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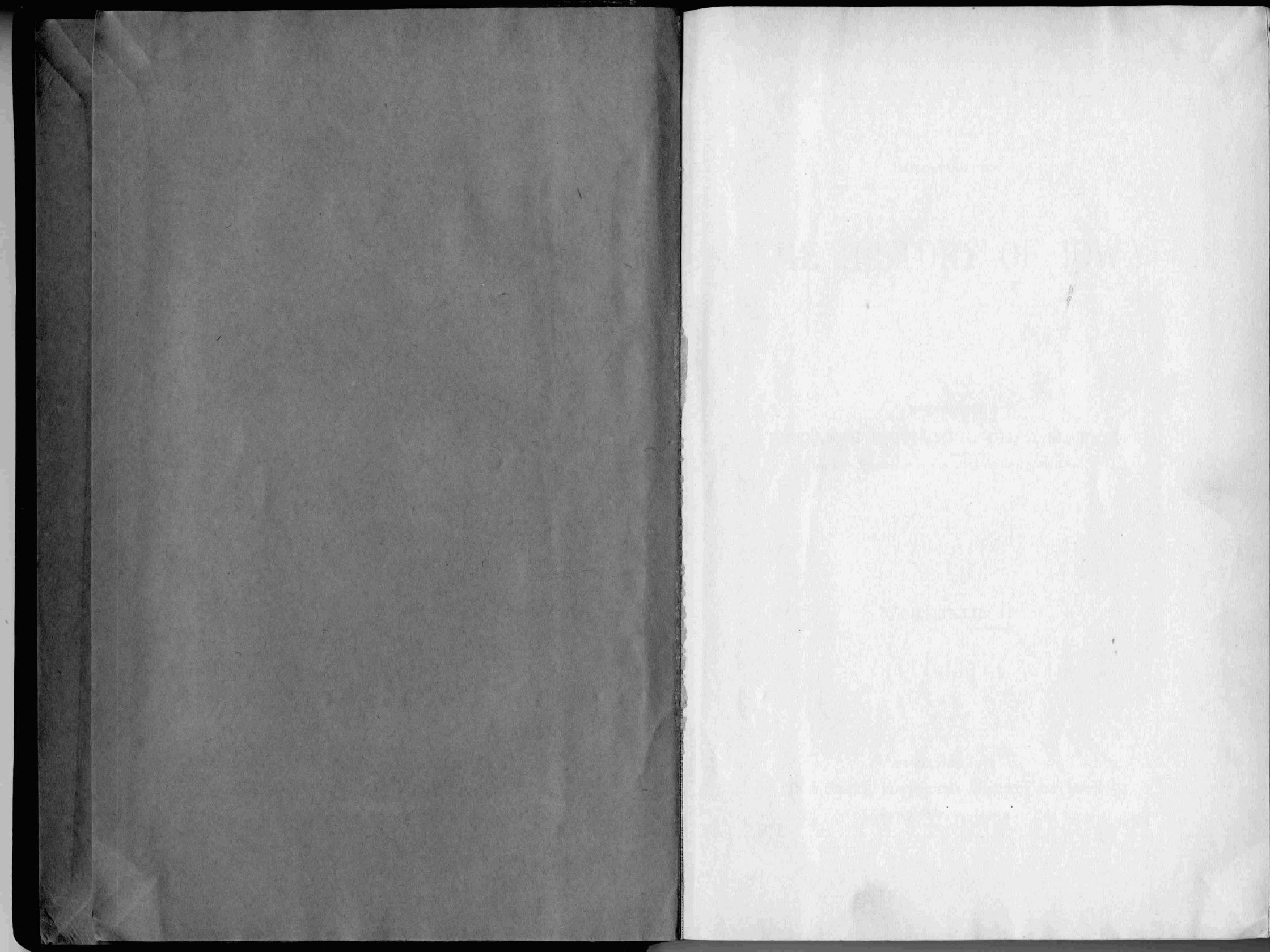
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RELATING TO

THE HISTORY OF IOWA

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EDITED BY

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VOLUME I.

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PREFACE.

THE object, purposes and scope of these publications of *Documentary Material Relating to the History of Iowa* are stated in the *General Introduction*: a restatement in this place would be mere supererogation.

Criticisms call for an explanation of the method of editing the material herein contained. That the investigator may be his own judge of the value of this material, I have taken pains to indicate specifically at the end of each document the source from which the given document is reprinted or transcribed. And in transcribing I have followed the copy of the original literally: that is to say, I have avoided all tampering with the sources from which the material is drawn. As a result it will be observed that in these publications typographical errors are reproduced along with other peculiarities in spelling, punctuation, capitalization, sentence construction, and such like.

It is with pleasure that I take this opportunity of thanking those (especially my University students) who have rendered service in the way of copying material or comparing the proof-sheets with the originals. Mr. George S. Schaeffer and Mr. H. Claude Horack deserve special mention in this connection. Others to be mentioned in the same connection are: Messrs. F. D. Merritt, F. W. Beckman, J. R. Frailey and H. W. Hanson. To Dr. J. L. Pickard, Professor Isaac

18686

A. Loos, Mr. Charles Aldrich and Dr. T. S. Parvin I am grateful for encouragement.

The numbers included in this volume were prepared and published as follows: numbers I. and II. early in the year 1895; numbers III. and IV. early in the year 1896; numbers V., VI. and VII. in the summer of 1896; and number VIII. in April, 1897.

It is proposed to continue these publications as time and opportunity may permit.

BENJ. F. SHAMBAUGH.

*State University of Iowa,
April, 1897.*

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GENERAL INTRODUCTION.

OWING to obstacles in the way of obtaining the necessary material, the history of Iowa has been little read and studied through its original sources. Scattered through various books and publications found in as many different collections and libraries, this material has been practically inaccessible to the general body of students. It is to obviate these difficulties, and to facilitate the adoption of scientific methods of study, that the documentary material contemplated in the title is brought forward and published.

It is also hoped that the present publications may encourage similar collections and publications in other states. For no part of American history has been so much neglected. It is practically an unexplored field: or, to use the words of the Hon. James Bryce, "it is rather a primeval forest, where the vegetation is rank, and through which scarcely a trail has yet been cut." Perhaps no work at the present time would be more appreciated than the writing of state histories. I do not mean "merely antiquarian or genealogical" efforts, or the presentation of interesting "reminiscences"; but histories, which, in discussing economic and industrial development, the growth of institutions, principles of political organization, the content of administration, finance, etc., indicate, wherever it is possible, causal connections and relations. Some beginnings in this direction have, it is true, been made by students in

Eastern universities for the older states; but for that greater number of American commonwealths that have grown up on the public domain, the field, as Bryce suggests, is still practically a wilderness.

Nor do the histories of the newer states concern the historian alone. Economic phenomena in all stages of development and extending over shorter and longer periods of time are here presented on a scale which perhaps has never before been paralleled. This is seen in the phenomena, witnessed in the course of a single generation, of a vast objective environment settled by isolated individuals or groups of individuals, of the rapid growth of population by additions from without and from within, of the economic integration of agricultural and of urban communities, of the growth of a social surplus, of the appearance of new wants and the development of concomitant means of satisfaction, of the location of industries, of transportation and of great markets. Again, in the origin and growth of Western communities the Sociologist has found material for his science. Here he observes the phenomena of social genesis, of aggregation, of social integration and of social impulses and desires.

It is, however, to the study of American Politics that the histories of the states, when written, are likely to make the most valuable contributions. The need of such contributions is now quite evident. For, with the exception of certain maxims and concepts drawn from Constitutional Law, there are but few principles of scientific rank generally recognized in political discussions; yet the phenomena in this field have certainly reached a coherency and definiteness that will admit of scientific treatment. But before we can hope for the development of a complete science in American Politics,

more and better data must be brought together in the several states on territorial, commonwealth, and local government.

In order to economize time and energy and avoid bad methods, this preliminary work in American Politics must begin at the right point. The histories of the states must be read before their political institutions can be studied to the best advantage. This does not mean that the inductions of history will or can contribute directly to a science of Politics: it simply aims to emphasize the thought that constitutions and statutes are not the whole of government, and that history is an aid in grasping and interpreting political phenomena. Finally, and to come back to the primary object of these publications, the most profitable reading or study of the histories of the American commonwealths, for whatever purpose, is through material from original sources.

The plan of the present publications, although in no sense materially different from that followed in such works as Stubb's *Select Charters*, Henderson's *Historical Documents of the Middle Ages*, or Preston's *Documents Illustrative of American History*, was, however, largely suggested by the admirable *Translations and Reprints from the Original Sources of European History*, which are being edited by Dr. Robinson, Professor Cheney, and Mr. Munro, of the University of Pennsylvania.

BENJ. F. SHAMBAUGH.

NUMBER I.

INTRODUCTION.

THE early history of Iowa takes its beginnings in the history of the Province of Louisiana. But since the Iowa region was not permanently settled until after 1830, this early history is chiefly a history of governments—a bare record of treaties and statutes, of changes in sovereign and subordinate jurisdiction.

Louisiana was first settled by the French near the close of the 17th century. The colony, founded by Iberville in 1699, grew slowly; for “the care of peopling this new and almost uninhabited country, instead of being placed under the charge of one of the superior departments of government, was principally confided to the agents of the Paris police.” The government of the colony was absolute; and its history consisted simply of the acts of those who administered it.

In 1762 Louisiana was ceded to the crown of Spain. But thirty-eight years later it was ceded back to France by the treaty of San Ildefonso. During the period of Spanish dominion the government of the Province was without guaranties to individual liberty. It was strikingly military in character. Everywhere the military chief was at the head of the civil organization. The prevailing system of juris-

prudence was that of the Civil Law. Indeed, the Roman Code may be said to have furnished the laws for the government of Louisiana.

In 1803 the whole of Louisiana was purchased by the United States. To America at large this purchase was "an event so portentous as to defy measurement; it gave a new face to politics, and ranked in historical importance next to the Declaration of Independence." While to the future commonwealth of Iowa the acquisition had a no less serious significance: since through it Iowa fell heir to the institutions of the Common Law of England.

The treaty with France was ratified at Washington October 19th, 1803; and by the act of October 31st the President of the United States was authorized by Congress to take possession of and occupy the country—virtually as its absolute ruler. On the 20th of December Governor Claiborne took formal possession of the government at New Orleans. The upper province, however, was not delivered up until March of the year next following.

By the act of March 26th, 1804, Congress divided the country into two territories—the Territory of Orleans and the District of Louisiana. Orleans was fully organized into a separate territory; while the District, in a practically unorganized state, was placed under the jurisdiction of the Governor and Judges of the Territory of Indiana.

B. F. S.

ACQUISITION OF LOUISIANA BY THE UNITED STATES.¹

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U. S. Statutes at Large, Foreign Treaties, Vol. VIII., p. 200; Poore's Constitutions and Charters, Pt. I., p. 687; American State Papers, Foreign Relations, Vol. II., pp. 506-583; American State Papers, Miscellaneous, Vol. I., pp. 344-356; Annals of Congress, 7th Cong., 2nd Sess., Appendix, pp. 1003-1210; Annals of Congress, 8th Cong., 1st Sess. *passim*; French's Historical Collections of Louisiana, *passim*.

Narrative and Critical History of United States, Vol. V., pp. 1-78; Stoddard's Sketches of Louisiana; Marbois' History of Louisiana; Gayarre's History of Louisiana; Von Holst's Constitutional History of the United States, Vol. I., pp. 184-192; Henry Adams' History of the United States, Vol. I., pp. 423-446, and Vol. II., pp. 25-115; Schouler's History of the United States, Vol. II., pp. 36-52; Tucker's History of the United States, Vol. II., pp. 193-205; Hart's Formation of the Union, pp. 185-187; Hildreth's History of the United States, Vol. II., pp. 478-482; McMaster's History of the People of the United States, Vol. II., pp. 621-633, and Vol. III., pp. 1-9.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC.

The President of the United States of America, and the First Consul of the French republic, in the name of the French people, desiring to remove all source of misunderstanding, relative to objects of discussion mentioned in the second and fifth articles of the convention of (the 8th Vendemiaire, an 9,) September, 30, 1800, relative to the rights claimed by the United States, in virtue of the treaty concluded at Madrid, the 27th October, 1795, between His Catholic Majesty and the said United States and willing to strengthen the union and friendship, which at the time of the said convention was happily re-established between the two nations, have respectively named their plenipotentiaries, to wit: The President of the United States of America, by and with the advice and consent of the Senate of the said States, Robert R. Livingston, minister plenipotentiary of the United States, and James Monroe,

¹For a discussion of the power of the United States to acquire territory see *American Insurance Co. v. Canter*, 1 Peters 542.

minister plenipotentiary and envoy extraordinary of the said States, near the Government of the French republic; and the First Consul, in the name of the French people, citizen Francis Barbé Marbois, minister of the public treasury, who, after having respectively exchanged their full powers, have agreed to the following articles:

Art. 1. Whereas, by the article the third of the treaty concluded at St. Ildefonso, (the 9th Vendemiaire, an 9,) October 1, 1800, between the First Consul of the French Republic and His Catholic Majesty, it was agreed as follows: His Catholic Majesty promises and engages on his part to cede to the French republic, six months after the full and entire execution of the conditions and stipulations herein, relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that is now in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States: And whereas, in pursuance of the treaty, and particularly of the third article, the French republic has an incontestable title to the domain and to the possession of the said territory. The First Consul of the French republic, desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French republic, for ever and in full sovereignty, the said territory with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic, in virtue of the above mentioned treaty, concluded with His Catholic Majesty.

Art. 2. In the cession made by the preceding article, are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property. The archives, papers, and documents, relative to the domain and sovereignty of Louisiana and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the

magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

Art. 3. The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.¹

Art. 4. There shall be sent by the Government of France a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of His Catholic Majesty the said country and its dependencies in the name of the French republic, if it has not been already done, as to transmit it, in the name of the French public,² to the commissary or agent of the United States.

Art. 5. Immediately after the ratification of the present treaty by the President of the United States, and in case that of the First Consul shall have been previously obtained, the commissary of the French republic shall remit all the military posts of New Orleans, and other parts of the ceded territory, to the commissary or commissaries named by the President to take possession of the troops, whether of France or Spain,

¹In reference to this article of the treaty Chief Justice Marshall said: "This article obviously contemplates two objects. One, that Louisiana shall be admitted into the Union as soon as possible, on an equal footing with the other States; and the other, that, till such admission, the inhabitants of the ceded territory shall be protected in the free enjoyment of their liberty, property and religion. Had any one of these rights been violated while these stipulations continued in force, the individual supposing himself to be injured might have brought his case into this court under the twenty-fifth section of the judiciary act. But this stipulation ceased to operate when Louisiana became a member of the Union, and its inhabitants were admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States."—*New Orleans v. De Armas*, 9 Peters, 224. Compare with dissenting opinion of Justice Curtis in the case of *Dred Scott v. Sanford*, 19 Howard 630.

²Undoubtedly a misprint, and should be "Republic."

who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible in the course of three months after the ratification of this treaty.

Art. 6. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

Art. 7. As it is reciprocally advantageous to the commerce of France and the United States, to encourage the communication of both nations, for a limited time, in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on, it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or her said colonies, and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the port of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on the merchandise, or other or greater tonnage than there paid by the citizens of the United States.

During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory. The twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French Government, if it shall take place in the United States: it is, however, well understood, that the object of the above article is to favor the manufactures, commerce, freight, and navigation of France and of Spain, so far as relates to the importations that the French and Spanish shall

make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations.

Art. 8. In future and forever, after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.

Art. 9. The particular convention signed this day by the respective ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French republic, prior to the 30th of September, 1800, (8th Vendemiaire, an 9,) is approved, and to have its execution in the same manner as if it had been inserted in the present treaty; and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other. Another particular convention, signed at the same date as the present treaty, relative to a definitive rule between the contracting parties is, in the like manner, approved, and will be ratified in the same form and in the same time, and jointly.

Art. 10. The present treaty shall be ratified in good and due form, and the ratification shall be exchanged in the space of six months after the date of the signature by the ministers plenipotentiary, or sooner if possible.

In faith whereof, the respective plenipotentiaries have signed these articles in the French and English languages, declaring, nevertheless, that the present treaty was originally agreed to in the French language, and have thereunto put their seals.

Done at Paris, the 10th day of Floreal, in the 11th year of the French republic, and the 30th April, 1803.

ROBERT R. LIVINGSTON,
JAMES MONROE,
F. BARBÉ MARBOIS.

—Reprinted from *American State Papers, Foreign Relations, Vol. II., p. 507.*

CONVENTION BETWEEN THE UNITED STATES OF AMERICA
AND THE FRENCH REPUBLIC.

The President of the United States of America, and the First Consul of the French republic, in the name of the French people, in consequence of the treaty of cession of Louisiana, which has been signed this day, wishing to regulate definitively every thing which has relation to the said cession, have authorized, to this effect, the plenipotentiaries, that is to say: the President of the United States has, by and with the advice and consent of the Senate of the said States, nominated for their plenipotentiaries, Robert R. Livingston, minister plenipotentiary of the United States, and James Monroe, minister plenipotentiary and envoy extraordinary of the said United States, near the Government of the French republic; and the First Consul of the French republic, in the name of the French people, has named, as plenipotentiary of said republic, the citizen Francis Barbé Marbois, who, in virtue of their full powers, which have been exchanged this day, have agreed to the following articles:

Art. 1. The Government of the United States engages to pay to the French Government, in the manner specified in the following article, the sum of sixty millions of francs, independent of the sum which shall be fixed by another convention for the payment of the debts due by France to citizens of the United States.

Art. 2. For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven million two hundred and fifty thousand dollars, bearing an interest of six per cent. per annum, payable, half yearly, in London, Amsterdam, or Paris, amounting, by the half-year, to three hundred and thirty-seven thousand five hundred dollars, according to the proportions which shall be determined by the French Government, to be paid at either place: the principle of the said stock to be reimbursed at the treasury of the United States in annual

payments of not less than three millions of dollars each, of which the first payment shall commence fifteen years after the date of the exchange of ratifications: this stock shall be transferred to the Government of France, or to such person or persons as shall be authorized to receive it, in three months, at most, after the exchange of the ratifications of this treaty, and after Louisiana shall be taken possession of in the name of the Government of the United States.

It is further agreed that, if the French Government should be desirous of disposing of the said stock, to receive the capital in Europe at shorter terms, that its measures, for that purpose, shall be taken so as to favor, in the greatest degree possible, the credit of the United States, and to raise to the highest price the said stock.

Art. 3. It is agreed that the dollar of the United States, specified in the present convention, shall be fixed at five francs $\frac{3333}{10000}$ or five livres eight sous tournoise.

The present convention shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months, to date from this day, or sooner if possible.

In faith of which, the respective plenipotentiaries have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty has been originally agreed on and written in the French language, to which they have hereunto affixed their seals.

Done at Paris, the tenth day of Floreal, eleventh year of the French republic, (30th April, 1803.)

ROBERT R. LIVINGSTON,
JAMES MONROE,
F. BARBÉ MARBOIS.

—Reprinted from *American State Papers, Foreign Relations, Vol. II., p. 508.*

CONVENTION BETWEEN THE UNITED STATES OF AMERICA
AND THE FRENCH REPUBLIC.

The President of the United States of America, and the First Consul of the French republic, in the name of the French people, having, by a treaty of this date, terminated all difficulties relative to Louisiana, and established on a solid foundation the friendship which unites the two nations, and being desirous, in compliance with the second and fifth articles of the convention of the 8th Vendemiaire, 9th year of the French republic, (30th September, 1800,) to secure the payment of the sum due by France to the citizens of the United States, have respectively nominated as plenipotentiaries, that is to say: the President of the United States of America, by and with the advice and consent of their Senate, Robert R. Livingston, minister plenipotentiary, and James Monroe, minister plenipotentiary and envoy extraordinary of the said States, near the Government of the French republic; and the First Consul, in the name of the French people, the citizen Francis Barbé Marbois, minister of the public treasury, who, after having exchanged their full powers, have agreed to the following articles:

Art. 1. The debts due by France to citizens of the United States, contracted before the 8th of Vendemiaire, 9th year of the French republic, (30th September, 1800,) shall be paid according to the following regulations, with interest at six per cent., to commence from the periods when the accounts and vouchers were presented to the French Government.

Art. 2. The debts provided for by the preceding article are those whose result is comprised in the conjectural note annexed to the present convention, and which, with the interest, cannot exceed the sum of twenty millions of francs. The claims comprised in the said note, which fall within the exceptions of the following articles, shall not be admitted to the benefit of this provision.

Art. 3. The principal and interest of the said debts shall be

discharged by the United States by orders drawn by their ministers plenipotentiary on their treasury; these orders shall be payable sixty days after the exchange of ratifications of the treaty and the conventions signed this day, and after possession shall be given of Louisiana by the commissaries of France to those of the United States.

Art. 4. It is expressly agreed that the preceding articles shall comprehend no debts but such as are due to citizens of the United States who have been and are yet creditors of France for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged, within the time mentioned in the said convention of the 8th Vendemiaire, 9th year, (30th September, 1800).

Art. 5. The preceding articles shall apply only, 1st, to captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States, otherwise than he might have had to the Government of the French republic, and only in case of the insufficiency of the captors; 2dly, the debts mentioned in the said fifth article of the convention contracted before the 8th Vendemiaire, an 9, (30th September, 1800,) the payment of which has been heretofore claimed of the actual Government of France, and for which the creditors have a right to the protection of the United States. The said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed. It is the express intention of the contracting parties not to extend the benefit of the present convention to reclamations of American citizens, who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who, by that reason, and the nature of their commerce, ought to be regarded as domiciliated in the places where such houses exist. All agreements and bargains concerning merchandise, which shall not be the property of American citizens, are equally excepted from the benefit of the said convention; saving, however, to such persons their claims in like manner as if this treaty had not been made.

Art. 6. And that the different questions which may arise under the preceding article may be fairly investigated, the ministers plenipotentiary of the United States shall name three persons, who shall act from the present, and provisionally, and who shall have full power to examine, without removing the documents, all the accounts of the different claims already liquidated by the bureaux established for this purpose by the French republic, and to ascertain whether they belong to the classes designated by the present convention, and the principles established in it; or if they are not in one of its exceptions, and on their certificate declaring that the debt is due to an American citizen, or his representative, and that it existed before the 8th Vendemiaire, 9th year, (30th September, 1800,) the debtor shall be entitled to an order on the treasury of the United States, in the manner prescribed in the third article.

Art. 7. The same agents shall likewise have power, without removing the documents, to examine the claims which are prepared for verification, and to certify those which ought to be admitted by uniting the necessary qualifications, and not being comprised in the exceptions contained in the present convention.

Art. 8. The same agents shall likewise examine the claims which are not prepared for liquidation, and certify in writing those which, in their judgments, ought to be admitted to liquidation.

Art. 9. In proportion as the debts mentioned in these articles shall be admitted, they shall be discharged with interest at six per cent. by the treasury of the United States.

Art. 10. And that no debt, which shall not have the qualifications above mentioned, and that no unjust or exorbitant demand may be admitted, the commercial agent of the United States at Paris, or such other agent as the minister plenipotentiary of the United States shall think proper to nominate, shall assist at the operations of the bureaux, and co-operate in the examination of the claims. And if this agent shall be of

opinion that any debt is not completely proved, or if he shall judge that it is not comprised in the principles of the fifth article above mentioned, and if, notwithstanding his opinion, the bureaux established by the French Government should think that it ought to be liquidated, he shall transmit his observations to the Board established by the United States, who, without removing documents, shall make a complete examination of the debt, and vouchers which support it, and report the result to the minister of the United States. The minister of the United States shall transmit his observations in all such cases to the minister of the treasury of the French republic, on whose report the French Government shall decide definitively in every case.

The rejection of any claim shall have no other effect than to exempt the United States from the payment of it; the French Government reserving to itself the right to decide definitively on such claims, so far as it concerns itself.

Art. 11. Every necessary decision shall be made in the course of a year, to commence from the exchange of ratification, and no reclamation shall be admitted afterwards.

Art. 12. In case of claims for debts contracted by the Government of France with citizens of the United States since the 8th Vendemiaire, 9th year, (September 30th, 1800,) not being comprised in this convention, may be pursued, and the payment demanded in the same manner as if it had not been made.

Art. 13. The present convention shall be ratified in good and due form, and the ratification shall be exchanged in six months from the date of signature of the ministers plenipotentiary, or sooner, if possible.

In faith of which, the respective ministers plenipotentiary have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty has been originally agreed on and written in the French language, to which they have hereunto affixed their seals.

Done at Paris, the 10th day of Floreal, 11th year of the French republic, (30th of April, 1803.)

ROBERT R. LIVINGSTON,
JAMES MONROE,
F. BARBÉ MARBOIS.

—*Reprinted from American State Papers, Foreign Relations, Vol. II., p. 508.*

THE PRESIDENT AUTHORIZED TO TAKE POSSESSION OF LOUISIANA.

BIBLIOGRAPHY AND REFERENCES.

U. S. Statutes at Large, Vol. II., p. 245; Annals of Congress, 8th Cong., 1st Sess., *passim*. Henry Adams' History of the United States, Vol. II., p. 119; Tucker's History of the United States, Vol. II., p. 199.

AN ACT TO ENABLE THE PRESIDENT OF THE UNITED STATES TO TAKE POSSESSION OF THE TERRITORIES CEDED BY FRANCE TO THE UNITED STATES, BY THE TREATY CONCLUDED AT PARIS, ON THE THIRTIETH OF APRIL LAST; AND FOR THE TEMPORARY GOVERNMENT THEREOF.¹

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby authorized to take possession of, and occupy the territory ceded by France to the United States, by the treaty concluded at Paris, on the thirtieth day of April last, between the two nations; and that he may for that purpose, and in order to maintain in the said territories the authority of the United

¹ For a discussion of the power of the General Government to provide government for territories compare the leading cases of: *Sere v. Pitot*, 6 Cranch, 336; *American Insurance Co. v. Canter*, 1 Peters, 542; *Benner v. Porter*, 9 Howard, 235; *Dred Scott v. Sanford*, 19 Howard, 393; *National Bank v. County of Yankton*, 101 U. S. 129.

States, employ any part of the army and navy of the United States, and of the force authorized by an act passed the third day of March last, intituled "An act directing a detachment from the militia of the United States, and for erecting certain arsenals," which he may deem necessary: and so much of the sum appropriated by the said act as may be necessary, is hereby appropriated for the purpose of carrying this act into effect; to be applied under the direction of the President of the United States.

