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First lessons in civ

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FIRST LESSONS  
IN  
CIVIL GOVERNMENT;

INCLUDING

A COMPREHENSIVE VIEW OF THE GOVERNMENT OF THE  
STATE OF NEW YORK, AND AN ABSTRACT  
OF THE LAWS.

SHOWING

THE RIGHTS, DUTIES, AND RESPONSIBILITIES, OF CITIZENS IN THE  
CIVIL AND DOMESTIC RELATIONS ;

WITH

AN OUTLINE OF THE GOVERNMENT OF THE UNITED STATES.

ADAPTED TO THE CAPACITIES OF CHILDREN AND YOUTH, AND  
DESIGNED FOR THE USE OF SCHOOLS.

BY ANDREW W. YOUNG,

Author of the "Science of Government," "The Statesman," etc.

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REVISED AND ADAPTED TO THE NEW CONSTITUTION.

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BUFFALO:  
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C. E. FELTON,  
STEREOTYPED, BUFFALO.

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## PREFACE.

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**N**OTWITHSTANDING the number and variety of class-books that have sought and gained admittance into our public schools, the study of our civil polity has not yet been encumbered with treatises on this most important science. While much has been done, during the last quarter of a century, by voluntary effort as well as by legislation, to diffuse the benefits of a practical education, it is remarkable that the science of government has hitherto received so little attention.

To secure the blessings of liberty to themselves and their posterity, was the leading object of the people of the United States in ordaining and establishing the constitution. That this constitution is fully adequate to the objects of its formation, has been satisfactorily proved by the experience of more than half a century. Whether the blessings of civil and religious freedom which our system of government is so happily adapted to secure shall be enjoyed by *our* posterity, will depend essentially upon what shall be done to qualify the rising generation of American youth for the duties and responsibilities of freemen.

The destinies of this great and growing republic will, in a few years, be committed to those who are now receiving instruction in our public schools. How important, then, that the course of education pursued in these institutions, should embrace the study of the principles of civil government, especially of that government in which our youth will so soon be called to take a part! Our government is in theory a government of *the people*; to be such *in fact*, the people must know *how* to govern. The right of self-government can be valuable only as it is exercised *intel-*

*Ignorantly.* Questions of public policy involving constitutional principles, and even liberty itself, are not unfrequently decided by popular suffrage; and without a thorough knowledge of our constitutional jurisprudence, the very object of free government may be defeated, and the people become their own oppressors.

A fundamental principle of our government is *equality*. At the ballot-box, the constitution recognizes no distinction or preference. It secures to all classes of our citizens—the humblest and the most exalted—the poor and the rich—an equal measure of political power. Hence all should be equally capable of exercising this power with wisdom and effect.

The study of political science should be commenced early. Children should *grow up* in the knowledge of our republican institutions. The provisions of our state and national constitutions should be to them as familiar as the spelling-book; yet thousands of our young men reach their majority, who have never given these constitutions so much as a single reading; and who assume the high prerogatives of freemen without knowing what the vast responsibilities of a freeman are! Can our liberties be safe in such hands? Can parents reconcile it with an enlightened sense of justice to their country to turn their sons upon the community thus unprepared to discharge their political duties?

If ever the great body of the people are to be qualified for the business of self-government, our common schools must be relied on as the principal means. In these institutions, probably nine-tenths of our citizens receive all their education. A science, therefore, the knowledge of which is so essential to our political prosperity, should be taught in every common school.

Influenced by these considerations, the compiler prepared, a few years since, his "Introduction to the Science of Government." The circulation which that work has received, affords evidence that the importance of this science is beginning to be appreciated. The object of the work was declared to be, "to supply a deficiency in the course of education." The belief was entertained and expressed, that it would be found well adapted to the condition of our

## PREFACE.

common schools ; and that the several subjects of which it treated were made "intelligible to those who were of suitable age and capacity to be benefited by the study of this science."

The fact, however, has been ascertained by experience, that youth have the "capacity" to comprehend the principles of civil government at a much earlier "age" than that to which that work is adapted : and hence it is used by a small portion only of those who may be benefited by the study. The primary design of the present work is, therefore, to supply a deficiency still remaining ; and it is confidently believed, that it may be profitably studied by children of ordinary intelligence, at the age of ten years.

In the author's endeavor so to simplify and illustrate certain subjects as to meet the capacities of children, some may discover what may be deemed an excessive attempt at simplicity of expression. Those, however, who have been engaged in the instruction of youth, are aware that there is little danger of aiming too low. A very common defect of many valuable works is, that they do not *descend* to the comprehension of those for whose benefit they are designed.

It will be seen that this work differs from the former, in respect to both the *plan* and the *matter*. The "Science of Government" being adapted alike to all the states, a particular description of the government of no state could be given in that work. It is designed to instruct our citizens in the principles of civil government in general, and particularly in "the constitutional and civil jurisprudence of the United States."

The work now offered is emphatically a *book of the government of the state of New York*. Besides a general view of the extensive machinery of our state government, it contains, as its title indicates, an abstract of the statutes of the state, from which the citizen may learn his rights, responsibilities, and duties, as a member of the civil community. It contains also an outline of the government of the United States, showing the nature and objects of the Union, the relations which the state and national governments bear to each other, the powers of the general government, and the organization of its several departments.

This work is not intended to be used merely as a class-book for youth. It may be read with no less interest and profit by the mass of adult citizens, and will be found highly useful and convenient in almost every family library as a book of reference. The study of the work by females is also recommended. The position which they occupy in society, and the part they take in the training of our youth, in the family and in the school, give them an influence in forming the character and settling the destiny of the nation, no less powerful than that which is produced by a direct participation in the government. Moved by that patriotic feeling which a thorough knowledge of our republican institutions naturally inspires, they would more effectively aid in the diffusion of a pure and enlightened patriotism, indispensable to the health and vigor of the body politic, and to the security of public liberty.

In the hope that this work will in some good degree answer the purpose for which it is designed, it is respectfully presented to the public.

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### NOTICE.

After a suspension, for several years, of the publication of this work, and for causes no longer existing; and after a change of proprietorship and a thorough revision by the author, the publication has been resumed, with a view to the consummation of the original object of diffusing among the youth of this state, the elements of a sound political education. In the prosecution of this plan, the publishers confidently anticipate the ready cooperation of those intrusted with the supervision of our public schools, and of the friends of education generally throughout the state.

*September, 1856.*

☞ A few sections will be found in this work, with a capital letter in brackets at the end of each. This letter refers to an amendatory note at the end of the work.

## TO TEACHERS.

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THE occupation of an instructor of youth, is a most honorable and responsible one. The persons who are, in a few years, to become our legislators, judges, and governors, are now in the process of training, in our public schools. Teachers should therefore realize the magnitude of their trusts, since the future character and destiny of the nation depend so essentially upon the degree of ability and fidelity with which this trust shall be discharged.

In our common schools, chiefly, must the foundation be laid for our future statesmen. From this work, if it shall meet a favorable reception, not a few of them will receive their "first lessons." Its success and efficiency will depend materially upon the manner in which it is received and used by teachers.

A teacher who desires to be in the highest degree useful, will cheerfully undertake the instruction of a class in civil government. The exercise may be made interesting to both teacher and scholars. The interest of the latter may be increased, by showing them how the personal advantage of every individual is promoted by good government.



Although this work is, for the most part, written in a style adapted to young minds, some subjects seemed to require the use of words and phrases which may not be sufficiently intelligible to every pupil, without reference to a dictionary, or some explanation by the teacher, who ought to see that every sentence and subject is understood by the class.

Some of the chapters will be found too long for a single lesson. Such portions only should be assigned to the class as may be learned well. In exercising the pupil, the teacher will generally find it necessary to add questions of his own, which he may do at pleasure.

Scholars, especially those in the cities of this state, need be informed, that cities have governments peculiar to themselves, and, consequently, that much of what pertains to the government of the state of New York, is not applicable to the city governments.

This work may be used, to great advantage, as a reading book. By requiring the pupils to read a lesson before they are interrogated, the two exercises of reading and recitation may be profitably combined. An important advantage of this course is, that the necessity of increasing the number of classes is thereby obviated. Also new interest will be given to the reading exercise; equal proficiency will be made in the art of reading; while knowledge of far greater practical utility than is derived from ordinary reading books, will be acquired.

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# CIVIL GOVERNMENT.

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## CHAPTER I.

### *Of Civil Government and Laws; Their Nature and Necessity.*

§ 1. GOVERNMENT, in a general sense, signifies direction, or regulation; or it is the control which one thing has over another. When applied to mankind, it means the exercise of authority by one or more persons over others, in controlling or regulating their conduct.

§ 2. A parent gives directions to his children for the regulation of their behavior. He commands what they are to do, and forbids what they are not to do. In giving these rules and causing them to be obeyed, he is said to *govern* his family. So the government of a teacher consists in keeping order in his school, by causing his scholars to observe the rules he has prescribed for their conduct.

§ 3. But the kind of government treated of in this book, is the government of a state or nation, generally called *civil government*. It is so called, because it is the government which regulates the actions of persons as members of civil society. But in order fully to understand the meaning of civil government, it is necessary to know what is meant by *civil society*.

§ 4. The Creator intended that mankind should live together. He has given them a desire to associate with each other, and made their happiness depend, in a great measure, on such association. Hence we find that persons derive enjoyment from each other's company which they could not have by living alone.

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QUESTIONS. § 1. What is government in a general sense? What when applied to persons? § 2. Illustrate the meaning by example. § 3. What is the government of a state or nation called? Why? § 4. From what

§ 5. Any number of persons associated together in any manner, or for any purpose, may be called a society. The friends of temperance associate for the purpose of promoting temperance, and are called a temperance society. Other persons act together as a Bible society, or an education society. But neither of these associations, nor any others commonly called societies, are what is understood by civil society.

§ 6. The term civil society is applied to the people of a country united for the purpose of government, under written rules and regulations. But it does not apply to the people of every nation. The Indians of this country observe certain rules and customs; but as these people are savage and unlearned, they are called *uncivilized*, and are not properly civil communities.

§ 7. Civil society can be said to exist only where the people are in a civilized state, or state of social improvement. By a state of civilization and social improvement is meant refinement of manners, or growth in knowledge. In any country where the people enjoy the benefits of learning, and the means of improving their social condition, or of making themselves more comfortable and happy, they are called *civilized*; and the authority exercised in regulating the conduct or actions of mankind in civil society, is called *civil government*.

§ 8. The rules by which the conduct of men in civil society is to be regulated, are called *laws*; as the commands of the parent or householder are the laws of the family, or as the rules of the teacher are the laws of the school. A *law* is therefore a rule prescribing what men are to do, and what they are not to do. A law implies two things; first the right and authority of those who govern to make the law; secondly, the duty of the governed to obey the law.

§ 9. To give force to a law, it must have a penalty. *Penalty* is the pain or suffering to be inflicted upon a person for breaking a law. The law requires, that for stealing, a man must pay a fine, or be put into prison, and that for murder, he must be hanged: therefore fine or imprisonment is the

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do you infer that man is made for society? § 5. What is a society? § 6. What is civil society? § 7. Where does civil society exist? What is civilization? Is this a civilized country? § 8. What are called laws? Define law. § 9. Why have laws a penalty? What is penalty? § 10. Why are

penalty for stealing, and hanging is the penalty for murder. If there were no penalties annexed to laws, men could not be compelled to obey them; bad men would commit the worst of crimes without fear, and there would be no safety or order in society.

§ 10. Civil government and laws, therefore, are necessary to preserve the peace and order of a community, and to secure to its members the free enjoyment of their rights. A *right* is the just claim or lawful title which we have to any thing. Thus we say, a person has a right to what he has earned by his labor, or bought with his money. A man is entitled to what is lawfully or justly his own; that is, he has a right to it.

§ 11. We have a right also *to do* things. We have a right to go where we please, and to act as we please, if by so doing we do not trespass upon the rights of others. This being free to act thus is called *liberty*. But it must be remembered that all men in civil society have the same natural rights, and no one has a right to disturb others in the enjoyment of their rights.

§ 12. All laws ought to be so made as to secure to men the liberty to enjoy and exercise their natural rights. *Natural rights* are those which we are entitled to by *nature*, rights with which we are born. They are called natural rights, because they are ours by birth. And because all persons in society have naturally the same rights, we have no right to what belongs to another, nor to say or do what will injure another.

§ 13. The law of nature is that rule of conduct which we are bound to observe towards our Creator and our fellow men, by reason of our natural relations to them. It is a perfect rule for all moral and social beings, right in itself, right in the nature of things; and it would be right, and ought to be obeyed, if no other law or positive command had ever been given.

§ 14. Mankind being dependent on their Creator, they owe to him duties which they ought to perform, though he had never positively enjoined them. It is right in itself that we

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laws necessary? What is a right? Explain the meaning. § 11. What is liberty? § 12. What are natural rights? May we do what ever we please? § 13. What is the law of nature? § 14. What reason is here given for



should love and serve our Maker, and thank him for his mercies; and it would be just as much our duty to do so, if he had never so commanded. And it is right in the nature of things that we should love our neighbor as ourselves; and our obligation to do so would be just as certain, had the duty never been enjoined by a positive precept.

§ 15. Living in society with our fellow men, on whom we are in a measure dependent, and who have the same natural rights as ourselves, we are bound by the principles of natural justice to promote their happiness, by doing to them as we would that they should do to us; that is to say, the law of nature requires us to do so. And here let it be remarked, that the all-wise and kind Creator has so constituted man, that in thus promoting the happiness of his fellow men, he increases his own.

§ 16. But it may be asked, if the law of nature is the rule by which mankind ought to regulate their conduct, of what use are written laws? The will of the Creator is the law of nature which men are bound to obey. But mankind in their present imperfect state are not capable of discovering in all cases what the law of nature requires; it has therefore pleased Divine Providence to reveal his will to mankind, to instruct them in their duties to himself and to each other. This will is revealed in the Holy Scriptures, and is called the law of revelation, or the Divine law.

§ 17. But though men have the Divine law for their guide, human laws are also necessary. God has commanded men to do that which is right, and to deal justly with each other; but men do not always agree as to what is right: human laws therefore become necessary to say what shall be considered just between man and man. And these laws must be written, that it may always be known what they are.

§ 18. Again it may be asked, what must be done when a human law does not agree with the Divine law? Must such law be obeyed? Men have no right to make a law that is contrary to the law of God; and we are not bound to obey

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loving our Creator and our fellow men? § 15. How must we act towards our fellow men? By what law? § 16. Do the will of God and the law of nature agree? Why then are written laws necessary? Wherein is the Divine law revealed? § 17. Why are human laws necessary? § 18. When human laws and the Divine law disagree, which must be obeyed?

1t. The apostles were forbidden to preach the gospel ; but they said, " we ought to obey God rather than men ;" and they continued to preach. (Acts, Chapter 5.) But we may not disobey a human law simply because it fails to require strict justice. A law may be very imperfect, as many human laws are, and yet we may obey it without breaking the Divine law.

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## CHAPTER II.

### *How Power is exercised in different Governments.*

§ 1. THE people of every country live under government and laws of some kind ; but the modes and forms of government in different countries are very different from each other. What distinguishes one form of government from another is, that the power to govern, that is, the power to make the laws and to put them in force, is in different hands, and is exercised in a different manner in some governments from what it is in others.

§ 2. In some countries the power to govern is in one person, called a king or emperor, who makes the laws for the people, who are called *subjects*, because they are subject to his will, which is their law. Such a government is called a *monarchy*, which means a government by one man, who is called *monarch*. When the ruler exercises authority over his subjects in a cruel manner, he is called a *despot* or *tyrant*, and his government is called despotism, or tyranny. Originally the words despot and tyrant meant simply a single ruler. But such is the sense at present conveyed by these words, that any government, when so administered as to oppress the people, is called despotic or tyrannical.

§ 3. Another form of government is a *democracy*, which means government by the people. In a government purely democratic, the people govern themselves. The great body of freemen meet in one assembly to make the laws and to

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§ 1. Are all forms of government alike ? Wherein consists the difference ?  
 § 2. Who makes the laws in a monarchy ? What is a monarchy ? When is it called a despotism, or tyranny ? § 3. What is a democracy ? How are laws

transact the public business. In ancient Greece and Rome there were some governments of this kind. This kind of government can exist only in small territories. It would be impossible for all the citizens of a large community to meet in a single assembly and do business.

§ 4. It will be seen that the two kinds of government here described, are directly opposite to each other. In the former, the power is in the hands of *one* man; in the latter, the power to govern is exercised by *all* the people. In the *one*, the people are governed by another; in the other, they govern themselves. The former, in which the will of one man is the law, is called an *absolute* or *arbitrary* government; the latter, in which the people make their own laws, is called a *free* government.

§ 5. There is a form of government which partakes of the nature of both a monarchical and a free government, and is therefore called a *mixed* government. It is also called a *limited monarchy*, because the monarch is himself restrained by laws, and cannot make laws alone. The government of Great Britain is one of this description. The chief magistrate, or king, gets his power as kings usually do, by right of birth that is, he inherits it from his ancestors, in the same manner as a son becomes heir to the property of his father, at whose death the property comes to the child by right of birth. The eldest son, if there is a son, is heir to the crown.

§ 6. But the king in that country has not the power to make the laws. The laws are framed by parliament, and submitted to the king for his approval. If he approves them, they become laws, otherwise they do not. Parliament is composed of two legislative assemblies, the house of *lords* and the house of *commons*. The lords are men of high rank, who get their office by birth, or from the king. They are also called *nobles*. The house of commons is composed of men who are elected by the people. These three branches of the government, the king, the house of lords, and the house of commons, must all agree upon a measure before it is a law.

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made in a pure democracy? § 4. Contrast a monarchy and a pure democracy? § 5. What is a mixed government? How does a king get power? § 6. By whom are laws made in Great Britain? And how? How is parliament constituted? Describe the two houses. § 7. What is an aristocracy

§ 7. Governments called *aristocracies*, have also existed; but no government properly called an aristocracy is known to exist at the present time. The word is applied to a government which is in the hands of a few persons of rank and wealth. The aristocratic principle, however, is preserved in the British house of lords.

§ 8. But the form of government which prevails in this country is different from all those which have been described. It is a republican government. A *republic* is a form of government in which the public, the people, enjoy common rights and privileges. Hence the name of *commonwealth* is sometimes applied to a republican government; as a thing is said to be *common* when it is enjoyed by persons generally, or by all. Hence also the word *community*, which signifies the people living under the same laws, and enjoying the same privileges. Every state in the union is a republic.

§ 9. In a republic the political power is with the people; and therefore the government is *free*. Hence our government is sometimes called a democracy; and perhaps the words republic and democracy had formerly the same meaning. But our government is materially different from such a democracy as has been described. In a republic like ours, the people do not all assemble in a body to make laws as in a pure democracy. The laws are made by a small number of men called representatives, who are chosen by the people for that purpose. The people also choose persons to transact the other business that needs to be done.

§ 10. Our government is therefore a representative government, or a representative republic. A *representative* is a person chosen or employed by others to make known their wishes, and to transact their business. A representative is therefore an agent. The word *agent*, however, more frequently denotes a person intrusted with the business of private individuals; by representative is generally understood one who is chosen to assist in enacting the laws. All public agents and representatives are called *officers*.

§ 11. Notwithstanding power in our government is divided

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§ 8. What is the government of this country called? What is a republic? What other name is it called by? Why? § 9. In what is our government different from a simple democracy? § 10. What, then, is our government properly called? What is a representative? § 11. In what respect are

among a great many different classes of officers, instead of being exercised by the great body of the people in person, as in a simple democracy, both governments are alike in this, that all power, however differently exercised, comes from the people. Both are such governments as the people choose for themselves, and therefore both are equally *free*.

§ 12. The form of government in the United States is expressed in a written instrument, called a *constitution*. A constitution is a form of rules by which the members of a society agree to be governed. Every society or association commonly so called, has a constitution. The persons forming the association draft a set of rules, stating the object of the society, what officers it shall have, what each is to do, and how its operations shall be carried on. These rules are called the constitution of the society. So the rules that are adopted by the members of the civil society, where the people are free, are called the constitution. They are in the nature of articles of agreement, by which the people mutually agree to be governed.

§ 13. A constitution is a kind of law; not, however, such a law as those which are made by the representatives of the people. It is a law made by the people themselves, directing what the government shall be, what officers are to be elected, and what duties they are to perform. It prescribes also what laws may, and what may not be made: hence it is sometimes called the *fundamental law*, being the *foundation* of all other laws, which must conform to or agree with the fundamental law. It is also called a *frame* of government, and may be compared to the frame of a building. The frame gives form and shape to the building; and every additional timber and plank required to finish it, must be fitted to the frame. So every law that is made, and every act that is done by the officers of the government, must conform to the constitution.

§ 14. The constitution is also called the *political law*, because it is the law of the political body, or body politic. By body politic is meant the people of the state incorporated into one body for the purpose of government. As the law

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the two governments alike? § 12. What is a constitution? What does it declare? § 13. Why is a constitution called the fundamental law? To what is it compared? § 14. Why is it called the political law? What is meant by body politic? In what does a political law differ from a civil or

of the whole people in their political capacity, the constitution is properly the political law, as distinguished from the laws made by the people's representatives, which are called the *civil or municipal laws*.

§ 15. Now it appears from what has been said, that a constitution is a law; but not every law is a constitution. A constitution is made by the act of the people, and constitutes their form of government; the laws are acts of the legislature, which are necessary in carrying on the government, and regulating the conduct of the citizens.

§ 16. It appears also, that the first and highest act of a free people, is the choice of a constitution or form of government for themselves. Hence, in no country do the people enjoy greater political privileges than in the United States. In most governments there is either no constitution at all, or none that is made by the people. In such governments the people are not free. The people of Great Britain enjoy a good degree of civil liberty, and we hear of the British constitution; but it is not a written instrument like ours, adopted by the free vote of the people. Not having such a constitution to restrain their rulers, the people are liable to suffer, and often do suffer from the enactment of unjust laws.

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### CHAPTER III.

#### *How the present Form of Government came to be established in this country.*

§ 1. In the two preceding chapters, I have endeavored to explain to my young fellow-citizens the principles of government in such a manner as to give them a knowledge of what civil government is, and of the nature and necessity of human laws; and I have described several of the different forms of government. In this chapter I shall show how the present

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municipal law? § 15. Is every law a constitution? State again the difference between them. § 16. What is the most important act of a free people? Do the people in most governments enjoy this privilege? What is said of the people of Great Britain and the British constitution?

§ 1. What has been explained and described in the two former chapters?

form of government came to be introduced and established in this country.

§ 2. It is presumed that the youngest of my readers know that the people of the United States have not always lived under their present excellent form of government. For more than one hundred and fifty years after the first settlement of this country, they were subject to the government of Great Britain. The present year, (1847,) is the 71st since the American colonies, now states, separated themselves from the parent country, and claimed the right to establish a government for themselves.

§ 3. This country was first settled by the English, who claimed it by right of discovery, they having discovered it in 1497, about five years after Columbus had discovered the West India islands. The first permanent settlement, however, was not made until the year 1607, when a colony of 105 persons settled at Jamestown, in Virginia. A few years afterwards, (1620,) a colony was planted in Plymouth, in Massachusetts. After this the number of colonies rapidly increased to twelve, the last of which, Pennsylvania, was settled in 1681. About fifty years thereafter, (1732,) Georgia was settled, the last of the thirteen which declared themselves free and independent states.

§ 4. During their connection with Great Britain, the government of the colonies was not one of their own choice, but such as the king was pleased to institute for them. Each colony had a separate and distinct government; but the governments in the different colonies were in many particulars alike. The powers of government were generally vested in a governor, a council, and an assembly of representatives chosen by the people. These three branches corresponded to the king, the nobles, and the commons, in the government of Great Britain. Power was therefore divided in those governments in nearly the same manner as it is in the states at present; for there is in every state a governor, a senate, and a representative assembly.

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§ 2. To what government were the people of this country formerly subject? How long? What is a colony? § 3. When did the English discover this country? When and where was the first settlement made? What is said of others? § 4. What is said about the government of the colonies while connected with Great Britain? Were they all governed alike? § 5. In

§ 5. There is, however, an important difference between those governments and the present. The people of the colonies were not allowed to choose a constitution or form of government for themselves; nor had they the privilege of choosing the officers of the different departments of the government. The governors were appointed either by the king, or by such persons as had authority from the king to appoint them; and they were generally under the control of the king, who kept them in office as long or as short a time as he pleased.

§ 6. The council was composed of a small number of men, also appointed by the king, and subject to his pleasure. This body constituted one branch of the legislature. The judges and magistrates, and other officers, were appointed by the governors, or by the king, or other persons who appointed the governors.

§ 7. Hence it appears that only one branch of the law-making power was chosen by the people, while the other two, the governor and council, were appointed by the king, or were subject to him, as were also the other officers of the government. Although one branch of the legislature was composed of men chosen by the people, the people could not always get such laws enacted as they wished; because both the governor and the council must agree to every measure which the people's representatives might propose; and then, when agreed to by them, it must be sent to England and submitted to the king, who also must give it his approval before it could be a law.

§ 8. In a few of the colonies, however, the people enjoyed greater privileges. In Massachusetts, Rhode Island, and Connecticut, for some years before the revolution, they elected their governors and both houses of the legislature. But even in these colonies no laws might be enacted that were contrary to the laws of England. And the privileges which they did enjoy were granted by the king, and might at any time be taken away from them at his pleasure.

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what respect did those governments differ from the present? Who appointed the governors? § 6. How was the council composed? How were other officers appointed? § 7. What officers were chosen by the people? Could the people have such laws as they wished? Why not? § 8. In what colonies did the people choose their governors and legislatures? § 9. What



§ 9. Such is a brief description of the government of the colonies before they became free and independent states. There is not room in this work for a history of all the circumstances which led to their separation from the parent country, and the establishment of independent governments. The reasons for the separation are stated in the declaration of independence. It may be necessary, however, to say here, that laws were made in England which bore heavily upon the people of the colonies. The general object of these laws was to compel the colonies to sell their produce to England, and to make them buy from England the goods they wanted; and to prevent them from buying goods from other countries, they were obliged to pay duties on such articles as were brought hither from such countries.

§ 10. A *duty*, as the word is here used, is a *tax* which a person who buys an article has to pay in addition to the price of such article. I will explain the nature of these duties, and how they operated. The colonies traded with the West India islands. Some of these islands belonged to France, some to Spain, and others to Great Britain. Now to prevent the colonies from trading with the French and Spanish islands, the British parliament enacted a law compelling the colonists to pay duties on the articles they received from these islands. In order, therefore, to avoid paying this tax, they must obtain such articles from the British Islands.

§ 11. Many other laws similar to this were passed by parliament, all for the benefit of that country; and the money thus obtained, was put into their own treasury for the support of the British government. The colonists remonstrated against these unjust laws. Petitions were sent to the king, and memorials to both houses of parliament, and every argument was employed to persuade them to repeal these laws, but all to no purpose. At length the colonists resolving not to submit to such laws, and the British government being determined to enforce them, a war between the two countries was the consequence.

§ 12. The war commenced in 1775. On the 4th of July,

is the nature of the laws made in England, that led the colonies to separate from that government? § 10. What is a duty? How are the nature and operation of a duty explained? § 11. What did the colonists do to get these laws repealed? What is repeal? § 12. When was independence declared?

1776, Congress declared the colonies to be free and independent states, no longer subject to Great Britain. Congress was a kind of legislative body, composed of a few delegates or representatives from the several colonies. A description of this congress will be given in another part of this work; also the declaration of independence, with the names of the men who signed it. After a hard struggle of about seven years, the war was ended, and Great Britain acknowledged the independence of the states. This change in our relations with that country, and the establishment of an independent government in the states, is called the *American Revolution*.

§ 13. Since the states declared themselves independent, one after another has changed its government, until all of the original thirteen have adopted new constitutions. New-York has adopted three during this period. The first was dated in 1777, the year next after the declaration; the second, 1821; and the present, 1846. Since the revolution, and prior to the present year, (1856,) eighteen new states have been admitted into the Union.

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## CHAPTER IV.

*Of the Government of New-York.—The general Nature and the Origin of the Government of this State.*

§ 1. If the scholar has attentively studied what is written in the preceding chapters on the principles of government, he will now be prepared to enter understandingly upon the study of the government of the state of New-York. Every citizen of the state ought to be well acquainted with its constitution and laws, that he may know both his own rights and duties, and the rights of his fellow-citizens.

§ 2. It is necessary also for every one to understand his rights and duties as a citizen of the United States. For

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By whom? How was that body composed? What is meant by the American Revolution? § 12. How many states were there at the time? How many at present?

§ 2. What is said of the two governments in this country? What is the

there is not only a government in each state, but the people of the several states are also united in *one general government*, which exercises authority, in certain matters, over all the states. The form of the general government is on the plan of the state governments, and its constitution is called the "Constitution of the United States." Sometimes this government is called the *national government*, because it extends over the whole nation; and sometimes the *federal government*, the word *federal* signifying to be united by a league or contract.

§ 3. Being citizens of both this state and the United States, a knowledge of both governments is necessary. But it is thought proper to give a more full and particular description of the state government than of the national; and it will be treated of first, as a knowledge of this will enable the young student the better to comprehend the provisions of the national constitution. And I shall begin by stating a few things of a general nature, which will apply to the government of all the states.

§ 4. In the first place, the government of the state may be considered divided into three departments; the legislative, the executive, and the judicial. The legislature is composed of two assemblies, or houses, the members of which are chosen by the people to make the laws of the state.

§ 5. The executive department consists of a governor, assisted by a great number of other officers, some of whom are elected by the people, and others are appointed in some manner prescribed by the constitution and laws. The governor, or chief magistrate, is elected by the people in all the states except three or four; in these he is chosen by the legislature. It is the business of this department to see that the laws are executed or carried into effect. The governor oversees the general business of the state, and recommends to the legislature such matters as he thinks ought to receive their attention. He also has a part in enacting the laws.

§ 6. The judicial department is composed of the different

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meaning of federal? § 4. Into what departments is the state government divided? Of what is the legislature composed? How are the members chosen? And for what purpose? § 5. Of what does the executive department consist? How is the governor chosen? What is the business of this department? § 6. Of what does the judicial department consist? What is

**courts of justice.** All judges and justices of the peace are judicial officers. It is their business to judge of the laws, and to decide what is just and right between citizens. There are several kinds of courts in a state. Some are of a lower, and others of a higher order. The manner in which these courts are constituted is not precisely the same in all the states; but their general powers, and their manner of conducting trials, is the same.

§ 7. The history of the origin and progress of the government of New York, is briefly as follows:

The colony of New York was not settled by the English as most of the other colonies were, but by the Dutch, who commenced a settlement as early, it is said, as the year 1614. The Dutch continued to occupy it for fifty years. It was claimed, however, by the British, as a part of their territory; and in the year 1664, Charles II., king of England, granted it, together with certain other lands, to his brother the duke of York and Albany. An expedition was sent out from England, under the command of Col. Nichols, to whom the colony was surrendered by the Dutch. When the English obtained possession of the colony, the name of New Amsterdam was changed to that of New York, and fort Orange to that of Albany, in honor of the duke.

§ 8. The government was that of a governor and council, who were appointed by the duke, to whom the king gave this power of appointment. Col. Nichols was the first English governor. The colony was thus governed during the greater part of the time until the revolution; the governor and council being appointed by the proprietor or proprietors of the soil. Hence it was called a *proprietary government*, which kind of government existed in several of the colonies.

§ 9. The next year after the war commenced, and a few months before the general Congress declared the independence of the colonies, and while the government under the crown of Great Britain was in force, the people of the colony of New York established a government by congress and

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the business of this department? § 7. By what people was the colony of New York settled? How long did they occupy it? By whom, and when, was it taken from the Dutch? By what names were New York and Albany first called? § 8. How were the governor and council appointed? Why was it called a proprietary government? § 9. What kind of a government

committees for the purpose of opposing the usurpation of the British parliament. But they intended that this government should expire when peace should be restored, which it was supposed would soon take place. This congress of the colony consisted of a number of representatives, called deputies, who were elected by the people in each county, and constituted the legislature. The committees consisted of a number of persons entrusted with certain matters in each county.

§ 10. Immediately after the general congress (then called the continental congress) had published their declaration of independence, that body recommended to the several state assemblies to establish such governments as should "best conduce to the happiness and safety of their constituents in particular, and America in general."

§ 11. But the assembly, that is, the congress of the colony of New York, were not certain that they had the power of instituting a new government; and, believing that it belonged to their constituents, the people, to determine this matter, they recommended to the electors to meet in the several counties, to determine by vote whether a new government should be formed, and if so, then either to authorize them, (the congress of the colony,) to institute a new government, or to choose other deputies in their stead for this purpose.

§ 12. The election was held, and deputies were appointed and authorized by the people to form a new government. A constitution was formed, which continued about forty-five years, when the constitution of 1821 was adopted.

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## CHAPTER V.

### *Of the formation of the present Constitution of New York.*

§ 1. It has already been observed, that the people of the United States live under constitutions and forms of government which they have established themselves. But how this

was established about the time independence was declared? Of whom did this congress consist? § 10. After the declaration, what did the general congress recommend? § 11. What did the congress of the colony of New York then do? § 12. Was a new government formed? How long did that constitution continue?

work of the people is done may not be known by all who are just beginning to study the science of civil government. I will therefore give an example of the manner of forming and establishing a constitution, by describing the manner in which the present constitution of the state of New York was made and adopted.

§ 2. It has been remarked that all the citizens of a large community cannot meet in one assembly; and hence the necessity of choosing a small number, called representatives, to make the laws and to transact the business of the government. So the freemen of this state, as they could not all meet to frame a constitution, acted by their delegates or representatives. Delegate and representative are words of similar meaning. In this state, however, persons who are chosen to act for the people in other business than that of making laws, are generally called *delegates*, and the meeting of such persons is called *convention*.

§ 3. The convention that framed the present constitution of New York, was composed of 128 delegates. The number sent from each county was the same as the number of representatives it was entitled to in the assembly, the lower house of the legislature. The county of Monroe, for example, was entitled to three members of assembly, and it was represented in the convention by three delegates. The county of Albany, being entitled to four members of assembly, sent to the convention four delegates.

§ 4. The delegates were chosen in the same manner as representatives in the legislature, and other officers, are chosen, but not at the same election. The legislature passed a law in May, 1845, requiring the question to be submitted to the people at the general election in November, whether a convention should be held to frame a new constitution, and appointing the last Tuesday of April following to elect delegates, and the first Monday of June for the meeting of the convention. A majority of the votes having been given in favor of a convention, the delegates were accordingly chosen.

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§ 2. Did all the people meet to frame the constitution? By whom did they act? What is a delegate? What is a convention? § 3. How many delegates were sent from each county? § 4. How and when were the delegates chosen? By what authority? When did they assemble? § 5. De-

§ 5. This is the way in which public officers are elected. On the day appointed, the electors, the men who are entitled to vote, meet in the several towns throughout the state. They meet in every town, because all the electors of a whole county could not conveniently assemble in one place. And this is one reason why a state is divided into towns. The manner of voting is this: each voter has a ballot prepared, which is a small piece of paper on which are written or printed the names of the persons he wishes to have elected. The ballots, one at a time, are received from the voters by persons appointed for that purpose, and put into a box, called ballot-box. When all have voted, the ballots are counted. A statement of the number of votes given in each town for each person voted for, is sent to the office of the county clerk, where it is ascertained what persons have received the highest number of votes in all the county. Such persons are declared to be elected.

§ 6. The delegates thus elected to represent the several counties, met in convention at the city of Albany at the appointed time, and continued in session until the 9th of October, when they agreed upon the form of a constitution. But although agreed upon by the convention, it was not yet a constitution; it remained for the people of the state to adopt it. And here observe the difference already mentioned, between a constitution, or *political law*, and the *municipal* or *civil laws*. The former must be agreed to by the people before it can go into effect; the latter are enacted by the legislature, and do not require the assent of the people.

§ 7. The proposed constitution was, as required by the law before mentioned, submitted to the people for adoption at the general election in November. A greater number of votes being given in favor of it than against it, it was declared to be adopted; and according to its own provision, (Art. 14, § 13,) went into effect on the first day of January, 1847.

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scribe the manner of voting at an election. To what place is the number of votes given in each town sent? § 6. Where did the delegates meet in convention? After a form was agreed upon, was it a constitution? What farther was necessary? § 7. When was the constitution adopted by the people? When did it go into effect?

## CHAPTER VI.

*Of the Election of Officers ; and by whom they are elected.*

§ 1. HAVING shown how the constitution was made and adopted, I proceed to show what the government under this constitution is, and how it is administered. The first act of political power exercised by the people is, as we have seen, the establishment of their constitution or form of government. To transact the great amount of business which is to be done in the various departments of the government, requires a great number of officers. Hence, the next act of political power to be exercised by the people, is the election of the necessary officers to administer the government.

§ 2. There is, once a year, on the Tuesday next after the first Monday of November, a general election throughout the state. At this election are chosen all officers that are elected by the people, other than town officers; the latter being chosen at another time, as will be seen hereafter. What officers are elected at the general election and at the town meetings, will appear as we proceed.

§ 3. When we speak of officers being elected by *the people*, we do not mean all the people of every class; but such only as are entitled by the constitution to vote at elections. It is not considered proper for females to take part in the government; and boys have not sufficient knowledge and judgment. The constitution therefore allows none to vote at elections but *male citizens* of the age of twenty-one years and upwards.

§ 4. But not every male citizen of this age is qualified to vote. A person that has but just come into the state, is not supposed to be well enough acquainted with the government to take part in it; nor would he be likely, being a stranger, to know what persons to vote for. The constitution therefore requires that a man must have resided in the state a year, and in the county four months before he is entitled to

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§ 1. What is the first act of political power? What the next? § 2. When is the general state election held? What officers are *not* then chosen? § 3. Do females vote at elections? Do boys? At what age do men vote? § 4. What does the constitution require respecting a man's residence to vote?



vote at an election. And he must also actually reside in the town where he offers to vote.

§ 5. Under the first constitution of this state, only such as owned property, or paid rent or taxes to a certain amount, were entitled to vote. In some of the states this is still the case, but not in this state. The right of voting is sometimes called the *right of suffrage*; and where all the freemen enjoy this privilege, it is said suffrage is *universal*, and where the privilege is restricted to those who have property or who pay taxes, we say, there is a *limited* suffrage.

§ 6 But when it is said that all male *citizens* over twenty-one years of age may vote, not every *man* of that age is meant. Persons born in other countries, are called *foreigners* or *aliens*. They are not in law citizens, nor entitled to the rights of freemen. A way is provided, however, in which they may become citizens, after having been in this country a certain number of years. This is called becoming *naturalized*; that is, becoming entitled to all the rights and privileges of *natural* born citizens, or citizens born in this country. (See Naturalization.)

§ 7. Persons also who have been convicted of infamous crimes, are denied the privilege of voting thereafter at elections, unless they have been pardoned by the governor before the expiration of the term for which they were sentenced to be imprisoned. An "infamous crime" is declared, by the laws of New York, to be one which is punishable with death, or by imprisonment in a state prison.

§ 8. There is also a difference made by the constitution between white and colored citizens. The latter are not allowed to vote unless they possess a freehold estate; that is, an interest in lands of the value of two hundred and fifty dollars. It is thought by some to be unjust, that any class of our citizens should be subject to the laws of the state, without being permitted to vote for the men by whom the laws are made.

§ 9. All state and county officers elected by the people, enter upon the duties of their respective offices on the first

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him a voter? § 5. What is said about owning property in order to be a voter? What is right of suffrage? Universal and limited suffrage? § 6. May aliens vote? Who are aliens? Can they ever become voters? § 7 Does crime hinder men's voting? What crimes? What is an infamous crime? § 8. In what cases may colored men vote? § 9. When do state and county officers go into office? When does the legislature meet?

day of January after they are elected. The legislature is required, by the constitution, to meet once a year, on the first Tuesday of January, unless a different day be appointed by law.

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## CHAPTER VII.

### *Of the Legislature ; and how it is formed.*

§ 1. THE legislative power of the state is by the constitution vested in a senate and assembly. The senate consists of thirty-two members, who are all chosen at the same time, and hold their office for two years.

§ 2. Senators are chosen in this manner: The state is divided into thirty-two districts, called senate districts, in each of which one senator is elected. Each district is to contain, as nearly as may be, an equal number of inhabitants. Most of the districts comprise two or more counties each. There are a few counties, each of which contains a population sufficient to constitute a senate district; and the city and county of New York alone is entitled to four senators, and must therefore be divided into four districts. But no county may be divided in the formation of a senate district, unless such county is entitled to more senators than one.

§ 3. The assembly consists of one hundred and twenty-eight members, all chosen every year. They are apportioned, as nearly as may be, among the several counties, according to the number of inhabitants entitled to be represented in each. For example: The state contained, according to the state census taken in 1845, 2,604,495 inhabitants. Excluding from this number all aliens, paupers, and all persons of color who do not pay taxes, these several classes of persons not being taken into account in the apportionment, there is left a representative population of 2,399,548; which being divided by 128, gives 18,746 as the number entitled to a

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§ 1. What two bodies constitute the legislature? How many members has the senate? When, and for how long a term chosen? § 2. In what manner are senators chosen? § 3. Of how many members does the assembly consist? For what term chosen? How apportioned? Illustrate by

member of assembly. Hence the county of Oneida, containing a representative population of 78,696, a little more than four times the number entitled to a representative, had four members. Delaware, containing 36,116 inhabitants, nearly twice the number entitled to a member, had two. Yates, with 20,466, had but one member.

§ 4. By the new constitution, every county entitled to more than one member of assembly, is required to be divided into as many districts as it is entitled to members; and one member is to be chosen in each district. This division must be so made as to give to each district an equal number of inhabitants, as nearly as may be without dividing any town.

§ 5. But there are always counties in which the population increases more rapidly than in others. The representation then becomes unequal or disproportionate. Two counties may now contain nearly an equal number of inhabitants; and a few years hence the population of the one may be double that of the other. The county having then so much the more numerous population, would be entitled to a greater number of representatives.

§ 6. It is therefore provided by the constitution, that at the end of every ten years an enumeration of the inhabitants shall be taken, and a new apportionment of members made, according to such enumeration or numbering, so that each county may have a just proportion or share of the representatives in the assembly. And if the senate districts become unequal in their population, they also must be so altered as to give to each, as nearly as may be, an equal number of inhabitants.

§ 7. It happens sometimes that a senator resigns his office, or dies, before the term expires for which he has been elected. The constitution does not declare the manner in which the vacancy shall be filled; but authorizes the legislature to provide for filling vacancies in office. If a person should be elected to fill a vacancy in the office of senator,

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example, the manner in which the apportionment is made. § 4. How are the counties entitled to more than one member, divided? § 5. How does the representation of a county sometimes become disproportioned to its population? § 6. What provision is made to remedy this disproportion? § 7. What constitutional provision is made to fill vacancies in the office of

he could hold such office only during the unexpired part of the term of him in whose stead he was chosen.

§ 8. Any person entitled to vote at elections, may be elected to the senate or assembly. This was not the case under former constitutions. To be eligible to the office of senator, a person was required to be a *freeholder*; who is a person owning real estate, that is, landed property, which he may transmit to his heirs. This restriction no longer exists in relation to any office whatever.

§ 9. No person, however, being a member of congress, or holding a judicial or military office under the United States, may hold a seat in the legislature. Nor may a member of the legislature be appointed to any civil office by the governor or legislature, during the term for which he shall have been elected. If, however, a member of congress or other person holding an office under the United States, shall resign such office after his election to the legislature, he will then be entitled to a seat in the same.

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## CHAPTER VIII.

### *Organization of the Legislature; Privileges of Members; Appointment of its Officers, &c.*

§ 1. THE legislature, composed of the senate and assembly, meets, as required by the constitution, on the first Tuesday of January in every year, for the purpose of considering the condition of the state, and of enacting such laws as may be necessary to promote the welfare of the people. The place of meeting is the city of Albany, which is therefore called the *capital* of the state. A large and commodious building has there been erected for the legislature to meet in, which is called the *capitol*.

§ 2. The two houses having assembled, each in its own chamber, every member of assembly, and every new senator,

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senator? § 8. Who are eligible to the legislature? What is a freeholder?  
 § 9. What restrictions exist in relation to the holding of legislative offices?  
 § 1. When and where does the legislature meet? § 2. What is required

is required, before proceeding to business, to take the oath of office, by which he solemnly swears, that he will support the constitution of the United States, and the constitution of the state of New-York; and that he will faithfully discharge the duties of his office according to the best of his ability.

§ 3. All persons elected to important public offices are required to take such oath. (Cons. Art. 12.) An oath is a solemn declaration, in which the person appeals to God to bear witness to the truth of what he declares. Oaths are required, because it is presumed that a person will feel a stronger obligation to do right when under oath than he otherwise would do. And yet it is to be deeply regretted that many public officers, even under the obligation of an oath, discharge their duties very unfaithfully. It is important, therefore, that the people choose good men for office, who will be sure to act honestly.

§ 4. As it would be improper that a small number of the members should make laws, the constitution provides that a majority of the members of each house shall constitute a quorum to do business. *Quorum* means such number of any body of officers as may transact business. As majority means more than one half, any number of members more than one half may act. While a very small number ought not to constitute a quorum, it would be equally improper to require all, or nearly all, the members to be present in order to do business, as it often happens that a considerable number of them are necessarily absent.

§ 5. Every legislative body must have some rules and order of doing business. The constitution allows each house to determine the rules of its own proceedings; but that the public may know what business is done, each house is required to keep a journal of its proceedings, and to publish the same, except such parts as ought to be kept secret. And that any person wishing, may witness its proceedings, the doors of each house must be kept open, except when the public welfare requires secrecy.

§ 6. In order to prevent any injury or interruption to the public business, it has been provided by law of the legislature,

of members before proceeding to business? § 3. What is an oath? Why is it required? § 4. How many members constitute a quorum? What is quorum? § 5. How are the people informed what business is done? § 6

that members may not be arrested on civil process, that is, they may not be prosecuted in suits at law, during their attendance at the meeting of the legislature, except for certain wrong acts or misdemeanors committed by them. And they enjoy this privilege also for fourteen days previous to such meeting, and fourteen days thereafter, that they may have time to go to and to return from each meeting or session of the legislature, without hinderance.

§ 7. The law also provides that each house may expel any of its members, and punish its members and officers for disorderly behavior, by imprisonment. And each house may also punish other persons as well as its members, for contempt or insult offered to the house; for disorderly conduct tending to interrupt its proceedings; for publishing false and malicious reports of the proceedings, or of the conduct of members; and for sundry other offences.

§ 8. After the members are sworn into office, the next thing to be done is to appoint the officers of the house. Each house must have a presiding officer, or chairman. In the senate the lieutenant governor acts as such, and is called *president of the senate*. This body, however, chooses one of its own number to preside when the lieutenant governor shall not attend. The assembly chooses one of its members to preside over the house, who is called the *speaker of the assembly*.

