whatever.

Not adopted. This suggestion to make the judges advisory members of the senate apparently received no direct consideration by the Convention, but the principle of the suggestion was practically adopted in the provision for a Council of Revision composed of the governor, chancellor, and judges of the supreme court, whose powers will be considered in a note to the section on that subject.

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(Court of Impeachments and Correction of Errors.) A (addendum) and B. And in order that all delinquents however exalted ~~in~~ their rank & station may be amenable to the Laws and prevented from screening themselves from Punishment under the sanction of Office and that the subject may be secured not only against corruption and the abuse of power but against the errors and mistakes of those who shall be entrusted with the dispensation of justice; This convention doth further ordain that a Court shall be instituted for the trial of Impeachments and the Correction of Errors under the Regulations which shall be established by the Legislature; and to consist of the senators, the Chancellor and the Judges of the Supreme Court, a majority of the Senators and of the Judges respectively with the chancellor being necessary to form a Quorum capable of proceeding on Business, except that when an impeachment shall be prosecuted against [~~either of the~~ senators] the Chancellor or either of the Judges of the Supreme Court he shall stand suspended from exercising his office until his acquittal and the other members shall constitute the Court; and in like manner when an appeal from a Decree in Equity shall be heard the Chancellor shall inform the Court of the reasons of his Decree; but shall not have a voice in the final sentence —And if the cause to be determined shall be brought up by writ of error on a question of Law on a judgment in the Supreme Court the Judges of that Court shall assign the Reasons of such their Judgment but shall not have a [have no] voice for its Affirmance or Reversal.

Draft B, omitting the preamble, was adopted with some modifications in form, and became § 32.

(Impeachment.) A (addendum) & B. And this convention doth further ordain that before the said Court for the Trial of Impeachments and the correction of Errors the Governor or other commander in chief [the lieutenant governor, the Senators] the chancellor, the Judges of the Supreme court [Counsellors of State] Secretary of State, Judges of Admiralty, [Master of the Rolls] Judges of Pro-

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bate & all other judicial officers shall respectively be liable to be impeached by the general Assembly for Mal & Corrupt Conduct in their respective offices; three-fourth parts of the members agreeing to such Impeachment. That previous to the trial of every impeachment the members of the said court shall respectively be sworn truely and impartially to try and determine the charge in Question according to evidence; and that no Judgment or Sentence of the said Court shall be valid unless it shall be assented to by three-fourth parts of the members who assisted at the Trial; nor shall it extend farther than to removal from office and Disqualification to hold or enjoy any place of Honor, Trust or Profit under this State. But the party convicted shall nevertheless be afterwards subject to a farther trial in the Supreme Court by a jury of the Country and to such additional Punishment according to the nature of the Offense and the law of the land as by the Judgment of the said court shall be inflicted.

On General Scott's motion, the following was substituted for the first sentence: "That the power of impeaching all officers for mal and corrupt conduct in their respective offices be vested in the representatives of the people in general assembly; but that it shall always be necessary that two-third parts of the members present shall consent to and agree to such impeachment." The following was substituted for the last sentence: "But the party so convicted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment according to the laws of the land."

After some other modifications, principally in form, the section was adopted and became 33.

While this subject was under consideration the following provision relating to counsel was adopted and became § 34:

"And it is further ordained, That in every trial on impeachment or indictment for crimes or misdemeanor the

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party impeached or indicted shall be allowed counsel as in civil actions."

(Common Law Continued.) A (addendum) & B. And this Convention doth further ordain that the Common Law of England and so much of the Statute Law of England and Great Britain as have heretofore been adopted in practice in this State as well as all Acts of the former governors, councils & General Assemblies of the Colony of New York which were respectively in force in this State on the Day of last shall until until altered or repealed by a future Legislature of this State continue to operate and be of force and effect unless where they are temporary in which case they shall expire at the times ~~respectively~~ limited for their Duration [~~or unless such parts of the said common, statute and provincial laws being excepted as the sovereignty and prerogatives and allegiance late heretofore exercised by the King of Great Britain and his ancestors or which are repugnant to the Declaration of Independence lately proclaimed in this State~~] such parts of the said common statute and provincial laws [respectively] being rejected and hereby [~~annulled~~] as concern [~~respects~~] the Allegiance [~~and~~] heretofore yielded to and the Sovereignty Government and Prerogatives claimed or exercised by the King of Great Britain and his [ancestors] predecessors. [Marg. note, "over this state and its inhabitants or which imply a power in the Parliament of England or Great Britain ~~to~~ restrain or regulate commerce manufacturers or internal policies of this State, or respect the Church of England or are incompatible with a free & equal Toleration of all Denominations of Christians without distinction or Preference"] or which are repugnant to the Rights and priviledges of a free & Independent ~~State~~ people or to the Constitution and frame of Government declared and established by this Convention, Saving to all bodies corporate & politic and to all private Persons the Lands, Tenements, hereditaments, Rights, Immunities and franchises derived from the King of Great Britain & his [Ancestor] predecessors before the [fourth] day of [July last].

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It will be observed that the original proposed to adopt the common law of England. This was qualified by Robert Yates's amendment of the first clause making it read: "such parts of the common law." etc. The Convention added a provision validating the acts of the colonial congresses and the present Convention, and, on motion of Abraham Yates, the proceedings of the committee of safety were included in this confirmation. The foregoing provisions became § 35.

(Religious Toleration.) A. And whereas it becomes the benevolent principles of rational Liberty not only to expell civil Tyranny, but also to guard against that Spiritual oppression and Intollerance, wherewith the Bigotry and Ambition of weak and wicked priests and princes have scourged mankind.

This Convention in the name and by the Authority of the good people of this State do further ordain determine and declare that free Toleration be forever allowed in this State (marg. note, "in religious Profession and worship to all mankind") ~~to all denominations of Christians without preference or distinction and to all Jews, Turks and Infidels, other than to such Christians or others as shall hold and teach for true Doctrines principles incompatible with and repugnant to the peace, safety and well being of civil society in general or of this state in particular of and concerning which doctrines and principles the legislature of this State shall from time to time judge and determine and further that as the prevalence of Religion and Learning greatly contributes to the Happiness & Security of the people of every free State, the legislature of this State ought shall to afford them all proper encouragement.~~

B. That the free ~~exercise~~ Toleration of religious profession and worship be forever allowed within this State to all mankind.

This was a marked change from the policy concerning religious toleration which then prevailed in the colony.

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In the Introduction I have quoted the rule declared by the Duke of York, in his appointment of Governor Andros, in 1674, granting full religious toleration, and have also quoted the paragraph on the same subject in the instructions to Governor Sloughter, in 1691, in which "Papists" were excepted from the liberty of conscience thereby guaranteed. This restrictive policy had been continued and was in force at the beginning of the Revolution. The instructions to Governor Tryon, the last colonial executive with general jurisdiction, bear date February 7, 1771. He continued in office three years after the first Constitution was framed,—till the latter part of March, 1780,—and the royal instructions to him were therefore in force when the Convention considered the foregoing proposition. Article 60 of the Tryon instructions is as follows:

"You are to permit a liberty of Conscience to all persons except Papists so they be contented & quiet with a peaceable enjoyment of the same not giving offense or scandal to the government."

It will be observed that this is substantially identical with the rule stated in the Sloughter instructions, in 1691, and that consequently this policy of limited religious toleration had prevailed for eighty-six years. It is therefore not surprising that a large number of delegates in the Convention favored a continuation of the restriction to which the people of the colony had so long been accustomed.

The instructions, following a long line of precedents, further provided for religious worship under the auspices of the established church by the requirement (article 61) that:

"You shall take especial Care that God Almighty be devoutly & duly served throughout your Government the Book of Common prayer as by Law established read each

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Sunday & Holliday & the blessed Sacrament administered according to the rites of the Church of England."

A provision was also made for building and maintaining churches and parsonages, and for other details of ecclesiastical administration. The Bishop of London was given exclusive ecclesiastical jurisdiction in the colony, and his certificate was a necessary prerequisite to the appointment of any minister.

Thus, when the Convention began the consideration of a plan or frame of government for the new state, the established church was one of the institutions of the colony. It formed a most important part of the colonial Constitution, and, because of the union of church and state then existing, the church was as much under the fostering care of the government as any other department of colonial affairs. The governor had power to appoint ministers to local churches, and he was directed to procure the removal of any minister who might give scandal by his doctrine or manners. But the details of our ecclesiastical history do not belong here, and I only need add that an examination of the legislative records shows that ecclesiastical affairs frequently engaged the attention of the colonial legislature. The first constitutional convention determined on a separation of church and state, not only by adopting the policy of universal religious toleration, but also by adopting a provision excluding ministers from the right to hold civil offices, and (article 35) by expressly abrogating and rejecting all parts of the common law or statutes which "may be construed to establish and maintain any particular denomination of Christians or their ministers."

The debate on the section concerning religious toleration, and the propositions for its amendment, afford a striking illustration of the determination then manifest by many of the patriots to incorporate in the Constitu-

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tion a provision that should absolutely insure religious freedom. John Jay, doubtless remembering the sufferings endured by his Huguenot ancestor, Pierre Jay, on the revocation of the Edict of Nantes, proposed to require all citizens to renounce the ecclesiastical as well as the political sovereignty of any foreign power. His opinions on this subject are shown not only by his proposed amendments to this section, but also by the amendments suggested to the section on naturalization. His purpose here is manifest from two propositions submitted by him when this section was under consideration. The first was as follows:

"Provided, nevertheless, that nothing in this clause contained shall be construed to extend the toleration of any sect or denomination of Christians or others, by whatever name distinguished, who inculcate and hold for true doctrines principles inconsistent with the safety of civil society of and concerning which the legislature of this state shall from time to time judge and determine."

After considerable debate Mr. Jay withdrew this amendment. and offered the following:

"Except the professors of the religion of the Church of Rome, who ought not to hold lands in or be admitted to, a participation of the civil rights enjoyed by the members of this State, until such time as the said professors shall appear in the supreme court of this State, and there most solemnly swear, that they verily believe in their consciences, that no pope, priest or foreign authority on earth, hath power to absolve the subjects of this State from their allegiance to the same. And further that they renounce and believe to be false and wicked, the dangerous and damnable doctrine, that the pope or any earthly authority have the power to absolve men from sin described in and prohibited by the Holy Gospel of Jesus Christ; and particularly, that no

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pope, priest or foreign authority on earth hath power to absolve them from the obligation of this oath."

This was debated at great length, and rejected by a vote of 10 to 19. The next day, Mr. Jay proposed the following addition after the word "mankind:"

"Provided, that the liberty hereby granted shall not be construed to encourage licentiousness or be used in such manner as to disturb or endanger the safety of the state."

Robert R. Livingston proposed the following addition as a substitute for the Jay amendment:

"Provided, that this toleration shall not extend to justify the professors of any religion in disturbing the peace or violating the laws of the state."

This was rejected, and Jay's amendment was adopted by a vote of 19 to 11. After further consideration Gouverneur Morris moved to amend the paragraph as follows: Between the words "be" and "construed" the word "so" be inserted, that the words "to encourage" be obliterated, and the words "as to excuse acts of" there substituted, and that after the word "licentiousness" the remainder of the paragraph be stricken out and the following words inserted, "or justify practices inconsistent with the peace or safety of this state,"—so that the whole paragraph may read thus: "Provided that the liberty of conscience hereby granted shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state." This was adopted unanimously.

(Ministers Disqualified from Holding Office.) A & B. And whereas the Ministers of the Gospel are by their Pro-

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fession dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their Function. Therefore this Convention doth ordain and determine that no Minister of the Gospel or Priest of any denomination whatever shall at any Time hereafter under any pretense or description whatever be eligible to or capable of holding any civil or military office within this State [of any kind whatever.]

Adopted in substance as presented, except that on General Scott's motion the words "or place" were added after "office." § 39.

(Militia.) A & B. And whereas it is of the utmost Importance to the Safety of every State that it should always be in a ~~state~~ condition of defense, and it is the duty of every man who enjoys the protection of any society to be prepared and willing to defend it, this Convention doth ordain and declare that the whole Militia of this State at all times hereafter (as well in peace as in war) shall be armed and disciplined and in readiness for Service. And that all such of the Inhabitants of this State as from scruples of Conscience may be averse to bearing arms, be therefrom excused by the Legislature & do pay to the State such sums of Money in Lieu of their personal Services, as the same may in the Judgment of the Legislature be worth, so as to put all the Members of this State on an equal Footing. And further that a proper Magazine of warlike stores proportionate to the number of Inhabitants be ~~from time to time and at all times~~ forever hereafter at the Expense of the State and by Acts of the Legislature established, maintained and Continued in every County in this State.

The paragraph was amended by limiting the exemption to Quakers only, and with this change was adopted and became § 40.

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(Trial by Jury.) A & B. And this Convention doth further determine that Tryal by jury in all cases in which ~~they have~~ it hath been heretofore used in the Colony of New York shall be forever established & remain inviolate.

Marg. note to B. "~~And that no Persons whatsoever within this State shall be liable to any Loss or Punishment from any Act of Attainder or other sentence of Condemnation where the Party hath not an opportunity of being heard in his defence~~. And no acts of attainder whatsoever shall be passed within this State."

Mr. Morris moved that the clause prohibiting acts of attainder be amended by adding the words "for crimes hereafter to be committed," and, on Mr. Jay's motion, the Convention agreed to the amendment in the following form,—"for crimes that may be committed after the termination of the present war; and such acts shall not work a corruption of blood." This permitted acts of attainder until the close of the war. Later the clause was again modified, and adopted in the following form: "That no acts of attainder shall be passed by the legislature of this state, for crimes other than those committed before the termination of the present war; and that such acts shall not work a corruption of blood." Robert Harper offered a proviso to the jury clause, "that no jury shall hereafter be compellable to unanimity in their verdict." This was rejected by a vote of 3 to 28. Mr. Adgate's motion authorizing a verdict by three fourths of a jury was rejected by the same vote. On Mr. Jay's motion the following clause was added to the section: "And further, that the legislature of this state shall at no time hereafter institute any new court or courts, but such as shall proceed according to the course of the common law."

(Naturalization.) B. That every person and persons that shall hereafter come within this State and purchase lands

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or Tenements within the same and before the Supreme Court shall take an oath of allegiance to the State shall be thereby naturalized and hold and enjoy all the rights and privileges of other the subjects of this State.

Draft A contained no provision on this subject.

Here was the full flower of state sovereignty before the state was organized and had a frame of government. The section as originally proposed required the naturalization of persons coming from other states, as well as from foreign countries. This was no comity, but an assertion of exclusiveness which happily was modified before the close of the discussion. The author of this section proposed to exclude from citizenship in New York persons residing in other states, unless they should become the owners of real property in the state, and take an oath of allegiance. Jefferson proposed a similar rule in his draft of a constitution for Virginia, June, 1776,—the earliest draft I have found for any state,—requiring a seven years' residence and an oath of allegiance, and made no discrimination between foreigners and residents of other states.

When the paragraph on naturalization was reached Mr. Jay moved to insert the following clause between the words "state" and "shall:" "And abjure and renounce all allegiance and subjection to all and every foreign King, prince, potentate, and state in all matters, ecclesiastical as well as civil." This amendment shows a clear purpose to exclude from the rights of citizenship any person who was unwilling to renounce his allegiance to any foreign power, ecclesiastical or civil. After refusing to strike out the words, "and subjection," proposed by Mr. Morris, the Convention adopted the Jay amendment by a vote of 26 to 9. Mr. Jay proposed the following addition to the section: "Provided, that nothing herein contained shall be construed to interfere with the connection heretofore

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subsisting between the Dutch congregations in this state and the classes and synods in Holland;" which after some debate he moved to amend by striking out all after "construed to" and substituting the following: "Discontinue the innocent connection which the non-Episcopalian congregations in this state have heretofore maintained with their respective mother churches in Europe, or to interfere in any of the rights of the Episcopalian churches now in this state, except such as involve a foreign subjection." The Convention was evidently unwilling to introduce denominational matters into the Constitution, and the last amendment was rejected by a vote of 6 to 29. Mr. Jay then asked, and apparently obtained, leave to withdraw the first amendment on this subject, but it seems that the Convention afterwards voted on it and rejected it unanimously. An amendment proposed by Mr. Jay requiring applicants to "comply with such further regulations as the future legislatures of the state may from time to time make respecting the naturalization of foreigners" was rejected by a vote of 13 to 19. The discussion evidently gave the Convention a broader view of the subject, and Mr. Morris proposed to state the provision in the following short form: "That it shall be in the discretion of the legislature to naturalize all such persons and in such manner as they shall think proper," and, after adding the following clause offered by Mr. Jay, already adopted, "provided the persons so to be by them naturalized, shall take an oath of allegiance to this state and abjure and renounce all allegiance and subjection to all and every King, prince, potentate, and state in all matters, ecclesiastical as well as civil,"—the section was adopted. It is evident that the Convention was not satisfied with the section, and Mr. Morris moved to strike it out. The Convention declined to do this, but adopted unanimously, after considerable debate, an amendment offered by Mr.

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Jay, applying the section to persons who, "being born in parts beyond sea and out of the United States of America, shall come to settle in and become subjects of this state," and the paragraph as thus amended was finally adopted by a vote of 20 to 15, and became § 42. The Jay amendment perfected the scheme by confining naturalization to foreigners without any attempt to exclude Americans from citizenship in this state.

While the subject of naturalization was under consideration, and after the Convention had evidently decided not to require applicants to become owners of real property, a committee was appointed, consisting of John Jay, James Duane, and Robert R. Livingston, "to report and prepare a paragraph for enabling the members of the other United American states to hold lands in this state." This shows the undeveloped condition of opinion among the statesmen of that period concerning the reciprocal relations between citizens of different states. The mere suggestion that the Constitution should contain regulations respecting the ownership of real property in this state by nonresident American citizens shows that there was apparently no thought of a permanent union of the states with a common and interchangeable citizenship. This committee made no report, and the Convention does not seem to have given the subject any further attention.

There is a striking parallel in many particulars, especially in relation to the independent attitude maintained by the states toward one another in the first stages of our separate history, to that which existed in ancient Greece, where, as Grote tells us in his "History of Greece," vol. 2, pp. 183, 184, Harper's edition, "in respect to political sovereignty, complete disunion was among their most cherished principles," and that, "sovereign authority within the city walls," was a settled maxim in the Greek mind. "The relation between one city and another was

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an international relation, not a relation subsisting between members of a common political aggregate. Within a few miles from his own city walls, an Athenian found himself in the territory of another city, wherein he was nothing more than an alien,—where he could not acquire property in house or land, nor contract a legal marriage with any native woman, nor sue for legal protection against injury, except through the mediation of some friendly citizen. The right of intermarriage and of acquiring landed property was occasionally granted by a city to some individual nonfreeman, as matter of special favour, and sometimes (though very rarely) reciprocated, generally between two separate cities."

It will be remembered that the Articles of Confederation adopted by Congress November 15, 1777, and ratified by the New York legislature February 6, 1778, contained the provision that "each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled," and that by the articles the states formed a "league of friendship" for certain specified purposes; but there was a distinct advance toward national comity in the provision that the "free inhabitants" of each state, with certain exceptions, were "entitled to all privileges and immunities of free citizens in the several states," with the "right of ingress and regress" and should "enjoy therein all the privileges of trade and commerce," in like manner as the inhabitants thereof. The principle of this provision is included in the Federal Constitution (article 4, § 2, subd. 1) and also in the 14th Amendment.

The provision concerning naturalization included in the first Constitution was of brief duration. Ten years later the Federal Constitution, adopted in 1787, and which went into operation in 1789, vested in Congress the power

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"to establish an uniform rule of naturalization," and by the enactment of the Federal Law in 1790 this provision of our Constitution became obsolete.

(Official Oath.) A & B. That every Oath of Office hereafter to be administered in this state shall among other Things impose an Obligation on the party taking it to do his duty as a good Citizen in maintaining the Independency [and union of the United States of America] of this State.

This was not adopted, nor any provision requiring an official oath. Mr. Jay in his letter to Livingston and Morris, referred to in the note on the Council of Appointment, expressed regret that a provision had not been adopted that all persons holding offices under the government should swear allegiance to it, and renounce all allegiance and subjection to foreign Kings, princes, and states in all matters, ecclesiastical as well as civil.

April 19th, Mr. Abraham Yates, from the committee appointed to report a plan for organizing a form of government, by direction of that committee, moved, and was seconded by Mr. Morris, that the following paragraph be inserted in the plan of government:

"And be it further ordained, That the register and clerks in chancery be appointed by the chancellor; the clerks of the supreme court by the judges of said court, the clerks of the court of probate by the judge of the said court; and the register and marshal of the court of admiralty by the judge of admiralty, the said marshal, registers and clerks to continue in office during the pleasure of those by whom they are to be appointed as aforesaid."

Mr. Jay was not present when this paragraph was adopted, and in his letter to Livingston and Morris protested against it as an unwise change of the plan of ap-

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pointment of officers which had been adopted before he was called away from the Convention.

On motion of Robert R. Livingston, seconded by Mr. Morris, the Convention adopted two additional paragraphs, one relating to the admission of attorneys, which in the final form is a part of § 27, and another relating to the duration of offices, which is § 28. Mr. Jay in his letter to Livingston and Morris characterizes the section providing for the admission of attorneys as "the most whimsical, crude, and indigested thing I have met with." He thought that attorneys should be admitted by the supreme court only, and that they should not be obliged to procure a license from every local court in which they had occasion to practice.

Abolition of slavery.—Mr. Morris moved that the following paragraph be added to the plan of government:

"And whereas a regard to the rights of human nature and the principles of our holy religion, loudly call upon us to dispense the blessings of freedom to all mankind; and in as much as it would at present be productive of great dangers to liberate the slaves within this state; it is, therefore, most earnestly recommended to the future legislature of the state of New York to take the most effectual measures consistent with the public safety, and the private property of individuals, for abolishing domestic slavery within the same, so that in future ages every human being who breathes the air of this state shall enjoy the privileges of a freeman."

The part of the proposition without the preamble was adopted by a vote of 24 to 8. Consideration of the preamble was postponed. The next day Mr. Morris proposed a new preamble as follows: "Inasmuch as it would be highly inexpedient to proceed to the liberating of slaves within this state, in the present situation thereof." This was adopted by a vote of 24 to 12. Mr. Robert R.

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Livingston then moved the previous question on the preamble and section, and the previous question was carried by a vote of 31 to 5. There does not seem to have been another vote on the section and preamble, but, according to the journal, the vote on the previous question was the end of the subject at this time. Mr. Jay supported Mr. Morris in this plan to provide for the abolition of slavery, and in his letter of April 29, already cited, he regrets that a provision on this subject was not adopted. He hoped to make New York the pioneer in the movement for the abolition of slavery.

Indian contracts.—Mr. Jay offered the following additional paragraph:

"Whereas the right of pre-emption to all Indian lands within this state appertains to the good people thereof; and whereas it is of great importance to the safety of this state that peace and amity with the Indians within the same be at all times supported and maintained; and whereas the frauds too often practiced towards the said Indians in contracts for their lands have for divers instances been productive of dangerous discontents and animosities. Be it ordained, That no purchase or contracts for the sale of lands made since the 14th day of October in the year of our Lord, 1775, or which may hereafter be made with or of the said Indians, within the limits of this state, shall be binding on the said Indians or deemed valid unless made under the authority and with the consent of the legislature of this state."

This was adopted omitting the first clause of the preamble relating to the right of pre-emption of Indian lands.

Council of Revision.—While the second section relative to the governor's veto power was under consideration, Robert R. Livingston presented the following plan for a Council of Revision:

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"And whereas laws inconsistent with the spirit of this constitution or with the public good may be hastily and unadvisedly passed, be it ordained that the governor for the time being, the chancellor and the judges of the supreme court or any two of them, together with the governor shall be and hereby are constituted a council to revise all bills about to be passed into laws by the legislature; and for that purpose shall assemble themselves from time to time when the legislature shall be convened; for which nevertheless they shall not receive any salary or consideration under any pretense whatever, and that all bills which have passed the senate and assembly shall before they become laws be presented to the said council for their revisal and consideration and if upon such revision and consideration it should appear improper to the said council or a majority of them that the said bill shall become a law of this state, that they return the same together with their objections to the same in writing to the senate, who shall enter the objections sent down by the council at large in their minutes, and proceed to reconsider the said bill. But if, after such reconsideration two thirds of the senators present shall, notwithstanding the said objections, agree to pass the same it shall together with the objections be sent down to the general assembly, where it shall also be reconsidered, and if approved by two thirds of the members present shall be a law. And in order to prevent any unnecessary delay:

"Be it further ordained, That if any bill shall not be returned by the council to the senate within ten days after it shall have been presented to the council the same shall be a law, unless the legislature shall by their adjournment render a return of the said bill within ten days impracticable, in which case the bill shall be returned to the senate on the first day of the meeting of the legislature after the expiration of the said ten days."

It will be observed that a vetoed bill was to be returned to the senate in all cases. On Mr. Hobart's motion the provision was amended by requiring a disapproved bill

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to be sent to the house in which it originated. Mr. Hobart's amendment also changed the rule in the original section by which a vetoed bill could be repassed by a vote of two thirds of the members of each house "present," so that it must have been passed by two thirds of the house to which it was returned, and by two thirds of the members present in the other house, requiring the assent of two thirds of all the members, instead of those present. In other respects the paragraph was approved as presented by Mr. Livingston, and became § 3 of the Constitution finally adopted.

(Militia Officers.) ~~That all military or militia officers hold their commissions during the will & pleasure of the legislature.~~

This appears in A, erased, but is not in B.

Constitution Adopted.

The Constitution was considered and discussed from day to day until April 20th, when the whole instrument was reviewed, and, after several minor corrections and some important ones, it was read and adopted by a vote of 32 to 1; the only dissenting vote was cast by Peter R. Livingston, of Albany. The journal shows that during the discussion of the Constitution less than one third of the entire Convention was in attendance. We are doubtless justified in assuming that the other members were elsewhere engaged in the performance of patriotic duties incident to the exigencies of the times, or, for other good and sufficient reasons, were prevented from attending the Convention. Mr. Jay had been called away by his mother's death, which occurred on the 17th, and was not present when the Constitution was adopted. General Ten Broeck, president of the Convention, and Mr. Duane were

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also absent. Vice President Pierre Van Cortlandt was "detained by adverse weather on the opposite side of the river." General Leonard Gansevoort of Albany was acting as president *pro tem.* It seems that the secretaries of the Convention used all their influence to prevent the final question being met that evening, for the reason that the president and vice president were both absent, and for the further reason that they wished to engross and prepare a copy for signature, but their objections were unavailing, and the Constitution was adopted, including the amendments agreed to during the day, and without being engrossed. The draft as thus agreed to was signed by Leonard Gansevoort, president *pro tem.,* but the secretaries, "indulging some feeling on the occasion, did not countersign the draft, and the Constitution as finally adopted did not receive their attestation." The following are the names of the men who voted to adopt the new Constitution and thus institute an independent state government in New York:

Albany.—Leonard Gansevoort, president *pro tem.,* John Ten Broeck, Jacob Cuyler, Abraham Yates, John James Bleecker.

Charlotte.—John Williams, Alexander Webster.

Cumberland.—Simon Stephens.

Dutchess.—Jonathan Landon, Robert R. Livingston, Gilbert Livingston.

New York.—John Morin Scott, Evert Bancker, Peter P. Van Zandt, Daniel Dunscomb, Robert Harper, James Beekman, Anthony Rutgers.

Orange.—Henry Wisner, Jeremiah Clarke, William Allison.

Suffolk.—William Smith, Thomas Tredwell, Matthias Burnet Miller, John Sloss Hobart.

Tryon.—William Harper.

Ulster.—Christopher Tappen.

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Westchester.—Gouverneur Morris, Gilbert Drake, Lewis Graham, Ebenezer Lockwood.

The Constitution was not submitted to the people, but took effect immediately, and, according to *Jackson ex dem. Russell* v. *White,* 20 Johns. 313, above cited, its adoption was deemed the origin of the state government. This day must therefore stand in history as

THE BIRTHDAY OF THE STATE OF NEW YORK,

SUNDAY, APRIL 20, 1777.

Forty-five years later, 1822, Mr. Jay felt compelled to reply to a newspaper criticism charging him with the responsibility for the action of the Convention in adopting the Constitution on Sunday, stating that he was called away by his mother's death on the 17th and was absent several days. His letter to Livingston and Morris, of April 29th, already referred to, shows that if he had been present he would have opposed the adoption of the Constitution, possibly not because it was Sunday, but because he deemed it incomplete, and wished to offer additional amendments. This Convention frequently met on Sunday, and it was not the first of the early conventions to meet on that day. The exigencies of the times demanded prompt and continuous attention, and the delegates seemed to appreciate the fact that war is a rude leveler of days, as well as of men and institutions.

The Convention, immediately after adopting the Constitution, ordered that it be published at the court house in Kingston on the following Tuesday, and that the chairman of the Kingston committee be requested to notify the inhabitants of Kingston thereof. On that day, Tuesday, April 22, 1777, the new Constitution was read at Kingston by Robert Benson, one of the secretaries of the Convention, from a platform erected on the end of a hogs-

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head, Vice President Pierre Van Cortlandt presiding. Thus was launched the first Constitution of New York.

Professor John Alexander Jameson, in his "Constitutional Conventions," says that this Constitution "was at that time generally regarded as the most excellent of all the American Constitutions." John Adams said that he believed it would do very well. Jay wrote to Gansevoort: "Our Constitution is universally approved, even in New England, where few New York productions have credit." Mr. Jay was chosen first chief justice of the new state, and at the opening of the first term of the supreme court under the authority of the Constitution, held at Kingston September 9, 1777, in the charge to the grand jury he described the new Constitution as "excellent," and said that it had given general satisfaction at home, and been not only approved, but applauded, abroad. John Austin Stevens said that "it is asserted to have been essentially the model of the national government under which we live."

The draft of the first Constitution, attested by Leonard Gansevoort, president *pro tem.*, the 27th and 28th sections of which and a part of the preamble are wanting, was deposited in the office of the secretary of state on the 30th of August, 1821. It came to the secretary's office from John McKesson, a nephew of John McKesson, one of the secretaries of the Convention, who retained possession of the Convention documents and records until his death.

Government Established.

But this Constitution could not itself set a new government in motion, and further action was necessary either by the Convention or the people, to provide public officers and machinery for the new state. The Convention, on the same day that the Constitution was adopted, April 20,

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1777, appointed a committee consisting of Robert R. Livingston, John Morin Scott, Gouverneur Morris, Abraham Yates, John Jay, and John Sloss Hobart, "to prepare and report a plan for organizing and establishing the government agreed to by this Convention." While this plan was under consideration by the committee the Convention decided to choose certain state and local officers. This was an assumption by the Convention of authority which it apparently did not possess, for by the Constitution which had just been adopted provision was made for the selection of these officers, either by appointment by the Council of Appointment, or by the governor, or by election by the people. This action shows the revolutionary and somewhat irregular methods adopted to set the new government in motion. If the provisions of the Constitution had been followed strictly, the Convention would have provided for the election of the governor, lieutenant governor, and the legislature; the legislature would have provided a Council of Appointment, and the officers would then have been chosen under constitutional sanction.

Instead of this, some forty men, about one third of the Convention, determined to choose the principal state officers and certain local officers in advance of the governor and legislature: and they also determined to select the senators and members of assembly from the southern part of the state, which was then in possession of the British, and where no election could then be held under the new Constitution. These proceedings are a very striking instance of the difficulties confronting the New York patriots in their efforts to establish an independent government; but, however irregular the proceedings of the Convention may have been when judged by principles applicable to an orderly constitutional government in time of peace, it must not be forgotten that New York was then

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the scene of active military operations, that many members of the Convention were in the field, earnestly engaged in the great struggle, and that those who found it practicable to attend the Convention could not be expected to adhere to the technical rules now deemed so essential in the administration of constitutional government.

The Third Provincial Congress, by the resolutions adopted May 31, 1776, recommending a new election of deputies authorized to institute and establish "such a government as they shall deem best calculated to secure the rights, liberties, and happiness of the good people of this colony," had evidently intended to provide for the election of a congress with full power to organize such a government; but it should be noted that when this election was recommended, and when it was held, American independence had not been declared, and that the resolutions providing for the election stated that the government so to be instituted by the new Provincial Congress was "to continue in force till a future peace with Great Britain shall render the same unnecessary." If peace had resulted without independence, the government so established by the deputies would have been of a temporary character, unless continued by the terms of peace.

But when the deputies, elected under these resolutions, and with this authority, assembled to form the Fourth Provincial Congress, independence had been declared, and the relations of the colony to the home government had been dissolved. The new congress was, therefore, confronted by a problem which did not exist when it was elected, and, instead of instituting a temporary government for the colony, it was obliged to institute a new government for the new state.

The new Provincial Congress construed its powers to be broad enough for the emergency, and that it had authority, not only to institute a government to meet present condi-

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tions, but that it also had authority to institute a permanent government for the state. This authority being conceded, it followed as a corollary that the Convention might not only construct the framework of a government, which appears in the written Constitution, but that it also might create or continue offices, and select needed officers to perform the functions of government till the routine of elections and appointments had become established under constitutional and legislative authority. It seems like a great stretch of authority for the Convention to select senators and members of assembly to represent particular districts and counties simply because the people, owing to the presence of the enemy, were unable to hold elections. There was no element of popular choice in this transaction. The Convention appreciated this fact, and admitted the temporary character of the selection by providing that the people themselves at the earliest opportunity might select their own representatives, who should at once take the place of those chosen by the Convention. The propriety of this proceeding does not seem to have been questioned at the time, and the result justifies the wisdom and prudence of the Convention. It may be noted, as showing the acquiescence of the people in this action, that one of the senators, Pierre Van Cortlandt, appointed by the Convention to represent the southern district, was chosen the first president of the new senate.

On the 8th of May the Convention adopted the following

ORDINANCE.

"WHEREAS, Until such time as the Constitution and Government of this state shall be fully organized, it is necessary that some persons be vested with power to provide for the safety of the same:

"*Therefore resolved,* That John Morin Scott, Robert

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R. Livingston, Christopher Tappen, Abraham Yates, Jun. Gouverneur Morris, Zephaniah Platt, John Jay, Charles De Witt, Robert Harper, Jacob Cuyler, Thomas Tredwell, Pierre Van Cortlandt, Matthew Cantine, John Sloss Hobart, and Jonathan G. Tompkins, or the major part of them, be, and they hereby are appointed a Council of Safety, and invested with all the powers necessary for the safety and preservation of the State, until a meeting of the Legislature: Provided that the executive powers of the State shall be vested in the Governor, as soon as he shall be chosen and admitted into Office; previous to which admission, such Governor shall appear before the said Council, and take the oath of allegiance, and also the following oath of office, to be taken by the Governors and Lieutenant Governors of this state, to wit,

"'I by the suffrage of the Freeholders of the State of New York, according to the laws and Constitution of the said State, elected to serve the good people thereof, as their do here, solemnly, in the presence of that almighty and eternal God, before whom I shall one day answer for my conduct, covenant and promise to and with the good people of the State of New York, that I will in all things, to the best of my knowledge and ability, faithfully perform the trust, so as aforesaid reposed in me, by executing the laws, and maintaining the peace, freedom, honour, and independence of the said State, in conformity to the powers unto me delegated by the Constitution; and I pray God so to preserve and help me, when in my extremest necessity I shall invoke his holy name, as I do keep this my sacred oath and declaration.'

"AND WHEREAS, The appointment of officers in this State is by the Constitution thereof vested in the Governor, by and with the advice and consent of a Council of

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Appointment, which doth not and cannot exist until after an election of Representatives in Senate and Assembly.

"AND WHEREAS, Many of the said officers are necessary, not only for the immediate execution of the laws of this State, and the distribution of justice, but also for the holding of such Elections as aforesaid.