Sec. 2. *And be it further enacted,* That until the expiration of the present session of Congress, unless provision for the temporary government of the said territories be sooner made by Congress, all the military, civil and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property and religion.

Approved, October 31, 1803.

—*Reprinted from U. S. Statutes at Large, Vol. II., p. 245.*

THE PROCLAMATION AND ADDRESS OF GOVERNOR CLAIBORNE.

BIBLIOGRAPHY AND REFERENCES.

American State Papers, Foreign Relations, Vol. II., pp. 582-583. McMaster's History of the People of the United States, Vol. III., pp. 10-14; Hildreth's History of the United States, Vol. II., p. 492; Tucker's History of the United States, Vol. II., p. 211.

PROCLAMATION.

Whereas, by stipulations between the Governments of France and Spain, the latter ceded to the former the colony

and province of Louisiana, with the same extent which it had at the date of the abovementioned treaty in the hands of Spain, and that it had when France possessed it, and such as it ought to be after the treaties subsequently entered into between Spain and other States; and whereas the Government of France has ceded the same to the United States by a treaty duly ratified, and bearing date the 30th of April, in the present year, and the possession of said colony and province is now in the United States, according to the tenor of the last mentioned treaty; and whereas the Congress of the United States, on the 31st day of October, in the present year, did enact that until the expiration of the session of Congress then sitting, (unless provisions for the temporary Government of the said territories be sooner made by Congress,) all the military, civil, and judicial powers, exercised by the then existing Government of the same, shall be vested in such person or persons, and shall be exercised in such manner, as the President of the United States shall direct, for the maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion; and the President of the United States has by his commission, bearing date the same 31st day of October, invested me with all the powers, and charged me with the several duties heretofore held and exercised by the Governor General and Intendant of the province:

I have, therefore, thought fit to issue this my proclamation, making known the premises, and to declare, that the Government heretofore exercised over the said province of Louisiana, as well under the authority of Spain as of the French republic, has ceased, and that of the United States of America is established over the same; that the inhabitants thereof will be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; that, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which

they profess; that all laws and municipal regulations, which were in existence at the cessation of the late Government, remain in full force; and all civil officers charged with their execution, except those whose powers have been especially vested in me, and except also such officers as have been entrusted with the collection of the revenue, are continued in their functions, during the pleasure of the Governor for the time being, or until provision shall otherwise be made.

And I do hereby exhort and enjoin all the inhabitants, and other persons within the said province, to be faithful and true in their allegiance to the United States, and obedient to the laws and authorities of the same, under full assurance that their just rights will be under the guardianship of the United States, and will be maintained from all force or violence from without or within.

In testimony whereof I have hereunto set my hand.

Given at the city of New Orleans, the 20th day of December, 1803, and of the independence of the United States of America the 28th.

WM. C. C. CLAIBORNE.

—*Reprinted from American State Papers, Foreign Relations, Vol. II., p. 582.*

ADDRESS TO THE CITIZENS OF LOUISIANA.

NEW ORLEANS, *September 20, 1803.*

FELLOW-CITIZENS OF LOUISIANA:

On the great and interesting event now finally consummated—an event so advantageous to yourselves, and so glorious to united America, I cannot forbear offering you my warmest congratulations. The wise policy of the Consul of France has, by the cession of Louisiana to the United States, secured to *you* a connexion beyond the reach of change, and

to your posterity the sure inheritance of freedom. The American people receive you as brothers; and will hasten to extend to you a participation in those inestimable rights, which have formed the basis of their own unexampled prosperity. Under the auspices of the American Government, you may confidently rely upon the security of your liberty, your property, and religion of your choice. You may with equal certainty rest assured, that your commerce will be promoted and your agriculture cherished; in a word, that your true interests will be among the primary objects of our national Legislature. In return for these benefits, the United States will be amply remunerated, if your growing attachment to the constitution of our country, and your veneration for the principles on which it is founded, be duly proportioned to the blessings which they will confer. Among your first duties, therefore, you should cultivate with assiduity among yourselves the advancement of political information; you should guide the rising generation in the paths of republican economy and virtue; you should encourage literature; for, without the advantages of education, your descendants will be unable to appreciate the intrinsic worth of the Government transmitted to them.

As for myself, fellow-citizens, accept a sincere assurance, that, during my continuance in the situation in which the President of the United States has been pleased to place me, every exertion will be made on my part to foster your internal happiness, and forward your general welfare; for it is only by such means that I can secure to myself the approbation of those great and just men who preside in the councils of our nation.

WILLIAM C. C. CLAIBORNE.

—*Reprinted from American State Papers, Foreign Relations, Vol. II., p. 583.*

LOUISIANA DIVIDED INTO TWO TERRITORIES.

BIBLIOGRAPHY AND REFERENCES.

U. S. Statutes at Large, Vol. II., pp. 283-289; Annals of Congress, 8th Cong., 1st Sess., *passim*. McMaster's History of the People of the United States, Vol. III., pp. 22-23; Henry Adams' History of the United States, Vol. II., pp. 120-125; Hildreth's History of the United States, Vol. II., pp. 495-497; Dillon's History of Indiana, p. 414; Dunn's History of Indiana, American Commonwealths Series, pp. 317-319.

AN ACT ERECTING LOUISIANA INTO TWO TERRITORIES, AND PROVIDING FOR THE TEMPORARY GOVERNMENT THEREOF.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of country ceded by France to the United States, under the name of Louisiana, which lies south of the Mississippi territory, and of an east and west line to commence on the Mississippi river, at the thirty-third degree of north latitude, and to extend west to the western boundary of the said cession, shall constitute a territory of the United States, under the name of the territory of Orleans; the government whereof shall be organized and administered as follows:

[Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 relate exclusively to the Territory of Orleans. They are omitted in this connection since the Territory of Orleans in no way concerns the history of Iowa.]

Sec. 12. The residue of the province of Louisiana, ceded to the United States, shall be called the district of Louisiana, the government whereof shall be organized and administered as follows:

The executive power now vested in the governor of the Indiana territory shall extend to, and be exercised in the said district of Louisiana. The governor and judges of the Indiana territory shall have power to establish, in the said district of Louisiana, inferior courts, and prescribe their jurisdiction and duties, and to make all laws which they may deem conducive to the good government of the inhabitants thereof: *Provided however,* that no law shall be valid which is incon-

sistent with the constitution and laws of the United States, or which shall lay any person under restraint or disability on account of his religious opinions, profession, or worship; in all of which he shall be free to maintain his own, and not burthened for those of another: *And provided also*, that in all criminal prosecutions, the trial shall be by a jury of twelve good and lawful men of the vicinage, and in all civil cases of value of one hundred dollars, the trial shall be by jury, if either of the parties require it. The judges of the Indiana territory, or any two of them, shall hold annually two courts within the said district, at such place as will be most convenient to the inhabitants thereof in general, shall possess the same jurisdiction they now possess in the Indiana territory, and shall continue in session until all the business depending before them shall be disposed of. It shall be the duty of the secretary of the Indiana territory to record and preserve all the papers and proceedings of the governor, of an executive nature, relative to the district of Louisiana, and transmit authentic copies thereof every six months to the President of the United States. The governor shall publish throughout the said district, all the laws which may be made as aforesaid, and shall from time to time report the same to the President of the United States, to be laid before Congress, which, if disapproved of by Congress, shall thenceforth cease, and be of no effect.

The said district of Louisiana shall be divided into districts by the governor, under the direction of the President, as the convenience of the settlements shall require, subject to such alterations hereafter as experience may prove more convenient. The inhabitants of each district, between the ages of eighteen and forty-five, shall be formed into a militia, with proper officers, according to their numbers, to be appointed by the governor, except the commanding officer, who shall be appointed by the President, and who whether a captain, a major or a colonel, shall be the commanding officer of the district, and as such, shall, under the governor, have command of the regular

officers and troops in his district, as well as of the militia, for which he shall have a brevet commission, giving him such command, and the pay and emoluments of an officer of the same grade in the regular army; he shall be specially charged with the employment of the military and militia of his district, in cases of sudden invasion or insurrection, and until the orders of the governor can be received, and at all times with the duty of ordering a military patrol, aided by militia if necessary, to arrest unauthorized settlers in any part of his district, and to commit such offenders to jail to be dealt with according to law.

Sec. 13. The laws in force in the said district of Louisiana, at the commencement of this act, and not inconsistent with any of the provisions thereof, shall continue in force until altered, modified or repealed by the governor and judges of the Indiana territory, as aforesaid.

Sec. 14. *And be it further enacted*, That all grants for lands within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, in the year one thousand eight hundred and three, the title whereof was, at the date of the treaty of St. Ildefonso, in the crown, government or nation of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted, or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null, void, and of no effect in law or equity. *Provided nevertheless*, that anything in this section contained shall not be construed to make null and void any bona fide grant, made agreeably to the laws, usages and customs of the Spanish government to an actual settler on the lands so granted, for himself, and for his wife and family; or to make null and void any bona fide act or proceeding done by an actual settler agreeably to the laws, usages and customs of the Spanish government, to obtain a grant for lands actually settled on by the person or persons claiming title thereto, if such settlement in either case was actually made prior to the twentieth day of

December, one thousand eight hundred and three: *And provided further*, that such grant shall not secure to the grantee or his assigns more than one mile square of land, together with such other and further quantity as heretofore hath been allowed for the wife and family of such actual settler, agreeably to the laws, usages and customs of the Spanish government. And that if any citizen of the United States, or other person, shall make a settlement on any lands belonging to the United States, within the limits of Louisiana, or shall survey, or attempt to survey, such lands, or to designate boundaries by marking trees, or otherwise, such offender shall, on conviction thereof, in any court of record of the United States, or the territories of the United States, forfeit a sum not exceeding one thousand dollars, and suffer imprisonment not exceeding twelve months; and it shall, moreover, be lawful for the President of the United States to employ such military force as he may judge necessary to remove from lands belonging to the United States any such citizen or other person, who shall attempt a settlement thereon.

Sec. 15. The President of the United States is hereby authorized to stipulate with any Indian tribes owning lands on the east side of the Mississippi, and residing thereon, for an exchange of lands, the property of the United States, on the west side of the Mississippi, in case the said tribes shall remove and settle thereon; but in such stipulation, the said tribes shall acknowledge themselves to be under the protection of the United States, and shall agree that they will not hold any treaty with any foreign power, individual state, or with the individuals of any state or power; and that they will not sell or dispose of the said lands, or any part thereof, to any sovereign power, except to the United States, nor to the subjects or citizens of any other sovereign power, nor to the citizens of the United States. And in order to maintain peace and tranquility with the Indian tribes who reside within the limits of Louisiana, as ceded by France to the United States, the act of Congress, passed on the thirtieth day of

March, one thousand eight hundred and two, intituled "An act to regulate trade and intercourse with the Idnian tribes, and to preserve peace on the frontiers," is hereby extended to the territories erected and established by this act; and the sum of fifteen thousand dollars of any money in the treasury not otherwise appropriated by law, is hereby appropriated to enable the President of the United States to effect the object expressed in this section.

Sec. 16. The act, passed on the thirty-first day of October, one thousand eight hundred and three, intituled "An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris, on the thirtieth day of April last, and for the temporary government thereof," shall continue in force until the first day of October next, anything therein to the contrary notwithstanding; on which said first day of October, this act shall commence, and have full force, and shall continue in full force for and during the term of one year, and to the end of the next session of Congress which may happen thereafter.

Approved, March 26, 1804.

—*Reprinted from U. S. Statutes at Large, Vol. II., p. 283.*

LAWS ENACTED BY THE GOVERNOR AND JUDGES OF THE TERRITORY OF INDIANA FOR THE DISTRICT OF LOUISIANA.

BIBLIOGRAPHY AND REFERENCES.

Laws of the District of Louisiana, found in a compilation of the laws of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri and of the State of Missouri up to 1824, published under the authority of the State of Missouri by virtue of the act of February 13th, 1839; Dunn's History of Indiana, American Commonwealths Series, pp. 318-319.

TITLES OF THE LAWS ENACTED FOR THE DISTRICT OF
LOUISIANA.

The style of the several following laws was: "Be it enacted by the Governor and Judges of the Indiana Territory, authorized and empowered by an act of Congress to make laws for the district of Louisiana and it is hereby enacted by the authority of the same."

A Law providing for the punishment of certain crimes.	Oct. 1st, 1804
A Law entitled a law respecting Slaves.	Oct. 1st, 1804
A Law establishing courts for the trial of small causes.	Oct. 1st, 1804
A Law regulating county rates and levies.	Oct. 1st, 1804
An Act establishing and regulating the Militia.	Oct. 1st, 1804
A Law entitled a law establishing Recorders' offices.	Oct. 1st, 1804
A Law regulating the practice of Attornies.	Oct. 1st, 1804
A Law entitled a law regulating the apportionment of Constables.	Oct. 1st, 1804
A Law entitled a law of Defalcation.	Oct. 1st, 1804
A Law regulating Boatmen.	Oct. 1st, 1804
A Law to regulate the practice of the general court upon writs of error and for other purposes.	Oct. 1st, 1804
A Law establishing a Court of Probate.	Oct. 1st, 1804
A Law establishing courts of Judicature.	Oct. 1st, 1804
A Law regulating the Oath of Office.	Oct. 1st, 1804
A Law establishing the office of Sheriff.	Oct. 1st, 1804
A Law regulating Marriages.	April 24th, 1805

—*Reprinted from a compilation of the laws of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri and of the State of Missouri up to 1824, pp. 15-67.*

NUMBER II.

INTRODUCTION.

THE inhabitants of the District of Louisiana were wholly dissatisfied with the provisions of the act of March 26th, 1804, erecting Louisiana into two territories.¹ Through their representatives assembled in convention at St. Louis, September 29th, 1804, they drew up a violent remonstrance against "the dictates of a foreign government," the absenteeism of Governor and Judges, and the violation of the principles of liberty and equality.² They complained of having been deprived of "some of the dearest rights enjoyed by freemen;" they were horrified by the proposition to transfer Indian tribes to the west side of the Mississippi;³ and they declared the union with Indiana to be quite incompatible since slavery was prohibited in the one territory, while in the other it must *of right* be allowed to exist. With much earnestness they prayed for the repeal of the act of March 26th, and petitioned for the establishment of a separate territory. Nor was the remonstrance without effect. In March of the year next following Congress provided for the erection of the District of Louisiana into the independent Territory of Louisiana.⁴

¹ See No. I. of this series, p. 19.

² American State Papers, Miscellaneous, Vol. I., p. 400.

³ This fear was based on the provisions of Sec. 15 of the act of March 26th, 1804. See No. I., of this series, p. 22.

⁴ See p. 27 of this number.

By the act of June 4th, 1812, the Territory of Louisiana was reorganized under the name of the Territory of Missouri.¹ A more complete governmental organization was now provided; and the people were guaranteed nearly all of the fundamental rights enumerated in the Ordinance of 1787, including judicial proceedings according to the Common Law. Indeed, the forms and institutions of the Common Law were everywhere rapidly taking the place of the Civil Law. This transformation in Jurisprudence is perhaps best evidenced in an act of the General Assembly of the Territory of Missouri, passed in January, 1816, by which the Common Law was formally adopted as "the rule of decision."²

In 1819 all that part of the Territory of Missouri which lay "south of a line beginning on the Mississippi river at thirty-six degrees north latitude, running thence west to the river St. Francois, thence up the same to thirty-six degrees thirty minutes north latitude, and thence west to the western territorial boundary-line," was erected into the Territory of Arkansas.³ Two years later (1821) the settled country immediately north of Arkansas was admitted into the Union as the State of Missouri. But with the exception of the prohibition of slavery contained in the "Missouri Compromise,"⁴ no provisions were made for the residue of territory to the north and west. Indeed, this territory, which embraced the geographical area of the future Commonwealth of Iowa, seems to have been left wholly without a local constitutional status.

B. F. S.

¹ See p. 30 of this number.

² See p. 41 of this number.

³ U. S. Stat. at Large, Vol. III., p. 493.

⁴ See p. 42 of this number.

THE TERRITORY OF LOUISIANA.

BIBLIOGRAPHY AND REFERENCES.

U. S. Statutes at Large, Vol. II., p. 331; Poore's Charters and Constitutions, Pt. I., p. 697; Annals of Congress, 8th Cong., 2nd Sess., *passim*; American State Papers, Miscellaneous, Vol. I., pp. 400-404; Statute Laws of the Territory of Louisiana.

Carr's History of Missouri, American Commonwealths Series, pp. 82-116; McMaster's History of the People of the United States, Vol. III., pp. 29-30; Hildreth's History of the United States, Vol. II., p. 545; Davis and Durrie's History of Missouri, pp. 50-51.

AN ACT FURTHER PROVIDING FOR THE GOVERNMENT OF THE DISTRICT OF LOUISIANA.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the country ceded by France to the United States, under the general name of Louisiana, which, by an act of the last session of Congress, was erected into a separate district, to be called the district of Louisiana, shall henceforth be known and designated by the name and title of the Territory of Louisiana, the government whereof shall be organized and administered as follows:

The executive power shall be vested in a governor, who shall reside in said territory, and hold his office during the term of three years, unless sooner removed by the President of the United States. He shall be commander in chief of the militia of the said territory, superintendent ex officio of Indian affairs, and shall appoint and commission all officers in the same, below the rank of general officers; shall have power to grant pardons for offences against the same, and reprieves for those against the United States, until the decision of the President thereon shall be known.

Sec. 2. There shall be a secretary, whose commission shall continue in force for four years, unless sooner revoked by the President of the United States, who shall reside in the said territory, and whose duty it shall be, under the direction of the governor, to record and preserve all the papers and

proceedings of the executive, and all the acts of the governor and of the legislative body, and transmit authentic copies of the same every six months, to the President of the United States. In case of a vacancy of the office of governor, the government of the said territory shall be exercised by the secretary.

Sec. 3. The legislative power shall (be) vested in the governor and in three judges, or a majority of them, who shall have power to establish inferior courts in the said territory, and prescribe their jurisdiction and duties, and to make all laws which they may deem conducive to the good government of the inhabitants thereof: *Provided however*, that no law shall be valid which is inconsistent with the constitution and laws of the United States, or which shall lay any person under restraint or disability on account of his religious opinions, profession, or worship, in all of which he shall be free to maintain his own and not be burthened with those of another. *And provided also*, that in all criminal prosecutions, the trial shall be by a jury of twelve good and lawful men of the vicinage, and in all civil cases of the value of one hundred dollars, the trial shall be by jury, if either of the parties require it. And the governor shall publish throughout the said territory, all the laws which may be made as aforesaid, and shall from time to time report the same to the President of the United States, to be laid before Congress, which, if disapproved of by Congress, shall thenceforth cease and be of no effect.

Sec. 4. There shall be appointed three judges, who shall hold their offices for the term of four years, who, or any two of them, shall hold annually two courts within the said district, at such place as will be most convenient to the inhabitants thereof in general: shall possess the same jurisdiction which is possessed by the judges of the Indiana territory, and shall continue in session until all the business depending before them shall be disposed of.

Sec. 5. *And be it further enacted*, That for the more convenient distribution of justice, the prevention of crimes and

injuries, and execution of process criminal and civil, the governor shall proceed from time to time as circumstances may require, to lay out those parts of the territory in which the Indian title shall have been extinguished, into districts, subject to such alteration as may be found necessary; and he shall appoint thereto such magistrates and other civil officers as he may deem necessary, whose several powers and authorities shall be regulated and defined by law.

Sec. 6. *And be it further enacted*, That the governor, secretary and judges, to be appointed by virtue of this act, shall respectively receive the same compensations for their services as are by law established for similar offices in the Indiana territory, to be paid quarter yearly out of the treasury of the United States.

Sec. 7. *And be it further enacted*, That the governor, secretary, judges, justices of the peace, and all other officers civil or military, before they enter upon the duties of their respective offices, shall take an oath, or affirmation, to support the constitution of the United States, and for the faithful discharge of the duties of their office; the governor before the President of the United States, or before a judge of the supreme or district court of the United States, or before such other person as the President of the United States shall authorize to administer the same; the secretary and judges before the governor; and all other officers before such person as the governor shall direct.

Sec. 8. *And be it further enacted*, That the governor, secretary, and judges, to be appointed by virtue of this act, and all the additional officers authorized thereby, or by the act for erecting Louisiana into two territories; and providing for the temporary government thereof, shall be appointed by the President of the United States, in the recess of the Senate, but shall be nominated at their next meeting for their advice and consent.

Sec. 9. *And be it further enacted*, That the laws and regulations, in force in the said district, at the commencement of

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this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified, or repealed by the legislature.

Sec. 10. *And be it further enacted*, That so much of an act, intituled "An act erecting Louisiana into two territories, and providing for the temporary government thereof," as is repugnant to this act, shall, from and after the fourth day of July next, be repealed, on which said fourth day of July, this act shall commence and have full force.

Approved, March 3, 1805.

—*Reprinted from U. S. Statutes at Large, Vol. II., p. 331.*

THE TERRITORY OF MISSOURI.

BIBLIOGRAPHY AND REFERENCES.

U. S. Statutes at Large, Vol. II., p. 743, Vol. III., pp. 328, 363; Poore's Charters and Constitutions, Pt. II., p. 1097; Annals of Congress, 12th Cong., 1st Sess., *passim*; Benton's Abridgment, Vol. IV., p. 430; American State Papers, Miscellaneous, Vol. II., pp. 201-203; Geyer's Digest of the Laws of the Territory of Missouri.

Carr's History of Missouri, American Commonwealths Series, pp. 117-138; Switzler's History of Missouri, pp. 187-191; Davis and Durrie's History of Missouri, pp. 59-68.

AN ACT PROVIDING FOR THE GOVERNMENT OF THE TERRITORY OF MISSOURI.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the territory heretofore called Louisiana shall hereafter be called Missouri, and that the temporary government of the territory of Missouri shall be organized and administered in the manner hereinafter prescribed.

Sec. 2. *And be it further enacted*, That the executive power shall be vested in a governor, who shall reside in the said territory; he shall hold his office during the term of three

years, unless sooner removed by the President of the United States; shall be commander in chief of the militia of the said territory; shall have power to appoint and commission all officers civil and of the militia, whose appointments are not herein otherwise provided for, which shall be established by law; shall take care that the laws be faithfully executed; shall have power to grant pardons for offences against the said territory, and reprieves for those against the United States, until the decision of the President of the United States thereon shall be made known; shall have power on extraordinary occasions to convene the general assembly, and he shall ex officio be superintendent of Indian affairs.

Sec. 3. *And be it further enacted*, That there shall be a secretary, whose commission shall continue in force for four years, unless sooner revoked by the President of the United States; he shall reside in the said territory; it shall be his duty, under the direction of the governor, to record and preserve all the proceedings and papers of the executive, and all the acts of the general assembly, and to transmit authentic copies of the same every six months to the President of the United States. In case of a vacancy of the office of governor, the government of the said territory shall be executed by the secretary.

Sec. 4. *And be it further enacted*, That the legislative power shall be vested in a general assembly, which shall consist of the governor, a legislative council and a house of representatives. The general assembly shall have power to make laws in all cases, both civil and criminal, for the good government of the people of the said territory, not repugnant to or inconsistent with the constitution and laws of the United States; and shall have power to establish inferior courts, and to prescribe their jurisdiction and duties; to define the powers and duties of justices of the peace and other civil officers in the said territory, and to regulate and fix the fees of office, and to ascertain and provide for payment of the same, and for all other services rendered to the said territory, under the

authority thereof. All bills having passed by a majority in the house of representatives, and by a majority in the legislative council, shall be referred to the governor for his assent, but no bill or legislative act whatever shall be of any force without his approbation.

Sec. 5. *And be it further enacted*, That the legislative council shall consist of nine members to continue in office five years, unless sooner removed by the President of the United States; any five of them shall be a quorum. The members of the legislative council shall be nominated and appointed in the manner following: as soon as representatives shall be elected, they shall be convened by the governor as hereafter prescribed, and when met, shall nominate eighteen persons, residents in the said territory one year preceding their nomination, holding no office of profit under the territory or the United States, the office of justice of the peace excepted, and each possessing in his own right two hundred acres of land therein, and return the names to the President of the United States, nine of whom the President, by and with the advice and consent of the Senate, shall appoint and commission to serve as aforesaid; and when a vacancy shall happen in the legislative council, by death or removal from office, the house of representatives shall nominate two persons qualified as aforesaid for each vacancy, and return their names to the President of the United States, one of whom he, by and with the advice and consent of the Senate, shall appoint and commission for the residue of the term: and every five years, four months at least before the expiration of the time of service of the members of the legislative council, the house of representatives shall nominate eighteen persons, qualified as aforesaid, and return their names to the President of the United States, nine of whom shall be appointed and commissioned as aforesaid, to serve as members of the legislative council five years, if not sooner removed. No person shall be a member of the legislative council who hath not attained to the age of twenty-five years.

Sec. 6. *And be it further enacted*, That the house of representatives shall be composed of members elected every second year by the people of the said territory, to serve for two years. For every five hundred free white male inhabitants there shall be one representative, and so on progressively with the number of free white male inhabitants shall the right of representation increase until the number of the representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the general assembly. No person shall be eligible or qualified to be a representative, who shall not have attained to the age of twenty-one years, and who shall not have resided in the territory one year next preceding the day of election, and who shall not be a freeholder within the county in which he may be elected; and no person holding an office under the United States or an office of profit under the territory shall be a representative. In case of vacancy by death, resignation, removal or otherwise of a representative, the governor shall issue a writ to the county, whenever a vacancy may be as aforesaid, to elect another person to serve the residue of the term. That all free white male citizens of the United States, above the age of twenty-one years, who have resided in said territory twelve months next preceding an election, and who shall have paid a territorial or county tax, assessed at least six months previous thereto, shall be entitled to vote for representatives to the general assembly of said territory.

Sec. 7. *And be it further enacted*, That in order to carry the same into operation, the governor of the said territory shall cause to be elected thirteen representatives, and for that purpose shall proceed, as circumstances may require, to lay off the parts of the said territory to which the Indian title hath been extinguished, into convenient counties, on or before the first Monday in October next, and give notice thereof throughout the same, and shall appoint the most convenient time and place within each of the said counties for holding the elections, and shall nominate a proper officer or officers to

preside at and conduct the same, and to return to him the names of the persons who shall have been elected. All subsequent elections shall be regulated by the general assembly, and the number of representatives shall be determined and the apportionment made in the manner herein before prescribed.