§ 9. It is the business of a presiding officer to keep order in the house, and to see that its business is done according to the rules of the house. And when a question is to be decided, he "puts it to vote;" that is, he requests the members to express their minds by "*aye*" and "*no*," in favor of or against any measure; and declares the question to be carried or lost, as the case may be. This part of a speaker's business is much the same as that of the chairman or president of the meeting of a society, or of a district school meeting. Probably most boys of the age of ten years have seen how business is conducted in such meetings.

§ 10. Each house also chooses a *clerk*, to keep the record

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What privileges do members enjoy? § 7. What power has each house to prevent disorderly behavior? § 8. Who presides in the senate? Who in the assembly? How is he chosen? § 9. What is the business of a presiding officer? § 10. What other officers are chosen? State the duties of

or journal of its proceedings, and to do such other things as are usually done by the secretary of a meeting; a *sergeant-at-arms*, whose duty it is to arrest members or other persons who are guilty of disorderly conduct, to compel the attendance of absent members, and to do other business of a like nature; also a *door-keeper*, and one or more *assistant door-keepers*. The officers mentioned in this section are not selected from the members of the house, but from the citizens at large.

§ 11. It is usual also for legislative bodies to choose some clergyman as *chaplain*, who offers prayer at the opening of each day's session, and performs such other religious services as occasion may require. It has been the practice of the legislature of this state, to invite all the clergymen of the city of Albany to officiate by turn in this capacity.

§ 12. The legislature has also one or more *printers*, who print a certain number of copies, (about 250,) called the usual number, of every bill, report, or other document ordered by either house to be printed. Also a specified number of copies of the journals or records of the proceedings of each house, as kept by the clerks, are printed for distribution. (See Chap. 11, § 6.) Printers were formerly chosen by the legislature. The public printing is now let to persons who offer to do it for the lowest price, and who give security for the due performance of the work.

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## CHAPTER IX.

*How the laws are enacted; the compensation of Members, &c.*

§ 1. AFTER the two houses have appointed their officers, each house sends a committee of two of its members to inform the governor that the legislature is ready to do business, and to receive any communication which he has to make. Whereupon the governor sends, by his private secretary, to both houses a *message*, which is read to each house by its clerk. The governor exhibits in his message, the condition

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each. § 11. What is the duty of a chaplain? § 12. What is the business of a printer to the legislature?

§ 1. How is the governor informed that the legislature is ready to do busi

of the affairs of the state, and calls the attention of the legislature to such subjects as he thinks ought to be acted on.

§ 2. Soon after the legislature has commenced its business, the committees of each house are appointed. A *committee* consists of one or more persons appointed or chosen to consider and to act upon any matter intrusted to them. A legislative committee generally consists of either three, five, or seven members. The committees are numerous, and are usually appointed by the presiding officer of each house; sometimes, however, by the house itself. There is a committee on agriculture; another on banks; another on railroads and canals; another on the division of towns and counties; another on colleges, academies and common schools; and a committee on almost every other subject of a general nature.

§ 3. The object of appointing these committees is to save the time of the house, and to hasten the transaction of business. To show the utility of committees, suppose that the people from different parts of the state apply to the legislature to enact laws authorizing the making of canals, the incorporation of banks, and the division of counties; for these things cannot be done unless authorized by law. It would be unwise for a legislature to pass laws simply because they were asked for; for although some persons might be benefited by such laws, many more might be injured by them. The objects desired must therefore be inquired into, to ascertain whether they are necessary or not.

§ 4. Now if there were no committees to which these several subjects might be referred, the time of the whole house must be spent upon each object of inquiry. And as hundreds of things are asked for at every session of the legislature, there would not be time enough in the whole year to dispose of them. But now every subject is referred to its appropriate committee. Petitions for canals are referred to the committee on canals; those for banks, to the committee on banks; and those for new counties, to the committee on the division of towns and counties; and so of every other

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ness? What then does he do? What does the message contain? § 2. What is a committee? Of what number does it consist? § 3. Why are legislative committees appointed? Explain the utility of committees. § 4. How are petitions referred? What are petitions? What is a standing commit-



petition. If any subject arises for which there is no appropriate *standing* committee, there is one appointed for the special purpose of considering such subject, and is called a *select* committee.

§ 5. The members of each committee meet from time to time at some place during hours when the house is not in session, to consider the subjects referred to them. They hear what is to be said in favor of the desired objects, by those who have come to urge the passage of the laws asked for, and also what is to be said on the other side by those who have come to oppose such measures. And frequently it is necessary for the committee to write to persons in distant parts of the state for further information.

§ 6. After due inquiry and consideration, committees make their reports to the house. A report of a committee contains a statement of the facts that have been ascertained, and of the reasons why the law prayed for ought or ought not to be passed. If a committee reports against a measure, the house generally dismisses the subject: if the committee reports in favor of such measure, it usually brings in a bill with the report. A *bill* is a draft or form of an intended law. Bills, however, are not always reported by committees. An individual member of the house may introduce a bill, by leave of the house, if he shall have given at least one day's notice beforehand of his intention to introduce it.

§ 7. A bill, after it is brought before the house, must go through many different stages and forms of action, all of which it is not deemed important to mention in this place. Before it is passed, it must be read three times; but not oftener than once on the same day without the consent of the whole house. Nor can it be altered or amended before its second reading. After it has been twice read, and fully discussed and amended, it is proposed to read it on a given day the third time.

§ 8. When the vote of the house is to be taken upon a bill, the speaker or chairman puts the question, "Shall the bill pass?" If a majority of all the members elected to each

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tee? A select committee? § 5. State the labors of a committee. § 6. When and what do committees report to the house? What is a bill? Are all bills reported by committees? § 7. How often must a bill be read before it is passed? § 8. By whom is the question put to the house? What is af

house vote in the affirmative, the bill is passed. Questions, except on the final passage of bills, are carried by a majority of the members present. In the senate, in case of a *tie*, that is, when the yeas and nays are equal, the president determines the question by his vote, which is called the *casting vote*.

§ 9. When a bill has passed one house, it is sent to the other, where it is to be acted on in the same manner; and if agreed to or amended by that house, it is in either case sent back to the house from which it was received. Some bills are sent several times from one house to the other, with amendments, before they are agreed to by both. If both houses do not agree to a bill, it is lost.

§ 10. When a bill has passed both houses, it is sent to the governor to be approved and signed by him. If he signs it, it is a law; if not, it is no law. This power of the governor to *negative* a bill, that is, to prevent its becoming a law by withholding from it his signature, is called *veto*, which is a Latin word signifying *I forbid*.

§ 11. Hence it appears, that if no laws could be enacted without the consent of the governor, we should not be in a much better condition than the people of the colonies were while subject to Great Britain, or than the people are in a monarchy, where one man makes the laws; for the governor might prevent the passage of every law that did not please him.

§ 12. But the people have by their constitution provided for the enactment of laws without the governor's assent. If he refuses to sign a bill, he must return it to the house in which it originated, stating his objections to it. The house then proceeds to reconsider the bill; and if, after having duly reconsidered it, *two-thirds* of the members present agree to pass it, it is sent, with the governor's objections, to the other house; and if two-thirds of the members of that house also agree to pass the bill, it becomes a law without the governor's name. Or if the governor should not return a bill within ten days after it is presented to him, it would be

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firmative and negative? A tie? How is it decided? § 9. After a bill has passed one house, what? When agreed to or amended by the other, what? § 10. When agreed to by both houses, is it a law? Who must sign it? What is veto? § 12. How may a bill become a law without the governor's

a law, though not signed by him, and without being again acted upon by the legislature.

§ 13. It may be asked, why send a bill to the governor? Why not let the legislature alone enact the laws? In reply it may be asked, why does a legislature consist of two branches? Why may not a single body of representatives make the laws as well as two? The reason is this: one house may pass a bill without discovering all its imperfections, and the people would be very likely to get many bad laws; but if the bill has to be examined in another body, any mistake or oversight committed by the first house may be detected in the second, where the bill may be either amended or wholly rejected.

§ 14. But it may, and sometimes does happen, that errors are committed by both houses. In order therefore to guard still more effectually against the enactment of bad laws, it is provided that the governor also shall examine and approve a bill. But that it may not depend on one man what laws we shall have, or whether we shall have any laws at all, the governor is required to return to the legislature all bills which he does not approve, that they may be passed, if they can be, in the manner stated, by two-thirds of both houses.

§ 15. Members of the legislature receive for their services three dollars a day from the commencement of the session; but they may not receive more than three hundred dollars for daily allowance during any one session. The speaker of the assembly is allowed one third more a day for his services. Members are also paid one dollar for every ten miles they travel, on the most usual route, in going to and returning from the place of meeting. The clerk of the senate receives a yearly salary of \$1200; the clerk of the assembly, \$1800; from which each provides his assistants and clerks. Other officers usually receive about the same compensation as members.

16. The clerks of the senate and assembly provide furniture for the senate and assembly chambers, stationery,

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approval? § 13. Why is the legislature divided into two branches? § 14. Why are bills submitted to the governor for his approval? § 15. How much do members of the legislature receive for their services? How much the clerks of both houses? The sergeant-at-arms, and door-keepers?

fire-wood, and other articles, for the use of the legislature, the expenses of which are paid out of the treasury.

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## CHAPTER X.

*Of the Executive Department, and of the General Administration of the Government of the State.—Governor and Lieutenant-Governor.*

§ 1. HAVING treated of the legislative department, and shown how its officers are elected, and how their power is exercised in making the laws ; I shall proceed to give a description of the executive department, of the election and appointment of its officers, and of their powers and duties in executing the laws and administering the government of the state.

§ 2. By the constitution, the executive power is vested in a governor. He is assisted by numerous subordinate executive officers. The governor and lieutenant-governor are elected at the annual election in November, and hold their offices for the term of two years. A person, to be qualified for the office of governor, must be a citizen of the United States, thirty years of age ; and he must have been a resident of the state five years next preceding his election.

§ 3. The governor has many powers to exercise, and many important duties to perform. A few of those mentioned in the constitution are the following : He sends to the legislature at the beginning of every session, a message, containing a statement of the general affairs of the state, and recommending such measures as he shall judge to be expedient. It is his duty also to see that the laws are executed, and to transact all necessary business with the officers of government.

§ 4. The governor has power to grant reprieves and pardons. If a person has been found guilty of murder, or of

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§ 1. What is the business of the executive department ? § 2. In whom is the executive power vested ? When, and for what term are the governor and lieutenant-governor elected ? State the qualifications of governor. § 3. What are some of his duties ? § 4. Who grants reprieves and pardons ?

any other crime for which he has been sentenced to suffer death, the governor may, if he should think proper to do so, put off the execution of the sentence to a later time than the day appointed. This is called granting a *reprieve*. If he should entirely free him from punishment, it would be granting a *pardon*. The governor has power to pardon for all offences except treason and cases of impeachment. He may however put off or suspend the execution of the sentence for treason, until the case shall be reported to the legislature at its next session. The legislature may then pardon the criminal or direct him to be executed, or grant a farther reprieve.

(For a definition of these offences, see Treason and Impeachment.)

§ 5. It is the duty of the governor also to grant commissions to all the commissioned officers of the militia. [A *commission* is a writing giving to an officer the power to serve.] Some of the highest of the militia officers the governor has power, with the consent of the senate, to appoint. In making such appointments, the governor nominates, that is, he *names*, in writing, the persons he wishes to have appointed, and sends the same to the senate. If a majority of the senators present consent to the appointment of the persons so nominated, they are appointed.

§ 6. The duties of the lieutenant-governor are not very numerous. He is president of the senate, as has been stated in a preceding chapter, but he has only a casting vote therein. He is also one of the commissioners of the land-office, of the canal fund, and of the canal board. The principal reason why the constitution provides for the election of a lieutenant-governor, probably is, that there may be a suitable person to fill the office of governor, in case the governor should be removed from office, or his office should otherwise become vacant.

§ 7. When the lieutenant-governor acts as governor, the senate chooses from its number a president. And if the

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What is it to reprieve? To pardon? In what cases has he power to grant reprieves and pardons? § 5. What officers are appointed and commissioned by the governor? How are appointments made by the governor and senate? § 6. What are the duties of the lieutenant-governor? Why is this office necessary? § 7. How are the offices of governor and lieu-

offices of both governor and lieutenant-governor should become vacant, the president of the senate must act as governor. Hence it is usual for the senate, before the close of each session, to elect a president, that there may be some person to perform the duties of lieutenant-governor, in case a vacancy in that office should happen before the next meeting of the senate.

§ 8. The salary of the governor is established by law at \$4000; that of his private secretary is \$600. The compensation of the lieutenant-governor is also required by the constitution to be fixed by law. The compensation of neither the governor nor the lieutenant-governor may be altered during their continuance in office. That of the latter is \$6 a day, and the same for every twenty miles travel to and from the place of meeting.

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## CHAPTER XI.

*Of the Secretary of State, Comptroller, Treasurer, Attorney-General, State Engineer and Surveyor, and State Printer.*

§ 1. THE principal executive officers who assist in the administration of the government of the state, are the secretary of state, the comptroller, the treasurer, the attorney-general, and the state engineer and surveyor. These officers are elected at the general election for the term of two years. They have power to appoint their own deputies and assistants.

§ 2. The *secretary of state* has the care of all the books, records, deeds to the state, parchments, maps, and papers which are to be kept in his office. He has a great many

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tenant-governor supplied when vacant? § 8. What is the governor's salary? Of his private secretary? What is the compensation of the lieutenant-governor?

§ 1. What are the principal executive officers? When, and for what term are they elected? § 2. What are the secretary's duties? § 3. Why

duties to perform, which cannot here be enumerated; but some of which we shall have occasion to notice in connection with other subjects, in subsequent chapters.

§ 3. An important duty of the secretary of state is the part he takes in publishing the laws. For if it is necessary to make laws, it is equally necessary that the people know what the laws are. When a law goes into effect, every body is bound to obey it; and he must suffer the consequence of breaking it, whether he knows what it is or not. The legislature has therefore made provision for publishing all the laws that are enacted.

§ 4. It is the business of the secretary of state to cause the laws to be published. He receives all bills that have become laws, and causes them to be published in the state paper, which is printed by the state printer in the city of Albany. Immediately after the close of each session of the legislature, he must also cause all the laws passed during the session to be printed and bound together in a volume, and distributed. A copy is sent to each county clerk, and one to each town clerk, in the state, to be kept in their offices for the use of the people who wish to examine the laws.

§ 5. The state officers also are to be supplied with the laws. The clerk of the senate receives eight copies for the use of the senate; the clerk of the assembly, twenty copies for the use of the assembly; and each of the higher state officers and judges receives a copy; and a copy is put into the state library. As it is desirable to know what the laws of other states are, three copies of our laws are every year sent by the secretary, under the direction of the governor, to the governor of every state in the union, and the same number of copies of the laws of each other state are requested to be sent to this state, one copy of which is put in the state library, one in the senate chamber, and one in the assembly chamber.

§ 6. Four copies of the laws are also sent to the secretary of state of the United States. And when the laws of each

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are laws published? § 4. Who causes the laws to be published? How are they first published? To what officers are they sent when bound? § 5. How many copies has each house, state officers and judges? How many are sent to each state? What is done with those received in exchange? § 6. To whom are the laws of congress sent? By whom? To whom are

session of congress are received, the secretary of state causes them to be distributed throughout the state in the same manner as the laws of this state are to be distributed. The journals or records of the proceedings of the legislature, as kept by the clerk of each house, are also bound in volumes which the secretary distributes among the members of the legislature and other state officers entitled to receive them; and a copy to each county clerk, to be kept in his office.

§ 7. Besides performing these and many other duties as secretary of state, he also performed the duties of superintendent of common schools, until, in 1854, the latter were assigned to a separate officer, called superintendent of public instruction. The secretary has a deputy, who may perform the ordinary duties of the secretary, and who is also clerk of the commissioners of the land-office. Salary of the secretary, \$2,500; of the deputy, \$1,500.

§ 8. The *comptroller* manages the fiscal concerns of the state, that is, the business relating to the money, property and debts of the state. He exhibits to the legislature, at its annual meeting, a statement of the funds of the state, of its revenue or income during the preceding year, and of what money has been paid out, and for what purposes. He also states, as nearly as he can estimate, how much money it will be necessary to expend the ensuing year, and specifies each object for which it is to be expended, and particularly what objects are to be provided for by law; for no money may be paid out of the treasury for any purpose but such as the laws specify.

§ 9. The *comptroller* also mentions plans for improving and managing the public revenues; keeps and settles the accounts of the state; superintends the collection of all moneys due to the state. When money is to be paid out of the treasury, he draws a warrant on the treasurer for the money; and without his warrant, (which is a written order,) no money may be drawn from the treasury: and he may, when necessary, borrow money to pay the debts of the state.

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the journals of the legislature sent? § 7. The duties of what other office does the secretary perform? What is his salary? That of his deputy? § 8, 9. What business is managed by the *comptroller*? What does he exhibit to the legislature? § 9. what does he do respecting the accounts, money, and debts of the state? § 10. What are kept in his office? What



§ 10. He also keeps in his office the bonds, mortgages, and other securities for money due the state; and all papers relating to the canals, and to the duties of the officers who manage the business of the canals. He is assisted by a deputy comptroller, and a second deputy-comptroller. The salary of the comptroller is \$2,500; that of each deputy, \$1,500. He is also allowed what is actually necessary for clerk hire, but cannot have more than \$6,800 for that purpose.

§ 11. The *treasurer* receives all moneys paid into the treasury of the state, and pays them out on the warrant of the comptroller. He deposits the money that comes into his hands, within three days after receiving it, in such banks in the city of Albany as he and the comptroller consider safe and as shall pay the highest rate of interest for the use of it. He exhibits annually to the legislature a statement of moneys received and paid out by him during the preceding year, and of the balance in the treasury.

§ 12. As large sums of money come into the hands of the treasurer, which he might refuse to pay over when called for, or which might be lost through his carelessness, he is required, before he enters on the duties of his office, to give a bond in the sum of \$50,000, with at least four sufficient sureties, that he will faithfully perform the duties of his office. The sureties are persons who are supposed to be able to pay this sum, and who bind themselves to pay to the state whatever the treasurer shall fail to pay, but not more than the sum mentioned. Public officers generally, who have the care of money, are required to give bonds of this kind.

§ 13. The treasurer appoints a deputy, for whose conduct the treasurer is responsible. The salary of the treasurer is \$1,500; of the deputy treasurer, \$1300; and for necessary additional clerk hire, the treasurer is allowed not exceeding \$1900.

§ 14. *Attorney-general.* An attorney is one who manages for another his matters in law, and is commonly called a *lawyer*. The attorney-general is a person learned in the

is his salary? The salaries of his deputies? § 11. What are the duties of the treasurer? § 12. What is said of his giving a bond? § 13. What is his salary? That of his deputy? § 14. What is the business of the attorney-

law, who is appointed to manage and conduct the suits at law in which the state is interested. When it is necessary to prosecute persons indebted to the state, it is done by him; and he also causes to be brought to trial persons charged with certain offences. His salary is \$2000; and he is allowed besides, for necessary clerk hire, not more than \$800.

§ 15. The *state engineer and surveyor* superintends the surveying and selling of lands belonging to the state, in the manner required by law, or according to the directions of the commissioners of the land-office. He keeps in his office a map of the state; and he is required, from time to time, to delineate the bounds of all the towns or counties formed or altered by the legislature; and when the bounds of a town are so described that he cannot delineate them on the map of the state; or when there is a dispute between the people of two towns, respecting their bounds, the state engineer and surveyor may order a special survey to be made, to ascertain the bounds of such towns, and to settle such disputes. He accounts to the comptroller for moneys received by him, in behalf of the state, or from the treasury. Salary, \$2500; extra allowance for clerk hire, not exceeding \$1500.

§ 16. The printing for the state officers, as that for the senate and assembly, is done by printers employed for that purpose. It is let out in separate contracts to the person or persons offering to do it at the lowest prices, and who give the required security for the faithful performance of the work.

§ 17. There is also a printer, who must be the printer of a newspaper published in the city of Albany as often, at least, as once a week, and which is called the *state paper*. This printer publishes all notices required by law to be published in the state paper. The publishing of these notices is also done by the lowest bidder.

§ 18. When persons intend to apply to the legislature

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general? His salary? § 15. State the principal duties of the state engineer and surveyor. His salary. § 16. How are printers employed to print for the state officers? § 17. What is the business of the printer of the state paper? How is he employed? § 18. What notices are published in the state paper?

for a law to divide a county, or to incorporate a city, village, or an association; or to lay a tax to make or improve a road or build a bridge, or for any other purpose, in any county where all or any of the inhabitants are to be taxed; the persons so intending, must give notice of their intention to apply for the passage of such law, by advertisement, to be published in the state paper at least six weeks before making the application, and also in a paper printed in the county where the object to be applied for is to be carried into effect. Several other kinds of notices are published in the state paper.

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## CHAPTER XII.

*Of the Funds, Revenue, and other property of the State; and of the general management of them.—General Fund; Canal Fund, and Canals.*

§ 1. A **FUND** is a sum of money used in carrying on business of any kind. The money or capital stock which a merchant employs in trade, is a fund. So the money which is raised to pay the officers of the government, and to carry on the business of the state, and such other property as is set apart for this purpose, are called the funds of the state; and the interest of these funds, and all other income to the state, are called the *revenue*. The state has provided funds for several purposes. One of these funds is called the general fund. There are also a canal fund, a literature fund, and a common school fund.

§ 2. The *general fund* consists of stock, debts, and other property of the state, together with the revenue and increase thereof; all moneys paid into the treasury for duties on hawkers and pedlers; and the fees of office received by the secretary of state, comptroller and surveyor-general. These officers are paid fixed salaries out of the general fund, and the fees they receive go into this fund and make a part of it. There is this difference between a salary and fees:

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§ 1. What is a fund? What are called the funds of the state? The revenue? § 2. Of what consists the general fund? What is a salary? A

A *salary* is a fixed sum to be paid to a person for his services by the year; a *fee* is the sum received for each separate act of service. Thus, a justice charges nine cents for issuing a summons; for an execution, nineteen cents; for administering an oath to a witness, six cents: and what he receives for these several items of service, is called fees.

§ 3. The fees of the secretary of state consist of what is paid him for recording, for copies of records, for searching records, for giving licenses to pedlers, for certificates, for affixing the seal of office to certain written instruments, and for many other things. The comptroller's fees are received for deeds of lands sold for taxes, for copies of papers, engrossing and other services similar to those performed by the secretary of state. The surveyor-general has fees for filing papers, for drafts, searches, copies of maps and surveys.

§ 4. This part of the business of these officers is done for individuals, who pay the officers the fees established by law, and the officers pay the same to the general fund of the state, and then draw out of the treasury again the amount of their salaries. Out of the general fund of the state are paid the salaries and compensation of the legislative, executive, and the principal judicial officers, employed in the several departments of the government.

§ 5. The *canal fund* consists of lands granted for the construction of the canals, and of debts due for such portions of these lands as have been sold; the tolls received from the canals; duties on the manufacture of salt; duties on goods sold at auction; money received for the use of the surplus waters of any canal, and for penalties and damages under the canal laws.

§ 6. The canals are made by the state, and are the property of the state. When a canal is to be made, instead of taxing the people for the money to make it, the state borrows the money for a long term of years, depending on the tolls to be collected on the canal after it shall have been finished, for the repayment of the money. The Erie canal was commenced in 1817. The convention that formed the constitu-

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fee? § 3. For what does the secretary of state receive fees? The comptroller? The surveyor-general? § 4. What is done with their fees? How are they paid? Who else is paid out of this fund? § 5. Of what consists the canal fund? § 6. Whose property are the canals? How is the money

tion in 1821, thought it advisable to provide a permanent fund to carry on and complete this great work, and to repay its cost. Provision for this object was accordingly made, and the cost of the original construction of the Erie and Champlain canals has long since been paid.

§ 7. The canal fund is managed by officers called *commissioners of the canal fund*, who are the lieutenant-governor, the secretary of state, the attorney-general, the comptroller, and the treasurer. But the care and disposal of the lands belonging to the canal fund, are vested in the commissioners of the land office.

§ 8. It is the duty of the commissioners of the canal fund to manage all things belonging to that fund to the best advantage; and to report to the legislature, at the opening of every session, the state of the fund, which report shall exhibit a statement of the funds intrusted to their care and management the preceding year. They must also lay before the legislature a full statement of all the tolls collected upon the canals during the preceding season of navigation, and of the rates of toll on all articles transported on the canals.

§ 9. The general care and superintendence of the canals, is intrusted to a board of officers, three in number, called *canal commissioners*, who are elected by the people at the general election for the term of three years; one to be elected every year. Each of them is required to give a bond in the sum of \$20,000, with sureties, for the faithful accounting for all moneys intrusted to him, and for the due performance of his duties.

§ 10. It is the duty of the canal commissioners to see that the canals are kept in repair and supplied with water; to keep in repair toll-houses, weighing-scales, and other things purchased or built for the use of the canals; and to make rules and regulations concerning matters in general relating to the navigation of the canals. And when a law is made authorizing the construction of a new canal, it is the duty of the commissioners to make such canal; and to

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obtained to make canals? How is it repaid? How and when was a canal fund permanently provided? § 7. By what officers is this fund managed? § 8. Mention the duties of these officers. § 9. Who have the general care and management of the canals? How are they elected? What bond is required of commissioners? § 10. What are the duties of the commissioners?

employ agents, engineers, surveyors, and such other persons as are wanted to assist them in the work.

§ 11. There is another board of canal officers, called the *canal board*. This board consists of both the canal commissioners and commissioners of the canal fund, and the state engineer. This board appoints the superintendents of repairs and the collectors of tolls, fixes the rate of tolls, and prescribes the rules and regulations for their collection.

§ 12. The canal tolls are the taxes paid by the master or owner of a boat, for the use of the canal in transporting goods and other property. The amount of toll paid is rated according to the weight of the goods carried. In order to ascertain how much toll is to be paid, the loading of a boat must be weighed, and the toll is paid on such loading, by the ton. The tolls are received by the collectors, of whom there is one in each of the principal villages on the canal, and at whose offices the commanders of boats passing these offices must stop and pay the tolls, which are rated and charged by the mile, for the distance they are to be carried.

§ 13. All money expended in making, repairing, or improving the canals, and in paying the officers and agents employed on the canals, is paid from the canal fund. The canal commissioners receive salaries of \$1700 each. The compensation of superintendents, and others, employed on the canals, is fixed by the canal board or by those who appoint or employ them.

## CHAPTER XIII.

### *Common School Fund, and Literature Fund, and their management.*

§ 1. No people can be prosperous and happy without learning. In some countries, such as Turkey and some

§ 11. How is the canal board constituted? What are its duties? § 12 What are the canal tolls? How are they rated? By whom received? § 13. For what purposes are canal moneys paid out? What are the salaries of canal commissioners, superintendents, &c.?

§ 1. What is here said to be the advantage of education? § 2. Why ought

others, the people are degraded and miserable. This is owing to their ignorance. They are governed by a despot, who rules over them with great rigor; and they scarcely know that they could be in a better condition. Indeed, for the want of education, they could not, if they were to try, govern themselves as the people of this country do. It is only where the great body of the citizens are well educated that a free government can be maintained.

§ 2. Hence, in order to continue free and prosperous, the American people must be educated. But all have not the means of obtaining a good education. There are among us some persons who are too poor to pay for the instruction of their children; and the rich are unwilling to assist them without some law to compel them. It must therefore be the duty of the government to provide the ways and means for the support of public schools, in which the children of our country may all be educated.

§ 3. In the state of New York, provision has been made for this purpose. A fund was created, many years ago, called the *common school fund*, for the support of common schools. These schools are properly so called, both because they are of a lower order than academies and colleges, and because the benefits of them may be enjoyed by all the people *in common*. And as the state is divided into small districts of territory, each containing about as many inhabitants as can conveniently support a school, they are also called *district schools*.

§ 4. When the constitution of 1821 was formed, provision was made for enlarging the school fund, by adding to it the proceeds of certain lands belonging to the state. Still farther addition has since been made to this fund, the interest or income of which is every year distributed among all the school districts, to be applied towards the payment of the wages of teachers.

§ 5. The highest common school officer is the state *superintendent of public instruction*, who is chosen by joint ballot of the senate and assembly, for the term of three years. He

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the government to provide for educating the people? § 3. For the support of what schools is the school fund provided? Why are they called common schools? District schools? § 4. When was this fund enlarged? § 5. Who is the highest common school officer? Who is he? By whom is the school

distributes the school moneys among the several counties of the state, apportioning them in the manner described in a succeeding section (§ 7) of this chapter. The money for each county is received by the county treasurer, and paid by him to the supervisors of the several towns, as apportioned to them respectively by the superintendent.

§ 6. The superintendent also gives instructions for the government of the schools, and reports to the legislature every year a statement of the condition of the common schools, plans for improving and managing the common school fund, and such other matters as he shall think necessary. And he has power also to settle disputes and other matters arising in districts. Persons conceiving themselves aggrieved by acts, or neglect of duty, or decisions of the school commissioner, trustees, or district meetings, may appeal to the state superintendent, whose decision in such cases shall be final.

§ 7. To the income of the common school fund provided in the manner stated, and a portion of the income of the United States deposit fund, referred to in § 14 and 15 of this chapter, there was added, by an act of 1851, the sum of \$800,000, to be raised annually by a tax upon the real and personal property within the state; the amount raised in each county to be in proportion to the valuation of the property therein: and of the whole sum of these and other moneys appropriated to the support of common schools, one-third is to be divided equally among the districts; and the remaining two-thirds among the same, in proportion to the number of children in each, between four and twenty-one years of age.

§ 8. Now as taxes are assessed upon the inhabitants in proportion to the value of the property of each, it will be seen how the rich are made to contribute to the education of the poor. They have, however, no reason to complain. By the general education of the people, the prosperity and happiness of the whole community are promoted; and the rich share in the common benefit. Besides, the more ignorant a community is, the more vicious it will become, and the more crimes will be committed; and as the expense of

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money distributed? § 6. Mention the duties of the superintendent.  
 § 7. What farther means are provided for the support of common schools?



the trial of all criminals is a public charge, the taxes on property are very little, if at all, increased by what is raised for purposes of education.

§ 9. The powers and duties of common school officers in the several counties and towns, and the manner of collecting and distributing the school moneys, will be stated in those chapters in which the duties of town and county officers generally are described.

§ 10. There is another school fund, called the *literature fund*. This fund has been provided for the assistance & benefit of academies, and other incorporated seminaries of learning. Both the fund and the schools are under the care and management of a board of officers, called, the *regents of the University of the state of New York*.

§ 11. The board of regents consists of twenty-two persons, three of whom are the governor, lieutenant-governor and secretary of state; the others are all appointed by the legislature. The officers of the board are, a chancellor, a vice-chancellor, a treasurer, and a secretary, all chosen by the board. They meet every year at the capitol in the city of Albany, on the evening of the 2nd Tuesday of January. Eight regents attending have power to do business.

§ 12. The regents, by themselves or committees, visit and inspect all the colleges and academies in the state, and examine into their condition and management, and make an annual report of the same to the legislature.

§ 13. The regents annually divide most of the income of the literature fund among the incorporated academies and other incorporated seminaries, except colleges, in proportion to the number of pupils in each, who have for four months, during the preceding year, pursued classical studies or the higher branches of English education, or both. Special appropriations are made for the colleges, no general rule of distribution having been adopted for their benefit.

§ 14. Of the income of the literature fund, \$12,000 are annually distributed in this manner. To this sum there is at

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§ 10. To what is the literature fund applied? In whose care is it? § 11. Of how many members does the board of regents consist? How are they appointed? What are their officers? § 12. What are the duties of the regents? § 13. How do they distribute the money to the academies? § 14. How much money is now annually distributed by them? § 15. How

present added every year a part (\$25,000) of the income of certain moneys belonging to the United States, deposited with this state; the interest of which moneys is appropriated to purposes of education. The whole amount, therefore, now distributed among the seminaries other than colleges, is \$40,000.

§ 15. Of the interest of this money of the United States, which this state has at present the use of, the greater part is appropriated to the support of common schools. The sum of \$165,000 is thus applied every year. Of this sum, \$55,000 a year was for three years applied exclusively to the purchase of district libraries, and may now be applied to the purchase of library books, scientific apparatus, globes, maps, &c.

§ 16. Thus we see how effectually and how wisely the government has provided for the education of the people. The poorest child need not remain ignorant. If all the youth of our country would improve the means they have of becoming well educated, and make a good use of their learning, how greatly would the condition of society be improved, and how much more liberally would the people share in the blessings of a republican government!

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## CHAPTER XIV.

### *Of the Public Lands, Buildings, &c.; and of the Salt Springs.*

§ 1. It is presumed that few of even the youngest readers need be told, that when we speak of the lands of the state, we do not mean the land owned by each and every individual citizen. The state has no better right to such land than one man has to the land of another. The public lands consist of such tracts and parcels of land as have in various ways come into the possession of the state, and are owned by the state in its corporate capacity; as the canals, state buildings, and other things, made or purchased with the

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much of the income of the United States deposit fund is at present annually distributed among the common school districts?

§ 1 Of what do the public lands consist? § 2 under whose care are

money of the state, are called the property of the state; or as the court-house, clerk's office, and jail, are the property of the county, because they are built with the money of the people of the county, to be used for public purposes.

§ 2. The lands of the state are under the care and superintendence of a board of commissioners, called *commissioners of the land office*. This board is composed of the lieutenant-governor, the speaker of the assembly, the secretary of state, the attorney-general, the surveyor-general, the comptroller, and the treasurer; all of whom except the speaker of the assembly and surveyor are commissioners of the canal fund.

§ 3. The commissioners of the land-office direct the granting of the unappropriated lands of the state; and they direct the surveyor-general, as often as shall be necessary, to cause actual surveys to be made of such lands. The deputy secretary of state is clerk to the commissioners, and records their proceedings in a book, which is kept in the office of the secretary of state.

§ 4. The *public buildings* in the city of Albany, are the *capitol*, in which the legislature meets, and in which is also the executive chamber, where the governor attends to the duties of his office; and the *state hall*, in which are kept the offices of the secretary of state, the comptroller, and other state officers.

§ 5. The custody and care of the capitol is vested in the *trustees of the capitol*, who are the governor and lieutenant-governor, the speaker of the assembly, the secretary of state, the attorney-general, and the comptroller, and who have power to cause it to be kept in repair, and to appoint a superintendent of the capitol, who is to reside therein. The trustees may also lease such rooms in the capitol as are not occupied by the legislature and courts authorized to be held there.

§ 6. The persons mentioned as trustees of the capitol, together with the surveyor-general, are *trustees of the state hall*; the care of which is vested in the comptroller, secretary of state, and surveyor-general; and the comptroller is authorized to cause it to be kept in repair.

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they? Who are these commissioners? § 3. What are their duties? Who is their clerk? § 4. What public buildings are in the city of Albany? § 5. In whose care is the capitol? What are their duties? § 6. Who are

§ 7. There are several *arsenals* in the state which are public property. An arsenal is a building in which are kept cannon, muskets, powder, balls, and other warlike stores; all of which are to be kept in repair, and ready for use in case they should be wanted for war. The arsenals and magazines, together with the articles deposited in them, are under the care of the *commissary-general*, who from the nature of his duties is properly a militia officer. He also furnishes the officers of the militia such articles as they are entitled to receive for the use of their companies. His salary is \$700 a year.

§ 8. There are three *state prisons* in this state; the Sing Sing prison at Mount Pleasant, the prison at Auburn, and the Clinton county prison. These prisons and the lands and buildings connected with them, are the property of the state. Three *inspectors of state prisons* are elected by the people for three years, one to be chosen every year. Each prison is under the care of one of the three inspectors, and other officers appointed for the purpose.

§ 9. The *state library* consists of books containing matter of a public nature; such as the laws of the state enacted from year to year, the laws of the United States, and the laws of the several states, together with all public documents, and such works generally as the members of the legislature and other officers of the government have occasion to examine, and as it is important to preserve for future use. The library has also a *miscellaneous* department which embraces a great variety of books, on literature, the arts and sciences, history, &c.

§ 10. The trustees of the state library are the regents of the university. The library rooms are in the capitol. The library is kept by a librarian, whose salary is \$700; an assistant librarian who receives \$500; and a messenger to whom is paid \$250.

§ 11. *Salt Springs*. A valuable item of property owned by the state are the salt springs. The principal of these springs are in and near the city of Syracuse in the county of Onondaga, and are called the Onondaga salt springs.

trustees of the state hall? Who have the particular care of it? § 7. What are the duties of the commissary-general? What is an arsenal? § 8. Where are the state prisons? How are the inspectors chosen? § 9. Of what consists the state library? § 10. In whose care is it? § 11. Where are the

§ 12. The care and superintendence of these springs is vested in the superintendent of the Onondaga salt springs in the county of Onondaga. The superintendent must give a bond in the sum of \$30,000, with five sufficient sureties, that he will faithfully perform the duties of his office ; the bond to be filed in the office of the comptroller. He has a number of deputies to assist him.

§ 13. The superintendent has possession of all the lands, buildings, timber, pumps, and other machinery ; and all water-courses, wells, springs, and all other property of the people of this state, within the town of Salina ; has the charge and management of them, under such rules, orders, and regulations as are made by the legislature from time to time ; and leases the buildings and lots to those wishing to manufacture salt. He also transmits to the comptroller a statement, quarterly, of the quantity of salt daily inspected ; and monthly a statement of the amount of duties accrued and collected ; and he performs many other duties.

§ 14. The superintendent or his deputies must carefully examine and inspect all the salt manufactories, and all the salt manufactured in them ; and if he finds it to be dry and clean, he marks on the barrel his name as inspector, and the number of pounds of salt which the barrel contains. This is done that persons buying the salt may know that the salt has been inspected, and is of a good quality.

§ 15. Every person applying for the inspection of salt, must pay, at the superintendent's office in the village where the salt is inspected, a duty of one cent on every bushel of fifty-six pounds weight, which is, by the constitution, to go into the canal fund.

§ 16. The superintendent has a salary of \$800 a year. His four deputies, two in the city of Syracuse, one at Liverpool, and one at Geddes, have \$450 each ; to be paid to them monthly, by the superintendent from money in his hands belonging to the state. Assistant deputy inspectors may, when necessary, be employed at \$30 a month.

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principal salt springs belonging to the state? § 12 Under whose management are they? What bond is required of him? § 13. What is the business of the superintendent? § 14. What are his duties as inspector? Why is salt inspected? § 15. To whom are the duties paid? What is the present duty? § 16. What are the salaries of the superintendent and his deputies?

§ 17. There are also salt springs at Montezuma in the county of Cayuga, under the management of a superintendent. The salt works at this place are not extensive, and yield but a small revenue to the state.

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## CHAPTER XV.

### *Of the Militia of the State.*

§ 1. In order to defend a country against attacks by foreign enemies, and to put down insurrections and rebellion against the government by its own citizens, it is the practice of governments to keep the country prepared for an event of this kind in case it should happen. For this purpose, men are required every year to meet on certain days for instruction and practice in the art of war. This is usually called *training*.

§ 2. All able-bodied white male citizens between the ages of eighteen and forty-five years, residing in this state, are subject to military duty, except ministers and preachers of the gospel, firemen, persons who have been duly equipped and have served seven years in a uniform company, and those also who have served five years as commissioned officers in the militia of this or any other state.

§ 3. Besides these, there are persons exempted by the laws of the United States. They are the vice-president and all executive and judicial officers of the government of the United States; members of congress and its officers; custom-house officers and their clerks; post-officers and drivers of mail stages; ferry-men employed at ferries on post roads; pilots and mariners.

§ 4. It will be seen that the president of the United States and the governor of the state, are not mentioned among the persons who are free from military duty. By the constitution of the United States, the president is commander-in-chief of

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§ 17. What is said of other salt springs?

§ 1. For what purpose are military trainings? § 2. What persons are liable to do military duty? Who are exempt by the laws of this state?

§ 3. Who are exempt by the laws of the United States? Why are not the

the army and navy of the United States; and of the whole militia of the several states also, when called out into actual service; and so also the governor is the commander-in-chief of the militia of the state. (See Cons. U. S. art. 2, § 2; and Cons. N. Y. art. 4, § 4.)

§ 5. All persons enrolled in the ununiformed militia of this state, are, by a late act, exempt from military duty in time of peace, by paying annually a commutation tax of fifty cents, to be collected by the town collector at the usual time of collecting the taxes. None but members of uniform companies being subject to military duty, they only are liable to fines and penalties for non-performance of such duty.

§ 6. Persons who refuse to appear at military parades after having been duly notified, or if they attend, but are not equipped as the law requires, or disobey orders, are reported by the commanding officer of the company to the commanding officer of the regiment, with the amount of fine fixed by law for each delinquency. Any persons thus returned as being liable to any penalty, may appeal to the commanding officer of the regiment, who, on good cause being shown, may remit or mitigate such penalty. Commissioned officers are, for neglect of duty, tried by a court martial, to consist, usually, of three officers.

§ 7. All fines and commutation money are paid to the county treasurer, and constitute the military fund of the regiment. Members of any uniform corps, and all commissioned officers, receive pay by the day while engaged on parade and duty.

§ 8. The highest militia officer is the *adjutant-general* of the state; who keeps a roster (list) of all the officers in the state above the rank of captain, containing the date of their commissions, their rank, the corps they belong to, the division, brigade, and regiment, and the places of their residence. He also enters in a book, a description of the several regiments, brigades, and divisions of infantry, artillery and riflemen; and performs sundry other duties. The adjutant general is appointed by the governor. His salary is \$1000.

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governor and the president also exempt? § 5. What provision is made for exempting the ununiformed militia? § 6. What is done to persons who refuse to train, or to commute, or are otherwise delinquent? § 7. How are fines and commutation money disposed of? § 8. What are the duties of the

§ 9. Trainings and musters of the great body of the militia, have been abolished in some other states as well as in this state; and for these and other reasons: first, they produce no material improvement in discipline; secondly, the time spent in these useless exercises, and the cost of arms and equipments, are burdensome to many citizens; and thirdly, no sudden emergency is likely to arise, which will require a large portion of the militia to be called into immediate service. The volunteer companies are deemed sufficient, except in cases of war with foreign powers.

§ 10. Happily, the practice of settling controversies between nations by war, is growing unpopular in civilized and Christian countries. War, whether right or wrong, is a dreadful evil, and ought to be discouraged, and, if possible, avoided. Were governments so disposed, they might in most cases settle their differences peaceably and honorably, as individuals do. If the love of military honor were less encouraged, and the principles of peace duly inculcated, the time would be hastened when "nations shall learn war no more."

## CHAPTER XVI.

### *Of Towns and their Incorporation; and of Town Meetings.*

§ 1. THE necessity of dividing a state into towns and counties, has already been shown in part. This necessity will be made still farther to appear. There are sundry regulations necessary to be made in the towns, which the people can better make for themselves than can be done by the legislature. In so doing, they act in the capacity of a simple democracy, which, as has been stated, is a government in which all the citizens meet in one body to do business.

§ 2. A town is a body corporate, or body politic. A *body politic*, or *corporation*, is a number of persons united, and authorized by law to act under one name, and as a single

adjutant-general? § 9. What is said of exempting persons from military duty? § 10. Is war desirable? What are the evils of war? § 1. What reason is here mentioned for dividing a state into towns? § 2.



person, in the transaction of business. So the people of a state or nation, united for the purpose of government, are called a body politic. Persons associated for any purpose without being incorporated by law, are not called a corporation. The object of incorporating an association by law is to give its members the power to make certain rules for their government, and to enforce these rules; and the power to sue and be sued, and to hold and sell property, as one person.

§ 3. Men often unite their money or capital in trade, or in carrying on some other business, in company. This is called a partnership. A corporation is a kind of partnership; but it is very different from a common business partnership. Persons united in trade, can bind none by their contracts but those who have consented to go into the partnership: and when they die the partnership must end. But not so with a corporation. When the persons who first composed the corporation are all dead, the corporation is still alive; for those who come after them have all the powers and privileges which those had who first associated.

§ 4. There is another difference: No person can be brought into a partnership without his consent; whereas a law incorporating a city or village, brings all the inhabitants within its bounds into the corporation, often against the consent of many. Not so, however, with rail-road, banking, and certain other corporations.

§ 5. To illustrate the effect of an act of incorporation, let us suppose that it should be necessary to improve the side walks in an unincorporated village; but a part of the inhabitants are unwilling to pay their share of the expense of the improvement. There is now no authority to compel them to do so. Those, therefore, who wish for the power to make such improvement, and all other necessary regulations for the government of the village, petition the legislature for an act of incorporation for that purpose. Such act authorizes the inhabitants of the village to pass all laws (*ordinances* they are generally called) which they may deem necessary, and to appoint officers to carry them into effect. And in the name of the trustees or other proper

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What is a town? Define body politic, or corporation. § 3. Contrast a corporation and partnership. § 4. State farther the difference. § 5. Illustrate

officers, they may sue and be sued, hold and sell property, and do other things which an individual person may do. And when the present inhabitants shall have passed off, those who shall then occupy their places, will constitute the same corporation.

§ 6. The people of this state are united in one great corporation. This corporation, however, is not formed by an act of the legislature, but by the act of the people in making the constitution, or political law of the state.

§ 7. A town, as a body corporate, may sue and be sued; purchase and hold land and other property for the use of its inhabitants; and make orders for the regulation and use of its corporate property. The electors of a town have power, at their annual town meeting, to direct money to be raised for town purposes; to establish the compensation of certain town officers; to make regulations as to fences; to direct what sum shall be raised in the town for the support of common schools; and to perform sundry other acts that relate to their internal affairs: and they have power at such meeting to elect such town officers as are to be chosen.

§ 8. Town meetings are required by law to be held on some Tuesday between the first Tuesday in February and the first Tuesday in May. They must be held in all the towns of each county on the same day; but they are not required to be held on the same day in all the counties. The officers to be chosen at town meetings, and their powers and duties, will be the subject of the next three chapters.

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## CHAPTER XVII.

*Town officers, and their Powers and Duties.—Supervisor, Town Clerk; Commissioners of Highways; Overseers of Highways; Overseers of the Poor.*

§ 1. THE officers to be elected at town meetings, are, a supervisor; a town clerk; so many justices of the peace as

a corporation by a supposed case. § 6. Is the state incorporated by act of the legislature? How then? § 7. What corporate powers has a town? What power have the electors? § 8. When are town meetings held?

§ 1. What officers are elected at town-meetings? § 2. What are the

the town is entitled to elect; three assessors, one to be elected every year for the term of three years; commissioners of highways, one or three, as the electors shall determine; if three, one every year, for the term of three years; one or two overseers of the poor; a collector; constables, not more than five; two inspectors of election for each election district in the town; a sealer of weights and measures; as many overseers of highways as there are road districts in the town; and so many pound-masters as the electors may determine. All the town officers may be, and all except the last three named must be, chosen by ballot. All thus voted for must be named in the same ballot.