"*Therefore resolved,* That the following persons be, and they hereby are appointed within this State, by authority of the same, to wit, That Robert R. Livingston, be Chancellor, John Jay, Chief Justice, Robert Yates and John Sloss Hobart, Puisne Judges, and Egbert Benson, Attorney General of this State. That Volkert P. Douw, be First Judge, and Jacob C. Ten Eyck, Abraham Ten Broeck, Henry Bleecker, Walter Livingston, and John H. Ten Eyck, the other Judges for the County of Albany: and that Henry J. Wendell, be Sheriff, and Leonard Gansevoort, Clerk of the said County. That Ephraim Paine, be First Judge, and Zephaniah Platt, and Anthony Hoffman, the other Judges, for the County of Dutchess; and that Melancton Smith, be Sheriff, and Henry Livingston, Clerk of the said County. That Lewis Morris, be First Judge, Stephen Ward, Joseph Strang, and Jonathan G. Tompkins, the other Judges, for the County of West-Chester; and John Thomas, be Sheriff, and John Bartow, Clerk of the said County. That Levi Pawling, be First Judge, and Dirck Wynkoop, jun. the other Judge, for the County of Ulster; and that Egbert Dumond, be Sheriff, and George Clinton, Clerk of the said County. That , be First Judge, and , the other Judges, of the County of Tryon; and that Anthony Van Veghton, be Sheriff, and , Clerk of the said County. That , be First Judge, , the other Judges, of the County of Orange; and that Jesse Woodhull, be Sheriff, and , Clerk of the said County. That William Duer, be First Judge,

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John Williams and William Marsh, the other Judges, for the County of Charlotte; and that Edward Savage, be Sheriff, and Ebenezer Clarke, Clerk of the said County. That be First Judge, the other Judges, of the County of Cumberland; and that Paul Spooner, be Sheriff, and Clerk of the said County. And that , be the First Judge, and the other Judges, for the County of Gloucester; and that Nathaniel Merril, be Sheriff, and Clerk of the said County.

[The blanks for inserting the names of judges and clerks of the counties of Tryon and Orange were, at the request of the deputies from those counties, not filled up; the said deputies engaging to be answerable to their constituents for the same; and the blanks for judges and clerks of the counties of Cumberland and Gloucester were not filled up for want of a representation of, and sufficient information from, the said counties.]

"*And Further Resolved,* That each and every of the persons herein before appointed, do, before the Council of Safety aforesaid, or such persons as shall be by them appointed, take and subscribe the following oath of allegiance, to wit,

" 'I do solemnly swear and declare, in the presence of Almighty God, that I will bear true faith and allegiance to the State of New York, as a good subject of the said State: and will do my duty as such a subject ought to do.'

"*And Further,* That every of the judicial officers above mentioned, do before he take upon him the exercise of his office, make the following oath, in manner above mentioned,

" 'I do solemnly swear and declare, in the presence of Almighty God, that I will, to the best of my knowledge and abilities, execute the office of within the State of New York, according to the Laws and

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Constitution of the said State, in defense of the freedom and independence thereof, and for the maintenance of liberty, and the distribution of justice among the subjects of the said State, without fear, favour, partiality, affection or hope of reward.'

"And also that every of the Sheriffs herein before named, do, before he exercise his said office, take in like manner, the following oath, to wit:

" 'I Sheriff of the County of do solemnly swear and declare in the presence of Almighty God, that I will in all things, to the best of my knowledge and ability, do my duty as Sheriff of the said county according to the Laws and Constitution of this State of New York for the furtherance of justice, and in support of the rights and liberties of the said State, and of the subjects thereof.'

"And that every of the Clerks herein before named, do in like manner, take the following oath, to wit,

" 'I Clerk of do solemnly swear and declare, in the presence of Almighty God, that I will justly and honestly keep the records and papers by virtue of my said office of Clerk committed unto me, and in all things, to the best of my knowledge and understanding, faithfully perform the duty of my said office of Clerk, without favour or partiality.'

"AND WHEREAS, It will be proper that all officers within this State, be, as soon as possible, appointed, in the mode for that purpose prescribed by the Constitution:

"*Therefore Resolved,* That all and singular the officers herein before appointed, shall respectively hold their offices, according to the tenure of such offices respectively specified in the said Constitution, if respectively approved of by the Council for the appointment of officers, at their first session; at which session, such of the said officers as shall be approved of by the said Council, as aforesaid,

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shall receive their commissions in proper form. It is nevertheless provided, That every of the persons herein before named, who held the like office with that so as aforesaid conferred upon him, under authority derived from the King of Great Britain, during good behaviour, shall continue to hold the said office, so long as he shall well and faithfully perform the duties of such office.

"AND WHEREAS, No permanent provision could, with propriety, be made in the Constitution of this State, for the mode of holding Elections within the same, such provisions being properly within the power of the legislature, and depending, from time to time, upon the situation and circumstances of the State:

"AND WHEREAS, It is necessary to point out some mode, by which Elections for a Governor, Lieutenant-Governor, and Members of the Legislature may be held within this State:

"*Therefore Resolved,* That the Sheriffs of the several counties, hereinbefore mentioned, upon public notice for that purpose, by them given, at least ten days before the day of Election, do direct that Elections be held for Governor, Lieutenant-Governor and Senators, in each county, by the freeholders thereof, qualified as is by the Constitution prescribed, and for Members of Assembly, by the people at large, at the following places, to wit,

"In the county of Albany, at the City-Hall in the city of Albany,—at the house of William White, in Schenectady,—at the house of George Man, in Schohary,—at the house of Lambert Van Valckenburgh, at Cocksackie Flatts,—at the house of Cornelius Miller, at Claverack,—at the house of Solomon Demming, in King's district,—at the house of Isaac Becker, in Tamhanick,—and at the house of Abraham Bloodgood, at Stillwater.

"In the county of Ulster, at the Court-House in the town of Kingston,—at the house of Ann Du Bois, in New

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Paltz,—at the house of Sarah Hill, in Hanover precinct, —at the house of Martin Wygant, in the precinct of Newburgh.

"In the county of Orange, at the Court-House in Goshen,—at or near the Presbyterian Church, in Warwick,—at the house of John Brewster, in the precinct of Cornwall,—at the Court-House at the New-City, in the precinct of Kakiat,—at the house of Paulus Vandervoort, in Haverstraw,—and at the house of Joseph Maybee, in the precinct of Tappan.

"In the county of Westchester, at the house of Elijah Hunter, in Bedford,—and at the house of Captain Abraham Thiel, in the Manor of Cortlandt.

"In the county of Dutchess, at the house of the Widow of Simon Westfall, deceased, in Rhinebeck precinct,—at the house of John Stoutenburgh, in Charlotte precinct,— at the house of Captain Jonathan Dennis, in Beekman's precinct,—at or near New Hackensack church, in Rumbout precinct,—and at Matthew Patterson's, in Fredericksburgh precinct.

"In the county of Tryon, at the house of Jonathan Veder, in Mohawk district—at the house of John Dunn, in Canajohary district,—at the Church, in Stone Arabia, in Palatine district,—at the house of Frederick Bellinger, in the German Flatts district,—at Smith's Hall in Old England district,—and at the house of Alexander Harper in the town-ship of Harpersfield.

"In the county of Cumberland, at the house of Seth Smith, in Brattleborough,—at the house of Luke Knoulton, in New-Fain,—at the Court-House in Westminster, —at the house of Tarbell, in Chester,—at the Town-House in Windsor,—and at the house of Colonel Marsh, in Hertford.

"In the county of Charlotte, at the new Presbyterian Church, in New-Perth—at the house of Anthony Hoff-

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nagle, in Kingsbury,—at the house of Nathaniel Spring, in Granville,—and at some convenient place in each of the Towns of Manchester, Danby, and Castle-Town.

"And in the county of Gloucester, at such places as the Sheriff of the said County, by the advice of the County Committee shall appoint, for the convenience of the Electors within the same.

"And that the Sheriffs of every county, shall order the elections to be held in each place above-mentioned, in his county, on the same day, under the direction of two reputable Freeholders; one to be appointed by the County Committee, the other by the Sheriff to attend at each of the places, where the Elections are, as aforesaid, directed to be held in every county, who shall jointly superintend the said Elections, and return to the Sheriff of the county in which such Elections are held, true poll lists of the Elections in the said several places, for Governor, Lieutenant-Governor, Senators and Representatives in Assembly; which lists the Sheriff shall transmit under his oath of office, to the Council of Safety, as far as the same shall relate to Governor, Lieutenant-Governor and Senators, and shall cast up the greatest number of votes for the Representatives in Assembly, and make return of the names of such of them as are duly elected, in the manner that has heretofore been usual and customary; and the Council of Safety shall, upon receipt of the poll lists of the Election of Governor, Lieutenant-Governor and Senators, examine the same, and declare who is the Governor, who the Lieutenant-Governor, and who the Senators so chosen, and shall administer to the said Governor and Lieutenant-Governor, the oath of allegiance and of office. The said Elections within the several counties to be so held, as that the persons thereby chosen may be assembled at Kingston, in the county of Ulster, or such other place as the said Council of Safety shall appoint, on the first

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day of July next; Provided that if by any unforeseen accident, such Elections cannot be so held, then the said Council shall order Election at such other time or times, as shall, in their opinion, be most conducive to the general interest of the State.

"*And it is Further Resolved,* That such Freeholders as have fled from the southern parts of this state, and are now actually resident in any of the other counties of this State, shall be entitled to vote within such counties, for Governor and Lieutenant-Governor as if they had actually possessed Freeholds within the same. And that in case an Election in any county should not be held, by reason of the death or resignation of the Sheriff, or for any other cause, that the Council of Safety, or the Governor, in case he shall be sworn into his office, issue orders for an Election for Representatives in Assembly, in such county, and appoint a returning officer to hold the same. And where no County Committee shall be in being, or such Committee shall neglect to appoint returning officers for the places above named in such county, that the person for that purpose appointed by the Sheriff shall alone hold the Election, and make return to the Sheriff, in like manner, as is above directed.

"AND WHEREAS, It is impracticable for the inhabitants of the southern district of this State, to choose Senators to represent them in the Senate thereof, or for the counties of the said district, Westchester excepted, to elect Representatives in Assembly; and it is reasonable and right to give to the said district and counties, a proportional share in the legislation of the whole State, as far as is possible in its present circumstances; therefore *Resolved,* That Lewis Morris, Pierre Van Cortlandt, John Morin Scott, Jonathan Lawrence, William Floyd, William Smith of Suffolk, Isaac Roosevelt, Doctor John Jones, and Philip Livingston, be and they hereby are ap-

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pointed Senators for the southern district of this State; and in case of vacancy, such vacancy to be filled up by the choice of the Assembly. And that Abraham Brasher, Daniel Dunscomb, Evert Bancker, Peter P. Van Zandt, Robert Harpur, Abraham P. Lott, Jacobus Van Zandt, Henry Rutgers, jun., and Frederick Jay, be, and they hereby are appointed Representatives in Assembly of the city and county of New York; Philip Edsall, Daniel Lawrence, Benjamin Coe, and Benjamin Birdsall, of the county of Queens; Burnet Miller, David Gelston, Ezra L'Hommedieu, Thomas Tredwell, and Thomas Wickes, of the county of Suffolk; William Boerum and Henry Williams, of the county of Kings; and Joshua Mercereau and Abraham Jones of the county of Richmond; and in case of vacancy, such vacancy to be filled up by the choice of the Senate, Provided always, that none of the said Senators or Representatives in Assembly so appointed, or hereafter to be appointed as aforesaid, shall continue longer in office than until the Electors they represent shall respectively be in a capacity of electing.

"By Order of Convention.

"Abraham Ten Broeck, President.

"Attest. John McKesson, Sec'ry."

Convention Adjourns; Council of Safety.

The Convention continued its sessions until the 13th of May, 1777, when it was dissolved. Its last act was to direct the Council of Safety to meet at the same place, Kingston, on the next day,—the 14th. The Council of Safety organized on the 14th of May by the unanimous election of Pierre Van Cortlandt president, and Robert Benson and John McKesson, secretaries. They had served as secretaries of the Provincial Convention, and were afterwards chosen respectively clerks of the senate

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and assembly. On the 19th of May, 1777, the Council of Safety adopted a resolution requiring the sheriffs to give notice of an election for governor, lieutenant governor, senators, and members of assembly. The date of the election was not fixed in the resolution, but each sheriff was required to give the longest notice possible, and to proceed without further warrant or authority. By the ordinance of the 8th of May it was directed that the elections be held at a time which would enable the legislature to meet on the 1st of July at Kingston, or at such other place as the Council of Safety might designate.

The ordinance required at least ten days' notice of the election, but did not require the election to be held in all the counties on the same day. The elections were held in the month of June, but the legislature did not meet on the 1st of July. The returns of the elections for governor, lieutenant governor, and senators, were canvassed by the Council of Safety on the 9th of July, at Kingston. This canvass showed that George Clinton was elected both governor and lieutenant governor.

On the same day the council addressed a letter to him congratulating him on his election to the office of governor and lieutenant governor, and requesting him to attend at Kingston at his earliest convenience and take the oath of the office which he accepts, and resign the other, so that a new election may be held to fill the vacancy.

General Clinton replied to this letter from Fort Montgomery on the 11th, accepting the office of governor. He expressed the opinion that his acceptance of the office of governor made it unnecessary to resign the office of lieutenant governor, but, for the purpose of removing any doubt on this question, he tendered a formal resignation of the office of lieutenant governor. He also said that, in view of the expected approach of the enemy, it would be

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impracticable for him to leave his post "until the enemy's designs are more certainly known."

On the 21st of July the Council of Safety adopted a resolution in which General Clinton was most earnestly requested to appear before the council to take the oath of office, and enter upon the discharge of the important duties of the office of governor.

On the 30th of July, 1777, General Clinton appeared before the council and took the oath of allegiance, and also the oath of office, which oaths were administered to him by Pierre Van Cortlandt, president of the council.

A proclamation was issued by the council on the same day, in and by which the council proclaimed and declared "the said George Clinton, Esq., Governor, General, and Commander in Chief of all the Militia, and Admiral of the Navy of this state, to whom the good people of this state are to pay due obedience according to the laws and Constitution thereof."

Legislature Organized.

On the 16th of July the Council of Safety adopted a resolution convening the legislature at Kingston, Ulster county, on the 1st day of August, and requesting the county committees to notify their representatives in senate and assembly accordingly. The legislature did not meet on the 1st day of August. On the 6th of August, Governor Clinton issued a proclamation proroguing the legislature until the 20th day of August, and, by another proclamation dated August 18, he prorogued the legislature again until the 1st day of September. On the last-named day several members of each house met at Kingston, but the number was not sufficient to proceed to business, and they adjourned from day to day until a sufficient number appeared.

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The constitutional convention had held its sessions in the court house, but, when the legislature convened, that building was occupied by the supreme court with Chief Justice John Jay presiding. The senate met at the house of Abraham Van Gaasbeck, and the assembly at the public house of Evert Bogardus. The legislature of 1887, by chapter 134, provided for the purchase of the Van Gaasbeck house. It is now owned by the state, and is known as the "senate house."

In the senate a quorum appeared on the 9th, and the senate was organized by the election of Pierre Van Cortlandt, of Westchester county, president, and Robert Benson, clerk. The first senate was composed of the following members:

From the southern district.—Lewis Morris (p. c.); Pierre Van Cortlandt* (p. c.); John Morin Scott* (p. c.); Jonathan Lawrence* (p. c.); William Floyd;* William Smith of Suffolk* (p. c.); Isaac Roosevelt (p. c.); Doctor John Jones;* Philip Livingston* (p. c.).

From the middle district.—Levi Pawling* (p. c.); Henry Wisner* (p. c.); Jesse Woodhull;* Zephaniah Platt* (p. c.); Jonathan Landon* (p. c.); Arthur Parkes* (p. c.).

From the eastern district.—Alexander Webster* (p. c.); William Duer (p. c.); John Williams (p. c.).

From the western district.—Abraham Yates, Jun.* (p. c.); Rinier Mynderse; Dirck W. Ten Broeck;* Isaac Paris (p. c.); Anthony Van Schaick;* Jellis Funda.

Those marked with a star were present at the organization of the senate. Those marked (p. c.) were members of the Provincial Convention. It thus appears that seventeen members of the first senate were members of the convention which framed the Constitution.

A quorum of members of assembly did not appear until

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the 10th; on that day thirty-six members appeared, and the assembly was organized by the election of Walter Livingston, of Albany, speaker, and John McKesson, clerk. The following is the list of members of the first assembly. Those marked with a star were present at the organization. Those marked (p. c.), twenty-three, were members of the Provincial Convention.

From the city and county of New York.—Abraham Barsher* (p. c.); Daniel Dunscomb* (p. c.); Evert Bancker* (p. c.); Jacobus Van Zandt (p. c.); Henry Rutgers, Jun.; Frederick Jay; Peter P. Van Zandt* (p. c.); Robert Harper* (p. c.); Abraham P. Lott (p. c.).

From the city and county of Albany.—Jacob Cuyler (p. c.); John Tayler* (p. c.); Robert Van Rensselaer (p. c.); Walter Livingston;* William B. Whiting;* Peter Vrooman; John Cuyler, Jun.;* James Gordon; Stephen F. Schuyler; Killian Van Rensselaer.*

From the county of Suffolk.—Burnet Miller (p. c.); David Gelston (p. c.); Ezra L'Hommedieu* (p. c.); Thomas Tredwell* (p. c.); Thomas Wickes.*

From Ulster county.—Johannis G. Hardenburgh;* John Cantine; Johannis Snyder; Cornelius C. Schoonmaker;* Henry Wisner, Jun.* (p. c.); Matthew Rea* (p. c.).

From Queens county.—Philip Edsall; Daniel Lawrence; Benjamin Coe; Benjamin Birdsall.*

From Kings county.—William Boerum; Henry Williams.*

From Richmond county.—Joshua Mercereau; Abraham Jones.

From Westchester county.—Gouverneur Morris* (p. c.); Zebediah Mills* (p. c.); Robert Graham;* Thaddeus Crane;* Israel Honeywell, Jun.; Samuel Drake.*

From Orange county.—John Hathorn;* Jeremiah Clarke* (p. c.); Tunis Kuyper;* Roeluff Van Houten.*

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From Dutchess county.—Dirck Brinkerhoff;* Anthony Hoffman* (p. c.); Gilbert Livingston* (p. c.); Jacobus Swartout;* Andrew Moorhouse;* John Schenck (p. c.); Egbert Benson.*

From Tryon county.—Michael Edie; Samuel Clyde; Abraham Van Horne;* Jacob Snell; Johannis Veeder (p. c.); Jacob G. Klock.

From Charlotte county.—Ebenezer Russell; Ebenezer Clarke; John Rowen; John Barns.

There were no returns from the counties of Gloucester and Cumberland.

An incident illustrating the survival of royal custom occurred at the opening session. When the assembly was organized it appointed a committee of two members to inform the Governor "that the House are ready to proceed to business, and wait His Excellency's *commands.*" After waiting on the Governor, the committee reported that he was pleased to inform them "that he would send for the House immediately." In the afternoon of the same day the Governor's private secretary appeared in the assembly and announced that "His Excellency requires the immediate attendance of the House in the court room." The assembly accordingly attended at the court room, and, on returning, the speaker again took the chair and announced, in the quaint formality of the time, "that His Excellency had been pleased to make a speech to the House, and to present him with a copy thereof," which was read and entered on the journal. This form of entry was followed, substantially, until the legislative session of 1823, when the Governor sent a message to the legislature, as required by the new Constitution, instead of delivering a speech at the opening of the session in the presence of the two houses. The senate journal shows similar proceedings, except that the Governor "requests,"

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instead of "requires," its immediate attendance in the court room.

The Hadden Case.

An incident illustrating the difficulty attending the new government, and which at the same time shows great solicitude for personal rights, arose the 1st of October, 1777, when Thomas Hadden, confined in the Ulster county jail, presented to Chief Justice John Jay and Associate Justices Robert Yates and John Sloss Hobart, a petition for a writ of habeas corpus, which was denied by the judges on the ground that, by the ordinance of the 8th of May, the officers appointed by the Convention were to be approved by the Council of Appointment at its first session; that the council had held a session, but had failed to approve or disapprove the appointment of the judges, and that for that reason the judges had no authority to act and issue the writ. On the 2d of October, Hadden presented to the assembly a petition setting forth these facts, reciting, also, that he had made frequent applications to the late Convention and Council of Safety for his release, which were unavailing because of "their constant attention to objects of greater and more general importance;" that his application to the judges for a writ had been refused for the reasons stated; that thereby he had been "deprived of one of the most valuable privileges of a free subject;" and that "the channels of justice are stopped up;" and he therefore applied to the assembly as the "grand inquest of this state," and as the "guardians of the people," "to assert and vindicate their rights and privileges." The assembly immediately ordered its clerk to serve a copy of the petition on the judges, and direct that they attend the house that day at 4 o'clock in the afternoon. They attended accordingly, and, in reply to a question by the speaker in compliance with an order of

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the house, said that the facts stated by Hadden were true, and, on being asked to assign reasons for refusing the writ of habeas corpus, submitted a written statement in which they expressed the unanimous opinion that, by reason of the failure of the Council of Appointment to approve their selection as judges, they had no authority to issue the writ. Thereupon the assembly adopted a resolution offered by Gouverneur Morris, declaring that the reasons assigned by the judges "are satisfactory," and the Council of Appointment was requested "to approve of the several officers appointed by an ordinance of the late Convention for organizing and establishing the government, agreed to by the said Convention, or to appoint others in their stead, to the end that the Governor may be enabled to issue commissions to such officers as they may so approve, or appoint."

On the 17th of October the council appointed Robert R. Livingston chancellor, John Jay chief justice, and Robert Yates and John Sloss Hobart associate justices.

Thus closed an incident which illustrates the extreme caution of the founders of the state in beginning the administration of a government intended to represent a just appreciation of the rights of the individual, and to be wholly free from oppression and tyranny. The Bill of Rights had guaranteed the right to the writ of habeas corpus to every Englishman, and by the Constitution this right had become the inheritance of every citizen of New York. It could not be withheld, except for very cogent reasons. It is worth noting that only three weeks after the organization of the first assembly it was called on to institute an inquiry into the conduct of the judges of the supreme court. The assembly entertained Hadden's petition, and "ordered" the judges to attend the house for the purpose of examining the matter. The Constitution had clothed the assembly with the power of impeachment,

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and the summons to the judges, based on Hadden's petition, was the initial step which might have resulted in an impeachment if it had appeared that the judges refused the writ from improper motives, or for unjustifiable reasons. Gouverneur Morris, ever ready in an emergency, here, again, showed his tact and good sense by offering a resolution which, after full debate, was adopted with only four dissenting votes, declaring that the reasons assigned by the judges for refusing to issue the writ "are satisfactory."

This incident is worthy of more than a passing notice. The men charged with the administration of public affairs were trying to set the new state machinery in motion. After some delay the legislature had assembled, and had received its first formal communication from the Governor. The judicial branch of the government had also begun the performance of its duties; but, when the legislature convened and was organized on the 10th of September, the executive department was still incomplete, for, by the Constitution, a Council of Appointment was to be established with power to appoint or confirm nearly all public officers. Soon after the legislature convened the assembly elected four senators to act with the Governor in the Council of Appointment. By the ordinance of the 8th of May, 1777, the selection of the judges by the Convention was only temporary, and they were permitted to act only until a meeting of the Council of Appointment. That council met on the 16th of September, but neglected to act on the judicial appointments. Hence, by a strict construction, the authority of the judges terminated on that day, and they could not lawfully grant a writ of habeas corpus. Hadden appealed to the assembly, not for the purpose of preferring charges against the judges, but with the view of inducing action which would clothe the supreme court with complete judicial authority. The

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assembly acted promptly and clearly within its jurisdiction. The judges were required to appear before the assembly and explain their reasons for refusing to grant the highest writ available for a citizen,—the writ of habeas corpus. They responded to the call of the assembly, not as defendants under accusation, but as members of a co-ordinate branch of the government, to explain why they had declined to exercise judicial power in that case. The incident is probably without a parallel in this state. In these modern days the assembly, while possessing jurisdiction to do so, would probably not call before it in this manner a justice of the supreme court whose official conduct had been made the subject of inquiry, but in those initial days of greater simplicity such a proceeding offered the easiest solution of a problem which might have become vexatious if technical rules of procedure had been applied to it. The judges appeared, and in a dignified statement presented the reasons for their refusal to grant the writ. It was a scene for an artist. We may readily picture the assembly in the old court house at Kingston where the first Constitution had been made, where the first supreme court had been held by Chief Justice John Jay himself, where the first legislature had convened, where the first governor had delivered his first speech to the legislature, and where the first Council of Appointment had been selected, listening to the reply by the judges who had been the honored colleagues of many of them in the late Convention and committees and Council of Safety, and especially to the chief justice, who had borne such a conspicuous part in public affairs during the last two years. There stood the judges ready to give a respectful answer to a respectful request from a branch of the government numbering among its members twenty-three of their associates in the late Convention. Chief Justice Jay bore himself here with his accustomed

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dignity and prudence, firmly asserting the correctness of his position, and declining to exercise a doubtful judicial authority. We shall see him again twenty-three years later, when, after having served as the first chief justice of the United States, having performed distinguished diplomatic service for the nation, and having returned to be chosen governor of the state, he once more asserts a great constitutional principle, and denies the right of the senatorial members of the Council of Appointment to equal authority with himself in the selection of public officers.

This legislature continued in session until October 7, 1777, when, in consequence of the capture of Fort Montgomery by the British, it was obliged to discontinue its sessions.

The following extract from the senate journal, January 5, 1778, tells its own story, and shows the agitated condition of the state at that time:

"About Noon on Tuesday, the 7 Day of October last, News came by Express of the Reduction of Fort Montgomery, in the Highlands, and its Dependencies by the enemy: and although this senate thereafter adjourned until Wednesday Morning, the 8 of October last, yet so many Members of the Honorable the House of Assembly absented themselves on military Service, and for the necessary Care of their Families, in Consequence of that Event, that there were not a sufficient Number of them left at Kingston to form a House for Business; which rendered the Meeting of the Senate according to adjournment, useless; and therefore the Senate ceased to attend on the public Business, until His Excellency the Governor thought proper to convene the legislature of this state, by his proclamation."

The Council of Safety, appointed by the Provincial Convention, was authorized to act only until a meeting of

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the legislature; therefore, when the legislature met and was fully organized on the 10th of September, 1777, the powers of this council ceased. At its last meeting held on that day it adopted a resolution requesting the Governor and chancellor to devise and procure a great seal for the state.

New Council of Safety.

On the 7th of October, the members of the senate and assembly convened, not as a legislature, but to form a convention to provide for the safety of the state. Pierre Van Cortlandt was chosen president. On the same day this Convention appointed a new Council of Safety, composed of the following members: William Floyd, John Morin Scott, Abraham Yates, Johannes Snyder, Egbert Benson, Robert Harper, Peter Pra Van Zandt, Levi Pawling, Daniel Dunscomb, Evert Bancker, Alexander Webster, William B. Whiting, and Jonathan Landon.

This council was authorized to act when the Convention was not in session, and was vested with "the like power and authorities which were given to the late Council of Safety;" and each senator, member of assembly, and delegate in Congress was entitled to sit and vote in this council. The governor or president of the senate, when present, was required to preside at the council, and was given a casting vote.

On the same day the Convention transmitted to Governor Clinton a copy of the resolution organizing the Convention and creating the Council of Safety, with the following letter:

Kingston, October 7, 1777.

Sir:—

By the enclosed resolution, your Excellency will perceive what steps the legislature have taken to provide for

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the safety of the state in the present emergency. The impossibility of keeping the several members in attendance on so critical an occasion must apologize for the measure. We hope soon to meet you again in our former capacity as members of the senate and assembly; in the interim you will be pleased to make application to the Council of Safety for such matters and things as may to you appear from time to time necessary.

Here, again, we see the difficulties that confronted the patriots. They could not even carry on a constitutional government in a constitutional way, but found it necessary to resort to an irregular and unconstitutional convention composed of the same men as the legislature; and by the creation of the Council of Safety the powers of the state were delegated to a possible seven men. The excuse given for this action was that it was impossible, or impracticable, to keep a quorum of the members of the legislature together.

This new Council of Safety was given large legislative and administrative powers. It was more revolutionary than the first council, for that council was an instrument of government created when there was no settled form of government, and as a necessary expedient to preserve order and administer affairs until the new government could be set in motion. But when the new Council of Safety was created the state government had been organized. There was a governor, a legislature, and a judiciary already performing the functions assigned to them under the Constitution and the laws. The legislature, as such, did not create the Council of Safety. It might have passed a law vesting in such a council needed administrative powers for the emergency. But the exigencies were very pressing, and the occasion was very sudden. The British were already making rapid progress in an attempt to conquer

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the Hudson river country, and the patriots could not wait for the slow formalities of legislation. It is also worth noting, in this connection, that the men in actual control of state affairs had served through several Provincial Congresses, and some of them were in the old Council of Safety. They quite naturally, therefore, turned to that expedient in this time of need.

But "necessity knows no law." It must be admitted that the right of self-preservation is superior to any statute or constitution; and, in a great emergency like that which the patriots were then compelled to face, with the southern part of the state in control of the enemy, with this enemy making rapid progress toward the north, with their own lives in danger, and their families and firesides subject to attack, the technicalities of a paper constitution could not prevent the use of any available means to protect the state, resist invasion, and preserve the lives and property of the people.

The new Provincial Convention, acting either directly or through a Council of Safety, was a legitimate exercise of original sovereignty, and a war measure amply justified by the circumstances. The men who resorted to this temporary method of conducting public affairs fully appreciated its irregularity. This is manifest from the letter sent by them to Governor Clinton. And the Council of Safety evidently shrank from their unwelcome task, for, on the 21st of November, 1777, the council appointed a committee to confer with the Governor "on the expediency of putting an end to the sessions of this council, either by calling the legislature of this state, or a convention thereof."

On the 27th the committee reported that they had conferred with Governor Clinton at New Windsor on the subject of convening the legislature; that he had informed them that, on account of the exigencies of the

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war (he then being in charge of military operations in the Highlands), he could not attend to public business further distant from New Windsor than Poughkeepsie; that he thought it most expedient to put an end to the session of the Council of Safety by calling a meeting of the legislature very early in the month of January at Poughkeepsie if accommodations could be procured there; and that the committee had ascertained that the "principal inhabitants" of Poughkeepsie had agreed to accommodate the members of the legislature with board.

The Council of Safety thereupon adopted a resolution recommending that the Governor, "by his proclamation, convene the legislature at Poughkeepsie as early in the month of January as possible. On the 15th of December, 1777, Governor Clinton issued a proclamation convening the legislature in session at Poughkeepsie on the 5th of January, 1778. Several members of the legislature met at Poughkeepsie accordingly, but no quorum was present until the 15th.

The capture of Fort Montgomery by the British early in October practically opened the way for the enemy to proceed up the river. The British improved the opportunity, and sent an expedition which destroyed Kingston, then the third town in population in the state, on the 16th of October. Before this time the Council of Safety had found it unsafe to continue to meet there. The journal shows meetings at different places in Ulster county until the 17th of December, when the council, then in session at Hurley, adjourned to met at Poughkeepsie on the 20th. The council met at Poughkeepsie on the 22d of December, where its sessions were continued from time to time until January 7, 1778, when, according to the journal, the council "adjourned until 3 o'clock this afternoon;" but there is no record of their meeting again. In the afternoon of that day the Provincial Convention met.

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This concluded and superseded the Council of Safety. The Convention held its last session on January 14, 1778. On the 15th of January the legislature resumed its sessions, and constitutional government was again in full operation.

Council's Proceedings Validated.

The last Provincial Convention and Council of Safety had assumed and exercised large administrative, and even legislative, powers. These powers had been exercised in behalf of the state and in the public interest; and, while this Convention and Council of Safety were irregular and unconstitutional bodies, their acts could not be wholly ignored, and clearly could not be repudiated by the legislature, whose members had created and given them whatever vitality they possessed. The legislature, therefore, at its first session in 1778 thought it proper to enact legislation validating the proceedings of the Convention and Council of Safety.

In February the legislature passed a bill relating to the exportation of certain food products, in which an embargo laid by the last Council of Safety was recognized and confirmed. This bill was vetoed by the Council of Revision, on objections prepared by Chief Justice John Jay, on the ground that the Council of Safety was unconstitutional, that it had no valid existence, and that the legislature could not ratify its acts. Chief Justice Jay says, in the course of his memorandum, that the bill is inconsistent with the spirit of the Constitution of this state, because it recognizes "the late supposed Council of Safety as a legislative body, when in fact all legislative power is to be exercised by the immediate representatives of the people, in senate and assembly, in the modes prescribed by the Constitution." The chief justice argues the matter at some length, suggesting that before the organization of

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the state government the people were under the necessity of being governed by conventions and committees of safety created by the people themselves, but that such conventions and committees could not be continued under the state government, and be given the power and authority vested in the legislature.

Governor Clinton and Chancellor Livingston concurred in these objections; but the bill, with slight modifications, was passed over the veto. This shows that the members of the legislature who, though not in their legislative capacity, had created the Council of Safety, intended to defend it and its work. This intention is manifest in another bill passed on the 4th of April, 1778, ratifying and confirming generally the acts of the Council of Safety, and providing for indemnity for those who had acted under its authority.

The following preamble to this bill is a legislative expression of the emergency under which the council was created:

"Whereas, the legislature of this state, at their late sessions at Kingston were prevented from proceeding on business, by reason that many of their members (officers in the militia) were called into actual service on the irruption of the enemy into this state, in which conjuncture the members of the senate and assembly then present did form themselves into a convention and appointed a Council of Safety out of their number, with like powers as former conventions and Councils of Safety of this state did heretofore exercise, and to continue so long as the necessities of the state should require; which appointment of the said convention and Council of Safety at that time was absolutely necessary, and the orders, recommendations, and resolutions by them from time to time made have been found greatly beneficial to this state. And whereas, doubts have arisen in the minds of some

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of the good people of this state, concerning the powers of the said convention and Council of Safety, notwithstanding the absolute necessity of such appointment, there being no provision made for that purpose in the Constitution of this state."

Then follows the formal act ratifying the proceedings of the council.

This bill was presented to the Council of Revision on the 4th of April. The council, before considering the bill, sent a communication to the legislature, asking for the orders and resolutions of the Council of Safety which would be confirmed by the pending bill. The assembly, on receipt of this communication, directed its clerk to attend before the Council of Revision with the minutes and proceedings of the Council of Safety; but the records do not show that any further action was taken by the Council of Revision or by the legislature. The bill appears as chapter 37 of the Laws of 1778, and it became a law by operation of the clause in § 3 of the Constitution, providing that a bill shall become a law if not acted on by the Council of Revision within ten days.

Another Council Recommended; Bill Vetoed.

This subject was again under consideration by the legislature in the fall of 1780. A joint committee was appointed by the legislature to "take into consideration the present critical situation of the country, and to determine the measures necessary to be pursued for the public safety." This committee reported a bill "for the appointment of a council to assist in the administration of the government during the recess of the legislature." The bill was not entered on the journals of the legislature nor of the Council of Revision, and I have not been able to find a copy of it. It was vetoed by the Council

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of Revision on the ground that it vested in the proposed council legislative powers which, under the Constitution, are vested in senate and assembly only, and cannot by them be delegated to others; because the bill subjects the governor to the control of the council, and also "because the said bill is not only repugnant to the spirit and letter of the Constitution, but, should the same become a law, would, in the opinion of this council, tend to embarrass government and destroy its present energy." On the 9th of October, 1780, a vote was taken in the assembly on the passage of the bill over the veto, but it did not receive the necessary two thirds.

The legislature was regularly organized in September, 1777, but it passed no laws at that session; and it is a fact worth noting that from the 3d of April, 1775, when the last act of the last Colonial Assembly was passed, to February 6, 1778, when the first act of the state legislature was passed, a period of nearly three years, the colony and state were governed by conventions and committees. With the legislature which convened at Poughkeepsie January 15, 1778, began the regular administration of constitutional government, and the only suggestion of a change of purpose, or attempted delegation of power, was contained in the bill of October, 1780, creating a new Council of Safety, but which, on more mature consideration, the legislature decided not to enact into a law.

Synopsis of Constitution.