Sec. 8. *And be it further enacted,* That the representatives elected as aforesaid, shall be convened by the governor in the town of St. Louis on the first Monday in December next; and the first general assembly shall be convened by the governor, as soon as may be convenient, at St. Louis, after the members of the legislative council shall be appointed and commissioned. The general assembly shall meet once in each year, at St. Louis, and such meeting shall be on the first Monday in December annually, unless they shall by law appoint a different day. The legislative council and the house of representatives, when assembled, shall each choose a speaker and its other officers, and determine the rules of its proceedings. Each house shall sit on its own adjournments from day to day. Neither house shall during the session, without consent of the other, adjourn for more than two days, nor to any other place than that where the two houses shall be sitting. The members of the general assembly shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Sec. 9. *And be it further enacted,* That all and every free white male person who, on the twentieth day of December, in the year one thousand eight hundred and three, was an inhabitant of the territory of Louisiana, and all free white male citizens of the United States, who, since the said twentieth day of December, in the year one thousand eight hundred and three emigrated, or who hereafter may emigrate to the said territory, being otherwise qualified according to the provisions of this act, shall be capable to hold any office of honour,

trust or profit, in the said territory, under the United States, or under the said territory, and to vote for members of the general assembly and a delegate to Congress during the temporary government provided for by this act.

Sec. 10. *And be it further enacted,* That the judicial power shall be vested in a superior court, and in inferior courts and justices of the peace. The judges of the superior court and justices of the peace shall hold their offices for the term of four years, unless sooner removed; the superior court shall consist of three judges, who shall reside in the said territory, any two of whom shall constitute a court; the superior courts shall have jurisdiction in all criminal cases, and exclusive jurisdiction in all those that are capital; and original and appellate jurisdiction in all civil cases of the value of one hundred dollars; the said judges shall hold their courts at such times and places as shall be prescribed by the general assembly. The sessions of the superior and inferior courts shall continue until all the business depending shall be disposed of, or for such time as shall be prescribed by the general assembly. The superior and inferior courts shall respectively appoint their clerks, who shall be commissioned by the governor, and shall hold their offices during the temporary government of the said territory, unless sooner removed by the court.¹

Sec. 11. *And be it further enacted,* That all free male white persons of the age of twenty-one years, who shall have resided one year in the said territory, and are not disqualified by any legal proceeding, shall be qualified to serve as grand or petit jurors in the courts of the said territory; and they shall, until the general assembly thereof shall otherwise direct, be selected in such manner as the said courts shall respec-

¹ By the act of January 27th, 1814, provision was made for an additional judge for the Territory of Missouri, who was to possess and exercise within the limits of the District of Arkansas such jurisdiction as had been previously possessed and exercised in that District by the court of common pleas and by the superior court of the Territory.—U. S. Statutes at Large, Vol. III., p. 95.

tively prescribe, so as to be most conducive to an impartial trial, and least burthensome to the inhabitants of the said territory.

Sec. 12. *And be it further enacted,* That the governor, secretary and judges for the territory of Missouri, authorized by this act, and all general officers of the militia, during the temporary government thereof, shall be appointed and commissioned by the President of the United States, by and with the advice and consent of the Senate; and the governor, secretary and judges shall respectively receive for their services the compensations established by law, to be paid quarterly out of the treasury of the United States; the governor, secretary, judges, members of the legislative council, members of the house of representatives, justices of the peace, and all other officers civil and military, before they enter on the duties of their respective offices, shall take an oath or affirmation to support the constitution of the United States, and for the faithful discharge of the duties of their office; the governor before a judge of the supreme or a district court of the United States, or a judge of the said territory; the secretary and judges before the governor; the members of the legislative council and house of representatives before a judge of the said territory; and the justices of the peace and all other officers before such person as the governor shall appoint and direct.

Sec. 13. *And be it further enacted,* That the citizens of the said territory entitled to vote for representatives to the general assembly thereof, shall, at the time of electing their representatives to the said general assembly, also elect one delegate from the said territory to the Congress of the United States; and the delegate so elected, shall possess the same powers, shall have the same privileges and compensation for his attendance in Congress, and for going to and returning from the same, as heretofore have been granted to and provided for a delegate from any territory of the United States.

Sec. 14. *And be it further enacted,* That the people of the

said territory shall always be entitled to a proportionate representation in the general assembly; to judicial proceedings according to the common law and the laws and usages in force in the said territory; to the benefit of the writ of habeas corpus. In all criminal cases the trial shall be by jury of good and lawful men of the vicinage. All persons shall be bailable unless for capital offences where the proof shall be evident or the presumption great. All fines shall be moderate, and no cruel or unusual punishment shall be inflicted. No man shall be deprived of his life, liberty or property, but by the judgment of his peers and the law of the land. If the public exigencies make it necessary for the common preservation to take the property of any person, or to demand his particular services, full compensation shall be made for the same. No ex post facto law or law impairing the obligation of contracts shall be made. No law shall be made which shall lay any person under restraint, burthen or disability, on account of his religious opinions, professions or mode of worship, in all which he shall be free to maintain his own, and not burthened for those of another. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be encouraged and provided for from the public lands of the United States in the said territory, in such manner as Congress may deem expedient.

Sec. 15. *And be it further enacted,* That the general assembly shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulation Congress may find necessary to make for securing the title in the bona fide purchasers; no tax shall ever be imposed on lands the property of the United States. The lands of non-resident proprietors shall never be taxed higher than those of residents. The Mississippi and Missouri rivers, and the navigable waters flowing into them, and the carrying places between the same, shall be common highways and forever free to the people of the said territory and

to the citizens of the United States, without any tax, duty or impost therefor.

Sec. 16. *And be it further enacted*, That the laws and regulations in force in the territory of Louisiana, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force until altered, modified or repealed by the general assembly. And it is hereby declared that this act shall not be construed to vacate the commission of any officer in the said territory, acting under the authority of the United States, but that every such commission shall be and continue in full force as if this act had not been made. And so much of an act, entitled "An act further providing for the government of the territory of Louisiana," approved on the third day of March, one thousand eight hundred and five, and so much of an act, entitled "An act for erecting Louisiana into two territories and providing for the temporary government thereof," approved the twenty-sixth of March, one thousand eight hundred and four, as is repugnant to this act, shall from and after the first Monday in December next be repealed. On which first Monday in December next this act shall commence and have full force: *Provided*, so much of it as requires the governor of said territory to perform certain duties previous to the said first Monday of December next shall be in force from the passage thereof.

Approved, June 4, 1812.

—*Reprinted from U. S. Statutes at Large, Vol. II., p. 743.*

AN ACT TO ALTER CERTAIN PARTS OF THE ACT PROVIDING FOR THE GOVERNMENT OF THE TERRITORY OF MISSOURI.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the electors of the territory of Missouri, entitled to vote for members of the house of representatives of the territory

at the time of electing the representatives to the general assembly, shall in each county in said territory elect one member of the legislative council to serve for two years and no longer, qualified according to the provisions of the fifth section of the "Act providing for the government of the territory of Missouri," passed June fourth, one thousand eight hundred and twelve, a majority of whom shall be a quorum, and shall possess the same powers as are granted to the legislative council by the said recited act; and in case of a vacancy of a member of the legislative council by resignation or otherwise, the governor of the territory shall issue a writ to the county to elect another person to serve the residue of the term.

Sec. 2. *And be it further enacted*, That so much of the eighth section of the said recited act as requires the general assembly of said territory to meet once in each year be repealed, and the said general assembly shall meet once in every other year at St. Louis, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day: *Provided*, That the governor for the time being shall have authority by proclamation to convene the general assembly whenever he shall deem the interest of the territory may require it.

Sec. 3. *And be it further enacted*, That the general assembly of the said territory shall be, and are hereby authorized, to require the judges of the superior court of the said territory to hold superior and circuit courts, to appoint the times and places of holding the same, and under such rules and regulations as the general assembly may in that behalf prescribe; the circuit courts shall be composed of one of the said judges, and shall have jurisdiction in all criminal cases, and exclusive original jurisdiction in all those which are capital, and original jurisdiction in all civil cases of the value of one hundred dollars, and the superior and circuit courts shall possess and exercise chancery powers as well as common law jurisdiction in all civil cases; *Provided*, That there shall be

an appeal in matters of law and equity, in all cases from the circuit courts to the superior court of the said territory.

Sec. 4. *And be it further enacted*, That such part of the said recited acts as is repugnant to, or inconsistent with the provisions of this act, be, and the same is hereby repealed.

Approved, April 29, 1816.

—*Reprinted from U. S. Statutes at Large, Vol. III., p. 328.*

AN ACT FURTHER TO REGULATE THE TERRITORIES OF
THE UNITED STATES, AND THEIR ELECTING DELEGATES
TO CONGRESS.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in every territory of the United States in which a temporary government has been, or hereafter shall be established, and which by virtue of the ordinance of Congress of the thirteenth of July, one thousand seven hundred and eighty-seven, or of any subsequent act of Congress, passed or to be passed, now hath or hereafter shall have the right to send a delegate to Congress, such delegate shall be elected every second year, for the same term of two years for which members of the house of representatives of the United States are elected; and in that house each of the said delegates shall have a seat with a right of debating, but not of voting.

Sec. 2. *And be it further enacted*, That on the first Monday of August next the citizens of the territory of Missouri, qualified according to the act, entitled "An act providing for the government of the territory of Missouri," shall elect a delegate to Congress; and it shall be the duty of the general assembly of the said territory to make provision by law for the annual or biennial meetings of the said general assembly, as the interests of the territory may in their opinion require; and

such annual or biennial meeting shall be on the first Monday of December, unless they shall by law appoint a different day. And so much of any law, or laws, as are inconsistent with the provision of this act, shall be, and the same are hereby, repealed.

Approved, March 3, 1817.

—*Reprinted from U. S. Statutes at Large, Vol. III., p. 363.*

THE COMMON LAW ADOPTED AS A RULE
OF DECISION.

BIBLIOGRAPHY AND REFERENCES.

Geyer's Digest of the Laws of the Territory of Missouri; Laws of the Territory of Missouri, found in a compilation of the laws of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri, and of the State of Missouri up to 1824, published under the authority of the State of Missouri by virtue of the act of February 13th, 1839, p. 436; McClain's Introduction of the Common Law into Iowa, Iowa Historical Lectures for 1892, p. 80.

AN ACT DECLARING WHAT LAWS SHALL BE IN FORCE
IN THIS TERRITORY.

Be it enacted by the General Assembly of the Territory of Missouri, [as follows:]

1. The common law of England, which is of a general nature, and all statutes made by the British parliament in aid of or to supply the defects of the said common law, made prior to the fourth year of James the first, and of a general nature, and not local to that kingdom, which said common law and statutes are not contrary to the laws of this territory, and not repugnant to, nor inconsistent with the constitution and laws of the United States shall be the rule of decision in this territory, until altered or repealed by the legislature, any law, usage, or custom to the contrary notwithstanding, *provided, however*, that none of the British statutes respecting crimes

and punishments shall be in force in this territory, nor shall any person be punished by common law, where the laws and statutes of this territory have made provision on the subject, but where the laws and statutes of the United States and this territory have not made provision for the punishment of offenses, the several courts may proceed to punish for such offenses; *provided*, the punishment shall in no case be other than fine and imprisonment, and the term of imprisonment shall not exceed two months; and the fine shall not exceed one hundred dollars.

2. The doctrine of survivorship in cases of joint tenants shall never be allowed, in this territory. The doctrine of entails shall never be allowed, and in all cases where any real estate shall be entailed, the whole of the right and interest of, in, and to the same, shall vest in fee simple in the person having the first reversion or remainder in said estate, after the life estate is determined in said estate.

This act shall take effect and be in force from and after the passage thereof.

Approved, January 19, 1816.

—*Reprinted from a compilation of the laws of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri and of the State of Missouri up to 1824, p. 436.*

THE MISSOURI COMPROMISE.

BIBLIOGRAPHY AND REFERENCES.

U. S. Statutes at Large, Vol. III., p. 548; Poore's Charters and Constitutions, Pt. II., p. 1104; Annals of Congress, 15th Cong., 2nd Sess., *passim*, and 16th Cong., 1st and 2nd Sess., *passim*; Benton's Abridgment, Vol. VI., *passim*; Niles' Register, Vols. XVII., XVIII. and XIX., *passim*; Scott v. Sanford, 19 Howard 293; In the matter of Ralph, on Habeas Corpus, 1 Morris (Ia.) 1.

Greeley's American Conflict, Vol. I., pp. 74-80; Annals of the West, pp. 931-938; Von Holst's Constitutional History of the United States, Vol. I., Ch. IX.; Hildreth's History of the United States, Vol. III., pp. 661-676;

Schouler's History of the United States, Vol. III., pp. 101-103, 134-173, 178-186; Tucker's History of the United States, Vol. III., pp. 269-287; Carr's History of Missouri, American Commonwealths Series, pp. 139-148; Wilson's Rise and Fall of the Slave Power in America, Vol. I., ch. XI.; Draper's Civil War in America, Vol. I., pp. 350-355; Hart's Formation of the Union, pp. 238-241; Goldwin Smith's Political History of the United States, pp. 177-178; Bryce's American Commonwealth, Vol. II., pp. 12-14.

AN ACT TO AUTHORIZE THE PEOPLE OF THE MISSOURI TERRITORY TO FORM A CONSTITUTION AND STATE GOVERNMENT, AND FOR THE ADMISSION OF SUCH STATE INTO THE UNION ON AN EQUAL FOOTING WITH THE ORIGINAL STATES, AND TO PROHIBIT SLAVERY IN CERTAIN TERRITORIES.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That, etc.

* * * * *

Sec. 8. *And be it further enacted*, That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state, contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed, in any state or territory of the United States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

Approved, March 6, 1820.

—*Reprinted from U. S. Statutes at Large, Vol. III., p. 548.*

NUMBER III.

INTRODUCTION.

IN the year 1821 Missouri was admitted into the union on an "equal footing with the original states." But no provisions were made for government in the residue of the Louisiana territory which lay to the north and west of Missouri. Indeed, this territory, which embraced the geographical area of the future Commonwealth of Iowa, seems to have been left wholly without a *local constitutional status*.¹ And in this anomalous status it remained until 1834, when, by an act of Congress approved June 28th, 1834, it was, "for the purpose of temporary government, attached to, and made a part of, the territory of Michigan." The act specifically declares that "the inhabitants therein shall be entitled to the same privileges and immunities, and be subject to the same laws, rules, and regulations, in all respects, as the other citizens of Michigan territory."²

¹ See No. II. of this series, p. 26. Observe the use of the words "*local constitutional status*." The territory in question had a *constitutional status*; for the constitution, laws and treaties of the United States remained the "supreme law of the land." But this was a *sovereign* or *general* constitutional status or relation, and therefore not *local*. Furthermore, it would not be safe to say that this territory, or the people inhabiting this territory, was without a *political status*; for a study of the "claim association" gives evidence of the existence of local political organization. But such local political organization was *extra-legal*, and therefore *not constitutional*.

² See entire act as reprinted in this No.

What were the "privileges and immunities" of the "other citizens of Michigan territory"? What were the "laws, rules, and regulations" under which they lived? It is to afford data for the answering of such questions that certain documentary material is reprinted in this number.

Furthermore, no right understanding or just appreciation can be had of the political institutions of early Iowa without an intensive study of such documents as the Ordinance of 1787 and certain acts of Congress and of the Territory of Michigan. For the early political institutions of this Commonwealth appear as sequences in those governmental developments which took place in and through the territories of the north and west. And here, as in political study in general, effects can best be studied through their causes.

B. F. S.

THE TERRITORY OF THE NORTHWEST.

BIBLIOGRAPHY AND REFERENCES.

Journals of Congress, Vol. XII., p. 49, 58-63; Poore's Constitutions and Charters, Vol. I., pp. 427-433; Public Domain, p. 153; U. S. Land Laws, p. 356; St. Clair Papers, Vol. II., p. 612; Preston's Documents, pp. 240-250; Albach's Annals of the West, pp. 466-472; Mag. of Western Hist., Nov., 1884, Vol. I., p. 56; Curtis's Constitution, Vol. I., p. 302; Tucker's United States, Vol. I., Appendix; Towle's Constitution, p. 360; Cooper and Fenton's Am. Politics; U. S. Stat. at Large, Vol. I., pp. 50, 285.

Winsor's Narrative and Critical Hist., Vol. VII., p. 537; Bancroft's U. S. Hist., Vol. II., p. 277 (last ed.); Burnet's Northwestern Territory, p. 37; Rufus King's Ohio (Am. Commonwealths), pp. 161-188; Dunn's Indiana (Am. Commonwealths), pp. 177-218; Harper's Mag., Vol. 71, p. 554; Bryant and Gay's U. S. Hist., Vol. IV., p. 109; Howard's Local Const. Hist., pp. 408-410; Hart's Formation of the Union, p. 108; Cooley's Michigan (Am. Commonwealths), p. 127; Adam's paper in Maryland Hist. Soc. Fund Publ., No. 11, p. 60; Cole's Hist. of the Ordinance in Pa. Hist. Soc. Papers (Phila., 1856); Lalor's Cyclopaedia, Vol. III., p. 31.

FRIDAY, *July 13, 1787.*

Congress assembled: Present as yesterday.

According to order, the ordinance for the government of the territory of the United States north-west of the river Ohio, was read a third time, and passed as follows:

AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES, NORTH-WEST OF THE RIVER OHIO.

Be it ordained by the United States in Congress assembled, That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates, both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child in equal parts; the descendants of a deceased child or grand-child, to take the share of their deceased parent in equal parts among

them: And where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate, shall have in equal parts among them, their deceased parent's share; and there shall in no case be a distinction between kindred of the whole and half-blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised, or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age) and attested by three witnesses; and real estates may be conveyed by lease and re-lease, or bargain and sale, signed, sealed and delivered by the person being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of Kaskaskies, St. Vincent's, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress, he shall reside in the district, and have a freehold estate therein, in 1000 acres of land, while in the exercise of his office.

There shall be appointed, from time to time, by Congress, a secretary, whose commission shall continue in force for four

years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in 500 acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months, to the secretary of Congress: There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in 500 acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behaviour.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress, from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

The governor, for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the general assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be

adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be 5000 free male inhabitants of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly; provided that for every 500 free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives shall amount to 25; after which, the number and proportion of representatives shall be regulated by the legislature: provided that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident of the district, or unless he shall have resided in the district three years; and in either case, shall likewise hold in his own right, in fee simple, 200 acres of land within the same: provided also, that a freehold in 50 acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district shall be necessary to qualify a man an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to con-

tinue in office five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the council shall be nominated and appointed in the following manner, to-wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in 500 acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council and house of representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue and dissolve the general assembly, when, in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district shall take an oath or affirmation of fidelity, and of office; the governor before the president of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress,

who shall have a seat in Congress, with a right of debating, but not of voting during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states, and the people and states in the said territory, and forever remain unalterable, unless by common consent, to-wit:

Art. 1st. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

Art. 2d. The inhabitants of the said territory, shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unlawful punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner

whatever, interfere with, or affect private contracts or engagements, *bona fide*, and without fraud previously formed.

Art. 3d. Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Art. 4th. The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein, as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory, shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress, according to the same common rule and measure, by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states, as in the original states, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts or new states, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The

navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common high-ways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost or duty therefor.

Art. 5th. There shall be formed in the said territory, not less than three, nor more than five states; and the boundaries of the states as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to-wit: The western state in said territory, shall be bounded by the Mississippi, the Ohio and Wabash rivers; a direct line drawn from the Wabash and Post Vincent's due north to the territorial line between the United States and Canada; and by the said territorial line to the lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincent's to the Ohio; by the Ohio, by a direct line drawn due north from the mouth of the Great-Miami, to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: provided, however, and it is further understood and declared, that the boundaries of these three states, shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory, which lies north of an east and west line drawn through the southerly bend or extreme of lake Michigan. And whenever any of the said states, shall have 60,000 free inhabitants therein, such state shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government: provided the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and so far as it can be consistent with the general

interests of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than 60,000.

Art. 6th. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: provided always, that any person escaping into the same, from whom labour or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labour or service as aforesaid.

Be it ordained by the authority aforesaid, that the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void.

Done, etc.

—Reprinted from "*Journals of Congress: containing their Proceedings from November 6, 1786, to November 5, 1787. Volume XII. From Folwell's Press. Philadelphia, 1801.*" See p. 58.

AN ACT TO PROVIDE FOR THE GOVERNMENT OF THE
TERRITORY NORTHWEST OF THE RIVER OHIO.

Whereas in order that the ordinance of the United States in Congress assembled, for the government of the territory northwest of the river Ohio may continue to have full effect, it is requisite that certain provisions should be made, so as to adapt the same to the present Constitution of the United States.

SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases in which by the said ordinance, any information is to be given, or communication made by the governor of the said territory to the United States in Congress

assembled, or to any of their officers, it shall be the duty of the said governor to give such information and to make such communication to the President of the United States, and the President shall nominate, and by and with the advice and consent of the Senate, shall appoint all officers which by the said ordinance were to have been appointed by the United States in Congress assembled, and all officers so appointed shall be commissioned by him; and in all cases where the United States in Congress assembled, might, by the said ordinance, revoke any commission or remove from any office, the President is hereby declared to have the same powers of revocation and removal.

SEC. 2. *And be it further enacted*, That in case of the death, removal, resignation, or necessary absence of the governor of the said territory, the secretary thereof shall be, and he is hereby authorized and required to execute all the powers, and perform all the duties of the governor, during the vacancy occasioned by the removal, resignation or necessary absence of the said governor.

Approved, August 7, 1789.

—*Reprinted from U. S. Statutes at Large, Vol. I., p. 50.*

AN ACT RESPECTING THE GOVERNMENT OF THE TERRITORIES OF THE UNITED STATES NORTHWEST AND SOUTH OF THE RIVER OHIO.

SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the laws of the territory northwest of the river Ohio, that have been or hereafter may be enacted by the governor and judges thereof, shall be printed under the direction of the Secretary of State, and two hundred copies thereof, together with ten sets of the laws of the United States, shall be delivered to the said governor and judges, to be distributed

among the inhabitants for their information, and that a like number of the laws of the United States shall be delivered to the governor and judges of the territory southwest of the river Ohio.

SEC. 2. *And be it further enacted*, That the governor and judges of the territory northwest of the river Ohio shall be, and hereby are authorized to repeal their laws by them made, whensoever the same may be found to be improper.

SEC. 3. *And be it further enacted*, That the official duties of the secretaries of the said territories shall be under the control of such laws, as are or may be in force in the said territories.

SEC. 4. *And be it further enacted*, That any one of the supreme or superior judges of the said territories, in the absence of the other judges, shall be and hereby is authorized to hold a court.

SEC. 5. *And be it further enacted*, That the secretary of state, provide proper seals for the several and respective public offices in the said territories.

SEC. 6. *And be it further enacted*, That the limitation act, passed by the governor and judges of the said territory, the twenty-eighth day of December, one thousand seven hundred and eighty-eight, be and hereby is disapproved.

SEC. 7. *And be it further enacted*, That the expenses incurred by John Cleves Symmes and George Turner, two of the judges of the said territory, in sending an express, and in purchasing a boat to go the circuit, in the year one thousand seven hundred and ninety, shall be liquidated by the officers of the treasury, and paid out of the treasury of the United States.

Approved, May 8, 1792.

—*Reprinted from U. S. Statutes at Large, Vol. I., p. 285.*

THE COMMON LAW.

BIBLIOGRAPHY AND REFERENCES.

Chase's Statutes of Ohio, Vol. I., p. 190; Laws of the Territory of Michigan, Vol. I., Introductory, pp. xi, xii; Lessee of Lindsley's *v.* Coats, 1 Ohio Supreme Court Reports, p. 243, Doe *v.* Gibson and Jolley, 2 Ohio Supreme Court Reports, p. 339; Lessee of Helfenstine *v.* Garrard et al., 7 Ohio Supreme Court Reports, p. 276; Shambaugh's Documentary Material relating to the History of Iowa, No. II., p. 41.

A LAW DECLARING WHAT LAWS SHALL BE IN FORCE.

The common law of England, all statutes or acts of the British parliament made in aid of the common law, prior to the fourth year of the reign of King James the first (and which are of a general nature, not local to that kingdom) and also the several laws in force in this territory, shall be the rule of decision, and shall be considered, as of full force, until repealed by legislative authority, or disapproved of by Congress. [*Adopted from the Statutes of Virginia—Published July 14, 1795—To take effect October 1, 1795.*]

—*Reprinted from Chase's Statutes of Ohio, Vol. I., p. 190.*

THE TERRITORY OF INDIANA.

AN ACT TO DIVIDE THE TERRITORY OF THE UNITED STATES NORTHWEST OF THE OHIO, INTO TWO SEPARATE GOVERNMENTS.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the fourth day of July next, all that part of the territory of the United States northwest of the Ohio river, which lies to the westward of a line beginning at the Ohio, opposite to the mouth of Kentucky river, and running thence to Fort Recovery, and thence north until it shall intersect the territorial line between the United States and Canada, shall, for the purposes of temporary government, constitute a separate territory, and be called the Indiana Territory.

SEC. 2. *And be it further enacted,* That there shall be established within the said territory a government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July one thousand seven hundred and eighty-seven, for the government of the territory of the United States northwest of the river Ohio; and the inhabitants thereof shall be entitled to, and enjoy all and singular the rights, privileges and advantages granted and secured to the people by the said ordinance.

SEC. 3. *And be it further enacted,* That the officers for the said territory, who by virtue of this act shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations as by the ordinance aforesaid and the laws of the United States, have been provided and established for similar officers in the territory of the United States northwest of the river Ohio. And the duties and emoluments of superintendent of Indian affairs shall be united with those of governor: *Provided,* that the President of the United States shall have full power, in the recess of Congress, to appoint and commission all officers herein authorized; and their commissions shall continue in force until the end of the next session of Congress.

SEC. 4. *And be it further enacted,* That so much of the ordinance for the government of the territory of the United States northwest of the Ohio river, as relates to the organization of a general assembly therein, and prescribes the powers thereof, shall be in force and operate in the Indiana territory, whenever satisfactory evidence shall be given to the governor thereof, that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: *Provided,* that until there shall be five thousand free male inhabitants of twenty-one years and upwards in said territory, the whole number of representatives to the general assembly shall

not be less than seven, nor more than nine, to be apportioned by the governor to the several counties in the said territory, agreeably to the number of free males of the age of twenty-one years and upwards which they may respectively contain.