§ 2. The *supervisor* receives and pays over all moneys raised in the town for defraying town charges, except those raised for the support of highways and bridges, of common schools, and of the poor, where poor moneys are to be raised. He prosecutes, in the name of the town or otherwise, as may be necessary, for all penalties or fines of fifty dollars or under, which are forfeited to the town, and for which no other officer is directed to prosecute. He also keeps an account of all the money received and expended by him; and accounts annually to the board of auditors of town accounts, for the money so received and expended.

§ 3. The supervisor attends the annual meeting of the board of supervisors of the county, and every adjourned or special meeting. Persons having accounts against the town, present them to the supervisor, who lays them before the board of supervisors. The town clerk also hands to him a statement of what money has been voted to be raised for the support of roads and bridges, and of common schools, and for other purposes, which also is to be laid by him before the board.

§ 4. The *town clerk* keeps the records, books and papers of the town, and files all papers required to be filed in his office; and records in the town book the minutes of the doings or proceedings of every town meeting. He delivers to the supervisor copies of all entries of votes for raising money

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duties of a supervisor? § 3. What are his duties as a member of the board of supervisors? § 4 State some of the duties of a town clerk § 5 How

in the town; and after each town meeting he sends to the clerk of the county the names of all the constables elected in the town.

§ 5. There are in every town four *justices of the peace*, who are elected for four years, one of them only going out of office every year by the regular expiration of his term. Only one therefore is to be annually elected, except when the offices of one or more of the others shall have become vacant by death, removal, or otherwise: in such case, so many additional justices must be chosen to fill such vacancies. A description of the powers and duties of justices will be given elsewhere. (See Justices' Courts.) The *assessors and collector* are officers whose business it is to assess and collect the taxes. (See Chapter 21.)

§ 6. The *commissioners of highways* have the care and superintendence of the roads and bridges in the town. It is their duty to give directions for repairing the roads and bridges; to lay out such new roads as they may deem necessary, and to alter or discontinue old ones. But they may not discontinue old roads, nor lay out new roads through inclosed or cultivated land, without consent of the owner, unless certified to be necessary by the oath of twelve freeholders of the town.

§ 7. The commissioners divide the town into as many road districts as they may judge convenient, and require the overseers to warn the persons in their districts to work on the highways the number of days they have been assessed by the commissioners; they cause mile-boards or mile-stones to be put up, one mile apart, on post roads and such others as they think proper, and guide-posts where such roads intersect each other.

§ 8. It is the duty of the commissioners to estimate and assess the highway labor to be performed in the ensuing year. The number of days' work to be assessed in each town, must be at least three times the number of taxable inhabitants therein. Every male inhabitant above twenty-

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many justices of the peace are in each town? How long do they serve? How many are annually chosen? § 6. What are the general duties of the commissioners of highways? What restriction upon their power is here mentioned? § 7. Into what do they divide the town? What other duties do they perform? § 8. Who assesses highway labor? How do they

one year, except ministers, paupers and idiots, must be assessed at least one day; and the remainder of the work is to be apportioned among these who own or occupy land or other property in the town, in proportion to the value of such property owned or occupied by each; the value to be ascertained from the last assessment roll.

§ 9. The *overseers of highways*, sometimes called pathmasters, are generally chosen otherwise than by ballot. It is the duty of each overseer to repair and keep in order the roads in his district, and to see that all persons assessed come and work on them; to collect all fines and commutation money; and to execute all orders of the commissioners.

§ 10. The overseer must give at least twenty-four hours' notice to persons, of the time and place when and where they are to labor, and with what implements; and those who are assessed at least three days' work, and who have a team, and a wagon or plough, may be required to furnish them; for which, with a man to manage them, three days shall be allowed for each day's labor thus performed.

§ 11. Any person who does not choose to work out his assessment, or furnish a substitute, may commute for the whole or any part of it; that is, he may pay to the overseer the value of his labor in money, which is fixed by law at sixty-two and a half cents a day; but the money must be paid within twenty-four hours after receiving notice to work. If a person refuses to work, and does not commute by paying the value of his labor in money, as required, he forfeits one dollar for every day's refusal or neglect.

§ 12. For necessary improvements on roads and bridges in any town, a sum to be estimated by the commissioners, but not exceeding \$250, may be raised; the amount to be added, by the board of supervisors, to the other charges of such town, and to be collected in the same manner. And if the electors so determine, at any annual town meeting, an additional sum, not exceeding \$250, may be raised for the same purposes.

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estimate the number of days to be worked in town? Then how do they apportion the labor? § 9. How are overseers of highways chosen? What are their general duties? § 10. How does he warn men to work? § 11. How may persons avoid working? What is commute? What if he refuses both to work and to commute? § 12. How much money may be raised in town

§ 13. *Overseers of the poor.* It is the duty of a government to provide for the support of persons who, through misfortune, have been reduced to a state of poverty, and who are unable to support themselves. Such provision has been made in this country, and to such extent, that no person is compelled to beg for the means of support; and consequently the people of this country are but little troubled, and seldom imposed upon, by vicious persons who go about begging from the honest and industrious citizens.

§ 14. It is the duty of the overseers of the poor, when applied to for the relief of poor and indigent persons, to provide for their support. The poor of the several towns are removed to the county poor-house, in such counties as have a poor-house, where they are supported at the expense of the towns to which they belong. If they have no legal settlement in any town; or if for any other cause they are county paupers, they are supported at the expense of the county.

§ 15. But not every person who is unable to maintain himself is supported at the public expense. If the poor person has a father, the father must support him: if he has no father, or if the father is not able, then his children must support him; and if there are no children, or none who are able, then the mother. If neither of such relatives is able, alone, to support the poor person, he may be compelled to pay a part of the expense; or any two or more of them may be made to pay the whole or a part of the expense of maintaining such poor person, according to their ability.

§ 16. When relatives fail to relieve and maintain their poor friends, as required by law, the overseers of the poor apply to the court of general sessions of the county for an order to compel such relief.

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for improving roads and bridges? How is it raised? § 13 Is any provision made for the poor? § 14. What are the duties of the overseers of the poor? § 15. Are *all* poor persons supported by the public? What relatives are bound to support their poor friends? § 16 How are they compelled when they refuse?

## CHAPTER XVIII.

*Common School Officers; Constables; Inspectors  
of Election.*

§ 1. For many years the business relating to the common schools in the several towns was intrusted chiefly to a town superintendent. By the act of 1856, this office was abolished, and its principal duties were committed to a new officer, called school commissioner. The commissioner is not a town officer, there being one in each assembly district. In each district comprising a whole county containing more than one hundred and forty school districts, there may be two commissioners.

§ 2. According to the provisions of this act, the commissioners were appointed on the 3d of June, 1856, by the boards of supervisors of the several counties, to hold their offices until the 1st of January, 1858. At the general election in 1857, and thereafter, they are to be elected by the people of the several assembly districts, for the term of three years. Vacancies in the office are to be filled by the county judge until the next general election, when a successor shall be chosen.

§ 3. One of the duties of the commissioner is to examine the teachers in his district. He examines them in respect to their learning and ability, and also as to their moral character; for children should not be placed under the care and instruction of immoral and vicious teachers. To persons duly qualified to teach a common school, he gives a certificate to that effect. The commissioners must also visit the schools, to examine into their condition, and to give advice to the teachers and trustees as to the government of the schools and to the

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§ 1. What officers are intrusted with business relating to the common schools in the towns? § 2. How are school commissioners elected? For what term? How are vacancies filled? § 3. What are their powers and duties in respect to teachers and schools? § 4. What as

studies pursued in them. And he may *annul* the certificate of any teacher who is found incompetent or unfit to teach or manage a school.

§ 4. Towns are divided into a convenient number of school districts, which are described and numbered; and the description and numbers are handed to the town clerk to be put on record. This power to form districts belongs to the commissioner. But little of this nature remains to be done, except occasionally to alter or divide a district; in which case, or in forming a new one, the trustees of a district interested may apply to the supervisor and town clerk to associate with the commissioner.

§ 5. The supervisor receives from the county treasurer the school money apportioned to the town, and apportions it among the districts, in the manner prescribed by law. He is to keep a true account of all the moneys received and paid out by him, and to lay the same before the board of town auditors at their annual meetings. He gives a bond, with sureties, for the faithful application of all the school moneys that shall come into his hands.

§ 6. The supervisor's account of the receipts and disbursements of the school money, is also to be delivered to the town clerk to be recorded by him in a book kept for that purpose. The town clerk also receives from trustees of districts their annual reports, and sends them to the school commissioner; and performs sundry other duties under the late act.

§ 7. The inhabitants of each district choose a *clerk*, whose duty it is to give notice of meetings called by the trustees; to record in a book the proceedings of the district, and to keep all the books and papers belonging to his office; *three trustees*, who call meetings, make out tax lists, build a school house, employ teachers, receive and pay out the public money, and transact other business of the district; and a *collector*, who collects all taxes voted to be raised in the district, and the money for teachers' wages, and pays the same to the trustees.

§ 8. The trustees are required every year, in January, by

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to districts? § 5, 6. What are the duties of the supervisor in apportioning and accounting for moneys? What does the town clerk do?  
 § 7. What officers are there in each school district? Their duties?  
 § 8. What do the trustees report? State the number of districts,



the 15th, to report to the town clerk the whole time a school has been kept in the district, during the year; the amount of money received, and how it has been expended; the number of children taught and residing in the district, and the names of their parents or other persons with whom they reside. The trustees thus reporting to the town clerk, and he to the school commissioner, and the commissioner to the superintendent of public instruction, the desired information respecting the schools is obtained. In 1854, the number of districts was 11,798; children between four and twenty-one years of age, 1,186,709; children taught in common schools, 877,201; moneys received in districts, besides library money, from the school fund proper, about \$145,000; from the U. S. deposit fund, \$165,000; state tax, \$800,000.

§ 9. *Constables*, not less than three, nor more than five, as the electors shall determine, are chosen in each town. The principal duties of a constable are, to serve all processes issued by justices of the peace, in suits at law for collecting debts, and for arresting persons charged with crime.

§ 10. *Inspectors of election*. The number of inspectors of election in each town depends upon the number of electors residing therein, and are chosen thus: The supervisor, assessors and town-clerk, are required to divide all towns containing more than five hundred electors, into two or more election districts, so that no district shall contain more than five hundred electors; and at the annual town meeting, the electors choose two persons residing in each district as inspectors of election in such district. And immediately after the votes of the town meeting are canvassed, the presiding officers of the meeting appoint a third inspector, to be selected from the two persons in the district who have received the highest number of votes next to the two inspectors elected.

§ 11. The inspectors keep the ballot-boxes, and put into them the ballots handed to them by the voters. They appoint two clerks, each of whom is to keep a poll list, which is a list of the names of all persons voting at the election. By this list it may at any time be known who have voted, so

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children. &c., in the state. § 9. How many constables are generally elected in each town? What are their duties? § 10. How are towns divided into election districts? How are inspectors of election chosen? § 11. By

that a person may be detected if he should offer to vote a second time; and on counting the ballots, if the number is found to agree with the number of names on the poll list, and if the lists of both clerks agree, it is presumed there is no mistake in the election.

§ 12. It is the duty of the inspectors to keep order and regularity at the election; and they have power to commit to jail any person for disorderly conduct. It is their duty also to prevent persons from voting who have no right to vote; and if any person is suspected of offering to vote without being qualified, they may require him to make oath as to his qualifications.

§ 13. After the poll is closed, that is, after the voting is ended, the inspectors publicly canvass the votes, and make a statement of the number of votes given for each person voted for; which statement is to be delivered to the supervisor, to be carried to the meeting of the board of county canvassers. This board consists of the several supervisors in the county, who meet to ascertain the whole number of votes given in the county, at the election.

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## CHAPTER XIX.

*Town Sealer; Board of Auditors of Town Accounts; Commissioners of Excise; Fence Viewers; Strays; Pound Masters.*

§ 1. THE *town sealer* is required to keep correct copies of the standard of weights and measures established by the state. Copies of such standard are furnished by the state sealer to each county sealer, at the expense of the county, who furnishes each town sealer with a copy of the different weights and measures, at the expense of the town. The town sealer must compare such copy once in three years, with that in the office of the county sealer.

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whom, and why, are poll lists kept? § 12. What are the power and duties of inspectors as to keeping order at elections? § 13. After the poll is closed, what is done?

§ 1. Whence does the town sealer receive copies of standard weights and measures? § 1, 2. What are his duties? What is the penalty for

§ 2 When weights and measures are brought to the town sealer, he compares them with the copy in his possession; and if they are not correct, he makes them conform to the lawful standard, and seals and marks them. If a person uses a weight or measure that does not agree with the standard, and by which any purchaser suffers injury, the party injured may sue the offender, and recover three times the amount of damage.

§ 3. There is in every town a *board of auditors of town accounts*, consisting of the supervisor and town clerk, together with the justices, or any two of them. They meet every year, on the last Thursday preceding the annual meeting of the board of supervisors of the county, for the purpose of auditing and allowing the accounts of all charges and claims against the town. A particular statement of the accounts, audited and certified by a majority of the board, is delivered to the town clerk, to be kept on file in his office for inspection by the inhabitants of the town, and a copy of such certified statement is delivered to the supervisor, to be laid before the board of supervisors. [A]

§ 4. *Commissioners of excise* are a board of officers who meet on the first Monday in May in every year, to grant licenses to tavern keepers and grocers, for selling spirituous liquors in small quantities. *Excise* is a duty or tax which is paid for the right to sell such liquors. These commissioners are the supervisor, and the four justices of the town. The supervisor and two justices, or if there is no supervisor at the time, three justices have power to grant licenses to tavern keepers to sell liquors, only to be drank in their houses or on their premises; and to grocers, but *not* to be drank in their shops or on their premises. And without such license, no person has a right to sell such liquors in quantities less than five gallons.

§ 5. A tavern-keeper must give a bond in the sum of \$125, with a surety, that he will keep an orderly house; and the commissioners must be satisfied that he is of good moral character, and has the necessary accommodations for

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using unsealed weights and measures? § 3. Who constitute the board of auditors? When do they meet? What do they do? § 4. Who are the commissioners of excise? What is excise? When do they meet? For what purpose? State the nature of the licenses they give? § 5. What is requi

travellers; and that a tavern for their accommodation is necessary at the place where it is to be kept. Grocers must also be deemed to be of good character, and give a like bond that they will not suffer their groceries to be disorderly, nor allow liquor to be drank on their premises.

§ 6. The commissioners have power to determine the sum to be paid for a license; which may not be less than five, nor more than thirty dollars. The money obtained for licenses is applied to the support of the poor. Persons selling liquors in quantities less than five gallons, without license, or tavern-keepers and grocers selling otherwise than according to their licenses, may be prosecuted and fined, not exceeding twenty-five dollars for each offence.

§ 7. Licenses to keep tavern may be granted without including a license to sell spirituous liquors; in which case nothing is paid for a license. No person may keep up a tavern sign, unless he has a license to keep tavern. For every day he shall so keep up a sign, he shall forfeit one dollar and twenty-five cents. [B]

§ 8. *Fence viewers.* The assessors and commissioners of highways are the fence viewers of each town. Their duties relate principally to division fences, and the estimation of damages by cattle, and of charges for keeping strays and animals impounded.

§ 9. Each of the owners of adjoining lands must make and maintain a just proportion of the division fence between them, unless one of them shall choose to let his land lie open; but if he shall afterwards enclose it, he must refund a just proportion of the value of the fence, or build his proportion. And if a dispute arises between the owners of adjoining lands, concerning the division fence, which they cannot settle themselves, it may be settled by two of the fence viewers, of whom each party chooses one; but if either party neglects to make such choice after eight days' notice, the other party chooses both. The two thus chosen, if they disagree, choose another fence viewer to act with them; and the decision of any two agreeing is binding upon the parties.

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rod of tavern-keepers and grocers? § 6. How much or how little may be charged for a license? § 7. May licenses be granted to any without charge? To whom? What is the penalty for keeping tavern without a sign? § 8. Who are fence viewers? To what do their duties relate? § 9. State the

§ 10. The electors may, at their town meeting, prescribe what shall be a sufficient fence; and if a person does not keep such fence, he cannot recover payment for damages done by beasts lawfully running on the highways; and if a person does not keep his part of a division fence in repair, he is liable to pay damage to the party injured, the damage to be ascertained by two fence viewers. If he shall neglect for one month after request in writing, to repair such fence, the party injured may repair it at the expense of the party so neglecting.

§ 11. *Strays*. If at any time a strayed horse, or if, between the first day of November and the first day of April thereafter, any strayed neat cattle or sheep, come upon the enclosed land of any person, such person must, within ten days, make a note in writing, containing his name and place of abode, and a description of the strays, and deliver it to the town clerk, to be entered in the town book. This is done that the owner of animals straying at that season may know where he is likely to get information concerning them.

§ 12. The owner of strays thus entered, before he is entitled to take the same, must pay to the keeper his fees for getting them entered, the fees of the clerk for entering them, and the charges for keeping them. If they cannot agree upon the amount of charges to be paid, the owner may choose two fence viewers to estimate the charges, who for their services must be paid by the owner of the strays.

§ 13. If no person appears to claim the strays on or before the first of May, or if the owner refuses to pay the charges, the keeper may, after giving due public notice, sell them to the highest bidder, and the residue of the money, after deducting all charges, must be paid to the owner on demand, if it shall be demanded within a year after the sale; but if not demanded within one year, he loses his claim to it, and it is paid to the supervisor for the use of the town.

§ 14. *Pound-masters* are chosen at town meetings to keep

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law here given, about making division fences; and the manner of settling disputes between owners of land. § 10. In what cases may, and in what may not, the owner of land recover for damage done by cattle? § 11. If a stray comes into a man's enclosure, what is the lawful course for him to take? § 12. What must be done to entitle the owner to his stray? § 13. If the owner never appears, what is done? § 14. What is a pound? What

the pounds. A *pound* is a small enclosure surrounded by a strong fence, in which beasts having done damage are confined. Any person suffering damage by unruly animals, may keep them in a safe place other than the public pound, and within twenty-four hours, (Sunday excepted,) he must apply to two fence viewers to appraise the damage. If the damage and expenses are not paid within twenty-four hours thereafter, the beasts are put into the nearest pound in the county; and if they are not discharged according to law, within six days, they may be sold to pay the damage sustained, and the charges for impounding and keeping them.

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## CHAPTER XX.

*County Officers.—Board of Supervisors; Treasurer; Clerk, Sheriff; Surrogate; District Attorney; Judges; Superintendents of Poor.*

§ 1. A COUNTY, like a town, is a body corporate, constituted by an act of the legislature and having the same rights and powers. The powers of a county, as a body politic, are exercised in the name of the board of supervisors of the county, and all acts and proceedings by or against it, must be in their name.

§ 2. The principal officers of a county are, the board of supervisors, a county clerk, a county treasurer, a sheriff, four coroners, one county judge, a surrogate, and a district attorney.

§ 3. The *board of Supervisors* consists of the supervisors of the several towns in the county. They meet annually, on a day designated by law, which is, in most counties, in the month of October or November; and they may also hold special meetings when necessary.

§ 4. The board has power to make orders concerning the

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is done with animals before impounding them? What is the duty of the pound-master.

§ 1. In whose name are the powers of a county exercised? § 2. Who are the principal county officers? § 3. Who compose the board of supervisors? When do they meet? § 4. What are their duties? § 5. What is

corporate property of the county; to examine and settle the accounts against the county, and to order the raising of money to defray its expenses; to provide for repairing the court-house and other county buildings; to audit the accounts of town officers and other persons, against their respective towns, and direct the raising of money to defray the same; and to perform such other duties as the laws require.

§ 5. They choose one of their number at every meeting, to preside as chairman; and whenever it may be necessary they appoint a clerk, who is not one of their number. The clerk records the proceedings of the board in a book, and preserves and files all accounts acted upon by the board. Their books, records, and accounts are deposited with the clerk, and may be examined by persons wishing to do so. The clerk is entitled to a reasonable compensation for his services, to be fixed by the board, and paid by the county. The compensation of each supervisor as member of the board, is two dollars a day.

§ 6. The *county treasurer* is elected by the people for three years. He gives to the board of supervisors a bond with sureties, in such sum as they direct, for the faithful performance of his duties. He receives all the money belonging to the county, and pays and applies the money as the law requires. He also receives such money belonging to the state, as is required by law to be paid to him, and transmits to the comptroller, every year, on or before the first of March, a statement of the money of the state received by him; and at the same time pays the money to the state treasurer. He has a few other duties to perform, some of which are mentioned in other chapters. His compensation is fixed by the board of supervisors, and may not exceed \$500, except in a few of the most populous counties.

§ 7. The *county clerk* is elected by the people at the annual election, for three years. He has the custody of all the books, records, deeds, maps, and papers, relating to the business of the office, and files all papers required to be filed in his office; and he records in books all deeds, mortgages, or other conveyances, and all papers and documents required

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done by their clerk? What is their compensation? § 6. By whom is the county treasurer elected? What are his duties? What his compensation?

by law to be recorded. (For definition of deeds, &c., see Chap. 29.) County clerks, except in the county of New-York, are clerks of the county and circuit courts held in their respective counties.

§ 8. The clerk of each county serves also as clerk of the board of county canvassers of the general election; and transmits to the secretary of state a list of the names of the persons elected in the county, as members of assembly, sherriffs, and coroners; and to the governor, comptroller, and secretary of state, each, a statement of the votes given in the county for governor, lieutenant governor, state senators, and representatives in congress; which statement is to be by them delivered to the state canvassers, to ascertain the whole number of votes given in all the counties, for all state officers. The state canvassers are the secretary of state, the comptroller, the attorney-general, the surveyor-general, and the treasurer.

§ 9. Other duties performed by the county clerk, are mentioned in other places. He has no salary; his compensation consists of *fees*, which are fixed by law, for recording, filing, and all other business done by him. He employs a deputy at his own expense.

§ 10. *Sheriffs* are chosen at the general election, for three years; and they may not be elected for the next three years. A sheriff must give a bond, with sureties, in the sum of \$10,000 for the faithful performance of his duties; and this bond is to be renewed every year. The bond of the sheriff of the county of New-York is \$20,000. The sheriff appoints an under sheriff, to perform the duties of sheriff in case the office should become vacant, until a new sheriff shall be elected; and he also appoints as many deputies as he may think proper.

§ 11. It is the duty of the sheriff to attend the sitting of all courts held in the county; to serve all processes directed to him by any of the state or county courts; and to have the custody of the jails and of the prisoners in them.

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§ 7. How, when, and for what term, is the county clerk chosen? What is his general business? § 8. What in regard to elections, &c.? Who are the county and state canvassers? § 9. What is a clerk's compensation? § 10. When and for what term are sheriffs elected? What bonds must they give? What under officers has a sheriff? § 11. What are his general



Executions issued out of any courts in the state, against the property of any person, are directed to the sheriff of the county in which the person resides.

§ 12. There are in each county four *coroners*, who are chosen at the general election, and hold their offices for three years. When a person has been slain, or has suddenly died, notice is given to a coroner, who goes to the place where such person shall be, to inquire into the cause of his death. A jury is summoned, and witnesses subpoenaed, among whom there is generally a physician or surgeon. After the examination, the jury give their opinion in writing, as to the cause and manner of the death. Such examination into the cause of a person's death, is called a *coroner's inquest*. Coroners perform the duties of sheriff, when vacancies happen in the offices of both sheriff and under sheriff.

§ 13. The *surrogate* is elected at the general election for four years. In counties containing a population not exceeding 40,000, the duties of surrogate are performed by the county judge. A surrogate inquires into and settles the estates of persons that have lately died. He examines witnesses to prove whether the wills of such deceased persons are valid or not. A *will* is a writing in which a person directs how his property shall be disposed of after his death. If the surrogate is satisfied that the will is lawfully made, he approves it. This officer is, in some states, called judge of probate. The Latin *probatus* means proof; hence probate has come to mean proving of a will.

§ 14. The *district attorney* is elected for three years. He attends all courts in which persons are tried for crimes and misdemeanors, and conducts all prosecutions for offences tried in such courts.

§ 15. A *county judge* is elected in each county for four years. Two *justices of sessions* also are elected to sit with him in trying crimes and misdemeanors. (See county courts.)

§ 16. *The superintendents of the poor*, are elected in each county for the term of three years, one to be chosen every

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duties? § 12. How many coroners, in each county? How, and for what term chosen? What is a coroner's business? § 13. How is the surrogate elected? What are his duties? § 14. For what term is the district attorney elected? His duties? § 15. How and for what term are county

year. They have the usual powers of a corporation, and the general care and superintendence of the poor in the county.

§ 17. It is their duty to provide places for keeping the poor, by buying or renting suitable buildings for the purpose; and to provide the means of supporting the poor. They employ keepers of the poor-houses and other places at which the poor are kept, and make rules for the government of such places. They draw on the county treasurer for money to defray the expenses of the poor, and account to the board of supervisors for all money received and expended by them.

§ 18. The superintendents have power also to determine the settlement of paupers; that is, in what towns they have gained a legal settlement; for such towns are liable for their support. And they have power in relation to idiots and lunatics. They may compel the relatives of pauper idiots and lunatics to support them. If they are chargeable to the county, the superintendents may provide a place in the county for their confinement, or send them to a lunatic asylum, there being two such asylums, the property of the state; one at Utica, the other at Bloomingdale, near the city of New York.

§ 19. It is also the duty of the superintendents, with the county judge, to visit and inspect the jail of the county and other county prisons, if there be any, and report to the court of oyer and terminer the condition of such prisons, the number of persons confined in them, the manner of their confinement, and their treatment. The superintendents are entitled to a reasonable compensation, to be determined by the supervisors.

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judges elected? § 16. How and for what term are superintendents of the poor elected? § 17. How do they provide for the poor, account for money, &c.? § 18. What power have they in relation to idiots and lunatics? § 19. What in relation to prisons? What is their compensation?

## CHAPTER XXI.

*Of the Assessment and Collection of Taxes.*

§ 1. As no government can be maintained without expense, and as every person is in some way benefited by the government, it is the duty of all who are able, to pay something for its support. And every good government has within itself the power to provide the means necessary for this purpose. One way of raising money to defray the expenses of government, is by taxation; and the money which each person pays is called a *tax*. The state officers, as has been shown in preceding chapters, are paid out of the state funds. But the expenses incurred in the several towns and counties, are raised by a tax upon the property of the citizens.

§ 2. All lands and all personal estate are liable to taxation in this state, except public property; buildings erected for colleges, academies, and common schools, and for public worship; the property of literary and charitable institutions; and the property of every minister of the gospel to the amount of \$1500. *Lands, real property, and real estate*, have the same meaning, and include land with all buildings and other articles erected or growing thereon. *Personal estate, or personal property*, includes all household furniture, money, goods, chattels, and debts due from solvent creditors.

§ 3. As taxes are laid upon property, and as each person is to pay in proportion to the value of his property, the first thing to be ascertained is, what amount of property is owned by each person in the town. This is the business of the *assessors*, of whom there are usually three elected in each town, at the annual town meeting. There must be at least three, and there may not be more than five assessors.

§ 4. The assessors pass through the town, between the first of May and the first of July, and set down in their assessment roll the names of all the taxable inhabitants, and the value of all the property of each, real and personal.

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§ 1. How is money raised to pay public expenses? What is a tax? To pay what expenses are taxes laid? § 2. On what are taxes laid? What property is exempt? What is real, and what personal estate? § 3. What is the first business of assessors? § 4. How do they estimate and set down

If any one is owing deb'ts, the amount of such debts is to be deducted from the value of his personal property; but no deduction may be made from the value of his real estate. If there is land which is unoccupied, and is owned by persons not residing in the town, it is called "land of non-residents." Such land must also be assessed.

§ 5. The assessors then put up notices in three or more places in the town, stating that the assessment roll is completed, and left with one of their number, who is named in the notice, where the roll may be examined by any of the inhabitants during twenty days, to see whether their property has been assessed at too high a value. At the expiration of twenty days, the assessors meet at the place mentioned, to review their assessments; and persons who think their property set down at too high an estimate, are allowed to prove its true value, or they make affidavit of what they consider to be its true value: and the assessors then reduce their assessment accordingly. An *affidavit* is a declaration in writing, sworn to before a proper officer.

§ 6. The assessment roll of each town is taken by the supervisor to the meeting of the board of supervisors, by whom each man's tax is to be estimated. But the assessors of some towns assess property higher than those of other towns; and unless the assessments were made equal, the people in some towns must pay more than a just share of the taxes. To prevent this, the board, before taxes are estimated, so increase or diminish the valuation of real estates in certain towns, as to make it equal to the valuation in other towns.

§ 7. But by equalizing the valuations, it is not to be understood that the land in all the towns is estimated at the same value by the acre; because the land in some towns, being in a better state of cultivation or lying nearer to market, is worth more than the land in other towns; but to equalize valuations, the valuation of the land in one town must be made to bear a just relation to the valuation in another, according to the quality and real worth of the land in each.

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the value of property? § 5. When this is done, what notice do they give? For what purpose? How are assessments corrected? § 6. What do the board of supervisors do with the assessment rolls before the tax is estimated? § 7. By what rule is this done? § 8. By whom are the taxes estimated?

§ 8. The board then cause the tax to be estimated, which is generally done by their clerk; and the amount of each person's tax, in dollars and cents, is set down opposite to the valuation of his property in the assessment roll. A copy of the roll is then delivered to each supervisor, and by him to the clerk of his town, to be kept for the use of the town; another copy is to be delivered to the collector of the town by the 15th of December; to which copy is annexed a *warrant*, signed by the members of the board, commanding the collector to collect from each person named in the roll the amount of his tax.

§ 9. The *collector* of the town, after receiving the tax list and warrant, collects the taxes. He gives notice, by advertisement posted in public places, that he will attend at a place mentioned, one day each week for four weeks, to receive taxes. To the money thus received, *one* per cent. is added for the compensation of the collector. If the amount of taxes to be collected is less than \$2000, he has *two* per cent. On what is not thus received, he has *five* per cent. If a person refuses or neglects to pay his tax, the collector may sell the personal property of such person.

§ 10. When the taxes are collected, the collector pays over the money as directed in the warrant: to the commissioners of highways, the sum raised for the improvement of highways and bridges, to the overseer of the poor, (where there is no poor-house or other place for keeping the poor of the county,) the sum raised for the support of the poor in the town; to the supervisor all other money raised to defray other town expenses; and the residue to the county treasurer, by the first day of February.

§ 11. The collector is required to deliver to the county treasurer an account of all the taxes remaining unpaid, and which he is not able to collect. The amount of these he is not obliged to pay to the treasurer. The county treasurer sends to the comptroller a statement of all lands in the county

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How are the rolls then disposed of? § 9. How does collector proceed in collecting the taxes? What compensation has he? § 10. To whom does he pay the money? § 11. What returns does he make of unpaid taxes? What is done in such cases by the county treasurer and comptroller?

on which the taxes are unpaid, and of the amount of taxes charged on such lands; and if the taxes remain unpaid two years from the first day of May in the year after they were assessed, the comptroller proceeds to advertise and sell the lands. If such lands shall not be redeemed within two years after such sale, by the payment of the taxes due, and of all charges, the comptroller shall execute a deed of the land to the purchaser.

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## CHAPTER XXII.

### *Of Courts of Justice.—Justices' Courts.*

§ 1. IN the preceding chapters it has been shown how the laws of the states are made, and how the government is administered; and also what are the powers and duties of officers in the legislative and executive departments of the government. There is another class of officers, whose power and duties remain to be described, called *judicial officers*. The business of judicial officers is to administer justice to the citizens; and when sitting for that purpose they are called a *court*. Sometimes we mean by court, the judges or justices, jurors, and other persons engaged in a trial; but frequently only the judge or justice holding the court are meant.

§ 2. The necessity of the court of justice is easily seen. It would be improper to allow every man who thinks himself injured to be judge in his own case, as to what is right or wrong, and to punish others for acts which he might think to be contrary to law. If such were the case, there might as well be no law at all. Mankind are generally partial to themselves; and therefore they would be unsafe judges between themselves and others. Besides, but a small portion of the people are sufficiently learned in the law to be judges.

§ 3. Hence, that justice may be done to all, as far as possible, it must be obtained in courts of law; and to prevent injustice from being done to any member of the community,

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§ 1. What is the business of judicial officers? § 2. From what appears the necessity of courts of justice? § 3. To prevent injustice in case of

the constitution requires, that in all cases of crime, however openly it has been committed, the offender must have a fair and impartial trial.

§ 4. There are numerous kinds of courts in the state, some of a higher, and others of a lower order. Some have general, and others special jurisdiction, and that which is more limited. When we speak of the jurisdiction of a court, we have reference to its power to pronounce the law. The word *jurisdiction* is composed of two Latin words, *jus*, law, and *dictio*, a speaking; hence *juris dictio*, a speaking of the law. The jurisdiction of a court therefore means how far, and in what cases, it has power to try and determine questions in law.

§ 5. Some courts have power only to try civil causes; others have jurisdiction in causes both civil and criminal. Some have jurisdiction in cases arising in any part of the state; others only in cases arising within the county. As most suits at law are tried in justices' courts, and as cases may be carried up from them to the higher courts, we shall begin with the lowest and proceed to the highest.

§ 6. *Justice's court.* A justice of the peace can try a cause only in the town for which he is chosen, and in which he resides, though he can issue a process in any town in the county. And he can try civil causes only, and only those in which a limited sum is sued for. Causes are called *civil*, when money is claimed; *criminal*, when persons are tried for crime. Causes, actions, and suits, though somewhat different in meaning, are words generally used to signify the same thing, meaning prosecutions at law, or lawsuits.

§ 7. A justice can try suits only in which the sum sued for does not exceed \$100; but he may take and enter judgment on the confession of a defendant, for any sum not exceeding \$250. (See Chap. 23, § 7.) No suit can be commenced before, or tried by, a justice who is a tavern-keeper; but he may issue executions on judgments previously taken by him.

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crime, what does the constitution require? § 4 What different kinds of courts are there? What is jurisdiction? § 5. What difference is there between the jurisdiction of one court and that of another? § 6. How is a justice's jurisdiction limited? What is a civil suit? Criminal? Define cause, action, suit. § 7. To what sum is a justice limited? In what case

§ 8. Actions must be brought before a justice of a town in which one of the parties resides, or of a town adjoining, in the same county; otherwise a plaintiff might maliciously take a defendant to the remotest part of the county, simply to give him unnecessary trouble, or perhaps to compel him to a settlement on unjust terms. A *plaintiff* is the party that sues; the party sued is called *defendant*, because he *defends* himself in the suit.

§ 9. Actions may be commenced by the parties going voluntarily before a justice; but this is seldom done. Suits are generally commenced by *process*, which means a written instrument issued by a justice, enforcing proceedings at law. The process by which a suit is in most cases commenced, is a *summons*; and the action is considered commenced on the day when the summons is delivered to the constable.

§ 10. A summons is addressed to any constable of the county, commanding him to summon the defendant to appear before the justice, on a day and at an hour specified, which must be not less than six nor more than twelve days after the date of the summons, to answer the plaintiff in a plea mentioned. and the summons must be served at least six days before the time when the defendant is to appear.

§ 11. If the defendant is found, the constable serves the summons by reading it; and if the defendant requests it, the constable must give him a copy of it. If he is not found, a copy must be left at his place of abode, with some one of the family of suitable age. The constable returns the summons to the justice, at or before the time named for trial with an indorsement on the back of it, stating the time it was served, and also whether personally served, or served by copy. If served by copy, and the defendant does not appear, a new summons is immediately issued.

§ 12. Either party may appear in person, or by attorney, that is, another person appointed to answer and act for him. Parties who are minors, must always have a next friend or a guardian to act for them. When parties have appeared

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cannot a justice act? § 8. In what town must a suit be brought? Who is the plaintiff? Defendant? § 9. How are suits usually commenced? What is a process? A summons? § 10. What does a summons contain? § 11. How is a summons served? How returned to the justice? § 12. How



and answered to their names, they make their pleadings; that is, the plaintiff declares for what he brings his suit; and the defendant declares the nature of what he has to *offset* against the plaintiff's demand; or he pleads that he has paid him, or that he never owed him, as the case may be. These acts of the parties are called *joining issue*. The pleadings may be either verbal, (by word,) or written. If written, the justice must file and keep them; if verbal, he must enter the substance of them in his docket.

§ 13. A defendant cannot offset any demand which he may buy, or in any other way get against a plaintiff, after the suit has been commenced. And a defendant must, on joining issue, plead, or give notice of a set-off, specifying the nature of his claim, or he will not be entitled to a set-off; and if he neglects to offset his claim, he can never thereafter recover such demand by law. There are certain demands which a defendant is not obliged to bring in against a plaintiff.

§ 14. If the demands of the parties are unequal, the justice enters judgment against the party owing, for the amount due the other, with the costs of suit. *Judgment* is what is adjudged to be due from the one to the other, and always includes the costs, which consist of the fees of the justice, constable, and witnesses. If nothing is found to be due the plaintiff, judgment is entered against him for the costs.

§ 15. At the time of joining issue, the justice may, at the request of the plaintiff, *adjourn*, or put over, the trial, not exceeding eight days; but if required by the defendant the plaintiff must make oath that he cannot, for the want of some material witness, safely proceed to trial. The defendant also is entitled to an adjournment, for such reasonable time as may be necessary for him to procure a material witness, not exceeding ninety days, if, when required by the plaintiff or the justice, he makes oath that he cannot safely go to trial without such witness.

§ 16. A man's own word is not taken as proof in his favor in a court of justice: he cannot establish a fact without *witnesses*. The justice, therefore, on the request of either party,

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do parties appear? What are pleadings? What is joining issue? § 13. What is said about set-off? § 14. Against which party is judgment entered? § 15. In what cases, and for how long a time, may a suit be adjourned? § 16. What is a subpoena? Its effect? By whom served? What must

issues a *subpœna*, which is a writing commanding persons to appear and give evidence on the trial; but a *subpœna* can only compel the attendance of witnesses being in the same county or a county adjoining. A *subpœna* may be served by a constable or any other person, who must pay, or offer to pay, the witness the fees allowed by law for one day's attendance, which is twelve and a half cents, or the witness is not obliged to attend.

§ 17. If a person duly *subpœnaed* does not appear, the party for whom he was *subpœnaed* may make oath that the testimony of the witness is material; whereupon the justice may issue an attachment commanding the constable to bring the witness, who must pay the fees of both the justice and the constable, unless he shall show reasonable cause for not attending. And a witness who, without a reasonable excuse, does not appear, or appearing, refuses to testify, may be fined by the justice not less than sixty-two and a half cents, nor more than ten dollars, for the use of the poor; and if the fine is not paid, he may be imprisoned not exceeding thirty days, or until the fine shall be paid: and he is liable also to pay all damage sustained by the party in whose behalf he was *subpœnaed*.

§ 18. At the time of trial, the justice proceeds to try the issue. The witnesses are sworn to testify truly to what they know; and after hearing the proof on both sides, the justice decides according to law and equity, as the right of the case may appear. If a defendant does not appear at the time of trial, the justice may hear the proofs and allegations of the plaintiff, and determine the case according to what shall be made to appear by that party alone.

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be offered or paid a witness? § 17. If a witness does not appear what may be done? In what cases may he be fined and imprisoned? To what is he farther liable? § 18. How does the justice proceed and try the issue?

## CHAPTER XXIII.

*Trial by Juries ; Collection of Judgments ; Appeals, &c.*

§ 1. ONE of the most valuable privileges enjoyed by the people of this country, is the right of trial by jury. It may so happen that a suit is brought before a justice who is not well informed in matters of law ; or he may be supposed to entertain feelings of partiality towards one of the parties ; or it may be suspected that he is not an honest man. Therefore, it is not always safe to submit a cause to a justice for decision. And that all may have the means of obtaining justice, the constitution secures to every person the privilege of having a jury to try any cause to which he is a party. (Cons. art. 1, § 2.)

§ 2. A *jury* is a number of men who sit on a trial, and are sworn to try a matter of fact, and to declare the truth according to evidence. This declaring of the truth is called *verdict*, which means a true saying. A jury in a justice's court consists of six men, all of whom must agree in their verdict. It is therefore presumed, that, when so many men are all of one opinion, their verdict is correct.

§ 3. The manner of obtaining a jury is as follows: At any time after issue is joined, and before any testimony is heard, either party may demand of the justice that the cause be tried by a jury. The justice then issues a *venire*, which is a precept commanding a constable to summon twelve men, duly qualified, to appear before the justice to make a jury to try the cause between the parties named in the *venire*. A list of the names of the persons summoned is made by the constable, annexed to the *venire*, and returned to the justice.

§ 4. At the trial of the cause, the names of the men so returned, and who shall appear, are written on separate pieces of paper, and put into a box or a hat, out of which the justice draws the names of six men, against whom no objection shall be made: for no man may serve as a juror

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§ 1 Why is the right of trial by jury a great privilege? § 2. What is a jury? A verdict? § 3. How is a jury obtained? What is a *venire*? How returned? § 4. How are jurors drawn? Who may not serve?

if objected to, who is not a freeholder, nor owns personal estate worth \$250, or who is nearly related to either party, or has any interest in the suit to be tried, or has already formed an opinion. If a sufficient number shall not be drawn, the justice may direct the constable to summon of the by standers or others to make up the deficiency.

§ 5. After hearing the proofs and allegations of the parties, the jurors are put under the charge of a constable, who is sworn to keep them in some convenient place, without meat or drink, except such as the justice may order, till they agree on their verdict, or till discharged by the justice. Nor shall the constable allow any person to speak to them during such time, nor speak to them himself, except by order of the justice, unless to ask them whether they have agreed on their verdict.

§ 6. When jurors have agreed on their verdict, they publicly deliver it to the justice, who enters it in his docket. If the jurors do not all agree after having been out a reasonable time, the justice may discharge them; and he shall then issue a new venire, returnable within forty-eight hours, unless the parties consent that the justice may render judgment on the evidence. Persons summoned as jurors may be fined in the same manner as witnesses, for not appearing, or for refusing to serve.

§ 7. Any person owing another and wishing to avoid paying the cost of a suit at law, may *confess judgment*. This is done by going before the justice, and signing a writing, stating the amount of the debt due to the plaintiff, and his consent that the justice enter judgment accordingly. If the sum confessed to be due is more than \$50, both the plaintiff and the defendant must be present, and make affidavit that the sum confessed is honestly due, and that the confession is not made to defraud any creditor.

§ 8. When a plaintiff discontinues or withdraws his action; or fails to appear within one hour after the time appointed for the suit to commence; or if he does not appear on the coming in of a jury to hear the verdict; or if he becomes

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§ 5. After hearing proof, &c., what is done with the jury? What is forbidden? § 6. If jurors agree, what? If they do not agree, what? § 7. How is a judgment confessed? When a debt is over \$50, what is required? § 8. In what cases is judgment rendered against a plaintiff? § 9. What is

non-suited on the trial; in either cases the justice renders judgment of non-suit with costs against the plaintiff. And when a trial is had, and it is found by verdict, or by the decision of the justice, that plaintiff has no cause of action against the defendant, judgment with costs is rendered against the plaintiff.

§ 9. After a judgment has been rendered, it must be carried into effect; that is, the debt or damage, with the costs must be collected. This is done by a constable. The instrument giving him authority, is called an *execution*, and issued by the justice. An execution may be issued at any time within five years after the judgment has been rendered, and shall be returnable in sixty days; by which it is meant, that the constable is to make his returns to the justice within that time.

§ 10. The execution is directed to any constable of the county, and commands him to sell the goods and chattels of the debtor, and to bring the money for the debt and costs to the justice within the sixty days. If the money is not paid to the constable, and no property can be found, the constable returns the execution to the justice, not satisfied. A justice of the peace can not issue executions against real estate, but only against the personal property of debtors. But a judgment of \$25, or upwards, exclusive of costs, may be filed and docketed in the office of the county clerk; who may, in such case, issue an execution against both the real and personal estate of the debtor.

§ 11. If a constable, through negligence, shall fail to collect a judgment as required by the execution, or shall fail to return the execution within sixty days, as required, he is liable himself to pay the amount of the judgment. And if he is not able to pay it, his surety is liable; for every constable is required to give a bond, with surety, for the faithful performance of his duties.

§ 12. But there are certain articles of personal property which poor men have always been allowed to retain for the use and comfort of their families. By a law of 1842, necessary

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an execution? How long after rendering judgment is it issued? § 10 What does an execution command? If no personal property is to be found what? § 11. What, if a constable fails to do his duty? § 12. What

household furniture, tools, and a team, to the amount of \$150, are exempt from execution, in addition to articles previously exempt by law.

§ 13. Prior to the year 1831, men who had not property wherewith to satisfy executions against them, might be taken by a constable, and committed to the county jail. But that unreasonable law was abolished in the year above mentioned. In cases, however, where executions are issued to collect judgments against persons for injuries done to property, for fines, and the like, such persons may still be imprisoned.

§ 14. Such is a description of the proceedings of a justice's court, in ordinary cases. But there are many things connected with the business of this court which must be learned from other books, and from observation. There are also other processes than a summons, which a justice issues for bringing persons to trial. One of these is a *warrant*, in which a constable is commanded, forthwith to bring the defendant before the justice. But this cannot be done in ordinary cases of debt.

§ 15. Another process issued by justices, is an *attachment*. This is issued when a debtor keeps himself concealed, or has departed, or is about to depart, from the county, with intent to defraud his creditors, or to avoid being prosecuted; or is about to remove from the county his property, to defraud his creditors, or has disposed of or secreted it, or is about to do so, with the like intent. A creditor making either of these facts appear to the satisfaction of a justice, the justice may issue an attachment, commanding a constable to attach and keep the property of the defendant, in order to satisfy any judgment which may be obtained against him.

§ 16. The constable serving an attachment, must leave a copy of it, with an inventory of the property attached, at the defendant's last place of residence; or if he had none in the county, the copy and inventory must be left with the person in whose possession the property was found.

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is said of property being exempt from execution? § 13. What is said of imprisonment for debt? § 14. What is the nature of a warrant? § 15. In what cases is an attachment issued? How is it obtained? § 16. How is

§ 17. If the defendant does not appear on the day of trial, the plaintiff may proceed to prove his demand, and the justice enters judgment for the amount proved to be due, with costs. To satisfy a judgment so taken, the property attached may be sold on execution, as in other cases.

§ 18. If either party is dissatisfied with a judgment rendered in a justice's court, he may *appeal* to the county court for a review of the judgment. The party appealing is called the appellant, and the adverse party the *respondent*. Witnesses do not attend at the trial in the higher court, nor is the case submitted to a jury. The substance of the testimony and proceedings before the justice is produced before the court, and upon this the judge gives judgment as the right of the case may appear. If he decides the judgment of the town court to be correct, he is said to *affirm* such judgment; but if he decides it to be wrong, he is said to *reverse* it. If he thinks necessary or proper, he may order a new trial.

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## CHAPTER XXIV.

### *County Courts, and Courts of Sessions; Circuit Courts and Courts of Oyer and Terminer; Supreme Court.*

§ 1. THERE is in each county, except the city and county of New York, a *county court*, held by a county judge, who is chosen by the electors of the county for the term of four years. This court holds at least two general terms in each county, and as many more as the judge shall appoint; each term to continue as long as shall be deemed necessary.