The first Constitution was a brief instrument, and was limited to very few subjects. Some important provisions, notably those relating to the Council of Revision and the Council of Appointment, were added while the Constitution was under consideration by the Convention, and we learn from Mr. Jay's correspondence that he intended to suggest other additions, which he thought it

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would be better to submit in convention than in the first draft, but he was called away by the death of his mother, and during his absence the Constitution was unexpectedly, and, as he thought, somewhat hastily, adopted. He afterwards expressed great regret that some other subjects had not been included. Omitting the preliminary part, consisting of the resolutions adopted by the Third Provincial Congress, providing for the election of the Convention, and the Declaration of Independence, which is quoted in full, the Constitution proper consists of forty-five short sections, or "articles," as they were then termed. The range of subjects treated is limited, and the powers conferred on the new government are quite meagerly expressed. The framers of the instrument seem to have taken the colonial government as they found it, and continued its principal features, while eliminating its royal characteristics. The judicial system of the colony, and also the county and town governments, were continued substantially as they then existed. It became necessary to construct a new legislature and provide a new executive. The skeleton of the new government was then complete, and the remainder of the Constitution either asserts abstract rights, or confers or limits power in matters of administrative detail.

The abstract rights asserted are few and briefly stated. In substance they are:

1. All power is derived from the people. This is fundamental in any system of representative popular government.

2. Each citizen is entitled to full protection in his individual rights; stating, in substance, the 39th article of Magna Charta.

3. Each citizen is entitled to the enjoyment of complete religious liberty.

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4. The right of trial by jury shall remain inviolate forever.

5. General, but not universal, suffrage was established, and the legislature was authorized to provide for the use of ballots at elections, instead of voting *viva voce*, which was then the practice.

Three general departments of government were established, namely, the legislative, executive, and judicial. These three divisions were already familiar, both from English precedents, and from colonial experience for nearly a century. The influence of tradition and custom is shown by the unwillingness of the Constitution makers to vest in these departments the distinct and independent powers naturally belonging to them. They did not seem to appreciate fully the importance of a clear separation of the powers of the three great departments into which the government was divided. Subsequent experience and development have marked these lines of distinction with much more clearness than was apprehended by the framers of the first Constitution. There seems to have been an unwillingness to trust either the legislative or the executive department with its appropriate powers under a proper distribution of constitutional authority. The Constitution shows a manifest intention to reserve to and vest in each department some authority over the others. In a representative constitutional government, as now understood, the legislature is the supreme law-making power, subject to the possible check of an executive veto, which may sometimes prevent hasty, ill-considered, and unwise legislation; but even this check may be overcome by the legislature, if a given number of its members, arbitrarily fixed at two thirds, shall be in favor of enacting the statute, notwithstanding executive objections. The executive is charged with the duty of executing the laws, with only the limited veto check on legis-

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lation. But both the legislative and executive branches are subject to indirect control or restraint, and may be kept in the path of constitutional duty, by the judiciary; for this branch of the government has the exalted function of determining whether a given statute violates the fundamental law as expressed in the Constitution, thus testing every statute by the principles established by the people for their government.

So clearly have these principles, specially applicable to each department, been enunciated in recent years, that it is now almost axiomatic that the supreme legislative power is vested in the senate and assembly, and that this legislative power cannot be delegated, except as authorized by the Constitution itself; that the functions of the governor are executive, and not legislative, except to the extent of the veto power, and not judicial, except generally in determining questions affecting removals from office, and in the exercise of the pardoning power; and that the functions of the courts are judicial only, and not administrative. The framers of the first Constitution, perhaps from a lack of an apprehension of these principles, now so familiar, and possibly, also, from a lack of experience necessarily incident to pioneer conditions, combined these functions in the several departments in a manner which would not now be tolerated in framing a well-ordered scheme of representative government. They not only made the legislature the lawmaking power, but they vested it with executive functions through the Council of Appointment, composed of four senators chosen annually by the assembly. They gave the higher courts, not only judicial powers, but also authority over legislation through the Council of Revision, composed of the governor, the chancellor, and the judges of the supreme court. By these two contrivances the power of the governor was limited in two very im-

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portant particulars; namely: He was deprived of the full veto power, for he might be overruled by the judges in the Council of Revision; and he was deprived of the responsibility for official appointments, by being made subject to the control of the Council of Appointment.

The Constitution contains a few details concerning the separate powers of the senate and assembly, including the power of the assembly to select the members of the Council of Appointment, and to present articles of impeachment. The legislature was to elect the state treasurer; it was also given control over contracts with Indians; and might naturalize aliens; but this right of naturalization was soon superseded by the Federal Constitution. The legislature was prohibited from passing acts of attainder, and from instituting any courts, except those which proceeded according to the common law. Terms of judicial officers were established, and provision was made for the choice of state, county, and town officers. The English common law was continued, and English grants were confirmed. Provision was also made for a state militia; and a curious provision was inserted, by which clergymen were excluded from the right to hold office.

It will be observed that the first Constitution was quite limited in its scope, and many subjects now deemed important were omitted. It was, however, sufficiently elastic to permit the expansion and growth of a great state, and it is a high tribute to the patience, good sense, and patriotism of the men who framed it, and of the men who administered the government under it through a third of the history of the state, that the only amendment in forty-five years was for the purpose of reducing and limiting the number of members of the senate and assembly.

The Jays, the Livingstons, the Morrises, the Clintons,

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the Gansevoorts, the Schuylers, the Van Cortlandts, the Van Rensselaers, the Roosevelts, the Spencers, the Lansings, the Lewises, the Ten Broecks, Duane, Scott, Kent, Hamilton, Tompkins, Burr, and others who constructed, set in motion, and maintained this simple machinery of government, did not need elaborate descriptions or limitations of power. They had a Constitution which gave them the right of self-government, and they knew how to use that right judiciously. There was placed in their hands a state to govern and improve, and they appreciated its possibilities and the importance of the trust reposed in them. The Constitution was sufficient for their needs. They were almost wholly unrestrained, for it will be noted that the restrictions in the first Constitution related chiefly to immaterial subjects which soon became obsolete. They did not need to tie their own hands, for they could trust themselves. The simple brevity, the "unsuspecting simplicity," of the first Constitution is in striking contrast to the prolixity of some modern Constitutions, which evince a misapprehension of the real purpose of a written constitution, namely, to state principles of government in general terms, and not with the fluctuating detail necessarily incident to statutes intended to meet shifting conditions of society or administration. Under this Constitution, despite its limitations, the state had a remarkable development. It witnessed the growth and enlargement of our unsurpassed system of jurisprudence, molded by the genius of Kent, with the aid of his distinguished associates in the judiciary. Under it were established the university and the common school; and colleges, academies, and libraries were nourished and encouraged. The care of the poor and other unfortunates was provided for by a system of administration which in its essential features has continued to this day. A system of taxation was estab-

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lished, the statute law was frequently revised, counties, cities, towns, and villages were created, internal administration adequate for the needs of the time was provided for the different branches of state and local government; and under this Constitution was begun the development of a plan for the construction of the great canals, which have since occupied such a large place in public affairs. Further observations on the first Constitution will be found at the end of the chapter on the Constitution of 1821 which superseded the original instrument. I have there quoted the opinions of Chancellor Kent, Governor De Witt Clinton, and Governor Yates concerning the value, scope, and character of the first Constitution.

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CHAPTER III.

The Convention of 1801.

The Constitutional Convention of 1801 had its origin in differences of opinion concerning the proper construction of § 23 of the Constitution, which provided for a Council of Appointment. The section is as follows:

"That all officers other than those who, by this Constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council for the appointment of the said officers, of which the governor for the time being, or the lieutenant governor, or the president of the senate (when they shall respectively administer the government), shall be president, and have a casting voice, but no other vote; and, with the advice and consent of the said council, shall appoint all the said officers: and that a majority of the said council be a quorum: and further, the said senators shall not be eligible to the said council for two years successively."

This council was an important part of the state government until abolished by the Constitution of 1821, which took effect on the 31st of December, 1822. The council, therefore, existed more than forty-five years; and while it has gone into history, probably never to return as a feature of our constitutional machinery, it played such an important part in the early history of the state, especially its political history, that it should receive here more than a passing notice.

The first constitution-makers had not gone very far

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in the direction of choosing officers by popular election. Most of the officers were chosen by appointment; and we shall see, as we note the development of our constitutional system, how slowly the theory of elections by the people made its way. The framers of the first Constitution treated this subject from the point of view of their own experience, and also in accordance with the custom of that time.

In the chapter on the first Constitution, I have referred to a letter written by John Jay to Robert R. Livingston and Gouverneur Morris, dated at Fishkill, April 29, 1777, nine days after the Constitution was adopted, from which it appears that the original draft of § 22, afterwards § 23, provided for appointment of officers by the legislature, on the nomination of the governor, and that this provision was generally disapproved by the Convention. The original form of the section has been given in the previous chapter. Several plans were proposed and discussed by members out of session, and finally the section as it stands was prepared by Mr. Jay, proposed by him in convention, and adopted. Having written the section, his opinion must have great weight in determining its proper construction; and he always claimed that it gave the governor the exclusive right of nomination. It may be well to note here that while the section, as proposed by Mr. Jay, was under consideration by the Convention, an amendment was offered by William Harper, providing for the appointment of four senators, to compose a council of appointment, "which council shall appoint all the said officers." This amendment did not give the governor any authority in the council, and he could not nominate or appoint any officer; that power was to be vested solely in the council.

It will be seen by the construction given to § 23 by the Convention of 1801 that the senators in the council

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possessed practically the power which they would have possessed under this proposed amendment; for under that construction they controlled the council, making nominations and appointments, and the governor was obliged to issue commissions accordingly. The Convention rejected the Harper amendment, leaving the section as proposed by Mr. Jay. The Convention that adopted the Constitution construed the section in the ordinance of the 8th of May, 1777, providing for the appointment of certain officers, and instituting the new government, in which ordinance it is declared that "the appointment of officers in this state is, by the Constitution thereof, vested in the governor, by and with the advice and consent of the Council of Appointment." This construction is quite significant, but it seems to have been overlooked in the controversy that arose over the section more than twenty years afterwards.

The records of the council do not show who made nominations, but it seems that Governor Clinton, up to 1794, exercised the sole power of nomination, "although doubts had arisen previously as to this power." The appointments are evidenced by a resolution entered on the minutes "that be and he hereby is appointed" (naming the office). The commissions were signed by the Governor, and recited, among other things, that, by virtue of statute or other authority, "we have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint." One of these commissions, issued in February, 1779, contains the following attestation: "Witness our trusty and well-beloved George Clinton, Esq., Governor of our said state. General and Commander in Chief of all the militia, and Admiral of the navy of the same, by and with the advice and consent of the Council of Appointment," followed by the date and signature; and this was afterwards the

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usual form. The form of the commission would indicate a nomination by the Governor and confirmation by the council; and this, as already stated, seems to have been the usual practice, although the records do not show the fact of a nomination by the Governor. The form of statutes creating offices during the early state history should not be overlooked, for they show a legislative construction of the constitutional provision. Thus, in 1779, the Governor was authorized by statute, "by and with the advice and consent of the Council of Appointment, to nominate and appoint" a state clothier. Many other offices were created during the next twenty-five years, with a like provision relative to appointment and confirmation; but the practice of the council does not seem to have been changed in consequence of these special acts, nor does it appear that the Governor in fact actually nominated an officer, and that his nomination was confirmed by the council. I think, without exception, the commissions during the existence of the council recited that the appointments were made "by and with the advice and consent of the Council of Appointment," although, by the declaration of the Convention of 1801, any member of the council might make a nomination. It will be observed that the early statutes providing for appointment of an officer by the governor and council used the form followed in modern statutes which provide for the appointment by the governor and senate; but in these later days the senate would hardly claim a concurrent right of nomination.

On the 29th of January, 1794, Egbert Benson was appointed puisne judge of the supreme court on the nomination of the council, and against the protest of the Governor, who claimed the exclusive right to make all nominations. John Jay was elected governor in the spring of 1795, while he was abroad as an envoy of the

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United States. He reached New York on his return, May 28th; he resigned the office of chief justice of the United States the 29th of June, 1795, and on the 1st of July took the oath of office as governor of New York. In his speech to the legislature at the opening of the session, January, 1796, he made the following reference to the subject of appointments: "There is an article in the Constitution, which, by admitting of two different constructions, has given rise to opposite opinions, and may give occasion to disagreeable contests and embarrassments. The article I allude to is the one which ordains that the person administering the government for the time being shall be president of the Council of Appointment, and have a casting voice, but no other vote; and, with the advice and consent of the said council, shall appoint all the officers which the Constitution directs to be appointed. Whether this does, by just construction, assign to him the exclusive right of nomination, is a question which, though not of recent date, still remains to be definitely settled. Circumstanced as I am in relation to this question, I think it proper to state it, and to submit to your consideration the expediency of determining it by a declaratory act." He did not mention the subject again in his communications to the legislature until February 26, 1801, when the relations between the Governor and the majority of the council had become so strained that the business of the council was practically at a standstill. This condition grew out of incidents that occurred on the 11th and 24th of February. On the 11th the Governor nominated eight candidates for the office of sheriff of Dutchess county, but they were rejected by the council. On the 24th the Governor proposed that all nominations be entered on the minutes of the council. This proposition was rejected by a majority of the council, on the grounds that it had not been

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the custom to enter the nominations on the minutes, that such entry would unnecessarily "swell the minutes," that the law did not require such entry, "and because the council do not admit, but deny, that the right of nomination exists in the Governor exclusively, which His Excellency claims and insists upon."

The council was composed at this time of DeWitt Clinton, Ambrose Spencer, Robert Roseboom, and John Sanders.

The issue was further intensified at the same meeting when Mr. Clinton nominated a candidate for the office of sheriff of Orange county. The minutes state that Governor Jay, "claiming the exclusive right of nomination, observed that it would be proper for him to consider what ought to be his conduct relative" to the nomination made by Mr. Clinton. He declined to present the nomination to the council, which soon adjourned, and did not meet again while Mr. Jay was governor.

Governor Jay's Special Message.

Governor Jay sent a special message to the assembly on the 26th of February, 1801, and the same message to the senate on the 27th, in relation to the Council of Appointment, reciting the differences which had existed between the council and Governor, not only during his own term, but during the term of his predecessor, Governor Clinton. Governor Jay claimed that under the Constitution the governor had the exclusive right of nomination. Some members of the Council of Appointment claimed a concurrent right of nomination. This the Governor denied, and in this message he recommends that it be settled in some way, either by a declaratory act of the legislature, or by judgment of law.

On the 27th of February the assembly adopted a preamble referring to the Governor's message of the pre-

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vious day, and the questions presented by it, which was followed by a resolution declaring "as the sense of this house, that the legislature have no authority to interpose between the Executive and the members of the Council of Appointment, touching the right of nomination, or to pass a declaratory act, defining the powers of the said council, or prescribing the manner in which the same shall be exercised."

On the 7th of March the senate adopted a concurrent resolution for a joint committee of the two houses to inquire and report what had been the practice of the Council of Appointment concerning nominations; but the assembly did not concur in this resolution.

On the 18th of March a communication relating to this subject was sent to the assembly by a majority of the Council of Appointment. It was signed by DeWitt Clinton, Ambrose Spencer, and Robert Roseboom.

Mr. Clinton, then a young man, had recently entered public life, and was at the beginning of a career which proved alike honorable to himself and to the state. At this time he was very persistent in pressing the claims of the council to a concurrent right of nomination; but he afterwards had abundant reason to change his views, when, as governor, the council was frequently opposed to him politically, and he was obliged to issue commissions to his political opponents. Mr. Spencer was serving his second term in the senate, and was soon afterwards appointed attorney general. A little later he was appointed associate justice, and afterwards chief justice, of the supreme court.

In this communication these members of the council stated at length their views on the conflicting claims of the Governor and council to the right of nomination. They denied the Governor's exclusive right of nomination, and asserted that not only by the Constitution, but

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by the practice of the council, the council had a concurrent right of nomination, and that appointments must be made by the council as a whole, including the Governor, who had only a casting voice. It also appeared from this communication that there were political differences between the Governor and the Council of Appointment; that he nominated to office members of his own party, whose nominations had been rejected by the council, and had refused to consider nominations made by members of the council.

Convention Recommended.

On the 6th of April the legislature passed an act recommending a convention for the purpose of considering the question of the construction of § 23 of the Constitution, and also that part of the Constitution relating to the number of members of the senate and assembly.

On the same day the senate adopted a preamble referring to the differences between the Governor and council, reciting "that the legislature cannot now adopt or concur in any measure to produce a seasonable and legal decision on the right of nomination; and that the right has been uniformly claimed and generally exercised as well by the late as the present Governor." Then follows a concurrent resolution suggesting "that it would be proper for the members of the Council of Appointment to signify to His Excellency, the Governor, their willingness to waive the aforesaid question relative to the right of nomination, and to proceed in the business of the council in the manner heretofore generally practised, until a legal decision can be had on that question." While this resolution was pending, DeWitt Clinton offered as a substitute a preamble reciting among other things, "that great and extensive injuries may result to the community from these differences, whereby the house

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of assembly may deem it their duty to interfere in the capacity of the grand inquest of the state, and to institute an impeachment against the delinquent or delinquents before the court for the trial of impeachments," and that the legislature, by passing a law for a convention, had adopted the only measure in their power to correct the evil. This preamble was followed by a resolution to the effect that in view of the possible presentation of the matter to the court for the trial of impeachments, of which the senators were members, they could not now properly express an opinion on either side of the controversy. Mr. Clinton's resolution was rejected. He then offered another resolution to the effect that it would be proper for the Governor to convene the council, and to signify to them his willingness so to accommodate with them respecting the right of nomination as to prevent a further interruption of appointments until a constitutional decision could be had on that question. This resolution was also rejected.

The assembly declined to concur in the senate resolution, but on the 8th adopted another resolution reiterating the views expressed by it on the 27th of February, with the following significant preamble:

"WHEREAS, It appears to this House from two several messages of His Excellency, the Governor, and from a communication of a majority of the members of the Council of Appointment, that the said council have not been convened since the 24th of February last for the performance of the duties committed to them by the Constitution; and that a controversy has arisen between His Excellency and the council respecting the right of nomination, which has created a new and unprecedented crisis in our public affairs; that notwithstanding speculative differences may hitherto have existed between the former governor and former councils on this subject,

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yet, that in practice, the business of appointments was never suspended; and that the present is the first council, under the present Governor's administration, who ever experienced any embarrassments in the execution of their official duties:

"AND WHEREAS, By the Constitution and laws of this state, at fixed periods certain appointments are enjoined and required to be made, yet the judges and justices of several counties, the mayors of the four cities, eight sheriffs, the auctioneers of this city, and a number of other officers, have not been appointed at the times prescribed by the said Constitution and laws:

"AND WHEREAS, A high responsibility must rest on His Excellency or the council, and such injurious consequences may result as will induce the next house of assembly to prefer an impeachment against the delinquent or delinquents; and whereas, the senate principally compose the court for the trial of impeachments; and whereas, the legislature have, by passing a law calling a convention, made the only provision in their power for the correction of this evil: therefore, *Resolved*, That this House do persist in their said resolution."

It appears from Hammond's Political History of New York (vol. 1, 157) and also from Pellew's Life of John Jay (p. 298) that, while the issue with the council was pending, Governor Jay requested the opinion of the chancellor and judges of the supreme court concerning the construction of § 23, "which they unanimously declined giving, on the ground that the expression of an opinion by them was not within the scope of their official duties, but entirely extrajudicial."

It has already been noted that the assembly expressed the opinion that the legislature had no power to determine the construction of § 23 by a declaratory act, and the senate seems to have taken the same view. It does

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not appear that any effort was made to procure a solution of the problem by the other method suggested by Governor Jay, namely, a judicial decision. The legislature adopted an entirely different course, and provided for a convention to determine the proper construction of the disputed section.

The first Constitution did not contain any provision for its own amendment, nor for calling future constitutional conventions. The legislature of 1801 could not absolutely direct that a convention be held, but passed a law recommending a convention for the purposes therein mentioned. This act, chapter 159, authorized and proposed the election of delegates to a convention to consider two features of the Constitution,—namely, that relating to the number of members of the senate and assembly, and the section relating to the Council of Appointment. It will be observed that the people were not given an opportunity to express their judgment on the question of holding a convention. While the bill was pending an amendment was once agreed to in the assembly giving this right, but later it was abandoned, and under the law the people were only given power to elect delegates. The people, who might have objected to such a convention, had no opportunity to express their objection, except by declining to vote for delegates, and this meant nothing, for the persons who received votes as delegates would be entitled to sit, if regularly chosen, even if the majority of the people had been opposed to a convention. We shall see in the next chapter that a bill passed in 1820 for a convention, without a previous submission of the question to the people, was vetoed by the Council of Revision on objections prepared by Chancellor Kent, then a member of the council. In this opinion he calls attention to the act of 1801, and distinguishes it from the act then under consideration on

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the ground that it conferred on the delegates power to determine two questions only; one of which, that relating to the Council of Appointment, was one of construction, and not of amendment; but he expressed the doubt whether a convention called to change the legislature was constitutional unless previously authorized by the people. Chancellor Kent, then an associate justice of the supreme court, was a member of the Council of Revision in 1801, but he and Chancellor Livingston were both absent when the convention bill was presented to the council, and it does not appear that there was any objection to it.

In addition to the question relating to the construction of § 23, the act conferred on the Convention power to consider that part of the Constitution "respecting the number of senators and members of assembly, and to reduce and limit the number as the Convention may deem proper."

The senate was originally composed of twenty-four members, and the assembly of seventy members, and provision was made for an increase in each branch at stated periods, until the maximum should be reached, which was fixed at one hundred senators and three hundred members of assembly. The increase in membership had apparently been more rapid than was at first anticipated. Governor Jay, in his speech to the legislature at the opening of the session, which began November 4, 1800, called attention to this increase, and recommended a convention to consider the question of the number of members of the senate and assembly. This seems to have been the only recommendation on the subject, and it is probable that a convention would not have been called at that time for the sole purpose of considering the number of members of the legislature; but when a convention seemed necessary to settle the controversy

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over the Council of Appointment, the subject of the legislature was included. At that time the senate had increased to forty-three members, and the assembly to one hundred and twenty-six members.

The Convention.

The delegates to the Convention of 1801 were required to meet in the courthouse in the city of Albany on the second Tuesday of October. They met accordingly on October 13. The following is the list of delegates by counties:

Albany.—John V. Henry, Daniel Hale, Leonard Gansevoort, Johan Jost Dietz, Peter West, S. Van Rensselaer, Josiah Ogden Hoffman, Abraham Van Ingen.

Cayuga.—Silas Halsey.

Chenango.—Stephen Hoxie, John W. Buckley.

Clinton and Essex.—Thomas Tredwell.

Columbia.—Alexander Coffin, Benjamin Birdsall, Moses Younglove, Thomas Trafford, James I. Van Alen, Stephen Hogeboom.

Delaware.—Roswell Hotchkis, Elias Osborn.

Dutchess.—Peter Heusted, Jonathan Akin, J. Van Benthuysen, T. W. Van Wyck, Edmond Parlee, Isaac Bloom, Ithamer Weed, Joseph Thorn, Smith Thompson, Caleb Hazen.

Greene.—Marton G. Schuneman, Stephen Simmons.

Herkimer.—Evans Wherry, M. B. Tallmadge, George Rosecrantz.

Kings.—John Hicks.

Montgomery.—Thomas Sammons, Nathaniel Campbell, Peter Waggoner, Jun., Caleb Woodworth, Jonathan Hallett, John Herkimer.

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New York.—James Nicholson, William Edgar, Solomon Townsend, George Clinton, Jun., Archibald Kerly, Joshua Barker, Maturin Livingston, John Mills, Peter H. Wendover, William Van Ness, Nicholas DePeyster, Daniel D. Tompkins, John Bingham.

Oneida.—James Dean, Bezaleel Fisk, Henry Huntington.

Onondaga.—Moses Carpenter.

Ontario and Steuben.—Moses Atwater, John Knox.

Orange.—Aaron Burr, Peter Townsend, Arthur Parks, James Clinton, John Steward.

Otsego.—David Shaw, James Moore, Daniel Hawks, Luther Rich.

Queens.—John Schenck, John W. Seaman, DeWitt Clinton, James Rayner.

Rensselaer.—Cornelius Lansing, Jacob Yates, Jonathan Rouse, John Ryan, Wm. W. Reynolds, Jonathan Niles.

Richmond.—Joseph Perine.

Rockland.—Peter Taulman.

Saratoga.—John Thompson, Samuel Lewis, Adam Comstock, D. L. Van Antwerp, Beriah Palmer.

Suffolk.—William Floyd, Joshua Smith, Jun., Ezra L'Hommedieu, Samuel L'Hommedieu.

Tioga.—John Patterson.

Ulster.—Abraham Schoonmaker, Anning Smith, John Cantine, Lucas Elmendorf.

Washington.—Edward Savage, Solomon King, Solomon Smith, John Vernor, Thomas Lyon, John Gale.

Westchester.—Jonathan G. Tompkins, Pierre Van Cortlandt, Jun., Israel Honeywell, Ebenezer White, Thomas Ferris.

Aaron Burr, then Vice President of the United States, was a delegate, and was chosen president of the Convention. DeWitt Clinton, a member of the Council of

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Appointment, was also a delegate. Daniel D. Tompkins began his public career as a delegate to this Convention. Smith Thompson, afterwards a justice of the supreme court of the state and of the United States, was also a delegate.

The Convention at once addressed itself to the task committed to it, and completed its labors on the 27th of October. The result of its deliberations appears in five paragraphs, four of which relate to the legislature; one, the last, determines the construction of the disputed section relating to the Council of Appointment. The amendments permanently fixed the number of senators at thirty-two. The assembly was given one hundred members, and provision was made for a possible increase to one hundred and fifty, by additions to be made after each census.

The principal subject of consideration was the construction to be given to article 23. A motion for a construction of the article giving the senators the exclusive right of nomination was defeated by a vote of 93 to 6. A motion to give the Governor the exclusive right of nomination was defeated, but the journal does not give the vote.

The resolution of the Convention as finally adopted declares that under the "true construction" of the article "the right to nominate all officers other than those who, by the Constitution, are directed to be otherwise appointed, is vested concurrently in the person administering the government of this state for the time being, and in each of the members of the Council of Appointment." This resolution was adopted by a vote of 86 to 14. Daniel D. Tompkins voted in the negative; and twenty years afterwards, in the Constitutional Convention of 1821, he referred with apparent self-satisfaction to this vote. The large vote in favor of the resolution is ex-

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plained by the fact that each of the two great political parties of that day had committed itself in favor of nominations by the members of the council,—the Federalist, in the winter of 1794, and the Republicans, in 1801.

It has already been noted that the convention which framed the Constitution had given this provision a different construction, but in the partisan struggle for power at the beginning of the last century the opinions of the authors of the Constitution seem to have been overlooked or ignored. Under the construction given by this Convention the council became a powerful and sometimes a very objectionable political machine, and at the time of its abolition, twenty-one years later, it wielded a patronage including nearly 15,000 officers, with an aggregate salary list of one million dollars. It often dispensed patronage with a high hand, making appointments and removals at will; it reduced the dignity and responsibility of the governor, so that, instead of being the chief executive of the state, he had only a casting vote in this appointing body, and only one fifth of the power of making nominations.

The plan of this council, as devised by Mr. Jay, was reasonable; and if it had been administered as intended, it might have continued as a permanent feature in our Constitution. We have adopted, as a substitute for this plan, the confirmation of the governor's appointments by the state senate, where confirmation is required at all, and have given the governor the absolute power of appointment without confirmation, in a large number of cases. Mr. Jay's plan contemplated a joint responsibility for appointments, to be shared by the governor and the legislature, by providing a council composed of four senators, distributed geographically through the state,

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with power only to confirm or reject nominations by the governor. The whole legislature was charged with a duty and responsibility in the matter by requiring the assembly to choose the council from the senators, thus directly or indirectly bringing both branches of the legislature into coöperation with the governor in making appointments; but the efficiency of the plan was destroyed by the construction given to the article by the Convention of 1801.

The evolution of this council, and its final destruction, without a dissenting vote, by the Convention of 1821, shows that even the cohesive power of patronage as a political force must yield to higher principles of constitutional government when it is discovered that the dispensing of such patronage by an unrestrained and irresponsible body is inimical to the best interests of the state.

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CHAPTER IV.

The Second Constitution, 1821.

The evolution of our Constitution has brought it to a condition where amendments are comparatively easy. The rule requiring a vote by the people once every twenty years, or oftener, as the legislature may provide, to determine whether a convention shall be called to revise the Constitution, affords frequent opportunities for considering the Constitution as a whole; while, by another provision, the legislature may, at any time, submit to the people specific propositions for amendment, without considering the whole instrument. This provision furnishes an easy method of altering the Constitution to meet new conditions; indeed, the method is rather too easy, for it affords opportunity for frequent attempted changes in the fundamental law; and if the Constitution, for any reason, happens to be unsatisfactory to a given class of people, and they find that they cannot do all that they think they wish to do, under the existing Constitution, they immediately seek to amend it, as if it were a statute, not possessing permanent character. The ease with which we may now propose amendments is in marked contrast to the difficulties surrounding the subject of constitutional changes during the first forty-five years of our history.

It has already been noted that the first Constitution contained no provision for its own amendment. The legislature could not, as it may now do, submit to the people propositions for specific amendments, nor could

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it direct that a convention be held to consider amendments, or a general revision. It could only recommend a convention; and even this it could not do without first submitting the question to the people, if the convention were to be given general power to revise the entire Constitution.

A brief sketch of the various attempts to amend the first Constitution will show how reluctant the people were to call conventions, or engage in a general revision of the Constitution. The Convention of 1801 probably would not have been called at that time had it not been for the trouble over the Council of Appointment, for there was no other subject on which there had been any serious demand for a change in the Constitution. True, the Governor had recommended a convention for the purpose of limiting the number of members of the legislature, but at that time the number had not, in either branch, reached one half the limit fixed by the Constitution. The mistake in construing the provision of the first Constitution relative to the powers of the Council of Appointment, which mistake seems to have been due largely to partisan ambition, led to a convention which fixed this mistaken construction for twenty-one years, resulting in constant and growing annoyance to the good people who wished to administer the government on correct principles, free from the corrupting influence of partisan intrigue.

The breach between Governor Jay and the Council of Appointment occurred near the close of his second term, and on the accession of his successor, General George Clinton, the council resumed its sessions, in August, 1801, and they continued without further interruption.

Constitutional Reforms Proposed.

There was evidently some dissatisfaction with the

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Constitution, and considerable agitation and discussion of proposed changes. This dissatisfaction does not seem to have made itself felt in the legislature until the session of 1811. That session gave considerable attention to the subject. A bill was passed by the assembly, recommending a convention to consider the subjects of the property qualifications of voters, the Council of Appointment, the election of sheriffs, and the appointment of clerks by the court of common pleas. While the bill was under consideration propositions were made to give the convention power to consider the subjects of eligibility to the legislature, elections of justices of the peace, requiring members of the Council of Appointment to take an oath that they would not remove an officer except for cause, prohibiting the appointment of any member of the legislature to any other civil office during his term, providing for the creation of senate districts equal in number to the senators to be elected, and for electing one senator from each district; but the assembly declined to include any of these in the subjects to be committed to the convention. This bill apparently received some consideration from the senate, but was not passed.

It appears from the senate journal that on the 2d of March, 1811, a convention of delegates from the several towns of Ontario county was held at Canandaigua, on the subject of the qualifications of voters, and that the convention sent a petition to the legislature, which was presented by John C. Spencer and others, praying for a convention to consider the propriety of amending the Constitution by removing the property qualification of voters. A similar petition was presented by some of the inhabitants of Rensselaer county. These petitions and the action of the assembly show that there was a growing movement in favor of general suffrage.

The subject of amending the Constitution was not

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taken up by the legislature again until 1818. In March of that year a joint committee of the senate and assembly was appointed to "examine and report what alterations, if any, it is expedient should be made in the Constitution of this state." A few days later the assembly members of the committee reported that the committee was equally divided on the question "as to the expediency of calling a convention at all." At this session two bills were introduced, but not passed; one providing for a convention to consider the subject of elective franchise, and the other to consider the subject of appointment of officers.

The legislature, in January, 1819, appointed another joint committee to consider the question of revising the Constitution, and to report subjects for the consideration of a convention.

On the 8th of February, 1819, Erastus Root offered a resolution instructing the joint committee "to prepare and bring in a bill to provide for the calling of a convention with full power to revise, alter, and modify the whole or any part of the Constitution of this state." Mr. Root's resolution was considered in committee of the whole February 17, and after considerable discussion was rejected by a vote of 51 to 56.

The subject of a convention was not considered by the assembly further at that session. The senate took no action, except to appoint members of the joint committee. This committee made no report.

Convention Proposed.

Governor DeWitt Clinton gave the subject of revising the Constitution considerable attention in his annual speech to the legislature at the opening of its session, January 4, 1820. His remarks concerning the Council of Appointment and the partisan struggles incident to

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this piece of constitutional machinery are quite significant, in view of the activity manifested by him twenty years earlier in procuring a construction of the Constitution, which made possible the condition now so forcibly deprecated by him.

Concerning constitutional revision, the Governor said: "The Constitution of this state was formed nearly forty-three years ago. And considering the circumstances under which it was established, in the midst of war and commotion, and without the benefits of much experience in representative government, it is not a little surprising that it is so free from imperfection. Attempts have been made at various times to call conventions to introduce alterations, which have only succeeded in a single instance, probably from an apprehension that an innovating spirit might predominate, and destroy, instead of consolidating, this temple of freedom and safety. Parties are the natural offspring of republican government. Wherever freedom exists, it will be manifested in differences of opinion with respect to the best mode of promoting the public welfare. And when these contentions spread over society, they form parties; and mingling sometimes with private views and local interests, degenerate into faction, which seeks its gratification in violation of morality, and at the expense of the general good. And such is the proneness of human nature to cherish the spirit of contention, that we often see the continuance of parties after the cessation of the producing causes. While this state has made rapid and signal advances in prosperity, it has been more obnoxious to the excitement of party than any member of the Federal Union. Even during the gloomy periods of the Revolution, this spirit was exhibited in a variety of shapes, and since that time it has scarcely ever ceased to agitate society. After giving full weight to the operation of

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other assignable causes, we are forced to conclude that there is a radical defect in the Constitution of our government; that it either wants some essential check against the progress of party, or that it contains in its arrangements the elements of discord and excitement. The assembly, which is the most numerous branch of the legislature, and which is annually chosen, elects every year, from the senate, four persons, who, together with the governor, constitute a Council of Appointment. The offices in the gift of this council are remunerated by salaries or fees to the amount of a million of dollars annually. Combinations will be formed to obtain the control of this enormous patronage. And they will attempt to influence, in the first place, the elections of the people, by dictating under the forms and discipline of party; secondly, the selection of the appointing power; and thirdly, the operations of that institution. And when no leading measures of the government have been impeached, and no important differences of opinion pretended, endeavors are not unusual to cherish the spirit of discord by conjuring up the shades of departed controversy, by appealing to the vindictive feelings of disappointment, or exciting the cravings of ambition and cupidity. With this principle of irritation in our Constitution, the hydra of faction will be in constant operation, endeavoring to make its way to power, sometimes by open denunciation, at others by secret intrigue, and always by artful approaches. The responsibility of public officers is essential to the due performance of their trust, and is demanded by the properties of delegated power, and the best interests of the community. The council, as constituted, is almost destitute of this essential requisite. The political tranquillity of the state demands a different arrangement of the appointing power. And I have no hesitation in recommending a convention for this and such other pur-

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poses as may be imperatively required by the public welfare. And I do this under a full persuasion that the powers of the convention cannot transcend the objects committed to their cognizance by the concurrent act of the legislature and people,—that the landmarks of security to liberty, property, religion, and life, will be inviolably preserved and more firmly established; and that the measure which will be adopted will have a benign influence in preserving the harmony of the community, and elevating the reputation of the state."