SEC. 5. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the territory of the United States northwest of the Ohio river, further than to prohibit the exercise thereof within the Indiana territory, from and after the aforesaid fourth day of July next: *Provided*, that whenever that part of the territory of the United States which lies to the eastward of a line beginning at the mouth of the Great Miami river, and running thence due north to the territorial line between the United States and Canada, shall be erected into an independent state, and admitted into the Union on an equal footing with the original states, thenceforth said line shall become and remain permanently the boundary line between such state and the Indiana territory; anything in this act contained to the contrary notwithstanding.

SEC. 6. *And be it further enacted*, That until it shall be otherwise ordered by the legislatures of the said territories respectively, Chillicothe, on Scioto river, shall be the seat of the government of the territory of the United States northwest of the Ohio river; and that Saint Vincennes, on the Wabash river, shall be the seat of the government for the Indiana territory.

Approved, May 7, 1800.

—*Reprinted from U. S. Statutes at Large, Vol. II., p. 58.*

THE TERRITORY OF MICHIGAN.

AN ACT TO DIVIDE THE INDIANA TERRITORY INTO TWO SEPARATE GOVERNMENTS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from

and after the thirtieth day of June next, all that part of the Indiana territory, which lies north of a line drawn east from the southerly bend or extreme of Lake Michigan, until it shall intersect Lake Erie, and east of a line drawn from the said southerly bend through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States, shall, for the purpose of temporary government, constitute a separate territory, and be called Michigan.

SEC. 2. *And be it further enacted*, That there shall be established within the said territory, a government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States, northwest of the river Ohio; and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled "An act to provide for the government of the territory northwest of the river Ohio;" and the inhabitants thereof shall be entitled to, and enjoy all and singular the rights, privileges, and advantages granted and secured to the people of the territory of the the United States, northwest of the river Ohio, by the said ordinance.

SEC. 3. *And be it further enacted*, That the officers for the said territory, who by virtue of this act shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations, as by the ordinance aforesaid and the laws of the United States, have been provided and established for similar officers in the Indiana territory; and the duties and emoluments of superintendent of Indian affairs, shall be united with those of governor.

SEC. 4. *And be it further enacted*, That nothing in this act contained, shall be construed so as, in any manner, to effect the government now in force in the Indiana territory, further than to prohibit the exercise thereof within the said territory

of Michigan, from after the aforesaid thirtieth day of June next.

SEC. 5. *And be it further enacted,* That all suits, process, and proceedings, which, on the thirtieth day of June next, shall be pending in the court of any county, which shall be included within the said territory of Michigan; and also all suits, process, and proceedings, which on the said thirtieth day of June next, shall be pending in the general court of the Indiana territory, in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the territory of Michigan aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana territory had remained undivided.

SEC. 6. *And be it further enacted,* That Detroit shall be the seat of government of the said territory, until Congress shall otherwise direct.

Approved, January 11, 1805.

—*Reprinted from U. S. Statutes at Large, Vol. II., p. 309.*

AN ACT AUTHORIZING THE ELECTION OF A DELEGATE FROM THE MICHIGAN TERRITORY TO THE CONGRESS OF THE UNITED STATES, AND EXTENDING THE RIGHT OF SUFFRAGE TO THE CITIZENS OF SAID TERRITORY.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the citizens of the Michigan territory be, and they are hereby authorized to elect one delegate to the Congress of the United States, who shall possess the qualifications, and exercise the privileges, heretofore required of, and granted to, the delegates from the several territories of the United States.

SEC. 2. *And be it further enacted,* That every free white male citizen of said territory, above the age of twenty-one years, who shall have resided therein one year next preceding

an election, and who shall have paid a county or territorial tax, shall be entitled to vote at such election for a delegate to the Congress of the United States, in such manner, and at such times and places, as shall be prescribed by the governor and judges of said territory.

SEC. 3. *And be it further enacted,* That the person, duly qualified according to law, who shall receive the greatest number of votes at such election, shall be furnished, by the governor of said territory, with a certificate, under his official seal, setting forth that he is duly elected, by the qualified electors, the delegate from said territory to the Congress of the United States, for the term of two years from the date of said certificate, which shall entitle the person to whom the same shall be given to take his seat in the House of Representatives in that capacity.

Approved, February 16, 1819.

—*Reprinted from U. S. Statutes at Large, Vol. III., p. 482.*

AN ACT TO PROVIDE FOR THE APPOINTMENT OF AN ADDITIONAL JUDGE FOR THE MICHIGAN TERRITORY, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there shall be appointed an additional judge for the Michigan territory, who shall possess and exercise within the counties of Michilimackinac, Brown, and Crawford, in the territory aforesaid, as said counties are now defined and established, or may be hereafter defined and established, the jurisdiction and power heretofore possessed and exercised by the supreme court of the said territory, and by the county courts of said counties respectively, within the said counties, and to the exclusion of the original jurisdiction of the said supreme court: and the jurisdiction of the said court, hereby established, shall be concurrent with the said county courts; but in all suits, either at

law or in equity, appeals shall be allowed from the decisions of the said county courts to the court established by this act, in the same manner as is provided for appeals from said courts to the supreme court of said territory; *Provided, always*, That the said supreme court shall have full power and authority to issue writs of error to the court established by this act, in all civil causes, and to hear and determine the same when sitting as a supreme court of the territory, according to the constitution and laws of the United States, and to the statutes adopted and published by the governor and judges of said territory: *

* * * * *

SEC. 4. *And be it further enacted*, That the court established by this act shall hold one term in each of the counties aforesaid, yearly, at the following times and places, to-wit: at Prairie du Chien, on the second Monday in May; at Green Bay, on the second Monday in June; and at Mackinac, on the third Monday in July, in each and every year; * * *

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Approved, January 30, 1823.

—*Reprinted from U. S. Statutes at Large, Vol. III., p. 722.*

AN ACT TO AMEND THE ORDINANCE AND ACTS OF CONGRESS
FOR THE GOVERNMENT OF THE TERRITORY OF MICHIGAN,
AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all the citizens of the United States, having the qualifications prescribed by the act, entitled "An act authorizing the election of a delegate from the Michigan territory to the Congress of the United States, and extending the right of suffrage to the citizens of said territory," approved February the sixteenth, eighteen hundred and nineteen, shall be entitled to vote at any public election in the said territory, and shall be eligible to any office therein.

SEC. 2. *And be it further enacted*, That the same powers which were granted to the governor, legislative council, and House of Representatives, of the North-western territory, by the ordinance of Congress, passed on the thirteenth day of July, seventeen hundred and eighty-seven, and which powers are transferred to the territory of Michigan by the act, entitled "An act to divide the Indiana territory into two separate governments," approved January the eleventh, eighteen hundred and five, are hereby conferred upon, and shall be exercised by the governor and a legislative council: which council shall consist of nine persons, any five of whom shall be a quorum, and who shall serve for the term of two years, and be appointed as follows, to-wit: At the next election of the delegate to Congress from the said territory, after the passing of this act, the qualified electors shall choose, by ballot, eighteen persons, having the qualifications of electors; and such election shall be conducted, certified, and the result declared, agreeably to the territorial law prescribing the mode of electing such delegate. But the time and manner of electing the members of the legislative council shall, after the first election, be prescribed by the legislature of the said territory; and the names of the eighteen persons, having the greatest number of votes, shall be transmitted by the governor of the said territory, to the President of the United States, who shall nominate, and, by and with the advice and consent of the Senate, appoint therefrom, the said legislative council; and vacancies occurring in the said council shall be filled in the same manner, from the list transmitted as aforesaid: And the President shall have power, in the recess of the Senate, to make the appointments authorized by this act; but all appointments, so made, shall be submitted to the Senate at their next session, for confirmation. The first legislative council shall be assembled at such time and place as the governor shall, by proclamation, designate. No session, in any one year, shall exceed the term of sixty days, nor shall any act passed by the governor and legislative council be valid, after the same shall have been disapproved by Congress. The

members of the legislative council shall receive two dollars each, per day, during their attendance at the sessions thereof, and two dollars for every twenty miles in going to, and returning therefrom, in full compensation for their services, and which shall be paid by the United States: *Provided*, That nothing herein contained shall be construed to affect the right of the citizens of said territory to elect a delegate to Congress; and the duties required of the governor [governor] and judges by the act referred to in the first section of this act, shall be performed by the governor [governor] and legislative council.

SEC. 3. *And be it further enacted*, That the powers and duties of the judges of the said territory shall be regulated by such laws as are, or may be, in force therein; and the said judges shall possess a chancery, as well as common law, jurisdiction. The tenure of office of the said judges shall be limited to four years: and on the first day of February, one thousand eight hundred and twenty-four, and every four years thereafter, the office of each of the said judges shall become vacant: *Provided*, That nothing in this act contained shall be so construed as to deprive the judges of the territory of the jurisdiction conferred upon them by the laws of the United States.

SEC. 4. *And be it further enacted*, That the legislature shall have power to submit, at any time, to the people of the said territory, the question, whether a general assembly shall be organized agreeably to the provisions of the ordinance aforesaid; and, if a majority of the qualified electors shall be in favor of such organization, then the powers vested by this act in the legislative council shall cease and determine, and a general assembly shall be organized, in conformity with the said ordinance, subject to the following provision: The governor [governor] of the said territory shall divide the same into five districts, and the qualified voters in each district shall elect one member of the legislative council, which shall possess the same powers heretofore granted to the legislative council of the North-western territory; and the members of the council shall hold their offices four years; and until there shall be five

thousand free white male inhabitants, of twenty-one years and upwards, in said territory, the whole number of Representatives to the general assembly shall not be less than seven, nor more than nine, to be apportioned by the governor [governor] to the several counties in the said territory, agreeably to the number of free white males above the age of twenty-one years, which they may contain: but after the organization of the general assembly, the apportionment of the representation shall be made by such assembly: *Provided*, That there shall not be more than twelve, nor less than seven, of the whole number of representatives, until there shall be six thousand free white male inhabitants, above the age of twenty-one years; after which, the number of representatives shall be regulated agreeably to the ordinance aforesaid.

SEC. 5. *And be it further enacted*, That the governor [governor] of the said territory shall have power to grant pardons for offences against the laws of the said territory, and reprieves for those against the United States, until the decision of the President thereon [thereon] shall be made known.

SEC. 6. *And be it further enacted*, That, so much of the ordinance aforesaid, and laws of the United States, as are inconsistent with the provisions of this act, be, and the same are hereby, as respects this territory of Michigan repealed.

SEC. 7. *And be it further enacted*, That from and after the first day of June next, there shall be but one clerk of the supreme court of the territory of Michigan, who shall perform all the duties of clerk of said court, whether sitting as a circuit and district court, or as judges of the territorial court.

SEC. 8. *And be it further enacted*, That the accounting officers of the treasury shall settle and adjust the accounts of John J. Deming, making him a reasonable allowance for his services as clerk of said district and circuit court, up to the first day of June next, and that the same be paid out of any money in the treasury, not otherwise appropriated.

Approved, March 3, 1823.

—*Reprinted from U. S. Statutes at Large, Vol. III., p. 769.*

AN ACT IN ADDITION TO AN ACT, ENTITLED "AN ACT TO AMEND THE ORDINANCE AND ACTS OF CONGRESS FOR THE GOVERNMENT OF THE TERRITORY OF MICHIGAN," AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the governor and legislative council of the territory of Michigan be, and they are hereby, authorized to divide the said territory into townships, and incorporate the same, or any part thereof; to grant, define, and regulate the privileges thereof, and to provide by law for the election of all such township and corporation officers, as may be designated within the same.

SEC. 2. *And be it further enacted,* That all county officers within said territory shall be hereafter elected by the qualified electors residing in each county, at such time and place, and in such manner, as the said governor and legislative council may from time to time direct: *Provided,* That nothing in this section contained shall authorize the electors aforesaid to elect any judge of any court of record, or clerk thereof, or any sheriff, or judge of probate, or justice of the peace. And that so much of the ordinance of Congress, passed July the thirteenth, seventeen hundred and eighty-seven, and of the laws of the United States, as are inconsistent with the provisions of this section, and as regard the Michigan territory, be, and the same are hereby, repealed.

SEC. 3. *And be it further enacted,* That the governor of the said territory shall nominate, and, by and with the advice and consent of the said legislative council, shall appoint, all other civil officers in said territory, except such as are appointed by the President of the United States, by and with the advice and consent of the Senate of the same. And the governor of the said territory shall have power to fill all vacancies in the offices required to be nominated by him, which may happen during the recess of said legislative council, by granting commissions, which shall expire at the end of their next session.

SEC. 4. *And be it further enacted,* That the qualified

electors of said territory shall, at their next and every subsequent election for members of their legislative council, choose, by ballot, eight persons, having the qualifications of electors, in addition to the number now by law authorized; and the names of the twenty-six persons, so elected, shall be transmitted by the governor of said territory, to the President of the United States, immediately after said election, who shall nominate, and by and with the advice and consent of the Senate of the United States, appoint, therefrom, thirteen persons; which said thirteen persons shall compose the legislative council, any nine of whom shall form a quorum to transact business; and all vacancies occurring in said council shall be filled in the same manner, from the list transmitted as aforesaid. The members of the said legislative council shall receive three dollars each per day, during their attendance at the sessions thereof, and three dollars for every twenty miles in going to, and returning therefrom, in full compensation for their services; which shall be paid by the United States.

SEC. 5. *And be it further enacted,* That appeals and writs of error shall lie, from the decision of the highest judicial tribunal of said territory, to the Supreme Court of the United States, in the same manner, and under the same regulations as do lie and are taken from the circuit courts of the United States, where the amount in controversy shall exceed one thousand dollars, which shall be ascertained by evidence satisfactory to the court allowing the appeal.

SEC. 6. *And be it further enacted,* That not less than two judges of the supreme or superior court of said territory, shall hereafter hold a court to transact the business of said court.

SEC. 7. *And be it further enacted,* That so much of any ordinance or law of the United States as contravenes the provisions of this act, so far as respects the territory of Michigan, be, and the same is hereby, repealed.

Approved, February 5, 1825.

—*Reprinted from U. S. Statutes at Large, Vol. IV., p. 80.*

AN ACT TO ALLOW THE CITIZENS OF THE TERRITORY OF MICHIGAN TO ELECT THE MEMBERS OF THEIR LEGISLATIVE COUNCIL, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That at the next, and at each succeeding election of members of the legislative council of the territory of Michigan, the qualified electors of the said territory may, instead of choosing twenty-six, as heretofore directed, elect thirteen fit persons as their representatives, in the manner, and with the qualifications now, or hereafter to be, prescribed by law; which said representatives, so elected, shall be and constitute the said legislative council. And for the purpose of securing an equal representation, the governor and legislative council of said territory, are hereby authorized and required to apportion the representatives, so to be elected as aforesaid, among the several counties or districts, in the said territory, in proportion, as near as may be, to the whole number of inhabitants in each county or district, exclusive of Indians not taxed.

* * * * *

SEC. 4. *And be it further enacted,* That no member of the legislative council shall be eligible to any office created, or the fees of which were regulated by a law or laws passed whilst he was a member, during the period for which he was elected, and for one year thereafter.

SEC. 5. *And be it further enacted,* That all laws, and parts of laws, in so far as the same shall be inconsistent with the provisions of this act, are hereby repealed; and, further, that Congress have the right, at any time, to alter or repeal this act.

Approved, January 29, 1827.

—*Reprinted from U. S. Statutes at Large, Vol. IV., p. 200.*

THE LEGISLATIVE POWERS OF THE GOVERNOR
AND JUDGES OF THE TERRITORY
OF MICHIGAN.

THE PREFACE TO WOODWARD'S CODE.

Washington, May 8, 1806.

I HAVE the honor to communicate to the secretary of state the constructions which the governor and judges of the territory of Michigan have been compelled to give to their powers of legislation, in the course of exercising them.

The operative words of the ordinance are, *the governor and the judges, or a majority of them, shall adopt and publish such laws of the original states, civil and criminal, as may be necessary, and best suited to the circumstances of the district.*

This provision has been deemed to constitute a kind of legislative board, composed of the governor and the three judges, any three of whom are considered to form a quorum, and of which quorum the votes of any two determine a question.

It has not been unknown that a different construction has obtained in other territories; that the words, *or a majority of them,* have been construed to apply to the judges only; and that without both the *presence and concurrence* of the governor, no law can be passed.

In the territory of Michigan the construction has been *unanimous*, that, in this form of government, the governor is a component member of the legislative board, and is entitled to be president of it; but that the other members may act without the governor, and that their votes carry a question against the concurrence of the governor. On this account the laws are clothed with the signature of all the members of the government, whether unanimously passed or not.

Under the term *laws*, all *parts of laws* have been deemed to be included. Hence it has not been thought necessary to adopt the whole of a law from one state. It has been deemed

sufficient that *all the parts of any law* are sanctioned by the provisions of *some of the states*.

A doubt arose whether the term *original states* permitted the adoption of laws from states created subsequent to the date of the ordinance.

On this point the construction has been that the term *original*, as affecting the territory of Michigan, has the same force as if used in the act constituting that territory. The states existing previous to the erection of this territory, have been deemed with respect to it, *original states*; and the very states which, by their concurrence in this law, *originated* this territory. Laws have, therefore, been adopted from states created since the passage of the ordinance, and anterior to the erection of the territory; though it has been conceived not proper to adopt the laws of any state which may be created subsequent to the establishment of the territory.

The *discretion* vested under the term *necessary*, has been construed to impart the power of *omitting any part of a law whatever*; and with respect to all *geographical* designations, all expressions of *time*, and of *number*, all sums of money, all official or personal descriptions, and some other points of a similar nature, it has been indispensably necessary to change, with perfect latitude, the law adopted, in order to render it, in any respect, *suited to the circumstances of the district*. These terms have, therefore, become a *formula*; which may, in some measure, apologize to the mind of him who after so many mutations is scarcely able to recognize in the *child* adopted, the lineaments of the *parent* which gave it birth.

An express statutory power is given to *repeal laws*. Hence a *repealing law*, becomes a law *made*, and not a law *adopted*; and after any part of a law has been repealed, the repealing law proceeds to render the remainder of the law consistent with itself.

So all legislation exercised under express acts of congress, ceases to be the *adoption*, and becomes the *making* of laws.

Doubts have existed, whether there was authority to adopt

a law which had been passed by a state, but afterwards altered or repealed, and how far the repeal of a law by a state, after its adoption by the territory, affected its subsequent validity. But no cases occurred which rendered it necessary to decide these questions.

In the body of laws now passed, three alone did not receive entire approbation.

So much of the law establishing the courts as vests the appointment of the clerk of the court in the *judicial*, and not in the *executive* department of the government, met with the dissent of the governor.

The governor apprehended that the power given by the ordinance to *appoint* and *commission magistrates*, and *civil officers*, vested this authority in the executive.

The judges considered that provision as not extending to this subject, and on that account, as well as the exception *not herein otherwise provided*, resorted to the previous regulation which confides to the judicial department the powers given under the common law; most of the corresponding offices in the courts of king's bench, and of common pleas, as well as of the counties in England, being, by prescription, filled by the *judicial*, and not by the *executive* department of the government.

The associate judge dissented to the act empowering aliens to hold lands in this territory.

The presiding judge dissented to so much of the act relative to taxes as imposes *poll-taxes*, or *taxes on particular professions of life*.

All the other laws have been passed unanimously.

I have the honor to be,

Sir,

With the greatest respect,

Your obedient servant,

A. B. Woodward.

The Honorable

James Madison,

Secretary of State.

—Reprinted from the *Laws of the Territory of Michigan*,
Vol. I., p. 1.

THE STATUTES OF THE ENGLISH PARLIAMENT
REPEALED.

BIBLIOGRAPHY AND REFERENCES.

Laws of the Territory of Michigan, Vol. I., pp. 900-903; Laws of the Territory of Michigan, condensed, arranged and passed by the fifth Legislative Council, pp. 563-565; Shambaugh's Documentary Material relating to the History of Iowa, No. II., p. 41, No. III., p. 58.

Compare the following act with an act of the Governor and Judges of the Territory of Michigan, adopted February 24th, 1809, which repealed "all the acts or laws adopted and published by the governor and judges, or by the legislative authority of the Northwestern Territory or the Indiana Territory."—Laws of the Territory of Michigan, Vol. IV., p. 84, Sec. 2.

AN ACT TO REPEAL ALL ACTS OF THE PARLIAMENT OF ENGLAND, AND OF THE PARLIAMENT OF GREAT BRITAIN, WITHIN THE TERRITORY OF MICHIGAN IN THE UNITED STATES OF AMERICA, AND FOR OTHER PURPOSES.

Whereas the good people of the territory of Michigan, may be ensnared by ignorance of acts of the parliament of England, and of acts of the parliament of Great Britain, which are not published among the laws of the territory, and it has been thought advisable by the Governor and judges of the territory of Michigan, hereafter specially to enact such of the said acts as shall appear worthy of adoption,

Be it therefore enacted by the Governor and Judges of the Territory of Michigan, That no act of the parliament of England, and no act of the parliament of Great Britain, shall have any force within the territory of Michigan: *Provided,* That all rights arising under any such act shall remain as if this act had not been made; the same being adopted from the laws of one of the original states, to wit, the state of Virginia, as far as necessary and suitable to the circumstances of the territory of Michigan.

* * * * *

Section 3. *And whereas,* the good people of the territory of Michigan may be ensnared by ignorance of laws adopted and made by the governor and judges of the ancient territory

of the United States northwest of the river Ohio, and of laws made by the general assembly of the said territory, and of laws adopted and made by the governor and the judges of the territory of Indiana, under all of which respective governments, this territory has heretofore been, and which said laws do not exist of record or in manuscript in this country, and are also out of print, as well as intermingled with a multiplicity of laws which do not concern or apply to this country, and therefore may not be expected to be reprinted in a body, and may not be expected to be selected and reprinted in a detached form without much uncertainty, delay and difficulty, and it has been thought advisable by the governor and the judges of the territory of Michigan, heretofore specially to re-enact such of the said laws as appeared worthy of adoption, and hereafter also to re-enact such of the said laws as shall appear worthy of adoption,

Be it therefore enacted by the Governor and Judges of the Territory of Michigan, That the laws adopted and made by the governor and the judges of the territory of the United States north-west of the river Ohio, and the laws made by the general assembly of the said territory, and the laws adopted and made by the governor and judges of the territory of Indiana, shall be of no force within the territory of Michigan: *Provided,* That all rights accruing under the said laws, or any of them, shall remain valid; * * * * *

Made, adopted and published at the city of Detroit, within the territory of Michigan, this sixteenth day of September, one thousand eight hundred and ten.

WILLIAM HULL,
Governor of the Territory of Michigan.

AUGUSTUS B. WOODWARD,
One of the Judges of the Territory of Michigan.

JOHN GRIFFIN,
One of the Judges of the Territory of Michigan.

—*Reprinted from the Laws of the Territory of Michigan, Vol. I., p. 900.*

THE TERRITORY WEST OF THE MISSISSIPPI
RIVER ATTACHED TO AND MADE A
PART OF THE TERRITORY
OF MICHIGAN.

AN ACT TO ATTACH THE TERRITORY OF THE UNITED STATES
WEST OF THE MISSISSIPPI RIVER, AND NORTH OF THE
STATE OF MISSOURI, TO THE TERRITORY OF MICHIGAN.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all that part of the territory of the United States bounded on the east by the Mississippi river, on the south by the state of Missouri, and a line drawn due west from the north-west corner of said state to the Missouri river; on the south-west and west by the Missouri river and the White Earth river, falling into the same; and on the north, by the northern boundary of the United States, shall be, and hereby is, for the purpose of temporary government, attached to, and made a part of, the territory of Michigan, and the inhabitants therein shall be entitled to the same privileges and immunities, and be subject to the same laws, rules, and regulations, in all respects, as the other citizens of Michigan territory.

Approved, June 28, 1834.

—*Reprinted from U. S. Statutes at Large, Vol. IV., p. 701.*

NUMBER IV.

INTRODUCTION.

THE act of June 28th, 1834,¹ gave to the territory west of the Mississippi river a *local constitutional status*.² It did more than this. It brought the inhabitants of that territory within the pale of constitutional government. Practically, however, they were still without the benefits of organized constitutional government. And it was not until the Territory of Wisconsin was established July 4th, 1836, that they became possessed of such benefits.³

B. F. S.

¹ See No. III. of this series, p. 76.

² *Ibid.*, p. 45.

³ See p. 78 of this number.

THE TERRITORY OF WISCONSIN.

AN ACT ESTABLISHING THE TERRITORIAL GOVERNMENT OF WISCONSIN.¹

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the third day of July next, the country included within the following boundaries shall constitute a separate Territory, for the purposes of temporary government, by the name of Wisconsin; that is to say: Bounded on the east, by a line drawn from the northeast corner of the State of Illinois, through the middle of Lake Michigan, to a point in the middle of said lake, and opposite the main channel of Green Bay, and through said channel and Green Bay to the mouth of the Menomonie river; thence through the middle of the main channel of said river, to that head of said river nearest to the Lake of the Desert; thence in a direct line, to the middle of said lake; thence through the middle of the main channel of the Montreal river, to its mouth; thence with a direct line across Lake Superior, to where the territorial line of the United States last touches said lake north-

¹ "The sovereignty of this section of the north-western territory is yet in the United States, and in pursuance of that clause of the Constitution giving to congress the power to dispose of, and make all needful rules and regulations respecting, the territory of the United States, the act establishing the territorial government of Wisconsin was passed. By that act a government was established or created, composed of executive, legislative and judicial branches. The governor is commander-in-chief of the militia, is to approve of laws passed by the legislature, can grant pardons, can commission officers, and shall take care that the laws be faithfully executed. The legislative power extends to all rightful subjects of legislation. But the laws of the governor and legislative assembly shall be submitted to, and if disapproved by the congress of the States, the same shall be null and of no effect. That is, the laws passed by the legislature are valid until annulled by the disapproval of congress. The judicial power of the Territory is vested in a supreme and other courts, which possess chancery and common law jurisdiction. They are courts of record. And the district courts possess the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States. Writs of error and appeals from the final

west; thence on the north, with the said territorial line, to the White-earth river; on the west, by a line from the said boundary line following down the middle of the main channel of White-earth river, to the Missouri river, and down the middle of the main channel of the Missouri river to a point due west from the northwest corner of the State of Missouri; and on the south, from said point, due east to the northwest corner of the State of Missouri; and thence with the boundaries of the States of Missouri and Illinois, as already fixed by acts of Congress. And after the said third day of July next, all power and authority of the Government of Michigan in and over the Territory hereby constituted, shall cease: *Provided,* That nothing in this act contained shall be construed to impair the rights of person or property now appertaining to any Indians within the said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or anywise to affect the authority of the Government of the United States to make any regulations respecting such

decisions of the supreme court are allowed to the supreme court of the United States in cases exceeding in amount \$1,000. Hence it is apparent, that by this law, a municipal corporation, or government, is created, subject to the control of and immediately connected with the government of the United States. By virtue of its incorporation, and as a necessary means of protecting its rights in all contracts, the Territory can maintain an action in the courts within its limits. By virtue of its incorporation, all the powers and functions of a sovereignty exist—subject only to the supervision and control of the general government. The officers in all branches of the government of the Territory are entitled to similar rights and privileges, and are subject to similar pains and penalties, to those of a sovereign State. And similar provisions are made for the settlement and adjustment of claims against the Territory, and for the disbursement of territorial funds, to those in existence as a sovereign State. For all necessary purposes of government, Wisconsin is a sovereignty, and should be entitled to the same immunities. It is a Territory of the United States, and is considered thereby a part of the United States or immediately connected therewith. For these reasons we come to the conclusion, that the Territory of Wisconsin cannot be sued in the courts of the Territory in the absence of express authority of law for that purpose."