§ 2. This court has no jurisdiction in criminal causes. Nor has it *original civil* jurisdiction in ordinary cases. By the original jurisdiction of a court is meant, that suits may *originate* or be commenced and have their first trial in such court. Formerly the county court had such jurisdiction. But the new constitution declares that it "shall have no original civil

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it served? § 17. What if the defendant does not appear at the trial? § 18. To what court do appeals from a justice's court go? What are the parties to appeals called? Upon what information does the judge decide? What is meant by affirming and reversing a judgment?

§ 1. By whom are county courts held? How and for what term is the judge elected? How many terms does this court hold? § 2. How is jurie-

jurisdiction, except in such special cases as the legislature shall prescribe." [C]

§ 3. In pursuance of this constitutional provision, the legislature has given to this court, in ordinary civil suits, only *appellate* jurisdiction; that is, the power to try suits brought before it by *appeal*. Judgments carried up from justices' courts, go to the county court; and they cannot go to a higher court, before they have been reviewed by the county court.

§ 4. Besides its power to review judgments from justices' courts, it has power in certain cases, in which the court of chancery formerly had jurisdiction; as, the foreclosure of mortgages; the partition of real property; the admeasurement of dower; the sale of real estate of infants; the care and custody of the person and property of habitual drunkards and lunatics; together with sundry other powers. Surrogates' courts also are held in some counties by the county judge. (See chap. XX., § 13, 15.)

§ 5. At the time and place of holding the county court, is held also a *court of sessions* by the county judge, with two justices, chosen by the electors of the county, and selected from the justices of the peace of the county having at least two years to serve. This court does not try civil causes. It has power to try and punish all crimes and misdemeanors committed in the county, except such as are punishable with death or imprisonment for life. It also examines the cases of persons imprisoned in the county jail, and in certain cases discharges them; and performs sundry other duties.

§ 6. This court has two juries: a jury to try and determine issues of fact, usually called a petit jury; and a grand jury, by which it inquires of all crimes and misdemeanors committed in the county. It tries such offences as it has power to try, and sends all indictments for offences which it has not power to try, to the next court of oyer and terminer, for trial. All courts having cognizance of crimes have grand juries.

§ 7. *Supreme Court.* There are thirty-two justices of the supreme court, elected by the people for the term of eight years. The state is divided into eight districts, called judicial

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diction restricted? What is meant by original jurisdiction? § 3. What jurisdiction has it? What is appellate jurisdiction? § 4. In what special cases has it jurisdiction? § 5. When, where, and by whom are courts of session held? What are its powers and duties? § 6. What juries has this court? What are their respective duties? § 7. How is the supreme court constituted?



districts, in each of which four of these justices are elected one to be chosen every two years. The supreme court has jurisdiction of all actions, civil and criminal, original and appellate. This court has power to revise the proceedings of every court in the state, except the court of appeals.

§ 8. But these thirty-two judges do not all sit together in holding courts. In order to transact all the business of this court, its labors are divided among the several justices, as will be seen from the following sections.

§ 9. Suits in which are claimed sums exceeding \$100, must be commenced in the supreme court. This court has original civil jurisdiction also in cases of sums of the smallest amount; but ordinary debts of \$50 and under are prosecuted in justices' courts, because, when judgment is obtained in the supreme court for no greater sum in damages than \$50, the plaintiff can not recover costs. [D]

§ 10. Civil suits commenced in the supreme court, are tried in the several counties. A court for this purpose is held by one of the justices of the supreme court; and although such court is in fact the supreme court, it is usually called *circuit court*, from the judges' going about among the several counties to hold these courts. It has a jury to try issues of fact. At least two terms of this court must be held every year in each county, and as many more terms as the judges of each judicial district shall appoint.

§ 11. The justice holding the circuit court, holds at the same time, with the county judge and the two justices of sessions, a *court of oyer and terminer*. The justice of the supreme court, with any two of the others, may hold a court. Being a criminal court, it has, like the court of sessions, two juries; a grand jury to inquire of crimes committed in the county, and a jury to try the persons charged with crimes by the grand jury. This court has power to try all offences for which indictments are found by the grand jury of either this court or the court of sessions, including such as are punishable with death or imprisonment for life, which the court of sessions cannot try.

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How and for what term elected? What power has it? § 8. How and why is the business of this court divided? § 9. Why are not small sums sued in this court? § 10. Where, and by whom are suits commenced in this court, tried? When thus sitting, what is it called? What causes does it try? § 11. How is a court of oyer and terminer constituted? What is its jurisdiction?

§ 12. There must be held every year in each county, at least one *special term* of the supreme court. A special term is held by one of the justices. The business at these special terms is not to try issues of fact by a jury as at circuit courts, but to hear and determine certain business in suits and proceedings at law, and to take testimony and make orders and decrees in suits in equity, &c. A justice may, at the time of holding a circuit court, hold a special term of the supreme court; but such special term is not to be deemed one of the terms required by law.

§ 13. There are to be held also at least four *general terms* every year, within each judicial district, and as many more as the judges of the district shall appoint. A general term may be held by three or more justices, one of whom shall be a justice having the shortest time to serve, and who is not a judge of the court of appeals, nor has been elected to fill a vacancy. The same shall be the presiding justice at such general term.

§ 14. The business of this court at general terms, is to hear and determine cases brought by appeal or otherwise from the circuit courts. This court, thus sitting, is sometimes called the supreme court *in banc*. As at a special term, so at a general term, there is no jury. Causes removed from this court, go to the court of appeals.

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§ 12. How often, and by whom, is a special term of this court held? What is its business at a special term? § 13. How often, and by whom, are general terms held? What justice presides? § 14. What business is done at these terms? What is a court, thus sitting, sometimes called?

## CHAPTER XXV.

*Courts of Equity, (Abolished;) Court of Appeals; Court for the trial of Impeachments.*

§ 1. THERE was formerly in this state, a court of chancery, or court of equity; but by the new constitution, this court, as a distinct and separate court, has been abolished. A *court of equity* is so called, because it is the object of such court to enable persons to obtain what is just and equitable when they can not obtain the same in courts of common law.

§ 2. In courts at law, the oath of the parties is not allowed as testimony; but in this the parties may be put on oath. In courts at law, a person cannot be compelled to do the specific act he has agreed to do; he can only be made to pay damages for not fulfilling his contract: in a court of equity a man may, in certain cases, be compelled to fulfil the contract itself.

§ 3. If a debtor has property held in trust for him by another, or has money, notes or other obligations, or debts owing to him; this court may compel him to discover and give up such property to satisfy an execution against him; and may prevent persons from paying him such debts. It has power also to restrain banks and other corporations and individuals from doing fraudulent acts; to dissolve corporations; to stop proceedings at law in certain cases; and to do sundry other things of a like nature, by way of relief, when it cannot otherwise be had.

§ 4. But there is now no state, it is believed, in which a separately organized court of chancery exists. In most if not all of the states, however, except New York, although equity powers are vested in the judges of the common law courts, there is still a distinction between suits in equity and suits at

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§ 1. What is the object of a court of equity? § 2, 3. What are the nature and powers of a court of this kind? § 4. What is said of this court in this

law; that is, the proceedings in the two kinds of suits are different. But in this state, not only has the court of chancery been abolished, but by late acts of the legislature, the same forms and mode of proceedings, are hereafter to be observed in all courts of record. These proceedings are in some respects similar to those which were formerly practiced in courts of equity; and the business of these courts is now performed by the judges of the existing courts.

§ 5. *Court of Appeals.* This is the highest court in the state, and the last to which a cause can be removed for a re-hearing. This court is composed of eight judges, of whom four are elected by the people of the state for the term of eight years, one to be elected every two years. The other four are selected from the class of justices of the supreme court having the shortest time (two years) to serve. At least six judges are necessary to hold a term of the court.

§ 6. This court holds at least five terms in a year, in different parts of the state, and may continue its terms as long as the court may deem necessary. This court reviews, on appeal, judgments and proceedings of the supreme court, at a general term, or by the superior and common pleas courts of the city of New York, and reverses, affirms or modifies the judgment or order appealed from, as the law may require. Five judges must concur in pronouncing a judgment. If five do not concur, the judgment of the lower court is affirmed, unless the court order the cause back for a re-hearing.

§ 7. The court for the trial of impeachments is to be composed of the president of the senate, the senators, or a majority of them, and the judges of the court of appeals, or a majority of them. On the trial of an impeachment against the governor, the lieutenant-governor may not act as a member of the court.

§ 8. *Trial of impeachment.* An *impeachment* is a charge against a public officer for corrupt conduct in office. If some person should offer a member of the legislature a sum of money or some other advantage, to induce him to vote for or against a proposed law, and such member should so vote; this would be corrupt conduct, for which he might be

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state? § 5. Which is the highest court in the state? How is it constituted? § 6. How many terms does it hold in a year? What is its business? § 7. How is a court of impeachment constituted? What is an impeach-

impeached. And so any officer who, from bad motives, should do a wrong act in discharging the duties of his office, or should commit a crime, would be impeachable. By the constitution, the power to impeach is given to the assembly. (Cons. Art. 6, § 1.)

§ 14. The mode of commencing a trial of this kind, as prescribed by law, is as follows: The assembly makes the charge, and delivers it to the president of the senate, who causes the court to be summoned. The accused is then brought before the court to answer the charge, and is entitled to counsel to assist him. (Cons. Art. 1, § 6.) When the issue is joined, the court appoints a time and place for trial. Before the trial commences, the clerk administers to the president of the senate, and the president to the other members, an oath truly to try and determine the charge, according to evidence.

§ 15. The trial is conducted as trials are in courts of justice. If two thirds of the members present concur in a conviction, the accused is convicted; if not, he is acquitted. To *convict* is to prove and determine a person guilty of an offence. If the person is convicted, the court may remove him from office, or disqualify him from holding any office thereafter, in this state, or both remove and disqualify him; but no other judgment can be pronounced by this court. But if the act committed by the offender is a crime, he may also be indicted, tried, and punished in a court of common law, as any other person.

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## CHAPTER XXVI.

### *General Provisions concerning Courts of Record.*

§ 1. ALL courts higher than courts held by justices of the peace, are called courts of record. The clerk of each county is clerk of the several courts held therein. The clerk of the

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ment! State a case. Who have power to impeach? § 14. How is the trial of an impeachment commenced? § 15. How is it conducted? How many must agree to convict? What is the punishment.

§ 1. What courts are courts of record? How are clerks of courts ap-

court of appeals, who is ex-officio clerk of the supreme court, is chosen by the electors of the state, for the term of three years. (Cons. Art. 6, §19.)

§ 2. It is the duty of the sheriff of every county, to serve all processes issued by any court of record which are to be served in his county, either by himself or his deputies. He cannot go out of the county to serve a civil process. If, therefore, a plaintiff lives in one county and the defendant in another, the process must be sent to the sheriff of the county in which the defendant resides, to be served on him. The process used in commencing civil actions in courts of record, is a *summons*, to which the defendant is required to answer within twenty days after service. If he does not so answer, judgment may be taken.

§ 3. The sheriff also serves subpoenas for witnesses, and all executions issued by these courts for collecting the money on judgments against debtors residing in the county. He is required also to attend all the courts which may at any time be sitting in his county; and, with the assistance of a number of constables, previously summoned by him for the purpose, to keep peace and order, in court time, and to execute all orders of the court.

§ 4. *Juries*. Every county court, circuit court, and court of oyer and terminer, has a jury for the trial of issues of fact. An *issue of fact* is a case in which the *fact* is to be determined from evidence, whether one party is indebted to another or not; or the fact whether the person charged with crime is guilty or not guilty. It is called issue of fact to distinguish it from an *issue of law*, in which the question to be decided is, what is the *law* in the case, which is done by the court instead of the jury. This jury is usually called a *petit jury*, as distinguished from a *grand jury*.

§ 5. Juries in courts of record, are composed of a greater number of men than juries in justices' courts, and they are obtained thus: The supervisor, town clerk, and assessors of each town in the county, meet once in three years, on the first Monday

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pointed? § 2. By whom are processes issued by these courts served? What if a defendant resides in another county? What is a declaration? § 3. What other duties does he perform? § 4. What courts have a jury? What is an issue of fact? What is this jury called? § 5. How is a list of

in July, for the purpose of making a list of the names of suitable persons to serve as jurors, to be selected from the names on the assessment roll of the town. The persons whose names are taken, must be twenty-one and under sixty years of age; be assessed for personal property of their own, to the amount of \$250, or have a freehold estate in real property, in their own right or in the right of their wives, to the value \$150; and be of fair character, sound judgment, and well informed.

§ 6. The list of the names so selected, in each town, is signed by the officers, or a majority of them, and within ten days is sent to the county clerk, and a copy of the list is filed with the town clerk. The county clerk writes the names on separate pieces of paper, and deposits them in a box kept for that purpose. Fourteen days before the holding of a court, the clerk, in presence of the sheriff and a county judge, draws from the box the names of thirty-six persons, to serve as jurors, and such additional number as may have been ordered.

§ 7. A list of the names drawn is handed to the sheriff, who must, at least six days before the sitting of the court, summon the persons named in the list, to attend such court. Any person summoned as a juror, who neglects to attend, may be fined by the court, not exceeding twenty-five dollars. Of the whole number summoned, twelve sit on every trial; and all must agree in their verdict. They are in charge of the sheriff, as jurors in justices' courts are in charge of a constable.

§ 8. *Grand juries.* It is one of the excellencies of our government, that the liberty and lives, as well as the property, of the people, are protected by a constitutional provision, securing to every person the right to be tried by a jury of his equals. (Cons. N. Y. art. 1, § 1, 2; Cons. U. S. amend. art. 6.) As the liberties and lives of men are more valuable than their property, they should be most safely guarded. Hence the constitution (Art. 1, § 7,) declares, that no person shall be put upon trial, without the previous judgment of a grand jury that he ought to be tried; and every court which has jurisdiction in cases of crime, has a grand jury.

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the names of petit jurors obtained? What are their qualifications? § 6  
 What is done with the list? How and when are the jurors drawn? § 7  
 Who summons the jurors? How many sit on a trial? § 8. Where is pro

§ 9. Grand jurors are thus obtained : The board of supervisors of the county, prepare a list of the names of three hundred men, to serve as grand jurors at the courts of oyer and terminer and general sessions, and deliver it to the county clerk. The list is disposed of, the names are drawn, and the jurors summoned, as in the case of petit jurors. The names of twenty-four men are drawn, but not more than twenty-three, nor less than sixteen, may be sworn on a grand jury.

§ 10. On the opening of the court, the jurors are sworn by a judge, to make a true presentment of all things given them in charge. The judge then gives them a charge, and appoints one of their number as foreman; and the jurors retire to a private apartment to attend to their duties.

§ 11. The jurors hear all complaints brought before them, against persons for crimes and breaches of the peace; and examine witnesses who appear to testify; and when it is requested, they have the assistance and advice of the district attorney. If they think the person complained of ought to be tried, they draw up a writing, in which they charge the person with the offence of which they think he is guilty. This is called an *indictment*. It is signed by the foreman, endorsed, "a true bill," and carried by the jury into court. At least twelve jurors must agree, or there is no indictment. If the person has not before been arrested, he may now be arrested, to be put upon trial. (See arrest and examination of offenders.)

§ 12. As all crimes are considered as committed against the peace and order of the community, the offender is complained of and tried in the name and in behalf of the people, who are the prosecuting party. The prosecution is managed by the district attorney, whose appointment and general duties have been mentioned.

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vision made for grand juries? § 9. How are grand jurors obtained? What number constitutes a jury? § 10. What is said of swearing them, charging them, &c.? § 11. What is their business? What is an indictment? § 12. In whose name are offenders prosecuted?



## CHAPTER XXVII.

*Time of commencing Actions.*

§ 1. THERE are times fixed by law, within which actions must be commenced, or they cannot be maintained. If a man has a right or title to *real estate*, he must bring his action within twenty years. If neither he, nor his ancestor, predecessor or grantor has had possession of the premises within twenty years before the suit is commenced, he cannot recover the estate.

§ 2. Actions brought for *debts* of most kinds, for trespass, for injury to goods and chattels, fraud, and for certain other injuries to the persons or rights of individuals, must be commenced within *six years*. If the demand is an open or running account, the action may be commenced within six years from the date of the last item of the account of either party.

§ 3. An action against a sheriff or constable for a violation or omission of duty, except for an escape, must be brought within *three years*. Actions for libel, slander, assault, battery, and false imprisonment, within *two years*.

§ 4. Persons under age, or insane, or imprisoned on a charge of crime, or in execution under sentence of a criminal court, or married women, are not deemed capable of commencing suits, until their disability be removed. And they may commence suits within the time prescribed by law after they shall have become capable.

§ 5. If a person entitled to bring an action, dies before the expiration of the time limited for commencing suits, his executors or administrators must bring the action within one year after his death. If a person departs from and resides out of the state, the time of his absence is not to be deemed or taken as any part of the time limited for the commencement of the action.

§ 6. Actions for collecting fines or penalties, must be brought.

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§ 1. Within what time must actions relating to real estate be commenced? § 2. In what cases within six years? § 3. What within three years? Two years? § 4. In what cases is the time extended? § 5. What is the time in certain cases of death? § 6. What for collecting fines and penalties?

within two years after the offence has been committed. If the penalty or forfeiture goes wholly or partly to the person prosecuting for the same, the action must commence within one year after the offence has been committed. If no private citizen brings the action within that time, the attorney-general of the state or the district attorney of the county, may, within two years after that year, commence the action in behalf of the people of the state. Actions to recover forfeitures to the party aggrieved, must commence within three years after the offence has been committed.

§ 7. If any action is commenced within the times mentioned, and if the defendant dies after such suit is brought, and before judgment is obtained against him, the plaintiff may commence a new suit against the heirs, executors, or administrators of the defendant, within one year after his death. And if an action commenced abates by reason of the death of a plaintiff, his executors or administrators may commence a new suit within one year after his death.

§ 8. There are sundry other provisions relating to the commencement of suits, and some exceptions to the law stated, for a knowledge of which reference must be had to the statutes of the state.

§ 9. A judgment rendered in any court within the United States, and remaining unpaid for twenty years, cannot, after that time be collected, unless there has been a part payment, or a written acknowledgement of indebtedness, within that time. And a right of action on a sealed instrument will expire at the end of twenty years, unless a part payment, or a written acknowledgement of indebtedness, be proved to have been made within that time.

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§ 7. What is to be done when persons die after an action has been commenced? § 9. What is provided respecting judgments and sealed instruments?

## CHAPTER XXVIII.

*Of Rights.—The Right of Property; Title to Real Estate.*

§ 1. IN the foregoing chapters we have given a general description of the government of the state of New-York, and have seen how its important affairs are conducted; how the several departments, legislative, executive, and judicial are organized; and what are the powers and duties of the different classes of officers in these departments. We have seen in all this; how well our government is adapted to secure to the people the free exercise and enjoyment of their rights.

§ 2. But it is not enough to know *how* the laws are made and administered: it behoves every citizen to know *what* the laws are by which he is governed. Every member of the community has rights; and he ought to know what they are, and how they are protected. He has also certain duties to perform, which he ought to understand. I shall therefore proceed to give an abstract of those laws which define the rights, and prescribe the duties of our citizens, in their social and domestic relations.

§ 3. The rights of citizens are either rights of person or rights of property. By the rights of person, or personal rights, we mean the right to be free to think, speak, and act as we please, and the right to be secure from injury to our bodies or persons, and our good names. The right of property is the right to acquire, hold, and enjoy property. All *laws* may therefore be considered as being intended to secure either the one or the other of these classes of rights.

§ 4. The rights of citizens are secured by laws. These laws are, first, *statute laws*, the laws enacted by the law-making power of the state, called also the *written law*, being always written or printed; and secondly, the *common law*, which consists of rules that have become binding by long usage and established custom. The common law of this

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§ 1. What has been treated of in the former chapters? § 2. Ought we to understand our rights and duties? Why? § 3. What are rights of person? Rights of property? § 4. By what laws are our rights secured? Define

country is the same as that of England, having been introduced and established here while the people were subject to that country; and it is still considered the law in all cases where no law has been made to the contrary.

§ 5. Every citizen of the United States may hold lands within this state, and take the same by descent, devise, or purchase. To take land by descent, is to obtain it by inheritance. When a person dying, makes no previous disposal of his property, it falls, or *descends*, by right, to his children or other relatives: hence they are said to become heirs to the property by *descent*.

§ 6. But a person may direct his property to be given, after his death, to whomsoever he pleases. This is called devising property, or bequeathing it; and the person receiving the property is said to have acquired it by *devise*. And if a person pays for property an equivalent in money or some other property, he would have it by *purchase*.

§ 7. But though every *citizen* of the United States may hold real estate, and convey it to others, the like privilege is not enjoyed by all *aliens*. By the common law, aliens cannot hold and convey real property. In this state, however, a law has been enacted, by which an alien may make a deposition or oath, in writing, before any officer who is authorized to take proof of deeds, that he resides and intends to reside in the United States, and to become a citizen as soon as he can be naturalized; and when this deposition, certified by such officer, shall have been filed and recorded by the secretary of state, such alien may take and hold real estate, as any citizen of this state, to himself and his heirs forever.

§ 8. It is provided, also, that the alien may, for six years, sell, assign, and devise such estate, and no longer, until he becomes naturalized. But he cannot in any case lease or demise his real estate, before he is naturalized. If he shall die at any time within the six years, without making a will, his heirs take by descent, and hold the property as if he had been a citizen.

§ 9. *Title to real property by descent.* The laws of this

dom. § 5. In what different ways may titles to lands be acquired? How is the title acquired by descent? § 6. How by devise? By purchase? § 7. Can all aliens hold and convey real estate? How may they acquire the right to take and hold it? What right has he to convey it? § 9. Who are

state prescribe the order in which the property of intestates descends to their heirs. A *testament*, or will, is a written instrument, in which a person declares his *will* concerning the disposal of his property, after his death. The person making a will is called *testator*: hence, a person dying without making a will or testament, is called an *intestate*.

§ 10. The property of an intestate descends, first, to his lineal descendants, that is, persons descending in a direct line, as from parents to children, and from children to grand children. The lineal descendant most nearly related to the intestate, however distant the relation may be, takes the property.

§ 11. If any children of an intestate are dead, and any are living, the inheritance descends to the children living, and to the descendants of the children dead; so that each child living shall receive such share as he would receive if all were living, and the children of those who are dead such share as the parents would receive if living. To make this plain: suppose an intestate to have had three sons, one of whom is dead, but has left children. In this case, each of the sons living would share one third of the property, and the children of the other son would have the remaining third.

§ 12. If an intestate dies without lawful descendants, and leaves a father, the inheritance goes to the father. If, however, the inheritance came to the intestate on the part of the mother, it does not go to the father while the mother is living; and after her death he holds it only during his life, and then it goes to the brothers and sisters of the intestate and their descendants, if he has any; but if not, it descends to the father in fee; that is, it becomes his in his own right, and may descend to his heirs.

§ 13. If the intestate has neither descendants nor father, or has not a father who is entitled to take the inheritance, but leaves a mother, the inheritance goes to the mother during her life, and after her death to the brothers and sisters of the intestate and their descendants, if he has any; but if not, it descends to the mother in fee.

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intestates? Define testament or will. Who is a testator? § 10. To whom first does property descend? § 11. How, when any children of an intestate are dead? § 12. How when he has no lawful descendants? § 13. Who

§ 14. In case there is neither father nor mother, or none that can lawfully inherit the estate, it descends to the living brothers and sisters of the intestate, and the descendants of those that are dead. If he has neither father nor mother, nor brothers and sisters or their descendants, the estate, if it came to him on the part of his father, goes to his father's brothers and sisters and their descendants, if any; but if not, then to the mother's brothers and sisters and their descendants.

§ 15. If the intestate has neither father nor mother, nor brothers and sisters, or their descendants, and the estate came to him on the part of the mother, it descends first to the mother's brothers and sisters and their descendants; but if the inheritance came not on the part of either father or mother of the intestate, it descends equally to the brothers and sisters of both his father and mother.

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## CHAPTER XXIX.

### *Of the Proof and Recording of Deeds and Mortgages.*

§ 1. EVERY person capable of holding real property, may also dispose of and convey his right or interest in such property to another person. To *convey* here means to transfer, or pass over to others, the right or ownership of property, so that they shall have the same interest in it as the person conveying it had before he conveyed it. Hence, the writing by which a right is thus transferred, is called a *conveyance*; but more frequently the instrument by which a title to land is conveyed, is called *deed*.

§ 2. A purchaser of land could not securely hold it without a deed; because a person's deed is the only lawful evidence of his being the true owner. If a person should buy

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he has neither descendants nor father? § 14. When he has neither descendants, nor father nor mother? § 15. How when there are neither brothers nor sisters or their descendants?

§ 1. Who may convey real estate? What is it to convey? What is an instrument of conveyance called? § 2. What is the use of a deed? § 2.

a farm without taking a deed of the seller, the seller might dispose of it to a second purchaser; and if he should give him a deed, such second purchaser, having a deed to show that he had bought the farm, might dispossess the first purchaser.

§ 3. Whenever, therefore, any real estate is to pass from one to another, the seller gives the buyer a deed. The deed states the names of the parties, the sum paid, the place where the land is situated, its boundaries, and the number of acres it contains. And as evidence of the sale, the seller affixes his name and seal to the instrument. This is generally done in the presence of one or more persons, who subscribe their names as witnesses; so that in case of dispute, the purchaser may know by whom to prove that the deed was executed by the person whose name it bears.

§ 4. But when a deed has been thus executed, the purchaser is not yet safe, unless he has had it recorded in the office of the clerk of the county in which the land lies. If it should be conveyed by the seller to a second purchaser, who should get his deed recorded first, such purchaser would hold the land.

§ 5. Before a conveyance is recorded, the person executing it must acknowledge, before a proper officer, that he executed the conveyance; and the officer must certify in writing on the back or margin of the instrument, that the person did so acknowledge. All judges of courts, and justices of the peace, may take acknowledgments. In some of the larger cities there are other persons specially appointed, called commissioners of deeds, who also may take acknowledgments. Every deed duly acknowledged and delivered to the county clerk to be recorded, is, with the acknowledgment, copied at length, word for word, in a book provided for that purpose.

§ 6. Lands are also conveyed by mortgage. A mortgage is a writing which conveys to another person a right to property as security for the payment of a debt, and is to have no force or effect when the debt is paid. A mortgage conveys land in the same manner as a deed; but a condition is added,

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What does a deed contain? How is it executed? § 4. What must then be done with the deed? Why? § 5. What is required before a conveyance is recorded? How is it proved or acknowledged? § 6. Describe the na-

stating, that if the debt for which the land is pledged shall be paid by a certain day, the instrument shall no longer have effect.

§ 7. When land is sold, and any part of the purchase money is to be paid at a future day, the seller usually conveys the land by deed to the purchaser; and the purchaser executes a mortgage to the seller, pledging the land as security for the payment of the money remaining unpaid. A mortgage also contains a condition, that if the money shall not be paid according to the agreement, the mortgagee, or person holding the mortgage, may sell the land to raise the money due; but if he sells it for more than that amount, the overplus must be paid to the mortgager.

§ 8. A wife must join with her husband in conveying land, by signing the deed with him; otherwise, if the husband should die, his widow would have a right to one third part of the estate during her life. This portion of a widow, thus retained, is called *dower*. It is common, therefore, for the wife also to sign the deed; and she must also acknowledge, before the officer taking the acknowledgment, and apart from her husband, that she signed the deed freely and without compulsion of her husband.

§ 9. When the debt secured by a mortgage on real estate has been paid, the mortgage is discharged thus: The person holding the mortgage, certifies in writing that the debt has been paid, and the certificate is acknowledged or proved, as conveyances are in order to be recorded, and presented to the clerk, who records such certificate and the proof or acknowledgment thereof. The mortgage is then discharged.

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ture of a mortgage? § 7. In what cases are mortgages given by a purchaser of land? What condition does it contain? § 8. Why must a wife sign a conveyance with her husband? What is this right of a widow called? How and what must she acknowledge? § 9. When and how is a mortgage cancelled or discharged?



## CHAPTER XXX.

*Of Leases ; and the Rights of Landlord and Tenant*

§ 1. To *lease* means to let; but generally to let real estate to another for rent or reward. The word *demise* is often used instead of lease. The landlord, or person leasing the estate, is called lessor; and the tenant, or person to whom the land is leased, is called lessee.

§ 2. A lease of real estate, or a contract for leasing, for a longer term than one year, in order to be valid or binding, must be in writing. Leases for a term longer than three years, must be proved and recorded as deeds and mortgages; and if for life, they must be sealed. These provisions do not extend to leases for years, or for life or lives, in the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware and Schenectady.

§ 3. The term of leases of agricultural land is, by the new constitution, limited to twelve years. No leases or grants of such land made after the adoption of the constitution, for a longer period than twelve years, shall be valid. (Cons. Art. 1, § 14.)

§ 4. A person to whom land is let, to hold at the will or pleasure of the lessor, is a *tenant at will*. Also if a tenant keeps possession of premises beyond the term for which he hired them, he is called a tenant at will, or *by sufferance*. And the lessor or landlord may take possession of the premises after he shall have given the tenant one month's notice to quit the same.

§ 5. But the landlord must take possession peaceably. The law declares that no entry shall be made upon any lands or other premises, by force; nor shall possession be held by force or violence, though entry shall have been made peaceably. To keep an unusual number of people, or unusual

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§ 1. Define the words lease, demise, lessor, lessee. § 2. What leases must be in writing? What leases recorded? Sealed? What counties excepted? § 3. To what term are leases restricted? § 4. Who are tenants at will, or at sufferance? What notice to quit is required? § 5. May a land-

weapons, or threaten bodily hurt, is deemed to be force, though actual violence be not used.

§ 6. A person forcibly put out, or held out, may recover possession by making complaint to a county judge, accompanied by an affidavit of the facts in the case; whereupon the judge issues a precept ordering the summoning of a jury to inquire into such forcible entering or holding; and if the defendant is found guilty, the judge orders the sheriff or constable to cause the plaintiff to be restored to the possession of the premises.

§ 7. But the landlord has a remedy at law. If a tenant at will or by sufferance does not quit the premises after the one month's notice required by law to be given, he may be removed by any judge of the county court of the county, or by any justice of the peace of the town or city, or by the mayor or recorder of the city in which the premises are situated.

§ 8. The landlord or lessor, his legal representatives, agents or assigns, make oath, in writing, to the facts which authorize the removal of the tenant, and present the same to one of the officers named in the preceding section, who issues a summons requiring any person in possession of the premises, to remove forthwith from the same, or show cause why possession should not be delivered. If the facts upon which the summons was issued shall be denied, the matters controverted shall be tried by a jury, provided either party demand a jury and shall pay the costs of the same.

§ 9. If at the time appointed no cause is shown to the contrary, the magistrate issues his warrant to the sheriff, or a constable, commanding him to remove all persons from the premises, and put the applicant in possession.

§ 10. If the proceedings were had before a justice of the peace, such proceedings may be removed by appeal to the county court of the county.

§ 11. A tenant also who holds over without permission after rent is due and remains unpaid, may be removed by any of the officers before mentioned. But the person entitled to the rent must first have demanded the same, or have served upon the person owing such rent, three days' notice, in writing, requiring him to pay or give up the premises.

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lord enter forcibly? § 6. How can possession be regained by a tenant forcibly put or kept out? § 7. By whom may the tenant be removed? § 8, 9. Describe the proceedings in such case. § 10. In what cases may appeal be had? § 11. How and when may a tenant be removed for non-payment of

§ 12. If a tenant shall give notice of his intention to quit, and sha'l not quit at the time specified in such notice, he will be liable to pay double rent for the time he shall thereafter continue in possession. And a tenant for life or years who wilfully holds over after such terms, and after demand made an l one month's notice to quit, is liable to pay double rent for the time so held over.

§ 13. If a half year's rent or more is in arrear, and if the landlord has a right by law to re-enter, he may bring an action of ejectment, to recover possession of the premises. But at any time within six months after possession has been taken by the landlord, the tenant shall be again entitled to the same, by paying the costs of the action and the rent due.

§ 14. If a tenant is evicted from leased premises by a person having a better title than the lessor, the tenant is not bound to pay the rent; for the obligation to pay ceases when the consideration of it ceases.

§ 15. If a lessee expressly agrees to hire for a definite term, he is bound to pay rent for the whole term, even though the premises should be destroyed before the term shall have expired. But a lessee may guard against a loss of this kind by inserting a condition in the lease.

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rent? § 12. In what cases are tenants liable for double rent? § 13. In what cases here mentioned may an action of ejectment be brought? What right is reserved to the tenant? § 14. Is a tenant, evicted by paramount title bound to pay rent? § 15. If premises are destroyed does the rent cease?

## CHAPTER XXXI.

*Of Wills and Testaments.*

§ 1. REAL estate may be given and bequeathed by a last Will and Testament, by all persons of sound mind, and of the age of twenty-one years, except married women; and personal estate may be so bequeathed by every male person over eighteen years, and by every unmarried female over sixteen years.

§ 2. A will must be subscribed by at least two attending witnesses, in whose presence the testator must subscribe the will, or acknowledge that he subscribed it, and declare it to be his last will and testament. The places of residence of the witnesses must also be written opposite to their names; and any person who shall sign the testator's name by his direction, must write his own name, as witness to the will. A will thus made is valid, unless revoked or altered by a later will or writing, executed in the same manner; and the will of an unmarried woman is revoked by her subsequent marriage.

§ 3. If a testator, after making his will, has a child born for which no provision is made, nor which is in any way mentioned in the will, the child is entitled to such portion of the estate as it would receive if the father had died intestate.

§ 4. After the death of a testator who has bequeathed *real estate*, any executor, or any person interested in the estate, may have the will proved, which is to be done before the surrogate. (See Chap. 20.) An *executor* is a person named in the will of a testator, or otherwise appointed, to see the will carried into effect. The person intending to apply for the proof of a will, must first give notice of his intention to the heirs; and if any of the heirs are minors, notice must be given to their guardian; and if they have no guardian the surrogate must appoint one. If it shall appear to the surrogate, upon the proof taken, that the will was duly exe-

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§ 1. Who may give and bequeath real estate? And who personal estate?  
 § 2. How is a will made? How may it be altered or revoked? What is revoke?  
 § 3. What right has an after-born child? § 4. Who may have a will proved? What is an executor? What must be done in order to get

cuted, he records the will and the proofs and examinations taken in a book.

§ 5. When a will of *personal estate* is to be proved, the widow and next of kin must be cited to attend the probate. And when applied to by any person interested, the surrogate issues a citation to the person having custody of the will, requiring him to produce it at the appointed time, to be proved. The person refusing so to do, may be committed to jail until he shall produce it.

§ 6. At the expiration of thirty days after a will of personal estate has been proved, the surrogate issues letters testamentary, to the persons named therein as executors, if within that time no person interested in the estate has filed objections with the surrogate, against granting such letters. *Letters testamentary* give to executors the right and authority to act. *Letters of administration* give like authority to persons whom the surrogate appoints, in case no will has been made; which persons are called *administrators* instead of executors.

§ 7. If all the persons named in a will as executors refuse, or are not by law qualified to serve, letters testamentary shall issue, and administration with the will annexed shall be granted, to some of the legatees. A *legatee* is a person to whom property is bequeathed by will. If there is no legatee, or none who will serve, the letters are granted to the relatives of the deceased, in the same order and manner as letters of administration in cases of persons dying intestate.

§ 8. If a person dies intestate, the fact of his so dying must be proved, to the satisfaction of the surrogate, who grants letters of administration to the relatives of the deceased who are entitled to succeed to his personal estate, in the following order: First, to the widow; second, to the children; third, to the father; fourth, to the brothers; fifth to the sisters; sixth, to the grand children; seventh, to any other next of kin entitled to any share of the estate.

§ 9. *Disposal of the property.* It is the duty of executors

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a will proved? § 5. What in case of a will of personal estate? After proof of such will, what does the surrogate do? What are letters testamentary? Letters of administration? § 7. What if the executors named in a will refuse to serve? What is a legatee? What if there is no legatee to serve? § 8. What if a person dies intestate? In what order are letters of

and administrators, with the aid of two *appraisers* appointed by the surrogate, to take an inventory of all the goods, chattels, notes, bonds, and other securities and property other than real estate; and the appraisers estimate and appraise such property.

§ 10. If the deceased leaves a widow and minor children, certain articles of household utensils, books belonging to the family library to the amount of fifty dollars, clothing, and sundry other necessary articles, are to remain in possession of the widow while she continues to live with and provide for the children. Such articles are to be included in the inventory, but not to be appraised.

§ 11. When a widow ceases to provide for the children, she may retain as her own, her wearing apparel, her ornaments, and one bed and bedding; and the other articles exempted shall belong to the children. If there is a widow, but no children, the articles exempted belong to the widow.

§ 12. If the debts against the deceased, and the legacies bequeathed by him, cannot be paid without a sale of his personal property, the executors or administrators may sell so much of it as may be necessary to pay the debts and legacies. If they discover, after filing the inventory, that the personal estate is not sufficient to pay the debts, they may, at any time within three years after the granting of their letters, apply to the surrogate for authority to mortgage, lease, or sell so much of the real estate of the deceased as shall be necessary to pay his debts.

§ 13. All money received from the sale of real estate, must be paid to the surrogate, who first pays the expenses of sale, and next satisfies the widow's claim of dower, by setting a part one-third of the money, and securing to her the annual interest during her life; unless she shall consent to take a certain sum in lieu of her dower. If the remainder is not sufficient to pay all the debts of the deceased; it is divided by the surrogate among the creditors, in proportion

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administration granted to his relatives? § 9. By whom is the inventory of the personal property made? § 10. In what case are certain articles not appraised? What articles? § 11. When the widow ceases to provide for the children, what? If there is a widow and no children, what? § 12. In what case must personal property be sold? If personal property is insufficient to pay debts, what? § 13. How is money received from the sale of

to their respective debts ; but if the proceeds of the sale are more than sufficient to pay all debts and expenses, the overplus is distributed among the heirs and devisees, in proportion to the right of each in the premises sold.

§ 14. Public administrators are persons who take charge of the effects of persons dying intestate, and leaving no widow or relative who is entitled or competent to take letters of administration. The county treasurer of every county is such administrator in his county, and has authority to collect and take charge of the assets of every such intestate, when they amount to one hundred dollars or more. In the city of New-York, a public administrator is appointed by the common council.

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## CHAPTER XXXII.

*Of the Domestic Relations.—Of Marriage, and the Relation of Husband and Wife ; Parent and Child ; Guardian and Ward.*

§ 1. THE marriage relation is a most important one. By improper marriages many persons are rendered unhappy for life ; and sometimes the peace of whole families is destroyed. Some law, therefore, is necessary to prevent such marriages, as far as possible, by declaring what kinds of marriages may, and what kinds may not be contracted.

§ 2. To make a marriage contract binding, several things are necessary : (1.) Persons must have sufficient understanding to transact the common business of life : hence lunatics and idiots cannot bind themselves in marriage.

§ 3. (2.) The parties must not be nearly related to each other. Marriage between parents and children, including grand parents and grand children of every degree, and between brothers and sisters, of the half as well as whole blood, are not binding. Persons thus related to each other, and cohabiting together as husband and wife, whether married or

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real estate distributed ? § 14. Who are public administrators ?

§ 2. Can persons of unsound minds lawfully marry ? § 3. What near

not, are deemed guilty of *incest*, which is a crime punishable by imprisonment in a state prison.

§ 4. (3.) Persons must be of sufficient age. There is no law enacted in this state fixing the age at which parties may contract marriage. In such case the common law must govern, which allows males to contract marriage at the age of fourteen years, and females at the age of twelve. But though marriages are considered lawful at these ages, it must not be supposed that they ought to be contracted by persons so young. They are merely allowed, because, when they are once formed, though unwisely, the evil of separating the parties may be greater than it would be to suffer them to be united.

§ 5. (4.) Persons must act freely. If the consent of either party has been obtained by force or by fraud, the marriage may be declared void.

§ 6. (5.) A person having a wife or husband living, cannot lawfully contract a second marriage, except when the former wife or husband has been sentenced to imprisonment for life; or has been absent for five years together, and the party remarrying not knowing that the absent party was living within that time; or when the former marriage has been lawfully annulled or dissolved. But if a marriage has been dissolved for the cause of adultery, the guilty party may not re-marry.

§ 7. Marriages forbidden by the preceding provisions are void, and may be so declared by the supreme court, which has power also to decree divorces, or dissolve or annul marriage contracts, in certain other cases. It may also decree separations or divorces, for a limited time or forever, when a husband cruelly treats his wife, or so conducts towards her as to render it unsafe for her to cohabit with him, or abandons her, or refuses to provide for her.

§ 8. Marriage may be solemnized, that is, the marriage ceremony may be administered, by ministers of the gospel, judges of county courts, and justices of the peace; and by

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relatives may not marry each other? What is incest? § 4. What is the age of consent, or in other words at what age may persons lawfully marry? § 5. What is said of a forced or fraudulent marriage? § 6. In what cases may a person marry a second time while the former wife or husband is living? § 7. Who declares forbidden marriages void? In what cases does he decree separations or divorces? § 8. Are marriages lawful unless sol-



mayors, recorders, and aldermen of cities. But a simple consent of the parties, declared before witnesses, renders a marriage lawful.

§ 9. By marriage the husband and wife become, in law, one person. By the common law, the husband acquires full right to all the personal property of the wife, and to the use, rents and profits of her real estate, during his life. But a law of 1848, secures to a wife in this state all the real and personal estate owned by her before marriage, and conveyed to her by any person other than her husband after marriage; except that property owned by her at the date of this act, is liable for the debts of her husband contracted before the passage of this act.

§ 10. As the husband acquires, by marriage, an interest in his wife's property, so he is obliged to pay her debts contracted before marriage: but if they are not recovered of the husband during the time he is united to her in marriage, he is no longer answerable for her debts.

§ 11. It is the duty of the husband to maintain his wife; and he is bound to pay debts which she may contract of necessities, but for nothing more. And it seems to be the law, that even if he forbids all persons to trust her, she can bind him for necessities, if they have become separate through fault on his part. If they part by consent, and he secures to her a separate maintenance, and pays it according to agreement, he is not answerable even for necessities.

§ 12. The husband and wife can not be witnesses for or against each other in a court of justice; but any declarations which a wife makes when acting as the agent of her husband, may be taken as evidence against him.

§ 13. *Parent and child.* It is the natural and reasonable duty of parents to maintain and educate their children until they become of suitable age to provide for themselves. The age at which the obligations of parents, as guardians of their children, end, is twenty-one years, which is called the age of *majority*, when persons are said to be *of age*. Hence, under

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emnized by ministers or magistrates? § 9 What right to a wife's real estate does a husband acquire by marriage? What right to her personal estate? § 10. How far is he liable for her debts? § 11. How far is he bound by her contracts? § 12. Can they be witnesses for or against each other? § 13. When do children become of age? § 14. Can children dispose of

twenty-one they are in law called *infants*, or minors, and are said to be in a state of *minority*.

§ 14. As parents are bound to support their minor children, they have a right to their labor; and they may recover the money for the wages of their children, from any person employing them without their parents' consent. A parent is not bound to pay even for necessaries sold to a child, unless a child had authority from the parent, or unless the parent neglected to provide for the child, or forced him from home by severe usage. And when a child is obliged to support himself, he is entitled to his own earnings.

§ 15. A second husband is not bound to support the children of his wife by a former husband. If, however, he receives such children into his family, he is liable to support them as his own.

§ 16. If a father dies before the child is of age, and does not, by will, appoint a guardian, the mother becomes the guardian of the child, and in some cases of his property also, until he arrives at the age of fourteen years, when he may choose a guardian for himself. When an infant becomes possessed of an estate in lands, if there is no father, the mother has the guardianship of the estate; and if there is neither father nor mother, then the nearest and eldest relative takes the guardianship of such estate.

§ 17. *Guardian and Ward.* The father is the natural guardian of a child, and after his death, the mother. But a father may, by his deed, or last will, dispose of the custody and tuition of a minor child, while under twenty-one years, to another person, who then has the care and management of the minor's personal estate, and of the profits of his real estate, during the time for which the disposal was made. Such person is then guardian, and the child is called *ward*.

§ 18. If the father does not by a deed or by will appoint a guardian for a minor child, the child may, if fourteen years of age, apply to the surrogate for the appointment of

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their own labor? How far is a parent liable for his children's contracts? § 15 how far a second husband for his wife's children? § 16. If a father dies, who is guardian of the children? When there is neither father nor mother who becomes guardian of children's real estate? § 17. How may a father dispose of the custody of a minor child? Who is then called ward? § 18. If a father does not so appoint a guardian, what?

a guardian; and if the child is under fourteen years, any relative or other person may so apply for a guardian, until the minor shall arrive at the age of fourteen, and until another shall be appointed. A guardian must give a bond with surety, that he will faithfully discharge the duties of guardian, and render a true account of all the property and money received and disposed of by him.

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## CHAPTER XXXIII.

### *Minors; Masters, Apprentices, and Servants.*

§ 1. *Minors.* THE statutes of New-York do not declare how far minors may bind themselves by contract or agreement. In such case, the common law must determine. In general, a minor is not bound by a bargain which he may make; but if he agrees, after becoming of age, to fulfil a contract which he made while a minor, he must do so. And if he has no father or other guardian, he is bound to pay for articles actually necessary for him. But the person who trusts him must make inquiry; and if the minor has been properly supplied by his friends, the person trusting him cannot recover; nor can he in any case recover more than the actual value of the goods sold to the minor.

§ 2. But minors are responsible for the payment of fines; and they may be prosecuted and tried for acts of fraud and crime. It is not easy, however, to determine, from the practice of courts of law, in what particular cases a minor is or is not accountable for fraudulent acts. His age, and the circumstances in which he was placed, might be such as to free him from obligation; but an act of gross and palpable fraud, committed by an infant who has arrived at the age of discretion, would bind him to a contract.

§ 3. *Masters, apprentices, and servants.* By the laws of New-York, male infants, and unmarried females under eighteen years, may, of their own free will, bind themselves,

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§ 1. Are minors bound by their bargains? In no case? § 2. Are they liable for fines? How in case of fraud and crime? § 3. For what time may minors bind themselves as apprentices and servants? By whose con-

in writing, to serve as apprentices or servants, in any trade or employment; males, until the age of twenty-one, and females, until the age of eighteen, or for a shorter time. A minor thus binding himself must have consent of the father; or if the father is dead, or disqualified by law, or neglects to provide for his family, then consent must be had of the mother; or if the mother is dead or disqualified, then of the guardian; or if there is no guardian, then of the overseers of the poor, or two justices of the peace, or a judge of the county court.

§ 4. Children that have become chargeable to the town or county for their support, may be so bound out by the overseers of the poor, or by the county superintendents of the poor; and executors who have been directed by the last will of a father to bring up a child to some trade or calling, may bind the child to such service. And the law properly requires, that the person to whom a child is bound by the superintendents or overseers of the poor, shall agree to cause the child to be taught to read and write, and if a male, to be instructed in the general rules of arithmetic, and at the end of the service, to give such apprentice a new bible.