The senate proposed a joint committee to consider that part of the Governor's speech relative to a constitutional convention. The assembly did not concur, but referred the subject to a select committee. On the 18th of January the assembly committee reported:

"That upon deliberate examination of this subject, they are unanimously of opinion, that a radical defect must somewhere exist in the Constitution of our state.

"Your committee, on this occasion, cannot forbear to remark that, whilst they witness in our sister states generally a disposition to embrace the opportunity presented in the present favorable state of our affairs as a nation, of introducing such wise and salutary measures of improvement as the times seem peculiarly favorable for carrying into effect, in this state, unfortunately, though a like disposition is ardently appreciated by a great part of the community, our energies are almost rendered nugatory by our division into distinct and contentious political parties, on subjects the most trivial and unimportant.

"Your committee are decidedly of opinion that this evil is attributable, in a great measure, to the defects in our state Constitution, the most prominent of which is that part that relates to and directs the manner of appointment to office. Your committee deem it unnecessary

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here to attempt a particular statement of the evils resulting from this part of our Constitution. The number of which the Council of Appointment consists renders it at once impossible for that body to possess the requisite information on the various points upon which it becomes their duty to decide; hence, their continual liability to be imposed upon and deceived by misrepresentations which it is out of their power to detect. This evil would be more tolerable if limited in its operations to the county or sections of the state in which an improper appointment might be made. Unfortunately, it is not the case; your committee might here enumerate various instances (which they forbear to do) in which the appointment of a county officer has been made the general electioneering topic, and has gone the round of almost every public journal in your state. Other points, though of seemingly less importance, do, in the opinion of your committee, strongly demand the interposition of a convention of the people of this state, amongst which are the following, to wit: That part that relates to the Council of Revision, and that which determines the qualifications of voters at elections. In the opinion of your committee, the right of judging of the constitutionality and expediency of bills which have passed the senate and assembly is better disposed of by most of our sister states. Experience has clearly demonstrated that this power may be safely vested in the hands of your chief magistrate; and though your committee have not before them an instance in which any very serious evil has resulted from the manner in which this power is at present disposed of, they are aware that a case may, and very probably will, occur, should that power be continued in the hands of your present Council of Revision, in which differences of opinion between that and the other branches of our government may produce incalculable injury to our state, which the

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voice of the people would be unable to remedy. Your committee are therefore of opinion that the body in which this power is vested ought, at stated periods, to be answerable to the people for a faithful and judicious exercise of it.

"On that part of our Constitution which relates to the qualification of voters at elections, your committee have to remark that, although its provisions, when applied to the state of New York, may be salutary and necessary, it excludes from a participation in the choice of the principal officers of our government, that part of our population on which, in case of war, you are dependent for protection, *viz.*, the most efficient part of the militia of our state, most of whom are as deeply interested in the good government thereof, both on account of their families and attachment to the principles of our government, as any other portion of our population.

"They therefore recommend the calling of a convention for the purposes above stated, and with such further powers as this legislature may deem proper to recommend; and your committee are of opinion that the electors, in choosing delegates to such convention, will be governed by a strict regard to such recommendation.

"They have prepared a bill accordingly, and directed their chairman to ask leave to present the same."

The assembly, at this session, considered a bill for a convention to amend the Constitution relative to the Council of Revision, Council of Appointment, qualification of voters for governor, senators, members of assembly, and the division of the state into senatorial districts, also to consider the propriety of inserting in the Constitution a provision that no law respecting the compensation of members of the legislature shall take effect until after the expiration of the legislative year in which such law may be passed, and to provide the manner of making future amendments. But the bill was not passed.

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On the 17th of February, 1820, while the bill was under consideration by the committee of the whole of the assembly, a motion was made to amend the bill by providing for a submission to the people of three propositions: "1st. In favor of a general convention. 2d. In favor of a limited convention, to be limited by the legislature. 3d. Against any convention." This proposition was adopted in the committee of the whole by a vote of 61 to 51, but when the report of the committee came before the assembly, leave to sit again was refused. This ended the matter for that session.

We note in these suggestions, and also in some of those made in previous years, germs of propositions that later became a part of the Constitution. It had already become apparent that members of the legislature ought not to fix their own compensation, and that they ought not to receive appointments to other civil offices. We shall have occasion to note the action taken by the Convention of 1821 on these subjects, and the reasons for the restraints imposed by the new Constitution.

Governor Clinton, in his speech at the opening of the next session of the legislature, November 7, 1820, again referring to the Council of Appointment, and to the necessity of a constitutional convention to consider this and other subjects, said:

"If the ingenuity of man had been exercised to organize the appointing power in such way as to produce continual intrigue and commotion in the state, none could have been devised with more effect than the present arrangement. We have seen its pernicious influence in the constant commotions which agitate us; and we can never expect that the community will be tranquil, or that the state will maintain its due weight in the confederacy, until a radical remedy is applied. Under this impression,

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I have heretofore proposed the calling of a convention. The Constitution contains no provisions for its amendment. In 1801, the legislature submitted two specific points to a convention of delegates, chosen by the people, which met and agreed to certain amendments. Attempts have been made at various times to follow up this precedent, which have been unsuccessful, not only on account of a collision of opinion about the general policy of the measure, but also respecting the objects to be proposed to the convention. These difficulties may be properly surmounted, either by submitting the subject of amendments generally to a convention, and thereby avoiding controversy about the purposes for which it is called, or by submitting the question to the people in the first instance, to determine whether one ought to be convened; and in either case, to provide for the ratification by the people in their primary assemblies, of the proceedings of the convention. This double check will be admirably calculated to carry into effect the sovereign authority of the people; to guard against dangerous interpolations in our fundamental charter; to check a spirit of pernicious innovation, and empirical prescription, and to allay the apprehensions of some of our best and wisest fellow-citizens, who, already satisfied with the signal prosperity and high destinies of the state, are unwilling, for the sake of some improvements, to encounter the risk of changing materially the features of the Constitution, which, in its general conformation, is admirably calculated to promote the happiness, to elevate the prosperity, and to protect the freedom of the community."

Convention Bill; Chancellor Kent's Veto.

On the 10th of November Michael Ulshoeffer introduced a bill for a convention, which was passed by the legislature on the 20th. This bill was similar to the con-

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vention act of 1801. It *recommended* a convention, and provided for the election of delegates, equal in number to the members of assembly, from the several cities and counties. The delegates so chosen were to compose a convention for the "purpose of considering the Constitution of this state and making such alteration in the same as they may deem proper, and to provide the manner of making future amendments thereto." The bill did not provide for ascertaining the sense of the people on the question of holding a convention, but the amended Constitution was to be submitted to the people for their approval. This bill was vetoed on the same day by the Council of Revision, on objections reported by Chancellor Kent. The judicial members of the council were equally divided on this veto, Chancellor Kent and Chief Justice Ambrose Spencer voting for it, Associate Justices Yates and Woodworth voting against it. Governor DeWitt Clinton gave the casting vote in favor of the veto.

The bill was vetoed on two grounds: first, that it contained no provision for ascertaining the sense of the people on the question of holding a convention; and second, that it provided for submitting the amended Constitution to the people as a whole, and did not give them any opportunity to discriminate as to their approval or disapproval of its different parts.

On the first ground of objection, Chancellor Kent says:

"There can be no doubt of the great and fundamental truth, that all free governments are founded on the authority of the people, and that they have at all times an indefeasible right to alter and reform the same as to their wisdom shall seem meet. The Constitution is the will of the people, expressed in their original charter, and intended for the permanent protection and happiness of them and their posterity, and it is perfectly consonant to

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the republican theory, and to the declared sense and practice of this country, that it cannot be altered or changed in any degree without the expression of the same original will. It is worthy, therefore, of great consideration, and may well be doubted whether it belongs to the ordinary legislature—chosen only to make laws in pursuance of the provisions of the existing Constitution—to call a convention, in the first instance, to revise, alter, and perhaps remodel the whole fabric of the government, and before they have received a legitimate and full expression of the will of the people that such changes should be made. The difficulty of acceding to such a measure of reform, without the previous approbation of the constituents of the government, presses with peculiar force and with painful anxiety upon the Council of Revision, which was instituted for the express purpose of guarding the Constitution against the passage of laws 'inconsistent with its spirit.'

"The Constitution of this state has been in operation upwards of forty years, and we have but one precedent on this subject, and that is the case of the Convention of 1801. But it is to be observed that the Convention of that year was called for two specific objects only, and with no other power or authority whatsoever. One of those objects was merely to determine the true construction of one of its articles, and was not intended to alter or amend it; and the other was to reduce and limit the number of the senators and members of assembly. The last was the single alteration proposed, and perhaps even with respect to that point it would have been more advisable that the previous sense of the people should have been taken. But there is no analogy between this single and cautious case, and the measure recommended by the present bill, which is not confined to any specific object of alteration or revisal, but submits the whole constitu-

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tional charter, with all its powers and provisions, however venerable they may have become by time, and valuable by experience, to unlimited revisal. The council have no evidence before them, nor does any legitimate and authentic evidence exist, that the people of this state think it either wise or expedient that the entire Constitution should be revised and probed, and perhaps disturbed to its foundation.

"The council, therefore, think it the most wise and safe course, and most accordant with the performance of the great trust committed to the representative powers under the Constitution, that the question of a general revision of it should be submitted to the people, in the first instance, to determine whether a convention ought to be convened."

The next day, the 21st, the objections of the Council of Revision were referred to a special committee of the assembly, composed of Michael Ulshoeffer, Samuel M. Hopkins, Howland Fish, William Thompson, Erastus Root.

January 9, 1821, this committee made a long report, defending the bill, taking issue with the Council of Revision on its objections, giving the history of the agitation for a convention, and making some observations on current political affairs, indulging in some feeling concerning the fate of the bill.

In view of the personnel of the Council of Revision, the observations of the committee concerning the action of the council show a quite remarkable freedom of criticism of high public officials, containing also a tinge of jealousy almost petulant, especially when coming from one branch of the government, and directed toward another of equal constitutional dignity. It will be recalled that Governor Clinton and Chief Justice Spencer, now members of the Council of Revision, were two members

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of the Council of Appointment twenty years earlier, when the breach occurred between the Governor and the council resulting in the Convention of 1801, and that they were then opposed to the Governor's claim of the exclusive right of nomination of officers. Fortune had brought them to a still higher position in public affairs, for one had become the head of the executive branch of the government, and the other had become the head of the supreme court; while James Kent, who, in 1801, was an associate justice of the supreme court, had now become chancellor, and the recognized head of the judicial system of the state. It is, therefore, somewhat curious to note the observation of the committee that "the opinion of the council, independent of its constitutional effect, has *heretofore* been much respected. But on this occasion it has perhaps been less estimated, owing to the division of opinion existing among the members of the council, as well as the serious doubts entertained whether the objections of the majority are at all well founded, and a question, moreover, whether the council possess the constitutional power arbitrarily to object to the passage of bills, upon mere opinion, vaguely expressed, respecting their propriety or expediency." Continuing, the committee say that "it may well be doubted whether the Council of Revision was ever intended as a legislative branch of the government, or in effect to exercise the powers of legislation. Such a construction cannot fairly be given to the Constitution."

The section in the first Constitution on the Council of Revision clearly gave that council the right to veto bills. Under it a bill could not become a law until it had been presented to the council, and if it should appear "improper" to the council that the bill should become a law, they were required to return the same, together with their objections thereto in writing, to the house in which the

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bill originated; and the bill could not, after such objections, become a law unless passed by a two-thirds vote. Yet this committee say that "it cannot be believed that this article ought to receive so liberal a construction as to give the council legislative powers, or to authorize them to object to any bill upon questions not of plain constitutional doubt, or of substantial and paramount consideration of public good." The committee further suggest that the logical result of the authority claimed and exercised by the Council of Revision would be to make it in effect a third branch of the legislature; and, by interposing objections, could compel the legislature to pass all bills by two-thirds vote; and the committee concluded its observations on this subject by suggesting that when a convention is assembled it remains to be solemnly determined whether such an exercise of power is in conformity to the letter or spirit of our charter; and whether a council (all of whom, except the Executive, are independent of the people) should be allowed any longer to enforce so dangerous an authority. The committee then argued the question at considerable length, contending that the bill was proper and constitutional, and ought to be passed, notwithstanding the objections of the Council of Revision. On the 15th of January, 1821, the assembly reconsidered the convention bill, but it did not receive the required two-thirds vote.

Convention Act Passed.

On the 13th of March, 1821, an act was passed (chapter 90) recommending a convention of the people of this state, and the question of holding a convention was to be submitted to the people on the last Tuesday of April. It was further provided that if the majority of the votes cast were in favor of a convention "it shall and may be lawful, and it is hereby recommended to the

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citizens of this state, on the 3d Tuesday of June next" to elect the same number of delegates as the number of members of assembly. It was further provided that the delegates so chosen meet in convention in Albany on the last Tuesday in August, 1821. The statute provided for an election of delegates to compose a convention "for the purpose of considering the Constitution of this state, and making such alterations in the same as they may deem proper; and to provide the manner of making future amendments thereto." The statute provided for the submission of the amended Constitution to the decision of the citizens of this state, such amendments to be submitted either as a whole or in parts, and that the said convention shall prescribe the time and manner of holding an election for such purposes.

The Convention.

At last, after forty-five years, the representatives of the people of New York once more assembled, with the direct authority to reconsider, revise, and reconstruct their fundamental charter. Not since that eventful 9th of July, 1776, had a convention with similar powers assembled in this state. The few attempts to call constitutional conventions show some dissatisfaction with the Constitution, but the failure of these attempts also shows how jealously the people guarded their institutions. The generation that framed the first Constitution, and constructed the first state government, had done its work and had laid down its responsibilities, leaving a priceless legacy to its successors. But after forty-five years of experience and growth and development it had become apparent to the leaders in public affairs that the state needed a Constitution more suited to modern conditions, and with limitations which the authors of the first Con-

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stitution did not deem necessary, or which had become necessary, in the course of the state's development.

It is a fact worth noting that John Jay, the principal author of the first Constitution, was still living when the Convention of 1821 was held. He had retired from active life, and had been in poor health many years. John Adams, referring to this convention, wrote to him May 13, 1821: "I hope you will be a member of the convention in New York (for the revision of the Constitution). It will want some such heart-of-oak pillar to support the temple." But the condition of Mr. Jay's health prevented his accepting this trust. It would have been a most fitting culmination of a great career if John Jay could have been a member of this Convention, and could have assisted in re-shaping its constitutional policy on the exalted model which, with such wise statesmanship, he had constructed for an earlier generation; but, while he could not attend in person, he was represented by his son, Peter A. Jay, and by a nephew, Peter Jay Munro.

The following is the list of delegates by counties:

Albany.—Stephen Van Rensselaer, James Kent, Ambrose Spencer, Abraham Van Vechten.

Allegany and Steuben.—Timothy Hurd, James M'Call.

Broome.—Charles Pumpelly.

Cattaraugus and Erie.—Augustus Porter, Samuel Russell.

Cayuga.—David Brinkerhoff, Rowland Day, Augustus F. Ferris.

Chenango.—Thomas Humphrey, Jarvis K. Pike, Nathan Taylor.

Clinton and Franklin.—Nathan Carver.

Columbia.—William Van Ness, Elisha Williams, Jacob R. Van Rensselaer, Francis Sylvester.

Cortland.—Samuel Nelson.

Delaware.—Erastus Root, Robert Clarke.

Dutchess.—James Tallmadge, Jr., Peter R. Livingston,

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Abraham H. Schenck, Elisha Barlow, Isaac Hunting.

Essex.—Reuben Sanford.

Genesee.—David Burroughs, John Z. Ross, Elizur Webster.

Greene.—Jehiel Tuttle, Alpheus Webster.

Herkimer.—Richard Van Horne, Sanders Lansing, Sherman Wooster.

Jefferson.—Egbert Ten Eyck, Hiram Steele.

Kings.—John Lefferts.

Lewis.—Ela Collins.

Livingston.—James Rosebrugh.

Madison.—Barak Beckwith, John Knowles, Edward Rogers.

Monroe.—John Bowman.

Montgomery.—Philip Rhinelander, Jr., Howard Fish, Jacob Hees, William I. Dodge, Alexander Sheldon.

New York.—Nathan Sanford, Peter Sharpe, Peter Stagg, Peter H. Wendover, William Paulding, Jr., Ogden Edwards, Jacobus Dyckman, Henry Wheaton, James Fairlie, John L. Lawrence, Jacob Radcliff.

Oneida.—Jonas Platt, Henry Huntington, Ezekiel Bacon, Nathan Williams, Samuel S. Breese.

Onondaga.—Victory Birdseye, Parly E. Howe, Amari Case, Asa Eastwood.

Ontario.—Philetus Swift, John Price, Micah Brooks, Joshua Van Fleet, David Sutherland.

Orange.—John Duer, Benjamin Woodward, John Hallock, Jr., Peter Milikin.

Otsego.—Martin Van Buren, Joseph Clyde, David Tripp, Ransom Hunt, William Park.

Putnam.—Joel Frost.

Queens.—Rufus King, Elbert H. Jones, Nathaniel Seaman.

Rensselaer.—James L. Hogeboom, John W. Woods, David Buel, Jr., John Reeve, Jirah Baker.

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Richmond.—Daniel D. Tompkins.

Rockland.—Samuel G. Verbryck.

Saratoga.—Salmon Child, John Cramer, Samuel Young, Jeremy Rockwell.

Schenectady.—John Sanders, Henry Yates, Jr.

Schoharie.—Jacob Sutherland, Olney Briggs, Asa Starkweather.

Seneca.—Robert S. Rose, Jonas Seeley.

St. Lawrence.—Jason Fenton.

Suffolk.—Ebenezer Sage, Usher H. Moore, Joshua Smith.

Tioga.—Matthew Carpenter.

Tompkins.—Richard Smith, Richard Townley.

Ulster and Sullivan.—Henry Jansen, James Hunter, Jonathan Dubois, Daniel Clark.

Washington and Warren.—Nathaniel Pitcher, Melancton Wheeler, Alexander Livingston, William Townsend, John Richards.

Westchester.—Peter A. Jay, Jonathan Ward, Peter Jay Munro.

This Convention was composed of many of the most distinguished men of the state.

Daniel D. Tompkins, then Vice President of the United States, represented the county of Richmond, and was chosen president of the Convention. He had made his first appearance in public life twenty years earlier, in the Convention of 1801, and since that time he had been a justice of the state supreme court, ten years governor, covering the period of the War of 1812, and he closed his public career in New York with this convention.

Chancellor Kent was also there, bringing to the Convention the wisdom and experience accumulated through a long service at the bar, in the legislature, in the supreme court, court of chancery, and in the Council of Revision,

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and bestowing on the work of the Convention the same thoughtful care, and expressing his opinions with the same elegant felicity which marked his judgments from the bench, and which so conspicuously characterizes his great commentaries on American law. It is a curious illustration of the irony of events that a mere accident should have placed in our first Constitution a provision abridging judicial service at the age of sixty years. By reason of this age limitation Chancellor Kent was on the eve of retirement when this Convention was held; but that enforced retirement of a great jurist, in full possession of his powers, gave to the world the greatest work yet produced on American law.

Martin Van Buren was also a member of this Convention. He had already served seven years as state senator, and had just been elected to the United States Senate. Later he was governor, secretary of state, minister to Great Britain, Vice President, and President of the United States. The record of the Convention shows that he took an active part in its deliberations.

Ambrose Spencer had already served in both branches of the legislature, and had been a member of the Council of Appointment, attorney general, associate justice of the supreme court, chief justice, and after his retirement from the bench resumed the practice of law at Albany, where he was chosen mayor, and member of Congress.

William Van Ness was also a member of this Convention. He had already served in the assembly, and was at this time a justice of the supreme court, which position he held for fourteen years. He went out of office on the last day of December, 1822, by virtue of a provision of the new Constitution.

Samuel Nelson, then a young man of twenty-eight, was also a member of this Convention. He had entered public life the preceding year as presidential elector, and

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he was destined to fill a large place in the judicial history of the state and nation. He was appointed circuit judge in 1823, associate justice of the supreme court in 1831, chief justice in 1837, and in 1845 was appointed associate justice of the Supreme Court of the United States, which position he held until October, 1872. He was appointed in 1871, by President Grant, a member of the Joint High Commission to arbitrate the Alabama claims on the part of the United States. He was also a member of the Constitutional Convention of 1846.

Peter Jay Munro, chairman of the judiciary committee of the Convention, was a nephew of John Jay, and one of the leading lawyers of New York.

Erastus Root occupied a very high position in the Convention, and exerted a deep influence in shaping the results of its deliberations. He had already served many years in the legislature and in Congress. At the time of the Convention he was lieutenant governor, and for many years was major general of the state militia. He was one of the chief figures in the political history of the state during the first half of the last century.

Nathan Sanford had already served the state in senate and assembly several years; for thirteen years had been United States District Attorney, and had just closed a term in the United States Senate. He was appointed chancellor in 1823, on the retirement of Chancellor Kent.

Jonas Platt, then a justice of the supreme court, was also a member of the Convention. He had been a member of the assembly, state senate, and of Congress. He went out of office when the new Constitution took effect.

Henry Wheaton, then under forty, who had already achieved prominence at the bar in Rhode Island and in New York, who later became a legal scholar of wide attainments, and a high authority on international law, honored the state by his services in this Convention. He

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had already served as division judge advocate of the Army, and also for four years as justice of the marine court of the city of New York. At the time of the Convention he was reporter of the Supreme Court of the United States, and in that capacity gave to the world a series of reports which a noted German author termed "the golden book of American law," covering one of the most important periods in our national judicial history. In 1825 the legislature appointed a commission composed of Mr. Wheaton, John Duer, and Benjamin F. Butler, to revise the statutes of the state. Their work appears as the body of law known as the Revised Statutes of 1830, which were adopted at different times during the preceding three years. Mr. Wheaton served with this commission until April, 1827, when he was appointed *chargé d'affaires* of the United States at Denmark, being the first American representative to that country. In 1835 he was appointed minister to Prussia, and held the office until 1846. Soon after his retirement, he was appointed lecturer on international law in Harvard College, of which institution he was a graduate. He was the author of several important legal works, most important of which is "The Elements of International Law."

Rufus King had already served his country as a delegate from Massachusetts to the Continental Congress, 1784–1786, as United States senator from New York, 1789–1796, and minister to Great Britain, 1796–1803. He was again elected United States senator in 1813, re-elected in 1819, and held that office at the time of the Convention. In 1825 he was again appointed minister to Great Britain. Though sixty years of age, and probably one of the oldest members of the Convention, he took an active interest in all its deliberations, speaking on nearly all the important questions under consideration.

Peter A. Jay, a son of John Jay, represented West-

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chester county in the Convention. He had served, in 1816, as member of assembly, and, at the time of the Convention, was recorder of the city of New York. He was evidently dissatisfied with the work of the Convention, for he voted against the Constitution, and his letters to his father, written while the Convention was in session, and soon afterwards, show that he felt that the new Constitution had gone too far in the direction of general suffrage.

John Duer was a prominent member of the Convention. Soon after the new Constitution took effect he was appointed a member of a commission to revise the statutes. The results of this commission's work appear in the Revised Statutes of 1830, which have ever since been regarded as a model of general statute law. After the completion of this work he became an associate judge of the superior court of the city of New York, and in 1857 was made the chief justice of the court.

Ogden Edwards had already served many years as surrogate of the county of New York, and also as a member of the legislature. Under the new Constitution he was appointed a circuit judge of the supreme court, and held the office till 1841, when his term was abridged by the age limit in the Constitution.

Many other men who afterwards held responsible positions and achieved distinction in state and local history were members of this Convention, and assisted in framing the second Constitution.

The Convention met on the 28th of August, 1821, and closed its labors on the 10th of November. It considered the entire first Constitution, abrogating many of its provisions, modifying others, and continuing a few without change. Many new provisions were incorporated in the second Constitution, and it became, in many respects, a new charter. Committees were appointed to consider the

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various parts of the Constitution, the new provisions were thoroughly discussed, and often debated at great length. The Convention seemed to be pervaded with a sincere desire to make a constitution which should express in outline the policy of the state concerning public affairs and administration, so far as that policy needed to be enlarged or limited by the fundamental law.

There were several storm-centers in the Convention, and on many subjects wide and irreconcilable differences of opinion. The debates also show occasional evidence of considerable feeling. Several state departments, which received the attention of the Convention, were directly represented in that body, notably the Council of Revision and the judiciary, and the attacks and defense in the discussion of these subjects sometimes provoked very sharp debate. On many of the most important propositions the Convention was almost equally divided, and quite frequently constitutional changes were made by a majority of only two or three votes.

The Second Constitution.

The Constitution of 1821 might perhaps, with more accuracy, be called the Constitution of 1822, because, while it was framed in 1821, it was submitted to the people in 1822, and all of its provisions took effect in that year. This Constitution, with notes, appears in full in the Introduction. By grouping its provisions according to general subjects, and comparing them with the provisions of the first Constitution, it will be noted that we have here substantially a new Constitution. It may be well first to ascertain what became of the first Constitution. The preamble, including the resolutions of the Continental Congress and the Provincial Convention, and also the Declaration of Independence, were, of course, omitted. The conservatism of the Convention is shown

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by the fact that out of forty-two sections in the first Constitution, all except nine are continued, either without change, or with modifications made necessary for the purpose of enlarging their scope. These nine sections are: 1 (Source of Authority), 3 (Council of Revision), 5 (First Census), 6 (Experiments as to the Method of Voting), 8 (Electors' Oath of Allegiance), 22 (Appointment of State Treasurer), 23 (Council of Appointment), 30 (Election of Delegates in Congress), 42 (Naturalization).

A brief analysis of the second Constitution shows the results of development which the Convention thought it necessary to express in the fundamental law.

The Legislature.

This was continued substantially as under the first Constitution,—namely, to be composed of a senate of thirty-two members elected for a term of four years, and whose members must be freeholders; and an assembly of one hundred and twenty-eight members, chosen annually. It will be remembered that the first Constitution, as amended in 1801, fixed the number of senators at thirty-two and the number of members of assembly at one hundred, with a possible increase to one hundred and fifty. The second Constitution did not provide for any increase. The first Constitution divided the state into four senate districts, while the second Constitution provided for eight districts. There was a strong movement in the Convention in favor of individual districts; that is, as many districts as there were senators to be elected, giving each district one senator. Other numbers were proposed, but the number eight was finally agreed on as a compromise, and a provision made for classifying the senators so that one fourth of the number should be elected each year. This gave an opportunity

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for sending new men to the senate, at the same time keeping a majority of experienced members. Under the first Constitution only freeholders could vote for senators; under the second Constitution senators were put on the same plane as other officers in this respect, but the freehold qualification of a senator was preserved.

A census was required to be taken once in ten years, instead of in seven, as under the first Constitution, and the senate districts were to be altered after each census.

A significant change was made in the basis of representation. Under the first Constitution senators and members of assembly were apportioned on the basis of the number of electors; while under the second Constitution the apportionment was based on the number of inhabitants, excluding "aliens, paupers, and persons of color, not taxed."

The second Constitution provided specifically that a bill might originate in either house, and was subject to amendment by the other. The peculiar provision of the first Constitution requiring the houses to meet together in conference in case of disagreement was omitted.

The compensation of the members of the legislature was limited to $3 per day, with a provision that no increase in compensation should take effect during the year in which it was made. Members of the legislature were also prohibited from receiving any civil appointment from the governor and senate, or from the legislature during the term for which they were elected. Members of Congress and persons holding judicial or military offices under the United States were made ineligible to seats in the legislature. Each bill passed by the legislature was to be presented to the governor for his consideration before it could become a law. The veto power, previously vested in the Council of Revision, was transferred to the governor, and the provisions of the first Constitu-

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tion were continued requiring certain subsequent action by the legislature on the veto of a bill, and also the effect of a failure by the governor to return a bill within ten days. The beginning of the political year was changed from the 1st of July to the 1st of January, and the legislature was required to meet on the 1st Tuesday of January.

Suffrage.

The right of suffrage, under the first Constitution, was based on property. Voters for governor, lieutenant governor, and senators were required to be freeholders, owning property worth 100 pounds ($250) over and above all debts charged thereon. Voters for members of assembly were required to own a freehold estate worth 20 pounds ($50), or to be lessees of real property worth 40 shillings ($5), and to have been rated and paid taxes in the state.

The governor, lieutenant governor, senators, and members of assembly were the only state officers elective under the first Constitution. This Constitution did not prescribe the qualifications of voters at town meetings, but by chapter 16, Laws of 1787, it was provided that "every male person, being a citizen of this state, who shall be above the age of twenty-one years, and shall have resided in any town, precinct, or district, six months next preceding such town, precinct, or district meeting, and paid taxes within the same, or shall be possessed of a freehold, or shall have rented a tenement of the yearly value of forty shillings, for the term of one year, within the same, shall have a right to vote at such meeting, and no other person."

These property qualifications were a practical illustration of John Jay's maxim that "those who own the country ought to govern it." The fallacy of this maxim became apparent to the next generation, who appreciated

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the fact that ownership, in a broad sense, does not consist merely in holding the technical title to property, and that those who helped to produce, improve, and preserve property are fairly entitled to a voice in determining the structure of the government, and in choosing the officers who shall administer it.

But the Convention of 1821, while making some advance, did not completely abrogate the restrictions of the right of suffrage. It remained for the people a little later, by special amendment, to sweep away all these barriers against the full exercise of the right of suffrage by every white male citizen.

A view of the right of suffrage expressed in the Convention by Judge Platt is worth noting at this point. He said that the "elective privilege was neither a right nor a franchise, but was, more properly speaking, an office. A citizen had no more right to claim the privilege of voting than of being elected. The office of voting must be considered in the light of a public trust, and the electors were public functionaries, who had certain duties to perform for the benefit of the whole community." Chief Justice Spencer concurred in this view.

Suffrage has been defined as a "vote or a participation in government, and specifically, the privilege of voting under a representative government, upon the choice of officers, and upon the adoption or rejection of fundamental laws." According to Judge Platt's view, the right of suffrage is not a natural right, but is a right granted by the state to those who are deemed best qualified to use it for the public weal. Those who organize a new society may determine who shall participate in its administration, and the manner in which this right shall be exercised. The right of choosing public officers is a qualified right, and often relative in its application. There is no such thing as universal suffrage, because in no society do

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all persons possess the right to vote, the classes depending on the qualifications deemed essential to the exercise of the privilege. Under our American system the power to choose public officers may fairly be called a delegated power,—delegated either to all the male citizens over twenty-one years of age who have resided for a prescribed period in the locality where the power is to be exercised, or delegated to the legislature, or to the governor, or to the judges, or to various municipal boards, like boards of supervisors, common councils, boards of trustees, and boards of education. In all these cases the object of the exercise of the power is to select some person for a public office. This office is a public trust, and the power to fill it is a public trust, whether exercised by the governor, the legislature, a municipal board, the voters in a given locality, or by all the voters in the state.

In some cases the power to select the officer is vested in one person; in other cases in a number of persons, like the members of municipal boards, or the legislature; and in still other cases by a larger number of persons not themselves holding distinct public offices, but as qualified voters, exercising this power of choice. Logically, the character of the power is the same, whether exercised by a number of persons called voters, acting in their original capacity, or by other persons called officers, chosen to perform certain functions, and acting in a representative capacity.

We have already noted, in considering the creation of the original state government, that the first Constitution was actually adopted and put in operation by thirty-three men, members of a convention composed of more than three times that number, and charged with the duty of framing a new government for the colony. This small body of men exercised the power of imposing on the people of the state the limitations on the exercise of the

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function of government contained in the Constitution, determining what officers should be chosen by the people, and prescribing the qualifications of the persons who were deemed fit to exercise the privilege of selecting the only state officers whose selection was committed to their choice,—namely, the governor, lieutenant governor, senators, and members of assembly,—and they, or their appointees, chose the other state officers and many local officers. The restriction on the exercise of the privilege of voting, by limiting it either to owners or lessees of real property, was a clear expression of the opinion entertained by the framers of the first Constitution, that the right to vote was not a natural right, and that it should be exercised by those persons only who possessed an interest in property sufficient to afford a presumption that they would exercise the privilege for the welfare of the state.

Several prominent members of the Convention of 1821 were in favor of continuing these limitations. While the subject of the election of senators was under discussion, on a motion by Chief Justice Spencer that the senators should continue to be elected by freeholders, Chancellor Kent made a speech in favor of the motion, arguing with his usual force and clearness against the proposed extension which would place the election of senators on the same basis as the election of members of assembly. His remarks show that he still adhered to the principles taught by the framers of our government, and they also show the extreme conservatism of his opinions concerning the elective privilege.

Chancellor Kent said: "I cannot but think that the considerate men who have studied the history of republics, or are read in lessons of experience, must look with concern upon our apparent disposition to vibrate from a well-balanced government to the extremes of the demo-

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cratic doctrines. . . . We are engaged in the bold and hazardous experiment of remodeling the Constitution. . . . The senate has hitherto been elected by the farmers of the state,—by the free and independent lords of the soil, worth at least $250 in freehold estate, over and above all debts charged thereon. The governor has been chosen by the same electors, and we have hitherto elected citizens of elevated rank and character. Our assembly has been chosen by freeholders, possessing a freehold of the value of $50, or by persons renting a tenement of the yearly value of $5, and who have been rated and actually paid taxes to the state. By the report before us, we propose to annihilate, at one stroke, all those property distinctions, and to bow before the idol of universal suffrage. That extreme democratic principle, when applied to the legislative and executive departments of government, has been regarded with terror by the wise men of every age, because in every European republic, ancient and modern, in which it has been tried, it has terminated disastrously, and been productive of corruption, injustice, violence, and tyranny. And dare we flatter ourselves that we are a peculiar people, who can run the career of history, exempted from the passions which have disturbed and corrupted the rest of mankind? If we are like other races of men, with similar follies and vices, then I greatly fear that our posterity will have reason to deplore, in sackcloth and ashes, the delusion of the day. . . . . .

"I shall feel grateful if we may be permitted to retain the stability and security of a senate, bottomed on the freehold property of the state. Such a body, so constituted, may prove a sheet anchor amidst the future factions and storms of the Republic. The great leading and governing interest of this state is, at present, the agricultural; and what madness would it be to commit

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that interest to the winds! That great body of the people are now the owners and actual cultivators of the soil. With that wholesome population we always expect to find moderation, frugality, order, honesty, and a due sense of independence, liberty, and justice. It is impossible that any people can lose their liberties by internal fraud or violence so long as the country is parceled out among freeholders of moderate possessions, and those freeholders have a sure and efficient control in the affairs of the government. Their habits, sympathies, and employments necessarily inspire them with a correct spirit of freedom and justice; they are the safest guardians of property and the laws. We certainly cannot too highly appreciate the value of the agricultural interest: it is the foundation of national wealth and power. . . .

"I wish to preserve our senate as the representative of the landed interest. I wish those who have an interest in the soil to retain the exclusive possession of a branch in the legislature, as a stronghold in which they may find safety through all the vicissitudes which the state may be destined, in the course of Providence, to experience. I wish them to be always enabled to say that their freeholds cannot be taxed without their consent. The men of no property, together with the crowds of dependents connected with great manufacturing and commercial establishments, and the motley and undefinable population of crowded ports, may, perhaps, at some future day, under skilful management, predominate in the assembly; and yet we should be perfectly safe if no laws could pass without the free consent of the owners of the soil. That security we at present enjoy; and it is that security that I wish to retain.

"The apprehended danger from the experiment of universal suffrage applied to the whole legislative department is no dream of the imagination. It is too mighty

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an excitement for the moral constitution of men to endure. The tendency of universal suffrage is to jeopardize the rights of property and the principles of liberty. There is a constant tendency in human society, and the history of every age proves it,—there is a tendency in the poor to covet and to share the plunder of the rich; in the debtor to relax or avoid the obligation of contracts; in the majority to tyrannize over the minority, and trample down their rights; in the indolent and the profligate, to cast the whole burthens of society upon the industrious and virtuous; and *there is a tendency in ambitious and wicked men to inflame these combustible materials.* It requires a vigilant government, and a firm administration of justice, to counteract that tendency. Thou shalt not covet, thou shalt not steal, are divine injunctions, induced by this miserable depravity of our nature. Who can undertake to calculate with any precision, how many millions of people this great state will contain in the course of this and the next century? and who can estimate the future extent and magnitude of our commercial ports? The disproportion between the men of property and the men of no property will be in every society in a ratio to its commerce, wealth, and population. We are no longer to remain plain and simple republics of farmers, like the New England colonists, or the Dutch settlements on the Hudson. We are fast becoming a great nation, with great commerce, manufactures, population, wealth, luxuries, and with the vices and miseries that they engender.