—The Territory of Wisconsin *v.* Doty and Others, 1 Pinney, 405.

Indians, their lands, property, or other rights, by treaty, or law, or otherwise, which it would have been competent to the Government to make if this act had never been passed: *Provided*, That nothing in this act contained shall be construed to inhibit the Government of the United States from dividing the Territory hereby established into one or more other Territories, in such manner, and at such times, as Congress shall, in its discretion, deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States.

✓ SEC. 2. *And be it further enacted*, That the executive power and authority in and over the said Territory shall be vested in a Governor, who shall hold his office for three years, unless sooner removed by the President of the United States. The Governor shall reside within the said Territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve of all laws passed by the Legislative Assembly before they shall take effect; he may grant pardons for offences against the laws of the said Territory, and reprieves for offences against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

✓ SEC. 3. *And be it further enacted*, That there shall be a Secretary of the said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings on or before the first Monday in December in each year, to the President of the United States; and at the same time, two copies of the laws to the Speaker of the House of Representa-

tives, for the use of Congress. And in case of the death, removal, resignation, or necessary absence, of the Governor from the Territory, the Secretary shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the Governor during such vacancy or necessary absence.

SEC. 4. *And be it further enacted*, That the Legislative power shall be vested in a Governor and a Legislative Assembly.¹ The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue four years. The House of Representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for the members of the Council, and whose term of service shall continue two years. An apportionment shall be made, as nearly equal as practicable, among the several counties, for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the said members of the Council and House of Representatives shall reside in and be inhabitants of the district for which they may be elected. Previous to the first election, the Governor of the Territory shall cause the census or enumeration of the inhabitants of the several counties in the Territory to be taken and made by the sheriffs of the said counties, respectively, and returns thereof made by said sheriffs to the Governor. The first election shall be held at such time and place, and be conducted in such manner, as the Governor shall appoint and direct: and he shall, at the same time, declare the number of members of the Council and House of Representatives to which each of the counties is entitled under this act.

¹ "It [the Legislative Assembly] is the legislative branch of the government of this Territory, and its members are legally and inherently possessed of all such privileges as are necessary to enable them, with freedom and safety, to execute the trust reposed in them by the people who elected them."—Anderson v. Rountree, 1 Pinney, 122.

The number of persons authorized to be elected having the greatest number of votes in each of the said counties for the Council, shall be declared, by the said Governor, to be duly elected to the said Council; and the person or persons having the greatest number of votes for the House of Representatives, equal to the number to which each county may be entitled, shall also be declared, by the Governor, to be duly elected: *Provided*, The Governor shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. And the persons thus elected to the Legislative Assembly shall meet at such place on such day as he shall appoint;¹ but, thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties to the Council and House of Representatives, according to population, shall be prescribed by law, as well as the day of the annual commencement of the session of the said Legislative Assembly; but no session, in any year, shall exceed the term of seventy-five days.

SEC. 5. *And be it further enacted*, That every free white male citizen of the United States, above the age of twenty-

¹“The members of the legislative assembly of this Territory being elected by the people, and empowered by the organic law, to legislate on all rightful subjects of legislation, while assembled for the purpose of legislation, and for a reasonable time to go to, and return home from, the seat of government, ought to be considered in reason, and, from the nature and dignity of their office, as invested with equal immunities with the members of any other representative body. * * * * *

“All the statute law we have on the subject of this privilege is an act of the Territorial legislature, on page 157 of the Statutes of Wisconsin. It is there provided that ‘no member of the legislative assembly shall be liable to arrest on a service of any civil process issued by any of the courts of this Territory during any such session of the legislative assembly, or for ten days previous to the commencement or subsequent to the termination of any session; and any member in arrest during the period of such exemption shall be entitled to an immediate discharge on any application to any judge, supreme court commissioner or justice, in any county in which such an arrest may have been made.’ * * * There is no doubt but that the legislature may, in its discretion, abridge or take away a privilege of its own members.”—Anderson v. Rountree, 1 Pinney, 121, 122, 123.

one years, who shall have been an inhabitant of said Territory at the time of its organization, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters at all subsequent elections shall be such as shall be determined by the Legislative Assembly: *Provided*, That the right of suffrage shall be exercised only by citizens of the United States.

SEC. 6. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation;¹ but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the Governor and Legislative Assembly shall be submitted to, and, if disapproved by the Congress of the United States, the same shall be null and of no effect.²

SEC. 7. *And be it further enacted*, That all township officers and all county officers, except judicial officers, justices of the peace, sheriffs, and clerks of courts, shall be elected by the people, in such manner as may be provided by the Governor and Legislative Assembly. The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, shall appoint, all judicial officers, justices of the

¹ The statutes of the Territory afford the most satisfactory interpretation of the phrase “all rightful subjects of legislation:” for, while the legislative power was, perhaps, not fully exercised, the statutes indicate the scope and content of that power, and in the absence of judicial data offer the only legitimate interpretation.

“By the sixth section of the organic law, the legislative power of the Territory is extended to all rightful subjects of legislation. This extends to the legislative assembly, the power to direct the manner in which all writs may be obtained. It has the power to prescribe all rules, requirements, forms and ceremonies in obtaining, issuing and serving writs and it can, by law, declare what officers shall or may administer oaths.”—Smith et al. v. Odell, 1 Pinney, 451.

² “That is, the laws passed by the legislature are valid until annulled by the disapproval of congress.”—The Territory of Wisconsin v. Doty and Others, 1 Pinney, 406.

peace, sheriffs, and all militia officers, except those of the staff, and all civil officers not herein provided for.¹ Vacancies occurring in the recess of the Council shall be filled by appointments from the Governor, which shall expire at the end of the next session of the Legislative Assembly; but the said Governor may appoint, in the first instance, the aforesaid officers, who shall hold their offices until the end of the next session of the said Legislative Assembly.

SEC. 8. *And be it further enacted,* That no member of the Legislative Assembly shall hold or be appointed to any office created or the salary or emoluments of which shall have increased whilst he was a member, during the term for which he shall have been elected, and for one year after the expiration of such term; and no person holding a commission under the United States, or any of its officers, except as a militia officer, shall be a member of the said Council, or shall hold any office under the Government of the said Territory.

SEC. 9. *And be it further enacted,* That the Judicial power of the said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace.² The

¹ "By this last clause it would seem, that some other officers might be created in addition to those enumerated in that law. In the exercise of the power granted to the legislative assembly, acts have been passed, and are now in force, authorizing the appointment of supreme court commissioners and conferring upon them extensive powers. * * * * There is no doubt, but that the legislative assembly can by law, create such a commissioner, and confer upon him the power to perform such ministerial duties, as may be deemed necessary in the administration of the laws."—Smith et al. v. Odell, 1 Pinney, 451.

² "These are the courts for the disposition of all the judicial business of the Territory—and it is not competent for the legislative assembly to create any more. The creation of any additional judicial tribunal, is in the congress of the United States. The legislative assembly is authorized to limit, by law, the jurisdiction of the several courts above mentioned, both appellate and original—but no farther."—Smith et al. v. Odell, 1 Pinney, 451.

"The first legislature that convened in and for this Territory, at Belmont, enacted a law on the 8th December, 1836, entitled 'An act concerning the supreme and district courts, and defining their jurisdiction and powers.' This act was evidently passed in pursuance of the organic law."—Judson v. Hindman and Others, 1 Pinney, 94.

supreme court shall consist of a chief justice and two associate judges, any two of whom shall be a quorum, and who shall hold a term at the seat of Government of the said Territory, annually, and they shall hold their offices during good behavior.¹ The said Territory shall be divided into three judicial districts; and a district court or courts shall be held in each of the three districts, by one of the judges of the supreme court, at such times and places as may be prescribed by law. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law: *Provided, however,* That justices of the peace shall not have jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or where the debt or sum claimed exceeds fifty dollars. And the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court shall appoint its clerk, who shall keep his office at the place where the court may be held, and the said clerks shall also be the registers in chancery; and any vacancy in said office of clerk happening in the vacation of said court, may be filled by the judge of said district, which appointment shall continue until the next term of said court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases, from the final decisions of the said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court, shall a trial by a jury be allowed in said court. The supreme court may appoint its own clerk, and every clerk shall hold his office at the pleasure of the court by which he shall have been

¹ "The supreme court of the Territory of Wisconsin, while adjudicating in cases arising under the laws of the Territory, is a legislative court, must conform its decisions to the laws of the Territory, and is not subject to the restriction referred to in the said seventh article of the amendments to the constitution, as would be the case were it deciding causes arising under the constitution and laws of the United States."—Rogers v. Bradford, 1 Pinney, 427.

appointed. And writs of error and appeals from the final decisions of the said supreme court shall be allowed and taken to the Supreme Court of the United States, in the same manner, and under the same regulations, as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States. And the first six days of every term of the said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws. And writs of error, and appeals from the final decisions of the said courts, in all such cases, shall be made to the supreme court of the Territory, in the same manner as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerk of the district court of the United States in the northern district of the State of New York receives for similar services.

3 SEC. 10. *And be it further enacted,* That there shall be an Attorney for the said Territory appointed, who shall continue in office four years, unless sooner removed by the President, and who shall receive the same fees and salary as the attorney of the United States for the Michigan Territory. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the President, who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the Marshal of the district court of the United States for the northern district of the State of New York; and shall, in addition, be paid the sum of two hundred dollars, annually, as a compensation for extra services.

SEC. 11. *And be it further enacted,* That the Governor, Secretary, Chief Justice and Associate Judges, Attorney, and Marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary, to be appointed as aforesaid, shall, before they act, as such respectively take an oath or affirmation before some judge or justice of the peace in the existing Territory of Michigan, duly commissioned and qualified to administer an oath or affirmation to support the constitution of the United States, and for the faithful discharge of the duties of their respective offices; which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken, and such certificate shall be received and recorded by the said Secretary among the Executive proceedings. And, afterwards, the Chief Justice and associate Judges, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some judge or justice of the Territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of two thousand five hundred dollars for his services as Governor and as superintendent of Indian affairs. The said Chief Justice and Associate Judges shall each receive an annual salary of eighteen hundred dollars. The Secretary shall receive an annual salary of twelve hundred dollars. The said salaries shall be paid quarterly, at the Treasury of the United States. The members of the Legislative Assembly shall be entitled to receive three dollars each per day, during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually-traveled route. There shall

be appropriated, annually, the sum of three hundred and fifty dollars, to be expended by the Governor to defray the contingent expenses of the Territory, and there shall also be appropriated annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws and other incidental expenses; and the Secretary of the Territory shall annually account to the Secretary of the Treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 12. *And be it further enacted*, That the inhabitants of the said Territory shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people of the Territory of the United States northwest of the river Ohio, by the articles of the compact contained in the ordinance for the Government of the said Territory, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven; and shall be subject to all the conditions and restrictions and prohibitions in said articles of compact imposed upon the people of the said Territory.¹

¹ See No. III. of this series for Ordinance of 1787.

"The ordinance of 1787, which was the fundamental law of Wisconsin at the time the present suit was commenced, declares that 'no man shall be deprived of his liberty or property but by the judgment of his peers or the law of the land.' But for these wise restraints upon legislative power, the right of government, as a sovereign authority, to take the property of individuals for public use, would be absolute; and that, too, without even allowing any direct compensation."—*Newcomb v. Smith*, 2 Pinney, 133.

"They [the people] were given, it is true, certain *rights*, before the present organization of the general government, and a solemn compact was made with them that those rights should not be taken away without their consent; * * * * The rights guaranteed to the people of the territory of Wisconsin were not those secured to the citizens of the states by the federal constitution, but those contained in the 'articles of compact,' in the ordinance of 1787, which articles were to remain forever unalterable, unless by common consent. That was their only fundamental law; and the constitution of the United States had no operation further than was necessary to enforce such 'laws of congress' as were applicable to the Territory and its inhabitants. * * * * This latter

The said inhabitants shall also be entitled to all the rights, privileges, and immunities, heretofore granted and secured to the Territory of Michigan, and to its inhabitants, and the existing laws of the Territory of Michigan shall be extended over said Territory, so far as the same shall not be incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed, by the Governor and Legislative Assembly of the said Territory of Wisconsin; and further, the laws of the United States are hereby extended over, and shall be in force in, said Territory, so far as the same, or any provisions thereof, may be applicable.

SEC. 13. *And be it further enacted*, That the Legislative Assembly of the Territory of Wisconsin shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said session, or as soon thereafter as may by them be deemed expedient, the said Governor and Legislative Assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible, which place, how-

instrument [the ordinance of 1787] * * * * has ever been regarded by the people of the North West territory as the palladium of their legal and political rights. * * * * To the ordinance, then, and not to the federal constitution, did the people of the Territory look; for it was never enacted that, in addition, they should have the rights under the constitution which are guaranteed to the citizens of the several States, or, in fact, any other rights or immunities than those contained in the ordinance and the subsequent laws of congress. * * * * Here we have, in comprehensive language, the strongest and most sacred guaranty of the enjoyment of rights and property."—From the dissenting opinion in the case of *Newcomb v. Smith*, 2 Pinney, 142-146.

"All the legislation of the territory of Wisconsin should have been consistent with the principles engrafted into this charter of human rights and civil liberty [*i. e.* the Ordinance of 1787]. The legislature could not curtail any rights conferred upon the people by the ordinance, nor confer any rights withheld."—*Reed v. Wright*, 2 Green (Ia.), 22.

"The power of the Wisconsin legislature was derived from Congress which extended to all rightful subjects of legislation, and subject also to all the restrictions and provisions of the ordinance of 1787."—*Reed v. Wright* 2 Green (Ia.), 27.

ever, shall thereafter be subject to be changed by the said Governor and Legislative Assembly. And twenty thousand dollars, to be paid out of any money in the Treasury, not otherwise appropriated, is hereby given to the said Territory, which shall be applied by the Governor and Legislative Assembly to defray the expenses of erecting public buildings at the seat of government.

SEC. 14. *And be it further enacted,* That a Delegate to the House of Representatives of the United States, to serve for the term of two years, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as have been granted to the Delegates from the several Territories of the United States to the said House of Representatives. The first election shall be held at such time and place or places, and be conducted in such manner, as the Governor shall appoint and direct. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given to the person so elected.

SEC. 15. *And be it further enacted,* That all suits, process and proceedings, and all indictments and informations which shall be undetermined on the third day of July next, in the courts held by the additional judge for the Michigan Territory, in the counties of Brown and Iowa;¹ and all suits, process and proceedings, and all indictments and informations which shall be undetermined on the said third day of July, in the county courts of the several counties of Crawford, Brown, Iowa, Dubuque, Milwalke [Milwaukie], and Des Moines, shall be transferred to be heard, tried, prosecuted and determined, in the district courts hereby established, which may include the said counties.

SEC. 16. *And be it further enacted,* That all causes which shall have been or may be removed from the courts held by the additional judge for the Michigan Territory, in the counties of Brown and Iowa, by appeal or otherwise, into the supreme

¹ See No. III. of this series, p. 63.

court for the Territory of Michigan, and which shall be undetermined therein on the third day of July next, shall be certified by the clerk of the said supreme court, and transferred to the supreme court of said Territory of Wisconsin, there to be proceeded in to final determination, in the same manner that they might have been in the said supreme court of the Territory of Michigan.

SEC. 17. *And be it further enacted,* That the sum of five thousand dollars be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to be expended by and under the direction of the Legislative Assembly of said Territory, in the purchase of a library for the accommodation of said Assembly, and of the supreme court hereby established.

Approved, April 20, 1836.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 10.*

AN ACT MAKING APPROPRIATIONS FOR THE CIVIL AND DIPLOMATIC EXPENSES OF GOVERNMENT FOR THE YEAR ONE THOUSAND EIGHT HUNDRED AND THIRTY-SIX.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, to be paid out of any unappropriated money in the Treasury, viz:

* * * * *

For the Governor, judges, secretary, district attorney, and marshal, and contingent expenses, of the Wisconsin Territory, nine thousand, nine hundred dollars.

Compensation and mileage of the members of the Legislative Council, and to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses of said Territory, nine thousand four hundred dollars.

For the public buildings and library of said Territory, twenty-five thousand dollars.

* * * * *

Approved, May 9, 1836.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 25.*

AN ACT FOR LAYING OFF THE TOWNS OF FORT MADISON AND BURLINGTON, IN THE COUNTY DES MOINES, AND THE TOWNS OF BELLEVIEW, DU BUQUE, AND PERU, IN THE COUNTY OF DU BUQUE, TERRITORY OF WISCONSIN, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the tracts of land in the Territory of Wisconsin including the towns of Fort Madison and Burlington, in the county of Des Moines; Belleview, Du Buque, and Peru, in the county of Du Buque; and Peru, in the county of Du Buque; and Mineral Point, in the county of Iowa, shall, under the direction of the Surveyor General of the public lands, be laid off into town lots, streets, avenues, and the lots for public use called the public squares, and into out-lots having regard to the lots and streets already surveyed, in such manner and of such dimensions as he may think proper for the public good and the equitable rights of the settlers and occupants of the said towns: *Provided,* The tracts of land so to be laid off into town-lots, &c. shall not exceed the quantity of one entire section, nor the town-lots one-half of an acre; nor shall the out-lots exceed the quantity of four acres each. When the survey of the lots shall be completed, a plat thereof shall be returned to the Secretary of the Treasury, and within six months thereafter the lots shall be offered to the highest bidder, at public sale, under the direction of the President of the United States, and

at such other times as he shall think proper; *Provided,* That no town-lot shall be sold for a sum less than five dollars: *And provided further,* That a quantity of land of proper width, on the river banks, at the towns of Fort Madison, Belleview, Burlington, Du Buque, and Peru, and running with the said rivers the whole length of said towns, shall be reserved from sale, (as shall also the public squares,) for public use, and remain for ever for public use, as public highways, and for other public uses.

SEC. 2. *And be it further enacted,* That it shall be the duty of the said Surveyor to class the lots already surveyed in the said towns of Fort Madison, Burlington, Belleview, Du Buque, Peru, and Mineral Point, into three classes, according to the relative value thereof, on account of situation and eligibility for business, without regard however to the improvements made thereon; and previous to the sale of said lots as aforesaid, each and every person or persons, or his, her, or their legal representatives, who shall heretofore have obtained from the agent of the United States a permit to occupy any lot or lots in the said towns, or who shall have, by building or enclosure, actually occupied or improved any lot or lots in the said towns, or within the tracts of land hereby authorized to be laid off into lots, shall be permitted to purchase such lot or lots by paying therefor, in cash, if the same fall within the first class as aforesaid, at the rate of forty dollars per acre; if within the second class, at the rate of twenty dollars per acre; and if within the third class, at the rate of ten dollars per acre: *Provided,* That no one of the persons aforesaid shall be permitted to purchase, by authority of this section, more than one acre of ground to embrace improvements already made.

SEC. 3. *And be it further enacted,* That the sum of three thousand dollars be, and the same is hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated, to defray the expenses of surveying the lands

covering the said towns of Fort Madison, Burlington, Bellevue, Du Buque, Peru, and Mineral Point.

Approved, July 2, 1836.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 70.*

AN ACT TO AMEND AN ACT ENTITLED "AN ACT FOR LAYING OFF THE TOWNS OF FORT MADISON AND BURLINGTON, IN THE COUNTY OF DES MOINES, AND THE TOWNS OF BELLEVIEW, DU BUQUE, AND PERU, IN THE COUNTY OF DU BUQUE, AND MINERAL POINT, IN THE COUNTY OF IOWA, TERRITORY OF WISCONSIN, AND FOR OTHER PURPOSES," APPROVED JULY SECOND, EIGHTEEN HUNDRED AND THIRTY-SIX.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all acts and duties required to be done and performed by the Surveyor for the Territory of Wisconsin, under the act to which this is an amendment, shall be done by a board of commissioners of three in number, any two of whom shall be a quorum to do business; said commissioners to be appointed by the President of the United States, and shall, previous to their entering upon the discharge of their duties, take an oath or affirmation to perform the same faithfully and impartially: *Provided,* That the action of the commissioners appointed under the present act shall not interfere with any of the acts performed by the Surveyor General, prior to the time of the passage hereof, in pursuance of instructions under the act to which this is amendatory.

SEC. 2. *And be it further enacted,* That the said commissioners shall have power to hear evidence and determine all claims to lots arising under the act to which this is an amendment; and for this purpose, the said commissioners are authorized to administer all oaths that may be necessary, and reduce

to writing all the evidence in support of claims, to pre-emption presented for their consideration; and when all the testimony shall have been heard and considered, the said commissioners shall file with the proper register and receiver for the district within which the towns are situated respectively, the testimony in each case, together with a certificate in favor of each person having the right of pre-emption under the provisions of the act of which this is amendatory; and upon making payment to the proper receiver of public money for the lot or lots to which such person is entitled, the receiver shall grant a receipt therefor, and the register issue certificates of purchase, to be transmitted to the Commissioner of the General Land Office, as in other cases of the sale of public lands.

SEC. 3. *And be it further enacted,* That the proper register and receiver of public moneys, after the board of commissioners have heard and determined all the cases of pre-emption under the act to which this is an amendment, shall expose the residue of the lots to public sale to the highest bidder, after advertising the same in three public newspapers at least three months prior to the day of sale, in the same manner as is provided for the sale of public lands in other cases; and after paying the commissioners the compensation hereafter allowed them, and all other expenses incident to the said survey and sale, the receiver of the land office shall pay over the residue of the money he may have received from the sale of lots aforesaid, by pre-emption as well as at public auction, into the hands of the trustees of the respective towns aforesaid, to be expended by them in the erection of public buildings, the construction of suitable wharves, and the improvement of the streets in the said towns of Fort Madison, Burlington, Bellevue, Du Buque, Peru and Mineral Point.

SEC. 4. *And be it further enacted,* That the commissioners appointed to carry this act into effect, shall be paid by the receiver of public moneys, of the proper land district, six dol-

lars each, per day, for their services, for every day they are necessarily employed.

Approved, March 3, 1837.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 178.*

AN ACT TO GIVE THE APPROVAL AND CONFIRMATION OF
CONGRESS TO THREE SEVERAL ACTS OF THE LEGISLA-
TIVE ASSEMBLY OF THE TERRITORY OF WISCONSIN
INCORPORATING BANKS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following acts of the Territorial Legislature of the Territory of Wisconsin, viz: an act entitled "An act to incorporate the stockholders of the Bank of Milwaukee," an act entitled "An act to incorporate the stockholders of the Miners' Bank of Dubuque,"¹ and an act entitled "An act to incorporate the stockholders of the Bank of Mineral Point," be, and the same are hereby severally and respectively approved and confirmed by Congress, with the following limitations and conditions, that is to say: that neither of said banks shall issue bills or notes for circulation, until one-half of the amount of their respective capitals shall have been actually paid in; and that, to enable the directors named in the said charters respectively to comply with this limitation and restriction, they shall be authorized to make calls, according to the provisions

¹ The Miners' Bank of Dubuque has an interesting history. Some important references to that history are: "An act to provide for the payment of the debt due to the Miners' Bank of Du Buque," passed by the Legislative Assembly of the Territory of Iowa in June, 1845; "An act to repeal the charter of the Miners' Bank of Du Buque, and to provide for winding up of the affairs of the same," passed by the Legislative Assembly of the Territory of Iowa in May, 1845; *Miners' Bank of Dubuque v. United States*, 1 Green (Ia.), 553; *Miners' Bank of Dubuque v. Thomas*, 4 Green, 336; *Miners' Bank of Dubuque v. State of Iowa*, 12 Howard, 1.

contained in the said charters, to an amount not exceeding, at any one time, forty per cent. upon the whole stock subscribed by each stockholder, and shall not be restricted to ten per cent. at any one call, as is provided in the said charters; and that neither of said banks shall have any authority to enlarge or augment its capital, or to make it larger, at any time, than the sum of two hundred thousand dollars, without the consent and approbation of Congress previously obtained; and that neither of the said banks shall, at any time, owe, either by bond, bill, note, or other contract, over and above its actual deposits, an amount to exceed twice the amount of its capital stock actually paid in, instead of the limitation in this respect contained in the said charters respectively; and that each of the said banks shall have complied with all the requirements of their respective charters, as altered, modified, and restricted by this act, so as to enable them to commence the business of banking, and shall actually have commenced banking on or before the first day of January next, or their charters, or the charters of such of them as shall have failed to comply with this limitation, shall be void and of no effect; and the acceptance of said acts of incorporation, by the grantees or stockholders respectively, shall be deemed and taken as acceptances, subject to the conditions and limitations herein prescribed; and any infringements upon, or violation of, the provisions and requirement of this act, or of the limitations and restrictions therein contained, on the part of either of the said institutions, shall forfeit its charter, and put an end to its corporate powers and privileges.

Approved, March 3, 1837.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 198.*

OF THE NATURE OF THE ACT OF CONGRESS
ORGANIZING THE TERRITORY OF
WISCONSIN.¹

THE act of congress organizing this Territory is in the nature of a constitution of a State. It is supreme, and the legislative assembly cannot pass an act in opposition to, or in violation of it. The courts cannot be required to enforce such an act. It should be treated as a nullity.