§ 5. Apprentices who wilfully absent themselves from service without leave of their master, may be compelled to serve double the time of absence, unless they pay for the injury sustained by such absence; and for ill behavior, or refusal to work, they may be tried by any two justices of the peace of the county, and imprisoned; or the justices may discharge the offender from his service, and the master from his obligation.

§ 6. A master may correct his apprentice with moderation, for misbehavior. He is liable to pay for necessaries for his apprentice, and for medical attendance; but he is not so liable in the case of hired servants.

§ 7. There is, in this state, no statute law defining the rights and obligations of hired servants and the persons employing them. Both are obliged to fulfil their agreement. If a hired servant leaves the service of his employer,

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sent! § 4. By whom are pauper children bound? In what case do executors bind out children? § 5. To what is an apprentice liable if he leaves his master? To what for ill behavior? § 6. What power has the master? For what is he liable? § 7. What if a hired servant does not serve out his

without good cause, before he has worked out the time for which he was hired, he cannot recover his wages. And for immoral conduct, wilful disobedience, or habitual neglect, he may be dismissed. On the other hand, ill usage, or any failure on the part of the employer to fulfil his engagement, releases the laborer from his service.

§ 8. How far a master is answerable for the acts of his hired servant, is not clear. As a general rule, however, the master is bound by contracts made, and liable for injuries done, by a servant actually engaged in the business of his master, whether the injury proceeds from negligence or from want of skill. But for an injury done by a wilful act of the servant, it is considered that the master is not liable.

§ 9. If the servant employs another to do his business, the master is liable for the injury done by the person so employed. But a servant is accountable to his master for a breach of trust, or for negligence in business, or for injuring another person in his master's business.

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## CHAPTER XXXIV.

### *Of Fraudulent Conveyances; and of Contracts in General*

§ 1. PROPERTY is sometimes fraudulently conveyed from one person to another. Debtors often put their property into the hands of others, to be kept from being taken to pay those whom they owe. With the same intent, property is frequently assigned to others, by way of mortgage, with the false pretence that the assignment is made for the security of a debt, when no such debt is honestly due; and when the property mortgaged is to remain in possession of the person conveying it, with the understanding that the mortgagee is never to take it.

§ 2. To prevent such fraudulent conveyances and sales

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term? For what cause may he be dismissed? For what may he leave?  
 § 8. In what cases are masters liable for acts of servants? § 9. If a servant employs another, what? For what is a servant accountable?

§ 1. How is property sometimes fraudulently conveyed? § 2. What

of property, the law declares, that all deeds of gift, and all transfers of goods and chattels, made by any person to secure them for his future use, shall be void, and shall not prevent them from being taken and sold to pay his debts. And to protect creditors against losses, the law also prescribes the manner in which sales and conveyances of property must be made, to be considered honestly done.

§ 3. Now as a sale or an assignment is more likely to be fraudulent when the property remains with the seller or assignor, than when the assignee takes it into his own possession, it has long been a settled principle of law, that if property assigned or sold continues with the person pledging or selling it, the transaction is to be deemed fraudulent, and the property may be taken by creditors.

§ 4. This principle of the common law has been in some measure changed, in this state. Our law establishes the same general principle, but provides, that if the person to whom a sale or an assignment is made, can make it appear that it has been done in good faith, and without any intent to hinder, delay or defraud creditors, he may hold the property, although it remains with the seller or assignor.

§ 5. But although this law affords security to the man who honestly takes an assignment of property for the security of a debt, yet the mortgager, having it still in his possession, might fraudulently sell it to a second purchaser, who would afterwards be compelled to give it up, and so suffer loss. To prevent this, the law requires, that any person to whom personal property is pledged, shall deliver the mortgage to the town clerk, to be filed and kept in his office; or where there is a county clerk's office in the town, the mortgage must be filed in such office; that any person wishing to know whether such property is under mortgage or not, may ascertain the fact at such office. And it is farther required, that the assignment be under seal, and renewed at the end of one year from its date, and from the date of each renewal.

§ 6. A contract for leasing land for a longer period than one year, or for the sale of land, or of any interest in land,

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general provision of law has been made to prevent this? § 3. If property remains with the seller, what is to be supposed? § 4. What does the law of this state provide in such cases? § 5. How is a second purchaser in danger of loss? What law has been made to prevent this? § 6. How are

is declared to be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party making the lease or sale, or by his lawfully authorized agent. By *consideration* is here meant the price, or any thing that is the cause or reason for which a person enters into an agreement. Thus the money paid or to be paid for a farm, is the consideration for which the seller grants it to the purchaser.

§ 7. In this state, an agreement which is not to be performed within a year from the time it is made; and a special promise to pay the debt or answer for the default of another person, must be in writing. And a contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or more, is void, without such writing, unless the buyer accepts and receives a part of the goods or of the evidences of them; or unless the buyer at the time pays some part of the purchase money.

§ 8. Much that relates to the nature of contracts is to be learned from the common law. As has been said, there must be some valuable consideration upon which a promise to do a thing is made; and there must be a mutual promise of both parties, to make a bargain binding; but the consideration may be something else than money or property; it is sufficient if it is any thing that is either a benefit to the party promising, or some loss or trouble to the party to whom the promise is made.

§ 9. A says to B, if you will deliver to me twenty bushels of wheat to-morrow, I will pay you twenty dollars for it. Now if B brings the wheat, A is not obliged to take it and pay the price offered, because B did not on his part promise to deliver it. But if B had so promised, A would be bound to fulfill, because B has fulfilled on his part. The consideration in the case is the promise of each; and the party that fails to fulfill, is liable to the other for the damage sustained.

§ 10. If you buy a horse to-day to be delivered to you

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contracts for leasing land made binding? What is consideration in a contract? § 7. What other contracts must be in writing to be binding? How may an unwritten contract for fifty dollars be made binding? § 8. What consideration other than money makes a contract valid? § 9. Give an example. § 10 Which party runs the risk of accident to property? § 11

to-morrow, and the horse should die before delivery, the loss is yours. The risk of accident to property is, in such cases, with the buyer. A buyer becomes the *owner* of property as soon as the contract is completed; but he is not entitled to take it into his possession till he pays or tenders the price, unless he has bought on a credit.

§ 11. An agreement to do what is impossible to be done, or what is unlawful; or an agreement that is made under some threat or fear, is not binding. Idiots are not bound by their contracts; nor are lunatics bound by any agreement made while they are insane.

§ 12. A person cannot give to another a title to what he does not himself own. A man buying a stolen horse cannot hold him, but must give him up to the owner. The thief, having no lawful title to the horse, could give no title. And if the horse should be sold ever so often, the owner has a right to take him wherever he finds him, by proving him to be his; and each purchaser must look for redress to the person who sold him the property.

§ 13. Frauds are often committed in selling articles that are faulty or unsound. It is the general rule of law, that if the seller does not expressly warrant an article, or if there is no fraud on his part, the buyer must abide the loss if the article proves defective. But if the seller conceals the defect knowing it to exist, he is liable to make good the damage.

§ 14. There is much written in the books concerning contracts; but it is not easy to find a law to apply to every contract that may be made. A large portion of the lawsuits are caused by the failure of persons to fulfill their engagements. If all would practise and encourage honest dealing, and endeavor to be faithful in discharging their obligations, there would be little need of studying the law of contracts; much money now spent in lawsuits would be saved, and many unkind feelings between man and man would be prevented.

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What agreements are never binding? § 12. Can a man give a title to what is not lawfully his own? State a case? § 13. what is the law about warranting property? § 14. What is said about the law of contracts?



## CHAPTER XXXV.

*Of Principal and Factor, or Agent; and of Lien.*

§ 1. A *principal* is one who employs another, as *agent*, to transact his business. A *factor* is an agent; but the word *factor* is generally understood to mean a *commercial agent*; that is, one who is employed by merchants residing in a distant place, to buy and sell, and transact business for them. Thus, country merchants send their wheat, pork, pot-ashes, and other country produce, and millers send their flour, to their agents in the city of New-York, to be disposed of. The owners of the property are called *principals*; their agents are factors, or, as they are perhaps more frequently called, *commission merchants*. As receivers of property consigned to them, they are also called *consignees*, and the persons who consign or commit to them their property, are *consignors*.

§ 2. For the accommodation of the principal, the factor sometimes pays him a part of the value of the produce before it is sold. This is called *advancing money*. But factors would seldom advance money without security. They have, therefore, by law, a claim on the property on which they advance the money; and they can hold it till they shall have been paid their charges against the owner. And as a factor does not always know who is the actual owner, the person in whose name the goods are shipped, is to be considered the owner.

§ 3. This claim which a factor has upon goods intrusted to him for sale, is called *lien*; and the factor may sell the goods, and retain out of the proceeds of the sale, what is due him; and the remainder he must pay to the principal, or owner.

§ 4. But a person cannot sell or pledge property committed to him for transportation or storage only; nor can a factor pledge goods intrusted to him for sale, as security for

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§ 1. Define principal and factor. Who are consignees? Consignors?  
 § 2. What is advancing money? How is a factor secured? § 3. What is this claim of a factor called? § 4. In what cases cannot a factor sell or

his own debts. A factor who disposes of any merchandise intrusted or consigned to him, and applies the avails to his own use, with intent to defraud the owner, may be punished by fine and imprisonment.

§ 5. How far, in ordinary business, a principal is bound by the acts of an agent, it is not easy to determine. As a general rule, however, a general agent, that is, one who transacts either all kinds of business for his employer, or business relating to some particular department, binds his employer or principal, by his acts, so long as he keeps within the general scope of his authority, even though he were expressly instructed not to do a particular act.

§ 6. But if an agent is employed for a special purpose, the principal is not bound by the act of the agent, if he passes the limits of his power. If I employ a man to go out and purchase a horse for me, without giving him authority to do any thing else, and if he buys a horse and a wagon, I am not bound to pay for the wagon, because the agent had power only to buy the horse.

§ 7. If an agent buys in his own name, he is himself liable; and although he does not disclose the name of the principal, the principal also is bound, if the goods come to his use, but not otherwise.

§ 8. A *lien*, as has been stated, is the claim of a factor or agent, upon property in his possession, as security for the payment of his charges. This right of lien extends to others than factors. It is intended also for the benefit of manufacturers and mechanics, and other persons carrying on business for the accommodation of the public.

§ 9. A merchant has a lien upon goods sold till the price is paid, if no credit has been stipulated for; and even when he agrees to give a credit, if the purchaser practises fraud in obtaining the goods, the seller may take them. These cases differ, however, from ordinary cases of lien, as the purchaser has not, in reality, acquired any lawful right to the property; and the merchant may dispose of the property as his own, which cannot be done in other cases.

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pledge property? For what, and how, is he punishable? § 5. In what cases, generally, is a principal bound by the acts of his agent? § 6. How is it in case of a special agency? § 7. How if an agent buys in his own name? § 8. Have others than factors the right of lien? § 9. What is here

§ 10. A shoemaker receiving leather to manufacture into shoes, may retain the shoes until he is paid for the making; a tailor has a lien upon the garment made from another's cloth; a blacksmith upon the horse he shoes; an innkeeper upon the horse or goods of his guest; and common carriers upon the goods they transport. But they cannot hold property for any other debt; nor have they a right to sell such property to satisfy their claim upon it. Whenever a person allows property to go out of his possession, he loses his lien.

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## CHAPTER XXXVI.

### *Of Partnership; and of Bailment, or the Delivering, Borrowing, Carrying, Letting, &c., of Property.*

§ 1. As much of the business of this country is done in partnership, it is necessary to learn what are the rights and responsibilities of partners. A *partnership* is the association of two or more persons for the purpose of carrying on any business, agreeing to divide the profits and bear the loss, in certain proportions. Persons forming a partnership, unite their money or capital. Sometimes one furnishes money, and another does the labor. Or, perhaps no money may be necessary, but each agrees to perform his share of the labor.

§ 2. All the members of a partnership are bound by the act of any one of them, or by any contract which either of them may make. Although they agree to divide their gains and losses, either one of them is liable for all the debts of the partnership. If one of the concern buys property on his own account, for his individual use and benefit, he alone is liable; but though he thus buys it, if it be afterwards applied to the use of the partnership, all become liable.

§ 3. There are cases, however, when not all who share in the profits are responsible; as when a clerk or agent

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said of a merchant's right of lien? § 10. What is said of a mechanic's or manufacturer's lien? Of an innkeeper's?

§ 1. What is a partnership? § 2. How far are partners jointly liable? § 2. In what cases mentioned are not all liable who share in profits? § 4

agrees to receive a part of the profits as a compensation for his service or labor; or when one receives, as rent, a part of the profits of a tannery, tavern or farm. In these cases, although the parties share in the profits, there is no partnership; and the persons who buy the stock and other materials, and hire the labor necessary to carry on their respective trades, are alone responsible.

§ 4. One partner cannot bring a new partner into the firm, without the consent of all the others. If, therefore, a partner should desire to sell his interest to some other person, who is to take his place in the partnership, he cannot do so, unless all the partners consent to such sale.

§ 5. All the partners must unite in suing and being sued. Sometimes, however, there are secret or dormant partners, who conceal their names; these may not join in an action as plaintiffs, but they may be sued when discovered to be partners.

§ 6. As each partner is liable for all the debts of the concern, so each may, in the name of the firm, in ordinary cases, assign over the effects and credits to pay the debts of the firm.

§ 7. Any partner may withdraw when he pleases, and dissolve the partnership, if no definite period has been agreed on for the partnership to continue; but if, by the terms of agreement, it is to continue for a definite period, it cannot be dissolved before the expiration of the term, without the mutual consent of all the partners, except by the death or some other inability of one of them; or by a decree of the court of chancery. When a partnership is dissolved by the withdrawal of any of the partners, notice of dissolution ought to be given, or such partners will be liable for debts contracted by those who continue the business.

§ 8. By a law of this state, a partnership may be formed by a number of persons, some of whom are to be responsible only to a limited amount, and their names are not to be used in the firm. But before a partnership of this kind can do business, a writing and certificate signed by the parties,

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In what cases only can a partner sell his interest to a person not a partner? § 5. Must all the partners join in suing and being sued? § 6. What power has an individual partner to assign? § 7. In what case can any partner withdraw, and dissolve the partnership? § 8. What peculiar kind of part-

stating the terms of partnership and the amount for which the *special partners*, (as they are called) are to be responsible, must be registered in the county clerks office; and the terms of partnership must also be published in a newspaper, for six weeks.

§ 9. In partnerships thus formed, called *limited partnerships*, the special partners become liable only to the amount mentioned in the terms of partnership. The other partners, called *general partners*, whose names only are used, and who transact the business, are liable for all the debts contracted, as in ordinary partnerships. If such partnership is to be dissolved by act of the parties, before the time expires for which it was formed, notice of dissolution must be filed and recorded in the county clerk's office, and published in a county newspaper for four weeks prior to the dissolution.

§ 10. Another class of rights and responsibilities are those which arise from delivering and receiving property in trust, to be kept or used, and re-delivered, according to agreement. Such delivery and receiving includes giving and taking goods to be kept for and without reward; in security for debt; borrowing and lending; letting for hire; carrying, &c. These are comprehended in the word *bailment*, which is from *bail*, a French word, signifying to deliver.

§ 11. If a person takes goods to keep and to return them without reward, he must keep them with ordinary care, or if they receive injury, he will be liable to the bailor for damage; in other words, a bailee without reward is responsible only for gross neglect. The person with whom goods are deposited, is also called in law, *depository*. A depository may not use the goods taken into his care.

§ 12. A person who agrees to carry goods from place to place, or to do some other act or work upon or about them, without recompense, must use due diligence in performing the work; he is responsible for gross neglect, if he undertakes and does the work amiss; but it is thought that for agreeing to do, and not undertaking or doing at all, he is

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nership may be formed in this state? How is it formed? § 8, 9. Which are the special and which the general partners? If such partnership is dissolved by act of parties, what is necessary? § 10. The doing of what things is comprehended in the word bailment? § 11. For what is a man responsible if he takes goods to keep without reward? § 12. If he agrees

not liable for damage. Or if he has been strongly persuaded to do the act, only a fair exertion of his ability is required.

§ 13. A borrower is liable for damage, in case of slight neglect. If he applies the article borrowed to the use for which he borrows it, uses it carefully, does not allow another to use it, and returns it within the time for which it was borrowed, he is not liable.

§ 14. A person who receives goods in security for a debt or engagement, is liable for ordinary neglect. But if he bestows ordinary care upon the goods, and they should then be lost, he still has a claim upon the pawnor for the debt.

§ 15. When property is hired, that is, when something is to be paid for the use of an article, and it is injured by moderate usage, the owner bears the loss; but the hirer must not use it for any purpose but that for which it was hired, and he must return it promptly, or he is liable for damage.

§ 16. If an article is delivered, upon which work is to be bestowed, the work must be properly done. A manufacturer who receives your wool to make into cloth, or the tailor who takes cloth to make into a garment, must do the work well, or he is liable for damage. If the property should be lost or stolen, he is responsible for ordinary neglect.

§ 17. Innkeepers are, in general, responsible for all injuries to the goods and baggage of their guests, even for thefts. But for losses caused by unavoidable accident, or robbery, they are not liable.

§ 18. A common carrier, that is, one who carries goods for hire, as a common employment, is responsible to the owner even if robbed of the goods. But a person who occasionally carries goods for hire is not a common carrier, and is answerable only for ordinary neglect, unless he expressly takes the risk. A common carrier is one who holds himself out as ready to carry goods as a business, by land or by water, and is answerable for all losses, except in cases of public enemies, as in time of war, and in case of the act of God, as by lightning, storms, floods &c. Public carriers

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to carry them without reward? § 13. How is a borrower made liable? § 14. For what is a pawnee liable? § 15. In what case is a hirer liable? § 16. State the liability of one who takes an article to do work upon? § 17. Of innkeepers? § 18. For what are common carriers answerable? Who are common carriers?

are responsible for the baggage of their passengers, though they advertise it as being at the risk of the owners.

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## CHAPTER XXXVII.

### *Of Promissory Notes ; Bills of Exchange ; Interest.*

§ 1. A PROMISSORY note is a writing by which a person promises to another a certain sum of money, for some value received by the promisor. The following is a form:

BUFFALO, July 1, 1856.

"Three months from date, I promise to pay to John Jones, or bearer, one hundred dollars, value received.

SAMUEL SMITH."

§ 2. Notes thus written may be bought and sold as other property. But if the words, "or bearer," were omitted, it would not so pass; or, as men would say it is not *negotiable*, being payable to John Jones only. The holder might sell it; but the buyer, if obliged to collect it by law, must sue in the name of Jones, in which case Smith, if he had any lawful demand against Jones, might offset it against the note.

§ 3. The words, or bearer, therefore, should always be inserted in notes intended to be negotiable, unless for some special reason a different form may be adopted.

§ 4. Another way of making notes negotiable, though less practised, is to insert the words, *or order*, in the place of "or bearer;" but in this case, the promisee must indorse it by writing his name on the back of it. Such indorsement is in law considered as his order to the maker to pay it to another person; and then it may pass.

§ 5. It is usual to insert the words *value received*, as evidence that the note was given for some valuable consideration; for it will be recollected that contracts are not valid without some consideration. But these words are not

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§ 1. What is a promissory note? State its form. § 2. When is a note called negotiable? How is a note sued when not negotiable? § 3. How must it be drawn to be negotiable? § 4. What is the effect of the words, *or order*, instead of *or bearer*? § 5. Are the words *value received* essen

necessary to make the note good; for if the maker of the note can prove that no value was received, he can avoid the payment, even if these words are in the note.

§ 6. A note, after it has become due, is not negotiable as before due. It may be transferred, but the promisor may offset demands which he had against the promisee, the original holder, before he parted with it.

§ 7. Notes are sometimes made payable *on demand*. They are due immediately; and payment need not be demanded and refused before the holder can sue. So also, if no time of payment is mentioned in a note, it is due when given, and no demand of payment is necessary. But a note payable *at sight*, or at a specified time after sight, must be presented for payment before it can be sued.

§ 8. After a note has become due, the maker is allowed three days to pay, which are called *days of grace*. But if no time of payment is mentioned in the note, or if it is payable on demand, no grace is given. To bind the indorser of a note payable to order (see § 4,) payment must be demanded of the maker on the last day of grace, and refused, and the indorser notified the same day by the holder, or by a person sent for that purpose, that the note is not paid. If the parties do not reside in the same town, notice may be sent by the first mail after the last day of grace.

§ 9. Sometimes the seller of a note warrants it. If in his indorsement he guaranties "the payment of the note," he is liable the same as an original promisor. If he warrants it "good," or "collectable," the holder must show that it could not be collected of the maker when due, or the guarantor is not liable.

§ 10. Sometimes notes, so called, are made payable in grain, lumber, or some other property instead of money. But these are not considered in law as notes, and are not negotiable, though written payable to bearer. Such obligations, however, are often sold and transferred; but if sued, it must be done in the name of the payee, in which case the promisor may offset demands, if he has any, against the

holder? § 6. Is a note negotiable after it has become due? § 7. What effect have the words, on demand? What if no time of payment is mentioned? § 8. What are days of grace? § 9. How is an indorser of a note made and held responsible? How and when must he be notified of non-payment? § 10. What is here said of obligations for property? How sued, etc.?



payee. If such obligations are not paid when they become due, they are then payable in money.

§ 11. A *bill of exchange* is an order drawn by one person on another, requesting him to pay money to a third person. The following is a form :

"UTICA, August 1, 1843.

"Ten days after sight, pay James Johnson or order, five hundred dollars, value received. PETER PRICE.

"TO THOMAS THOMPSON,  
Merchant, New-York."

§ 12. It will be seen that this is, in effect, the same as an order used in common business. But when drawn by merchants in commercial cities on persons in distant places, orders of this kind are called bills of exchange. They are often very convenient to persons in mercantile business.

§ 13. The nature and operation of a bill of exchange are thus illustrated: A in New-York has \$500 due him from B in Cincinnati. A draws an order on B for that sum, and C, who is going to Cincinnati, pays A the money, and takes the order and receives his money again of B. If B has not the money when the bill is presented; or if it is made payable at some future day, and he agrees to pay it, he is said to *accept* the bill; and as evidence of the fact, he writes his acceptance upon it.

§ 14. When a person accepts a bill, he becomes the debtor, but the drawer remains liable to pay if the acceptor fails to do so. But payment must be demanded of the acceptor on the last day of grace, and notice given to the drawer, as in the case of an indorsed note.

§ 15. *Interest* is an allowance for the use money, or for the forbearance of a debt. Thus, a person lends to another \$100 for one year, and receives for the use of it \$7, which is called the interest. Promissory notes are generally made payable with interest.

§ 16. The rate of interest is fixed by law, but it is not the same in all the states. In the State of New-York it is seven per cent. that is, seven on every hundred for a year, and in

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§ 11. What is a bill of exchange? § 12 What is it like? § 13. State the nature and effect of a bill of exchange. How is it accepted? § 14 Who is then debtor? When must payment be demanded? § 15. What is interest? Give an example. § 16. What is the lawful rate of interest in

that proportion for a longer or shorter period. A less rate may be taken, by agreement; but when no special agreement is made, seven per cent. may, in all cases, be charged.

§ 17. A higher rate of interest than that fixed by law, is called *usury*. If a person has paid usurious interest, he may recover the amount paid above the lawful interest, if sued for within one year. A note or obligation on which more than lawful interest is to be taken for the loan of money, is void; and the payment of no part of it can be enforced.

§ 18. This law is intended to prevent persons from taking undue advantage of others. who, in cases of extreme necessity, might be compelled to pay exorbitant, and even ruinous rates of interest. It is thought by some, however, that such a law ought not to exist. In some states only half, and in others a still smaller proportion of the debt, is forfeited for taking usury.

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## CHAPTER XXXVIII.

### *Moneyed Corporations.—Banks; Insurance Companies.*

§ 1. WE are informed that the first banks were only places where money was laid up or deposited for safe keeping. But banks at the present day are not used for depositing alone. No banks in this country can be established, but by authority of law. The formation, nature, and uses of a bank, are shown by the following example:

§ 2. If the inhabitants of a place want a bank, they petition the legislature to incorporate a banking association. The act of incorporation prescribes the manner in which the company shall be formed, how its business shall be done, and the amount of capital or stock to be employed. The capital is raised in this way: The sum intended to constitute the capital of the bank, is divided into shares of \$100 each: so that if the whole stock is to be \$100,000, there are 1000 shares. These shares are sold, to one person ten, to another

this state? § 17. What is usury? What is forfeited for taking usury?  
 § 18. What is the object of this law?

§ 1. What is said of the first banks? § 2. State how a bank is autho-

twenty, and to another, perhaps fifty, and so on till all are sold, and the whole capital is paid in.

§ 3. Now a person buying any number of shares, takes a certificate, stating that he is the owner of such number of shares; and such certificate may be sold to another person.

§ 4. The stockholders choose of their number, usually, thirteen directors, who choose one of themselves to be president; hence the name of a banking association generally is, "The President, Directors, and Company of the Bank of——." The president and directors choose a cashier and clerks.

§ 5. A part of the business of banks is still that for which they were originally intended, viz., depositing money. Merchants and other business men near a bank, deposit their money, and then draw it out as they have use for it, by sending their order to the cashier. This order is called a check.

§ 6. Banks are allowed to issue their own bills as money. A bank bill or note, is a promise to pay the bearer a certain sum, on demand, and is signed by the president and cashier. These bills pass as money, because persons holding them may get the gold or silver for them by demanding it of the cashier.

§ 7. A material part of the business of a bank is to lend money. If a man wants to borrow money at a bank, he makes a note for the amount wanted, which is signed by himself and one or two others as sureties. For this note the cashier pays, in the bank's own bills, deducting from the amount the interest for the time the note is to run.

§ 8. Another kind of business done by banks is, to assist merchants and others in transmitting money to distant places. An operation of this kind is performed thus: A in Boston wishing to send \$1,000 to B in Philadelphia, puts the money into a bank in Boston; and takes for it an order, or draft, on a bank in Philadelphia, for that amount to be paid to B. The draft is sent by mail to B, who calls at the bank, and receives his money: and the bank charges the amount to the Boston bank.

zed, and how the capital is raised. § 4. Who are the stockholders? Who are chosen, and how? § 5. How are deposits drawn out of a bank? § 6. What is the nature of a bank bill? § 7. How is money borrowed from a bank? § 8. Describe the manner of transmitting money to distant places through banks? § 9. How are banks saved the trouble of collecting

§ 9. But how does the bank in Philadelphia get its money again? It must be remembered, that as there are many merchants in each city constantly trading with those in the other, large sums must be constantly sent from one place to the other, through the banks. The bank in each city, therefore, keeps account with that in the other; and as about an equal amount passes from each to each, many thousand dollars may be charged by each to the other, and on settlement but a small balance may be due from either.

§ 10. It has just been said that banks pay out their own notes as money, which they promise to pay on demand. Paying specie for their bills is called *redeeming* them. But banks sometimes issue more bills than they are able to redeem. In that case they are said to fail, or to break; and the holders of bills suffer loss; because the individual property of the stockholders cannot be taken to pay the debts of the bank, except in a few states.

§ 11. In the state of New-York there are laws which provide means for redeeming the bills of banks that fail. In 1830, a law was made imposing a yearly tax of one half of one per cent., that is, a half cent on every dollar, or a half dollar on every hundred dollars of their capital stock, until three per cent. should be paid. The money thus raised is a fund, called *safety fund*, from which bills of broken banks are redeemed. When this fund is likely to run out, the taxing must be renewed.

§ 12. A new banking law was enacted in 1838, by which banks thereafter to be established, were to put into the hands of the comptroller, securities for redeeming their bills, for the full amount of their capital. At least one half of these securities must consist of stocks of this or some other state, and the remainder, of mortgages on real estate. When a bank fails, the comptroller sells the lands and state stocks which he has in pledge, if necessary, to redeem the bills. Under this law, persons may form a banking association without applying for a special law of incorporation. [F]

§ 13. But perhaps not every young reader knows what *state stocks* are. They are debts which a state owes. When

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from each after each operation? § 10. What is redeeming bills? § 11. Describe the banking law of 1830. § 12. How is security provided by the law of 1838? § 13. What are state stocks? Describe the manner

a state undertakes to construct a canal, or some other great work, or needs money for any other purpose, it borrows the money of rich individuals, generally for a long term of years. The business is done on the part of the state by the proper officer, (the comptroller in this state,) who gives for the money borrowed, the bonds of the state, promising to pay the money at the time specified, with interest at the rate agreed on.

§ 14. These bonds are usually given in sums of \$1,000, and may be sold and transferred as promissory notes. These state bonds or stocks are generally considered good security; because, if the state has no other means of redeeming its bonds, the legislature has power to pass a law to raise the money by a tax upon the people. Almost every state is more or less indebted, in this way, not only to American capitalists, but to those of European countries, whence many millions of dollars have been sent to the United States, to purchase state stocks.

§ 15. There is another kind of moneyed corporations, called *insurance companies*. They are formed in the same manner as banks. For a small sum paid them, say 50, 75, or 100 cents on every 100 dollars of the estimated worth of a building, they agree to pay for it if it should be destroyed by fire. They also insure ships and other vessels. Sometimes the lives of men are thus insured; the company agreeing to pay a certain sum, or a yearly allowance, for the benefit of a man's family in case of his death.

§ 16. There are also *mutual insurance companies*. Every person having his property insured, is a member of the company, and pays so many dollars on every hundred of the value of the property. Out of the fund thus raised a building when burned is paid for. Companies of this kind have been formed in every part of the state.

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in which they are created. § 14. Why are these stocks thought good security? § 15. What is the nature of insurance companies? What do they insure? § 16. How is the fund of a mutual insurance company raised?

## CHAPTER XXXIX.

*Of Crimes.—Felonies, or Crimes punishable with Death, or by Imprisonment in State Prison.*

§ 1. To protect the persons and property of the citizens, there must be, in every state, laws against crime. These laws ought to define the several crimes, and to declare what shall be the measure of punishment to be inflicted upon offenders. There are, in the state of New York, three crimes punishable by death: treason against the people of the state, murder, and arson in the first degree.

§ 2. These crimes are called *capital* offences, and their punishment is called *capital* punishment; because it is the highest that can be inflicted, and perhaps also because the word capital is derived from the Latin *caput*, which means *head*; and this punishment was formerly inflicted by beheading, and is said to be still practiced in some of the eastern countries.

§ 3. *Treason* is defined by the statute to be, levying war in this state against the people of this state; or a combination of two or more persons, attempting by force to usurp or overturn the government of the state; or in adhering to enemies of the state while separately engaged in war with a foreign enemy, and giving them aid and comfort.

§ 4. *Murder* is the killing of a person in the following cases: (1.) when done with intent to effect death; (2.) when done by any act eminently dangerous to others, and showing a depraved mind, regardless of human life, although without design to effect death; (3.) when done without design to effect death, by a person in committing a felony; (4.) when done by duelling. A *felony*, in this state, is a crime punishable by death or imprisonment in a state prison.

§ 5. *Arson* in the first degree is wilfully setting on fire or burning, in the night time, a dwelling house or other building in which there is, at the time, some human being, and which

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§ 1. What crimes are punishable with death in this state? § 2. Why are these called capital offences? § 3. What is treason? § 4. What is murder? § 5. What is arson in the first degree? § 6. What is man-

building has been usually occupied by persons lodging therein at night.

§ 6. *Manslaughter* in the first degree, is the killing of a person without a design to cause death, by another person who is engaged in committing, or is attempting to commit, a crime or misdemeanor less than a felony; or who assists another in committing self-murder. Penalty, imprisonment not less than seven years.

§ 7. *Manslaughter* in the second degree, is the killing of a person without a design to effect death, but in a cruel, unusual manner; or in unnecessarily killing another in attempting to hinder his doing an unlawful act. Imprisonment, not less than four years, nor more than seven.

§ 8. *Manslaughter* in the third degree, is the killing of another in the heat of passion, by a dangerous weapon, without a design to effect death; or the unintentional killing of a person by the negligence of another, engaged in committing or attempting to commit a trespass; or permitting a mischievous animal to go at large, knowing its evil propensities, if such animal shall kill a person; or undesignedly causing death by a physician in a state of intoxication, by administering any poison, drug, or medicine, or doing any other act which shall produce death; or causing death by persons navigating steam-boats or other vessels, through culpable negligence or ignorance. Imprisonment from two to four years.

§ 9. *Manslaughter* in the fourth degree, is the involuntary killing of a person with any weapon, or by means neither cruel nor unusual, in the heat of passion. State prison two years; or county jail, not exceeding one year, or fine of \$1,000, or both.

§ 10. *Homicide* signifies mankilling. It is of three kinds, felonious, justifiable, and excusable. When felonious, it is either murder or manslaughter. *Justifiable* homicide is that which is committed in the necessary defence of one's person, house or goods, or of the person of another, when in danger of injury; or that which is committed in lawfully attempting

slaughter in the first degree? What is the penalty? § 7. *Manslaughter* in the second degree? Punishment? § 8. *Manslaughter* in the third degree? Punishment? § 9. *Manslaughter* in the fourth degree? Punishment? § 10. What is homicide? State the different kinds. § 11. What

to take a person for felony committed, or to suppress a riot, or to keep the peace. *Excusable* homicide is the killing of a person by accident, or while lawfully employed, without any design to do wrong. In the two last cases there is no punishment.

§ 11. Intentionally *maiming* another by cutting out or disabling the tongue or any other member or limb; inveigling or *kidnapping*; *decoying* and taking away children; *exposing children* in the street to abandon them; committing or attempting an assault, with *intent to kill*, or to commit any other felony, or in resisting the execution of a legal process; *administering poison* without producing death; *poisoning any well* or spring of water; are all felonies, and punishable as such. State prison not over ten years; or in some cases, county jail, or fine, or both.

§ 12. *Arson* in the second degree, is setting on fire or burning an inhabited dwelling, in the day time; or setting on fire in the night time, a shop or other building endangering an inhabited dwelling. Arson in the third and fourth degrees, is the burning of buildings other than dwellings, and other property of various kinds. Imprisonment from two to ten years.

§ 13. *Burglary* in the first degree, is breaking into and entering, in the night time, a dwelling in which there is at the time some person, with intent to commit some crime therein, either by breaking or bursting into it, or by unlocking an outer door with false keys, or by picking the lock. Breaking into and entering a house, by day or by night, under circumstances which do not constitute burglary in the first degree, is burglary in the second or third degree. In the first degree, imprisonment not less than ten years; second degree, from five to ten; third degree, not more than five years.

§ 14. *Forgery* consists in falsely making, counterfeiting, or altering, any instrument of writing, with intent to defraud. The word *counterfeiting* is generally applied to making false coins or bank notes, or in passing them; or in having in possession any engraved plate, or bills unsigned, which are

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are some of the crimes mentioned in this section? § 12. What is arson in the second degree? Third and fourth degrees? Punishment? § 13. What is burglary in the first degree? Second and third degrees? Punishment? § 14. What is forgery? Counterfeiting? Punishment? § 15. What is



intended to be used for these purposes. Imprisonment the same as for burglary.

§ 15. *Robbery*. Taking personal property from another in his presence and against his will, by violence, or by putting him in fear of immediate injury to his person, is robbery in the first degree. If the property is given up through fear of injury threatened upon his person or property, or upon that of a relative or member of his family, to be inflicted at some different time, it is robbery in the second degree. First degree, imprisonment not less than ten years; second degree, not more than ten years.

§ 16. Knowingly to send or deliver, or to make for the purpose of being sent, a letter or writing, threatening to accuse any one of crime, or to do him some injury, with intent to extort or gain from him any money or property, is considered an *attempt to rob*, for which the offender may be imprisoned not exceeding five years.

§ 17. *Embezzlement* is fraudulently putting to one's own use what is intrusted to him by another. To buy or receive property knowing it to have been embezzled, is to be guilty of the same offence. Embezzling is punishable in the same manner as larceny of the same amount.

§ 18. *Larceny* is theft or stealing. If the value of the property stolen is more than twenty-five dollars, the crime is *grand larceny*. Imprisonment not exceeding five years. If committed in a dwelling house, ship or other vessel, three years may be added. And if in the night time, imprisonment may be ten years. A second offence, though the amount stolen is under twenty-five dollars, is punishable as *grand larceny*.

§ 19. *Perjury* is wilfully swearing or affirming falsely, to any material matter, upon an oath legally administered. If committed on trial of a capital offence, imprisonment not less than ten years; on any other trial, not exceeding ten years. *Subornation of perjury* is procuring another to swear falsely. punishable as perjury.

robbery in the first degree? Second degree? Punishment? ; 16 What is an attempt to rob? Punishment? § 17. What is embezzlement? Punishment? § 18. What is larceny? Grand larceny? Punishment? Petit larceny? Punishment? § 19. What is perjury? Punishment? Subornation of perjury? Punishment? § 20. What is bribery? Punishment?

§ 20. *Bribery* is promising or giving a reward to a public officer, to influence his opinion, vote, or judgment. Imprisonment not exceeding ten years, or fine not exceeding \$5000, or both. A person *accepting* such bribe, is punishable in the same manner, and forfeits his office, and may never hold another public trust in this state. Penalty less in case of the lower officers.

§ 21. *Duelling* is a combat between two persons with deadly weapons. Killing another in a duel is murder, and punishable with death. If death does not ensue, imprisonment not exceeding ten years. Challenging, or accepting a challenge, to fight, or to be present as a second, imprisonment not exceeding seven years.

§ 22. Aiding or attempting to aid a prisoner committed for felony, to *escape from confinement*, or forcibly rescuing a prisoner charged with crime, from the custody of a public officer, is a crime. Imprisonment not exceeding ten years. If the offence for which the prisoner is committed is less than felony, imprisonment in jail, not exceeding a year, or fine not exceeding \$500, or both.

§ 23. A sheriff, jailor, or other officer, for corruptly refusing to execute a lawful process for apprehending or confining a person charged with a criminal offence, or for conniving at or allowing the escape of a prisoner in his custody, may be imprisoned in jail, not exceeding a year, or fined not exceeding \$1000, or both: and such officer shall be for ever disqualified to hold office in this state.

§ 24. If a prisoner confined in a state prison shall break prison and escape; or if he shall attempt, by force or violence to any person, to escape from prison, whether he shall escape or not, five years may be added to the term for which he was imprisoned. A person confined in a county jail for a criminal offence, may, for breaking jail and escaping, be imprisoned in a state prison two years, or in a county jail one year, in addition to the former term. And any person, lawfully confined in jail for any cause whatever, who shall forcibly break jail, or attempt by force or violence to escape, may be imprisoned therefor in jail one year.

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For accepting bribe, what? § 21. What is duelling? How punished? § 22. For aiding escapes, what punishment? § 23. For what are sheriffs and other officers punishable? To what extent? § 24. For breaking and

§ 25. *Bigamy* is the crime of having two or more wives, and is also called *polygamy*. But bigamy literally signifies having *two* wives, and polygamy any number more than one. These words, in law, are applied also to women having two or more husbands. A person having a husband or wife living, and marrying another person, is guilty of bigamy. Imprisonment not exceeding five years. (For exceptions, see Chap. 32, § 6.)

§ 26. An unmarried person, also, who shall marry the husband or wife of another, is punishable in like manner, or may be imprisoned in a county jail not exceeding a year, or fined not exceeding \$500, or both.

§ 27. *Incest* is the marrying or cohabiting together as husband and wife, of persons related to each other within certain degrees. (See Chap. 32, § 3.) Imprisonment not exceeding ten years.

§ 28. *Opening a grave* and removing a dead body, for any unlawful purpose, or purchasing such body knowing it to have been unlawfully disinterred, is a crime. Imprisonment not exceeding five years in state prison; or in jail, not exceeding one year, or fine not over \$500, or both. Opening a grave with the above intent, or stealing the coffin or any article interred with the body, is punishable by imprisonment in a state prison two years; or in jail six months, or fine \$250, or both the latter.

§ 29. It is also criminal for a person knowing an offence to have been committed, for any money or promise of reward to conceal such offence. If the crime committed is punishable by death or imprisonment for life, the person concealing or compounding it, may be imprisoned in state prison five years, or in county jail one year. If the crime committed is punishable by a shorter imprisonment than for life, the person concealing it may be imprisoned in state prison three years, or in jail six months.

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escaping from state prison, what penalty? From county jail, what? § 25. What is bigamy? Polygamy? Penalty? § 26. For an unmarried person marrying another's wife or husband, what penalty? § 27. What is incest? Penalty? § 28. For opening graves, what penalty? § 29. For concealing crimes, what penalty?

## CHAPTER XL.

*Offences punishable by Imprisonment in a county Jail and by Fines; General Provisions concerning Crimes; Arrest and Examination of offenders.*

§ 1. AMONG the offences not punishable by imprisonment in a state prison are the following: Petit larceny, which is stealing \$25 or less, first offence; attempting to extort, by threats, any money or other benefit; fraudulent conveying or concealing property to defraud creditors; conspiracies by two or more persons to commit an offence; imprisoning or arresting another without legal authority, or under a false pretence; receiving a reward to conceal a misdemeanor; racing horses within a mile of the place where a court is sitting; wilfully committing trespass, by cutting down or carrying away any wood or timber, or injuring fruit, ornamental, or shade trees.

§ 2. Also the following: Voting at an election more than once; physicians or others when intoxicated, prescribing medicines endangering life; druggists or others keeping poisonous articles for sale without having them labelled with the word "poison;" maliciously killing or wounding animals belonging to another, or cruelly beating his own or another's; wilfully opening or reading sealed letters addressed to another, except in cases punishable by the laws of the United States; removing or defacing any monument, mile-stone, or guide-board; maliciously injuring or destroying a public bridge, toll-gate, or mill-dam.

§ 3. The above mentioned offences, and numerous others not here enumerated, are called misdemeanors, and are punishable by fine, or imprisonment in a county jail, or both. And any person having been convicted of an attempt to commit an offence which, if committed, would be punishable by imprisonment in a state prison, shall, for a second offence, be imprisoned in such prison.

§ 4. *General provisions.* Persons sometimes advise or are

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§ 1 2. Mention some of the offences enumerated in these two sections?  
 § 3. What are these offences called? How are they punished? How is a second attempt to commit a misdemeanor punished? § 4. What is an ac-

knowing to the commission of felonies, but are not actually engaged in committing them. Such are *accessories*. He who advises or commands another to commit a felony is called an accessory *before the fact*, and is punished in the same manner as the principal. If he conceals the offender after the offence has been committed, or gives him any aid to prevent his being brought to punishment, he is an accessory *after the fact*, and may be imprisoned in a state prison not over five years, or in a county jail not more than one year, or fined not exceeding \$500, or both the latter.

§ 5. The terms of imprisonment prescribed by law for second offences, are much longer than those for first offences. And if a person is convicted of two or more offences before sentence is pronounced for either, the imprisonment for each subsequent offence begins at the end of the imprisonment for the former.

§ 6. Persons under sixteen years of age, convicted of felony or other crime, instead of being sentenced to state prison or the county jail, may, by order of the court, be sent to the house of refuge established by the society for the reformation of juvenile delinquents, in the city of New York, if there is room for them in such house of refuge.

§ 7. A person sentenced on conviction for a felony, shall not thereafter be competent to testify, in any cause, civil or criminal, except in the cases specially provided by law, or unless he shall have been pardoned before the expiration of the term for which he was sentenced.

§ 8. No person can be twice tried for the same offence. (Cons. Art. 1, § 6.) But if he was acquitted because the proof on trial did not agree with the indictment, or because the indictment was defective, he may again be indicted and tried.

§ 9. *Arrest and examination of offenders.* Any judge or justice of the peace has power to issue process for apprehending any person charged with an offence. When a complaint

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cessory? An accessory before the fact? After the fact? Punishment?  
 § 5. How does the punishment of a second offence differ from that of the first? When a person is convicted of two or more offences before sentence, what? § 6. Persons convicted under sixteen years, how may they be sentenced? § 7. What disqualification does conviction for felony produce? § 8. Can a person be twice tried for the same offence? What exception is mentioned? § 9. Who may issue process to apprehend offend

is made to a magistrate, he examines the complainant on oath, and any witnesses that are produced ; and if it appears that an offence has been committed, he issues a warrant, commanding the officer to whom it is directed, to bring the accused before the magistrate.

§ 10. The magistrate first examines the complainant and witnesses in support of the prosecution ; and next the prisoner, who is not on oath, and then his witnesses. The evidence is put to writing by the magistrate and signed by the witnesses. If an offence has been committed, the magistrate binds, by recognizance, the prosecutor and all material witnesses, to appear and testify against the prisoner, at the next court at which the prisoner may be indicted and tried.

§ 11. If the offence is less than a state prison offence, he may, if he chooses, be forthwith tried by a court of *special sessions*, consisting of a single justice of the peace, or judge, with or without a jury, at the election of the prisoner. If the offence was committed in another town, he must be taken for trial before a magistrate in such town.

§ 12. If the offender does not choose to be tried by this court, and if the offence is one for which he may be let to bail, the magistrate may take bail for his appearance at the next court. But if no bail is offered, or if the offence is notailable, the prisoner is committed to jail until the next court having power to try him. But he must be indicted by a grand jury before he can be tried. (See Chap. 26, § 8.)

§ 13. The reason why offenders are sometimes arrested and examined before their case is brought before a grand jury, is to prevent their escaping before the next county court, as grand juries do not sit except during the sittings of courts.

§ 14. The way in which bail is taken is this : The accused gives a bond in such sum as the justice or judge shall require, with one or more sureties, who are bound for the appearance of the accused at the next court, or in case he shall not appear, then to pay the sum mentioned in the bond. This

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ers ? When is it issued and what is it called ? § 10. Describe the proceedings of the magistrate ? § 11. By what court may the offender be immediately tried ? What is the use of this court ? § 12. If the offender chooses not to be tried by it, what ? § 13. Why are offenders brought before magistrates ? § 14. How is bail taken ? What is a recognizance ?

bond or obligation is in law called a *recognizance*. The same name is also applied to the bond given by the prosecutor and witnesses for their appearance at court.

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## CHAPTER XLI.

### *Sundry Regulations for preserving Peace and Order.*

§ 1. *Disorderly persons and practices.* THERE are numerous classes of persons who corrupt the morals and disturb the peace and good order of society; among whom are the following: men who threaten to run away and leave their families to be supported by the public; persons pretending to tell fortunes; keepers of houses for the resort of drunkards, gamblers, or other disorderly persons; persons having no visible calling, but who for the most part support themselves by gaming; all common showmen, rope dancers, and other public actors; keepers of gaming tables and other gaming machines or devices.

§ 2. Any person deemed to be disorderly may be brought, by warrant, before a justice for examination, and if found to be a disorderly person, the justice may require him to give a bond, with sureties, for his future good behavior; and if he cannot find sureties, he may be committed to jail.