"The growth of the city of New York is enough to startle and awaken those who are pursuing the *ignis fatuus* of universal suffrage. In 1773 it had 21,000 souls; in 1801 it had 60,000 souls; in 1806 it had 76,000 souls; in 1820 it had 123,000 souls. [In 1900, 3,437,202. C. Z. L.]

"It is rapidly swelling into the unwieldy population,

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and with the burdensome pauperism, of a European metropolis. New York is destined to become the future London of America; and in less than a century, that city, with the operation of universal suffrage, and under skilful direction, will govern this state.

"The notion that every man that works a day on the road, or serves an idle hour in the militia, is entitled as of right to an equal participation in the whole power of the government, is most unreasonable, and has no foundation in justice. . . .

"Society is an association for the protection of property as well as of life, and the individual who contributes only one cent to the common stock, ought not to have the same power and influence in directing the property concerns of the partnership as he who contributes his thousands. He will not have the same inducements to care, and diligence, and fidelity. His inducements and his temptation would be to divide the whole capital upon the principles of an agrarian law. . . .

"Liberty, rightly understood, is an inestimable blessing; but liberty without wisdom, and without justice, is no better than wild and savage licentiousness. The danger which we have hereafter to apprehend is not the want, but the abuse, of liberty. We have to apprehend the oppression of the minorities, and a disposition to encroach on private right,—to disturb chartered privileges, and to weaken, degrade, and overawe the administration of justice; we have to apprehend the establishment of unequal, and consequently, unjust, systems of taxation, and all the mischief of a crude and mutable legislation. A stable senate, exempted from the influence of universal suffrage, will powerfully check these dangerous propensities; and such a check becomes the more necessary, since this Convention has already determined to withdraw the

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watchful eye of the judicial department from the passage of laws. . . .

"We are destined to become a great manufacturing as well as commercial state. We have already numerous and prosperous factories of one kind or another, and one master capitalist with his one hundred apprentices and journeymen and agents and dependents will bear down at the polls an equal number of farmers of small estates in his vicinity, who cannot safely unite for their common defense. Large manufacturing and mechanical establishments can act in an instant with the unity and efficacy of disciplined troops. It is against such combinations, among others, that I think we ought to give to the freeholders, or those who have interest in land, one branch of the legislature for their asylum and comfort. Universal suffrage once granted, is granted forever, and never can be recalled. There is no retrograde step in the rear of democracy. However mischievous the precedent may be in its consequences, or however fatal in its effects, universal suffrage can never be recalled or checked, but by the strength of the bayonet. We stand, therefore, this moment, on the brink of fate; on the very edge of the precipice. If we let go our present hold on the senate, we commit our proudest hopes and our most precious interests to the waves. . . .

"It ought further to be observed, that the senate is a court of justice in the last resort. It is the last depository of public and private rights; of civil and criminal justice. This gives the subject an awful consideration, and wonderfully increases the importance of securing that house from the inroads of universal suffrage. Our country freeholders are exclusively our jurors in the administration of justice, and there is equal reason that none but those who have an interest in the soil should have any concern in the composition of that court. As long as the

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senate is safe, justice is safe, property is safe, and our liberties are safe. But when the wisdom, the integrity, and the independence of that court is lost, we may be certain that the freedom and happiness of the state are fled forever.

"I hope, sir, we shall not carry desolation through all the departments of the fabric erected by our fathers. I hope we shall not put forward to the world such a new Constitution as will meet with the scorn of the wise, and the tears of the patriot."

Erastus Root, replying to Chancellor Kent, urged that the senate should not be "elected by different persons, so as to possess genius and feelings hostile to each other;" that the senate and assembly should not be composed of heterogeneous materials and distinct elements. He said it was admitted that "the senate, although elected by freeholders, has not possessed a superiority, in any respect, over the other branch of the legislature. The balance of the different branches of the government has been a theme of warm admiration. It has been likened to a beautiful pyramid, of which the king was the apex, the people the base, and the aristocracy in the center,—that is, between the head and the tail. I am not disposed to carry my admiration so far as to place the people's governor at the top, the people's legislature at the bottom, and the aristocratic senate, between two fires, in the middle. However pleasant the theory may be, it is incompatible with the genius of our government. These powerful checks may be necessary between different families, possessing adverse interests, but can never be salutary among brothers of the same family, whose interests are similar."

P. R. Livingston was opposed to continuing the limitation as to voters for senators. He said that the people wanted the extension of suffrage, that "74,000 witnesses

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testified last spring that they wanted it. Meetings and resolutions, public prints, and conversation have united to require it." He said the landed interest itself had demanded this extension. "It is said that wealth builds our churches, establishes our schools, endows our colleges, and erects our hospitals." But he said these institutions have not been raised without the hand of labor. "It is the same hand that has leveled the sturdy oak, the lofty pine, and towering hemlock, and subdued your forests to a garden. It is not the fact, in this country, that money controls labor; but labor controls money."

Governor Tompkins said that "property, when compared with our other essential rights, is insignificant and trifling. 'Life, liberty, and *the pursuit of happiness*'—not of property—are set forth in the Declaration of Independence as cardinal objects. Property is not even named. It is not to be disguised that we are about to become a naval power. The late war (1812) bore triumphant testimony to the fact that we are under no necessity of maintaining a standing army. The militia is sufficient to repel incursions of the savages, to suppress insurrection, or to repel an invading foe. Give them something, then, to fight for. How was the late war sustained? Who filled the ranks of your armies? Not the priesthood, not the men of wealth, not the speculators: the former were preaching sedition, and the latter decrying the credit of the government, to fatten on its spoil. And yet the very men who were led on to battle, had no vote to give for their commander in chief. . . .

"We have yielded to property as much as it deserves. It remains, also, that we should look to the protection of him who has personal security and personal liberty at stake. It is the citizen soldier who demands the boon, and he rightfully demands it. It is a privilege inestimable to him, and 'only formidable to tyrants.'"

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Mr. Buel called attention to the Constitutions of other states, pointing out that in four only, including New York, was the exclusive right of voting confined to landholders; and that a large majority of statesmen and patriots of the country "sanctioned and established as a maxim the opinion that there is no danger in confiding the most extensive right of suffrage to the intelligent population of these United States."

Martin Van Buren was in favor of the extension of the right of suffrage, and made a long speech against Chief Justice Spencer's motion. He spoke of the "sombre and frightful picture" which had been drawn by Chancellor Kent, and the "alarming consequences," which it was supposed would flow from the proposed extension. He quoted from a modern writer the observation that "Constitutions are the work of time, not the invention of ingenuity: that to frame a complete system of government, depending on habits of reverence and experience, was an attempt as absurd as to build a tree, or manufacture an opinion." Mr. Van Buren reviewed the argument on both sides in an elaborate historical and philosophical exposition of the principles involved, and urged the rejection of the amendment to permit freeholders only to vote for senators. Judge Van Ness favored the retention of the freehold qualification of voters for senators, suggesting that this class included, in fact, nine tenths of the people, and that the provision requiring this qualification would be an inducement for men to become freeholders so that they could thereby become voters.

The debate continued three days, and at its close Chief Justice Spencer's motion was defeated by a vote of 19 to 100. This settled conclusively, in the Convention, the question of the extension of the right of suffrage.

Four days after this vote was taken, Peter Jay Munro, a nephew of John Jay, offered a resolution that "the right

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of suffrage for all elective officers be vested in all the resident male citizens of the state, of the age of twenty-one years," who have acquired a legal settlement in any city or town. This resolution was referred to a select committee, but apparently the Convention was not ready for this broad extension of the right of suffrage. The committee to whom this resolution was referred reported a more restricted rule, which in substance was approved by the Convention, but the people, five years later, adopted Mr. Munro's plan, requiring for white voters only citizenship and a prescribed length of residence.

RESTRICTING THE COLORED VOTE.

The American nation is not likely soon to outgrow the effect of African slavery on its institutions; social conditions, statutes, commercial relations, and constitutional provisions are familiar incidents of conditions produced by the coming of the black man to America. It is almost literally true that he came with the white settlers, and he has from the first been an interesting and sometimes an extremely perplexing concomitant of our American civilization. The problem of the negro in America is not yet settled. His status in our social and political order is still uncertain, notwithstanding all our efforts, by statutes and constitutions, to define his position. We cannot read the negro out of our history; he is an inseparable part of it, and it is impossible intelligently to consider our institutions and omit this element of influence in shaping our political system. While the direct effect of slavery was most seriously felt in the Southern states, New York was not too far north to become the home of the slave through the colonial period and for fifty years of our state history. The subject is especially pertinent here, for the Convention of 1821 introduced into the Constitution a rule of exclusion or of discrimination in relation to suffrage, which

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placed colored voters in a different class from that of their white neighbors. We shall have occasion hereafter to show that this discrimination continued until abrogated by the Fifteenth Amendment to the Federal Constitution, which took effect in 1870, and that it remained a part of our state Constitution until the 1st of January, 1875, when it was superseded by the amendments of 1874.

The history of slavery in New York does not belong in this work, but a few incidents concerning it may properly be given for the purpose of explaining conditions which seem to have influenced the Convention in adopting a rule which was intended to exclude the majority of colored men from the right to vote. The Dutch settlers of New Netherland were not originally slave holders. This appears from a communication from the Assembly of XIX. to the States General in October, 1629, eight years after the incorporation of the Dutch West India Company, in which it was said that the Dutch could not successfully compete with the Spanish and Portuguese in colonizing the tropical parts of America, for the reason that the Dutch had no slaves and were not "used to the employment of them." But the West India Company evidently intended to overcome this difficulty, for in the "Freedoms and Exemptions" proposed the same year for the purpose of encouraging the settlement of New Netherland the Company agreed to supply "the colonists with as many blacks as they conveniently can" and so long as the Company might deem proper. This policy was renewed in the "Freedoms and Exemptions" of 1640. So the "Board of Accounts," in a report to the Assembly of XIX., in 1644, suggested that it would not be unwise to allow the introduction into New Netherland of negroes from Brazil, "which negroes would accomplish more work for their masters, and at a less expense, than farm servants." The policy of importing negroes was also encour-

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aged in a communication from the Assembly of XIX. to the Director and council in New Netherland in 1646, and again by resolutions of the States General in 1648.

Thus the Dutch, a nation of freemen who had achieved their political freedom after almost unparalleled sacrifices, adopted, for the sake of commercial success, a social policy evidently repugnant to them. To what extent the early colonists availed themselves of the encouragement to introduce negro slavery does not appear. Some of them do not seem to have taken kindly to this policy, for in the remonstrance from the colony which was sent to the States General in 1649, complaint is made, among other things, that while certain slaves had been manumitted, their children were continued in bondage, "contrary to all public law, that any one born of a free Christian mother should, notwithstanding, be a slave and obliged so to remain." The West India Company, replying to this complaint, said that the "Company's negroes taken from the Spaniards, being all slaves, were, on account of their long services, manumitted on condition that their children serve the Company whenever it pleased," and that only three of such children were then in service, one of whom was in the family of Governor Stuyvesant. This partial emancipation had no appreciable effect on the slave policy, which was firmly fastened on the colony, and was further encouraged from time to time by the home government.

That the new policy had taken root is manifest from a petition presented by the magistrates of Gravesend to the Directors of the Company in Amsterdam, in September, 1651, in which the magistrates requested the Directors to purchase for that settlement "negroes or blacks," for which the magistrates would pay whatever price the Company might charge. Incidentally it may be noted that in the summer of 1664, not long before the Dutch surren-

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dered the colony to the English, a ship containing some three hundred negroes came into New York bay, that about two hundred and fifty were sold in this colony, and the remainder were taken to colonies farther south.

The English found slavery an established institution in the colony, but it was not new to English colonial experience. Slavery was continued and encouraged in New York, and the records of that period show large importations of slaves. There was, however, an evidently sincere attempt to mitigate the condition of these unfortunate creatures, for we find, in the royal instructions to Governor Dongan in 1686, a direction to him to find out, with the assistance of the council, "the best means to facilitate and encourage the Conversion of negroes & Indians to the Christian Religion." These instructions were often repeated to subsequent governors. "Man's inhumanity to man" was forcibly illustrated by the refusal of the assembly, in 1699, to pass a bill urged by Governor Bellomont for the purpose of facilitating the conversion of slaves, who reported that the bill "would not go downe with the assembly: they having a notion that the Negroes being converted to Christianity would emancipate them from their slavery, and loose them from their service, for they have no other servants in this country but negroes." The same Governor, in a communication to the Lords of Trade, April 17, 1699, advised the importation of negroes from Guinea, to be used in the manufacture of naval stores, saying that they could be imported at an expense of about ten pounds ($25) New York money, and could be maintained for nine pence a day. To what extent this suggestion influenced the subsequent slave trade I do not know, but, according to the colonial records, 2,395 negro slaves were imported during twenty-five years, from 1701 to 1726 inclusive. According to the census of 1703 there were 1,301 slaves in the counties of New York, Kings,

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Richmond, Orange, and Westchester. The general census of 1723 showed 6,171 negroes and slaves in the colony. The last colonial census, 1771, showed 19,883 blacks, and Governor Tryon, in 1774, estimated that there were then 21,149 blacks.

New York was not considered a very good slave market. Governor (Lord) Cornbury, in a report in 1708, said that ships engaged in the slave trade seldom came to New York, "but rather go to Virginia and Maryland, where they find a much better market for their negroes than they can do here." Several statutes passed during the colonial period imposed duties on the importation of negroes, and sought to regulate the treatment and conduct of slaves, including rigorous fugitive slave laws.

In the chapter on the first Constitution I have quoted the preamble and resolution proposed in the Convention of 1776–77 by Gouverneur Morris, intended to provide for the gradual abolition of slavery. The preamble recited that the blessings of freedom ought to be dispensed to all mankind, but that the immediate abolition of slavery was deemed inexpedient. The legislature was therefore urged to take measures as soon as practicable for the abolition of slavery, "so that in future ages every human being who breathes the air of this state shall enjoy the privileges of a freeman." The preamble and the resolution were each separately adopted by a large majority. The resolution did not embody an essential constitutional principle, and was only a recommendation to the legislature. After further consideration the Convention decided to omit the provision from the Constitution, but the effect of it remained as a declaration of the policy which ought to be adopted and pursued in the state in relation to slavery. I have also, in that chapter, noted the fact that John Jay supported the Morris resolution, hoping that New York would be the pioneer state in the abolition of

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slavery. The Constitution as finally adopted was silent on this subject, and it is noteworthy, in view of the action of the Convention of 1821, that the first Convention made no discrimination among voters on account of color. Negroes who possessed the other qualifications were permitted to vote on the same terms as whites; indeed, the classification of races was not even suggested in the first Constitution. The statesmen who framed the first Constitution, and who, by adopting the Morris resolution, declared their attitude toward slavery, continued in control of public affairs many years.

The policy of the Morris resolution was practically adopted by the legislature in 1785, by an act which prohibited the sale in this state of any negro or other person imported or brought into the state from any other part of the United States, or from any other place or country, and such a person so sold contrary to the statute was thereupon declared to be free. The same statute provided for the manumission of slaves, either by certificate or by will. According to an act passed in 1798 it seems that the Quakers had manumitted their slaves, but, in some cases, not in strict conformity with the statute. This act ratified all such manumissions. The abolition movement was evidently growing, for in March of the next year an act was passed declaring that every child born in this state of a slave after the 4th of July, 1799, should be free; yet not quite free, for the statute made such a child the servant of its mother's proprietor until twenty-eight years of age if a male, and twenty-five years if a female, and subject to the provisions of law relating to persons bound to service by overseers of the poor. The act of 1801 restricted the importation or exportation of slaves except under specified conditions, amounting practically to a positive prohibition. The act of 1817 required masters of servants who became such under the act of

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1799 and subsequent statutes declaring the status of children of slaves to provide for the education of such servants by teaching them, among other things, to read the Holy Scriptures before they became eighteen years of age, and in default, such a servant, on arriving at that age, was entitled to his freedom. The act of 1817 was another step toward the ultimate abolition of slavery, for it expressly declared that "every negro, mulatto, or mustee within this state, born before the 4th day of July, 1799, shall, from and after the 4th day of July, 1827, be free." The 4th of July, 1827, thus became New York's emancipation day. This principle was confirmed by that part of the revised statutes, including this subject, which was passed December 3, 1827, and signed by Governor De Witt Clinton on the same day, which expressly declared that "every person born within this state, whether white or colored, is free; every person who shall hereafter be born within this state, shall be free; and every person brought into this state as a slave, except as authorized by this title, shall be free." Thus ended slavery in New York, after an existence of two centuries.

Opposition to slavery, which had been so clearly expressed by the Morris resolution in the Convention of 1777, continued to increase, and was evidenced not only by the New York act of 1817 providing for the abolition of slavery, but also by the action of other states, and by most earnest discussion in Congress. New York was not oblivious to national anti-slavery agitation, but by executive and legislative utterances sustained the policy of restricting slavery, which found expression in the Missouri Compromise of 1820. The anti-slavery line between the North and South was already being closely drawn, and the proposed admission of Missouri into the Union as a slave state culminated in the declaration of a far-reaching policy in relation to the extension of slavery.

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Governor De Witt Clinton referred to the subject in his annual speech to the legislature in January, 1820, in which, after considering some general aspects of national affairs, he said he considered "the interdiction of the extension of slavery a paramount consideration. Morally and politically speaking, slavery is an evil of the first magnitude; and whatever may be the consequences, it is our duty to prohibit its progress in all cases where such prohibition is allowed by the Constitution. No evil can result from its inhibition more pernicious than its toleration; and I earnestly recommend the expression of your sense on this occasion as equally due to the character of the state and the prosperity of the empire." The assembly appointed a select committee to consider this part of the Governor's speech. The committee reported the following preamble and resolution, which were adopted by both houses:

"Whereas, the inhibiting the further extension of slavery in these United States is a subject of deep concern among the people of this state; and whereas we consider slavery an evil much to be deplored, and that every constitutional barrier should be interposed to prevent its further extension; and that the Constitution of the United States clearly gives Congress the right to require, in all new states not comprised within the boundaries of these United States, the prohibition of slavery as a condition of its admission into the Union:" New York senators and representatives were therefore asked to "oppose the admission as a state into the Union any territory not comprised as aforesaid, without making the prohibition of slavery therein an indispensable condition of admission."

This was in January, 1820. On the 6th of March following, Congress passed an act providing for the admission of Missouri as a state, and which act expressly pro-

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hibited slavery in that part of the Louisiana purchase north of thirty-six degrees and thirty minutes north latitude not included in Missouri. The first Constitution of Missouri contained a clause requiring the legislature to pass laws preventing free negroes and mulattoes from becoming residents of the state. Congress objected to this provision and declined to admit the state, except upon the condition that no law should ever be passed by the legislature to enforce the free negro clause in the state Constitution. The legislature was required to assent to this condition by a public act, to be communicated to the President, who was thereupon authorized to issue a proclamation declaring Missouri admitted to the Union. An act was accordingly passed which was deemed sufficient by President Monroe, and a proclamation was issued by him on the 10th of August, 1821. This was only eighteen days before the meeting of the New York Constitutional Convention. Four important steps had been taken in relation to slavery: three in New York,—namely, the act of 1785, prohibiting the sale of persons as slaves in New York, the act of 1799, giving freedom to the children of slaves, and the act of 1817, providing for the ultimate abolition of slavery in this state in 1827,—and one by Congress, prohibiting slavery in the northern part of the Louisiana purchase. These were some of the positive public acts which were fresh in the minds of statesmen who composed the Convention, but the discussion went far beyond the results actually accomplished, and the anti-slavery sentiment was rapidly growing. New York had taken the last practicable step for the abolition of slavery, but slavery still existed, and only a few months after the legislature passed the concurrent resolution already quoted, a Federal census was taken which showed that in New York there were then, 1820, 10,089 slaves, besides 29,278 free blacks, and 701 indented servants, which

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probably included the free children of slave parents, under the act of 1799. It thus appeared that New York had a colored population amounting to 39,367, not including indented servants, some of whom were probably children of slaves.

In the Convention of 1821 the committee on suffrage proposed a provision limiting the elective franchise to white male citizens. Peter A. Jay, a son of John Jay, moved to strike out the word "white." This precipitated a long debate in which the elements of the right of suffrage were considered from a philosophical and also from a practical standpoint. It was admitted that the provision was new in our Constitution. Mr. Ross, explaining the committee's report, said blacks were excluded "because they are seldom, if ever, required to share in the common burthens or defense of the state." He said they were "incapable of exercising that privilege with any sort of discretion, prudence, or independence. They have no just conceptions of civil liberty. They know not how to appreciate it, and are consequently indifferent to its preservation." He said the exclusion invaded no inherent right, and had nothing to do with the question of slavery. He said the question was one of expediency only. Mr. Jay vigorously protested against the proposed exclusion, urging that colored men already possessed this right, that they were natives of the same country, and derived from our institutions the same privileges, as white persons. He said the whole number of colored persons was less than one fortieth of the whole population, and that there was no necessity for the exclusion as a public measure. He said that in the city of New York not more than one tenth of the inhabitants were colored and of this tenth only a few were entitled to vote. General Root said the blacks could not be called on for military service, and they have "no anchorage in your country which the government is

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willing to trust." He said it was impossible to remodel the Constitution without changing the relative rights of citizens. Mr. R. Clarke said that in the War of the Revolution colored men helped to fight our battles on land and sea, and in the War of 1812 they contributed to some of the most splendid victories.

Mr. Young said when the first Constitution was framed there were "few or no free blacks in the state. The present state of things was not contemplated, and hence no provision was made against it." Chancellor Kent supported Mr. Jay's motion. He said he did not come to the Convention to disfranchise any person or to take away any person's rights. He said it deserved consideration whether the proposed exclusion would not be a violation of the provision in the Federal Constitution that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." Col. Young quoted from the opinion of the chancellor, then chief justice, in *Livingston* v. *Van Ingen,* 9 Johns. 577, where it was said that the clause meant "only that citizens of other states shall have equal rights with our own citizens, and not that they shall have different or greater rights." Mr. Radcliff thought this provision applied only to civil, and not to political, rights. Rufus King thought the provision extended to all rights. He said if the children of the white men are citizens, so are the children of the black men, "and they may, in time, raise up a progeny which will be disastrous to the other races of this country."

Chief Justice Spencer made the following statement of the principles which ought to guide a constitutional convention in framing the fundamental law: "In proceeding to amend the Constitution, this Convention has an unquestionable right to protect and guard the rights of the majority of the community, although it may seemingly invade the rights of others. The community has a right

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to secure its own happiness and prosperity, and we are authorized to adopt all means that shall conduce to that end. If we find existing in this community any particular class of people who cannot, with propriety and safety, exercise and enjoy certain privileges, we have a right to abridge them by placing them in the hands of the majority." Referring to the blacks, the Chief Justice said that, whatever our faults or the faults of our ancestors concerning them, "we have the unquestionable right, if we think the exercise of this privilege of voting by them will contravene the public good,—we have a right to say they shall not enjoy it."

The Chief Justice said that the clause in the Federal Constitution relating to privileges and immunities of citizens referred only to personal rights. "A citizen had no more right to claim to be an elector than to be elected." General Tallmadge said that at a contested election in the city of New York in the spring of 1821 only one hundred and sixty-three colored persons voted. Mr. Livingston said that when the first Constitution was framed a free negro in this state was a phenomenon. Practically all negroes were then slaves. Their condition had been ameliorated by statute and otherwise, and provision had been made for their emancipation, but he thought they were not qualified to become electors, and ought not to be clothed with that privilege. He said that out of about fifty colored petitioners who had presented a petition for a continuance of the elective franchise, more than twenty could not even write their names. He said that at the recent election in New York city more than five hundred colored persons applied for admission as voters.

After a prolonged debate Mr. Jay's motion to strike out the word "white" was carried by a vote of 63 to 59. We find on the affirmative side the names of many leaders of the Convention, including Jay, Kent, King, Munroe,

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Nelson, Platt, Van Buren, Van Ness, Wheaton, and Yates. After considering other sections of the suffrage article, the whole subject, on motion of Mr. Edwards, was referred to a new committee of thirteen. This committee brought in a report prescribing the general qualifications of voters, with a proviso that "no male citizen, other than white, shall be subject to taxation, or entitled to vote at any election, unless, in addition to the qualifications of age and residence last above mentioned, he shall be seized and possessed, in his own right, of a freehold estate of the value of $250, over and above all debts and incumbrances charged thereon, and shall have been, within the year next preceding the election, assessed, and shall have actually paid, a tax to the state or county."

This presented a new view of the subject. Under the original report of the standing committee a colored person was denied the right of suffrage without regard to property or other qualifications. The Convention, by a narrow majority, had voted to strike the word "white" from the first report, with the result that all persons, without regard to color, would have been entitled to vote if possessing the required qualifications. The new report admitted colored citizens to the right of suffrage upon a property test which was not applied to white voters, and as an apparent compensation for the denial of suffrage, colored persons were not to be subject to taxation unless they were also qualified to vote. Mr. Briggs thought the property qualification ought not to be imposed on blacks any more than on whites. Chancellor Kent said he was in favor of the proviso. He said it was true that the blacks were, in some respects, a degraded portion of the community, but he was unwilling to see them disfranchised and the door eternally barred against them. The proviso would not cut them off from all hope, and might, in some degree, alleviate the wrongs we had done them.

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It would have a tendency to make them industrious and frugal, with the prospect of participating in the right of suffrage. Mr. Van Buren also supported the proviso. The proviso was adopted by a vote of 72 to 31, but Chancellor Kent evidently changed his mind, for he voted against it, as did also Chief Justice Spencer, Mr. Jay, Mr. Root, Mr. Munro, Judge Platt, Mr. Wheaton, and several others who had voted against the original report.

When the section was under consideration again, Judge Platt moved to expunge the proviso, and delivered a speech which I think embodies the ablest presentation of the subject during the debate on suffrage. He said the "obligations of justice are eternal and indispensable." The proviso embodied a principle to which he could not give his consent. He admitted that most of the free negroes in this state were unfit to be intrusted with the right of suffrage. He said he would exclude the great mass of them, "but not by this unjust and odious discrimination of color." He said there was no necessity for this principle of exclusion. "Let us," he said, "attain this object of exclusion by fixing such an uniform standard of qualification as would not only exclude the great body of freemen of color, but also a large portion of ignorant and depraved white men, who are as unfit to exercise the power of voting as the men of color." He said that by this proviso "all freemen of African parentage are to be constitutionally degraded, no matter how virtuous or intelligent." The proviso added "mockery to injustice." "During the last forty years we have brought up this foreign race from the house of bondage: we have led them nearly through the wilderness, and shown them the promised land. Shall we now drive them back again into Egypt?" Looking into the future, Judge Platt said: "If I do not deceive myself, those who shall live fifty years hence will view this proviso in the same light as we

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now view the law of our New England fathers, which punished with death all who were guilty of being Quakers; or the law of our fathers in the Colonial Assembly of New York, which offered bounties to encourage the slave trade." In less than fifty years after this utterance slavery had disappeared, and all discriminations in the elective franchise, based on color, had been abolished. Thirty-three delegates voted to strike out the proviso, but the majority of the Convention adhered to the property test for colored voters, and it was included in the Constitution.

Under the second Constitution a qualified voter must have been:—

A resident of the state for one year.

A resident for six months in the town or county where he might offer his vote.

He must have paid a tax within one year on his real or personal property, unless he was exempt from taxation.

Or must have performed military duty within the year in the state militia, unless he was entitled to a fireman's exemption.

Or, having been a resident of the state three years, and of the town or county one year, must have been assessed for highway labor, and must have performed such labor, or have commuted therefor.

These qualifications had substantially been prescribed by the convention act of 1821 for voters on the question of holding a convention and on the approval of the Constitution to be proposed by the convention. The Convention, therefore, adopted, in substance, a suffrage policy which had already been declared by the legislature.

A colored voter must have been a resident of the state three years, and for one year seized or possessed of a freehold estate worth $250, over and above all debts charged

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thereon, and on which estate he had paid a tax. Colored persons were exempt from direct taxation on property valued at less than $250.

A qualified voter was entitled to vote in the town or ward where he resided, and not elsewhere, for all elective officers. This abolished all distinctions under the first Constitution between different classes of voters, and placed all voters for all officers in one class.

The legislature was authorized to pass laws excluding from the right of suffrage persons convicted of infamous crimes. The legislature was also required to enact registration laws.

The Constitution also provided for election by ballot, except for certain minor offices. Under the first Constitution, the governor and lieutenant governor were to be elected by ballot, and the senators and members of assembly were to be elected *viva voce*.

The first Constitution authorized the legislature "as soon as may be after the close of the present war between the United States of America and Great Britain," to cause all elections of senators and members of assembly to be by ballot; and if this method should prove unsatisfactory, the legislature was authorized to restore voting *viva voce*. By the first election law, passed March 27, 1778, a qualified voter for senator or member of assembly was required to "deliver his vote *viva voce* and with an audible voice," in the hearing of the inspectors, one of whom was required to repeat the vote to the clerks, who were required to enter it in the poll lists. A person voting for governor and lieutenant governor was required to vote by ballot, using a "paper ticket," which was required to be "so folded, rolled up, tied, or otherwise closed, as to conceal the writing;" and this ticket was required to be delivered to the inspectors, and by them put into a box prepared for that purpose.

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It will be observed that under this statute only voters for governor and lieutenant governor possessed the privilege of secrecy in voting, and that persons voting for senators and members of assembly were required to state their choice openly.

In 1787, the war having closed, the legislature, acting under the authority conferred by the Constitution, changed the method of voting for senators and members of assembly, and required all voting to be by ballot, following substantially the "paper ticket" provisions of the act of 1778. This secured secret voting for all state officers then elective; and the Constitution of 1821 made this provision permanent.

The Executive.

Under the first Constitution the governor was required to be a freeholder, and he was chosen for the term of three years. Under the second Constitution the freehold qualification was continued, and in addition the governor was required to be a native citizen of the United States, thirty years of age, and five years a resident of the state. The term was reduced to two years. There was considerable difference of opinion in the Convention concerning the term, but with a general agreement that the term of three years should be reduced. The principal reason for the reduction of the term was the larger authority conferred on the governor by the new Constitution. There was a strong movement in favor of a one year term, but the majority thought this too short, because not giving the governor sufficient opportunity to formulate policies, and become familiar with public affairs. Provision was made for an election by the legislature in case of a tie in the popular vote.

The governor's power to prorogue the legislature, conferred by the first Constitution, was not continued, but he

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was to have the same right to convene the legislature "on extraordinary occasions." The general powers conferred on the governor were substantially the same, except that his pardoning power was extended to cases of murder; under the first Constitution the power to pardon in murder cases was vested in the legislature. The power to pardon in cases of treason was still excluded from his jurisdiction, and continued in the legislature. While the pardoning power was under discussion, Judge Platt remarked that "the dispensation of mercy is an appropriate duty of the Executive alone, who superintends the execution of the law. A popular assembly is not a fit tribunal to determine in such cases." Mr. Sheldon, in reply, said the governor ought not to have the pardoning power in cases of murder; "in all such cases the culprit should die by the voice of the people." Governor Tompkins proposed to except impeachment cases from the governor's pardoning power. Chief Justice Spencer observed that impeachment does not imply a conviction of a crime in the legal sense; and that the officer after removal is indictable if the offense is criminal. But it was agreed that the Constitution should be explicit, and the Tompkins amendment was adopted.

Provision was also made, as in the first Constitution, for the election of the lieutenant governor with the same qualifications and for the same term as the governor. The provision authorizing the lieutenant governor and the president of the senate to act as governor in special emergencies was continued substantially as in the first Constitution.

A new provision was included in the second Constitution, requiring the governor to be paid a stated compensation, which should neither be increased nor diminished during his term.

The further evolution of this subject will be noted later,

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resulting in a provision fixing the governor's compensation in the Constitution itself.

Under the first Constitution it was the duty of the governor "to inform the legislature of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare, and prosperity." As a substitute for this provision the second Constitution provided that the governor "shall communicate to the legislature at every session the condition of the state; and recommend such matters to them as he shall judge expedient." Under the first Constitution it was the custom of the governor to open each session of the legislature by a speech delivered in the presence of both houses, assembled together for this purpose. The motion to change the practice by requiring the governor to communicate by message, instead of by a speech, was made by Peter R. Livingston, and in support of his motion he made the following interesting statement: "The latter mode has been productive of great inconvenience and expense. I had the curiosity once to look over the journals, and I ascertained that it cost $70,000 to the state during ten to fifteen years, in debate about the reply to a governor's speech. This speech is a relic of monarchy, founded in the love of pomp and splendor and show. Besides, when the two houses are of different political character, one approves, the other condemns, the speech; and in 1814 the assembly spent eleven days in discussing the propriety of an answer to the governor's speech, yet we all know that neither a speech nor an answer is legislation. In the general government, until Mr. Jefferson's accession, a speech was delivered by the President and an answer was read; but Mr. Jefferson cut up the practice by the roots by sending a message. Besides, for the sake of the harmony due to the proceedings of the two houses,

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when of different political character, it is best to have a message. We have seen, and might see again, a governor on his own carpet, obliged to listen to sentiments which must be odious to him; obliged to submit in quiet to a flagellation, as bitter as political hostility could make it. To be sure, the governor has the last word, and he sends back a reply more bitter, if possible, than the answer; but all this is injudicious and improper, and will be done away by adopting the proposition I have the honor to make."

Officers.

Many changes were made by the second Constitution in the manner of choosing public officers. It has already been noted that nearly 15,000 officers were appointed by the Council of Appointment, and that great abuses had grown up in connection with the exercise of this power by that council. An opinion had long been growing in the state in favor of extending the right of the people to elect officers, and in opposition to the policy of requiring local officers to receive their appointments from Albany. Some changes in this direction were made by the Convention.

ELECTIVE OFFICERS.

The governor, lieutenant governor, and members of the legislature. These had been elective under the first Constitution.

Sheriffs, clerks of counties, including the register of New York, and coroners. These were appointive under the first Constitution.

All other officers who had previously been elective.

APPOINTIVE OFFICERS.

Secretary of state, comptroller, treasurer, attorney general, surveyor general, commissary general, to be appointed by the legislature.

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All judicial officers, except justices of the peace, by the governor.

Justices of the peace, by the board of supervisors and judges of the county court.

Clerks of courts, by the courts of which they are clerks.

District attorneys, by the county courts.

Mayors, by the common councils.

Masters and examiners in chancery, by the governor and senate.

Clerk of the court of oyer and terminer and general sessions in the city of New York, by the court of general sessions.

Special justices and assistants in New York, by the common council.

Major general, brigade inspectors, and chiefs of the staff departments, by the governor and senate.

Adjutant general, by the governor.

Militia officers in general, by the organizations or by officers thereof.

TENURE.

Governor and lieutenant governor, two years. The term was three under the first Constitution.

Senators, four years, and

Members of Assembly, one year, the same as under the first Constitution.

Chancellor and justices of the supreme court, during good behavior, or until they attain the age of sixty years, as under the first Constitution.

Justices of the peace, four years. Under the first Constitution they held their office at the pleasure of the Council of Appointment.

Secretary of state, comptroller, attorney general, surveyor general, and commissary general, three years. Under the first Constitution these officers were subject

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to removal at any time by the Council of Appointment.

Sheriffs, clerks of counties, register of New York, and coroners, three years. Under the first Constitution sheriffs and coroners were appointed annually. The clerks held their offices during the pleasure of the Council of Appointment.

Clerks of courts and district attorneys, three years. No term was fixed under the first Constitution.

Mayors of cities, one year.