—*Smith et al. vs. Odell, 1 Pinney (Wis.), 454.*

SUCH are the provisions of the organic law, which is a constitution to us.

—*Barker vs. Baxter, 1 Pinney (Wis.), 409.*

IT is to these acts of congress that the people of the territory looked for their legal and political rights. They are:

First. The ordinance of 1787.

Second. The organic act of the territory of Wisconsin, passed in 1836.

—*Newcomb vs. Smith, 2 Pinney (Wis.), 142.*

THE sovereignty of this section of the north-western territory is yet in the United States, and in pursuance of that clause of the Constitution giving to congress the power to

¹ Commonly known and referred to as the "Organic Law," or "Organic Act." For the text of this act see p. 78 of this number.

dispose of, and make all needful rules and regulations respecting, the territory of the United States, the act establishing the territorial government of Wisconsin was passed. By that act a government was established or created, composed of executive, legislative and judicial branches. * * * *

* Hence it is apparent, that by this law, a municipal corporation, or government, is created, subject to the control of and immediately connected with the government of the United States.

—*The Territory of Wisconsin vs. Doty and Others, 1 Pinney (Wis.), 405.*

THE organic law is binding upon the legislature of the Territory, as the constitution of a State is upon the action of its legislature; but it is a mere act of congress, subject to its amendment, modification or repeal. Under the constitution, it was competent for congress to legislate directly for the Territory; but, as this would be inconvenient, and probably not consistent with the immediate or local wants or interests of the people, the Territorial government was created by the organic law, wherein the governor and legislative assembly are authorized to discharge their respective duties therein referred to, for the interest and protection of the people.

—*The United States vs. Hatch, 1 Pinney (Wis.), 189.*

NUMBER V.

INTRODUCTION.

THE Territory of Wisconsin as defined by the act of April 20th, 1836,¹ contained a geographical area equal to at least three ordinary Commonwealths. This fact along with the phenomenal increase in population and the growth of widely scattered settlements necessitated an early division of that Territory. Two years, to the day, from the establishment of the Territory of Wisconsin the country west of the Mississippi river was erected into the Territory of Iowa.² Six years later (1844) Iowa was ready to enter the Union on an equal footing with the original States. But, owing to a dispute between Congress and the people of the Territory over the boundaries of the future Commonwealth, admission was delayed until December 28th, 1846.

B. F. S.

¹ See No. IV. of this series, p. 78.

² See p. 102 of this number.

THE TERRITORY OF IOWA.

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AN ACT TO DIVIDE THE TERRITORY OF WISCONSIN AND TO ESTABLISH THE TERRITORIAL GOVERNMENT OF IOWA.¹

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the third day of July next, all that part of the present Territory of Wisconsin which lies west of the Mississippi river, and west of a line drawn due north from the head waters or sources of the Mississippi to the Territorial line, shall, for the purposes of temporary government, be and constitute a separate Territorial Government by the name of Iowa; and that from and after the said third day of July next, the present Territorial Government of Wisconsin shall extend only to that part of the present Territory of Wisconsin which lies east of the Mississippi river. And after the said third day of July next, all power and authority of the Government of Wisconsin in and over the Territory hereby constituted shall cease: *Provided,* That nothing in this act contained shall be construed to impair the rights of persons or property now

¹ This act of Congress constituted the Organic Law, *i. e.* the Constitution, of the Territory of Iowa. Cf. No. IV. of this series, p. 98. See Reed *v.* Wright, 2 Green, *passim*.

appertaining to any Indians within the said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or anywise to affect the authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty or law, or otherwise, which it would have been competent to the Government to make if this act had never been passed: *Provided,* That nothing in this act contained shall be construed to inhibit the Government of the United States from dividing the Territory hereby established into one or more other Territories, in such manner and at such times as Congress shall, in its discretion, deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States.

SEC. 2. *And be it further enacted,* That the executive power and authority¹ in and over the said Territory of Iowa shall be vested in a Governor, who shall hold his office for three years, unless sooner removed by the President of the United States. The Governor shall reside within the said Territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve of all laws passed by the Legislative Assembly before they shall take effect; he may grant pardons for offences against the laws of the said Territory, and reprieves for offences against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted,* That there shall be a

¹ "The legislative and judicial departments of the Territory were separate and independent. It was not within the province of either to encroach upon the duties and authority of the other."—Levins *v.* Sleator, 2 Green, 607.

Secretary of the said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first Monday in December in each year, to the President of the United States, and, at the same time, two copies of the laws to the speaker of the House of Representatives, for the use of Congress. And in case of the death, removal, resignation, or necessary absence of the Governor from the Territory, the Secretary shall have, and he is hereby authorized and required to execute and perform all the powers and duties of the Governor during such vacancy or necessary absence, or until another Governor shall be duly appointed to fill such vacancy.

SEC. 4. *And be it further enacted,* That the legislative power shall be vested in the Governor¹ and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall consist of twenty-six members possessing the same qualifications as prescribed for the members of the Council, and whose term of service shall continue one year. An apportionment shall be made as nearly equal as practicable, among the several counties, for the election of the Council and Representatives, giving to

¹ "An act is not 'passed' by the legislature until it is duly *approved* by the Governor who, *quoad hoc*, is a part and portion of the legislature."—United States *v.* Fanning, Morris, 350 Cf. Act of March 3d, 1839, p. 117 of this number.

"The approval of the Executive is absolute, unconditional."—United States *v.* Fanning, Morris, 350.

A note appended by the Governor to his approval is simply the expression of "a judicial opinion."—United States *v.* Fanning, Morris, 350. See Statutes of the Territory of Iowa, 1838, pp. 206, 207 and 208.

each section of the Territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the said members of the Council and House of Representatives shall reside in and be inhabitants of the district for which they may be elected. Previous to the first election, the Governor of the Territory shall cause the census or enumeration of the inhabitants of the several counties in the Territory to be taken and made by the sheriffs of the said counties, respectively, unless the same shall have been taken within three months previous to the third day of July next, and returns thereof made by said sheriffs to the Governor. The first election shall be held at such time and place, and be conducted in such manner as the Governor shall appoint and direct; and he shall at the same time, declare the number of members of the Council and House of Representatives to which each of the counties or districts are entitled under this act. The number of persons authorized to be elected having the greatest number of votes in each of the said counties or districts for the Council, shall be declared by the said Governor to be duly elected to the said Council; and the person or persons having the greatest number of votes for the House of Representatives, equal to the number to which each county may be entitled, shall also be declared by the Governor to be duly elected: *Provided,* The Governor shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. And the persons thus elected to the Legislative Assembly shall meet at such place, and on such day as he shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties to the Council and House of Representatives, according to population, shall be prescribed by law, as well as the day of the annual commencement of the session of the said Legislative Assembly; but no session in any year shall exceed the term of seventy-five days.

SEC. 5. *And be it further enacted,* That every free white

male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant of said Territory at the time of its organization, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters at all subsequent elections, shall be such as shall be determined by the Legislative Assembly; *Provided*, That the right of suffrage shall be exercised only by citizens of the United States.

SEC. 6. *And be it further enacted*, That the Legislative power of the Territory shall extend to all rightful subjects of legislation;¹ but no law shall be passed interfering with the

¹ "By the organic law it is provided, 'that the legislative power of the territory shall extend to all rightful subjects of legislation.' This language is general and comprehensive, and shows that our territorial legislature was invested with as much power at least, as is enjoyed by the most unrestrained State legislatures. The power to pass general divorce laws has been exercised by every State legislature in the Union. Many of them have passed special acts of divorce upon individual applications, and have granted divorces with such facility, and upon such meager showing, as to supersede the necessity of judicial action in such cases. But however much this power may have been abused by legislative bodies, it is generally conceded, that the state and territorial governments have complete control and discretion over the subject of divorce. It is a subject that can be regulated by no other than the legislative department of government."—*Levins v. Sleator*, 2 Green, 605.

"The power of our legislature being confined to 'rightful subjects of legislation,' and the bill of rights contained in the ordinance of 1787, having declared that the legislature ought not to interfere with private contracts previously formed in good faith; such contracts are just as sacred here, as they are under the federal constitution within the States."—*Miners' Bank of Dubuque v. United States*, Morris, 484.

"It [an act of the legislature of the Territory] is not within the scope of rightful legislation, for it does not profess to declare a general rule of action for the citizen, but is partial, limited and exclusive."—*Reed v. Wright*, 2 Green, 29.

"By what may be termed the organic laws creating the governments of both the territories above mentioned, [Wisconsin and Iowa] it will be seen, that those governments were vested with general legislative power; and were subjected to no enumerated or specific limitations of that general power, save in certain exceptions applicable to the lands or other property of the United States, and to the right on the part of the governments, in exercising the power of taxation, to discriminate between the property of residents and non-residents."—*Miners' Bank v. Iowa*, 12 Howard, 4.

primary disposal of the soil;¹ no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the Governor and Legislative Assembly shall be submitted to, and if disapproved by, the Congress of the United States, the same shall be null and of no effect.²

SEC. 7. *And be it further enacted*, That all township officers, and all county officers, except judicial officers, justices of the peace, sheriffs, and clerks of courts, shall be elected by the people, in such manner as is now prescribed by the laws of the Territory of Wisconsin, or as may, after the first election, be provided by the Governor and Legislative Assembly of

¹ But the traffic in public lands was not considered illegal. Therefore, it was not considered fraud to sell lands belonging to the United States, provided no deception was practiced. See *Stannard et al. v. McCarty*, Morris, 124. *Cf. Hill v. Smith*, Morris, 70, and *Freeman v. Holliday*, Morris, 80. For a definite conception of the extent of the actual traffic in public lands in Iowa, see "Constitution and Records of the Claim Association of Johnson County," by Shambaugh.

A statute of the legislature of the Territory making it an indictable offence to cut and carry away timber off the school lands does not interfere with the "primary disposal of the soil." "We conclude therefore, that it would be competent for the legislature to punish all wilful injuries to real estate as misdemeanors; that this power extends as well to lands owned by the United States, as to that belonging to individuals."—*Chalfont v. United States*, Morris 217. *Cf. Hodgen v. United States*, Morris, 218, and *Hughell v. Wilson*, Morris, 383.

"To authorize the judges to hold special or extra terms of their courts, whenever in their opinion occasion might require * * * would be a rightful subject of legislation within the meaning of the organic law, and within the province of the legislative assembly."—*Harriman v. Iowa*, 2 Green, 276.

But no act of the legislature of the Territory could abolish the right of trial by jury.—*Reed v. Wright*, 2 Green, 15.

² "Congress, in creating the territorial governments, and in conferring upon them powers of general legislation, did not, from obvious principles of policy and necessity, ordain a suspension of all acts proceeding from those powers, until expressly sanctioned by themselves, whilst for considerations equally strong they reserved the power of disapproving or annulling such acts of territorial legislation as might be deemed detrimental."—*Miners' Bank v. Iowa*, 12 Howard, 8. *Cf. No. IV. of this series*, p. 96.

Iowa Territory. The Governor shall nominate and by and with the advice and consent of the Legislative Council, shall appoint all judicial officers, justices of the peace, sheriffs, and all militia officers, except those of the staff, and all civil officers not herein provided for. Vacancies occurring in the recess of the Council, shall be filled by appointments from the Governor, which shall expire at the end of the next session of the Legislative Assembly; but the said Governor may appoint, in the first instance, the aforesaid officers, who shall hold their offices until the end of the next session of the said Legislative Assembly.

SEC. 8. *And be it further enacted,* That no member of the Legislative Assembly shall hold, or be appointed to, any office created, or the salary and emoluments of which shall have been increased, whilst he was a member, during the term for which he shall have been elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, or any of its officers, except as a militia officer, shall be a member of the said Council or House of Representatives, or shall hold any office under the Government of the said Territory.

SEC. 9. *And be it further enacted,* That the judicial power of the said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice, and two associate judges, any two of whom shall be a quorum, and who shall hold a term at the seat of Government of the said Territory annually, and they shall hold their offices during the term of four years. The said Territory shall be divided into three judicial districts; and a district court or courts shall be held in each of the three districts, by one of the judges of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointment, respectively, reside in the districts which shall be assigned to them. The jurisdiction, of the several courts herein provided for, both appellate and original, and that

of the probate courts, and of the justices of the peace, shall be as limited by law: *Provided, however,* That justices of the peace shall not have jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or when the debt or sum claimed exceeds fifty dollars. And the said supreme and district courts, respectively, shall possess a chancery as well as common law jurisdiction. Each district court shall appoint its clerk, who shall keep his office at the place where the court may be held, and the said clerks shall also be registers in chancery; and any vacancy in said office of clerk happening in the vacation of said court, may be filled by the judge of said district, which appointment shall continue until the next term of said court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases, from the final decisions of the said district courts to the supreme court under such regulations as may be prescribed by law;¹ but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court may appoint its own clerk, and every clerk shall hold his office at the pleasure of the court by which he shall have been appointed. And writs of error and appeals from the final decision of the said supreme court shall be allowed and taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit

¹ It was not the province of the Supreme Court "to give advice to the District Courts."—*Long v. Long, Morris*, 382.

The Supreme Court although properly an appellate court was by statute (Acts of the Legislative Assembly of 1836, p. 23) authorized to issue the writs of habeas corpus, mandamus, quo warranto, prohibition, error, super-sedeas, procedendo, certiorari, scire facias, etc.—*United States v. Commissioners of Dubuque Co., Morris*, 31.

and district courts of the United States.¹ And the first six days of every term of the said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws. And writs of error and appeals from the final decisions of the said courts, in all such cases, shall be made to the supreme court of the Territory, in the same manner as in other cases. The said clerks shall receive in all such cases, the same fees which the clerk of the district courts of Wisconsin Territory now receives for similar services.²

SEC. 10. *And be it further enacted,* That there shall be an attorney for the said Territory appointed, who shall continue in office four years, unless sooner removed by the President, and who shall receive the same fees and salary as the

¹ "But the main question is that the court below, *sitting as a District Court of the United States*, had no jurisdiction of the case. Counsel seem to be under a misconception as to be the true nature of our District Courts. Under no circumstances are they properly speaking, District Courts of the United States. They are merely Territorial Courts, having powers of District and Circuit Courts of the United States; but when adjudicating upon the laws of Congress their character and title does not change."—Lorimier and others *v.* the State Bank of Ill., Morris, 225.

² "The 9th section of the Iowa organic law provides that the several courts thereby created, both appellate and original, shall be as limited by law, and that the supreme and district courts respectively shall have a chancery as well as a common law jurisdiction. The territorial district courts, in addition to the federal powers conferred upon them, were invested with extended and general jurisdiction over actions real, personal and mixed. Under this general jurisdiction they were authorized to try and determine, according to the course of the common law, all ordinary actions, both local and transitory. They were also invested with a special jurisdiction, conferred by legislative enactment, in proceedings which could not be entertained as actions at common law. The term inferior courts, in a strict and technical sense, is only applicable to courts of a limited and special jurisdiction, in which the proceedings are not according to the course of the common law, but defined by statutory regulations. It must be obvious that our territorial district courts cannot be included under that term. They were endowed with all the general powers and universal attributes of common law jurisdiction. Their authority was general and superior to all but the supreme court."—Wright *v.* Marsh, Lee & Delavan, 2 Green, 103.

attorney of the United States, for the present Territory of Wisconsin. There shall also be a marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the President, who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the present Territory of Wisconsin; and shall, in addition, be paid the sum of two hundred dollars annually, as a compensation for extra services.

SEC. 11. *And be it further enacted,* That the Governor, secretary, chief justice, and associate judges, attorney and marshal, shall be nominated, and by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively, take an oath or affirmation, before some judge or justice of the peace, in the existing Territory of Wisconsin, duly commissioned and qualified to administer an oath or affirmation, [or] before the chief justice, or some associate justice of the Supreme Court of the United States, to support the constitution of the United States, and for the faithful discharge of the duties of their respective offices, which said oaths when so taken, shall be certified by the person before whom the same shall have been taken, and such certificate shall be received and recorded by the said Secretary among the executive proceedings. And, afterwards, the chief justice and associate judges, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or secretary, or some judge or justice of the Territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation, shall

be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of fifteen hundred dollars as Governor, and one thousand dollars as superintendent of Indian affairs. The said chief justice and associate judges shall each receive an annual salary of fifteen hundred dollars. The Secretary shall receive an annual salary of twelve hundred dollars. The said salary shall be paid quarter-yearly at the Treasury of the United States. The members of the Legislative Assembly shall be entitled to receive three dollars each per day, during their attendance at the sessions thereof; and three dollars each for every twenty miles travel in going to and returning from, the said sessions, estimated according to the nearest usually travelled route. There shall be appropriated, annually, the sum of three hundred and fifty dollars, to be expended by the Governor to defray the contingent expenses of the Territory; and there shall also be appropriated, annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the Secretary of the Territory shall annually account to the Secretary of the Treasury of the United States, for the manner in which the aforesaid sum shall have been expended.

SEC. 12. *And be it further enacted,* That the inhabitants of the said Territory shall be entitled to all the rights, privileges and immunities heretofore granted and secured to the Territory of Wisconsin and to its inhabitants;¹ and the exist-

¹ See Sec. 12 of the the Organic Law of Wisconsin Territory—No. IV. of this series, p. 88.

The important "rights privileges and immunities" guaranteed by this provision to the inhabitants of the Territory of Iowa were those enumerated in the Ordinance of 1787.

"The ordinance of 1787 is made part of the fundamental law of this territory. * * * That ordinance seems to contemplate the extension (in a general way) of all the benefits of the common law to the territory northwest of the Ohio river, including the State of Illinois. * * *

ing laws of the Territory of Wisconsin shall be extended over said Territory, so far as the same be not incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed, by the Governor and Legislative Assembly of the said Territory of Iowa; and further, the laws of the United States are hereby extended over, and shall be in force in said Territory, so far as the same, or any provisions thereof, may be applicable.

SEC. 13. *And be it further enacted,* That the Legislative Assembly of the Territory of Iowa shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said session, or as soon thereafter as may by them be deemed expedient, the said Governor and Legislative Assembly shall proceed to locate and establish the seat of Government for said Territory, at such place as they may deem eligible, which place, however, shall thereafter be subject to be changed by the said Governor and Legislative Assembly. And the sum of twenty thousand dollars, out of any money in the Treasury not otherwise appropriated, is hereby granted to the said Territory of Iowa, which shall be applied by the Governor and Legisla-

But independently of the ordinance of 1787, we should feel justified in coming to the same conclusion. Matters of national history are recognized by courts of justice. That the United States were originally colonized from England; and Illinois from those colonies or States formed from them are matters which need not be pleaded or proved. That emigrants carry with them the common law of the mother country is also well settled law."—Holmes, *Brown & Co. v. Mallett, Morris*, 83.

The Ordinance of 1787 prohibited the Territory from impairing the obligation of contracts—See *Temple v. Hays & Hendershott Morris*, 11.

"For the purpose of the opinion, it may be conceded that the ordinance was in force in Iowa at the time of its admission as a State, and is now, except so far as it has been abrogated."—*Higgins v. Farmers Ins. Co.*, 60 Iowa, 52.

"The adoption of the constitution of this state by the free will and vote of the people with the assent of the government of the United States, and the subsequent admission of the State into the Union, in our judgment, abrogates entirely the provisions of the ordinance wherever its provisions and those of the state constitution come in conflict."—*Conn. Life Ins. Co. v. Cross et al.*, 18 Wisconsin, 115.

tive Assembly thereof to defray the expenses of erecting public buildings at the seat of Government.

SEC. 14. *And be it further enacted,* That a delegate to the House of Representatives of the United States to serve for the term of two years, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as have been granted to the delegates from the several Territories of the United States, to the said House of Representatives. The first election shall be held at such time and place or places, and be conducted in such manner as the Governor shall appoint and direct. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given to the person so elected.

SEC. 15. *And be it further enacted,* That all suits, process, and proceedings, and all indictments and informations, which shall be undetermined on the third day of July next, in the district courts of Wisconsin Territory, west of the Mississippi river, shall be transferred to be heard, tried, prosecuted and determined in the district courts hereby established, which may include the said counties.¹

7 SEC. 16. *And be it further enacted,* That all justices of the peace, constables, sheriffs, and all other executive and judicial officers, who shall be in office on the third day of July next, in that portion of the present Territory of Wisconsin which will then, by this act, become the Territory of Iowa, shall be, and are hereby authorized and required to continue to exercise and perform the duties of their respective offices, as officers of the Territory of Iowa, temporarily and until they, or others, shall be duly appointed to fill their places by the Territorial Government of Iowa, in the manner herein directed: *Provided,* That no officer shall hold or continue

¹ "If, by the organic law, judgments rendered when Iowa was Wisconsin were transferred to the district courts of Iowa, and thereby became judgments in said courts, we think they are as much subject to the statute as if originally rendered in the courts of Iowa."—*Woods v. Mains*, 1 Green, 295.

in office by virtue of this provision, over twelve months from the said third day of July next.

SEC. 17. *And be it further enacted,* That all causes which shall have been or may be removed from the courts held by the present Territory of Wisconsin, in the counties west of the Mississippi river, by appeal or otherwise, into the supreme court for the Territory of Wisconsin, and which shall be undetermined therein on the third day of July next, shall be certified by the clerk of the said supreme court, and transferred to the supreme court of said Territory of Iowa, there to be proceeded into final determination, in the same manner that they might have been in the said supreme court of the Territory of Wisconsin.

SEC. 18. *And be it further enacted,* That the sum of five thousand dollars be, and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, to be expended by, and under the direction of, the Governor of said Territory of Iowa, in the purchase of a library, to be kept at the seat of Government, for the accommodation of the Governor, Legislative Assembly, judges, secretary, marshal, and attorney of said Territory, and such other persons as the Governor and Legislative Assembly shall direct.

SEC. 19. *And be it further enacted,* That from and after the day named in this act for the organization of the Territory of Iowa, the term of the members of the Council and House of Representatives of the Territory of Wisconsin shall be deemed to have expired, and an entirely new organization of the Council and House of Representatives of the Territory of Wisconsin as constituted by this act shall take place as follows: As soon as practicable after the passage of this act, the Governor of the Territory of Wisconsin shall apportion the thirteen members of the Council and twenty-six members of the House of Representatives among the several counties or districts comprised within said Territory, according to their population, as nearly as may be (Indians excepted). The first election shall be held at such time as the Governor shall

appoint and direct; and shall be conducted, and returns thereof made, in all respects, according to the provisions of the laws of said Territory, and the Governor shall declare the persons having the greatest number of votes to be elected, and shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. The persons thus elected shall meet at Madison, the seat of Government, on such day as he shall appoint, but thereafter the apportioning of the representation in the several counties to the Council and House of Representatives according to population, the day of their election, and the day for the commencement of the session of the Legislative Assembly, shall be prescribed by law.

SEC. 20. *And be it further enacted,* That temporarily, and until otherwise provided by law of the Legislative Assembly, the Governor of the Territory of Iowa may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and also appoint the times for holding courts in the several counties in each district, by proclamation to be issued by him; but the Legislative Assembly, at their first, or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges and alter the times of holding the courts or any of them.

Approved, June 12, 1838.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 235.*

NOTE.

SOME OBSERVATIONS ON THE CONTROL OF TRANSPORTATION ON THE MISSISSIPPI RIVER
BY THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF IOWA.

"True, the Mississippi river and all the navigable waters leading into it are common highways and must be forever free. The legislature can make no law for obstructing the navigation of these streams.

"But the establishment of public roads traversing the country in various directions is a rightful subject of legislation, and the most judicious and effectual mode of establishing and keeping these in repair is a matter that is entrusted to the legislative discretion. The right to construct a road includes the power to provide for overcoming all obstacles in its course as

well those presented by a river as by any other object. A ferry (properly so-called) is merely the continuance of a road across a river. It is only a substitute for a bridge.

"Suppose a bridge should be resolved upon as the best mode of prolonging a road across a navigable stream. If made so as not to obstruct the navigation, the power of the legislature to authorize its construction is unquestionable. It is equally clear that the legislative power is competent to authorize the construction of such bridge by an individual or a company with power to compensate themselves by taking toll. Nor will it be thought that the legislature may for the purpose of encouraging individuals to construct such bridge, grant them an exclusive privilege to a reasonable extent and prohibit all other persons from interfering therewith. The rule would be the same in relation to a ferry which is a floating bridge. The granting of an exclusive privilege to establish such a public convenience within certain reasonable limits, would be no violation of that provision of the ordinance of 1787, which declares the Mississippi and its tributaries common highways and forever free, provided the navigation proper of the river be not thereby interfered with or obstructed."

—United States v. Fanning, Morris, 351.

AN ACT TO ALTER AND AMEND THE ORGANIC LAW OF THE
TERRITORIES OF WISCONSIN AND IOWA.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every bill which shall have passed the Council and House of Representatives of the Territories of Iowa and Wisconsin shall, before it become a law, be presented to the Governor of the Territory; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two thirds of that House it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting

for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the Governor within three 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 Assembly by adjournment prevent its return, in which case it shall not be a law.

SEC. 2. *And be it further enacted,* That this act shall not be so construed as to deprive Congress of the right to disapprove of any law passed by the said Legislative Assembly, or in any way to impair or alter the power of Congress over laws passed by said Assembly.

Approved, March 3, 1839.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 356.*

AN ACT TO AUTHORIZE THE ELECTION OR APPOINTMENT OF CERTAIN OFFICERS IN THE TERRITORY OF IOWA, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Legislative Assembly of the Territory of Iowa shall be, and are hereby, authorized to provide by law for the election or appointment of sheriffs, judges of probate, justices of the peace, and county surveyors, within the said Territory, in such way or manner, and at such times and places as to them may seem proper; and after a law shall have been passed by the Legislative Assembly for that purpose, all elections or appointments of the above-named officers thereafter to be had or made shall be in pursuance of such law.

SEC. 2. *And be it further enacted,* That the term of service of the present delegate for said Territory of Iowa shall expire on the twenty-seventh day of October, eighteen hundred and forty; and the qualified electors of said Territory may elect a Delegate to serve from the said twenty-seventh day of October to the fourth day of March thereafter, at such

time and place as shall be prescribed by law by the Legislative Assembly, and thereafter a delegate shall be elected, at such time and place as the Legislative Assembly may direct, to serve for a Congress, as members of the House of Representatives are now elected.