§ 3. It is a disorderly act to *fire any gun* or other fire-arms, rocket, cracker, or other fire-works, within a quarter of a mile of a building, on Christmas and New-year's days, the 22d of February, or on the day celebrated as the anniversary of American independence, for which the offender may be fined five dollars.

§ 4. Any person who, on a day of public meeting, keeps any gaming establishment within half a mile of such meeting may be fined \$25; and it is the duty of sheriffs and all other peace officers to break, burn, or otherwise destroy every such gaming table or machine.

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§ 1. What classes of persons are called disorderly? § 2. What may be done with them? § 3. What is the fine for firing guns &c. on certain days? What days? § 4. How are gaming tables, &c. prohibited on public days?

§ 5. Tavern keepers, grocers, or masters of vessels or boats for carrying passengers, may not allow gaming in their houses or on their boats. Fine \$10.

§ 6. *Raffling* for money or other property, or being interested in the same, is forbidden under a penalty of \$10. And any person setting up money or goods to be raffled for, forfeits three times the value of the same and ten dollars besides.

§ 7. *Betting and gaming* is a disorderly practice, and unlawful. The loser of any wager or bet is not bound to pay it; or, if he has paid it, he may sue for and recover the same. The winner at a game of chance forfeits five times the value of what he so wins; and the winner or loser at play, or by betting the value of twenty-five dollars or upwards within twenty-four hours, may be fined five times the sum so lost or won.

§ 8. *Racing horses* and other animals for any bet or stakes, is declared to be a common nuisance and misdemeanor; and all parties concerned therein are subject to a fine not exceeding \$500, or imprisonment not exceeding a year. And any person assisting to make up a purse to be run for, forfeits \$25. And all peace officers may disperse the persons assembled to attend the race; and judges and justices may issue warrants for arresting the offenders, and compel them to enter into recognisances, with sureties, for good behavior, and for their appearance at the proper court to answer for their offences. The owner of the racing animal forfeits the value of the same.

§ 9. *Profane cursing and swearing* is forbidden under a penalty of one dollar for every offence; and if done in the presence and hearing of a magistrate, he may convict the offender without other proof. If the offender does not forthwith pay the fine with costs, or give security for their payment within six days, he may be committed to jail not less than one day nor more than three days.

§ 10. For the wilful *disturbance of a religious meeting*, by improper behavior, or by making a noise within or near the

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§ 5. How in taverns, groceries, and on boats? § 6. What is the penalty for raffling? § 7. Penalty for betting and gaming? § 8. Racing horses for bets or stakes? What power have peace officers to prevent racing? § 9. How may profane cursing and swearing be punished? § 10. Disturbing re



place of meeting, the offender may be fined not exceeding \$25 ; or in case of non-payment, he may be imprisoned, not exceeding thirty days, or till the fine shall be paid.

§ 11. The *observance of Sunday* is required. It forbids all shooting, hunting, sporting, and pastimes on that day ; and all traveling and servile labor, except such as necessit, and charity require. Penalty, one dollar for each offence, committed by a person of the age of fourteen years. Persons uniformly keeping Saturday as holy time, and whose labor does not disturb others in the observance of Sunday, are not required to keep this day.

§ 12. No person may expose to sale any goods, wares, fruits, or other property on Sunday ; except meats, milk, and fish, which may be sold before nine o'clock in the morning. The articles so exposed for sale are forfeited, and may be seized by warrant, and sold on one day's notice, and the proceeds paid to the overseers of the poor.

§ 13. *Shows &c.* Any person exhibiting or performing for gain or profit, any wire or rope dance, or any other idle shows or feats which common showmen, mountebanks or jugglers usually perform ; and any person allowing his house or any other part of his premises to be used for such purpose, forfeits \$25 for each offence. The same penalty applies to persons exhibiting any painting, animal, or natural or artificial curiosity, not above mentioned, without a written permission signed by two justices of the town.

The fines and penalties mentioned in the several sections of this chapter are principally applied to the support of the poor.

§ 14. *Beggars and vagrants.* All idle persons wandering about and begging, and giving no good account of themselves, are deemed *vagrants*, and may be taken before a magistrate and examined. If any such person needs relief, he may be provided for as a poor person, and kept at labor not exceeding six months ; but if he is a notorious offender, he may be sent to a house of correction, or to a county jail, not exceeding sixty days.

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religious meetings ? § 11. What is forbidden on Sunday ? What is the penalty ? § 12. What is forfeited for exposing goods for sale ? § 13. What is the penalty for exhibitions, jugglery, &c. ? In what case may certain curiosities be exhibited ? How are fines applied ? § 14. What is the law con

§ 15. *Habitual drunkards.* If the overseers of the poor discover any person to be a habitual drunkard, they may, by public advertisement, forbid all persons selling or giving such drunkard any spirituous liquors, unless by advice of a physician; and any person who shall offend against this provision, shall forfeit \$10 for the use of the poor. But the drunkard may have the fact determined by a jury whether he is or is not a habitual drunkard.

§ 16. To prevent the property of an habitual drunkard from being wasted or destroyed, the overseers of the poor may apply to the county court, which has power to provide for the safe-keeping of the property of idiots, lunatics, habitual drunkards, and other persons who are unable to manage their own affairs, and for maintaining them and their families, and educating their children out of their personal estates, and the rents and profits of their real estates. The supreme court has the same jurisdiction in such cases as the county court.

§ 17. *Law of the road, public stages, &c.* Persons meeting with carriages shall seasonably turn their carriages to the right of the centre of the road, under the penalty of \$5 to be recovered by the party injured. Any person who shall run his horses or suffer them to run with a carriage upon a public road, may be fined not exceeding \$100, or imprisoned not exceeding sixty days.

§ 18. Owners of public stages are forbidden to employ drivers addicted to drunkenness, under a penalty of five dollars for every day they are thus employed. The driver of any passenger carriage who shall leave his horses attached to it while passengers remain therein, without first fastening the horses or placing the lines in the hands of another person, forfeits \$20. And the owners of public carriages are liable for all injuries and damages done by their drivers, whether done wilfully or otherwise.

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cerning beggars and vagrants? § 15. What way is provided to prevent habitual drunkards from getting liquor? § 16. To prevent their spending their property? § 17. What is the law of the road? § 18. What concerning public stage owners?

## CHAPTER XLII.

*Of the rights of Conscience ; Writ of Habeas Corpus ; Liberty of Speech and of the Press.*

§ 1. THERE are certain important rights secured to the people of this state, which have not yet been noticed. The guaranty of these rights is in the 3d, 4th, and 8th sections of the 1st article of the Constitution.

§ 2. The first of these sections (§ 3) secures to every citizen *liberty of conscience* ; which is the liberty to discuss and maintain our religious opinions, and to worship God in such manner as we believe most acceptable to him. This is a privilege heretofore denied to the people of many other countries, even in some called Christian and civilized ; in which many thousands have been put to death for their religious opinions.

§ 3. But the rights of conscience are now more extensively tolerated. In some countries, however, there is still what is called an established religion, where some religious denomination receives the support of the government, as in Great Britain. This is called "union of church and state." But in this country the government does not interfere in religious matters, except to protect and secure to every denomination, "without discrimination or preference, the free exercise and enjoyment of religious worship."

§ 4. Another of the rights alluded to, is the privilege of the "writ of *habeas corpus*." This is a Latin phrase, and means, have the body. This privilege was long enjoyed by the people of Great Britain before the independence of these states ; and it is not strange that a people loving liberty should, in establishing a government of their own, insert such a provision in their constitution.

§ 5. A person committed, confined, or restrained of his liberty for a supposed criminal matter, or under any pretence whatsoever, may, before the final judgment of a court is

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§ 2. What is liberty of conscience ? Has religious liberty always been enjoyed ? § 3. To what extent are the rights of conscience secured in this country ? § 4. What is the meaning of *habeas corpus* ? § 5. In what

pronounced against him, petition a competent court or judge, stating the cause of complaint. The judge then issues a writ against the party complained of, commanding him to bring before the court or judge, the body of the person confined; and if he shall refuse to do so, he may be imprisoned.

§ 6. If, upon examination, it appears that the complainant has been illegally confined, the judge grants relief. If a person has been discharged upon habeas corpus, he may not be again confined for the same cause; but it is not to be deemed the same cause if, after a discharge, he shall be committed for the same offence by due process of law; or if, after a discharge for defect of proof, or defect in commitment, he shall be again arrested on sufficient proof, and committed for the same offence. For reimprisoning a person unlawfully after having been duly discharged, the law imposes a penalty of \$1250, to be paid to the party aggrieved.

§ 7. The section which remains to be noticed, is that which secures to all the right "freely to speak, write, and publish their sentiments;" that is, *the liberty of speech and of the press*. A *press* is a machine for printing; but the word is also used to signify the business of printing and publishing; hence liberty of the press is the free right to publish books or papers without restraint.

§ 8. In many foreign countries, persons were not allowed to speak against the government or its officers, however bad their character or acts might be. In some of these governments, books and papers could not be issued without being first examined by persons appointed by the government. In this country no law can be passed which shall prevent the humblest citizen from censuring the conduct of the highest officer of the government.

§ 9. But it must not be supposed that men may speak or publish, against others, whatever they please; for the same section which secures freedom of speech, makes us "responsible for the *abuse* of that right." Without some restraint,

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cases, and how, is this writ obtained? § 6. What does the judge then do? Can he be twice confined for the same cause? For so doing, what is the penalty? What is not considered the same cause? § 7. What is liberty of speech? Liberty of the press? § 8. Is this liberty every where enjoyed? § 9. May we speak of others whatever we please? Why should we not?

wicked men might, by false reports, destroy the good name, the peace, or the property of others. Nor may we, in all cases, speak even the truth of others, if thereby we should injure them.

§ 10. To defame another by a false or malicious statement or report, is either slander or libel. When the offence consists in words spoken, it is *slander*; when in words written or printed it is called *libel*. As a slander in writing or in print is generally more widely circulated, and likely to do greater injury, it is considered the greater offence. Hence damages may sometimes be recovered for slanderous words printed, when for the same words merely spoken, a suit could not be maintained.

§ 11. It has just been stated, that we may not always even speak the truth of others. By the common law of England, the libel was considered as great when the statement was true as when false, because the injury might be just as great; and therefore when prosecuted for libel, a man was not allowed to prove to the jury the truth of his statement. Such may be considered the law in this country, except where special provision to the contrary has been made by law or constitution.

§ 12. But it may sometimes be proper to speak an unfavorable truth of others: therefore the framers of our constitution inserted this provision, that "the truth *may* be given in evidence to the jury; and if the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted."

§ 13. The wisdom of this provision is easily seen. Suppose you know a person to be accustomed to steal, or to commit other secret injuries, you have a right to inform others of his practices to put them on their guard against him. But though a man has been guilty of bad conduct, if you publish the fact to injure him in his business or to expose him to public scorn, you are liable, because you did it not from good motives.

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§ 10. What is the difference between slander and libel? § 11. If a person is prosecuted for slander or libel, may he, by the common law, prove that what he said is true? § 12. What does our constitution provide respecting this? § 13. Suppose a case in which it would be lawful to publish a man's bad character? § 14. For what is a person liable in case of slander? For

§ 14. In case of slander, a man is liable only for damages in a civil action; but for libel, a person is not only liable for private damages, but he may also be indicted and tried as for other public offences.

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## CHAPTER XLIII.

### *Of the Government of the United States.*

§ 1. HAVING treated of the government of the state of New York, and of our rights and duties as citizens of this state, I proceed, as proposed, to show our relations to the government of the United States.

§ 2. It is thought by many persons, to be very difficult to understand the relations which the state and national governments bear to each other. But if the scholar will attentively study the following chapters, he will find that *children* may learn what many of our adult citizens have never learned, and what some think none but *men* are able to comprehend.

§ 3. To learn the nature of the general government, and of our relations to it as citizens of the United States, we must go back to the time when the colonies were subject to Great Britain. Though they were all subject to that country, they had no political connection with each other. They were, in this respect, as independent of each other as so many different nations. Hence there was no such thing as being a citizen of the United States. Every person was only a citizen of the state in which he lived.

§ 4. During the controversy with Great Britain, it became necessary for the colonies to agree upon some general measures of defence. For this purpose, the first great continental congress, composed of delegates from the several colonies, met at Philadelphia on the 4th of September, 1774. The next year, in May, another congress met to propose and to adopt such farther measures as the state of the country might require; and the same congress, on the 4th of July,

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what in case of libel?

§ 3 Had the colonies any political connection while subject to Great Britain? Of what were the people then citizens? § 4. For what purpose did

1776, declared the colonies to be free and independent states.

§ 5. This declaration was called "the unanimous declaration of the United States of America;" but the states were united only in certain measures of safety. There was no government which exercised authority over the states. The people were subject to their respective state governments only. They were not yet incorporated into one nation for the purpose of government, as now, under a constitution. Hence, they were not properly citizens of the United States.

§ 6. To provide effectually for the future security, as well as the immediate safety of the American people, congress deemed it necessary that there should be a union of the states under some general government; and in November, 1777, that body agreed upon a plan of union. The articles were called "articles of confederation and perpetual union between the states;" and were to go into effect when adopted by the legislatures of all the states. Some of the states were slow to agree to the articles; but they were finally adopted, March 1, 1781.

§ 7. The states were now united in a kind of national government, but it was not such a one as the present; as will appear by noticing a few points of difference between them. In the first place they were different in *form*. The confederation was a *union of states*; it was scarcely entitled to be called a government. It had not, as the national government now has, the three departments of power, legislative, executive and judicial. It had only a legislature, and that consisted of only one body; and to that congress the several states, large and small, were entitled to send each an equal number of delegates.

§ 8. That government differed from the present also in regard to its *powers*. The confederation was a very weak government. Its powers were vested in congress. The congress was to manage the common affairs of the nation, and

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the first great congress assemble? When and where? What was done by the next congress? § 5. What was the declaration called? For what purpose were the states united? Was there a national government at that time? § 6. What kind of union was agreed upon by congress in 1777? When did these articles go into effect? § 7. Was that a government like the present? In what general respects was it different in form? § 8. How

to enact such laws (if laws they might be called) as might seem necessary ; but it had not the power to enforce them.

§ 9. For example, it belonged to congress to ascertain the number of men and the sums of money to be raised to carry on the war, and to call on each state to raise its due share ; but congress could not compel a state to do so. The government had no power to lay and collect taxes ; it was dependent upon the states for raising the money to defray the public expenses. It could, and did, to some extent, borrow money in its own name, on the credit of the union ; but it had not the means of repaying the money so borrowed. But more of its defects will hereafter appear.

§ 10. It may be asked, how so weak a government could keep the states together. The plan was devised in a time of war, and had respect to the operations of war, rather than to a state of peace : and a regard to their own safety induced the states, in most cases, to obey the orders of congress ; just as individuals will readily unite when exposed to a common danger, or when pursuing a common interest. But when the danger is passed, and the desired object attained, their union and friendship are easily broken.

§ 11. So it was with the states. The war being over, they did not continue to act in harmony. Laws were enacted in some states, giving their own citizens undue advantages over the citizens of other states ; and soon the good feeling which had existed was interrupted : and in a few years the jealousies and disputes between the states became such as threatened to break up the union.

§ 12. It was now evident that to keep the states united in time of peace with foreign nations, there must be a different government ; a government possessing more extensive powers, which could control, in all needful cases, the action of the state governments.

§ 13. Having been thereto requested, congress called a convention, to revise and amend the articles of confederation. All the states, Rhode Island excepted, chose delegates, who

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did the confederation differ in regard to its powers ? § 9. By way of example, what could congress do, and what could it not do ? § 10. How were the states kept united under so weak a government ? § 11. What caused disputes and ill feeling between the states ? § 12. What kind of a government now appeared necessary ? § 13. When did the convention meet, that



met at Philadelphia in May, 1787. Although it seems to have been generally intended only to alter the articles of confederation, it was proposed to the convention to form a new government, different both in its form, and in respect to its powers. This proposition was agreed to by a majority of the convention; and after a long and arduous session, which closed in September, the present constitution was adopted by the convention.

§ 14. In examining the constitution, we see that it differs also in its *nature* from the former government. This appears from the manner in which it was formed and adopted. The articles of confederation were framed by congress, the members of which were appointed by the state legislatures; and when so framed they were sent to the state legislatures, to be approved by them, before they could go into effect. The adoption of these articles was therefore the act of the *legislatures* of the states, and not the act of the *people* of the states; and the confederation was a union of *states*, rather than a union of the *people* of the states.

§ 15. The constitution, on the other hand, was framed by men appointed expressly for that purpose, and submitted for approval, not to the state legislatures, but to the people of the states, and adopted by state conventions, whose members were chosen for that purpose by the *people*. Hence, the constitution is virtually the act of the people; and the union is not a mere confederation of states, but, as the preamble declares, "a more perfect union," formed by "*the PEOPLE OF THE UNITED STATES.*"

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## CHAPTER XLIV.

### *Of the Legislative Department.*

§ 1. THE legislature, called congress, is composed of two branches, a senate and a house of representatives. The

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framed the constitution? When did the session close? When was the constitution adopted? (See chap. 50, § 13.) § 14. By whom were the articles of confederation framed? By whom approved and adopted? ; 15 By whom was the constitution, framed, approved, and adopted?

§ 1. How is congress composed? How is the senate constituted? For

senate consists of two members from each state, chosen by the legislature, for six years. This body is constituted upon the same principles, nearly, as the old congress, the members of which were also chosen by the state legislatures; and the several states were entitled to an equal number, which number was not to be less than two nor more than seven; and they were chosen for one year only.

§ 2. A senator must be thirty years of age; and he must have been nine years a citizen of the United States, and must be an inhabitant of the state for which he is chosen.

§ 3. The house of representatives is constituted upon the same principle as a legislative body of a state. As the members of assembly of the state of New-York, are apportioned among the counties, in proportion to the number of inhabitants in each, so each state sends to the lower house of congress, a number of members proportioned to the number of its inhabitants. Representatives are elected for two years.

§ 4. The constitution does not limit either house to any definite number of members. Whenever a new state is added to the union, two members are added to the senate, and one or more to the house of representatives.

§ 5. The number of representatives may change, also, while the number of states remains the same. After the taking of a new census, which is done every ten years, congress determines what number of inhabitants shall be entitled to a representative for the next ten years; which number, the constitution declares, shall not be less than 30,000.

§ 6. But a representative for every 30,000 inhabitants, as the population increases, would make the house too large. At this rate there would be, at present, more than 500 representatives. This number would be too great. It would be a needless expense to pay so many men to make laws, when a smaller number can do the business as well, and much more promptly. Hence congress, after the census of 1850,

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what term are senators chosen? § 2. What are the qualifications of a senator? § 3. Upon what principle is the house of representatives constituted? What is the term of office of a representative? § 4. What adds to the number of members of each house? § 5. What is the least number of inhabitants that can be entitled to a representative? § 6. What is the present number? Why

fixed the number of inhabitants as the ratio of representation from each state, at 90,716. This gives to New-York 33 representatives.

§ 7. Representatives are thus chosen: The state is divided, by the legislature, into thirty-three districts, called congressional districts, in each of which one member of congress is chosen. Each of the larger counties constitutes a district; and of the smaller, two or more together make a district. The city and county of New-York, having so numerous a population, is divided into four districts. Representatives to congress are chosen in this state, at the annual election, every two years.

§ 8. In the southern states, a large portion of the people are slaves. In ascertaining the number of representatives for the slave holding states, only three-fifths of the slaves are counted. It was contended by some of the delegates in the convention that framed the constitution, that the people of the slave states ought not to be represented for their slaves, because slaves were property, and no property, in the free states, entitled its owners to representation. After much debate, it was at length agreed, that every five slaves should be counted as three *free* citizens.

§ 9. A representative must be twenty-five years of age, and must have been seven years a citizen of the United States. Aliens, or foreigners, therefore, cannot be elected until seven years after they have been naturalized.

§ 10. The manner of organizing the houses, and of passing bills, as will be seen from the first article of the constitution, is similar to that which is practised by the state legislatures.

§ 11. Members of congress receive, for their services, eight dollars a day. The speaker of the house of representatives, and the president of the senate *pro tempore*, when the vice-president is absent, receive sixteen dollars a day. Members of congress, also receive a day's compensation for every twenty miles travel to and from the seat of government.

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is the number so large? How many representatives has New-York? § 7 How are representatives chosen? § 8. By what rule are representatives appointed, to the slave-holding states? § 9. What are the qualifications of a representative? § 10. How do the houses of congress do business? § 11 What daily compensation do members receive? How much for travelling in this just?

But this is unreasonable. Such are the present facilities for travelling, that a member may go from Buffalo to Washington in about two days, at an expense of about \$20, for which he is entitled to receive pay for more than thirty days' service.

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## CHAPTER XLV.

### *Of the Executive Department.*

§ 1. THE executive department of the general government, is constituted in a manner similar to that of a state government. The chief executive officer is called the president of the United States. He is elected for four years. There is also a vice-president, chosen at the same time, and for the same term. The general duties of these officers are much like those of the governor and lieutenant-governor of a state. (See Con. Art. 2, § 2, 3.)

§ 2. A president must be thirty-five years of age, and a natural born citizen of the United States. When the office of president becomes vacant, the vice-president becomes president; and a president of the senate, *pro tempore*, chosen by the senate for the purpose, takes the place of the vice-president.

§ 3. In electing a president, the people do not vote directly for him. The voters of each state choose a number of men, equal to the number of senators and representatives to which it is entitled in congress. These men, thus chosen in the several states, elect the president and vice-president, and are called presidential electors. The state of New-York, having two senators and thirty-three representatives in congress, is entitled to thirty-five presidential electors.

§ 4. These electors, however, are not chosen in the same manner as members of congress. The names of thirty-three men, one from each congressional district in the state, are

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§ 1. In whom is the executive power of the nation vested? What is the nature of his duties? § 2. What are the qualifications of a president? What is the principal business of a vice president? § 3. Do the people vote directly for president? By whom is he elected? § 4. How and when are

put on one ballot, together with the names of any other two men, corresponding with the two senators; and each voter in the state votes for the whole number of presidential electors to which the state is entitled. Presidential electors are, by a recent act of congress, required to be chosen in all the states on the same day; which day is the Tuesday next after the first Monday of November, the day of the general election in this state.

§ 5. The electors of president do not all meet in one body. Those of each state meet by themselves, in their own state, on the first Wednesday of December, and vote for president and vice-president; and make a list of the persons voted for, and the number of votes for each; which list is sent to the president of the senate, at the seat of the government of the United States, before the first of January. On the second Wednesday of February, the president of the senate, in the presence of all the senators and representatives, opens all the certificates, and the votes are counted. The person having a majority of all the electoral votes for president, is elected.

§ 6. But a person may have the highest number, that is, a plurality, of the electoral votes, without having a *majority*. Suppose that at the next presidential election there should be three candidates for the office of president, and that of the 296 electoral votes, (there being at present 296 members of congress in both houses,) one candidate should receive 120 votes, another 90, and the other 86. Now a majority, that is, more than one half of the whole number, cannot be less than 149; consequently neither would be elected.

§ 7. If no person has a majority of the electoral votes, the house of representatives must choose the president from those candidates, not exceeding three, who had the highest number of the electoral votes. But in so doing, the members do not all vote together, as when passing bills; but those of each state vote by themselves; and the candidate who receives the votes of a majority of the representatives of a

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the presidential electors chosen? § 5. How, where, and when, do they meet to vote for president? To whom do they send the list of votes? When, where, and before whom, are the votes from all the states counted? § 6. What is the difference between a plurality and a majority of votes? § 7. When no candidate has a majority, how is the president elected?

state, has but one vote for each such majority ; from which it appears, that there are only as many presidential votes as there are states ; and the person who receives the votes of a majority of the states, is elected.

§ 8. If there is no election of vice president by the electors, the senate, in a body, chooses one from the two having the highest numbers of the electoral votes. The person receiving the votes of a majority of the whole number of senators, is vice-president.

§ 9. The president and vice-president go into office on the 4th day of March next after the election, and end their term on the 3d day of March, four years thereafter ; the same days of the same month on which senators every six years, and representatives every two years, commence and end their regular terms of office.

§ 10. The powers and duties of the president are numerous, and some of them very important. They are, in their nature, much the same as those of the governor of a state. They will be found mentioned in the constitution, article 2, § 2, 3.

§ 11. The president has a salary of \$25,000 a year. Some think this too much. But the expenses of a president are necessarily very great. It is believed that no president has ever been able to lay up a large portion of his salary. The vice president receives \$5,000 a year. His principal duty is to preside in the senate.

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## CHAPTER XLVI.

### *Of the subordinate Executive Departments.*

§ 1. THE general executive business of the nation, excepting what is done by the president in person, is performed in

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How does the house vote ? § 8. How is the vice-president elected when no person has a majority of the electoral votes ? § 9. When do the president and vice-president begin and end their official terms ? When do senators and representatives ? § 10. What is said of the president's powers and duties ? § 11. What is the salary of the president ? Of the vice-president ?

§ 1. Name the heads of the several executive departments. What are

the several executive departments, of which the following are the head officers: the secretary of state, the secretary of the treasury, the secretary of the interior, the secretary of war, the secretary of the navy, the attorney-general, and the post-master-general. These officers are consulted by the president, on important public matters; and hence are called "the cabinet." They are appointed by the president and senate.

§ 2. The *secretary of state* performs many duties similar to those of a secretary of a state government. (Chap. XI, § 2, &c.) But his most important duties are those which relate to our intercourse with foreign governments. Instructions from the president to our public ministers abroad, are communicated by him; and he also conducts the correspondence with the ministers of foreign countries residing here. Hence he is called a diplomatic officer. *Diplomacy* means the agency or management of ministers of a foreign court; or the customs, rules, or forms of negotiation practiced by the representatives of foreign nations.

§ 3. The *secretary of the treasury* conducts the financial affairs of the government. His duties are similar to those of the comptroller or auditor of a state. (Chap. XI, § 8, &c.) There are, in this department, two comptrollers and five auditors, to examine and settle the public accounts and collect the debts due the United States; a treasurer to keep and pay out the money; a register, who keeps accounts of the goods imported and exported, and of the shipping employed in our foreign trade; a solicitor; a recorder; and a large number of clerks.

§ 4. The *secretary of the interior* manages the business relating to patents, public lands, pensions, Indian affairs, public buildings, and the lead mines and other mines of the United States. The department of the interior, called also the home department, was established in 1849. Its principal business was formerly transacted in the state, treasury, and war departments.

§ 5. The business of the *secretary of war* relates to the military affairs of the United States. The nation supports

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they sometimes called? How appointed? § 2. What are the duties of the secretary of state? What is the business of the secretary of the treasury? Of the comptroller, auditor, treasurer, and register? § 4. To what does the business of the secretary of the interior relate? What is said about this department? § 5. What are the

what is called a standing army, which consists, at present, of about 10,000 armed men, stationed in different parts of the United States, and ready for service when wanted. The secretary is assisted by many subordinate officers and clerks.

§ 6. The *secretary of the navy* superintends the business relating to the navy. A *navy* is the fleet, or ships of war, which a nation keeps to defend itself in time of war, and to protect the trade of its citizens on the high seas in time of peace. There are employed in this department three *navy commissioners*, and a number of clerks.

§ 7. The *attorney-general* prosecutes and conducts all suits in the supreme court in which the United States are concerned, and gives his advice upon questions of law, when requested by the president or heads of departments.

§ 8. The *postmaster-general* establishes post-offices, appoints postmasters, and provides for carrying the mails. The business of this department is very extensive. There is a postmaster in almost every town in the union; in some towns there are several. The business of this vast number of officers is under the general supervision of the department, and subject to its direction.

§ 9. Every postmaster is required to keep an account of all the letters sent from and received at his office, and of the names of the offices to which sent, and from which received; and also the letters on which the postage was paid when mailed, and on which it was unpaid, and of those which are sent free of postage. And at the end of every quarter he sends such account to the general post office, with a statement of all moneys received for postage and paid out on the orders of the department.

§ 10. He is required also, at stated periods, to advertise a list of the letters in his office not likely to be immediately called for; and those remaining in the office three months longer, (called *dead* letters,) he sends to the general post-office, where they are opened; and such of these as contain valuable matter, are returned by mail to the writers of them. Letters that are refused by the persons to whom they are ad-

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duties of the secretary of war? What is said of the standing army? § 6. What is the business of the secretary of the navy? What is a navy? The attorney-general's business? § 8. That of the postmaster-general? § 9, 10. Of the postmasters? § 11. Who have the



dressed, are sent, also as dead letters, to the general post-office, at the end of every month, and without having been advertised.

§ 11. Postmasters whose compensation has amounted to less than \$200 during the year preceding, may receive and send, free of postage, letters on their own private business, weighing half an ounce or less; and members of congress, during their term of office, and until the first of December after its expiration, may receive and send letters and packets not exceeding two ounces, and all public documents, free. The person entitled to send matter free, must write on the outside his name and the title of his office. This is called *franking*. Civil officers at the seat of government also may frank matter relating to their official duties, and marked outside, "official business."

§ 12. The postage on every letter or packet weighing half an ounce or less, for any distance not exceeding 3,000 miles, is 3 cents, and the same for every additional half ounce. or fraction of half an ounce: any distance exceeding 3,000 miles, 6 cents. Newspapers and periodicals published monthly or oftener, and not exceeding three ounces, go to any part of the United States for  $\frac{1}{2}$  cent each, and the same for every additional half ounce; not exceeding  $1\frac{1}{2}$  ounce,  $\frac{1}{4}$  cent each, to any post-office in the state in which they are published.

§ 13. The salaries of the secretaries, attorney-general, and postmaster-general, are \$8,000 each. The officers named in the treasury department, and those of similar grade in other departments, receive, some \$3,500, others \$3,000 each; and a large number of subordinate officers and clerks, from \$2,500 to less than \$1,000.

§ 14. Three assistant postmaster-generals receive \$2,500 each; the auditor receives \$3,000. Postmasters receive for their services certain rates per cent. on the amount of postage received by them in each quarter of the year. This per centage varies, however, being greater on small sums than on those of larger amount. Postmasters whose commissions amount to \$1,000 or more in a year, are appointed by the president and senate.

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franking privilege, and to what extent? § 12. State the rates of postage. § 13. What are the salaries of the heads of departments? Of the subordinate officers? § 14. What are the salaries of the

§ 15. All the secretaries and postmaster-general, except the secretary of the treasury, report annually to the president, who lays their reports before congress. The secretary of the treasury reports directly to congress.

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## CHAPTER XLVII.

### *Of the Judicial Department.*

§ 1. As has been stated, there was, before the adoption of the constitution, no established national judiciary. The necessity of such a tribunal to decide disputes between states, and other matters of a national character, having become apparent, power was given to congress to establish national courts. (See Cons. Art. 1, § 8; Art. 3, § 1.)

§ 2. It is proper that all cases arising between citizens of the same state, as well as all crimes committed against its laws, should be tried by the courts of the state. But when cases arise under the laws of the United States, or between different states, or citizens of different states; or when crimes are committed on the ocean, or elsewhere beyond the jurisdiction of a state, it is evident that some other than a state court ought to try such cases. For example, if a person should violate the laws of congress made for the collection of duties on goods imported, he must be prosecuted in a court of the United States. So a murder committed at sea, beyond the limits of a state, is properly tried in a national court. Piracy, which is robbery on the high seas, is always tried in such court. And so all other cases mentioned in article 2, section 2, of the constitution.

§ 3. The lowest national courts are the *district courts*. Every state constitutes at least one district; a few of the large states, two each. In each district is a judge, who has power to hold a court. There are also in each district a

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postmaster-general and his under officers? What is the compensation of deputy postmasters? § 15. To whom do the heads of departments report?

§ 1. What is the object of having national courts? § 2. What are some of the cases that properly come before these courts? What is piracy? § 3. Which are the lowest national courts? What constitutes a district?

district attorney to attend to suits on the part of the United States, and a marshal, whose duties in this court are like those of a sheriff in state courts. This court has four stated terms a year. It tries certain kinds of civil cases, and the lower crimes against the laws of the United States.

§ 4. The circuits embrace larger territories than the districts. There are nine circuits in the United States, each including several states. In each there is a *circuit judge*, who holds a court in his circuit twice a year. The judge of the district within which the court is held, sits with the circuit judge in holding a circuit court. Besides certain kinds of civil causes, this court tries the highest crimes against the laws of the United States; as murder within forts, arsenals, and other territory, the property of the United States, or on the high seas.

§ 5. The *supreme court* consists of all the judges of the circuit courts, one of whom is the chief justice of the supreme court. There are but few causes which originate or commence in this court; its principal business is to rejudge cases that are brought up from the circuit courts. It holds one session annually, at the seat of government, commencing on the second Monday of January, and continuing about eight weeks.

§ 6. One important object of a supreme court of the United States, is, that a uniform meaning or interpretation may be given to the constitution and laws of the United States. One court may decide a law to be constitutional; another may declare it to be unconstitutional. In one state the constitution may be taken to mean one thing; in another quite another thing. But when a case comes before the supreme court, and is there decided, such decision governs the judgment of all inferior courts throughout the union.

§ 7. All judges of the United States' courts are appointed by the president and senate, and hold their offices for life, or during good behavior. The salary of the chief justice is \$6,500; that of the associate judges, \$6,000 each.

What cases does this court try? § 4. Of what territory are the circuits composed? How many circuits are there? Who hold the circuit courts? What cases do they try? § 5. How is the supreme court constituted? What is its business? Where and when does it meet? § 6. What is one important advantage of this court? § 7. How are all United States' judges appointed? What are the salaries of the judges of the supreme court?

## CHAPTER XLVIII.

*Of the Powers of the General Government.*

§ 1. Most of the important powers of the government of the United States, are vested in congress, and will be found enumerated in the 1st article, and 8th section, of the constitution. Perhaps the want of none of these powers was so sensibly felt under the confederation, as the first three here mentioned; and it is probably for this reason that they were placed at the beginning of the list.

§ 2. The first of these is the power "to lay and collect taxes, duties, imposts and excises;" and the objects of this power are declared to be, "to pay the debts, and provide for the common defence and general welfare of the United States."

§ 3. Congress had been obliged to borrow large sums of money to defray the expenses of the war. Several millions were borrowed from France and Holland. But congress had no power, as has been observed, to raise money by taxation. The government could not pay its debts, nor support itself. But by the power here given, it may raise money to any amount necessary for the objects stated in the constitution. And it may raise the money either by *direct taxation*, that is, by laying the tax directly upon the *property* of the citizens, or by *indirect taxation*, which is by duties, imposts, and excises.

§ 4. The nature of duties has been explained. (See *duties*.) *Duties* or *customs*, and *imposts*, have nearly the same meaning. The last, however, are properly taxes on goods *imported* only; the first apply to taxes on goods exported as well as on those imported. But as our government does not impose duties on exports, these three words practically signify the same thing. But *excise* has no reference at all to the exportation or importation of goods; it is a tax laid upon an article manufactured, sold, or consumed, *within* the country.

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§ 1. What three powers of congress are first mentioned? § 2. Which is the first? § 3. Why was this power necessary when the constitution was framed? What is direct taxation? Indirect taxation? § 4. What is the

Such, for example, is the duty paid by keepers of taverns and groceries for the privilege of selling liquors.

§ 5. Notwithstanding congress has power to raise money by taxation in several ways, it has seldom been found necessary to exercise it in any other way than by laying duties on foreign goods, and on the vessels in which they were imported. How effectual this mode of taxation has been, will appear from the following facts:

§ 6. At the close of the revolutionary war, the national debt amounted to \$42,000,000, on which congress could not so much as pay the interest. Two years after the constitution went into effect, the debt had risen to \$75,000,000; in 1804, to \$86,000,000. From that time it gradually diminished until the commencement of the late war, in 1812. when it was reduced to \$45,000,000. By that war, the debt was again increased, being in 1816, \$127, 000,000.

§ 7. Now the raising of so large a sum by a direct tax. would have been very oppressive. Wherefore congress exercised its power of taxation almost exclusively in laying duties on imports; and from the revenue thus raised, not only have the yearly expenses of the government been defrayed, but this vast national debt has long since been paid, besides leaving in the treasury a large surplus, which has been distributed among the states, and loaned out to the citizens.

§ 8. Equally necessary is the power next mentioned, "to borrow money on the credit of the United States." Large sums of money are sometimes wanted to pay a debt before they can be raised from the revenues or regular income of the nation; and sometimes immediately, as in case of war. In such case, congress must tax the people, or borrow the money. But who would lend the government, if it had not the means of paying?

§ 9. Here, then, we see the utility of both these powers. Capitalists are now willing to lend their money to the government, because, if other means of paying its debts should be insufficient, it has power to raise the money by direct taxation.

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difference between duties and imposts? What is an excise? § 5. Have direct taxes been often laid? § 6. State the amount of the national debt at each period here mentioned. § 7. By what means has this debt been paid

§ 10. The power "to regulate commerce with foreign nations," which is next in the list, seems to be, in a measure, connected with the first, "to lay duties." It will be remembered that, before the war of the revolution, the colonies were dependent on Great Britain for manufactured goods. By the war, trade with that country was interrupted. But when peace was restored, the British again sent their goods into this country; but they levied heavy duties upon American produce and American vessels coming into their ports, with the view of so raising the price of foreign agricultural products, as to compel her citizens to buy those of their own country. Thus was the trade of the two countries placed on an unequal footing. We wanted English goods, but England would not take the produce of our labor in exchange, without subjecting it to heavy duties.

§ 11. Hence, some regulations concerning foreign trade became necessary. Congress had not the power to regulate commerce; it belonged to the states. But the states, acting *separately*, were unable to effect the object desired; they could not agree upon any system of measures. A change in the government must be made before the evil could be remedied. And we learn from the history of that day, that, to give to the general government power to regulate trade was one of the principal causes, perhaps the more immediate cause, of calling the convention that framed the constitution.

§ 12. It has just been remarked, that the two powers, "to lay duties," and "to regulate commerce," are nearly allied. Indeed, the former has been used to carry into effect the intentions of the latter. The first law but one, passed by the first congress under the constitution, authorized "duties to be laid on goods, wares, and merchandises, imported," and for purposes, one of which was declared to be, "the encouragement and protection of domestic manufactures." England having by her regulations of trade encouraged the supplying of her own people with provisions, congress intended, by laying duties upon foreign goods, to encourage the manufacture of similar goods at home.

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§ 8, 9. Why is the power to borrow money necessary? § 10. What power is next mentioned? What is said about our trade with Great Britain? § 11. What then became necessary? Why could they not be made? What did this lead to? § 12. What law was passed by the first congress

§ 13. Whether this is a wise measure for regulating the commerce of a nation, is a question in political economy, upon which statesmen differ; one which it is not the design of this work to discuss. The above facts are given simply to explain the objects and use of the power to regulate foreign commerce.

§ 14. Congress has power, also, to regulate commerce "among the several states." Without this power, each state might adopt regulations favorable to its own citizens, and injurious to the people of other states. This was actually done under the confederation; and to restore and preserve harmony, and to secure equal justice to the citizens of all the states, which could be done only by one uniform system for the whole, this power was given to the general government.

§ 15. Under the power to regulate commerce, congress has also made *navigation laws*, or laws relating to the shipping of the nation. These laws require vessels to be measured, to ascertain how much they hold; and prescribe the manner in which they are enrolled or registered, and licensed, and in which they are to enter and leave the ports, and the duties of the masters of vessels, declaring what papers they are to carry, &c.

§ 16. These regulations are especially necessary for the collection of the revenue arising from foreign commerce. There is, in every port of entry, a *collector of customs*, who superintends the collection of duties. When a vessel arrives, it is submitted, with the cargo, and all papers and invoices, to the inspection of the proper officers; and the goods subject to duty are all weighed or measured, and the duties estimated according to law.

§ 17. On some articles a *specific* duty is charged, which is a duty of so much a pound, yard, or gallon; as, two cents on a pound of iron, or fifty cents on a yard of cloth. Others are charged with an *ad valorem* duty, which means a duty

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under the constitution? What was one of the objects of this law? § 14. What other commerce may congress regulate? Why is this power necessary? § 15. Under what power are navigation laws made? What is navigation? What do these laws require? § 16. For what special purpose are these regulations necessary? What is done when a vessel comes into port? What is a port? § 17. What is a specific duty? Ad valorem?

According to the value, being a certain per centage on the value of an article; as forty per cent. on what costs one dollar, would be forty cents; or thirty per cent. on every hundred dollars would be thirty dollars. In certain cases, *tonnage* duties are charged, upon foreign vessels, at so much per ton of their measurement.

§ 18. All this business requires a vast amount of labor. Nearly five hundred men are employed at the custom-house in the city of New-York. The whole amount derived from customs in the United States, in 1854, was about \$64,224,190. Besides this a considerable sum was received into the treasury from the sale of public lands. These two sources produce nearly the whole revenue of the nation; from which are paid the salaries of officers, and other expenses of the government.

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## CHAPTER XLIX.

### *Powers of the General Government, continued.*

§ 1. ANOTHER power given to congress, is the power "to establish a uniform rule of naturalization." It has already been stated, that foreigners, or aliens, are not entitled to the privileges of citizens till they become naturalized. Before the constitution was adopted, every state established its own rules for naturalizing foreigners. But as a person, on being made a citizen in any state, becomes a citizen of the United States, it is evident that there should be but one rule of naturalization.

§ 2. An alien must have lived in the United States five years, before he can become a citizen. Two years before he is admitted as a citizen, he must declare, on oath, in writing, before a proper court, that he intends to become a citizen of the United States, and to renounce his allegiance

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Tonnage duty? § 18. What is said of the custom-house business? In the city of New-York? How much revenue is derived from customs? For what purposes is the income of the nation expended?

§ 1. What is naturalization? Why should this power be in congress?  
 § 2. How soon may an alien become naturalized? What is the rule of



to his former government; and he must declare, on oath, that he will support the constitution of the United States. Then, two years thereafter, the court, if satisfied as to his moral character and his attachment to the constitution, may admit him as a citizen.

§ 3. On his being naturalized, a man's minor children, if dwelling in the United States, also become citizens. If a man has lived at least three years in the United States before he becomes of age, he may, at the expiration of the five years' residence, be admitted by the court, without having previously made a declaration of his intention to become a citizen.

§ 4. The power "to coin money and regulate the value thereof," is properly given to congress. Formerly the system of reckoning was by pounds, shillings, and pence; the value of which was different in different states. For instance in the New-England states, six shillings make a dollar, in New-York eight, in Pennsylvania seven shillings and six-pence. This rendered dealing between the people of different states quite inconvenient. The present decimal mode of calculation, in dollars and cents, established by congress, together with the use of decimal coins, has removed the former inconvenience.

§ 5. Money is coined at the *mint*, which is in Philadelphia. The business of coining is under the superintendence of a director. The gold and silver, before it is coined, is called *bullion*. Individuals, as well as the government, may get money coined at the mint. Six principal men employed in the mint, receive salaries of \$1,000 to \$2,000 each. Gold and silver are also coined at New-Orleans; and gold, to some extent is coined at Dahlonega in North Carolina, Charlotte in Georgia, and in California.

§ 6. Another power of congress is "to promote the progress of science and useful arts." Sciences and arts are much aided by new books and new inventions. But if every body had the privilege of printing and selling every new book or other writing, and of reaping equal benefits from

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naturalization? § 3. How do children become citizens? In what case may persons be admitted as citizens, without first declaring their intention to become such? § 4. What were the inconveniences suffered from the old system of reckoning? How have they been removed? § 5. Where is money coined? What is bullion? § 6. What is the object of the power

every new invention or discovery, there would be less encouragement for men of ability and genius to spend their time and money in preparing new works for the public.

§ 7. Congress has therefore passed an act by which an author may get, for his writings, a *copy-right*, by which all other persons are prohibited, for twenty-eight years, from printing or publishing the same without the proprietor's consent. And the proprietor may, at the expiration of that time, get the right renewed for fourteen years longer. *Patents* for new inventions are granted for fourteen years; and may be renewed for a farther term of seven years, if the inventor shall not have been reasonably rewarded.

§ 8. The powers relating to war and the public defence, are also given to congress. It would be dangerous to allow a single state to make war; and to depend on the state governments to provide the means of prosecuting a war, had already been found to be unsafe. And as the people of all the states become involved in the calamity and expense of a war, the power to declare war ought to belong to the representatives of the whole nation.

§ 9. So also the power "to grant letters of *marque and reprisal*." Letters of *marque and reprisal* give to persons injured by citizens of another nation, the liberty to seize the bodies or goods of any of the citizens of such nation, and detain them till the injury shall be repaired. It is not clear that such license ought ever to be given. But the power to grant it ought to be vested in congress, if any where.

§ 10. Congress has power "to exercise exclusive legislation," (that is, congress only, has the power to make laws,) over the District of Columbia, in which is the seat of government. The "ten miles square," as appears from the language of the clause, was not yet in possession of the national government; but it was in contemplation, by the states of Maryland and Virginia, to cede it to the United States for the purpose mentioned. As it is the property of the

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to promote the progress of science and useful arts? § 7. What privilege does a copy-right give to an author or proprietor of a book or other writing? What privilege does a patent confer upon an inventor? § 8. For what reasons is the power given to congress to declare war, and provide for the defence of the nation? § 9. What are letters of *marque and reprisal*? § 10. Over what territory may congress exercise exclusive legislation? § What is

nation, it is proper that congress alone should be allowed to make laws for the people therein. [t']

§ 11. A very essential power of the general government is the power "to make treaties." This power, however, is exercised by the president and senate. A *treaty* is an agreement between two nations. Treaties are made to restore or preserve peace, and sometimes to regulate trade, between nations. It is plain, therefore, that this power ought to be in the national government; and for wise reasons it is given to the president and senate alone. And for reasons equally strong, the power to appoint ambassadors and others, by whom treaties are negotiated, should be in the same hands. (See Con. Art. 2, § 2, clause 2.)

§ 12. In making a treaty, the terms are arranged and agreed upon by the agents of the two governments; and the articles of agreement are sent to their respective governments to be ratified. Hence, what is meant by the president and senate's making treaties, is their approving them, or giving them their effect. Each civilized nation has some officer at home, and a representative at the seat of each foreign government, to transact business for his nation, and to keep his government advised of what is done abroad. There is, at the city of Washington, a minister from Great Britain, France, Russia, and other foreign countries. The person who corresponds with them on the part of our government, is the secretary of state. And we also have a minister in each of those countries.

§ 13. Representatives at foreign courts are differently styled, ambassadors, envoys, ministers, and *chargés d'affaires*. The duties of all these several agents are not always precisely the same. An *envoy*, and sometimes an *ambassador*, is sent on a special occasion, and returns when the particular business on which he was sent is done. The others reside abroad, and act in obedience to instructions sent them from time to time. *Chargés d'affaires* are ministers of a lower grade. The name is French, and means a person

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neant by exclusive legislation? What is here said of the district? Where is the seat of government? § 11. In whom is the power to make treaties vested? What is a treaty? § 12. Describe the manner of making treaties? What practice of civilized nations is here spoken of? § 13. What are the names of the different foreign representatives? In what do

having charge of the affairs of his nation. *Consuls* reside in foreign seaports, as much of their business relates to the commercial intercourse between nations, and is done with masters of vessels and with merchants.