Masters and examiners in chancery, three years.

Register and assistant register, during the pleasure of the chancellor.

The clerk of oyer and terminer and general sessions in New York, during the pleasure of the court.

Special justice and assistants in New York, four years.

County court judges and city recorders, five years.

An official term not fixed by the Constitution might be established by law, and if not so established the officers held during the pleasure of the appointing power.

IMPEACHMENT.

The assembly was given the power to impeach all civil officers. This power was vested in the assembly under the first Constitution.

REMOVAL.

Under the first Constitution the Council of Appointment had the general power of removal, and this power was exercised quite freely. Much more variety appears on the subject of removal in the second Constitution.

Several methods of removal are specified in this Constitution.

By the legislature, on concurrent resolution.—Secretary of state, comptroller, attorney general, surveyor

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general, commissary general, and also all officers who held office during good behavior.

By the senate, on the recommendation of the governor.—Commissioned officers of the militia, masters and examiners in chancery, judges of the county courts, and recorders of cities.

By the governor.—Sheriffs, county clerks, registers, and coroners.

By the county court.—District attorneys and justices of the peace.

By the court of general sessions in the city of New York.—Clerk of oyer and terminer, and general sessions of the peace.

By courts.—Their clerks, except the county clerk.

The Judiciary.

The Provincial Constitutional Convention did not spend much time over the judiciary provision of the first Constitution. It found a court of chancery, a supreme court, a court of common pleas, and justices' courts, and it recognized and continued them without substantial change. But, beginning with the Convention of 1821, the structure of our judicial system has always engaged the serious attention of constitutional conventions. We shall have occasion to note the important changes made in this system by the Conventions of 1846, 1867, and 1894, and also the fact that the subject of changes in the judiciary was deemed sufficiently important to call for a constitutional commission in 1890, which was charged with the sole duty of considering the judiciary article. This branch of the government received serious attention from the Convention of 1821, but it is apparent that the members of the Convention were not all actuated by the same motives.

It was suggested during the debate on the judiciary

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article, that there was a settled purpose among the lawyers of the state, and which purpose was shared to a large extent by the people, to make some radical changes in the judicial organization. Some persons were in favor of change in the interest of actual improvement, while it seems quite certain that some favored alterations in the system for the purpose of effecting a change in the personnel of the court.

One of the great struggles of the Convention was over the judiciary article; and perhaps in no controversy that engaged the attention of the Convention was partisanship more plainly, and even painfully, manifest than in the effort to accomplish an alleged reform in the judiciary, but whose real purpose was to put out of office the judges of the supreme court. This purpose was not disclosed at once, but as the discussion of the various plans of judicial reform proceeded, members of the Convention did not hesitate to declare their intention to provide for a new appointment of supreme court judges upon the adoption of the new Constitution. This instrument (article 9, § 1) contained a provision that the commissions of all civil officers should expire on the last day of December, 1822. This, of course, included the judges, who held office during good behavior or until they should attain the age of sixty years. So far as the court itself was concerned it was not necessary for the Convention to take any positive action, except to provide additional judges, if deemed necessary.

The first Constitution took the supreme court as it found it, recognized and continued it, but made no special provision concerning it. This court, established by the act of the colonial legislature in May, 1691, had, at the time of the Revolution, a chief justice and four associate justices, and they comprised the judicial force of the supreme court. The Provincial Constitutional Conven-

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tion inaugurated the new state supreme court by the election of a chief justice and two associate justices, and by later appointments the membership of the court was increased to five.

When the Convention of 1821 met, the court was composed of Chief Justice Ambrose Spencer, who had been a member of the court seventeen years, William W. Van Ness, who had held office fourteen years, Joseph C. Yates, thirteen years, Jonas Platt, eight years, and John Woodworth, two years. Under the Constitutional provision which abridged the term of a justice of the supreme court at the age of sixty years, Chief Justice Spencer might have held office until December 13, 1825. Judge Van Ness might have continued in office until 1836, Judge Platt until June 30, 1829; Judge Yates until November 9, 1828, and Judge Woodworth until November 12, 1828. The judges might, therefore, have continued in office several years if the constitutional provision had not been disturbed, or if the court had been continued without affecting the incumbents.

Three judges—Chief Justice Spencer, and Associate Justices Van Ness and Platt—were members of the Convention, but they do not seem to have made any special effort to be continued in office. They pursued a dignified course, and were probably prepared to accept the action of the Convention without complaint. The effort to get rid of the judges succeeded so far as this result could be reached by the Constitution. Judge Van Ness died within two months after the Constitution took effect. Judge Yates was elected governor in November, 1822, and took office with the new Constitution. He appointed as his successor Jacob Sutherland, who had been a member of the Convention. Judge Woodworth was reappointed in February, 1823.

Under the former Constitution there had been four

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associate justices. The new Constitution reduced the number to two, and Justices Woodworth and Sutherland received these appointments. John Savage was appointed chief justice in place of Ambrose Spencer. Judge Platt might have served six and a half years longer before he reached the age limit, and the compulsory retirement of the judges apparently meant more to him than to any of the others.

The course of this Convention is in marked contrast with the course pursued by later conventions, notably the Convention of 1894, which abolished the superior courts of New York and Buffalo, the court of common pleas of New York, and the city court of Brooklyn, but transformed their judges into justices of the supreme court.

Some of the best lawyers in the Convention were members of the judiciary committee which was appointed on the 1st of September, and consisted of Peter Jay Munro (a nephew of John Jay), Nathan Williams, Jacob Sutherland, Francis Silvester, Henry Wheaton, John Duer, Melancton Wheeler. This committee, on the 24th of September, submitted a report, containing an elaborate plan of a judicial system. The plan provided for the following courts:

The court for the trial of impeachments, which was also to be the court for the correction of errors; court of chancery; supreme court of judicature; superior court of common pleas; court of nisi prius; courts of oyer and terminer, and general gaol delivery; inferior courts of common pleas, to be called county courts; courts of general sessions of the peace; and "such other tribunals of inferior and limited jurisdiction as the legislature may establish, under the restrictions hereinafter mentioned."

The court of chancery was to consist of a chancellor and the vice chancellor.

The number of supreme court judges was to be re-

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duced to four, and the superior court of common pleas was to be composed of a chief justice and three associate justices.

The existing jurisdiction and powers of the supreme court were continued.

The superior court of common pleas was to have jurisdiction concurrent with the supreme court in civil cases, except as to mandamus, quo warranto, and prohibition.

The supreme court and the superior court of common pleas were each required to hold four terms each year.

Courts of nisi prius were to be held by justices of the supreme court or of the superior court of common pleas.

Courts of oyer and terminer were to be composed of three or more commissioners, and the justices of the supreme court and of the superior court, and judges of the county court were to be such commissioners *ex officio;* but one of the justices of the supreme court or of the superior court was always a necessary member of the court of oyer and terminer.

The county court was to be composed of a first judge and three associate judges, who were to be *ex officio* justices of the peace and judges of the courts of general sessions.

The county court was to have the jurisdiction then possessed by courts of common pleas, and was also to have jurisdiction to hear appeals from judgments of justices' courts.

The county court was also to be a court for the "probate and registering of wills and granting letters of administration," and was to have the powers then possessed by surrogates.

A special court of probate was to be held for the city and county of New York.

Review of proceedings in probate courts was vested in the court of chancery.

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The court of common pleas and the court of general sessions of the peace in New York were continued.

The chancellor and vice chancellor and justices of the supreme court were to hold office during good behavior, or until they reach the age of sixty-five years, and were subject to removal by the governor, on the "address" of both houses of the legislature. They were prohibited from holding any other office, and were made ineligible to the office of governor or lieutenant governor, for two years after the expiration of their term.

The judges of the county court were to hold office for five years.

Certain judges in New York were to hold office for ten years.

The report was taken up for consideration on the 22d of October, and Mr. Munro, chairman of the committee, made a statement of the reasons which had prompted the committee in proposing this judicial plan.

The large increase in the business of the court of chancery was the occasion of the proposition to establish the office of vice chancellor, and the growth of population of the state, especially in the western counties, made it necessary to provide more judicial machinery; and it was thought that a sufficiently large judicial force would be provided by establishing the superior court of common pleas, whose four judges, with the four in the supreme court, would make eight for the state.

Erastus Root offered the following substitute for the first section of the report:

"The judicial power of this state shall be vested in a court for the trial of impeachments and the correction of errors, to consist of the president of the senate, and the senators; in a supreme court, to consist of a chief justice, and not more than four, nor less than two, associate justices; in circuit courts, and courts of common

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pleas, and in justices of the peace, and in such other courts, subordinate to the supreme court, as the legislature may from time to time establish. The state shall be divided into a convenient number of districts, subject to alteration, as the public good may require; and for each, a circuit judge shall be appointed. He shall have the same powers as a judge of the supreme court, at his chambers. He shall have power to try issues joined in the supreme court; to preside in courts of oyer and terminer and jail delivery; and, if required by law, to preside in courts of common pleas and general sessions of the peace. The supreme court shall have jurisdiction in all cases in law and equity, and the legislature may, in their discretion, vest chancery powers in other courts of subordinate jurisdiction; provided, however, that the court of chancery, as at present organized, shall continue until the legislature shall otherwise direct."

It will be noted that the practical result of this substitute, if adopted, would have been the abolition of the court of chancery, and the transfer of its equity powers to the supreme court. This was considered the effect of the resolution, and it was debated accordingly. There was a spirited debate on the question of abolishing the court of chancery, the example of other states and countries being cited by those who favored or opposed its abolition, and the question was discussed on its merits; namely, whether there should be a distinct equity tribunal, or whether the supreme court should be vested with the double jurisdiction in law and equity.

Chancellor Kent took part in the debate, and in the course of his speech called attention to the fact that, from a personal point of view, the abolition of the court would make little difference to him, because he had almost reached the age limit fixed by the Constitution; but he urged the retention of the court as a matter of public

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interest and benefit, pointing out the advantages accruing to the state from a separate equity tribunal, and the difficulties that would ensue if the powers were transferred to the common-law courts. The Chancellor is reported to have said, during the discussion, that "when he was appointed chancellor he was compelled to commence a new course of legal study, although he had held the office of chief justice." Of course this was not literally true. It appears from a letter written by him in 1828 that when appointed chancellor he had read the equity reports up to that time, and some other works on equity, but he says he "took the court as if it had been a new institution, and never before known in the United States;" and it is almost literally true that he made the court of chancery in New York.

After two days' debate Mr. Root's amendment was rejected by a vote of 36 to 73.

A vote on the first section of the committee's report was reached October 24, and it was rejected by a vote of 33 to 79. Martin Van Buren thought that this vote disposed of the whole report, and that seemed to be the general opinion of the Convention. Various propositions were thereupon submitted in the Convention, including one by Mr. Van Buren, providing for establishing circuits or districts, and the appointment of circuit judges, and also the appointment of vice chancellors. These propositions were submitted to a new committee.

The next day this committee, through Mr. Munro, its chairman, reported a plan providing for judicial circuits and the appointment of circuit judges who should have the powers of a supreme court judge at chambers, try issues joined in the supreme court, preside at courts of oyer and terminer and jail delivery, and also, when required by law, preside in courts of common pleas and general sessions of the peace. This report also fixed the

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term of the chancellor and other higher judicial officers during good behavior, or until they reached the age of sixty years, prohibited them from holding any other office, and provided that all votes given for them for any other office should be void. The legislature was authorized to confer equity powers on courts subordinate to the court of chancery. The office of judge of probate was to be abolished, and his powers and duties devolved on the court of chancery.

Governor Tompkins made a proposition that the supreme court consist of a chief justice and not more than four nor less than two associate justices. This was rejected by a vote of 44 to 64.

Mr. Buel, discussing these various propositions, said: "What are we about to do? We are about to provide in our Constitution for the removal of the incumbents in our high judicial departments without having altered in any shape their jurisdiction, or the construction of the courts which they compose. By this, what do we say to the world? We say that we are about to make a constitutional provision which has no other object than that of pulling from the bench of our supreme court certain individuals who may have become odious to a portion of the community. This is not worthy of the people of the state of New York, or of this Convention. It will be a disgrace to us." Mr. Buel said he did not take this stand from any particular partiality for these judicial officers, but because he considered it beneath the dignity of so enlightened a body, and because he knew there was a method of reaching such officers by law; and he thought that that would be the wisest course to pursue in this case, if they had done any thing for which they deserved to be removed.

Mr. Van Vechten, speaking on the same subject, said that the Convention was assembled for the purpose of

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amending the Constitution; "and no man had ever dreamed of its being for the purpose of dismissing officers from our government. . . . Is it seemly, or is it consonant with the dignity of this Convention, for the purpose of driving these men from office, to insert in the Constitution which we are forming for generations to come, a clause which has no object in view but to gratify personal revenge? We have already declared by our acts that these men shall hold till they arrive at the age of sixty years; and we have also provided that if they shall conduct in such a manner as to forfeit their claim to a continuance in office, a majority of the assembly may impeach, and by two thirds of the same, and a majority of the senate, they may be removed. With respect to the interference of our judges in politics, who has not had to do with politics? . . . It is not till quite lately that we have heard this great outcry. Have we not chosen the judges of our supreme court as electors for President and Vice President of the United States? We have gone hand in hand with these men, approving and leading them forward; and now we are to destroy them at a blow, contrary to the rule which we have ourselves established; leaving the stain upon our Constitution, that future generations may read our disgrace with shame and confusion."

Mr. Root, replying to Mr. Van Vechten, called attention to the fact that the Convention had already decided to terminate the office of senator when the new Constitution should take effect, which would put the senators out of office the same as the judges. He said the fact of the interference of the judges in politics was admitted. He said he had never encouraged the judges in their political career, and was not responsible for their perseverance in it; and he raised his "feeble voice" against this "politico-judicial domination." He said he

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was not disposed to try these judges there, but he left them, with all the other officers, to the appointing power, "to see whether they have so behaved in their official stations as to entitle them to a reappointment."

The consideration of the judiciary article was resumed on the 1st of November, when Matthew Carpenter of Tioga offered a proposition in substance that the supreme court consist of a chief justice and two associate justices, that the state be divided into not less than four nor more than eight districts, that a judge be appointed for each district with the powers of a supreme court justice at chambers, and also with power to preside at trials of issues, and in courts of oyer and terminer and general gaol delivery, and who might be vested with further equity powers by the legislature.

This plan was quite similar to the plan proposed by the second committee, and which, as a whole, had already been rejected. It was understood to contemplate the destruction of the supreme court as then constituted, and the creation of a new one.

Mr. Clarke, speaking on this proposition, said that its object was not merely to remove the present incumbents, but to establish a useful system for the state. The supreme court was to be a court of appellate jurisdiction only, and three judges would be sufficient for the appellate court. He further suggested that it was questionable whether, from feelings of delicacy, men should be continued in office if their services were no longer required. He urged the increase of the judiciary force by providing for district judges, and said that, to a large part of the state, the present chancery system was worse than useless.

Judge Platt and Judge Van Ness do not seem to have taken any part in the debate.

On the 2d of November, while the Carpenter proposi-

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tion was under consideration, Chief Justice Spencer, apparently speaking for all the members of the court, made some observations on the judicial system, showing the large increase in business, incident to the growth of population, and the large number of counties which had been created, and stated that when there were four judges there were twenty counties, and now, with five judges, there are fifty-two counties. He said it was not to be disguised that the judges had not sufficient time for the performance of their duties. He spoke of the labors of the judges and of their efforts to keep up with the work, and urged an increase of the judicial force by providing for circuit judges. Judge Spencer further said that he took a seat upon the bench of the supreme court eighteen years ago, since which his whole time had been devoted to a discharge of the duties incumbent on him in that station. The salary of that office had barely enabled him to support his family and educate his children, without laying up a dollar from that source, more than he had when he accepted the office. He had abandoned his profession, which was far more lucrative than the office which he accepted, and he received that appointment under the sanction of the Constitution, with a pledge that he should hold it till he arrived at the age of sixty, unless removed for mal-conduct. His term of service, by that limitation, would expire in about four years; but if the public good required his removal, amen to it. The Convention had an undoubted right to do it if they thought proper, notwithstanding it would appear rational that those who had received that office under the old Constitution should continue till their term expired by law. He did not ask this, but merely suggested it for the consideration of the Convention.

He submitted a plan for the appointment of as many circuit judges as the legislature might prescribe. In the

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course of his speech Judge Spencer said this was the last opportunity he would have to address the Convention, as his official duties would require him to leave town the next day. In view of the avowed purpose of several prominent members of the Convention to put Chief Justice Spencer and his associates out of office, his speech showed a calm and dignified presentation of the subject from one who had a deep personal interest in the result.

The debates on this subject do not make very pleasant reading, and, looking back on the Convention after eighty years, the discussion does not present an agreeable picture.

Mr. Root spoke with some bitterness, saying, among other things, that for his part, he longed to see the emancipation of the state from judicial thraldom. Under that kind of slavery had this state groaned ever since he had been a member of it; and whenever a member of the bar had undertaken to lift his voice, he had had cause to rue the day that he undertook it. He also said: "The gentlemen of the bar in the country have seen and felt the evils of this system; and, as you have been already told, it is important that your high judicial officers be above suspicion; otherwise they are worse than useless. If they are suspected, they cannot render to the people justice and equity to their satisfaction. Then bring them before the proper appointing power, and see whether they are free from suspicion, and whether the people are willing to reappoint them."

Peter R. Livingston made a severe attack on the judiciary. He said that "characters have been permitted to remain in your judiciary department, who have been implicated with attempts to procure corrupt laws. It has been that department which has prevented the passage of wholesome laws which the public good required. It has been that department which has given sanction to

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laws unfriendly to the public good. It has been some of that department who have become notorious, in every part of your state, in electioneering campaigns; who have repeatedly attended political meetings, and spoken in them over and over again. . . . Can a person, after having spent half of his life in politics, divest himself of all political prejudices and partialities upon a bench of justice? If he can, he is something more than man."

Mr. Wheaton proposed that the limitation of the number of judges should not take effect until the number had been reduced to three, by death, resignation, removal, or abridgment of the term by the age limit. This was rejected by a vote of 39 to 66.

This proposition seemed fair and reasonable and would probably have been adopted in a modern convention, especially if the element of personal hostility to an incumbent did not exist. The sequel shows that the number of judges would actually have been reduced to three within two months after the Constitution took effect, for it has already been noted that Judge Yates resigned to take the office of governor, and Judge Van Ness died in February, 1823. This would have left in office Chief Justice Spencer and Associate Justices Platt and Woodworth.

General Carpenter's proposition was adopted by a vote of 62 to 53. After some further discussion the judiciary plan was adopted, and appears as article 5 of the Constitution. This article provides in substance:

For a court for the trial of impeachments and the correction of errors, with the membership, and, substantially, the powers, provided by the first Constitution.

The power of impeachment vested in the assembly under the first Constitution was continued.

The tenure of office of chancellor and justice of the

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supreme court was also continued, with an age limit at sixty years.

The supreme court was to consist of a chief justice and two associate justices.

The state was to be divided by law into not less than four nor more than eight circuits, and a judge was to be appointed for each circuit in the same manner, and hold his office for the same tenure, as a justice of the supreme court, and who should possess the powers of a justice of the supreme court at chambers, and in the trial of issues joined in the supreme court, and in courts of oyer and terminer, and gaol delivery.

The legislature was authorized to vest equity powers in the circuit judges and in the county courts, or in subordinate courts subject to the appellate jurisdiction of the chancellor.

County judges and recorders were to hold office for five years, subject to removal by the senate, on the recommendation of the governor, for cause.

The chancellor, supreme court justices, and circuit judges were prohibited from holding any other office or public trust, and all votes for them for an elective office given by the legislature or the people were to be void.

Four important changes had been accomplished by the new judiciary article; namely, the supreme court had been reorganized and its membership reduced, and the offices of the incumbents were to be terminated when the Constitution took effect. The working force of the supreme court had been increased from five to eleven judges, including circuit judges. The tenure of office of local judges had been limited to a fixed term, and the higher judicial officers had been prohibited from becoming candidates for office. This was the net result of a long and fierce struggle.

It is probable that if the judiciary article had been

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considered solely on its merits it would have been disposed of in much less time, and with much less discussion; but the introduction into the debate of the personal element, by the attack on the judges, and the manifest intention of the leaders of the Convention to exclude these judges from office by operation of the new Constitution, gave the discussion a character and tone not discovered in any other part of the work of the Convention.

In the course of the debate the suggestion was made that, so far as concerned the termination of their offices, the judges would fare no worse than many other public officers. This was true enough, for, in fact, the Constitution shortened the term of the Governor six months, and cut off the terms of the senators, the chancellor, and all other appointive officers. But these officers were not the subject of attack, like the judges, and the judiciary situation would have appeared much less objectionable if the criticism of the bench could have been omitted, and the general proposition asserted that the new Constitution should make a clean sweep of all appointive officers, treating them all alike, with a complete reorganization of the various departments of public service.

Before leaving this subject it should be noted that the legislature, on the 17th of April, 1823, passed a law for the purpose of putting into operation the judiciary provisions of the Constitution, among other things providing for eight circuits corresponding with the senate districts established by the Constitution; for the appointment of a judge in each circuit; and conferring on the circuit judges, in addition to the powers conferred on them by the Constitution, "concurrent jurisdiction with the chancellor in all matters and causes in equity, of every description and character, subject, however, in all cases, to the appellate jurisdiction of the chancellor."

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The circuit judges were required to hold the necessary terms of courts of equity within their circuits.

April 23, Governor Yates appointed eight circuit judges, three of whom, Ogden Edwards, Nathan Williams, and Samuel Nelson, had been members of the Convention. Thus, the new judicial machinery was set in motion, and continued without constitutional change until remodeled by the Convention of 1846.

Chancellor Kent was permitted to continue in office until he reached the age limit, and he retired on the 31st of July, 1823, after more than twenty-five years of most distinguished and honorable service in the supreme court and the court of chancery.

Canals.

The canals made their first appearance in the Constitution in 1821. This great system of internal waterways was under construction when this Convention met. For many years the subject of constructing canals had been agitated and considered by the people of the state, but the progress of sentiment in favor of building the great canals had been somewhat slow. The movement was well under way when it was interrupted by the War of 1812, and it seemed for a time as if the project would have to be abandoned. Soon after the war, however, it was revived with renewed energy, and carried to completion. The limits and scope of this work will not permit a detailed history of the canals, but they have played such an important part in the constitutional, local, and political history of the state that a brief reference to some of the more prominent incidents connected with the development of our canal policy may not be out of place here, as an introduction to the consideration of the relations which the canals have sustained to the evolution of the Constitution, and also for the purpose of showing the

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condition of public affairs which prompted the Convention of 1821 to give the canals even the limited notice which they received in the new Constitution.

It will be observed that the attention given to the canals by this Convention was not of a creative sort, but was intended rather to recognize conditions established by statutes incident to the construction of the canals, and to crystallize in the Constitution itself the canal policy already established by the legislature. It will be shown under later Constitutions how this subject developed and grew, until it reached such a magnitude as sometimes to engross a large share of the attention of the people of the state.

1724, November 10. Cadwallader Colden, for forty years surveyor general of the province of New York, in a report to Governor Burnet, on the fur trade with the Indians, spoke of "the carrying place between the Mohawk river and the river that leads into the Oneida lake, which carrying place is only 3 miles long, except in very dry weather, when they are obliged to carry 2 miles further; from thence they go with the current down the Onondaga river to the Cataracqui lake (Ontario).

1768, August 17. Sir Henry Moore, governor of the province of New York, in a letter to the Earl of Hillsborough, describing a late tour to the central part of the province, said that he went up as far as the Canajoharie falls on the Mohawk river. "Here is a carrying place about 1 mile in length, and all boats going down or up the river are obliged to unload and be carried over land. As this fall is the only obstruction to the navigation between Fort Stanwix and Schenectady, my intention was to project a canal on the side of the falls, with sluices on the same plan as those built on the grand canal in Lanquedoc, and I stayed a whole day there, which was employed in measuring the falls and examining the

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ground for that purpose." He further said that he intended to lay the matter before the "legislative bodies" at their next meeting, and request them to carry into execution the plan of constructing such a canal.

1768, December 16. Governor Moore sent a special message to the Colonial Assembly, in which he called their attention to the navigation of the Mohawk river, as follows: "The obstruction of the navigation of the Mohawk river between Schenectady and Fort Stanwix, occasioned by the falls of Canajoharie, has been constantly complained of, though it is obvious to all who have been conversant in matters of this kind that the difficulty is easily to be removed by sluices, upon the plan of those in the great canal of Lanquedoc, in France, which was made to open a communication between the Atlantic and the Mediterranean. The opportunity I had in my tour, last summer, of examining this carrying place, and of measuring the falls, has encouraged me to recommend to the house of assembly the improvement of our inland navigation as a matter of the greatest importance to the province, and worthy of their serious consideration." The Colonial Assembly took no action in the matter.

1774. Governor William Tryon, in a general report of the affairs of the province, says that a "short cut across the carrying place (Fort Stanwix) might be made into Wood creek, which runs into the Oneida lake, thence through the Onondaga river into Lake Ontario." He also suggested that north of Fort Edward, on the upper Hudson, it seemed practicable to "open a passage by locks, etc., to the waters of Lake Champlain."

1776, April. General Philip Schuyler suggested a canal between Hudson's river and Lake Champlain. Later in the season he was directed to "take measures for clearing Wood creek at Skeenesborough (White-

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hall), constructing a lock there, and taking the level of the waters falling into the Hudson at Fort Edward, and into Wood creek." He completed the survey for the projected canal. Lossing's Philip Schuyler, vol. 2, pages 40, 104.

1777, July. Gouverneur Morris, in a conversation with Morgan Lewis and General Philip Schuyler, at Fort Edward, said: "That at no very distant day, the waters of the great western seas would, by the aid of man, break through their barriers, and mingle with those of the Hudson. . . . That numerous streams passed these barriers through natural channels, and that artificial ones might be conducted by the same routes." Related by Morgan Lewis in a letter to Harmanus Bleecker, dated May 26, 1828.

1783, July. General Washington, after the War of the Revolution had actually ended, and while waiting for the final treaty of peace, in company with Governor George Clinton, made a tour of the northern and central parts of the state, traveling in all about 750 miles, most of the way on horseback. Washington in a letter to Chevalier de Chastellux, dated October 12, 1783, said: "I have, lately, made a tour through the lakes George and Champlain, as far as Crown Point; then returning to Schenectady, I proceeded up the Mohawk river to Fort Schuyler, crossed over to Wood creek, which empties into the Oneida lake, and affords the water communication with Ontario; I then traversed the country to the head of the eastern banks of the Susquehanna, and viewed the lake Otsego, and the portage between that lake and the Mohawk river at Canajoharie. Prompted by these actual observations, I could not help taking a more contemplative and extensive view of the vast inland navigation of these United States, and could not but be struck with the immense diffusion and importance of

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it, and with the goodness of that Providence who has dealt his favors to us with so profuse a hand. Would to God we may have wisdom enough to improve them! I shall not rest contented until I have explored the western country, and traversed those lines (or a great part of them), which have given bounds to a new empire."

1784, November 3. Christopher Colles, an engineer, presented to the assembly a memorial proposing improvements in the navigation of the Mohawk river, and requested state aid for this purpose. The memorial was also presented to the senate, but no action was taken except to refer it to a committee, which made no report.

1784, November 6. The assembly committee to whom the Colles memorial was referred made a report, which was concurred in, to the effect that the "laudable proposition merits encouragement, but that it would be inexpedient for the legislature to cause that business to be undertaken at public expense." The committee suggested that "if Mr. Colles, with a number of adventurers (as by him proposed), should undertake it, they ought to be encouraged by a law giving and securing unto them, their heirs and assigns forever, the profits that may arise by the transportation, under such restrictions and regulations as shall appear to the legislature necessary for that purpose; and authorizing them to execute that work through any lands or improvements on payment of the damages to the proprietors, as the same shall be assessed by a jury."

1785, March 31. Mr. Colles presented another petition relating to the removal of obstructions in the Mohawk river.

1785, April 5. The committee to whom the Colles memorial was referred made a report, which was concurred in, that the objects sought "would be productive of the most beneficial consequences to the state;" and

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recommended an appropriation of $125 to enable Mr. Colles to make an "essay" and lay a draft thereof before the legislature at their next meeting.

1786, February 1. Christopher Colles presented a petition and report relative to the navigation of the Mohawk river. Following this report a bill was introduced, but not passed, "for improving the navigation of the Mohawk river, Wood creek and Onondaga river, with a view of opening an inland navigation to Oswego, and for extending the same, if practicable, to Lake Erie."

1787. The possibilities of water communication between the Great Lakes and the ocean were considered not only by conservative statesmen and practical engineers, but the idea was expressed in the general literature of this period. A notable instance of the effect of the policy of expansion, which gave promise of such large results to the young nation just beginning a great career, and which inspired the imagination with unbounded hopes of results to be achieved by the development of arts, literature and commerce, is found in the ambitious poem called "The Vision of Columbus," published this year by Joel Barlow, one of the early American poets, and dedicated to Louis XVI., of France. In this "vision" the great discoverer witnesses the unfolding of America's greatness, including many aspects of growth and development now familiar to the world. Among other things there is presented to him the scene

> "Where laboring Hudson's glassy current strays,
> York's growing walls their splendid turrets raise;
> Albania, rising in her midland pride,
> Rolls her rich treasures on his lengthening tide."

But the spirit of prophecy was upon him, and he saw far beyond the flowing tides of the Hudson, and the growing cities on her shores.

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"He saw, as widely spreads the unchannel'd plain,
Where inland realms for ages bloom'd in vain,
Canals, long-winding, ope a watery flight,
And distant streams and seas and lakes unite."

"From fair Albania, tow'rd the falling sun,
Back thro' the midland, lengthening channels run,
Meet the far lakes, their beauteous towns that lave,
And Hudson join to broad Ohio's wave."

These quotations remind us of the speeches of Dr. Hayes in the assembly of 1878, when, with poetic prose, he so eloquently urged the adoption of a policy under which New York should continue to grow and prosper and utilize the Hudson in transporting an expanding commerce brought to it through the Erie canal. We recall also Judge Cady's speech in the Convention of 1894, in which he pointed out the close, if not inseparable, connection between that canal and the "sovereignty and material prosperity of an imperial state."

1788, September. Elkanah Watson, in his Journal, suggested a canal connecting the Mohawk river with Wood creek, and, by other locks and canals, making a communication between Hudson's river and Lake Ontario.

1791, January 5. Governor George Clinton, in his speech to the legislature, said that "our frontier settlements, freed from the apprehensions of danger, are rapidly increasing, and must soon yield extensive resources for profitable commerce; this consideration forcibly recommends the policy of continuing to facilitate the means of communication with them, as well to strengthen the bands of society as to prevent the produce of those fertile districts from being diverted to other markets."

1791, March 24, chapter 53. The commissioners of the Land Office were authorized to cause the explora-

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tion, and the necessary survey, of the ground situated between the Mohawk river, at or near Fort Stanwix, and the Wood creek, in the county of Herkimer; and also between the Hudson river and Wood creek, in the county of Washington; and to cause an estimate to be made of the probable expense that would attend the making of canals sufficient for loaded boats to pass, and report the same to the legislature at their next meeting. One hundred pounds were appropriated for expenses.

1792, January 5. Governor George Clinton, in his annual speech to the legislature, referred to the act of 1791, requiring the commissioners of the Land Office to make an examination concerning proposed canals, and submitted their report, "which ascertains the practicability of effecting this object at a very moderate expense; and I trust that a measure so interesting to the community will continue to command the attention due to its importance, and especially as the resources of the state will prove adequate to these and other useful improvements without the aid of taxes."

1792, March 30. Chapter 40 provided for the incorporation of two lock navigation companies; one, the Western Inland Lock Navigation Company, "for the purpose of opening a lock navigation from the now navigable part of Hudson's river, to be extended to Lake Ontario and to the Seneca lake;" and the other, the Northern Inland Lock Navigation Company, for a like purpose from the now navigable part of Hudson's river to Lake Champlain. A subsidy of $25,000 was to be paid by the state,—one half to each,—as a "free gift;" and the canals were to be completed within fifteen years. Amended as to some details by acts passed December 20, 1792 (chap. 8), March 9, 1793 (chap. 49), and March 31, 1795 (chap. 38).

1794, January 7. Governor George Clinton, in his

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annual speech to the legislature, referring to the lock navigation companies and their work, said that, "although the care of improving and opening these navigations be committed to private companies, they will require, and no doubt, from time to time, receive, from the legislature every fostering aid and patronage commensurate to the great public advantages which must result from the improvement of the means of intercourse."

1796, January 6. Governor John Jay, in his annual speech to the legislature, said: "The ultimate connection that subsists between our agriculture, commerce, and navigation, strongly recommends the policy of facilitating and multiplying the means of intercourse between different parts of the state."

1796, April 11. Chapter 61 authorized the state treasurer to loan the Western Inland Lock Navigation Company £15,000, to be secured by mortgage of the company's property at Little Falls; also authorized the keeper of military stores to loan to the company a ton and a half of powder.

1796. The Western Company completed a canal at Little Falls 2¾ miles long, with five locks, also a canal at German Flats, 1¼ miles in length.

1797. The Western Company completed a canal from the Mohawk to Wood creek, 1¾ miles only, making a total of 5¾ miles opened by the company in two years. The character of the work is indicated by the fact that there were nine locks in these three canals.

1797, March 17. Chapter 36 authorized the Western Inland Lock Navigation Company to receive $250,000 from Wilhelm Willink and others, aliens, who, in consideration of such payment, were to receive privileges additional to those conferred by chapter 58, Laws 1796, regarding their right to hold land in this state.

1798, April 5. Chapter 92 incorporated the Niagara

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Canal Company "for the purpose of opening a canal and lock navigation between the waters of Lake Erie and those of Lake Ontario, from the most convenient place above the falls of Niagara at or near Steadman's landing, to the most convenient place below said falls, and nearly opposite to Queens Town landing." The company was also authorized to use the water in the canal for hydraulic or manufacturing purposes, or lease, let, grant, or convey the same for a limited time. The canal was to be completed within ten years, and the canal locks were to be large enough to allow the free passage of boats 70 feet long, 16 feet wide, and 4 feet draught. The act authorized the use of state lands for the canal, and 100 feet on each side thereof for towing paths, 5 acres at each end of the canal for the erection of buildings, "and the further quantity of 40 acres in one or more place or places in squares, as the said corporation shall judge most convenient, for erecting mills and other hydraulic works," with the right to take from such land timber, stone, and other materials for the necessary use of the company.

1800, December 20. Gouverneur Morris, in a letter to John Parish, said that "one tenth of the expense borne by Britain in the last campaign would enable ships to sail from London through Hudson's river into Lake Erie."

1801. Conversation in Washington, D. C., soon after the Parish letter, between Gouverneur Morris, Robert Morris, and others. Gouverneur Morris suggested tapping Lake Erie, and bringing the waters of that lake to the Hudson by an inclined plane or by a water table. Spark's Life and Writings of Gouverneur Morris, vol. 1, page 499. See also Lossing's Life and Times of Philip Schuyler, vol. 1, page 471.

1802, April 2. Chapter 97 authorized the comptroller,

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on behalf of the state, to take stock in the Western Inland Lock Navigation Company.

1803. Conversation at Schenectady between Gouverneur Morris and Simeon De Witt, surveyor general of New York, in which Mr. Morris suggested "tapping Lake Erie and leading its waters in an artificial river directly across the country to Hudson's river."

Mr. De Witt, in a letter to William Darby, dated February 25, 1822, relating this conversation and other incidents, said that "the merits of first starting the idea of a direct communication by water between Lake Erie and Hudson's river, unquestionably belongs to Mr. Gouverneur Morris."

1806, December 2. President Jefferson, in his annual message to Congress, suggested the application of the surplus revenues to the "great purposes," among others, "of roads and canals. By these operations new channels of communication will be opened between the states; the lines of separation will disappear; their interests will be identified, and their union cemented by new and indissoluble ties."