Approved, March 3, 1839.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 357.*

AN ACT MAKING A DONATION OF LAND TO THE TERRITORY OF IOWA, FOR THE PURPOSE OF ERECTING PUBLIC BUILDINGS THEREON.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, appropriated and granted to the Territory of Iowa, one entire section of land, of any of the surveyed public lands in said Territory, for the purpose of erecting thereon the public buildings for the use of the Executive and Legislative departments of the Government of the said Territory: *Provided,* That the said section of land shall be selected under the authority of the Territorial Legislature, the seat of Government located thereon, and notice of said selection officially returned to the register of the land office in the district in which the land is situated within one year from the passing of this act: *And provided, further,* That nothing herein contained shall authorize the selection of the sixteenth section in any township reserved for the use of schools, nor of any lot reserved for public purposes; and that in the selection to be made as aforesaid, no pre-existing improvement or right to pre-emption recognized by law, shall be prejudiced thereby.

SEC. 2. *And be it further enacted,* That if, at the time of the selection of the section of land to be made as aforesaid, the contiguous sections thereto have not been made subject

to public sale, or being so subject have not been sold at public sale or by private entry, then each and every section contiguous to said selected section, and not so sold, shall be thereafter reserved and withheld from sale in any manner, until the further order of Congress thereon. But nothing herein expressed shall be construed to restrain the said Territory of Iowa, after appropriating a sufficient quantity of land within said selected section for the site and accommodation of the public buildings, from selling and disposing of the residue of said section in lots or otherwise, for the use of said Territory, in the erection and completion of said buildings.

Approved, March 3, 1839.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 330.*

AN ACT GRANTING TO THE JUDGES OF THE SUPREME COURT OF IOWA THE SAME COMPENSATION AS BY LAW IS GIVEN TO THE JUDGES OF THE SUPREME COURT OF WISCONSIN.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the commencement of the next quarter, after the passage of this act, the judges of the supreme court of the Territory of Iowa shall receive the same salary as is now received by the judges of the Territory of Wisconsin.

Approved, March 3, 1839.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 331.*

AN ACT TO MAKE AN APPROPRIATION FOR CERTAIN EXPENSES IN THE ERECTION OF A PENITENTIARY IN THE TERRITORY OF IOWA.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the

sum of fifteen thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, granted and appropriated, out of any unappropriated money in the Treasury, to pay for work heretofore actually done and materials furnished in the construction of a penitentiary in the Territory of Iowa; but no further work or materials are hereby authorized to be done or furnished for the completion of said penitentiary, on the faith of future appropriations by Congress, but the same are expressly prohibited.

Approved, August 29, 1842.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 537.*

AN ACT GIVING THE ASSENT OF CONGRESS TO THE HOLDING OF AN EXTRA SESSION OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF IOWA.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the assent of Congress is hereby given to the holding of an extra session of the Legislative Assembly of the Territory of Iowa, in the month of June, eighteen hundred and forty-four: *Provided,* That no portion of the expense of such extra session shall be paid by the Government of the United States.

Approved, April 30, 1844.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 657.*

AN ACT TO AUTHORIZE THE LEGISLATURES OF THE SEVERAL TERRITORIES TO REGULATE THE APPORTIONMENT OF REPRESENTATION, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be competent to the Legislatures of the several Terri-

tories, to readjust and apportion the representation in the two branches of their respective bodies in such manner from time to time as may seem to them just and proper: *Provided*, That the numbers of said bodies as authorized by existing laws shall not be increased.

SEC. 2. *And be it further enacted*, That justices of the peace, and all general officers of the militia in the several Territories shall be elected by the people in such manner as the respective Legislatures thereof may provide by law.

Approved, June 15, 1844.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 670.*

AN ACT MAKING APPROPRIATION FOR CERTAIN IMPROVEMENTS IN THE TERRITORY OF IOWA.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums of money be, and they are hereby, appropriated, to be paid out of any money in the treasury not otherwise appropriated, to be expended under the direction of the Secretary of War.

For the improvement of the harbor at the town of Dubuque, seven thousand five hundred dollars; *Provided*, upon due examination and survey, under the direction of the Secretary of War, it shall appear that a permanent improvement can be accomplished and completed for this amount, so as to admit the landing of steamers of the largest class navigating the river at the town of Dubuque at all seasons of the year.

For the construction and keeping in repair bridges on the "Agency" road (so called), laid out by the United States in the year eighteen hundred and thirty-nine, five thousand dollars.

For the construction and keeping in repair bridges on the Military road (so called), from Dubuque to the northern boundary of the State of Missouri, which road was laid out

by the United States in the year eighteen hundred and thirty-nine, ten thousand dollars.

Approved, June 15, 1844.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 670.*

THE ADMISSION OF IOWA INTO THE UNION.

AN ACT FOR THE ADMISSION OF THE STATES OF IOWA AND FLORIDA INTO THE UNION.

WHEREAS, the people of the Territory of Iowa did on the seventh day of October, eighteen hundred and forty-four, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government; and whereas, the people of the Territory of Florida did, in like manner, by their delegates, on the eleventh day of January, eighteen hundred and thirty-nine, form for themselves a constitution and State government, both of which said constitutions are republican; and said conventions having asked the admission of their respective Territories into the Union as States, on equal footing with the original States:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

SEC. 2. *And be it further enacted*, That the following shall be the boundaries of the said State of Iowa, to wit: Beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato, or Blue-Earth river, thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington city, thence due south to the northern boundary

line of the State of Missouri, thence eastwardly following that boundary to the point at which the same intersects the Des Moines river, thence by the middle of the channel of that river to the place of beginning.

SEC. 3. *And be it further enacted,* That the said State of Iowa shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the said State of Iowa, so far as the said rivers shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same: Such rivers to be common to both: And that the said river Mississippi, and the navigable waters leading into the same, shall be common highways, and forever free as well to the inhabitants of said State, as to all other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State of Iowa.

SEC. 4. *And be it further enacted,* That it is made and declared to be a fundamental condition of the admission of said State of Iowa into the Union, that so much of this act as relates to the said State of Iowa shall be assented to by a majority of the qualified electors at their township elections, in the manner and at the time prescribed in the sixth section of the thirteenth article of the constitution adopted at Iowa City the first day of November, anno Domini eighteen hundred and forty-four, or by the Legislature of said State. And as soon as such assent shall be given, the President of the United States shall announce the same by proclamation; and therefrom and without further proceedings on the part of Congress the admission of the said State of Iowa into the Union, on an equal footing in all respects whatever with the original States, shall be considered as complete.

* * * * *

SEC. 6. *And be it further enacted,* That until the next census and apportionment shall be made, each of said States of Iowa and Florida shall be entitled to one representative in the House of Representatives of the United States.

SEC. 7. *And be it further enacted,* That said States of Iowa and Florida are admitted into the Union on the express condition that they shall never interfere with the primary disposal of the public lands lying within them, nor levy any tax on the same whilst remaining the property of the United States: *Provided,* That the ordinance of the convention that formed the constitution of Iowa, and which is appended to the said constitution, shall not be deemed or taken to have any effect or validity, or to be recognized as in any manner obligatory upon the Government of the United States.

Approved, March 3, 1845.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 742.*

AN ACT SUPPLEMENTAL TO THE ACT FOR THE ADMISSION
OF THE STATES OF IOWA AND FLORIDA INTO THE
UNION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the State of Iowa as elsewhere within the United States.

SEC. 2. *And be it further enacted,* That the said State shall be one district, and be called the district of Iowa; and a district court shall be held therein, to consist of one judge, who shall reside in the said district, and be called a district judge. He shall hold, at the seat of government of the said State, two sessions of the said district court annually, on the first Monday in January, and he shall, in all things, have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky district, under an act entitled "An act to establish the judicial courts of the United States." He shall appoint a clerk for the said district, who shall reside and keep the records of the said court at the place of holding the same; and shall receive, for

the services performed by him, the same fees to which the clerk of the Kentucky district is by law entitled for similar services.

SEC. 3. *And be it further enacted,* That there shall be allowed to the judge of the said district court the annual compensation of fifteen hundred dollars, to commence from the date of his appointment, to be paid quarterly at the treasury of the United States.

SEC. 4. *And be it further enacted,* That there shall be appointed in the said district, a person learned in the law, to act as attorney for the United States; who shall, in addition to his stated fees, be paid annually by the United States two hundred dollars, as a full compensation for all extra services: the said payment to be made quarterly, at the treasury of the United States.

SEC. 5. *And be it further enacted,* That a marshal shall be appointed for the said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed and allowed to marshals in other districts; and shall, moreover, be entitled to the sum of two hundred dollars annually, as a compensation for all extra services.

SEC. 6. *And be it further enacted,* That in lieu of the propositions submitted to the Congress of the United States, by an ordinance passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates at Iowa City, assembled for the purpose of making a constitution for the State of Iowa, which are hereby rejected, the following propositions be, and the same are hereby, offered to the Legislature of the State of Iowa, for their acceptance or rejection; which, if accepted, under the authority conferred on the said legislature, by the convention which framed the constitution of the said State, shall be obligatory upon the United States:

First. That section numbered sixteen in every township of the public lands, and, where such section has been sold or

otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools.

Second. That the seventy-two sections of land set apart and reserved for the use and support of a university, by an act of Congress approved on the twentieth day of July, eighteen hundred and forty, entitled, "An act granting two townships of land for the use of a university in the Territory of Iowa," are hereby granted and conveyed to the State, to be appropriated solely to the use and support of such university, in such manner as the legislature may prescribe.

Third. That five entire sections of land, to be selected and located under the direction of the legislature, in legal divisions of not less than one quarter section, from any of the unappropriated lands belonging to the United States within the said State, are hereby granted to the State for the purpose of completing the public buildings of the said State, or for the erection of public buildings at the seat of government of the said State, as the legislature may determine and direct.

Fourth. That all salt springs within the State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the said State for its use; the same to be selected by the legislature thereof, within one year after the admission of said State, and the same, when so selected, to be used on such terms, conditions, and regulations, as the legislature of the State shall direct: *Provided,* That no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall by this section, be granted to said State: *And provided, also,* That the General Assembly shall never lease or sell the same, at any one time, for a longer period than ten years, without the consent of Congress.

Fifth. That five per cent. of the net proceeds of sales of all public lands lying within the said State, which have been, or shall be sold by Congress, from and after the admission of

said State, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the legislature may direct: *Provided*, That the five foregoing propositions herein offered are on the condition that the legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State, shall provide, by an ordinance, irrevocable without the consent of the United States, that the said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents, respectively.

Approved, March 3, 1845.

—*Reprinted from U. S. Statutes at Large, Vol. V., p. 789.*

AN ACT TO DEFINE THE BOUNDARIES OF THE STATE OF IOWA, AND TO REPEAL SO MUCH OF THE ACT OF THE THIRD OF MARCH, ONE THOUSAND EIGHT HUNDRED AND FORTY-FIVE AS RELATES TO THE BOUNDARIES OF IOWA.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following shall be, and they are hereby, declared to be the boundaries of the State of Iowa, in lieu of those prescribed by the second section of the act of the third of March, eighteen hundred and forty-five, entitled, "An act for the admis-

sion of the States of Iowa and Florida into the Union," viz. Beginning in the middle of the main channel of the Mississippi River, at a point due east of the middle of the mouth of the main channel of the Des Moines River; thence up the middle of the main channel of the said Des Moines River, to a point on said river where the northern boundary line of the State of Missouri, as established by the constitution of that State, adopted June twelfth, eighteen hundred and twenty, crosses the said middle of the main channel of the said Des Moines River; thence, westwardly, along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of the main channel of the Missouri River; thence up the middle of the main channel of the said Missouri River, to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollet's map; thence, up the main channel of the said Big Sioux River, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east, along said parallel of forty-three degrees and thirty minutes, until said parallel intersects the middle of the main channel of the Mississippi River; thence, down the middle of the main channel of said Mississippi River, to the place of beginning.

SEC. 2. *And be it further enacted*, That the question which has heretofore been the subject-matter of controversy and dispute between the State of Missouri and the Territory of Iowa, respecting the precise location of the northern boundary line of the State of Missouri, shall be, and the same is hereby, referred to the Supreme Court of the United States for adjudication and settlement, in accordance with the act of the Legislature of Missouri, approved March twenty-fifth, eighteen hundred and forty-five, and the memorial of the Council and House of Representatives of the Territory of Iowa, approved January seventeenth, eighteen hundred and forty-six, by which both parties have agreed to "the commencement and speedy determination of such suit as may be necessary to

procure a final decision by the Supreme Court of the United States upon the true location of the northern boundary of that State;" and the said Supreme Court is hereby invested with all the power and authority necessary to the performance of the duty imposed by this section.

SEC. 3. *And be it further enacted,* That, until the next census and apportionment shall be made, the State of Iowa shall be entitled to two representatives in the House of Representatives of the United States.

SEC. 4. *And be it further enacted,* That so much of the act of the third of March, eighteen hundred and forty-five, entitled "An Act for the Admission of the States of Iowa and Florida into the Union," relating to the said State of Iowa, as is inconsistent with the provisions of this act, be and the same is hereby repealed.

Approved, August 4, 1846.

—*Reprinted from U. S. Statutes at Large, Vol. IX., p. 52.*

AN ACT FOR THE ADMISSION OF THE STATE OF IOWA INTO THE UNION.

WHEREAS the people of the Territory of Iowa, did on the eighteenth day of May, anno Domini eighteen hundred and forty-six, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government—which constitution is republican in its character and features—and said convention has asked admission of the said Territory into the Union as a State, on an equal footing with the original States, in obedience to "An Act for the Admission of the States of Iowa and Florida into the Union," approved March third, eighteen hundred and forty-five, and "An Act to define the Boundaries of the State of Iowa, and to repeal so much of the Act of the third of March, one thousand eight hundred and forty-five as relates to the Boundaries of

Iowa," which said last act was approved August fourth, anno Domini, eighteen hundred and forty-six: Therefore—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Iowa shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatsoever.

SEC. 2. *And be it further enacted,* That all the provisions of "An Act supplemental to the Act for the Admission of the States of Iowa and Florida into the Union," approved March third, eighteen hundred and forty-five, be, and the same are hereby declared to continue and remain in full force as applicable to the State of Iowa, as hereby admitted and received into the Union.

Approved, December 28, 1846.

—*Reprinted from U. S. Statutes at Large, Vol. IX., p. 117.*

AN ACT AND ORDINANCE ACCEPTING THE PROPOSITIONS MADE BY CONGRESS ON THE ADMISSION OF IOWA INTO THE UNION AS A STATE.

SEC. 1. *Be it enacted and ordained by the General Assembly of the State of Iowa,* That the propositions to the State of Iowa on her admission into the Union, made by the act of Congress, entitled "An act supplemental to the act for the admission of the States of Iowa and Florida into the Union," approved March 3, 1845, and which are contained in the sixth section of that act, are hereby accepted in lieu of the propositions submitted to Congress by an ordinance, passed on the first day of November, eighteen hundred and forty-four, by the Convention of delegates which assembled at Iowa City on the first Monday of October, eighteen hundred and forty-four, for the purpose of forming a constitution for said State, and which were rejected by Congress: *Provided,*

The General Assembly shall have the right, in accordance with the provisions of the second section of the tenth article of the constitution of Iowa, to appropriate the five per cent. of the net proceeds of sales of all public lands lying within the State, which have been or shall be sold by Congress from and after the admission of said State, after deducting all expenses incident to the same, to the support of common schools.

SEC. 2. And be it further enacted and ordained, as conditions of the grants specified in the propositions first mentioned in the foregoing section, irrevocable and unalterable without the consent of the United States, that the State of Iowa will never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers thereof; and that no tax shall be imposed on lands, the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war with Great Britain, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, other purposes, for the term of three years from and after township, or the dates of the patents respectively.

SEC. 3. It is hereby made the duty of the Secretary of State, after the taking effect of this act, to forward one copy of the same to each of our Senators and Representatives in Congress, who are hereby required to procure the consent of Congress to the diversion of the five per cent. fund indicated in the proviso to the first section of this act.

SEC. 4. This act shall take effect from and after its publication in the weekly newspapers printed in Iowa City.¹

Approved, January 15, 1849.

—*Reprinted from Acts of the Second General Assembly, Ch. 91, p. 121.*

¹ Published in the Reporter, January, 24th, and in the Republican, January 31st, 1849.

NUMBER VI.

INTRODUCTION.

THE division of the Territory of Wisconsin and the organization of the Territory of Iowa¹ was soon followed by the hope of an early admission into the Union. The first formal expression of this desire for Commonwealth organization is found in an act of the Legislative Assembly (approved, July 31st, 1840) which called for a vote of the people on the question of a constitutional convention.² In August, 1840, the vote was taken, and resulted in the defeat of the proposition for a convention by a large majority.³ Two years later (1842) the same question was again submitted to a vote of the people;⁴ and again the proposition was defeated by a majority in every county.⁵ In these as well as in subsequent campaigns a leading argument against Commonwealth organization was, that such organization would throw the entire support of the new government upon the people of the Territory and thus increase greatly the burden of taxation. Finally, however, in accordance with a vote⁶ taken in consequence of an act of the Legislative Assembly (approved, February 12th,

¹ See No. V. of this series, p. 102.

² See p. 135 of this number.

³ See p. 136 of this number.

⁴ See p. 137 of this number.

⁵ See p. 141 of this number.

⁶ See p. 147 of this number.

1844)¹ delegates were elected to the first constitutional convention which met at Iowa City on the 7th of October, 1844.²

The Constitution drafted by this convention (which may properly be termed the *Constitution of 1844*)³ was submitted to the people of the Territory in April, 1845.⁴ In the meantime Congress passed an act (approved, March 3d, 1845) for the admission of Iowa into the Union on an equal footing with the original States.⁵ But the boundaries of the future Commonwealth as defined in this act of Congress were not the boundaries as prescribed in the first article of the Constitution. The difference was radical, giving rise to much dissatisfaction. Indeed, it is now generally conceded that their disapproval of the boundaries set by Congress led the people of the Territory to reject the Constitution at the April election.

The Constitution of 1844 had been rejected by the people. But those most anxious for Commonwealth organization secured, at an extra session of the Legislative Assembly, the passage of an act re-submitting the Constitution "as it came from the hands of the late Convention." Furthermore, this act provided that the ratification of the Constitution "shall not be construed as an acceptance of the boundaries fixed by Congress in the late act of admission, and the admission shall not be deemed complete until whatever condition may be imposed by Congress, shall be ratified by the people." Thus the boundary question was again made a vital issue. At the August (1845) election the Constitution of 1844 was rejected a second time by the people of the Territory.

B. F. S.

¹ See p. 143 of this number.

² Journal of the Convention, p. 3.

³ See p. 150 of this number for text of this Constitution.

⁴ See Act of the Leg. Ass'y of Feb. 12th, 1844, Sec. 8, p. 146 of this number.

⁵ See No. V. of this series, p. 123.

PROPOSITIONS FOR A CONSTITUTIONAL CONVENTION.

AN ACT TO PROVIDE FOR THE EXPRESSION OF THE OPINION OF THE PEOPLE OF THE TERRITORY OF IOWA AS TO TAKING PREPARATORY STEPS FOR THEIR ADMISSION INTO THE UNION.

SECTION. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That for the purpose of obtaining the wishes of the people of the Territory of Iowa, as to preparatory steps for admission into the Union as a State, a poll shall be opened at each electoral precinct in this Territory at the time of holding the next general election for Delegate to Congress, members of the Council, and House of Representatives, &c.

SEC. 2. That it shall be the duty of the judges of election at every precinct in this Territory, at the time in the first section provided, to receive the ballots of all persons authorized by the laws to vote for Delegate to Congress, and safely deposit the same in a separate box for that purpose.

SEC. 3. That those voters who wish to call a convention to frame a constitution for their future government, will say on their ballot "convention," and those opposed to taking any preparatory steps will say "no convention."

SEC. 4. That immediately after the polls are closed, it shall be the duty of the judges aforesaid to open and examine the ballots given as aforesaid, and upon a separate piece of paper set down truly and distinctly the number of votes given for and against the convention, and certify the same as judges of election for the precinct and county where the same are given.

SEC. 5. That it shall be the duty of the judges of election aforesaid to carefully seal up said list of votes, certified as aforesaid, and safely send the same, with the returns of the general election, to the clerk of the county commissioners

court of the proper county endorsed, "returns for and against convention."

SEC. 6. That it shall be the duty of said clerk, by whom said returns shall be received, within five days after their reception, (without breaking the seals,) to transmit them safely to the Secretary of the Territory of Iowa, who, in the presence of the Governor, shall break the seals of said returns, and examine and count the same, and then carefully file them in his office, and the Governor shall issue his proclamation declaring the number of votes given for and against the convention.

SEC. 7. The opening and examination of the said returns shall take place on the first Monday of November, in the year of our Lord eighteen hundred and forty.

Approved, July 31 1840.

—Reprinted from *Laws of the Territory of Iowa, 1840, (Extra Session) Ch. 33, p. 46.*

THE VOTE IN 1840 ON THE QUESTION OF A CONVENTION.

The votes given at the late general election¹ for and against a State Convention, were against a Convention by a large majority.—The sentiments of the people of the Territory thus indicated, will necessarily preclude all further legislation on the subject at the present session. The people have, by their votes, expressed their preference for a Territorial Government for the time being.

—Reprinted from *Journal of the House of Representatives of the Third Legislative Assembly of the Territory of Iowa, p. 12.—being an extract from the Governor's Message of Nov. 3d, 1840.*

¹ The August election, 1840.

We learn by the proclamation of the Governor, that, at the late election in this Territory, the vote for and against the Convention, stands thus: For a Convention 937; Against a Convention 2907.¹

—Reprinted from *The Iowa Standard, Vol. I., No. 6, Nov. 27th, 1840.*

AN ACT TO PROVIDE FOR THE EXPRESSION OF THE OPINION OF THE PEOPLE OF THE TERRITORY OF IOWA, UPON THE SUBJECT OF THE FORMATION OF A STATE CONSTITUTION AND GOVERNMENT, AND TO ENABLE THEM TO FORM A CONSTITUTION FOR THE STATE OF IOWA.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That for the purpose of obtaining the expression of the opinion of the people of the Territory of Iowa, upon the subject of the formation of a Constitution and State Government, a poll shall be opened at each electoral precinct in this Territory, at the time of holding the next general election for members of the Council and House of Representatives, &c.

SEC. 2. That it shall be the duty of the judges of elections, at every precinct in this Territory, to interrogate the several qualified electors when they approach the polls to vote, whether they are in favor or against a Convention, to which interrogatory the said elector shall answer simply "Convention," or "No Convention," and the clerks of said election shall thereupon write down his name in a column headed "Convention," or "No Convention," in accordance with the vote of said elector.

¹ Cf. *Bloomington Herald, Vol. II., No. 39, July 29th, 1842.* See also Judge Springer's address published in the *Iowa Historical Record, Vol. XII., No. 3, p. 487.*

SEC. 3. That immediately after the polls are closed, it shall be the duty of the judges of said election, to mark down distinctly on a sheet of paper the number of votes given for, and the number of votes given against a Convention, and certify the same, together with the paper containing the names of the voters above mentioned, to be correct; and they shall thereupon carefully seal up said papers, so certified, endorsed thereon "Returns for and against a Convention," and forward the same to the clerk of the board of county commissioners of the proper county, within five days from the day of the election aforesaid; and it shall be the duty of the clerk by whom said returns shall be received, within four days after the same shall be deposited in his office, to make out an abstract of the votes given for and against a Convention, enclose them in an envelope endorsed thereon "Returns for and against a Convention for _____ County," (as the case may be,) and transmit the same to the office of the Secretary of the Territory, who, within thirty days after the election aforesaid, shall, in the presence of the Governor, examine and count said returns and file them in his office, and thereupon the Governor shall issue his proclamation declaring the number of votes given for and the number of votes given against a Convention.

SEC. 4. That if a majority of the votes polled at the election, provided for in this act, shall be for a "Convention," then there shall be another election held for the election of Delegates to a Convention to form a Constitution for the State of Iowa, on the second Tuesday in October next after the election aforesaid; and the notice for said election for Delegates, shall be given at least twenty days before the holding thereof; and the manner of giving said notice and all other proceedings connected with said election, shall be in accordance with the provisions of the law, providing for the election of members of the Council and House of Representatives in this Territory, so far as the same may be applicable.

SEC. 5. That the Convention shall consist of eighty-two

members, to be elected within the several organized counties in this Territory as follows, to-wit: the county of Lee shall elect eleven members; the county of Des Moines ten; the county of Van Buren eleven; the county of Henry seven; the county of Jefferson five; the county of Washington three; the county of Louisa four; the county of Muscatine four; the county of Johnson three; the county of Cedar two, the county of Linn three; the county of Scott four; the county of Clinton two; the county of Jackson three; the county of Jones one; the county of Dubuque six; the county of Delaware one; and the county of Clayton two. The said Delegates shall be citizens of the United States, and shall have resided twelve months within the Territory, before the election aforesaid.

SEC. 6. That the judges of election in the several precincts, shall certify the votes for Delegates, in the same manner as is provided by law for the election of members of the Council and House of Representatives, and shall send returns of said election, so certified, to the clerk of the county commissioners' court, who shall open said returns and certify the election of Delegates in the same manner as is now provided by law, for the election of members of the Council and House of Representatives; and in case of a tie vote between any of the candidates for Delegates, it shall be the duty of the clerk of the board of county commissioners, to order a new election to be held within twenty days after said first election, and be conducted in the same manner as said first election.

SEC. 7. That the said Delegates elect, shall meet at Iowa City, on the first Monday of November next, ensuing the election aforesaid, and proceed to form a Constitution and State Government, for the Territory of Iowa.

SEC. 8. That when a Constitution and form of State Government, shall have been adopted by said Convention, they shall cause the same to be published in all the newspapers printed in this Territory; and at the next general election for members of the Council and House of Representatives, after the formation of a Constitution and State Govern-

ment by said Convention, the electors of said Territory, who are qualified to vote for members of the Legislature at said general election, shall be and they are hereby authorized, to vote "For the Constitution," or "Against the Constitution." The votes for and against the Constitution, shall be counted and returned to the clerk of the county commissioners court, in the same manner as required by this act, in the election for Convention and against Convention; and the clerk of said commissioners shall, in the same manner, transmit returns of said votes for and against the Constitution, to the Secretary of the Territory, who shall open and count the same, as soon as they are all received from the several counties in this Territory, in the presence of the Governor, who shall issue his proclamation declaring the result.