§ 14. Ministers of the United States receive a salary of \$9,000 a year; *chargés d'affaires*, \$4,500: and both receive, besides, on going out of the United States, an *oufou*, equal to a year's salary.

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## CHAPTER L.

### *Powers prohibited to Congress and the States.*

§ 1. WHILE the constitution gives many important powers to the general government, there are many things which it expressly declares shall not be done. (See Art. 1, § 9.)

§ 2. "No bill of attainder or *ex post facto* law shall be passed." A *bill of attainder* is an act of the legislature, inflicting the punishment of death upon a person pronounced guilty of some crime, without trial. If it inflicts a milder punishment, it is called a bill of pains and penalties.

§ 3. An *ex post facto law* is, literally, a law which has effect upon an act after it is done. But the phrase here means a law to punish, as a *crime*, an act that was lawful when it was done. Thus, if a law should be passed, by which a man should suffer death for an act of justifiable homicide, committed before the law was made, such would be an *ex post facto* law. A law is also an *ex post facto* law that inflicts a more severe penalty for an *unlawful* act, than was imposed for such offence when committed. Thus, if a law were passed to-day, requiring that men now awaiting trial for petit larceny heretofore committed, should, on conviction, suffer death, or imprisonment in state prison, the law would be *ex post facto*.

§ 4. "No capitation or other direct tax shall be laid, un-

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their duties differ? What is a *chargé d'affaires*? Why do consuls reside in sea-ports? § 14. What is the compensation of ministers, &c.

§ 2. What laws shall congress not pass? Define bill of attainder. § 3. What is an *ex post facto* law? § 4. What is a capitation tax? § 5. What

“less in proportion to the census or enumeration herein before directed to be taken.” (Cons. Art. 1, § 9.) The word *capitation* is derived from the same Latin word as *capital*, which has been defined. It is a tax of so much upon every head, or poll, without respect to property; hence it is usually called a *poll-tax*. Taxes of this kind are not laid in this country. A portion of the highway labor, as we have seen, is thus assessed.

§ 5. “No attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.” (Cons. Art. 3, § 3, cl. 2.) To the young reader this sentence may need explanation. Literally, attainder means a taint, or staining, or corruption; but it here signifies the same as judgment, or conviction. By the common law, the stain of treason was made to affect the *blood* of the traitor, so that he could neither inherit property himself, nor could his heirs inherit from him; but his whole estate was forfeited. The constitution properly abolishes a law by which the innocent were made to suffer for the crimes of others.

§ 6. Besides corruption of blood and forfeiture, the manner of inflicting the punishment was most disgraceful and inhuman. The offender was drawn to the gallows on a hurdle; hanged by the neck, and cut down alive; his entrails taken out and burned while he was yet alive; his head cut off; and his body quartered. Power being given to congress, in the clause above referred to, “to declare the punishment of treason,” congress has abolished this barbarous practice. Hanging, simply, is the punishment.

§ 7. Not congress only, but the states also, are properly prohibited from doing certain acts. (See Art. 1, § 10.) One of the things there forbidden is, to “make any thing but gold and silver coin a tender in payment of debts.” This means that no person shall be compelled to take, in payment of a debt owing to him, any thing *tendered* or offered to him, but gold and silver coin.

§ 8. Both during and after the war, a large amount of

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is here meant by attainder of treason? Corruption of blood? § 6. How was punishment for treason formerly inflicted? § 7. The states shall not make any thing but coin a tender in payment of debts: what does this mean? § 8. What is here meant by bills of credit? What in particular

paper money, almost worthless, was put in circulation; and by some of the states, this money was declared to be a tender. Hence the propriety of this prohibition. But the constitution goes farther, and says, (in the same clause,) that no state shall "*emit bills of credit*;" that is, issue paper money on the credit of the state. Bank bills, it will be remembered, are not issued by the state, but by banking companies.

§ 9. Most of the other things here forbidden to the states, congress has the power to do; and it would be improper to give these powers to both. Indeed, they were given to the general government, for the very reason that it was not expedient that they should be exercised by the states.

§ 10. Constitutions properly contain some provision for amending them, in case it may become necessary. The mode of amending the constitution of the United States, is prescribed in the 5th article. (Examine the article.) To get a majority of two-thirds of congress or of the states to propose amendments, and then to get the proposed amendments ratified, either by the legislatures of three-fourths of the states, or by conventions in three-fourths of them, is very difficult. This is right. If the constitution could be altered by a bare majority, there would be danger of its being too frequently altered—sometimes, perhaps, for the worse.

§ 11. By the 2d clause of the 6th article, the constitution, and the laws and treaties made under it, are declared to be binding above all state constitutions and laws. If it were not so—if all state authorities were not bound by the constitution of the United States, it would be good for nothing; there might as well be no general government at all. Any law, therefore, which is decided by a competent court to be contrary to the constitution, is void.

§ 12. By the last article, the constitution was to go into effect, when ratified by conventions of delegates of nine states, which was then a majority of three-fourths of the states. As it was hardly to be expected that every state would immediately adopt it, it was not thought proper to risk the good of all upon an event so doubtful.

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duced the framers to forbid their being issued? § 9. What are some of the other things forbidden to the states? (See Constitution.) § 10. How are amendments to be made to the constitution? § 11. What is provided in the 2d clause of the 6th article of the constitution? Why should the acts of

§ 13. The framers closed their labors in September, 1787; and in July 1788, New Hampshire, the ninth state, sent its ratification to congress; and congress appointed the first Wednesday of January, 1789, for choosing electors of president in the several states, and the first Wednesday of February for the electors to meet in their respective states to elect the president. Gen. Washington was unanimously chosen, and on the 30th of April, was inaugurated president. Proceedings, however, commenced under the constitution on the 4th of March, preceding.

§ 14. In the foregoing sketch of the government of the United States, many provisions of the constitution have been passed over without remark. A note on every clause could not be given. The student who wishes to obtain a better knowledge of our *national* jurisprudence, is referred to the larger work of the author, entitled "Science of Government."

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## CHAPTER LI.

### *Review and Conclusion.*

§ 1. FROM the view which has been given of the state and national governments, it must be seen how well they are adapted to promote the general welfare of the people, and to secure to them the blessings of liberty. Let us, by way of review, again advert to some of the leading features of our political system.

§ 2. One of the excellencies of this system is the extent to which political rights and privileges are enjoyed. In the ancient democracies of Greece, where every freeman was a member of the legislature, political rights were enjoyed and exercised only by about one twentieth part of the male citizens of full age. In England and France, where one

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the general government be binding upon the state authorities? § 12. How was the constitution ratified? § 13. When was it finally ratified? and when was the government commenced under it? Who was the first president? and when elected?

§ 3. To what extent was political power exercised in ancient Greece?

branch of the legislature is elective, a large portion of the people have no right to vote for their representatives. In the latter country, containing a population of nearly 35 millions, there are only about half as many voters as in the state of New-York.

§ 3. But in the greater portion of the United States, nearly all the *white* male citizens exercise the rights of freemen. They have a voice in choosing their constitution, and in electing the officers of the government. This is the fundamental principle of republicanism, the highest privilege of freemen.

§ 4. Another excellency of our government, and one that gives security to liberty, is the division of the civil power into legislative, executive, and judicial. If the persons who make the laws, should also have power to execute them and to judge of and apply them, the government, whatever it might be called, would be little better than a despotism. There would be too many different powers in the same hands. It has been found better to keep these several kinds of power separate.

§ 5. Additional security is given to liberty by the peculiar nature of the union. This has been described. It differs from the unions that have heretofore existed. These were simple confederacies or leagues between sovereign states. The old American confederation was of this kind. By a *sovereign* state, we mean a state that makes all its own laws, and is controlled by no superior power.

§ 6. The Swiss cantons are at present united in such a confederacy. They are sovereign states; and as in all mere confederations, each canton has an equal vote in the congress. The principal German states are similarly united; some of which are republican, and others monarchical.

§ 7. But the states of the American union are not wholly sovereign. They have, for the good of the whole, given up a portion of their sovereignty to the general government, which, in some cases, controls the state governments. If the states were entirely sovereign, they could establish any

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What is said of the right of suffrage in England and France? § 3. What is said of the same in the United States? § 4. What division of civil power gives security to liberty? § 5. What else increases this security? What is a sovereign state? § 6. What is said of the Swiss and German confede-



kind of government. But by the constitution, the general government has power, and is bound, to prevent any state from changing its government to any other than a republican form. (Art. 4, § 4.)

§ 8. In the progress of this work, the government of the United States has frequently been called the *national* government; but it is not wholly national. To have an idea of a government purely national, we must suppose the people united in one great government, with only one legislature to make laws for the whole nation, one executive, and one judiciary. And in adopting a constitution, all the electors must vote directly for or against the proposed form, and a majority of all the votes must be necessary for its adoption, as when choosing a state constitution.

§ 9. But it must be kept in mind that the state governments existed first, and that the civil conduct of the citizens is regulated by the laws of the states. Although the general government, also, in some cases, acts directly upon individual citizens, and is superior to the state governments; yet its powers extend only to certain objects, which powers are given to it by the people of the states: consequently all powers which the constitution does not grant to the general government, remain with the states and the people.

§ 10. The government is therefore of a *mixed* nature, being partly national and partly federal. *Federal* signifies united by a league or confederation, and implies that the members have equal power. Such was the character of the old confederation; and some of its principles have been retained in the constitution.

§ 11. Under the former, all the states were equally represented in the congress, the members of which were chosen by the state legislatures. So in the senate, the states are equally represented now; and the senators are also appointed by the state legislatures. So in the adoption of the constitution the states had an equal voice; and so they must have in amending it. In these cases the *federal* principle is preserved.

rations? § 7. Are our states wholly sovereign? How, and to what extent are they prevented from changing their governments? § 8. What would be necessary to make the general government purely national? § 9. By what laws is the civil conduct of the citizens regulated? Whence does the general government derive its powers? § 10. What two principles are combined in the general government? What is federal? § 11 12

§ 12. Again: In electing a president by presidential electors, each state having a number proportioned to its population, the election is upon the *national* principle. But if the election is to be made by the house of representatives, each state has an equal vote: this is according to the *federal* principle. Hence the government of the United States is sometimes called the "federal government."

§ 13. It may perhaps be asked: Why are so many governments necessary? Why not dispense with the state governments, and let the people of the whole nation be united in one great national government, like that of a state? Such a plan would be impracticable. A single government could not make all the laws necessary for so great a nation, nor manage its numerous affairs. Hence, the interests of large portions and of different classes of the people must be neglected. Complaints and grievances would spring up in every quarter, and the government could not satisfy or redress them; and disorder and confusion would soon prevail throughout the republic, and perhaps result in bloodshed.

§ 14. Thus we see that our liberties are best secured by having the national territory divided into portions of convenient size, with a government in each, and by binding them together under a strong national government, which shall keep each of them within its own proper sphere.

§ 15. How highly favored the people who live under such a government as that which we have described! How dear should be the memory of those who achieved the independence of these states, and established the system of government which has conveyed to us, their descendants, the blessings of civil and religious freedom! And what a debt of gratitude is due to the Supreme Ruler of nations, for conducting a feeble and infant nation, through difficulties and dangers, to a state of unexampled prosperity and happiness!

§ 16. With our patriot fathers, the great object was, independence and liberty. With us let the question be, How shall our liberties be preserved? Whether the American people shall long continue to enjoy the blessings which our

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Wherein has the federal principle been retained? § 13. Why might not the whole nation be under a single government? § 14. How are our liberties best secured? § 15. To whom are we indebted for all the blessings of good government? § 16. On what does the continuance of our liberties

excellent constitution is capable of securing to them, depends upon what shall be the character and conduct of the people themselves.

§ 17. A nation, to be prosperous and happy, must be virtuous. A community may live under a free constitution, and yet suffer all the evils of a despotism. The people may be their own oppressors. Bad laws in a republican government, are no less oppressive than in any other. Where there is not virtue in the body politic, bad men will be elected to office, and bad laws will be made.

§ 18. On the other hand, freedom may be enjoyed even in a monarchy. A wise and virtuous king will make good and wholesome laws; and his subjects may as truly enjoy civil and religious liberty, as the citizens of a republic. Freedom exists really wherever the laws are good, and where they are properly administered and duly respected.

§ 19. The people must also be intelligent. In general, the freedom and happiness of a nation are in proportion to its intelligence. If people are ignorant, they cannot govern themselves. Indeed, they know not what their natural rights are. Besides, if they are not well informed, they are liable to be deceived by intriguing politicians, who seek power only to use it for selfish purposes.

§ 20. Hence the necessity of vigilance also. As men in office are prone to abuse their power, they should be closely watched; and as they are but the servants of the people, they should be called to account for improper conduct: and the people must not suffer party prejudice to blind them to the errors of their greatest favorites.

§ 21. If, then, we would continue a free and happy people, we must be intelligent, virtuous and vigilant. Our liberties *may* be preserved; and they *will* be preserved, so long as the general diffusion of useful knowledge shall continue to be liberally encouraged, and the conduct of our citizens, in their social and political relations, shall be governed by religious principles, and a genuine and enlightened patriotism.

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depend? § 17, 18. What is necessary to the happiness and propriety of a nation? Can there be freedom in a monarchy? What does it effect? § 19. What are the effects of ignorance, in a community? § 20. What is said in respect to the necessity of vigilance? § 21. What, then, must be done?

# CONSTITUTION OF THE STATE OF NEW YORK.

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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. 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.

SEC. 2. 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.

SEC. 3. 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 constructed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

SEC. 4. 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.

SEC. 5. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

SEC. 6. 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 offence; 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.

SEC. 7. 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.

**SEC. 8.** 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 libellous 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.

**SEC. 9.** 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.

**SEC. 10.** No law shall be passed, abridging the right of the people peacefully 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.

**SEC. 11.** 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.

**SEC. 12.** 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.

**SEC. 13.** 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.

**SEC. 14.** 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.

**SEC. 15.** All fines, quarter sales, or other like restraints upon alienation reserved in any grant of land, hereafter to be made, shall be void.

**SEC. 16.** 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.

**SEC. 17.** 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: 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.

SEC. 18. 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 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.

## ARTICLE II.

SECTION 1. 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 otherwise, 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.

SEC. 2. Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, of 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.

SEC. 3. 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 alms house, or other asylum, at public expense; nor while confined in any public prison.

SEC. 4. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established.

SEC. 5. All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise.

### ARTICLE III.

SECTION 1. The legislative power of this state shall be vested in a senate and assembly.

SEC. 2. 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.

SEC. 3. 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.

[The following are the numbers of the several senate districts, and the counties of which each is composed :

District number *one*, Suffolk, Richmond and Queens; number *two*, Kings; numbers *three*, *four*, *five*, and *six*, the city and county of New York; number *seven*, Westchester, Putnam and Rockland; number *eight*, Dutchess and Columbia; number *nine*, Orange and Sullivan; number *ten*, Ulster and Greene; number *eleven*, Albany and Schenectady; number *twelve*, Rensselaer; number *thirteen*, Washington and Saratoga; number *fourteen*, Warren, Essex and Clinton; number *fifteen*, St. Lawrence and Franklin; number *sixteen*, Herkimer, Hamilton, Fulton, and Montgomery; number *seventeen*, Schoharie and Delaware; number *eighteen*, Otsego and Chenango; number *nineteen*, Oneida; number *twenty*, Madison and Oswego; number *twenty-one*, Jefferson and Lewis; number *twenty-two*, Onondaga; number *twenty-three*, Cortland, Broome and Tioga; number *twenty-four*, Cayuga and Wayne; number *twenty-five*, Tompkins, Seneca and Yates; number *twenty-six*, Steuben and Chemung; number *twenty-seven*, Monroe; number *twenty-eight*, Orleans, Genesee and Niagara; number *twenty-nine*, Ontario and Livingston; number *thirty*, Allegany and Wyoming; number *thirty-one*, Erie; number *thirty-two*, Chautauque and Cattaraugus.]

SEC. 4. 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 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.

SEC. 5. 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

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 re-apportion 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 re-apportionment, to more than one member, shall assemble at such time as the legislature making such re-apportionment 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 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.

SEC. 6. The members of the legislature shall receive for their services a sum not exceeding three dollars a day, from the commencement of the session; but such pay shall not exceed in the aggregate three hundred dollars for 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.

SEC. 7. 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.

SEC. 8. 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.



**SEC. 9.** 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.

**SEC. 10.** 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, when the lieutenant-governor shall not attend as president, or shall act as governor.

**SEC. 11.** 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.

**SEC. 12.** For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.

**SEC. 13.** Any bill may originate in either house of the legislature; and all bills passed by one house may be amended by the other.

**SEC. 14.** 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.

**SEC. 15.** 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 question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

**SEC. 16.** 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.

**SEC. 17.** 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.

#### ARTICLE IV.

**SECTION 1.** 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.

**SEC. 2.** 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 of this state.

**SEC. 3.** 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.

**SEC. 4.** 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 and during his continuance in office.

**SEC. 5.** The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offences 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.

**SEC. 6.** 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.

**SEC. 7.** The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall only have 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.

**SEC. 8.** 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.

**SEC. 9.** 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 yeas and nays, and the names of the members 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 it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law

#### ARTICLE V.

**SECTION 1.** 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.

**SEC. 2.** 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.

**SEC. 3.** 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 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.

**SEC. 4.** 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.

**SEC. 5.** 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 canal commissioners.

**SEC. 6.** 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.

SEC. 7. 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.

SEC. 8. 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.

#### ARTICLE VI.

SECTION 1. The assembly shall have the power of impeachment, by the vote of a 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 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.

SEC. 2. 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 supreme court having the shortest term 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.

SEC. 3. There shall be a supreme court having general jurisdiction in law and equity.

SEC. 4. 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.

SEC. 5. The legislature shall have the same powers to alter and regulate the jurisdiction and proceedings in law and equity, as they have heretofore possessed.

SEC. 6. 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. And 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.

SEC. 7. 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.

SEC. 8. 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 ability, shall be entitled to admission to practice in all the courts of this state.

SEC. 9. 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 terminer within the several counties, shall be provided for by law.

SEC. 10. The testimony in equity cases shall be taken in like manner as in cases at law.

SEC. 11. 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 defence. On the question of removal, the ayes and noes shall be entered on the journals.

SEC. 12. 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.

SEC. 13. In case the office of any judge of the court of appeals, or jus-

Office 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.

SEC. 14. 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. 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.

SEC. 15. 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.

SEC. 16. 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.

SEC. 17. 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 in their de-

fence, by such county, city or state courts as may be prescribed by law for causes to be assigned in the order of removal.

SEC. 18. 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.

SEC. 19. 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 for 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.

SEC. 20. No judicial officer except justices of the peace, shall receive to his own use any fees or perquisites of office.

SEC. 21. 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.

SEC. 22. 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.

SEC. 23. 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.

SEC. 24. 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 and 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.

SEC. 25. [Ceases to have effect.]

## ARTICLE VII.

[The several sections of this article are given in condensed form, as follows:

SEC. 1. Appropriates annually out of the nett or surplus revenues of the state canals, \$1,300,000, until the year 1855, and thereafter \$1,700,000, as a sinking fund for the payment of the canal debt, until it shall be paid.

SEC. 2. Appropriates annually out of these revenues, towards the payment of the general fund debt and other state debts, \$350,000, until the canal debt shall be paid, and thereafter \$1,500,000 towards the general fund debt and other debts until paid.

SEC. 3. Appropriates annually out of the nett or surplus revenues, for the benefit of the general fund, such sum, not exceeding \$200,000, as may be required for the necessary expenses of the state. The remainder of said canal revenues is applied toward the completion of the unfinished canals. At any time after eight years from the adoption of the constitu-

tion, if a direct tax shall continue to be necessary to defray any part of the expenses of the government, the legislature may, instead of \$200,000, appropriate not exceeding \$350,000 annually, until the general fund debt be paid or the canals be completed; and thereafter \$672,500, or so much thereof as shall be necessary, may be annually applied to defray the state expenses.

SEC. 4. Forbids hereafter, the releasing or compromising of any claims of the state against incorporated companies, but requires the enforcement of these claims, and the money, if collected, to be applied as part of the sinking fund provided in the second section of this article.

SEC. 5. If the state shall at any time be unable, on the credit of these sinking funds, to procure the means to pay the claims of its creditors, the revenues of these funds are to be so increased by taxes as to make them sufficient to preserve the public faith.

SEC. 6. Prohibits the selling or leasing of any of the canals of the state.

SEC. 7. Prohibits the selling or disposing of the salt springs of the state; but authorizes the sale of lands adjoining, or convenient for the use of the springs, for the purpose of investing the money arising therefrom in other lands alike convenient; provided the quantity of lands be not diminished.

SEC. 8. No moneys may hereafter be paid out of the treasury or funds of the state, unless authorized by law, nor unless paid within two years after the passage of the law making the appropriation. Every such law must specify the sum, and the object to which it is to be applied.

SEC. 9. The credit of the state shall not in any manner be loaned to, or in aid of, any individual association or corporation.

SEC. 10. Authorizes the contracting of debt, not exceeding \$1,000,000, to meet casual deficits in the revenues, or for expenses not provided for; the money arising from the loans creating such debt to be applied to the purpose for which it was created, or to repay the debt.

SEC. 11. Authorizes the farther contracting of debt to repel invasion, suppress insurrection, or defend the state in war.

SEC. 12. In contracting any other debt by the state, the law must specify the work or object; authorize a direct tax to pay it within eighteen years; and, before it can go into effect, must be approved by the people (that is, by a majority of those voting upon it) at a general election. And the proceeds of the loans or stocks creating such debt, may not be applied to any other work or object.

SEC. 13. Every law authorizing taxation must state distinctly the tax, and the object to which the money is to be applied.

SEC. 14. On the final passage of every act imposing a tax creating a debt or charge, making any appropriation of public money or property, or releasing any claim or demand of the state, three-fifths of all the members of each house must be present.]

#### ARTICLE VIII.

SECTION 1. 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.



SEC. 2. Does from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. 3. 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.

SEC. 4. 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.

SEC. 5. 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.

SEC. 6. 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.

SEC. 7. 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 the said first day of January, one thousand eight hundred and fifty.

SEC. 8. In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

SEC. 9. 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.

#### ARTICLE IX.

SECTION 1. 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 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.

#### ARTICLE X.

SECTION 1. 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, their offices shall be deemed vacant. But the county shall never be 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 defence.

SEC. 2. 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 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.

SEC. 3. 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.

SEC. 4. The time of electing all officers named in this article shall be prescribed by law.

SEC. 5. 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.

SEC. 6. The political year and the 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.

SEC. 7. 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.

SEC. 8. The legislature may declare the cases in which any office shall be deemed vacant, where no provision is made for that purpose in this constitution.

#### ARTICLE XI.

[This article relates to the militia. Being of less general interest than some others, it is omitted for want of room. What most concerns the mass of the citizens, will be found in Chap. XV.]

#### ARTICLE XII.

SECTION 1. Members of the legislature and all officers, executive and judicial, except 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.

### ARTICLE XIII.

SECTION 1. 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 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.

SEC. 2. 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.

### ARTICLE XIV.

[SECTION 1 to 12, contains provisions, the effect of which has expired.]

SEC. 13. This constitution shall be in force from and including the first day of January, one thousand eight hundred and forty-seven, except as is herein otherwise provided.

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 TRACY, President,  
And Delegate from the county of Chenango.

JAMES F. STARDUCK, }  
H. W. STRONG, } *Secretaries.*  
FR. SEGER. }

## DECLARATION OF INDEPENDENCE.

*In Congress, July 4, 1776.*

### THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

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 a 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 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 remaining, 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 condition 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 constitution, 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:

For transporting us beyond seas to be tried for pretended offences:

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 among 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 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 connexions and correspondence. They, too, have been deaf to the voice of justice and 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 the 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 do all other acts and things which independent states may of right do. And for the support of the declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.**

**JOHN HANCOCK,**  
*President of Congress, and*  
*Delegate from Massachusetts.*

***New Hampshire.* Josiah Bartlett, William Whipple, Matthew Thornton.**

*Massachusetts Bay.* Samuel Adams, John Adams, Robert Treat Paine, Elbridge Gerry.

*Rhode Island, &c.* Stephen Hopkins, William Ellery.

*Connecticut.* Roger Sherman, Samuel Huntington, William Williams, Oliver Wolcott.

*New York.* William Floyd, Philip Livingston, Francis Lewis, Lewis Morris.

*New Jersey.* Richard Stockton, John Witherspoon, Francis Hopkinson, John Hart, Abraham Clark.

*Pennsylvania.* Robert Morris, Benjamin Rush, Benjamin Franklin, John Morton, George Clymer, James Smith, George Taylor, James Wilson, George Ross.

*Delaware.* Cæsar Rodney, George Read, Thomas M'Kean.

*Maryland.* Samuel Chase, William Paca, Thomas Stone, Charles Carroll, of Carrollton.

*Virginia.* George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, Jr. Francis Lightfoot Lee, Carter Braxton.

*North Carolina.* William Hooper, Joseph Hewes, John Penn.

*South Carolina.* Edward Rutledge, Thomas Heyward, Jr. Arthur Middleton.

*Georgia.* Button Gwinett, Lyman Hall, George Walton

Attest, CHARLES THOMPSON, *Secretary.*

## CONSTITUTION OF THE UNITED STATES.

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The Constitution framed for the United States of America, by a convention of deputies from the States of New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, at a session begun May 25, and ended September 17, 1787.

WE, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

### ARTICLE I.

SECTION 1. 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.

SEC. 2. 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.

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 the state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within the 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 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*; Georgia *three*.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SEC. 3. 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.

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.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

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.

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.

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.

SEC. 4. 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.

The congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

SEC. 5. 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.

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.

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.

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.

SEC. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same: and for any speech or debate in either house, they shall not be questioned in any other place.

No Senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SEC. 7. 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.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States: if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two thirds of the house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return in which case it shall not be a law.

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 when the same shall take effect, shall be approved by him, or, being dis-

approved by him, shall be passed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SEC. 8. Congress shall have power—

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money; to regulate the value thereof, and of foreign coin; and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post offices and post roads:

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:

To constitute tribunals inferior to the supreme court:

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

To declare war; grant letters of marque and reprisal; and make rules concerning captures on land and water:

To raise and support armies: but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

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:

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings: And,

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.

**SEC. 9.** 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.

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.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

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.

No money shall be drawn from the treasury, but in consequence of appropriations made by law : and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States ; and no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

**SEC. 10.** No state shall enter into any treaty, alliance or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make any thing 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.

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 nett produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States ; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II.

**SECTION 1.** 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 :

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.

*See also Amendment 12*

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 government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then, from the five highest on the list, the said house shall, in like manner, choose the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.

(By the 12th article of amendment, the above clause has been repealed.)

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.

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 four years a resident within the United States.

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.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

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.

**SEC. 2.** The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

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.

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

**SEC. 3.** 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.

**SEC. 4.** 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.** 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, which shall not be diminished during their continuance in office.

**SEC. 2.** The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of 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.

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.

The trial of all crimes, except in cases of impeachment, shall be by jury and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

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. 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.

SEC. 2. The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

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.

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.

SEC. 3. 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.

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.

SEC. 4. The United States shall guaranty 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

The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or on the application

of the legislatures of two thirds of the several states, shall call a convention for proposing amendments; which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall 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.

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.

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, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislature, 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.

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 seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof we have subscribed our names.

GEORGE WASHINGTON,  
*President, and Delegate from Virginia.*

*New Hampshire.* John Langdon, Nicholas Gilman.  
*Massachusetts.* Nathaniel Gorham, Rufus King.  
*Connecticut.* Wm. Samuel Johnson, Roger Sherman.  
*New York.* Alexander Hamilton



*New Jersey.* William Livingston, William Paterson, David Brearly Jonathan Dayton.

*Pennsylvania.* Benjamin Franklin, Robert Morris, Thomas Fitzsimons, James Wilson, Thomas Mifflin, George Clymer, Jared Ingersoll, Gouverneur Morris.

*Delaware.* George Read, Gunning Bedford Jr., John Dickinson, Richard Bassett, Jacob Broom.

*Maryland.* James M'Henry, Daniel of St. Tho. Jenifer, Daniel Carroll.

*Virginia.* John Blair, James Madison, Jr.

*North Carolina.* William Blount, Richard Dobbs Spaight, Hugh Williamson.

*South Carolina.* John Rutledge, Charles Pinckney, Pierce Butler, Chas. Cotesworth Pinckney.

*Georgia.* William Few, Abraham Baldwin.

Attest, WILLIAM JACKSON, *Secretary.*

## AMENDMENTS.

ARTICLE I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ART. II. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ART. III. 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.

ART. IV. 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 warrant 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.

ART. V. No person shall be held to answer for a capital or other 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 offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be 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.

ART. VI. 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 defence.

ART. VII. In suits at law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ART. VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ART. IX. The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people

ART. X. 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.

ART. XI. 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.

ART. XII. The electors shall meet in their respective states, and vote, by ballot, for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves: they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of government of the United States, directed to the president of the senate: the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the senate shall choose the vice president: a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

## WASHINGTON'S FAREWELL ADDRESS.

SEPTEMBER 17, 1796.

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### *Friends and Fellow Citizens :*

The period for a new election of a citizen to administer the executive government of the United States being not far distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed, to decline being considered among the number of those out of whom the choice is to be made.

I beg you at the same time to do me the justice to be assured, that this resolution has not been taken without a strict regard to all the considerations appertaining to the relation which binds a dutiful citizen to his country ; and that in withdrawing the tender of service, which silence in my situation might imply, I am influenced by no diminution of zeal for your future interest ; no deficiency of grateful respect for your past kindness ; but am supported by a full conviction that the step is compatible with both.

The acceptance of and continuance hitherto in the office to which your suffrages have twice called me, have been a uniform sacrifice of inclination to the opinion of duty, and to a deference for what appeared to be your desire. I constantly hoped that it would have been much earlier in my power, consistently with motives which I was not at liberty to disregard, to return to that retirement from which I had been reluctantly drawn. The strength of my inclination to do this, previous to the last election, had even led to the preparation of an address to declare it to you ; but mature reflection on the then perplexed and critical posture of affairs with foreign nations, and the unanimous advice of persons entitled to my confidence, impelled me to abandon the idea. I rejoice that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty or propriety ; and am persuaded, whatever partiality may be retained for my services, that in the present circumstances of our country you will not disapprove of my determination to retire.

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The impressions with which I first undertook the arduous trust, were explained on the proper occasion. In the discharge of this trust I will only say that I have, with good intentions, contributed towards the organization and administration of the government the best exertions of which a very fallible judgment was capable. Not unconscious, in the outset, of the inferiority of my qualifications, experience in my own eyes, perhaps still more in the eyes of others, has strengthened the motives to diffidence of myself; and, every day the increasing weight of years admonishes me more and more, that the shade of retirement is as necessary to me as it will be welcome. Satisfied that if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe, that while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

In looking forward to the moment which is to terminate the career of my political life, my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude which I own to my beloved country for the many honors it has conferred upon me; still more for the steadfast confidence with which it has supported me; and for the opportunities I have thence enjoyed of manifesting my inviolable attachment, by services faithful and persevering, though in usefulness unequal to my zeal. If benefits have resulted to our country from these services, let it always be remembered to your praise, and as instructive example in our annals, that under circumstances in which the passions, agitated in every direction, were liable to mislead—amidst appearances sometimes dubious—vicissitudes of fortunes often discouraging—in situations in which not unfrequently want of success has countenanced the spirit of criticism—the constancy of your support was the essential prop of the efforts, and a guarantee of the plans, by which they were effected. Profoundly penetrated with this idea, I shall carry it with me to my grave, as a strong incitement to unceasing wishes, that Heaven may continue to you the choicest tokens of its beneficence—that your union and brotherly affection may be perpetual—that the free constitution which is the work of your hands may be sacredly maintained—that its administration in every department may be stamped with wisdom and virtue—that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete, by so careful a preservation, and so prudent a use of this blessing, as will acquire to them the glory of recommending it to the applause, the affection, and adoption of every nation which is yet a stranger to it.

Here, perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger, natural to that solicitude, urge me, on an occasion like present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments, which are the result of much reflection, of no inconsiderable observation, and which appear to me all important to the permanency of your felicity as a people. These will be offered to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his coun-

els. Nor can I forget, as an encouragement to it, your indulgent reception of my sentiments on a former and not dissimilar occasion.

Interwoven as is the love of liberty with every ligament of our hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

The unity of government, which constitutes you one people, is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real independence; the support of your tranquillity at home; your peace abroad; of your safety; of your prosperity, of that very liberty which you so highly prize. But as it is easy to foresee, that from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed; it is of infinite moment, that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and to speak of it as a palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens by birth or choice, of a common country, that country has a right to concentrate your affections. The name of AMERICAN, which belongs to you in your national capacity, must always exalt the just pride of patriotism, more than any appellation derived from local discriminations. With slight shades of difference you have the same religion, manners, habits and political principle. You have, in a common cause, fought, and triumphed together; the independence and liberty you possess, are the work of joint councils, and joint efforts—of common dangers, sufferings, and success.

But these considerations, however powerfully they address themselves to your sensibility, are greatly outweighed by those which apply more immediately to your interest. Here every portion of our country finds the most commanding motives for carefully guarding and preserving the union of the whole.

The *north*, in an unrestrained intercourse with the *south*, protected by the equal laws of a common government finds in the productions of the latter, great additional resources of maritime and commercial enterprize, and precious materials of manufacturing industry. The *south*, in the same intercourse, benefitting by the same agency of the *north*, sees its agriculture grow and its commerce expand. Turning partly into its own channels the seamen of the *north*, it finds its particular navigation invigorated—and while it contributes in different ways to nourish and increase the general mass of the national navigation, it looks forward to the protection of a maritime strength, to which itself is unequally adapted.

The *east*, in like intercourse with the *west*, already finds in the progressive improvement of interior communications by land and water, and will more and more find a valuable vent for the commodities which it brings from abroad, or manufactures at home. The *west* derives from the *east* supplies requisite to its growth and comfort—and what is perhaps of still greater consequence, it must of necessity owe the secure enjoyment of indispensable outlets for its own productions, to the weight, influence, and the future maritime strength of the Atlantic side of the Union, directed by an indissoluble community of interest as one nation. Any other tenure by which the *west* can hold this essential advantage, whether derived from its own separate strength, or from an apostate and unnatural connexion with any foreign power, must be intrinsically precarious.

While therefore every part of our country thus feels an immediate and particular interest in union, all the parts combined cannot fail to find in the united mass of means and efforts, greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their peace by foreign nations; and what is of inestimable value, they must derive from union an exemption from those broils and wars between themselves, which so frequently afflict neighboring countries, not tied together by the same government, which their own rivalships alone would be sufficient to produce; but which opposite foreign alliances, attachments, and intrigues, would stimulate and embitter. Hence likewise, they will avoid the necessity of those overgrown military establishments, which under any form of government are inauspicious to liberty, and which are to be regarded as particularly hostile to republican liberty. In this sense it is, that your union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.

These considerations speak a persuasive language to every reflecting and virtuous mind, and exhibit the continuance of the union as a primary object of patriotic desire. Is there a doubt whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation in such a case were criminal. We are authorized to hope that a proper organization of the whole, with the auxiliary agency of governments for the respective subdivisions, will afford a happy issue of the experiment. It is well worth a fair and full experiment. With such powerful and obvious motives to union, affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who in any quarter may endeavor to weaken its bands.

In contemplating the causes which may disturb our union, it occurs as matter of serious concern that any ground should have been furnished for characterizing parties, by geographical discriminations—*Northern* and *Southern*; *Atlantic* and *Western*; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart-burnings which spring from these misrepresentations; they tend to ren

der alien to each other those who ought to be bound together by fraternal affection. The inhabitants of our western country have lately had a useful lesson on this head. They have seen in the negotiation, by the executive, and in the unanimous ratification by the senate of the treaty with Spain, and in the universal satisfaction at that event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them of a policy in the general government, and in the Atlantic states, unfriendly their interests in regard to the Mississippi. They have been witnesses to the formation of two treaties, that with Great Britain, and that with Spain, which secure to them every thing they could desire, in respect to our foreign relations, towards confirming their prosperity. Will it not be their wisdom to rely for the preservation of these advantages on the union by which they were procured? Will they not henceforth be deaf to those advisers, if such there are, who would sever them from their brethren and connect them with aliens?

To the efficacy and permanency of your union, a government for the whole is indispensable. No alliances, however strict, between the parts can be an adequate substitute; they must inevitably experience the infractions and interruptions which alliances at all times have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a constitution of government, better calculated than your former for an intimate union, and for the efficacious management of your common concern. This government, the offspring of your own choice, uninfluenced and unawed; adopted upon full investigation and mature deliberation; completely free in its principles; in the distribution of its powers uniting security with energy, and containing within itself provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political system is the right of the people to make and to alter their constitutions of government. But the constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government, presupposes the duty of every individual to obey the established government.

All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberations and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize faction; to give it an artificial and extraordinary force; to put in the place of the delegated will of the nation, the will of party, often a small, but artful and enterprising minority of the community; and according to the alternate triumphs of different parties, to make the public administration the mirror of the ill concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans, digested by common councils, and modified by mutual interests.

However combinations or associations of the above description may



now and then answer popular ends, they are likely, in the course of time and things, to become potent engines by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the reins of government; destroying afterwards the very engines which have lifted them to unjust dominion.

Towards the preservation of your government and the permanency of your present happy state, it is requisite not only that you steadily discountenance irregular opposition to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretext. One method of assault may be to affect in the forms of the constitution alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments, as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitutions of a country; that facility in changes upon the credit of mere hypothesis and opinion, exposes to perpetual change, from the endless variety of hypothesis and opinion; and remember especially, that from the efficient management of your common interests, in a country so extensive as ours, a government of as much vigor as is consistent with the perfect security of liberty, is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name, where the government is too feeble to withstand the enterprises of faction, to confine each member of society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

I have already intimated to you the dangers of parties in the state, with particular reference to the founding of them upon geographical discriminations. Let me now take a more comprehensive view, and warn you, in the most solemn manner, against the baneful effects of the spirit of party generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness, and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual; and, sooner or later, the chief of some prevailing faction more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation on the ruins of the public liberty.

Without looking forward to an extremity of this kind, (which nevertheless ought not to be entirely out of sight,) the common and continual

mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.

It serves always to distract the public councils, and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms; kindles the animosity of one part against another; foment occasional riot and insurrection. It opens the door to foreign influence and corruption, which finds a facilitated access to the government itself, through the channels of party passion. Thus the policy and will of one country are subjected to the policy and will of another.

There is an opinion that parties in free countries are useful checks upon the administration of the government, and serve to keep alive the spirit of liberty. This, within certain limits, is probably true; and in governments of a monarchical cast, patriotism may look with indulgence if not with favor, upon the spirit of party. But in those of popular character, in governments purely elective, it is a spirit not to be encouraged. From the natural tendency, it is certain there will always be enough of that spirit for every salutary purpose; and there being constant danger of excess, the effort ought to be, by force of public opinion to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming, it should consume.

It is important, likewise, that the habits of thinking, in a free country, should inspire caution in those intrusted with its administration, to confine themselves within their respective constitutional spheres; avoiding, in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominate in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing into different depositories, and constituting each the guardian of the public weal against invasions of the other, has been evinced by experiments, ancient and modern; some of them in our country, and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers, be, in any particular, wrong, let it be corrected by an amendment in the way in which the constitution designates. But let there be no change by usurpation, for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any partial or transient benefit which the use can at any time yield.

Of all the dispositions and habits which lead to political prosperity, religion, and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness—these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and cherish them. A volume could not trace all their con-

union with private and public felicity. Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths, which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles.

It is substantially true that virtue or morality is a necessary spring of popular government. The rule indeed extends with more or less force to every species of free government. Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric?

Promote, then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

As a very important source of strength and security, cherish public credit. One method of preserving it, is to use it as sparingly as possible, avoiding occasions of expense by cultivating peace, but remembering, also, that timely disbursements to prepare for danger, frequently prevent much greater disbursements to repel it; avoiding likewise the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions in time of peace to discharge the debts which unavoidable wars have occasioned, not ungenerously throwing upon posterity the burden which we ourselves ought to bear. The execution of these maxims belongs to your representatives; but it is necessary that public opinion should co-operate. To facilitate to them the performance of their duty, it is essential that you should particularly bear in mind, that towards the payment of debts there must be revenue; that to have revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleasant; that the intrinsic embarrassment, inseparable from the selection of the proper objects, (which is always a choice of difficulties,) ought to be a decisive motive for a candid construction of the conduct of the government in making it, and for a spirit of acquiescence in the measures for obtaining revenue which the public exigences may at any time dictate.

Observe good faith and justice towards all nations; cultivate peace and harmony with all: religion and morality enjoin this conduct; and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and at no distant period, a great nation, to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt but that in the course of time and things the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it? Can it be that Providence has connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! it is rendered impossible by its vices!

In the execution of such a plan nothing is more essential than that permanent, inveterate antipathies, against particular nations, and passionate attachment for others, should be excluded; and that in the place of them, just and amicable feelings towards all should be cultivated. The nation which indulges towards another an habitual hatred, or an habitual fondness, is, in some degree, a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another, disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable when accidental or trifling occasions of dispute occur.

Hence frequent collisions, obstinate, envenomed, and bloody contests. The nation, prompted by ill will and resentment, sometimes impels to war the government, contrary to the best calculations of policy. The government sometimes participates in the national propensity, and adopts through passion what reason would reject; at other times it makes the animosity of the nation subservient to the projects of hostility, instigated by pride, ambition, and other sinister and pernicious motives. The peace often, sometimes, perhaps, the liberty of nations has been the victim.

So, likewise, a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and the wars of the latter without adequate inducements or justification. It leads, also, to concessions to the favorite nation of privileges denied to others, which are apt doubly to injure the nation making the concessions, by unnecessarily parting with what ought to have been retained, and by exciting jealousy, ill will, and a disposition to retaliate in the parties from whom equal privileges are withheld; and it gives to ambitious, corrupt, or deluded citizens, (who devote themselves to the favorite nation,) facility to betray or sacrifice the interests of their own country without odium, sometimes even with popularity; gilding with the appearances of a virtuous sense of obligation to a commendable deference for public opinion, or a laudable zeal for public good, the base or foolish compliances of ambition, corruption, or infatuation.

As avenues to foreign influence, in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many opportunities do they afford to tamper with domestic factions, to practice the art of seduction, to mislead public opinion, to influence or awe the public councils! Such an attachment of a small or weak, towards a great and powerful nation, dooms the former to be the satellite of the latter. Against the insidious wiles of foreign influence, (I conjure you to believe me, fellow citizens,) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government. But that jealousy, to be useful, must be impartial, else it becomes the instrument of the very influence to be avoided, instead of a

defence against it. Excessive partiality for one foreign nation, and excessive dislike for another, cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots who may resist the intrigues of the favorite, are liable to become suspected and odious; while its tools and dupes usurp the applause and confidence of the people to surrender their interests.

The great rule of conduct for us, in regard to foreign nations, is, in extending our commercial relations, to have with them as little political connexion as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.

Europe has a set of primary interests, which to us have none, or a very remote relation. Hence, she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties, in the ordinary vicissitude of her politics, or the ordinary combinations and collisions of her friendships or enmities.

Our detached and distant situation, invites and enables us to pursue a different course. If we remain one people, under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon, to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest, guided by justice shall counsel.

Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalry, interest, humor or caprice?

It is our true policy to steer clear of permanent alliances with any portion of the foreign world: so far I mean, as we are now at liberty to do it; for let me not be understood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs, that honesty is always the best policy. I repeat, therefore, let those engagements be observed in their genuine sense. But in my opinion, it is unnecessary, and would be unwise to extend them.

Taking care always to keep ourselves, by suitable establishments, on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony, and a liberal intercourse with all nations, are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand; neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying by gentle means the stream of commerce, but forcing nothing; establishing, with powers so disposed in order to give trade a stable course, to define the rights of our merchants, and to enable the government to support them, conventional rules of intercourse, the best that present circumstances and natural opinion will permit, but temporary,

and liable to be from time to time, abandoned or varied, as experience and circumstances shall dictate ; constantly keeping in view that it is folly in one nation to look for disinterested favors from another ; that it must pay with a portion of its independence for whatever it may accept under that character ; that by such acceptance, it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard.

In offering to you, my countrymen, these counsels of an old affectionate friend, I dare not hope they will make the strong and lasting impression I could wish—that they will control the usual current of the passions, or prevent our nation from running the course which has hitherto marked the destiny of nations. But if I may even flatter myself that they may be productive of some partial benefit, some occasional good ; that they may now and then recur to moderate the fury of party spirit ; to warn against the mischiefs of foreign intrigue ; to guard against the impostures of pretended patriotism ; this hope will be a full recompense for the solicitude for your welfare by which they have been dictated.

How far in the discharge of my official duties I have been guided by the principles which have been delineated, the public records and other evidences of my conduct must witness to you and to the world. To myself, the assurance of my own conscience is, that I have at least believed myself to be guided by them.

In relation to the still subsisting war in Europe, my Proclamation of the 22d of April, 1793, is the index to my plan. Sanctioned by your approving voice, and by that of your representatives in both houses of Congress, the spirit of that measure has continually governed me ; uninfluenced by any attempts to deter or divert me from it.

After deliberate examination, with the aids of the best lights I could obtain, I was well satisfied that our country, under all the circumstances of the case, had a right to take, and was bound in duty and interest to take, a neutral position. Having taken it, I determined, as far as should depend upon me, to maintain it with moderation, perseverance and firmness.

The considerations which respect the right to hold this conduct, it is not necessary on this occasion to detail. I will only observe, that according to my understanding of the matter, that right, so far from being denied by any of the belligerent powers, has been virtually admitted by all.

The duty of holding a neutral conduct may be inferred, without any thing more, from the obligation which justice and humanity impose on every nation, in cases in which it is free to act, to maintain inviolate the relations of peace and amity towards other nations.

The inducements of interest for observing that conduct, will best be referred to your own reflections and experience. With me, a predominant motive has been to endeavour to gain time to our country to settle and mature its yet recent institutions, and to progress, without interrup-

tion, to that degree of strength and constancy, which is necessary to give it, humanly speaking, the command of its own fortune.

Though in reviewing the incidents of my administration, I am unconscious of intentional error; I am nevertheless too sensible of my defects not to think it probable that I may have committed many errors. Whatever they may be, I fervently beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope that my country will never cease to view them with indulgence; and that, after forty-five years of my life dedicated to its service, with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

Relying on its kindness in this as in other things, and actuated by that fervent love towards it, which is so natural to a man who views in it the native soil of himself and his progenitors for several generations; I anticipate, with pleasing expectation, that retreat, in which I promise myself to realize, without alloy, the sweet enjoyment of partaking, in the midst of my fellow citizens, the benign influence of good laws, under a free government; the ever favorite object of my heart, and the happy reward, as I trust, of our mutual cares, labors and dangers.