1807, March 2. The United States Senate adopted the following resolution:

"Resolved, that the Secretary of the Treasury be directed to prepare and report to the Senate, at their next session, a plan for the application of such means as are within the power of Congress, to the purposes of opening and making canals; together with a statement of the undertakings of that nature which, as objects of public improvements, may require and deserve the aid of government; and also a statement of works of the nature mentioned which have been commenced, the progress which has been made in them, and the means and prospect of their being completed, and such information

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as, in the opinion of the Secretary, shall be material in relation to the objects of this resolution."

1808, January 26. Governor Daniel D. Tompkins, in his annual speech to the legislature, referring to the fact that our external commerce was almost entirely cut off, and that it was not improbable that an appeal to arms would soon be made, said it was "peculiarly important to adopt all measures in our power, in order to increase the means of supplying ourselves, and to encourage those arts which contribute to the support and comfort of human life; to facilitate interior communication, and to invigorate the enterprising spirit of our country."

1808, February 4. Joshua Forman presented a concurrent resolution in the assembly, providing for a joint committee of the senate and assembly "to take into consideration the propriety of exploring and causing an accurate survey to be made of the most eligible and direct route for a canal, to open communication between the tide waters of the Hudson and Lake Erie, to the end that Congress may be enabled to appropriate such sums as may be necessary to the accomplishment of that great national object." The senate concurred in the resolution.

1808, March 21. The joint committee made a report favoring a canal between the Hudson river and Lake Erie, referring to the action of the President in "recommending an appropriation of a portion of the surplus revenues for improving by canals the inland navigation of the country;" presenting for the consideration of the national government the state of New York "as pre-eminently distinguished on the map of our country for its commercial advantages;" and urging "that speedy measures ought to be adopted on the part of this state for ascertaining the best route of communication by canals between the tide waters of Hudson river and the great western lakes, and for making an accurate survey and

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charts, to be transmitted to the President of the United States."

The report was accompanied by a resolution, presented by the committee, which was adopted the same day, and concurred in by the senate April 6, directing the surveyor general to make a survey, map, and chart of a route for a canal between Hudson river and Lake Erie; and transmit a copy of the map and chart to the President of the United States.

1808, April 4. Albert Gallatin, Secretary of the Treasury, in compliance with the Senate resolution of March 2, 1807, made a report to the Senate, which included surveys and estimates for a canal between Hudson river and Lake Champlain, between Hudson river and Lake Ontario, by the Mohawk river and Wood creek, and between Lake Ontario and Lake Erie, around Niagara Falls. The report refers to the incorporation of the Northern, Western, and Niagara canal companies, describing the work which had then been done by each.

1808, April 11. $600 was appropriated for the expenses of the surveyor general.

1808, June 11. James Geddes was appointed by the surveyor general to make the survey required by the foregoing resolution of the legislature.

1809. James Geddes made his report to the surveyor general.

1810, March 13. Senator Jonas Platt, of Oneida county, afterwards a justice of the supreme court, offered a resolution, which was concurred in by the assembly, appointing a commission, composed of Gouverneur Morris, Stephen Van Rensselaer, DeWitt Clinton, Simeon De Witt, William North, Thomas Eddy, and Peter B. Porter, to explore and survey routes for canals from Hudson river to Lake Ontario and Lake Erie.

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1810, April 5. The legislature appropriated $3,000 for the expenses of the commission.

1811, January 29. Daniel D. Tompkins, in his annual speech to the legislature, referring to the report of the commissioners appointed in 1810, said: "The importance of that subject highly merits, and, I doubt not, will receive, your early and serious attention."

1811, March 2. The commissioners appointed under the Platt resolution submitted an extended report "drawn by the masterly pen of Gouverneur Morris," treating the whole subject with great detail, estimating the cost of the canal at $5,000,000, with the following suggestions:

"It remains, therefore, to determine whether this canal should be at the cost of this state or the Union. If the state were not bound by the Federal band with her sister states, she might fairly ask compensation from those who own the soil along the great lakes for the permission to cut this canal at their expense; or her statesmen might deem it still more advisable to make the canal at her own expense, and take for the use of it a transit duty, raising or lowering the impost, as circumstances might direct for her own advantage. This might be the better course if the state stood alone. But, fortunately for the peace and happiness of all, this is not the case; we are connected by a bond which, if the prayers of good men are favorably heard, will be indissoluble. It becomes proper, therefore, to resort for the solution of the present question, to principles of distributive justice. That which presents itself is the trite adage that those who participate in the benefit should contribute to the expense. . . . The wisdom as well as justice of the national legislature will, no doubt, lead to the exercise on their part of prudent munificence."

1811, March 2. DeWitt Clinton, following the presentation of the foregoing report, asked for and obtained

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leave of the senate to bring in a bill, which was passed on the 8th of April, "to provide for the improvement of the internal navigation of the state." The act contained the following preamble:

"Whereas a communication by means of a canal navigation between the Great Lakes and Hudson's river will encourage agriculture, promote commerce and manufactures, facilitate a free and general intercourse between different parts of the United States, and tend to the aggrandizement and prosperity of the country, and consolidate and strengthen the Union."

The commissioners were authorized to consider "all matters relating to the said inland navigation," and to make application on behalf of this state to the Congress of the United States, or to the legislature of any other state or territory, to co-operate and aid in this undertaking. The act appointed a commission consisting of Gouverneur Morris, Stephen Van Rensselaer, De Witt Clinton, Simeon De Witt, William North, Thomas Eddy, Peter B. Porter, Robert R. Livingston, and Robert Fulton, and appropriated $15,000 for their use.

1812, March 14. The commissioners submitted to the legislature a report of their proceedings, from which it appears that De Witt Clinton and Gouverneur Morris were especially deputed to visit Washington, and present to the President and Congress the question of national aid in the project of constructing a canal across the state of New York. President Madison seems to have favored the canal, but withheld his approval of the plan of national aid, on account of his scruples concerning the interpretation of the Constitution. He submitted the matter to Congress by a special message, transmitting a copy of the New York statute, but without any recommendation.

Congress, after some fluctuations of sentiment among

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members of the committee to which the matter was referred, declined to engage in the project of the proposed canal.

The commissioners further said that, the canal having been offered to the national government, and not accepted, "the state is at liberty to consult and pursue the maxims of policy. These seem imperatively to demand that the canal be made by her, and for her own account, as soon as circumstances will permit. It is believed that a revenue may be derived from it, far exceeding the interest of what it will cost, and it seems just that those of our citizens who have no immediate interest in the work should find retribution for their share of the cost (if any) in a revenue which will lessen their future contributions. Whether this subject be considered with a view to commerce and finance, or on the more extensive scale of policy, there would be a want of wisdom, and almost of piety, not to employ for public advantage those means which Divine Providence has placed so completely within our power."

1812, June 19. Chapter 231 authorized the commissioners, appointed under the act of 1811, to purchase the property and interests of the Western Inland Lock Navigation Company, acquire other property for canal purposes, and borrow $5,000,000 on a 15-year credit.

1813, April 6. Chapter 144 incorporated the Seneca Lock Navigation Company "for the purpose of improving the navigation between the Seneca and Cayuga lakes." The state comptroller was directed to subscribe 500 shares. The surveyor general was to be a director. Adjoining landowners might use the waters for mills or hydraulic purposes.

1815. City Hotel meeting held late in the year, in New York, called by Thomas Eddy, with the approval of Judge Jonas Platt and De Witt Clinton. William Bayard

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was chairman, John Pintard secretary. A committee was appointed to circulate a memorial, composed of Mayor Clinton, Thomas Eddy, Cadwallader D. Colden, John Swartwout.

1816. The memorial authorized by the City Hotel meeting, and which was prepared by De Witt Clinton, was presented to the legislature. This is one of the ablest and most comprehensive documents ever prepared on the subject of a great public improvement, and shows the wide grasp and extended knowledge possessed by Mr. Clinton. It is evident that this memorial made a deep impression, and was a very efficient aid in creating public sentiment in favor of the canal enterprise.

1816, February 2. Governor Tompkins, in his annual speech to the legislature, made the following observations concerning internal navigation:

"The difficulties and expenses which attended the transportation of public stores to frontier posts, during the late war, have demonstrated the necessity of a legislative intervention to encourage the establishment of good roads from the Hudson to the St. Lawrence, and to Lake Erie, Ontario, and Champlain. . . . It will rest with the legislature whether the prospect of connecting the waters of the Hudson with those of the western lakes and of Champlain is not sufficiently important to demand the appropriation of some part of the revenues of the state to its accomplishment, without imposing too great a burthen upon our constituents."

Discussing the subject further, Governor Tompkins remarked, with rather too much hopefulness, that the "first route being an object common with the states of the West, we may rely on their zealous co-operation in any judicious plan that can perfect the water communication in that direction. As it relates to connecting the waters of the Hudson with those of Lake Champlain, we

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may, with equal confidence, count on the spirited exertions of the patriotic and enterprising state of Vermont."

1816, April 17. Chapter 237 provided for the "improvement of the internal navigation of this state." Stephen Van Rensselaer, De Witt Clinton, Samuel Young, Joseph Ellicott, and Myron Holley were appointed commissioners "to consider, devise, and adopt such measures as may or shall be requisite to facilitate and effect the communication by means of canals and locks between the navigable waters of Hudson's river and Lake Erie, and the said navigable waters and Lake Champlain."

The commissioners were authorized to apply to the United States, or to any other state or territory benefited, or to any person or corporation, "for cessions, grants, or donations of land or money for the purpose of aiding the construction" of the proposed canals. This statute repealed the acts of 1811 and 1812 above cited.

1817, April 15. Chapter 262 established a canal fund, to consist of appropriations, grants, and donations made for that purpose by this state, by Congress, by other states, or by corporations, companies, or individuals, and created commissioners of the canal fund, consisting of the lieutenant governor, comptroller, attorney general, surveyor general, secretary of state, and treasurer. The commissioners appointed by the act of 1816 were continued, under the name of canal commissioners.

The canal commissioners were authorized to "commence making said canals" by opening communications by canals and locks between the Mohawk and Seneca rivers, and between Lake Champlain and the Hudson river; to receive from the commissioners of the canal fund, and expend, moneys necessary for such construction; to establish reasonable tolls, and make rules for

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their collection and payment to the commissioners of the canal fund.

The canal commissioners were authorized to acquire the property of the Western Inland Lock Navigation Co. The act imposed a tax of $.12½ per bushel on all salt manufactured in Onondaga and in the western district, also $1 for each passenger by steamboat on the Hudson river, for each trip over 100 miles, and half that sum for any distance less than 100 miles, and over 30 miles. The proceeds of the tax on salt and steamboat passengers, and also on all sales at auction, after deducting $23,500 annually appropriated to the hospital, economical school, orphan asylum society, and $10,000 appropriated annually for the support of foreign poor in the city of New York, the net proceeds from the Western Inland Lock Navigation Company, the net proceeds from the canals, and all grants and donations made or to be made for the purpose of making said canals, were appropriated for canal purposes.

1817, July 4. First work on state canal begun at Rome. "This important act, the commencement of the Erie canal, was performed with some ceremony. Mr. Clinton, the president of the Board, who had been chosen governor at the previous election, in 1817, attended, with the other canal commissioners and engineers. The anniversary of our independence, since the declaration of which only forty-one years had elapsed, was selected as an auspicious day to begin this great work. The first earth was removed from the canal path, amidst the acclamations of a large concourse of people, exulting in the past, enjoying the present, and anticipating the future."

1818, January 27. Governor De Witt Clinton, in his annual speech to the legislature, said:

"The internal trade of a country is equally essential to

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the prosperity of agriculture, of manufactures, and of commerce; for, embracing the interests of all, it extends its enlivening influence to every important department of human industry. But it can never be advantageously nor extensively pursued and cultivated without easy and rapid communications by water courses, roads, and canals; and it is among the first duties of government to facilitate the transportation of commodities, by opening and ameliorating all the channels of beneficial intercourse; for, in peace or in war, it is equally essential to our cardinal interests. . . .

"I congratulate you upon the auspicious commencement and successful progress of the contemplated water communications between the great western and northern lakes and the Atlantic ocean. Near sixty miles of the western canal have been contracted for to be finished within the present year, and it is probable that the whole of the northern canal will be disposed of in the same manner before the ensuing spring. . . .

"With respect to the debt which will be incurred in the prosecution of internal improvements, there can be no doubt but that light tolls on our own commodities, and higher transit duties on foreign productions, will, in a few years, not only accumulate a fund for its extinguishment, but be a prolific source of revenue for the general purposes of government. And this subject may, in other respects, form the basis of important arrangements in our system of political economy. It may be rendered a powerful instrument for encouraging our own manufactures and for restraining the pernicious use of foreign commodities."

1818, March 6. Chapter 23 incorporated the Chittenengo Canal Co. for the purpose of "making a canal from the Chittenengo village to the great western canal."

1819, January 5. Governor De Witt Clinton, in his

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annual speech to the legislature, reviewed at some length the work already accomplished in the construction of the canals, recommended further legislation, and concluded with the following observation: "And, when we contemplate the immense benefits which will be derived from the consequent promotion of agriculture, manufactures, and commerce; from the acquisition of revenue; from the establishment of character; and from the consolidation of the Federal Union, we must feel ourselves impelled, by the most commanding motives, to proceed in our honorable career by perfecting, with all possible expedition, this inland navigation."

1819, April 7, chapter 105. The commissioners of the canal fund were authorized to borrow an additional sum of $600,000. The canal commissioners were authorized to extend the canals from Seneca river to Lake Erie, also from the eastern terminus of the great western canal to the Hudson river, between Fort Edward and the navigable waters of the Hudson river, and between the great western canal and the salt works in the village of Salina.

1820, January 4. Governor De Witt Clinton, in his annual speech to the legislature, after again referring to the satisfactory progress of the work, said: "The efforts of direct hostility to the system of internal improvements will, in future, be feeble. Honest and well-disposed men, who have hitherto entertained doubts, have yielded them to the unparalleled success of this measure. But, as there is great reason to apprehend the exertions of insidious enmity, I consider it my solemn duty to warn you against them. As the canal proceeds to the west, the country east will, of course, be accommodated, and in proportion to its progress to completion, in that ratio will it be considered more easy to combine a greater mass of population against its further extension. Attempts have already been made to arrest its progress west of the

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Seneca river, and it is highly probable that they will be renewed when the work is finished to the Genesee."

He further remarked that the "honor and prosperity of the state imperiously demand the completion of the whole of this great work."

1820, March 30. Chapter 117, amended act of 1817, suspended the steamboat tax conditionally, and imposed a general tax of $5,000 in lieu thereof.

1820, November 7. Governor De Witt Clinton, in his annual speech, again reviewed the progress of the work of construction of the canals, and urged the speedy completion of the enterprise.

1821, February 9, chapter 36. Commissioners of the canal fund were authorized to make an additional loan of $2,000,000. The statute also authorized the legislature to appoint an additional canal commissioner. Canal commissioners should hold office during the pleasure of the legislature, and might be removed by a concurrent resolution of the two houses.

1822, January 2. Governor De Witt Clinton, in his annual speech to the legislature, communicated to that body the condition of the canal enterprise, stating the number of miles completed, and the prospect concerning the remainder, and observed: "We cannot too highly appreciate the importance of the artificial navigation now in train of rapid and successful completion." He urged the legislature to cherish "a prospective spirit, and to provide in season for the exigencies of future times."

1823, January 7. Governor Joseph C. Yates, in his first message to the legislature, said:

"It gives me much pleasure to state that the canal system, so wisely adopted and successfully pursued in the state, promises to realize the expectations of the community. The convenience already afforded to the inhabitants by the facility with which the products of the coun-

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try may be brought to market has exceeded the most sanguine hopes of its warmest supporters."

1823, October 8. The Albany basin was opened. The first canal boat, De Witt Clinton, passed through the lock into the Hudson river.

1824, January 6. Governor Yates, in his annual message to the legislature, said, in part, concerning canals:

"During the last year, the Champlain canal has been rendered navigable to the Hudson river, at the city of Albany, and the completion of the Erie canal, the ensuing season or the summer following, is rendered morally certain; so that the period is not distant when we shall fully experience the benefits and important advantages secured to our citizens by this unexampled improvement. A more propitious era, connected with the growth and prosperity of our country, cannot well be imagined; and in taking a retrospective view of the enterprise and patriotism of our predecessors, it is difficult to suppress the most endearing emotions of respect and gratitude for the memory of those with whom this vastly important and useful project of connecting the western and northern lakes with the waters of the Hudson first originated."

1824, April 12. De Witt Clinton was removed by the legislature from the office of canal commissioner by a vote of 21 to 3 in the senate, and 64 to 34 in the assembly. This proceeding was taken on the last day of the session, just before adjournment, without charges, and almost without debate. It is evident that the people did not approve the action of the legislature, for Mr. Clinton was elected governor again by a very large majority within seven months after his removal, and on the first of January, 1825, resumed this office. It was thus his happy fortune as chief magistrate, to bring to a successful completion the enterprise to which he had devoted his energies and talents for fifteen years.

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1825, January 4. Governor De Witt Clinton, on resuming the office of governor, after an interregnum of two years, in his annual message to the legislature, presented the subject of canals, and said:

"The Erie canal (which is the longest in the world, and which, in conjunction with the Champlain canal, and the contemplated communications with Lake Ontario and the minor lakes, will produce the most extensive and important inland navigation ever witnessed) would have been finished last season, had it not been for the intervention of unexpected impediments. . . . I consider these works as but the first in a series of great undertakings. We must, however, pursue our objects with prudence as well as with energy, in every stage of our progress, looking for support in the wisdom and patriotism of the people. And it is a source of high felicitation to know that the debt may be speedily satisfied without resorting to taxation, without discontinuing our efforts for similar improvements, and without staying the dispensing hand of government in favor of the great departments of education, literature, and science, or the cardinal interests of productive industry."

1825, October 26. The Erie canal was completed. The Seneca Chief, the first canal boat for New York, left Buffalo, having on board Governor De Witt Clinton, Lieutenant Governor James Tallmadge, and other prominent citizens.

1825, November 4. The Seneca Chief arrived at New York, *via* the Erie canal and the Hudson river, a distance of 513 miles.

The Convention of 1821 found a canal policy already established and in practical operation, although the canals were not yet completed. The promoters of the canal enterprise had all along expressed the opinion that the canals would pay for themselves, and that, while money

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on the credit of the state had been borrowed for their construction, this debt could and would be paid from the tolls, without any direct taxation.

The legislature, by the acts of 1817 and 1820, above cited, had provided for the payment of this debt by the application of the proceeds derived from the salt springs, and from licenses to auctioneers, and from the steamboat passenger traffic. The effect of the provision concerning canals, adopted by the Convention, was to fix in the Constitution, beyond danger of interference or change, the policy already established by the legislature. This insured a permanent and continuing fund for the gradual payment of the canal debt. The proposition to include this subject in the Constitution was vigorously opposed in the Convention, principally on the ground that the administration of this new department of public affairs would necessarily be subject to some fluctuation, and that it ought to be left to the discretion of the legislature rather than to be fixed by any cast-iron constitutional provision, which would prevent the legislature from making changes which might be found necessary after the canals were completed; and it was further urged in this connection that the legislature could be trusted to do whatever was for the public interest. In the course of the debate a sectional feeling between the eastern and western parts of the state was manifested, and the whole subject provoked very animated discussion. A large majority of the Convention thought that the faith of the state by its Constitution should be pledged for the maintenance of the canal policy already established, and that there should be no opportunity for the diversion to other purposes of funds already devoted to the payment of the canal debt, and a consequent resort to general taxation. The Convention evidently felt assured of the success of the canal enterprise to which the state had committed

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itself, though it was not completed until four years after the Convention; and the debates evince a breadth of view of public affairs, and the confidence in the future which was a marked characteristic of the statesmen of that period.

The subject of canals occupies only a small space in the Constitution, but it embraced the following propositions:

Canal tolls at a rate not less than that already fixed by the canal commissioners were established and continued.

The canal tolls, the duties on salt, auction duties, and the revenue raised in lieu of the steamboat passenger tax, were inviolably appropriated for canal purposes, without change of rate or diversion until all expenses and debts incident to the construction of the canals were fully paid.

The legislature was prohibited from selling or disposing of the salt springs, or salt lands, or the canals.

Bill of Rights.

Sir William Blackstone in his Commentaries (1, 124) says that the "principal aim of society, and the primary end of human laws, are to maintain, regulate, and to protect the absolute rights of individuals; namely, the right of personal liberty, the right of personal security, the right of private property;" to which Chancellor Kent added, "the right to the free exercise and enjoyment of religious profession and worship."

It has been deemed essential that these rights, and others logically deducible from them, be stated in concrete written form in a constitution, statute, or other instrument, so that all the people entitled to their enjoyment may claim the privileges conferred by them whenever their liberties are invaded.

Blackstone further says that these rights are "private immunities," which include "either the residuum of natural

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liberty which is not required by the laws of society to be sacrificed to public convenience; or else those civil privileges which society hath engaged to provide in lieu of the natural liberties so given up by individuals;" and that the enjoyment of these rights has sometimes been subject to "serious fluctuation," sometimes "depressed," and at other times even "too luxuriant," but that the "vigor of our free Constitution has always delivered the nation from these embarrassments," and the fundamental articles have been asserted as often as they were thought to be in danger.

These fundamental principles of personal liberty are stated with great force and vigor in the 39th and 40th articles of Magna Charta (1215), where it is declared that,

"No freeman shall be seized, or imprisoned, or dispossessed, or outlawed, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land."

"To none will we sell, to none will we deny, to none will we delay, right or justice."

The principles contained in the 39th article were reasserted by an act of Parliament, passed in the 28th year of the reign of Edward III. (1354), which provided that "no man, of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought to answer by due process of law."

Sir James Mackintosh, commenting on the 39th and 40th articles of Magna Charta, says they contain "the Habeas Corpus and the Trial by Jury; the most effectual securities against oppression which the wisdom of man has hitherto been able to devise."

Hallam (Middle Ages, vol. 2, pp. 448–450) says of

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the 39th and 40th articles of Magna Charta: "But the essential clauses of Magna Charta are those which protect the personal liberty and property of all freemen, by giving security from arbitrary imprisonment and arbitrary spoliation." Hallam further says that "it is obvious that these words [of the 39th and 40th articles] interpreted by any honest court of law, convey an ample security for the two main rights of civil society. From the era, therefore, of King John's charter, it must have been a clear principle of our Constitution, that no man can be detained in prison without trial. Whether courts of justice framed the writ of habeas corpus in conformity to the spirit of this clause, or found it already in their register, it became from that era, the right of every subject to demand it. . . . That writ, rendered more actively remedial by the statute of Car. II., but founded upon the broad basis of Magna Charta, is the principal bulwark of English liberty."

Charles I., soon after his accession, made a forced loan, which many people refused to pay. Some of the common people who refused were pressed into the navy; some of the gentry were imprisoned. Five of these, Sir Thomas Darnel and others, sued out their writs of habeas corpus in the King's Bench, to which the warden of the Fleet returned that they were detained under a warrant from the Privy Council by *special command of the King*. This raised a question of the power of the Crown to imprison without specific charges. This question was of vital importance to the subject, and it was contended with great ability, by eminent counsel, that a British subject could not be imprisoned at the mere pleasure of the King. The court, after long argument and much consideration, sustained the Crown, and remanded the prisoners to custody. This proceeding was in 1627, and it gave rise to the famous Petition of Right, 1628.

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This petition was the next most important step in the development of the rights of English subjects. It was wrung from Charles I. by the third Parliament, in 1628. Macaulay calls this "The Second Great Charter of the Liberties of England." This petition recited various statutes and charters limiting the royal prerogative, and granting popular rights, among them Magna Charta and the Statute of 28 Edward III., above cited, and various infringements on these charters and privileges which had recently been either directed or permitted by the King, including:

The compulsory loan of money for royal purposes, and requiring persons who refused to make such loan to take an unlawful oath, and become bound to make appearance to give utterance before the Privy Council, and in other places.

The unlawful levying of taxes.

The imprisonment of several persons, contrary to Magna Charta and the Statute of Edward III., who, on a writ of habeas corpus, were found to be detained without any specific charge, but simply at the royal pleasure.

Quartering soldiers in time of peace, without the consent of the people.

Unlawfully creating extraordinary commissions for the trial and punishment of offenders by the use of martial law in time of peace, instead of resorting to the ordinary criminal procedure.

The petition included the following demands:

1. That "no man hereafter be compelled to make, or yield, any gift, loan, benevolence, tax, or such like charge, without common consent by act of Parliament."

2. "That none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof."

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3. That "no freeman, in any such manner as is before mentioned, be imprisoned or detained."

4. That the soldiers and mariners may be removed, so that the people may not be burdened.

5. That the commissions for proceeding by martial law be revoked and annulled, and that no such commissions be again issued.

After some delay Charles gave a reluctant assent to this petition, and Macaulay, describing the event, says that "the day on which the royal sanction was solemnly given to this great act was a day of joy and hope. The Commons, who crowded the Bar of the House of Lords, broke forth into loud acclamations as soon as the clerk had pronounced the ancient form of words by which our Princes have, during many ages, signified their assent to the wishes of the Estates of the Realm. These acclamations were re-echoed by the voice of the capital and of the nation."

But the end was not yet; the struggle between royal prerogative and parliamentary government in the name of the people was soon renewed. Scarcely three weeks elapsed after Charles gave his assent to the great "Petition" when he began plotting to subvert or evade it. His encroachments on popular liberty finally became unendurable, and he was driven from the throne to the block.

The "Protectorate" of Cromwell was, in many respects, the beginning of a new era in English liberty, but after a short period this Protectorate was succeeded by another monarchy, and by a sovereign who forgot or ignored the obligations which the Crown owed to the people. But the people did not forget.

The decision of the court in *Darnel's Case,* denying the relief sought by the writ of habeas corpus, and announcing the doctrine that the subject could be imprisoned at the pleasure of the King, without assigning any specific

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reason, caused an alarm which did not readily abate. This decision meant that the will of the King "might be deemed the law of the land" within the meaning of Magna Charta. This doctrine could not long prevail. Several efforts were made within the next few years to procure the passage of a law defining more clearly the remedies of the subject on a writ of habeas corpus. These efforts finally resulted in the enactment of chap. 2, 31 Car. II., on the 26th of May, 1679, entitled "An Act for the Better Securing the Liberty of the Subject, and for Prevention of Imprisonment Beyond the Seas." This is the famous habeas corpus act. It did not state any new principles, but was intended to provide ample and stringent remedies. It stands as one of the landmarks of English constitutional history, and has been the basis of modern legislation on the same subject.

Magna Charta, the Statute of Edward, the Petition of Right, and the habeas corpus act had traveled across the sea, and the colonists in New York, at their first Colonial Assembly, held in October, 1683, six years before the English Bill of Rights, passed "The Charter of Liberties and Privileges," in which they asserted for New York the rights conferred by these great instruments, so far as they were applicable to colonial conditions.

In addition to various provisions concerning local government the charter contained the following statement of fundamental principles:

1. "THAT Every ffreeholder within this province, and ffreemen in any Corporacon Shall have his free Choise and Vote in the Electing of the Representatives without any manner of constraint or Imposicon. And that in all Eleccons the Majority of Voices shall carry itt and by freeholders is understood every one who is Soe understood according to the Lawes of England."

2. "THAT Noe freeman shall be taken and imprisoned

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or be disseized of his ffreehold or Libertye or ffree Customes or be outlawed or Exiled or any other wayes destroyed nor shall be passed upon adjudged or condemned But by the Lawfull Judgment of his peers and by the Law of this province. Justice nor Right shall be neither sold denyed or deferred to any man within this province." Magna Charta, 39.

3. "THAT Noe aid Tax, Tallage, Assessment, Custome, Loane, Benevolence or Imposicon whatsoever shall be layed assessed imposed or levyed on any of his Majestyes Subjects within this province or Their Estates upon any manner of Colour or pretence but by the act and Consent of the Governour Councell and Representatives of the people in Generall Assembly mett and Assembled." Petition of Right.

4. "THAT Noe man of what Estate or Condicon soever shall be putt out of his lands or Tenements, nor taken, nor imprisoned, nor disherited, nor banished nor any wayes destroyed without being brought to Answere by due Course of Law." 28 Ed. III., chap. 2.

5. "THAT A Ffreeman Shall not be amerced for a small fault, but after the manner of his fault and for a great fault after the Greatnesse thereof Saveing to him his freehold. And a husbandman saveing to him his Wainage and a merchant likewise saveing to him his merchandize And none of the said Amerciaments shall be assessed but by the oath of twelve honest and Lawfull men of the Vicinage provided the faults and misdemeanors be not in Contempt of Courts of Judicature.

"ALL Tryalls shall be by the verdict of twelve men, and as near as may be peers or Equalls And of the neighbourhood and in the County Shire or Division where the fact Shall arise or grow Whether the Same be by Indictment Infermacon Declaracon or otherwise against the person Offender or Defendant." Magna Charta.

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6. "THAT In all Cases Capitall or Criminall there shall be a grand Inquest who shall first present the offence and then twelve men of the neighbourhood to try the offender who after his plea to the Indictment shall be allowed his reasonable Challenges."

7. "THAT In all cases whatsoever Bayle by sufficient Suretyes Shall be allowed and taken unlesse for treason or felony plainly and specially Expressed and menconed in the Warrant of Committment provided Alwayes that nothing herein contained shall Extend to discharge out of prison upon bayle any person taken in Execucon for debts or otherwise legally sentenced by the Judgment of any of the Courts of Record within the province.

8. "THAT Noe Comissions for proceeding by Marshall Law against any of his Majestyes Subjects within this province shall issue forth to any person or persons whatsoever least by Colour of them any of his Majestyes Subjects bee destroyed or putt to death Except all such officers persons and Soldiers in pay throughout the Government." Petition of Right, 1628.

9. "THAT From hence forward Noe lands within this province shall be esteemed or accounted a Chattle or personall Estate but an Estate of Inheritance according to the Custome and practise of his Majestyes Realme of England."

10. "THAT All Lands and Heritages within this province and Dependencyes shall be free from all fines and Lycences upon Alienacons, and from all Herriotts Wards Shipps Liveryes primer Seizens yeare day and Wast Escheats and forfeitures upon the death of parents and Ancestors naturall casuall or Judiciall, and that forever; Cases of High treason only excepted.

11. "THAT Noe person or persons which professe ffaith in God by Jesus Christ Shall at any time be any wayes molested punished disquieted or called in Question

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for any Difference in opinion or Matter of Religious Concernment, who doe not actually disturb the Civill peace of the province, But that all and Every such person or persons may from time to time and at all times freely have and fully enjoy his or their Judgments or Consciencyes in matters of Religion throughout all the province, they behaveing themselves peaceably and quietly and not useing this Liberty to Lycentiousnesse nor to the Civill Injury or outward disturbance of others."

The English people endured the reign of the second Charles with great patience; but this patience soon became exhausted when his successor, James II., began his desperate career of royal usurpation.

This part of English history is not especially pertinent here, and is mentioned only for the purpose of recalling the well-known fact that the struggle between royal prerogative and popular rights continued with varying results through sixty years, ending in the overthrow and abdication of James, in 1688, and the transfer of the crown to William and Mary. But the English people did not mean to be deceived again, and, when the crown was offered to William and Mary, they were required to give their assent to the Declaration of Right.

This Declaration, which became the English Bill of Rights, was enacted as chapter 2, passed at the second session of Parliament, 1689. This Bill of Rights was one of the immediate effects of the Revolution which resulted in the abdication of James II., who usurped and attempted to overthrow some of the most important personal rights and privileges secured by Magna Charta, and by the act of 28 Edward III.

This Bill of Rights declared:

"1. That the pretended power of suspending laws, or the execution of laws by regal authority, without consent of Parliament, is illegal.

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"2. That the pretended power of dispensing with laws, or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal.

"3. That the commission for erecting the late Court of Commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.

"4. That levying money for or to the use of the Crown, by pretense of prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal.

"5. That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.

"6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law.

"7. That the subjects which are Protestants may have arms for their defense suitable to their conditions, and as allowed by law.

"8. That election of members of Parliament ought to be free.

"9. That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.

"10. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

"11. That jurors ought to be duly impaneled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

"12. That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

"13. And that for redress of all grievances, and for

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the amending, strengthening, and preserving of the laws. Parliament ought to be held frequently.

"And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties."

The statute declares that all and singular the rights and liberties asserted and claimed by the Declaration are and shall be esteemed, allowed, adjudged, deemed, and taken to be "the true, ancient, and indubitable rights and liberties of the people of this kingdom." Macaulay describes the Declaration as a "great contract between the governors and the governed," and the "title deed by which the King held his throne, and the people their liberties."

The privileges affirmed and granted by the Bill of Rights, and also all other liberties possessed and enjoyed by the English people, were solemnly ratified and confirmed by the Act of Settlement, 12 and 13 Wm. III. (1700), chap. 2, which closes with the following paragraph:

"And whereas the Laws of England are the birthright of the people thereof, and all the Kings and Queens, who shall ascend the Throne of this realm, ought to administer the Government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same: The said Lords Spiritual and Temporal, and Commons, do therefore further humbly pray, That all the Laws and Statutes of this realm for securing the established religion, and the rights and liberties of the people thereof, and all other Laws and Statutes of the same now in force, may be ratified and confirmed, and the same are by his Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, and by the authority of the same, ratified and confirmed accordingly."

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The transfer of the crown from James II. to William and Mary was a real revolution, and the instrument by which that transfer was effected was a revolutionary instrument. It established a new government in a new royal line, with limitations and restrictions on the royal prerogative, and an assertion of popular rights which have become permanent and irrevocable under the English Constitution. It is noteworthy here, also, that the crown was tendered to William and Mary by a convention of representatives of the people, chosen in the manner required for the election of members of Parliament, not by virtue of the usual royal writ, but by general consent, and as a voluntary act, in response to William's request for the selection of representatives with authority from the people to re-establish the government. This convention was not originally a Parliament, but it turned itself into a Parliament, and became the law-making power of the English nation. This body was in effect a constitutional convention; it established a new government, and proclaimed certain fundamental principles on which that government should be administered.

There is a striking similarity between this convention and the New York Provincial Convention of 1776. We have already noted in the chapter on the first Constitution that the first constitutional convention not only framed and put in operation a new state government, but that it also assumed and exercised legislative powers. In doing this the New York patriots, perhaps unconsciously, imitated their English predecessors who accomplished the revolution of 1688.

The English Bill of Rights, contained in the statute of William and Mary, became not only the property of Englishmen in England, but also the property of the inhabitants of the English colonies in America; and this statute was in full force in the colony of New York at the begin-

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ning of the Revolution. But many of its provisions were not applicable to the new conditions incident to the separation of the colonies from Great Britain, and the establishment of a new form of government. It was quite natural, therefore, that the Provincial Convention should wish to provide for a Bill of Rights in the first Constitution, stating these rights from the American point of view.

The resolution of the Provincial Convention adopted on the 1st of August, 1776, providing for a committee to "report a plan for instituting and framing a form of government," also directed the committee to prepare a Bill of Rights, "ascertaining and declaring the essential rights and privileges of the good people of this state, as a foundation for such form of government." A Bill of Rights was not reported by the committee as a part of the Constitution, nor was such a declaration of principles adopted by the convention. The committee did, however, include in the proposed Constitution a few propositions which fairly belong in a Bill of Rights; namely, the provision that the people are the source of all authority; the provision against disfranchisement, or depriving any citizen of his rights or privileges, "unless by the law of the land, or the judgment of his peers;" religious toleration, preserving trial by jury, and prohibiting acts of attainder. But it should be noted that the Constitution, by article 35, continued in force, subject to alteration by the legislature, "such parts of the common law of England, statute law of England and Great Britain, and the acts of the legislature of the colony New York, as together did form the law of the said colony on the 19th day of April, 1775." This actually continued the English Bill of Rights as a part of the law of New York.

Many of the early state Constitutions contained elaborate Bills of Rights, based largely on the provisions of

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Magna Charta, and on subsequent charters and statutes which were the outgrowth and development of the principles stated in that great document.

The legislature of New York, on the 26th of January, 1787, passed (chap. 1) "An Act Concerning the Rights of the Citizens of this State." This has since been known as the Bill of Rights. It was continued in the revisions of 1801, 1813, and also, with some modifications, in the revised statutes of 1828, by which the original act of 1787 was repealed. The Bill of Rights contained in the revised statutes is still a part of the law of New York, and many of its provisions are also in the Constitution. The Bill of Rights in its original form continued in force more than forty years, and was deemed of great value and significance by the statesmen of that period. Several of its most important features were included in the Constitution of 1821, and have since remained a part of our fundamental law. Their value as checks on the exercise of power by the majority will be noted when we take up the consideration of judicial decisions construing various statutes which have been declared obnoxious to the provisions of the Constitution which seek to secure the individual rights and privileges of the citizen.

The Bill of Rights of 1787 is so important historically and as a source of constitutional limitations that it deserves to be quoted here in full. This statute contained the following statement of principles:

First. That no authority shall, on any pretense whatsoever, be exercised over the citizens of this state but such as is or shall be derived from and granted by the people of this state.

(This is substantially a repetition of article 1 of the Constitution of 1777.)

Second. That no citizen of this state shall be taken or imprisoned or be disseised of his or her freehold or lib-

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erties or free customs, or outlawed or exiled or condemned or otherwise destroyed, but by lawful judgment of his or her peers, or by due process of law.

(This is based on the 39th article of Magna Charta, with some modification not affecting the principle of the original. See also 28 Edward III., chap. 3.)

Third. That no citizen of this state shall be taken or imprisoned for any offense upon petition or suggestion unless it be by indictment or presentment of good and lawful men of the same neighborhood where such deeds be done, in due manner or by due process of law.

(This paragraph and the next seem to be based on the provision in the English "Petition of Right" against the extraordinary commissions for the trial of offenses instead of resorting to the usual judicial tribunals.)

Fourth. That no person shall be put to answer without presentment before justices, or matter of record, or due process of law according to the law of the land, and if any thing be done contrary it shall be void in law and holden for error.

(See note to paragraph 3.)

Fifth. That no person, of what estate or condition soever, shall be taken or imprisoned, or disinherited or put to death without being brought to answer by due process of law; and that no person shall be put out of his or her franchise or freehold, or lose his or her life or limb, or goods and chattels, unless he or she be duly brought to answer and be forejudged of the same by due course of law; and if anything be done contrary to the same it shall be void in law, and holden for none.

(Based on Magna Charta, chap. 39, and on 28 Edward III., chap. 3.)

Sixth. That neither justice nor right shall be sold to any person, nor denied, nor deferred; and that writs and process shall be granted freely and without delay to all

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persons requiring the same, and nothing from henceforth shall be paid or taken for any writ or process but the accustomed fee for writing and for the seal of the same writ or process; and all fines, duties, and impositions whatsoever heretofore taken or demanded under what name or description soever, for or upon granting any writs, inquests, commissions, or process to suitors in their causes, shall be and hereby are abolished.

(Based on Magna Charta, article 40, with modifications, but without affecting the principle.)

Seventh. That no citizens of this state shall be fined or amerced without reasonable cause, and such fine or amerciament shall always be according to the quantity of his or her trespass or offense and saving to him or her, his or her contenement; That is to say, every freeholder saving his freehold, a merchant saving his merchandize, and a mechanic saving the implements of his trade.

(Based on Magna Charta, articles 20, 21, and 22.)

Eighth. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(English Bill of Rights, 1689, article 10, without change.)

Ninth. That all elections shall be free, and that no person, by force of arms nor by malice or menacing or otherwise, presume to disturb or hinder any citizen of this state to make free election, upon pain of fine and imprisonment and treble damages to the party grieved.

(An extension of article 8, English Bill of Rights, providing that election of members of Parliament ought to be free.)

Tenth. That it is the right of the citizens of this state to petition the person administering the government of this state for the time being, or either house of the legis-

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lature, and all commitments and prosecutions for such petitioning are illegal.

(English Bill of Rights, article 5, extended so as to permit petitions to the legislature.)

Eleventh. That the freedom of speech and debates and proceedings in the senate and assembly shall not be impeached or questioned in any court or place out of the senate and assembly.

(English Bill of Rights, article 9, substituting the senate and assembly for Parliament.)

Twelfth. That no tax, duty, aid, or imposition whatsoever shall be taken or levied within this state without the grant and assent of the people of this state, by their representatives in senate and assembly, and that no citizen of this state shall be, by any means, compelled to contribute to any gift, loan, tax, or other like charge not set, laid, or imposed by the legislature of this state; and further, that no citizen of this state shall be constrained to arm himself or to go out of this state or find soldiers or men of arms, either horsemen or footmen, if it be not by assent and grant of the people of this state, by their representatives in senate and assembly.

(Based on the Petition of Right, par. 1, and also the Bill of Rights, article 4.)

Thirteenth. That by the laws and customs of this state the citizens and inhabitants thereof cannot be compelled against their wills to receive soldiers into their houses and to sojourn them there, and therefore no officer, military or civil, nor any other person whatsoever shall, from henceforth, presume to place, quarter, or billet any soldier or soldiers upon any citizen or inhabitant of this state of any degree or profession whatever without his or her consent, and that it shall and may be lawful for every such citizen and inhabitant to refuse to sojourn or quarter any

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soldier or soldiers, notwithstanding any command, order, warrant, or billeting whatever.

(Based on the Petition of Right.)

The proposition was made in the Federal Constitutional Convention of 1787 to include in the Constitution a Bill of Rights, but the proposition was defeated by a tie vote. Many of the states, while acting on the ratification of the Federal Constitution of 1787, proposed numerous amendments to that instrument, many of which were intended to declare certain fundamental principles commonly included in a Bill of Rights, and an examination of the first ten amendments to the Federal Constitution will show the importance of these principles.

One of the statesmen of that day (Mr. Samuel Livermore, of New Hampshire) is reported to have said that these amendments were "of no more value than a pinch of snuff, since they went to secure rights never in danger." But more than a century of legislation and judicial construction since the adoption of the amendments demonstrate the wisdom of the statesmen who insisted on incorporating these principles in the Constitution.

The first ten amendments to the Federal Constitution were recommended to the states by Congress in September, 1789, at its first session under the Constitution.

These amendments to the Constitution of the United States assert the following principles relating to the rights and privileges of the citizen:

1. Freedom of religious profession and worship.
2. Freedom of speech and of the press.
3. Right of petition.
4. Right of the people to keep and bear arms.
5. Soldiers not to be quartered in time of peace without consent of the owner of the house, "nor in time of war, but in a manner to be prescribed by law."

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6. Guaranteeing immunity from unreasonable searches and seizures.

7. Indictment necessary in prosecutions for capital or otherwise infamous crimes.

8. No person shall be deprived of life, liberty, or property without due process of law.

9. Private property shall not be taken for public use without compensation.

10. Trial by jury is preserved in civil cases where the amount in controversy exceeds $20.

11. A person accused of crime—

a. Shall not be compelled to be a witness against himself.

b. Is entitled 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.

c. Must be informed of the nature and cause of the accusation.

d. Must be confronted with the witnesses against him.

e. Must have compulsory process for obtaining witnesses in his favor.

f. Is entitled to the assistance of counsel for his defense.

12. Excessive bail shall not be required.

13. Excessive fines shall not be imposed.

14. Cruel and unusual punishments shall not be inflicted.

15. No person shall "be subject, for the same offense, to be twice put in jeopardy of life or limb."

16. Rights not enumerated, preserved.

This brings us to the Constitution of 1821. The framers of this instrument sought to include in it all the provisions deemed necessary, which were found in the English and New York Bills of Rights, and in the first ten amend-

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ments to the Federal Constitution. The Constitution of 1821 appears in full in another part of this work.

A synopsis only of the Bill of Rights is given here, for the purpose of showing the subjects included, and their continuance or evolution from earlier Bills of Rights. These provisions may be stated or summarized as follows:

1. Citizens not to be disfranchised.
2. Trial by jury preserved.
3. Creation of new courts limited.
4. Religious toleration.
5. Writ of habeas corpus.
6. Indictment necessary in prosecutions for capital or otherwise infamous crimes.
7. Accused may have counsel.
8. No person to be twice put in jeopardy.
9. Accused person not compelled to be a witness against himself.
10. No person to be deprived of life, liberty, or property without due process of law.
11. Private property shall not be taken for public use without just compensation.
12. Freedom of speech and of the press.
13. Truth may be given in evidence in libel cases.

NEW YORK BILL OF RIGHTS, 1905.

The Bill of Rights has become somewhat disconnected by the manner in which its various parts have been adopted, some parts being in the Constitution, others in the statutes, and several in both. It seems desirable to state here, in a connected form, the various provisions belonging in the Bill of Rights, whether in the Constitution or in statutes. In this arrangement the Constitution is given the preference, and similar statutory provisions are not repeated. This arrangement also includes pro-

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visions not usually stated in a formal Bill of Rights, but which, under our Constitution, confer peculiar privileges either on the whole people or specified classes of people,—such as the right of suffrage, which is fundamental in a republican government; the common-school provision, which gives the children of the state a right to the benefits of a system of common schools; the civil service provision, which confers on certain classes of citizens superior rights in relation to positions in the public service; and the provision relative to damages for negligence causing death, which prohibits the legislature from limiting the amount which may be recovered in such cases.

1. All authority derived from the people.—No authority can, on any pretense whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state.

[Const. 1777, art. 1; act 1787, § 1; Rev. Stat. ¶ 1, chap. 4, § 1.]

2. Persons not to be disfranchised.—No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

[Magna Charta, chap. 39; Const. 1777, art. 13; N. Y. act 1787, ¶ 2; Const. 1821, art. 7, § 1; Const. 1846, art. 1, § 1; Const. 1894, art. 1, § 1.]

3. Due process of law.—No person shall be deprived of life, liberty, or property without due process of law.

[U. S. Const. 5th Amend.; N. Y. Const. 1821, art. 7, § 7; Const. 1846, art. 1, § 6; Const. 1894, art. 1, § 6.]

4. Right of suffrage.—Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state one year next preceding an election, and for the last four months a resi-

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dent of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the state, or of the United States, in the Army or Navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

[N. Y. Const. 1777, art. 7; 1821, art. 2, § 1, as amended 1826; 1846, art. 2, § 1, as amended 1864 and 1874; 1894, art. 2, § 1.]

5. *Religious toleration.*—The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

[Const. 1777, art. 38; U. S. Const. 1st Amend.; N. Y. Const. 1821, art. 7, § 3; Rev. Stat. pt. 1, chap. 4, § 9; N. Y. Const. 1846, art. 1, § 3; 1894, art. 1, § 3.]

6. *Common schools.*—The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

[Const. 1894, art. 9, § 1.]

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7. Trial by jury.—The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law.

[Const. 1777, art. 41; 1821, art. 7, § 2; Rev. Stat. pt. 1, chap. 4, § 8; N. Y. Const. 1846, art. 1, § 2; 1894, art. 1, § 2.]

8. Habeas corpus.—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 its suspension.

[English habeas corpus act, 31 Car. II., chap. 2, 1679; U. S. Const. art. 1, § 9, sub. 2; N. Y. Const. 1821, art. 7, § 6; Rev. Stat. pt. 1, chap. 4, § 10; N. Y. Const. 1846, art. 1, § 4; 1894, art. 1, § 4.]

9. Justice to be speedily administered and process freely granted.—Neither justice nor right should be sold to any person, nor denied, nor deferred; and writs and process ought to be granted freely and without delay to all persons requiring the same, on payment of the fees established by law.

[Magna Charta, chap. 40; N. Y. act of 1787, ¶ 6; Rev. Stat. pt. 1, chap. 4, § 15.]

10. Indictments.—No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this state may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the legislature), unless on presentment or indictment of a grand jury.

[U. S. Const. 5th Amend.; N. Y. Const. 1821, art. 7, § 7; Rev. Stat. pt. 1, chap. 4, § 13; N. Y. Const. 1846, art. 1, § 6; 1894, art. 1, § 6.]

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11. Rights of persons accused of crime.—In all criminal prosecutions the accused has a right to a speedy and public trial by an impartial jury, and is entitled to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor.

[U. S. Const. 6th Amend.; Rev. Stat. pt. 1, chap. 4, § 14.]

12. Accused may appear in person or by counsel.—In any trial, in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions.

[U. S. Const. 6th Amend.; N. Y. Const. 1777, art. 34; 1821, art. 7, § 7; Rev. Stat. pt. 1, chap. 4, § 12; N. Y. Const. 1846, art. 1, § 6; 1894, art. 1, § 6. The provision giving the accused the right to appear in person was first included in the Constitution in 1846, but it had already been made a part of the Bill of Rights in the Revised Statutes of 1828.]

13. Accused person not compelled to be a witness against himself.—No person shall be compelled in any criminal case to be a witness against himself.

[U. S. Const. 5th Amend.; N. Y. Const. 1821, art. 7, § 7; Rev. Stat. pt. 1, chap. 4, § 13; N. Y. Const. 1846, art. 1, § 6; 1894, art. 1, § 6.]

14. Excessive fines.—Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

[English Bill of Rights, 2 Wm. & M. chap. 2, 1689, art. 10; N. Y. act 1787, chap. 1, ¶ 8; U. S. Const. 8th Amend.; Rev. Stat. pt. 1, chap. 4, § 17; N. Y. Const. 1846, art. 1, § 5; 1894, art. 1, § 5.]

15. Twice in jeopardy.—No person shall be subject to be twice put in jeopardy for the same offense.

[U. S. Const. 5th Amend.; N. Y. Const. 1821, art. 7, § 7; Rev. Stat. pt. 1, chap. 4, § 13; N. Y. Const. 1846, art. 1, § 6; 1894, art. 1, § 6.]

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16. Truth in libel cases, power of jury.—In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

[Const. 1821, art. 7, § 8; Rev. Stat. pt. 1, chap. 4, § 21; N. Y. Const. 1846, art. 1, § 8; 1894, art. 1, § 8.]

17. Search warrants regulated.—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, ought not to be violated; and no warrants can 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.

[U. S. Const. 4th Amend.; Rev. Stat. pt. 1, chap. 4, § 11.]

18. Fines to be reasonable.—No citizen of this state ought to be fined or amerced without reasonable cause, and such fine or amercement should always be proportioned to the nature of the offense.

[Magna Charta, arts. 20, 21, 22; N. Y. Bill of Rights, 1787, ¶ 7; Rev. Stat. pt. 1, chap. 4, § 16.]

19. Private property taken for public use.—Private property shall not be taken for public use without just compensation.

[U. S. Const. 5th Amend.; N. Y. Const. 1821, art. 7, § 7; Rev. Stat. pt. 1, chap. 4, § 13; N. Y. Const. 1846, art. 1, § 6; 1894, art. 1, § 6.]

20. Liberty of speech and of the press.—Every citizen may freely speak, write, and publish his sentiments on all

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subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.

[U. S. Const. 1st Amend.; N. Y. Const. 1821, art. 7, § 8; Rev. Stat. pt. 1, chap. 4, § 20; N. Y. Const. 1846, art. 1, § 8; 1894, art. 1, § 8.]

21. Members of the legislature not to be questioned for speeches.—For any speech or debate in either house of the legislature the members shall not be questioned in any other place.

[English Bill of Rights, 2 Wm. & M. chap. 2, 1689, art. 9; N. Y. Laws 1787, chap. 1, ¶ 11; U. S. Const. art. 1, § 6, sub. 1; N. Y. Const. 1846, art. 3, § 12; 1894, art. 3, § 12.]

22. Right of petition preserved.—No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof.

[English Bill of Rights, 2 Wm. & M. chap. 2, 1689, art. 5; Rev. Stat. pt. 1, chap. 4, § 19; N. Y. Const. 1846, art. 1, § 10; 1894, art. 1, § 9.]

23. Elections to be free and undisturbed.—All elections ought to be free; and no person by force of arms, malice, menacing, or otherwise, should presume to disturb or hinder any citizen of this state in the free exercise of the right of suffrage.

[English Bill of Rights, 2 Wm. & M. chap. 2, 1689, art. 8; N. Y. act 1787, ¶ 9; Rev. Stat. pt. 1, chap. 4, § 18.]

24. Taxes, how levied.—No tax, duty, aid, or imposition whatsoever, except such as may be laid by a law of the United States, can be taken or levied within this state, without the grant and assent of the people of this state, by their representatives in senate and assembly; and no

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citizen of this state can be, by any means, compelled to contribute to any gift, loan, tax, or other like charge, not laid or imposed by a law of the United States, or by the legislature of this state.

[Petition of Right, 1628, ¶ 1; English Bill of Rights, 2 Wm. & M. chap. 2, 1689, art. 4; N. Y. act 1787, ¶ 12; Rev. Stat. pt. 1, chap. 4, § 2.]

25. Right to keep arms.—A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms cannot be infringed.

[English Bill of Rights, 1689, ¶ 7; U. S. Const. 2d Amend.; Rev. Stat. pt. 1, chap. 4, § 3.]

26. Military service by citizens.—No citizen of this state can be constrained to arm himself, or to go out of this state, or to find soldiers or men of arms, either horsemen or footmen, without the grant and assent of the people of this state, by their representatives in senate and assembly, except in the cases specially provided for by the Constitution of the United States.

[Petition of Right, 1628, ¶ 1; English Bill of Rights, 2 Wm. & M. chap. 2, 1689, art. 4; N. Y. act 1787, ¶ 12; Rev. Stat. pt. 1, chap. 4, § 4.]

27. Who excused from military service.—All such inhabitants of this state, of any religious denomination whatever, as, from scruples of conscience, may be averse to bearing arms, are to be excused therefrom by paying to the state an equivalent in money; and the legislature is required to provide by law for the collection of such equivalent, to be estimated according to the expense, in time and money, of an ordinary able-bodied militiaman.

[Const. 1821, art. 7, § 5; Rev. Stat. pt. 1, chap. 4, § 5; N. Y. Const. 1846, art. 11, § 1; 1894, art. 11, § 1; Mil. Code 1898, § 1.]

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28. Quartering of soldiers.—No soldier can, 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.

[Petition of Right, 1628; N. Y. Bill of Rights, 1787, ¶ 13; Rev. Stat. pt. 1, chap. 4, § 6.]

29. Feudal tenure.—All feudal tenures of every description, with all their incidents, are declared to be abolished, saving, however, all rents and services certain, which, at any time heretofore, have been lawfully created or reserved.

[Const. 1846, art. 1, § 12; 1894, art. 1, § 11.]

30. Allodial tenures.—All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

[Const. 1846, art. 1, § 13; 1894, art. 1, § 12.]

31. Escheats.—The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands the title to which shall fail, from a defect of heirs, shall revert, or escheat to the people.

[Const. 1846, art. 1, § 11; 1894, art. 1, § 10.]

32. Civil service appointments and promotions.—Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations

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which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the Army and Navy of the United States in the late Civil War, who are citizens and residents of this state, shall be entitled to preference in appointment and promotion, without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section.

[Const. 1894, art. 5, § 9.]

33. Damages for injuries causing death.—The right of action now existing to recover damages for injuries resulting in death shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.

[Const. 1894, art. 1, § 18.]

34. Personal rights; discrimination prohibited.—That all persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities, and privileges of inns, restaurants, hotels, public conveyances on land and water, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law, and applicable alike to all citizens. That no citizen of the state possessing all other qualifications which are or may be required or prescribed by law shall be disqualified to serve as grand or petit juror in any court of this state on account of race, creed, or color.

[Laws 1895, chap. 1042. The act prescribes penalties for its violation.]

Council of Revision.

The Council of Revision was represented by Chancellor Kent, Chief Justice Spencer, and Associate Justices Platt

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and Van Ness. The attempt to overthrow the council brought out, from the judges, a very able defense; and while they did not seek to retain the council as a permanent institution, they showed that it was based on a salutary principle of administration, and that it had not abused its powers, but, on the contrary, had rendered great service to the state in preventing hasty, ill-considered, and unconstitutional legislation.

The section in the first Constitution relating to the Council of Revision was prepared by Robert R. Livingston. He became the first chancellor, and held the position twenty-four years. He was, therefore, a member of the council during all that time. According to a table used by Judge Jonas Platt in a speech on the Council of Revision, eighty-two bills were vetoed while Chancellor Livingston was a member of the council, and one hundred and twenty-eight during the forty-five years of its existence. The whole number of bills passed during this period is given as 6,590. The bills vetoed amount to less than 2 per cent of the entire number,—an average of less than three a year. Two years no bills were vetoed, and ten years show only one veto each year. Alfred B. Street published a history of the Council of Revision in 1859, and his figures differ somewhat from those given by Judge Platt, but they cover a little longer time. According to Mr. Street, the council vetoed one hundred and sixty-nine bills, fifty-one of which were passed over the veto, leaving one hundred and eighteen which did not become laws. Taking either Judge Platt's or Mr. Street's figures as the basis of an inference, it is clear that the Council of Revision was a very conservative body, and that its authority was not "dangerous," as might be supposed from the language of the Ulshoeffer committee's report. According to Judge Platt's figures, eighty-three bills were vetoed as unconstitutional. Some of these

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were passed over the veto, but it is quite evident that a large number of unconstitutional bills were thus disposed of by the chancellor and judges without waiting for the law to be attacked, perhaps years after its passage, in a judicial proceeding.

The most substantial reason for abolishing the council was the intermingling of judicial and legislative functions, occasioned by requiring the judges to consider all bills passed by the legislature. The council might reject bills because it did not agree with the legislature on questions of policy; and it was charged that the council had in fact rejected bills for this reason; but it is evident, from the small number of bills vetoed, that the council did not seriously interfere with the legislature in determining matters of policy.

Governor Tompkins said he believed that the framers of the first Constitution meant to limit the jurisdiction of the Council of Revision to the consideration of constitutional objections to bills. "The council had become the third branch of the legislature, with a control equal to two thirds of all the representative branches." A suggestion was made by several delegates that the members of the council had vetoed bills from party views. Chancellor Kent replied to this insinuation, giving details of different vetoes, with the votes thereon, and concluded his statement with the following observation:

"Thus, sir, we perceive that in the cases selected to prove the predominating influence of party spirit in the council, the spirit of party was subdued by the firmness and independence of the council. I am not called here to vindicate my official conduct as a member of the council, nor am I responsible to the house for my acts in another place; but I must be permitted to say, after the charge that has been made, that for the twenty-three years in which I have had the honour to be a member of the Coun-

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cil of Revision, I have always endeavored to discharge my trust without regard to party influence, and with a single reference to the intrinsic merits of the bills that have been submitted to the council. My judgment may have frequently misled me, but I have never considered myself, in my official character, as the representative of a party. My judicial appointments have been conferred upon me successively by different parties, and I have always considered myself, and have always endeavored to discharge my duty in my public character, as the impartial trustee of the community at large. I therefore deny and disclaim, so far as it respects myself, the imputation which has been cast upon the council."

Judge Platt spoke at some length on the proposition to abolish the council, giving a history of its labors, and, in closing, said:

"Let the Council of Revision descend in silence to the grave. But let no man now write any inscription on its tomb. When the feelings and interests and passions of the day shall have subsided, if I do not greatly deceive myself, impartial posterity will inscribe an epitaph on that tomb, expressive of profound veneration."

One delegate called Judge Platt's last remarks a "requiem," and it is evident from the debates that for some reason, whether justifiable or not, the council no longer enjoyed the fullest confidence of the leaders in public affairs. At this distance the impression is almost irresistible that the hostility to the council had its origin largely in partisan ambition which was sometimes defeated by the refusal of the council to sanction certain bills. Besides, the council was beyond the reach of ordinary partisan influence, for the reason that its judicial members held office during good behavior, or until they reached the age of sixty years; consequently this council was the most permanent part of the state government.

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Governors might come and governors might go, but the council remained. Legislators might serve their brief term, but whatever they did in the way of legislation must pass under the scrutiny of this council.

It has already been noted that Chancellor Livingston was a member of this council for twenty-four years, and that Chancellor Kent was also a member for the same length of time. It is not surprising, therefore, that after a while a feeling should have grown up in the state that the judicial members of the council, not being responsible to the people for their appointment, nor for their continuance in office, sometimes stood in the way of schemes proposed by the dominant party in the legislature. It was suggested while the proposition to abolish the council was under discussion, that if it had limited its functions to the consideration of constitutional questions only it would have been continued as a necessary and useful part of the machinery of state government. But the council had the power, and it was its plain duty, as it is the duty of the governor now, to point out defects in bills aside from any constitutional question, for the purpose of perfecting the statutes.

The power given to the judiciary by the first Constitution, to prevent the enactment of unconstitutional laws, was of great value in shaping our early legislation, and doubtless accounts to a large degree for the few cases in our early judicial history involving the constitutionality of statutes. It would be an advantage in constructing legislation now if there were some method to determine the constitutionality of laws prior to their enactment; and it would be an improvement in our law-making machinery if the legislature and the governor had the right to require the opinion of the court of appeals as to the constitutionality of a pending bill. This opinion should, of course, be limited strictly to the question of constitution-

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ality. The legislature and the governor would thus have the aid of our highest judicial tribunal while the bill is under consideration. If the court's opinion should be adverse to the bill, it could be amended or laid aside, and not be made a statute, as is now the case, with the possible resulting complications of public and private interests involved in its constitutionality. To this extent it seems clear that Mr. Livingston showed wise forethought and statesmanship in requiring the aid of the judiciary in the enactment of laws. The legislature and the governor may consult the attorney general, or seek other legal advice, but an opinion obtained from either source is not binding on the courts; and such opinions, however eminent their authors may be, cannot take the place of the solemn determination of our highest judicial tribunal, which must ultimately determine these disputed questions, and whose judgments deservedly command such high respect.

The value and importance of a resort to the judiciary in the first instance has already been noted in connection with our early legislation. Chancellor Livingston's policy might profitably be revived so far as it related to the determination of constitutional questions. There was a partial revival of its spirit in 1893, when the legislative law was amended by making it the duty of the Statutory Revision Commission, on the request of either house of the legislature, or any committee, member, or officer thereof, to "render opinions as to the constitutionality, consistency, or other legal effect of proposed legislation." The legislature very frequently consulted the Statutory Revision Commission, and procured its advice concerning pending legislation; but while the legislature might consent to be guided by the opinions of the commission, it was not bound to do so, and these opinions were only advisory, and did not have the effect of a judicial decision.

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Besides, when there is no revision commission, the statute is, of course, inoperative. None of these makeshifts can take the place of judicial advice.

Council of Appointment.

The destruction of the Council of Appointment had been foreordained even before the people had determined to hold a new convention, and within three weeks after the Convention met, the select committee, of which Mr. Van Buren was chairman, brought in a report providing for the abolition of the council. The organization and history of the council have already been noted, and also the reasons which actuated the statesmen of that period in desiring its abolition. But it was felt that, while as a consequence of the mistaken construction of the powers of the council under the first Constitution, as enunciated by the Convention of 1801, the council had outlived its usefulness as a desirable feature of the state government, the principle underlying it was not objectionable. Hence, several substitute plans were offered by prominent members of the Convention before it was finally agreed to transfer the confirming power to the senate. General Tallmadge proposed that the eight senators of the fourth class constitute an executive council, and that the governor should nominate, and by and with the consent of the council appoint, certain officers. This plan was rejected by a vote of 48 to 68.

Mr. Russell proposed an executive council of eight members,—one from each district,—to be elected by the people. The governor was to have a casting vote in the council, and was also given the exclusive right to nominate all state officers; but each councilor was given the exclusive right to nominate all officers whose powers were to be exercised in his district. This proposition received 36 votes. A council of appointment was also proposed

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for New York city only, to be called a "Board of Electors," composed of as many members as there were wards, the people of each ward electing one.

These plans and their serious consideration by the Convention show the tenacity of habit, and the tendency to continue existing conditions. There was evident reluctance on the part of many men to have such a large confirming body as a senate of thirty-two members, but the transition was comparatively easy from four of the senators acting as a council to the whole number acting in effect as a council, although under another name. The practical result of the change was the enlargement of the council from four to thirty-two members, and vesting in the governor the exclusive right of nomination.

Thus after twenty-eight years since the nominating power of the governor had been actually disputed in the case of the appointment of Egbert Benson as a justice of the supreme court, in 1794, against the protest of the governor, George Clinton, that power was clearly and firmly fixed in the Constitution, and John Jay was vindicated.

Miscellaneous.

The common-school fund, already established, was fixed and made permanent, with the declaration that the interest of the fund "shall be inviolably appropriated and applied to the support of common schools throughout this state." Lotteries were prohibited; the provision of the first Constitution concerning land contracts with Indians was continued; the provision of the first Constitution relative to the continuance of the common and colonial law was continued, with the exception that the provision in the first Constitution, continuing the statute law of England and Great Britain, was omitted; the provision of the first Constitution relative to royal grants was continued.

One of the subjects especially committed to this conven-

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tion related to the method of amending the Constitution. The first Constitution was defective in not containing any provision for its amendment. Under that Constitution there could be no amendments, except by a convention, and probably this condition prevented many amendments, because of the unwillingness of the people to call conventions. The Convention of 1821 adopted the plan, since continued, of permitting amendments to be recommended to the people by the legislature; but, to prevent hasty action, required the proposed amendment to pass the scrutiny of two legislatures. This gives the people an opportunity to elect a new legislature while the proposed amendment is pending, and, if deemed of sufficient importance, it may receive special consideration in the election. A significant change concerning constitutional amendments will be considered under the Constitution of 1894.

The new Constitution provided that several of its most important parts should take effect on the last day of February, 1822; that members of the existing legislature should, on the first Monday of March, take an oath to support the new Constitution so far as the same should then be in effect; that elections should be held on the first Monday of November, 1822, for elective officers under the new Constitution; that commissions of all appointive officers should expire on the last day of December, 1822, and that the whole Constitution should be in force from that day.

Conclusion.

The convention act authorized the submission of the Constitution to the people either as a whole or in separate parts. The report on this subject, prepared by Mr. Root, stated that because so much of the Constitution was new, and because of the relations of its various parts to one

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another, it would be impracticable to submit specific parts without reference to the remainder; therefore the Convention determined to submit the Constitution as a whole.

The Convention directed that the Constitution be submitted to the people at an election to be held January 15, 16, and 17, 1822, and ordered the printing and distribution of five thousand copies of the Constitution, of the resolution providing for its submission, and of the Convention's address to the people.

The Constitution was adopted by the Convention at its last session on the 10th day of November, 1821, with nine negative votes. Ninety-eight delegates then signed the Constitution, and the engrossed amended Constitution thus signed was on that day delivered to the secretary of state, and deposited in his office, where it is still preserved.

President Tompkins, in his closing address, on the adjournment of the Convention, said: "It is my sincere hope that the approbation of the community may greet the result of our consultations; and that it may accomplish the momentous objects for which we have been assembled; and redound to the liberty, tranquillity, and permanent welfare of our constituents and of posterity."

Governor De Witt Clinton, in his annual speech to the legislature on the 2d of January, 1822, made the following observations concerning the new Constitution, which was then under consideration by the people:

"Since the adjournment of the legislature, an event has occurred of the highest importance to the people of this state. The delegates elected 'for the purpose of considering the Constitution of this state, and making such alterations in the same as they may deem proper, and to provide the manner of making future amendments thereto,' have concluded their deliberations, and presented the result for the ratification or rejection of the people,

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in the shape of a new Constitution, varying essentially in many of its provisions from the present frame of government. As this subject is now under the consideration of the supreme and sovereign power of the community, the source of all legitimate government, it would be obviously improper for the derivative and subordinate authorities to interfere in their official characters with its deliberations and decisions. Whatever advice we offer, whatever determination we form, and whatever course we pursue, must be indicated in our individual capacities, as component members of a great community, acting in its sovereign character; and whenever the momentous decision is made, and whatever it may be, it will be our incumbent duty to obey implicitly the determinations of the people, and to carry into full effect their expressed volitions. Were it not for considerations so imperative, I should on this, as I trust I have on all proper occasions, have communicated with frankness and candor my views in relation to the bearing of this important question on the public welfare. It is a spectacle truly felicitating, to observe the calm and dignified moderation with which our constituents have approached this important subject, for, so far as my observation has extended, the discussions have been free from the usual asperities and agitations of the times. It is, indeed, not a question involving the views of personal ambition, the interests of party ascendency, or the feelings of local contention. It looks to the past for enlightened instruction; to the present for wise and patriotic decision; and to the future for general and permanent benefit. To perceive a vast and growing population sitting in judgment on its own form of government, acting with intelligence, independence, and firmness, discarding minor and evanescent considerations, and consulting the greatest happiness of the greatest number, is a sublime sight, administering to the best

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hopes, and answering the highest expectations, of the friends of republican government. And let us humbly supplicate the Supreme Dispenser of all good to shed his propitious influence on this occasion, and to produce a result auspicious to the stability of civil liberty and ascendency of good government, and the prosperity of our beloved country."

The Constitution was ratified by the people by a vote of 74,732 to 41,402, and all of its provisions went into operation during that year. Thus, on the last day of December, 1822, the first Constitution of New York passed into history. It had served its purpose well. It might almost literally be said of it that it was born on the battle-field. Its authors wrote it, musket in hand. They left the arena of war at short intervals to sit in the councils of state, to construct a government for times of peace. It had some defects, not especially manifest at first, but which became apparent as the state increased in wealth, population, and commercial interests, and as new problems were presented for the consideration of the people. It was founded on correct principles; but these principles needed extension and enlargement to meet the growing needs of the state. It was a good Constitution for that time, and deserved the encomiums which it received from statesmen of that period. We may most fittingly quote here the eloquent words of Chancellor Kent, who, in the Convention of 1821, speaking of the first Constitution, said: "This state has existed for forty-four years under our present Constitution, which was formed by those illustrious sages and patriots who adorned the Revolution. It has wonderfully fulfilled all the great ends of civil government. During that long period, we have enjoyed, in an eminent degree, the blessings of civil and religious liberty. We have had our lives, our privileges, and our property, protected. We have had

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a succession of wise and temperate legislatures. The code of our statute law has been again and again revised and corrected, and it may proudly bear comparison with that of any other people. We have had, during that period (although I am, perhaps, not the fittest person to say it), a regular, stable, honest, and enlightened administration of justice. All the peaceable pursuits of industry, and all the important interests of education and science, have been fostered and encouraged. We have trebled our numbers within the last twenty-five years, have displayed mighty resources, and have made unexampled progress in the career of prosperity and greatness. Our financial credit stands at an enviable height; and we are now successfully engaged in connecting the great lakes with the ocean by stupendous canals, which excite the admiration of our neighbors, and will make a conspicuous figure, even upon the map of the United States. These are some of the fruits of our present government."

Governor Joseph C. Yates, who had been a justice of the supreme court under the first Constitution, in his first message to the legislature, January 7, 1823, referring to the change of Constitutions, said:

"There has been only one period since the declaration of our independence, that the legislature of the state of New York have been called upon to perform such high and responsible duties as at this session will devolve upon you; and when we reflect upon the conduct of those who formed the first Constitution of this state, and organized a government, every well-ordered mind must be led with gratitude to bow before the throne of Grace, returning fervent thanks to the God of heaven and of earth, who raised up for us, in that time of need, men eminently endowed with great intelligence, integrity, and superior, I had almost said inspired, views of the rights and liberties of man. The checks and balances of the old Con-

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stitution of this state were admirable, when judged with reference to the time in which it was adopted; just emerging from a state of colonial dependence, and while desperately, and almost convulsively, struggling to break the fetters of trans-Atlantic despotism; almost every man in the community at that time possessing high ideas of the necessity of a strong executive power, and great legislative independence; and although we have amended what we have deemed its errors, and what, in the present state of the community, were really such, yet the candid mind cannot but admire and applaud its great comparative excellence. I could not, gentlemen, withhold at this time, and on this occasion, the expression of my affection and veneration for those men, great in intellect and honesty, several of whom were personally known to many of us, who, having placed and seen their country in prosperity and the enjoyment of liberty, have gone to sleep with their fathers until the great day of retribution.

"This government has, by the late amendments, been adapted to the present feelings and views of the community, the only proper standard by which a good government can be formed: and no time for its reorganization could be more auspicious than the present."

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