# PARLIAMENTARY RULES.

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**NOTE.**—The subject of the following chapters, although not embraced in the term, Civil Government, may with propriety be introduced into this work. A large portion of our citizens participate in public meetings, and conventions of various kinds; and a knowledge of the rules of proceedings is necessary for all who take a part in the deliberations of these assemblies, not only as presiding officers, but as ordinary members. As this work is designed for the family library as well as for the use of schools, it is believed that its value will be greatly enhanced by the addition of this brief treatise on parliamentary practice. To adult citizens generally, to the more advanced pupils in our common schools, and to the students in our seminaries, is the study of these rules commended.

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## CHAPTER I.

### NECESSITY OF RULES OF PROCEEDING IN DELIBERATIVE BODIES — ORGANIZATION OF AN ASSEMBLY — DUTIES OF ITS OFFICERS — RIGHTS AND DUTIES OF MEMBERS.

§ 1. It must be apparent, upon the slightest consideration, that no deliberative assembly, consisting of any considerable number of persons, can transact business with facility or dispatch, without some established rules of proceeding. Their deliberations would almost unavoidably be protracted by needless debate; action upon any subject would be liable to interruption, and perhaps the assembly, incapable of preserving order, would break up in confusion.

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§ 1. Why are rules of proceeding necessary?



§ 2. Hence, it has become the universal practice of political conventions and other assemblages for deliberative purposes, to observe some rules for conducting their deliberations. These rules are in all bodies nearly the same; so far, at least as the character of different meetings will admit; and, like many other institutions in this country, have come to us from England. From their having been originally adopted and practiced by the British parliament, they are called *parliamentary rules*; and the same term is still used, whether applied to the rules of legislative bodies, or to those of meetings for other purposes.

§ 3. These rules have been adopted by all legislative assemblies in this country, with such alterations and additions only as have been found necessary to adapt them to the peculiar circumstances of each assembly. And so far as they admit of general application, they regulate the proceedings of all public meetings. As every citizen has occasion to participate in public business, and as a large portion of the citizens are at times called upon to preside at meetings of some kind, a compendium of the principal rules of parliamentary practice, will, it is believed, add essential value to this "Manual," and will not be deemed incompatible with its design.

§ 4. Before an assembly proceeds to business, it must be duly organized; that is, it must be put into a suitable form for the transaction of business. It is done thus: One of the members of the meeting requests the others to come to order. The members having become seated, he requests them to nominate (name) some person to act as chairman. This being done, he declares that such person has been nominated, and puts the question, that the person named be requested to take the chair.

§ 5. It is not unusual for the person himself who calls the meeting to order, both to nominate a candidate for the chair, and to put the question to vote. Should the question be decided in the negative, (which, however, is seldom the case,) another person is nominated and the question is taken,

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§ 2. Whence have these rules come to us? Why are they called *parliamentary* rules? § 3. Are these rules uniform in all bodies? § 4, 5. State the manner of organizing an ordinary meeting.

until a choice is made. The person chosen to serve as chairman takes the chair, and proceeds to complete the organization of the meeting, by the election of a clerk, or secretary, in the same manner, and such other officers as the assembly shall think proper to appoint.

§ 6. When large conventions are assembled, and the importance of the business to be transacted seems to require a more deliberate choice of officers, the person calling the convention to order sometimes announces, that the organization is intended to be temporary, and preparatory to a permanent organization. And after such temporary organization, a committee is appointed to make a selection of persons as permanent officers of the meeting; who are generally a president, one or more vice-presidents, and one or more secretaries.

§ 7. The business of a vice-president is to take the chair in the absence of the president from the meeting, or when he leaves the chair to take part in the proceedings as an ordinary member. When, as is often the case at large conventions, a number of supernumerary vice-presidents and secretaries are chosen, it is done chiefly to give consequence and dignity to the meeting.

§ 8. In deliberative bodies composed of delegates chosen in the several towns, counties, or districts, to represent the people of these localities, it is necessary to ascertain before proceeding to business, who have been chosen as members, that those only who are authorized may take part in the proceedings, and that a list of the members may be made for the use of the meeting and its officers. A proper time for this investigation, is before the permanent organization, if the meeting was not permanently organized in the first instance.

§ 9. Sometimes also before, or immediately after, the permanent organization, besides the committee appointed to select permanent officers, committees are also appointed to arrange and report the order of business, and to fix the times for reassembling after adjournment; to prepare resolutions, and perhaps an address, to be presented to the

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§ 6. What is said of temporary and permanent organizations?  
 § 7. What is the object of appointing numerous vice-presidents and secretaries? § 8. How is it known who are members of a convention?

meeting for consideration; and for such other purposes as may be deemed necessary. These committees are thus early appointed, that there may be no unnecessary delay in proceeding to business when the convention shall have become permanently organized. Legislative bodies have standing rules for the order of business, which are adopted by each successive legislature, and seldom with any essential alteration.

§ 10. Legislative assemblies can not do business without the presence of a quorum. The number of members constituting a quorum, is fixed by the constitution or by law. As ordinary public meetings are not to consist of any definite number of persons, it can not be known what number of members constitute a quorum. Hence, the business of such meetings is generally commenced, and from time to time resumed, after waiting a reasonable time for the attendance of members, without reference to any particular number.

§ 11. The principal duties of a presiding officer, are the following: To open each sitting by taking the chair, and calling the members to order; to announce to the assembly the business in order; to receive all communications, messages, motions, and propositions, and put to vote all questions which are to be decided by the assembly, and declare the result; to enforce the rules of order, and the observance of decorum among the members. The presiding officer may read sitting, but should rise to state a motion, or put a question. In many, especially small bodies, the formality of rising is more frequently dispensed with.

§ 12. It is the duty of a clerk or secretary, to take notes of all the acts and proceedings of the meeting; to read all papers that may be ordered to be read; to call the roll of the assembly, and record the votes when necessary; to notify committees of their appointment and of the business referred to them; and to take charge of all papers and documents belonging to the assembly.

§ 13. It is the duty of every member to treat all other members with respect and decorum. In general, whispering

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§ 9. When, and for what purposes, are certain committees appointed? § 10. Are quorums ever dispensed with? § 11. What are the principal duties of a presiding officer? § 12. Of a clerk, or secretary?

or speaking to each other; standing up to the interruption of others; walking across the room, and especially passing between the presiding officer and a member speaking; to enter the room, or to remove from place to place, with hats on; are all violations of the rules of decorum. But to disturb each other by hissing, intentional coughing, spitting, or otherwise, is an aggravated breach of decorum, of which no member having a proper respect for himself or the assembly, will be guilty.

§ 14. It is the right of any member, and the special duty of the presiding officer, to call the attention of the assembly to any instance of disorderly conduct. A member charged with an offense against the assembly has a right to vindicate himself from the charge, and having been heard, he is to withdraw, unless, on his offering to withdraw, the assembly allows him to remain.

§ 15. No member, when his private interests, or his conduct as a member, are involved in a question under debate, ought to be present after having been heard in exculpation; but if he should remain, he should not be allowed to vote; or, if he should vote, his vote ought to be disallowed. The laws of decency, the honor of the assembly, and the rule that no man is to be judge in his own case, alike forbid the allowance of such vote.

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## CHAPTER II.

### GENERAL ORDER OR ARRANGEMENT OF BUSINESS—INTRODUCTION OF BUSINESS, BY MOTION, PETITION, &c.

§ 1. WHEN there has been no previous arrangement of the business of an assembly, the order in which the several matters are to be taken up, is left to the discretion of the

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§ 13. What rules of decorum are here enjoined on members?  
 § 14. What rights of members are here mentioned? § 15. What is the duty of a member when his private interests are involved?

presiding officer, unless the assembly, on a question, shall decide to take up a particular subject. In legislative bodies, there is a settled order of business; and the utility of such an order is found also in other meetings, which are to last a considerable time, and which have before them numerous subjects to be acted upon.

§ 2. Such an arrangement of business is desirable, both for the government of the presiding officer, and for restraining individual members from calling up favorite measures out of their just turn. Although, in the absence of a settled order, the consent of the assembly might be required in order to give precedence to any such favorite measure, an established order is useful in directing the discretion of the assembly, when it is moved to take up a particular matter to the injury of others which have a prior right to be attended to in the general order of business.

§ 3. It may be observed, in relation to a settled order of business, that the question of its necessity, and, if necessary, whether it shall be established according to some general rule, or by special orders relating to each particular subject, is to be determined by the nature and number of the matters before the meeting.

§ 4. When a meeting has been duly organized, and is open for business, any member may offer any proposition or communication which he may choose to make, consistently with the rules of the assembly. In order to do this, he must first "obtain the floor," as it is called. This is done by rising in his place, and addressing the presiding officer by his title; as, "Mr. President," or "Mr. Chairman," as the case may require. The presiding officer, hearing himself addressed, answers the call, by speaking the name of the member, that the assembly may take notice who it is that speaks.

§ 5. If two or more rise to speak nearly together, the presiding officer determines who was first up, and calls him by name; whereupon he proceeds, unless he voluntarily sits down and gives way to the other. If the decision of the

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§ 1. Who gives direction to the business of a meeting? § 2. Why is a settled order of business necessary? § 3. On what does its necessity depend? § 4. How is the floor obtained?

president is not satisfactory, any member may call it in question, and have the sense of the assembly taken thereon; the question being first taken upon the name of the person announced by the president.

§ 6. A member introducing a proposition of his own whether by resolution or otherwise, puts it into the proper form, and moves that it be adopted by the assembly. A proposition thus moved, is called a *motion*; and it is so called until it has been stated by the chair, and offered to the assembly for its acceptance or rejection, when it is denominated a *question*; and when it is adopted, it becomes the *resolution, order, or vote* of the assembly.

§ 7. Motions are usually submitted in writing; and the president may refuse to receive any motion that is not in writing. Motions, however, which admit of being easily and correctly recorded by the secretary are often received, though not in writing. Or the chairman himself may, if he pleases, reduce a motion to writing before it is submitted.

§ 8. It should here be observed that principal motions only come under this rule. *Occasional or incidental* motions, and motions *subsidiary* to, or aiding a principal motion, are not offered in writing. \* Of these kinds of motions, are motions to adjourn, to postpone, to lie on the table, to take the previous question, to commit a subject; that is, to refer it to a committee. But a motion to amend, when additional words are to be inserted, must, if required, be in writing. These motions will be more particularly considered hereafter. (Chap. V.)

§ 9. A motion, to be entitled to the notice of the presiding officer, must have the approval of at least one member besides the person making it; which approval is expressed by his rising and saying that he *seconds* the motion. It is generally deemed inexpedient to take up time in considering a question which none but the mover regards with favor.

§ 10. When a motion has been seconded, it is stated by

§ 5. When several rise near together, how is the privilege determined? § 6. How is a proposition introduced? What is a motion, question, resolution, &c.? § 7. In what condition are motions to be offered? § 8. What motions are not required to be in writing? § 9. Why is a motion to be seconded?

the president to the meeting. It then becomes a question for the decision of the meeting; and it is then, and not before, in order for any member to speak to it, or to make any other motion for the disposal of it.

§ 11. Communications, as memorials, petitions, remonstrances, from persons not members, are presented by members, as no person but a member has a right to speak to the assembly. Petitions must be subscribed by the petitioners, unless they attend in person, or are unable to sign. And a member, or somebody else, must declare that he knows the handwriting of the petitioners, if it should be questioned. A member presenting a petition, should be able to state the substance of it, and also prepared to say, if questioned, that it is written in proper and respectful language.

§ 12. According to the regular form, on presenting or offering a petition, a motion to receive it must be made and seconded, and a question put, whether it shall be received. In practice, however, the formality of a vote is generally dispensed with; and if no objection to its being received is made, the president takes it for granted that there is none. The petition is then brought up to the table, read by the clerk, and disposed of by the assembly. In legislative bodies, the mass of petitions are not even read on their reception, but are referred to the committees on the subjects to which the petitions relate. Other communications than petitions from persons not members, take a similar course.

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### CHAPTER III.

#### MOTIONS—FOR THE PREVIOUS QUESTION—FOR POSTPONEMENT—TO LIE ON THE TABLE—TO COMMIT.

§ 1. WHEN a question before an assembly is deemed useless or inexpedient, or is thought to have been sufficiently discussed, any member may stop the debate by moving the

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§ 10. When may a proposition be spoken to? § 11. How are petitions, &c., to be presented? § 12. How are they received?

*previous question*; which is, *Shall the main question be now put?* If the question is decided in the affirmative, the main question is to be put immediately, without any further debate.

§ 2. But the effect of a decision in the negative, is not everywhere the same. In some legislative bodies, the decision that the main question shall *not* be now put, is regarded as a determination that it shall not be put at any time during the present sitting; leaving the debate to continue through the same, unless the question shall be sooner disposed of. In the house of representatives, a negative vote on the previous question, has the contrary effect; that of *stopping* the debate for the day.

§ 3. To understand how it has come, that a negative decision should operate to *suppress* debate on a main question, when it is the object of an affirmative vote to effect a similar result, it is necessary to refer to the original use of the previous question. It is said to have been introduced in England, in 1604. It was then, *Shall the main question be put?* and a determination in the negative suppressed the main question for the whole session; for, if it could not be put at all, there was no use in continuing the discussion.

§ 4. But the previous question was afterward altered to its present form: *Shall the main question be now put?* and a decision in the negative, namely, that it shall not be now put, is to decide that it shall not be put that day. Hence, as the main question can not be put that day, or at the present sitting, the debate must be suspended during the same time.

§ 5. In England, the object of the mover of the previous question, is to obtain a *negative* decision; because, although the effect would be, strictly, and according to its original intention, to suppress the main question for the day, it has, by parliamentary usage, come to be a disposal of the main question altogether, *without a vote* upon it; whereas, in this country, the object of the mover of the previous question, is

§ 1. What is the previous question, and its effect, if decided affirmatively? § 2. If decided negatively, what? Is it everywhere the same? § 3. What was the question originally; and its effect if negatived? § 4. How was this question afterward altered?



to get a vote in the *affirmative*, with the view, *not* of suppressing the main question entirely, but of suppressing debate, either altogether, as in some assemblies, or, as in others, for the present time only. The effect of an affirmative decision is the same in both countries, namely, the putting of the main question immediately.

§ 6. When it is desired to suppress a main question for the whole session without having it come to a vote, the preferable course is, to move that the question be *postponed indefinitely*; which is a postponement without fixing a day for resuming the consideration of the question. This quashes the proposition for that session.

§ 7. When a question is before an assembly, which is deemed proper to be acted upon, but on which members are not prepared to act, either from want of information, or because something more pressing claims present attention, a motion is made to *postpone* the subject to some future day within the session; or, if it is not thought proper to fix upon a day certain, the proper motion is, that the matter *lie on the table*. It may then be called up at any time when it is convenient to consider it. Such motion is sometimes intended to make a final disposal of a subject; as such will be the effect, if it should not afterward be called up.

§ 8. If a proposition is so imperfect in its form as to need more amendment than can be conveniently made by the assembly, a motion is made to *commit* it; that is, to refer it to a committee for amendment; which committee may be the standing committee having similar subjects in charge, or a select committee appointed for this special purpose.

§ 9. But if the proposition is well digested, and seems to need but few and simple amendments, and especially if these are of leading consequence, the assembly itself proceeds to consider and amend the proposition. The modes

§ 5. What is the difference between the objects and-effects of a negative decision of the previous question in this country and in England? § 6. In what other way may a question be suppressed? § 7. What are the objects of postponing to a day certain, and to lie on the table? § 8. Why is a proposition committed? and what is it to commit? § 9. When may the committing of a proposition be dispensed with?

of amendment are so various, and the different motions to amend so numerous, as to require a separate chapter for their consideration.

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## CHAPTER IV.

AMENDMENTS—DIVISION OF A QUESTION, AND ITS MODIFICATION—DIFFERENT MOTIONS TO AMEND—FILLING BLANKS—ORDER OF PROCEEDING IN CONSIDERING AND AMENDING PAPERS.

§ 1. WHEN a proposition or question contains more parts than one, it may, by consent of the assembly, be divided into two or more questions. So also, if there are several names in a proposition, they may be divided, and put one by one.

§ 2. The mover of a proposition is sometimes allowed to *modify* it, after it has been stated as a question by the presiding officer. And sometimes, after an amendment has been moved and seconded, the mover of the original proposition consents to the amendment, and it is accordingly made. But if objected to, such modification and amendment can only be made by permission of the assembly, by a motion and vote. Nor may the mover of a proposition, after it has been stated as a question, withdraw it, without similar leave.

§ 3. One way of amending a proposition, is by *striking out* certain words, or a paragraph. Before a question is put on a proposed amendment by striking out, those desiring to retain the paragraph, should amend it, if it needs amendment, before the vote on striking out is taken; as it can not be restored, if struck out, nor amended, if retained.

§ 4. When it is proposed to amend by *inserting* or *adding* a paragraph, or a part of one, its friends should make it as

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§ 1. When is a question divisible? § 2. How may a proposition be modified or withdrawn? § 3. What is necessary before striking out words?

acceptable as they can, by amendments, before the question is put for inserting; as it can not be amended by inserting the same words afterward. If, however, the same words are connected with others, so as to make a different proposition, a motion to insert the same words is in order.

§ 5. When it is moved to amend by striking out or inserting certain words, or a paragraph, the manner of stating the question is, first, to read the whole passage to be amended as it stands; then the words proposed to be struck out or inserted; and lastly the passage as it will be when amended.

§ 6. Another form of amending a proposition, is, to *strike out* certain words and *insert* others in their place. The manner of stating a question of this kind, is, first, to read the passage as it stands at present; then the words to be struck out; next those to be inserted; and lastly, the passage as it will stand if amended. If desired, the question may then be divided by a vote of the assembly: if divided, the question is first taken on striking out; and, if carried, it is next put on inserting the words proposed. If that question is lost, it may be moved to insert others.

§ 7. If a motion to amend by striking out and inserting, is put, undivided, and decided in the negative, the same motion can not be made again; but it may be moved to strike out the same words, and insert others of a tenor different from those first proposed. If this motion is negatived, it may be moved to strike out the same words, and insert nothing. Motions may, in various other ways, be made to amend by striking out or inserting words formerly proposed to be struck out or inserted, or a part of them; provided they are so connected with others not before proposed, as to make a different proposition.

§ 8. If a motion to strike out and insert is decided in the affirmative, it can not be moved, either to insert the words struck out, or a part of them, or to strike out those inserted, or a part of them; but the words struck out, or a part of

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§ 4. How, after a motion to insert words is lost, may the same words be afterward inserted? § 5. How is the question on striking out or inserting stated? § 6. How is it stated on striking out and inserting? § 7. After a question on striking out and inserting is lost, how may the motion be made to strike out the same words?

them, may be inserted with others; and the words inserted, or a part of them, may be struck out with others.

§ 9. A proposed amendment may itself be amended; but a motion to amend an amendment to an amendment of a main question, is not admitted. Such an accumulation, or piling of questions, would embarrass the action of an assembly. The same result must be sought by deciding against the amendment of the amendment in the form proposed, and then moving it again as it is wished to be amended. In this form it becomes only an amendment of an amendment. A person desiring to amend an amendment should give notice, that, if rejected in its present form, he will move it again in the form in which he wishes it adopted: in which case, those who prefer the latter may join in rejecting the former.

§ 10. Propositions are sometimes introduced with blanks, purposely left by the mover, to be filled with times and numbers by the assembly. The matter to be inserted, however, is not properly considered as an amendment to a question, but rather as an original motion, to be decided before the principal question. Motions may be made to fill blanks, and the question put on each before another is made. But the usual and better mode is, to have several propositions first made, and then take the question on them in regular order.

§ 11. In filling blanks, it is not the rule in all assemblies, as some suppose, that the largest sum or number, and longest time, are always to be first put to the question; although such is the rule in some legislative bodies. A better rule is said to be this: In all cases of time or number, if the *larger* comprehends the *lesser*, we must begin with the greatest, and go down until an affirmative vote is obtained. But if the lesser includes the greater, the question must be first put on the least, and go up until a vote is reached.

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§ 8. If a motion to strike out and insert is carried, how, afterward, may words struck out be inserted, or words inserted be struck out? § 9. May an amendment of an amendment be amended? How may the same object be otherwise effected? § 10. In what ways may blanks be filled? § 11. What rules are here mentioned as to the order of putting the question on times and numbers?

§ 12. But it is not, in all cases, easy to determine, whether the larger includes the lesser, or the lesser the greater; as will appear from the fact, that Mr. Jefferson, in his Manual, mentions, among others, as belonging to the former class, the question, to what day a postponement shall be; and to the latter, the question, on what day the session shall be closed by adjournment. Another author assigns to the former class, the amount of a fine; and to the latter, the amount of a tax. In these and other cases mentioned, the distinction might not, at first thought, appear to every presiding officer.

§ 13. Therefore, in explanation of this rule, it is said, that the object is, not to begin at that extreme number or time, which, and more, being within every man's wish, none can vote against it; and yet, if it should be carried in the affirmative, every question for more would be precluded; but at that extreme which will unite few, and then to advance or recede, until a number or time is reached that will unite a majority.

§ 14. To illustrate: Take the question of postponement, (§ 12,) and suppose three days named to fill a blank, the first, tenth, and twentieth of any month. Here the greater includes the lesser; because, if the time of postponement extends to the furthest day named, it of course extends to or beyond the earliest; or, the earliest or a later day is within every man's wish. But if the above named days were proposed as days on which to adjourn, the lesser would include the greater; for, if the assembly adjourns on the first day of the month, it will of course be adjourned on the twentieth: and as all wish for the adjournment as early as the twentieth, or earlier, the beginning should be at the other extreme.

§ 15. The natural order in considering and amending any paper containing several distinct propositions, is to begin at the beginning, and proceed through it by paragraphs; and it is not in order to go back and amend any former part.

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§ 12. Can you explain the questions here placed in contrast? § 13. In what other way is the rule stated? § 14. Give an illustration. § 15. What is the natural order in considering and amending papers containing several distinct propositions?

This, however, is sometimes allowed, especially in small bodies, where a strict adherence to the rule is less necessary.

§ 16. To the above rule there is an exception. In the case of a resolution, or series of resolutions, or other paper, having a preamble or title, the preamble or title is postponed until the other parts are gone through with. Also the title of a bill in a legislative body is so postponed. The reason is, that such alterations may be made in the body of the bill, as shall require an alteration of the title.

§ 17. In considering a paper consisting of several paragraphs, as a bill, resolutions, draft of an address, &c., the whole paper is to be read first by the clerk, and then by the presiding officer, by paragraphs, pausing at the end of each, and putting questions for amending, if amendments are proposed; and when the whole paper has been gone through with, the question is taken on agreeing to or adopting the whole paper, as amended, or unamended.

§ 18. In considering a paper which has been referred to a committee, and reported back to the assembly, the amendments only are read, in course, by the clerk. The presiding officer then reads the first, and puts it to the question, and so on, until all are adopted or rejected, before any other amendment is admitted, except an amendment to an amendment. When the amendments reported by the committee have been disposed of, the presiding officer pauses for amendments to be proposed to the body of the paper. So also he pauses for this purpose if the paper was reported without amendments, putting no questions but on amendments proposed. Having gone through the whole, he puts the question on agreeing to or adopting the paper, as the resolution or order of the assembly.

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§ 16. Mention an exception to this rule. § 17. How are papers gone through with? § 18. How, in case of a paper reported back by a committee?

## CHAPTER V.

ORDER OR PRIORITY OF QUESTIONS—PRIVILEGED QUESTIONS—  
SUBSIDIARY AND INCIDENTAL PRIVILEGED QUESTIONS.

§ 1. It is a general rule, that the question first moved and seconded, shall be first put. But this rule gives way to what are called *privileged questions*; and these privileged questions again have priority among themselves.

§ 2. A motion to adjourn takes place of all others. But this motion can not be received after another question is put, and the assembly is engaged in voting. Nor, after a motion to adjourn is negatived, can the motion be renewed, until some other proceeding has taken place.

§ 3. Orders of the day take the place of all other questions, except for adjournment, and the incidental question, the question of privilege. (§19.) Orders of the day are subjects which have, by an order of the assembly, been assigned for a particular day. Hence, when the day fixed for the consideration of these subjects arrives, they are privileged questions for that day. But a motion for the orders of the day, to give it precedence, must be for the orders generally, if there is more than one, and not for any particular one; and, if carried, they must be read and gone through with, in the order in which they stand, unless some particular subject is taken up out of its regular order, by a special vote.

§ 4. Another class of privileged questions, are those which are secondary to the principal question; and as they are used to assist in disposing of a principal question or motion,

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§ 1. What is generally the order in which questions are put? § 2. What privilege has a motion to adjourn? § 3. What privilege have the orders of the day? What is necessary to give them precedence? § 4. What is the use of subsidiary questions? Which are they?

they are sometimes called *subsidiary questions*. Subsidiary motions, are motions for the previous question, to lay on the table, to postpone, either indefinitely or to a day certain, to commit, and to amend.

§ 5. The nature and use of these motions, and their operation as applied to a main question, have been explained. We will here speak briefly of their different degrees, the privileges which they have among themselves, and of their effect upon each other.

§ 6. It is a general rule, that subsidiary or secondary questions can not be used to dispose of or to suppress one another; the common principle, "first moved, first put," applies to them. If, for example, a motion has been made to postpone, commit, or amend a main question, it can not be moved to suppress that motion by the previous question. Or, if there is a motion for the previous question, or for the commitment or amendment of a main question, it can not be moved to postpone the motion for the previous question, or for the commitment or amendment of the main question.

§ 7. There are several reasons for this rule. It would be a piling of questions on one another, which, to avoid embarrassment, is not allowed. Besides, it is useless, as the same result may be had more simply, by voting against the motion itself, which is sought to be disposed of by another secondary motion.

§ 8. To this rule, however, there are exceptions. A motion to amend may be applied to a motion to postpone, to commit, or to amend, a principal motion. The reason why the secondary motion to amend has a privilege which is not given to other secondary and privileged motions, is its useful character. It is not used to dispose of or suppress, but to carry out and improve the motion to which it is applied. But it can not be applied to motions for the previous question, and to lie on the table, for the reason that these motions, being already as simple as they can be, do not admit of any change or amendment. There are a few other exceptions. (§ 14, 15.)

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§ 6. What general rule applies to them, in respect to order or privilege? § 7. What are the reasons for this rule? § 8. Are there exceptions to this rule? Why this privilege to a motion to amend?



§ 9. A motion to lie on the table takes precedence of and supersedes the other subsidiary motions; namely, for the previous question, to postpone, to commit, and to amend; and, if carried, removes the principal motion, and all the other subsidiary and incidental motions connected with it, from before the assembly, until it is again taken up.

§ 10. The previous question is of the same degree with all other subsidiary questions, except that of lying on the table, and, consequently, if first moved, can not be superseded by a motion to postpone, commit, or amend; and if moved first and put, the others can not be made at all; for, if the previous question is decided in the affirmative, the main question must be immediately put; and it would not be in order to postpone, commit, or amend: if negatived, that is, if the main question is not to be now put, it is taken out of the possession of the assembly for the day; so that there is nothing to postpone, commit, or amend; (except in assemblies, where the negating of the previous questions has a different effect.)

§ 11. The motion to postpone is of the same degree as the motions for the previous question, to commit, and to amend; and, if first made, can not be superseded by them. A motion to postpone indefinitely may be amended so as to make it to a day certain; and a motion to postpone to a certain day, may be amended so as to make the postponement indefinite, or to a different day certain.

§ 12. A decision to postpone a proposition, leaves no ground for any other subsidiary motion; but if it is decided not to postpone, a motion for the previous question, or to commit, or to amend, may be applied.

§ 13. A motion to amend stands in the same degree with the previous question, and indefinite postponement; but it gives way to a motion to postpone to a day certain, and without a violation of the rule before mentioned, (§ 9,) that these subsidiary motions may not suppress one another. The

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§ 9. What privilege has the motion to lie on the table? § 10. What privilege has the previous question? § 11. What privilege has the motion to postpone? § 12. What effect has a decision to postpone? § 13. What privilege has the motion to amend? Does a decision to amend suppress another question?

reason is, that the postponement to a day certain is not a suppression of a question, but leaves it before the assembly, to be resumed at the time to which it is adjourned.

§ 14. A motion to amend gives way also to a motion to commit; for the reason that the latter, instead of suppressing, aids and facilitates the former.

§ 15. There is another class of privileged questions, which, arising out of other questions, are called *incidental questions*, and must be put before the questions out of which they arise. They are questions of order, questions of privilege, questions incident to the reading of papers, questions for the suspension of a rule, on the withdrawal of a motion, and amendment of amendments. The two last have been considered. (Chap. IV. §2.)

§ 16. It is the duty of a presiding officer to enforce the rules and orders of the assembly; and it is the right of every member taking notice of the breach of a rule, to insist upon its enforcement. If a question arises as to the fact of there being a violation of a rule, it is called a *question of order*; and the subject out of which it arises, must give way until the incidental question of order is disposed of.

§ 17. A question of order is first decided by the chairman, without debate or delay. If the decision is not satisfactory, any member may *appeal* from that decision, and have the question decided by the assembly. The question is then stated by the chairman: Shall the decision of the chair stand as the decision of the assembly? It is then debated and decided as other questions; and the chairman himself may take a part in the debate, which he may not do on ordinary occasions.

§ 18. A *question of privilege* is one that concerns the rights and privileges of an assembly and of its individual members; as when a quarrel arises between two members; or when some other disturbance takes place to interrupt the

§ 14. What effect has a motion to commit upon a motion to amend?  
 § 15. What privilege have incidental questions? What are they?  
 § 16. Whence does a question of order arise? What privilege has it?  
 § 17. How is it decided? How is an appeal from the decision taken?  
 § 18. What is a question of privilege? Over what others has it precedence?

business of the assembly. When a question of privilege arises, it supersedes, for the time, all others, except questions of adjournment, and must be first disposed of.

§ 19. When papers are laid before an assembly, every member has a right to have them once read. When the reading is called for, the presiding officer directs it to be done by the clerk. If the reading is objected to, it must be put to the question. But a member has not the right to read, or to have read, any paper or document, having no relation to a question under consideration, without the consent of the house. This would consume too much time.

§ 20. Formerly, it was the practice in legislative bodies, on referring papers to committees, to have them first read; but of late, any part of a paper is seldom read, except the title, unless the reading is insisted on by a member. If a question arises on its reading, this question has the privilege of being first decided.

§ 21. If action upon a subject can not be had, by reason of some special rule prohibiting it, a motion may be made to dispense with, or *suspend the rule*, in order to permit the action desired: and the motion to suspend must be first decided. The rules of legislative bodies usually require the consent of a greater number than a bare majority for the suspension of a rule. Where no rule exists, it is presumed general consent is necessary.

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## CHAPTER VI.

### COMMITTEES—THEIR APPOINTMENT AND REPORT—COMMITTEE OF THE WHOLE.

§ 1. THE nature and general duties of committees in all deliberative assemblies are similar to those of legislative committees, which have been briefly described. (Page, 39.) The number of members constituting the several standing

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§ 19. What is the rule for reading papers? § 20. Is it the practice to read all papers presented? § 21. In what cases are rules suspended? How is it done?

committees of legislative bodies generally, is permanently fixed, either by usage, or by an express rule. The number of a select committee is determined at the time of its appointment. Such is usually the case in ordinary assemblies, in the appointment of all committees.

§ 2. In fixing upon the number of a committee, different numbers are sometimes proposed by different members, which are separately put to the question, beginning with the highest. Sometimes the person moving the appointment of a committee, includes the number in his motion; and a different number may be moved as an amendment of the motion.

§ 3. The mode of selecting the members, is either by appointment by the presiding officer, by ballot, or by nomination and vote of the meeting. In legislative assemblies, and others sitting for a considerable time, it is usually provided by a standing rule, that, unless specially ordered otherwise, all committees shall be named by the chair.

§ 4. In appointing a committee to which a subject is to be referred, the committee ought to be so constituted that a majority of its members shall be favorable to the proposed measure; the mover and seconder being usually of course appointed. The object of referring or committing a bill or other paper, is to make it acceptable to the assembly; but a committee opposed to it would totally destroy it. And when a member who is against a measure, hears himself named as one of the committee, he ought to ask to be excused. Persons, however, who take exceptions to some particulars in the bill, or other paper, may, and perhaps ought, to constitute at least a part of the committee.

§ 5. The members of a committee have the right to appoint their chairman; but as a matter of courtesy, the person first named on a committee is usually permitted to act as chairman, who presides over it, and reports its proceedings to the assembly.

§ 6. The order in which committees are to consider and amend papers referred to them, is substantially the same as

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§ 1, 2. How is the number of members of committee usually determined? § 3. How are they selected and appointed? § 4. What rule is to be observed in constituting a committee? § 5. How is the chairman appointed?

that practiced by the assembly. (Chapter IV.) It is, however, less strictly observed; nor, indeed, does the same strictness in committee seem to be necessary.

§ 7. When a paper is referred to a committee, they may not erase, interline, or disfigure it; but they must, in a separate paper, set down the amendments they have agreed to report, stating the words to be inserted or omitted, and where, by reference to the paragraph, line, and word. Or, if the amendments are numerous, they may be reported in the form of a new draft.

§ 8. When a committee have agreed on a report, it is moved by some member, and voted, that the chairman, or some other member, make their report to the assembly.

§ 9. In making a report, the chairman of the committee, standing in his place, informs the house, that the committee to whom was referred such a bill, or subject, have, according to order, had the same under consideration, and have directed him to report the same without amendment, or with sundry amendments, (as the case may be,) which he is ready to do when it shall please the house to receive it; and he or any other member may then move that the report be now received.

§ 10. If, however, no objection is made, the report is received without the formality of a motion and vote. So also the reading of a report by the chairman, and again by the clerk, as required by the rule, is usually dispensed with, until it is taken up for consideration. The printing of reports in legislative bodies, generally renders the reading unnecessary.

§ 11. When the report of a committee is received, the committee is dissolved, and can act no more without a new power. But it may be revived, and the same matter recommitted to them; which, however, is not done, except in important cases, and for special reasons. If a report is not received, the committee is not discharged, but may be ordered to sit again.

§ 12. The report of a committee, when taken up for consideration, may be amended, and otherwise acted on, as other

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§ 6, 7. How do committees consider and amend papers referred to them? § 8, 9. How is the report of a committee made to the assembly? § 10. Is the formality of a vote always observed? § 11. When does the power of a committee end?

propositions. And when it is to be disposed of by a final vote, the question is stated to be on its acceptance; and, if accepted, the whole report becomes the statement, resolution, or act of the assembly. The receiving of a committee's report is perhaps, especially in ordinary assemblies, more frequently termed *accepting* it, and the final act, instead of accepting, is called *adopting* the report.

§ 13. All legislative bodies sometimes act as a *committee of the whole*; and while sitting as such they are not called by their usual name, as the senate, or the house, but are addressed or spoken of as *the committee*. And the presiding officer is not called speaker or president, but *chairman*, as in ordinary meetings. Ordinary meetings or conventions do not at any time assume the name of committee of the whole; nor do they, in form, resolve themselves into such committee; yet, in many of their proceedings, they are allowed the same freedom as is usually enjoyed by a legislative committee of the whole.

§ 14. The form of going from the house into committee of the whole, is for the presiding officer, on motion made and seconded, to put the question, that the house, or the senate, do now resolve itself into a committee of the whole, to take under consideration such a matter, naming it. If the question is determined in the affirmative, he leaves the chair, naming some member to act as chairman, and takes a seat elsewhere; and the person appointed chairman, takes his seat at the clerk's table. In some legislative bodies, he takes the chair of the presiding officer.

§ 15. Matters of great concern are usually referred to a committee of the whole house. In committee of the whole, the executive message is discussed, and the several subjects embraced in it are arranged and prepared to be referred to the appropriate standing committees, and to select committees, if any need to be appointed. Important bills reported to the house, are also referred to such committee to be considered and amended before they are finally disposed of by

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§ 12. How are reports acted on in the house? § 13. What is a committee of the whole? § 14. How does a legislative body pass into committee of the whole? § 15. What are the principal objects of instituting this committee?

the house. One object of instituting a committee of the whole, is to afford greater freedom of discussion. The sense of the whole can be better taken in committee, where every one speaks as often as he pleases, provided he can obtain the floor.

§ 16. A committee of the whole can not adjourn as others may; therefore, if their business is unfinished at a sitting, some member moves that the committee rise, report progress, and ask leave to sit again. If the motion prevails, the chairman rises, and the presiding officer resumes the chair; and the chairman of the committee then informs him, that the committee of the whole have, according to order, had under their consideration such a matter, and have made some progress therein; but not having time to go through with the same, have directed their chairman to ask leave to sit again. Whereupon the question is put on their having leave, and sometimes also on the time when the house will again resolve itself into a committee.

§ 17. No previous question can be put in a committee of the whole; if, therefore, it is desired to stop or prevent debate, a motion may be made that the committee rise.

§ 18. If a committee of the whole have gone through with the matter referred to them, a member moves that the committee rise, and that the chairman report their proceedings to the house; which being resolved, the chairman rises, the presiding officer resumes the chair, and the chairman informs him that the committee have gone through with the business referred to them, and that he is ready to make their report when the house shall be ready to receive it.

§ 19. If the house are ready to receive the report, and a desire or willingness to do so is signified, the chairman proceeds to report, without a question's being taken on receiving. But when it is not the general sense of the house to receive the report at the time, the time should be fixed by a motion and question.

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§ 16. Can such committee adjourn? What if its business can not be finished at a sitting? State the form of rising? § 17. How may debate be stopped in committee of the whole? § 18, 19. How is its final report made to the house?

## CHAPTER LXX.

## ORDER IN DEBATE.

§ 1. WHEN the presiding officer is in the chair, every member is to be seated. The person occupying the chair, may not speak on the question in debate; but he may speak to matters of order, and be first heard; and he may, by leave of the assembly, state matters of fact for their information. He may also address the assembly when his decision on a question of order is appealed from. And when he rises to speak, any member standing ought to sit down; but a presiding officer may not interrupt a member who has the floor.

§ 2. When a person means to speak, he must stand in his place, and address the chairman. The manner of obtaining the floor, has been described. (Chap. II, § 4, 5.) A person speaking, should not mention a member present by his name, but describe him as him who last spoke, or on the other side of the question, or in some other way; or, as is common in legislative bodies, to designate another, as the gentleman from —, naming the town, county, or district which he represents.

§ 3. If a member, before he has concluded his speech, gives up the floor for any purpose, he loses his right to it, even though it is yielded on condition that he shall have it again, or though it was given up to another only for an explanation. As a matter of favor, however, the person yielding the floor, is usually permitted to resume it.

§ 4. A person is not to use indecent language against the proceedings, or reflect upon any prior act or determination of the assembly, unless he means to conclude with a motion to rescind such determination. But reflections upon a proposition while under consideration, though it has even been reported by a committee, are no reflections on the assembly.

§ 5. No member may digress from his subject, and fall

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§ 1. How is a presiding officer restricted as to speaking? § 2. Whom must a person speaking address? How must he designate other members? § 3. Can a member yield the floor, and retain his right to it? § 4. What language is forbidden?



upon another member, and speak reviling or unmanly words of or to him. He may reprobate the nature or consequences of a measure in strong terms; but to arraign the motives of those who propose or advocate it, is a personality, and against order.

§ 6. A person speaking must confine himself to the question, and not speak impertinently, or beside the subject. So closely is this rule to be observed, that if at any time a secondary or an incidental question arises, as on an amendment, or a postponement, the person speaking must confine his remarks to the particular question then before the assembly, and not speak to the main question.

§ 7. When a member speaks irrelevantly, or beside the question, he may be interrupted by the chairman, or called to order by a member; and the question may be made, whether he shall be allowed to proceed in the manner in which he was speaking when interrupted. If no question is made, or if one is made and decided in the negative, he is still to be allowed to proceed in order; that is, keeping to the particular subject before the assembly.

§ 8. No member may, without the general consent of the assembly, speak more than once to the same question, until all who desire to speak have spoken. He may then speak a second time by leave of the assembly. This is the general rule, and is to be observed where no special rule provides otherwise. But those who have spoken on the main question, may speak again on secondary or incidental questions arising in the course of debate. And if a subject upon which a member has spoken is referred to a committee, he may speak again on the question presented by the report of the committee. In meetings other than legislative assemblies, greater freedom is allowed.

§ 9. A member may also be permitted to speak a second time to clear a matter of fact; or merely to explain himself in some material part of his speech, or to the orders of the assembly; keeping himself to that matter only. But he can not interrupt another who is speaking, in order to make the explanation.

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§ 5. What may he do, and what not? § 6. To what must he confine himself? § 7. When called to order for irrelevant speaking, how may a member proceed? § 8. What is the strict rule as to the number of times of speaking? § 9. For what purposes may he speak again?

§ 10. No member is to disturb another in his speech, by hissing, coughing, speaking, or whispering; nor by passing between the member speaking and the chair, or by walking across the room; nor by any other disorderly behavior. But if a member finds that the assembly are not inclined to hear him, and that by conversation or any other noise they endeavor to drown his voice, it is the most prudent way to submit to the pleasure of the house, and to sit down; for it seldom happens, that members are guilty of this piece of ill manners without some reason; or that they are so inattentive to one who says anything worth their hearing.

§ 11. If repeated calls do not produce order, the chairman may call by his name any member obstinately persisting in irregularity; whereupon the assembly may require him to withdraw. He is then to be heard in exculpation, and to withdraw. Then the chairman states the offense committed, and the assembly considers the kind and degree of punishment to be inflicted.

§ 12. If a member uses disorderly, offensive, or insulting words, he is interrupted by another member or by several members rising and calling him to order. The member complaining of the words and desiring them to be taken down by the clerk, must repeat them; and the chairman may then direct the clerk to take them down in his minutes. But if he thinks them not disorderly, he delays the direction. If the call becomes pretty general, he orders the clerk to take them down as stated by the objecting member. They are then part of his minutes, and, when read to the offending member, he may deny that they were his words, and the assembly must then decide by a question whether they were his words or not: and the words, as written down, may be amended so as to conform to what the assembly thinks them to be.

§ 13. Then the member may either justify the words, or explain the sense in which he used them, or apologize. If the assembly is satisfied, no farther proceeding is necessary. But if two members still insist on taking the sense of the assembly, the member must withdraw before that question

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§ 10. What acts of indecorum are prohibited? § 11. How is a person speaking dealt with for persisting in irregularity? § 12. What course is taken when a member uses disorderly words?

is stated, and then the sense of the assembly is to be taken. If the offending member is allowed to conclude his speech, and any other member speaks, or other business intervenes, after offensive words are spoken, they can not be taken notice of for censure. This is for the common security of all, and to prevent mistakes, which are likely to happen, if words are not taken down immediately.

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## CHAPTER LXXI.

### TAKING THE QUESTION—MANNER OF VOTING—RECONSIDERATION.

§ 1. WHEN the debate upon a question is ended, and the final vote is to be taken, the presiding officer states the question, and puts it, always first in the affirmative, in words differing slightly in form in different bodies; but substantially as follows: *Gentlemen, all of you who are in favor of—*repeating, as nearly as may be, the words of the question—*say aye;* and after the answer of ayes, *All those who are opposed, say no.*

§ 2. The presiding officer then, judging by the sound which voice is the greater, declares to the assembly that *the ayes have it*, or *the noes have it*, as the case may be; or, as in some assemblies, *it is carried*, or, *it is lost*. If he is doubtful as to the majority, he may put the question a second time before declaring the result. If he is still unable to decide, or, having decided, if any member is not satisfied with the decision, the presiding officer directs the assembly to divide, that the members on each side may be counted.

§ 3. In some places, the members vote by holding up their right hands. Such is said to be still the practice in legislative bodies in the New England states.

§ 4. The most convenient mode of dividing a house, is to direct the members to rise, first those in the affirmative, and

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§ 13. After the disorderly words are taken down, what follows?

§ 1. What is the ordinary form of putting a final question? § 2. How is the majority of votes ascertained? How does he declare the result?

§ 3. How is voting sometimes done?

then those in the negative, and be counted. Every member present when the question is stated, is, according to the general rule, required to vote; and, on the other hand, none can vote who was not then in the room.

§ 5. Another form of taking the question, is by taking the *yeas* and *nays*. This mode is practiced in legislative bodies in this country. The form of stating a question to be thus taken, is, *All who are in favor of, &c., will, when their names are called, answer yes; and, All those who are opposed, will, when their names are called, answer no.* The roll is then called in alphabetical order, by the clerk, who notes the answer of each member, yes or no. The *yeas* and *nays* are then counted, and the result declared.

§ 6. Except on the final passage of a bill, questions generally are not taken in this manner, unless called for by members, who, for certain reasons, desire to have the *yeas* and *nays* entered on the journal. The constitution of the state declares what number of members shall request the *yeas* and *nays*, in order to require them to be taken. The constitutions of some states, require the *yeas* and *nays* on the final passage of all bills and resolutions.

§ 7. According to the strict rule of parliament, a question once put and decided, can not be brought up again at the same session, but must stand as the judgment of the house. This rule prevails in this country also, but with a modification which has often been found useful in relieving an assembly from great inconvenience and difficulty otherwise unavoidable.

§ 8. When a question has been decided in the affirmative or negative, it is in order to move that the vote be *reconsidered*. If such motion prevails, the matter is restored to the state in which it stood before the vote reconsidered was taken. In many legislative bodies, there is a special rule, providing that a motion to reconsider may be made only on the same or the next day, and by a member who voted with the majority. But this rule, like other special rules, is binding only where it has been expressly adopted.

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§ 4. How is a house divided? § 5. How is the question taken by *yeas* and *nays*? § 6. When must the question be thus taken? In what cases in this state? (See Cons.) § 7, 8. By what means may a question once decided be revived?

## NOTES.

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[A.] P. 74. The accounts of the individual members of the board of town auditors, are now audited by the board of supervisors.

[B.] P. 75. The foregoing regulations concerning the sale of spirituous liquors were superseded or repealed by the prohibitory liquor law of 1855. The principal provisions of this law having been declared, by the court of appeals, to be unconstitutional, and the repealing clause being considered as remaining in force, the opinion prevails, that there is at present no law restraining the sale of spirituous liquors. Consequently, the commissioners of excise have no occasion to grant licenses for selling liquors.

[C.] P. 95. By an act of 1851, original civil jurisdiction was given to county courts, in cases in which the sum claimed does not exceed \$500.

[D.] P. 96. In consequence of the jurisdiction granted to the county court by the act mentioned in the preceding note, all suits for sums exceeding \$100 are not necessarily commenced in the supreme court.

[E.] P. 139. By act of 1851, a *bank department* is created, and a superintendent of same appointed by the governor and senate. All the duties of the comptroller relating to banking associations are transferred to the superintendent of the banking department. The salary of the superintendent is \$2,500.

[F.] P. 178. That part of the District of Columbia which was taken from Virginia, was, in 1846, retroceded to that state by an act of Congress.

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