SEC. 9. That all electors qualified as aforesaid, may vote for or against a Convention, in any county of this Territory, whether residents of such county or not; but in the election of Delegates to the Convention, the said electors shall not vote out of the counties wherein they have their residences.

SEC. 10. That the several elections provided for in this act, shall in all respects, be conducted in accordance with the provisions of an act, regulating general elections in this Territory, and the several acts amendatory thereto, so far as the same is applicable, and except as is herein specially provided for.

SEC. 11. That whenever a person shall present himself to give his vote or ballot at said elections, and either of the judges shall suspect or any other person shall challenge him to be unqualified for that purpose, the judges shall tender to him the following oath: "You do solemnly swear and declare, (or you do solemnly declare and affirm) that you are of the age of twenty-one years, according to your best knowledge and belief, a citizen of the United States, and that you have been for the last six months, an inhabitant of this Territory, and now a resident in this county, and that you have not voted before, in any part of this Territory at this election."

SEC. 12. That it shall be the duty of the Secretary of the

Territory, to cause this act to be published in the several newspapers of this Territory, as soon as the same may be approved by the Governor; and it shall be the duty of the clerk of the board of county commissioners in the several counties of this Territory, to give notice that a poll will be opened for the purposes specified in the first section of this act, to the sheriff of his proper county, who is hereby required to post up notices in accordance with law, at least twenty days before the general election day, in August next.

SEC. 13. That it shall be the duty of the Secretary of the Territory, to procure a suitable room for the meetings of the Convention; also, to provide the same with furniture, stationery, and all other things necessary, for the comfort and convenience of the Convention.

SEC. 14. That this act shall take effect and be in force from and after its passage.

Approved, February 16, 1842.

—*Reprinted from Laws of the Territory of Iowa, 1842, Ch. 84, p. 70.*

THE VOTE IN 1842 ON THE QUESTION OF A CONVENTION.

Under the provisions of the Act of the last session "to provide for the expression of the opinion of the people of the Territory upon the subject of the formation of a State Constitution and Government, and to enable them to form a Constitution for the State of Iowa," polls were opened in all the counties, at the time of holding the general election¹ for members of the Council and House of Representatives, and the question of "Convention" or "No Convention" submitted to the voters. Returns of the result have been made to the Secretary of the Territory, (with the exception of a single precinct

¹ The August election, 1842.

in one of the counties,) which show a majority in every county, and a large aggregate majority, against a Convention.

—Reprinted from *Journal of the House of Representatives of the Fifth Legislative Assembly of the Territory of Iowa*, p. 13.—being an extract from the Governor's Message of Dec. 7th, 1842.

OFFICIAL RESULT ON THE CONVENTION QUESTION.

We copy from the Hawkeye the annexed abstract, from the official record, of votes given for and against a Convention at the late election in this Territory.

	CONVENTION.	NO CONVENTION.
Des Moines co.	540	902
Scott	167	349
Henry	299	613
Lee	663	705
Johnson	258	277
Cedar	165	199
Muscatine	206	287
Jones		124
Clinton	93	98
Linn	145	270
Washington	187	394
Louisa	223	309
Jackson	136	325
Du Buque	115	477
Clayton	39	107
Jefferson	340	542
Van Buren	553	847
	4129	6825
		4129
Majority against Convention,		2696

—Reprinted from *The Iowa City Standard*, Vol. II., No. 41, Sept. 10th, 1842.

At this election, held August 1, 1842, the vote stood, for the convention, 4,146; against it, 6,868.¹ Every one of the seventeen counties that voted gave a majority against it.

—Reprinted from *Hull's Historical and Comparative Census of Iowa*, Introduction, p. ix.

AN ACT TO PROVIDE FOR THE EXPRESSION OF THE OPINION OF THE PEOPLE OF THE TERRITORY OF IOWA UPON THE SUBJECT OF THE FORMATION OF A STATE CONSTITUTION FOR THE STATE OF IOWA.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That for the purpose of obtaining the expression of the opinion of the people of the Territory of Iowa upon the subject of the formation of a constitution and state government, a poll shall be opened at each electoral precinct in this Territory at the time and place of holding the township elections in April next. In those counties that are not organized into townships polls shall be opened at the places of voting for members of the Legislature at the time aforesaid.

SEC. 2. That it shall be the duty of the judges of elections at every precinct in this Territory to interrogate the several qualified electors, when they approach the polls to vote, whether they are in favor or against a convention, to which interrogatory the said elector shall answer simply "Convention," or "No Convention;" and the clerks of said election shall thereupon write down his name in a column headed "Convention," or "No Convention," in accordance with the vote of said elector.

SEC. 3. That immediately after the polls are closed it shall be the duty of the judges of said election to mark down dis-

¹ Judge Springer gives the figures as follows: for convention, 3,260; against a convention, 5,754.—*Iowa Historical Record*, Vol. XII., No. 3, p. 487.

tinctly, on a sheet of paper, the number of votes given for and the number of votes given against a Convention, and certify the same together with the paper containing the names of the voters, above mentioned, to be correct; and they shall thereupon carefully seal up said papers so certified, endorsed thereon "returns for and against a Convention," and forward the same to the Clerk of the board of County Commissioners of the proper county within five days from the day of election aforesaid; and it shall be the duty of the Clerk by whom said returns shall be received, within four days after the same shall be deposited in his office, to make out an abstract of the votes given for and against a Convention, and enclose them in an envelope, endorsed thereon "returns for and against a Convention for _____ county," as the case may be, and transmit the same to the office of the Secretary of the Territory, who, within thirty days after the election aforesaid, shall, in the presence of the Governor, examine and count said returns, and file them in his office; and thereupon the Governor shall issue his proclamation, declaring the number of votes given for and the number of votes given against a Convention.

SEC. 4. That if a majority of the votes polled at the election provided for in this act shall be for a Convention, then there shall be another election held for the election of delegates to a Convention to form a constitution for the State of Iowa at the next general election; and the notice for said election for delegates shall be given at least twenty days before the holding thereof; and the manner of giving said notice, and all other proceedings connected with said election, shall be in accordance with the provisions of the law providing for the election of members of the Council and House of Representatives in this Territory, so far as the same may be applicable.

SEC. 5. That the Convention shall consist of seventy members, to be elected within the several organized counties in this Territory, as follows, to wit:

The county of Lee shall elect eight members;

"	"	Des Moines,	eight	"
"	"	Van Buren,	eight	"
"	"	Jefferson,	five	"
"	"	Henry,	five	"
"	"	Washington,	three	"
"	"	Louisa,	three	"
"	"	Muscatine,	three	"
"	"	Johnson,	three	"
"	"	Linn,	three	"
"	"	Cedar,	two	"
"	"	Scott,	three	"
"	"	Clinton,	two	"
"	"	Jones,	one	"
"	"	Jackson,	three	"
"	"	Dubuque,	} six	"
"	"	Delaware,		
"	"	Buchanan,		
"	"	Blackhawk,		
"	"	Clayton and	}	"
"	"	Fayette,		
"	"	Wapello,	one	"
"	"	Davis,	one	"
"	"	Keokuk,	one	"
"	"	Mahaska,	one	"

The said delegates shall be citizens of the United States, and shall have resided six months within the Territory before the election aforesaid.

SEC. 6. That the judges of election in the several townships and precincts shall certify the votes for delegates in the same manner as is provided by law for the election of members of the Council and House of Representatives, and shall send returns of said election so certified to the Clerk of the board of County Commissioners, who shall open said returns and certify the election of delegates in the same manner as is now provided by law for the election of members of the

Council and House of Representatives; and in case of a tie vote between any of the candidates for delegates it shall be the duty of the Clerk of the board of County Commissioners to order a new election, to be held within twenty days after said first election, and to be conducted in the same manner as said first election.

SEC. 7. That the said delegates elect shall meet at Iowa City on the first Monday of October after the election of delegates, and proceed to form a constitution and state government for the Territory of Iowa.

SEC. 8. That when a constitution and form of State government shall have been adopted by said Convention, they shall cause the same to be published in all the newspapers printed in the Territory; and at the township election in April succeeding the formation of a constitution and State government by said Convention, the electors of said Territory, who are qualified to vote for members of the Legislature at said general election, shall be and they are hereby authorized to vote for the constitution or against the constitution. The vote for and against the constitution shall be counted and returned to the Clerk of the board of County Commissioners, in the same manner transmit returns of said votes for and against the constitution to the Secretary of the Territory, who shall open and count the same as soon as they are all received from the several counties in this Territory, in the presence of the Governor, who shall issue his proclamation declaring the result.

SEC. 9. That all electors qualified as aforesaid may vote for or against a constitution in any county of this Territory, whether residents of such county or not; but in the election of delegates to the Convention the said electors shall not vote out of the counties wherein they have their residence.

SEC. 10. That the several elections provided for in this act shall in all respects be conducted in accordance with the provisions of an act regulating general elections in this Territory, so far as the same is applicable, and except as is herein specially provided for.

SEC. 11. That it shall be the duty of the Secretary of the Territory to cause this act to be published in the several newspapers of this Territory as soon as the same may be approved by the Governor; and it shall be the duty of the Clerk of the board of County Commissioners in the several counties of this Territory to give notice that a poll will be opened for the purposes specified in the first section of this act to the Sheriff of his proper county, who is hereby required to post up notices in accordance with law at least twenty days before the first Monday in April next.

SEC. 12. That it shall be the duty of the Secretary of the Territory to procure a suitable room for the meeting of the Convention; also, to provide the same with furniture, stationery, and all other things necessary for the comfort and convenience of the Convention.

SEC. 13. That the members of said Convention shall be entitled to such compensation as the Convention may direct, not exceeding three dollars per diem, and three dollars for every twenty miles travel to and from the place of holding said Convention.

SEC. 14. This act shall take effect and be in force from and after its passage.

Approved, 12th February, 1844.

—*Reprinted from Laws of the Territory of Iowa, 1844, Ch. 9, p. 13.*

THE VOTE IN 1844 ON THE QUESTION OF A CONVENTION.

The Convention—By the Proclamation of Gov. Chambers, dated 1st inst., it appears that in all the organized counties in the Territory, with the exception of Clayton, Washington and Davis, the vote on the convention question, at the late election,¹ stood as follows:

¹ The April election.

For a Convention,	6,719
Against it,	3,974
Showing a majority of favor of a State Government.	2,745 in

—Reprinted from *Bloomington Herald*, Vol. IV., No. 26,
May 3d, 1844.

CONVENTION—OFFICIAL VOTE.*

	FOR CONVENTION.	AG'ST CONVENTION.
Jackson,	204	198
Lee,	1342	353
Van Buren,	970	296
Clinton,	73	89
Keokuk,	157	13
Johnson,	313	150
Louisa,	256	249
Henry,	479	338
Muscatine,	240	267
Scott,	143	204
Dubuque,	282	293
Linn,	100	159
Cedar,	171	122
Wapello,	414	162
Jones,	20	107
Mahaska,	167	155
Jefferson,	566	164
Delaware,	12	25
Des Moines,	741	630
Davis,	216	135
Clayton,	41	72
Total,	6,976	4,181
	4,181	
Majority,	2,795	

* Washington county return not received.

—Reprinted from *Bloomington Herald*, Vol. IV., No. 27,
May 10th, 1844.

Again the subject was agitated, and an act was passed February 16¹, 1844, providing for submitting the question at the township election in the following April. At this election, the people decided in favor of a convention by a large majority, the vote standing 7,221 for, and 4,308 against.²

—Reprinted from *Hull's Historical and Comparative Census of Iowa*, Introduction, p. ix.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE EXPRESSION OF THE OPINION OF THE PEOPLE OF THE TERRITORY OF IOWA, UPON THE SUBJECT OF THE FORMATION OF A STATE CONSTITUTION FOR THE STATE OF IOWA."

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the fifth section of the act to which this act is amendatory, be so amended as to read that said Convention shall consist of seventy-three members, and that the counties of Davis, Wapello, and Mahaska shall each be entitled to two members of said Convention.

SEC. 2. That so much of said act as conflicts with the provisions of this act, be, and the same is, hereby repealed.

Approved, 19th June, 1844.

—Reprinted from *Laws of the Territory of Iowa, 1844*, (Extra Session), Ch. 8, p. 5.

¹ Should read, February 12th.

² Cf. Judge Springer's address, *Iowa Historical Record*, Vol. XII., No. 3, p. 487.

THE CONSTITUTION OF 1844.

CONSTITUTION.

ARTICLE I.

PREAMBLE AND BOUNDARIES.

We, the people of the Territory of Iowa, within the boundaries hereinafter designated, by our representatives in Convention assembled at Iowa City, on Monday the seventh day of October, in the year of our Lord one thousand eight hundred and forty-four, grateful to the Supreme Ruler of the Universe for the blessings hitherto enjoyed as a people, and acknowledging our dependence upon him for a continuation of those blessings, in order to establish justice, ensure tranquility, provide for the common defence, promote the general welfare, secure to ourselves and our posterity, the rights of life, liberty, and the pursuit of happiness, do agree to form and establish a free and independent government, by the name of the State of Iowa, the boundaries whereof shall be as follows, to wit: Beginning in the middle of the main channel of the Mississippi river opposite the mouth of the Des Moines river; thence up the said river Des Moines in the middle of the main channel thereof, to a point where it is intersected by the Old Indian Boundary line, or line run by John C. Sullivan in the year 1816; thence westwardly along said line to the "Old North-west corner of Missouri;" thence due west to the middle of the main channel of the Missouri river; thence up in the middle of the main channel of the river last mentioned to the mouth of the Sioux or Calumet river; thence in a direct line to the middle of the main channel of the St. Peters river, where the Watonwan river (according to Nicollet's map) enters the same; thence down the middle of the main channel of said river to the middle of the main channel of the Mississippi river; thence down the middle of the main channel of said river, to the place of beginning.

ARTICLE 2.

OF THE BILL OF RIGHTS.

1. All men are by nature free and independent, and have certain unalienable rights, among which, are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right at all times, to alter, or reform the same, whenever the public good may require it.

3. The Legislature shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates, for building or repairing places of worship, or for the maintainance of any minister or ministry.

4. No religious test shall be required as a qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion.

5. All laws of a general nature shall have a uniform operation.

6. Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appear to the jury that the matter charged as libelous was true, and was published with good motive, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

7. The right of the people to be secure in their persons,

houses, papers, and effects against unreasonable seizures and searches, shall not be violated, and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the papers or things to be seized.

8. The right of trial by jury shall remain inviolate; but the Legislature may authorize trial by a jury of a less number than twelve men in the inferior courts.

9. In all criminal trials, the accused shall have a right to a speedy trial by an impartial jury, to be informed of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for his own witnesses, and to have the assistance of counsel.

10. No person shall be held to answer for a criminal offence, unless on presentment, or indictment by a grand jury, except in cases cognizable by justices of the peace, or arising in the army or navy, or in the militia when in actual service in time of war or public danger.

11. No person shall after acquittal be tried for the same offence. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, where the proof is evident or the presumption great.

12. The writ of Habeas Corpus shall not be suspended unless in case of rebellion or invasion, the public safety require it.

13. The military shall be subordinate to the civil power. No standing army shall be kept up by the State in time of peace, and in time of war no appropriation for a standing army shall be for a longer time than two years.

14. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in manner prescribed by law.

15. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort.—No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

16. Excessive bail shall not be required. Excessive fines shall not be imposed; and cruel and unusual punishments shall not be inflicted.

17. Private property shall not be taken for public use without just compensation.

18. No person shall be imprisoned for debt in any civil action on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

19. The people have the right freely to assemble together to consult for the common good, to make known their opinions to their representatives and to petition for redress of grievances.

20. No bill of attainder, ex post facto law, or law impairing the obligation of contract, shall ever be passed.

21. Foreigners who are residents of this State shall enjoy the same rights, in respect to the possession, enjoyment and descent of property, as native born citizens.

22. Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.

23. This enumeration of rights shall not be construed to impair or deny others, retained by the people.

ARTICLE 3.

RIGHT OF SUFFRAGE.

1. In all elections which are now or hereafter may be authorized, every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and of the county in which he claims his vote thirty days, shall be entitled to vote.

2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at, going to, and returning therefrom.

3. Except in time of war or public danger, no elector shall be obliged to perform militia duty on the day of election.

4. No person in the military, naval, or marine service of the United States, shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place or station within the State.

5. No idiot or insane person, or persons declared infamous by act of the Legislature, shall be entitled to the privileges of an elector.

6. All elections shall be by ballot.

ARTICLE 4.

OF THE DISTRIBUTION OF POWERS.

1. The powers of the government of Iowa shall be divided into other separate departments; the legislative, the executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT.

1. The legislative authority of this State shall be vested in a senate and house of representatives, which shall be designated the General Assembly of the State of Iowa, and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The sessions of the General Assembly shall be biennial, and shall commence on the 1st Monday of January next ensuing the election of its members; unless the Governor of the State shall in the interim convene the General Assembly by proclamation.

3. The members of the house of representatives shall be chosen every second year, by the qualified electors of their respective districts, on the 3d Tuesday in October, whose term of office shall continue two years from the day of the general election.

4. No person shall be a member of the house of representatives who shall not have attained the age of twenty-one years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this State or Territory, one year next preceding his election, and who shall not, at the time of his election, have an actual residence of thirty days in the county or district he may be chosen to represent.

5. Senators shall be chosen for the term of four years, at the same time and place as representatives. They shall be twenty-five years of age, and possess the qualifications of representatives as to residence and citizenship.

6. The number of Senators shall not be less than one third nor more than one half of the representative body; and at the first session of the General Assembly after this Constitution takes effect, the Senators shall be divided by lot, as equally as may be, into two classes; the seats of the Senators of the first class shall be vacated at the expiration of the second year, so that one half shall be chosen every two years.

7. When the number of senators is increased they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. The house of representatives, when assembled, shall choose a Speaker and its other officers, and the senate shall appoint its own officers except the President; and each body shall judge of the qualifications, elections, and returns of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties, as each house may provide.

10. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly be-

havior, and with the consent of two-thirds, expel a member, but not a second time for the same offence; and shall have all other powers necessary for a branch of the legislature of a free and independent State.

11. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall at the desire of any two members present, be entered on the journals.

12. Senators and representatives, in all cases except for treason, felony, and breach of peace, shall be privileged from arrest during the session of the legislature, and in going to and returning from the same.

13. When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

14. The doors of each house shall be open, except on such occasion as in the opinion of the house, may require secrecy.

15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either house, and be amended, altered or rejected by the other; but no bill shall have the force of a law until on three several days it be read in each house, and unless, in cases of urgency, two thirds of the house in which the bill shall be depending may deem it expedient to dispense with the rules: and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses.

17. Every bill which shall have passed the general assembly shall, before it become a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it with his objections to the house in which it shall

have originated, who shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration, it again pass both houses by yeas and nays, by a majority of two thirds of the members of each house present, it shall become a law notwithstanding the governor's objections. If any bill shall not be returned within five days 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, by adjournment prevent such return.

18. No money shall be drawn from the treasury but in consequence of appropriations made by law.

19. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the legislature.

20. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members present.

21. The governor, lieutenant governor, secretary of state, auditor, treasurer, and judges of the Supreme and District Courts shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend farther than to removal from office, and disqualification to hold any office of honor, trust or profit, under this State; but the party convicted or acquitted shall nevertheless be liable and subject to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the General Assembly may provide.

22. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during such term; except such offices as may be filled by elections by the people.

23. No person holding any lucrative office under the

United States, or this State, or any other power, shall be eligible to the general assembly: *Provided*, That officers in the militia to which there is attached no annual salary, or the office of justice of the peace, shall not be deemed lucrative.

24. No person who may hereafter be a collector or holder of public moneys shall have a seat in either house of the general assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

25. Each member of the general assembly shall receive a compensation to be fixed by law, for his services, to be paid out of the treasury of the State. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session; when convened in extra session by the governor, they shall receive such sum as shall be fixed for the first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they shall travel, in going to and returning from their place of meeting, on the most usual route: *Provided, however*, That the members of the first Legislature under this constitution, shall receive two dollars per day for their services during the entire session.

26. To obviate confusion, and improper influences which may result from intermingling in one and the same act, such things as have no proper relation to each other, every law shall embrace but one object, which shall be expressed in the title.

27. No law of the general assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this state by authority: If the general assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state.

28. No divorce shall be granted by the legislature.

29. No county or counties shall be liable for the expense

of laying out or establishing any road or roads authorized by special act of the assembly.

30. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

31. Members of the general assembly shall, before they enter upon 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 Iowa, and that I will faithfully discharge the duties of senator (or representative as the case may be) according to the best of my ability;" and members elect of the general assembly are hereby empowered to administer to each other the said oath or affirmation.

32. Within two years after the first meeting of the General Assembly, under this constitution, and within every subsequent term of four years for the term of sixteen years, an enumeration of all the white inhabitants of this State shall be made, in such manner as shall be directed by law. The number of senators and representatives shall, at the first regular session of the legislature after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each; and the house of representatives shall never be less than twenty-six, nor greater than thirty-nine, until the number of white inhabitants shall be one hundred and twenty-five thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-nine nor exceed seventy-two.

33. When a senatorial and representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a senatorial or representative district.

34. In all elections by the General Assembly the members thereof shall vote viva voce, and the votes shall be entered on the journal.

35. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed eight hundred dollars; Secretary of State, five hundred dollars; Treasurer, three hundred dollars; Auditor, five hundred dollars; Judges of the Supreme and District Courts, each, eight hundred dollars.

ARTICLE 5.

OF THE EXECUTIVE DEPARTMENT.

1. The Supreme Executive power shall be vested in a Governor, who shall hold his office for two years, and a Lieutenant Governor shall be chosen at the same time and for the same term.

2. No person shall be eligible to the office of Governor or Lieutenant Governor who is not a citizen of the United States, been a resident of the State two years next preceding the election, and who has not attained the age of thirty years at the time of said election.

3. The Governor and Lieutenant Governor shall be elected by the electors at times and places of choosing members of the Legislature. The persons having the highest number of votes for Governor and Lieutenant Governor shall be elected; but in case two or more have an equal and the highest number of votes for Governor or Lieutenant Governor, the Legislature shall, by joint ballot, choose one of said persons so having an equal and the highest number, for Governor or Lieutenant Governor.

4. The returns of every election for Governor and Lieutenant Governor shall be sealed up and transmitted to the Seat of Government by the returning officers, directed to the President of the Senate, who shall open and publish them in the presence of the members of both houses.

5. The Governor shall be commander-in-chief of the militia and of the army and navy of this State.

6. He shall transact all executive business with the officers

of government, civil and military; and may require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices.

7. He shall take care that the laws be faithfully executed.

8. When any office shall, from any cause, become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the Governor shall make an appointment for such vacated office, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

9. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to them, when assembled, the purpose for which they shall have been convened.

10. 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 deem expedient.

11. In case of disagreement between the two houses with respect to the time of adjournment, the Governor shall have the power to adjourn the General Assembly to such time as he may think proper, provided it be not to a period beyond the next meeting of the Legislature.

12. In case of the impeachment of the Governor, his removal from office, death, resignation or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor until such disability shall cease, or the vacancy be filled.

13. If, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or be absent from the State, the President pro tempore of the Senate shall act as Governor until the vacancy be filled; and should a vacancy occur by the impeachment, death, resignation or absence from the State of the President pro-tempore of the Senate, the Speaker of the House of Representatives shall discharge the duties of Governor during the existence of such vacancy.

14. The Lieutenant Governor shall, by virtue of his office, be President of the Senate; in committee of the whole he may debate on all questions; and when there is an equal division he shall give the casting vote.

15. No member of Congress, nor any other person holding office under the United States or this State, shall execute the office of Governor.

16. The Governor shall have power to grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment, in such manner and upon such conditions as may be prescribed by law.

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

18. The Lieutenant Governor, except when acting as Governor, and President of the Senate pro tempore, shall each receive the same compensation as shall be allowed to the Speaker of the House of Representatives.

19. There shall be a seal of this State, which shall be kept by the Governor and used by him officially, and shall be called the great Seal of the State of Iowa.

20. All grants and commissions shall be in the name, and by the authority of the people of Iowa, sealed with the seal, signed by the Governor, and countersigned by the Secretary of State.

21. A Secretary of State, Auditor of Public Accounts, and Treasurer, shall be elected by the qualified electors at the time and place of voting for Governor, who shall continue in office two year. The Secretary of State shall keep a fair register of all the official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before either branch of the Legislature, and shall perform such other duties as shall be assigned him by law.

22. The first Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer and Superin-

tendent of public schools, shall hold their offices for two years after the first Monday in January succeeding their election, and until their successors shall be elected and qualified; and forever after the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, and Superintendent of public schools, shall hold their offices for the term of two years and until their respective successors shall be elected and qualified to office.

ARTICLE 6.

JUDICIAL DEPARTMENT.

1. The Judicial power shall be vested in a Supreme Court, District Courts, and such other inferior courts, as the Legislature may from time to time establish.

2. The Supreme Court shall consist of a Chief Justice and two Associates, two of whom shall be a quorum to hold court.

The Supreme Court shall have appellate jurisdiction only, in all cases in chancery, and constitute a court for the correction of errors at law, under such restrictions as the General Assembly may by law prescribe.

The sessions of the court shall be at the Seat of Government, at such times as may be fixed by law; and the Judges thereof shall appoint a Clerk, who shall hold his office during their pleasure.

3. The Supreme Court shall have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals. The Judges of the Supreme Court shall be conservators of the peace throughout the State.

4. The District Court shall consist of a Judge, who shall reside in the district assigned him by law, be elected by the qualified voters thereof, and hold his office for the term of four years, until his successor is elected and qualified.

The District Court shall be a court of law and equity, and have jurisdiction in all civil and criminal matters arising in the

respective counties in the district, in such manner as shall be prescribed by law. The Judges of the District Courts shall be conservators of the peace in their respective districts.

The first session of the General Assembly shall divide the State into three districts, which shall be increased as the exigencies of the State may require.

5. The Judges of the Supreme Court shall be elected by joint vote of the General Assembly, and shall hold their offices for the term of four years, and until their successors are elected and qualified.

6. There shall be elected in each county, one Judge of Probate, one Prosecuting Attorney, and one Clerk of the District Court, who shall continue in office for two years, and until their successors are elected and qualified. Vacancies in the office of Clerk shall be filled by appointment by the Judge of the District Court, and such appointments shall continue, until a successor is elected and qualified.

7. The style of all process shall be "The State of Iowa," and all prosecutions shall be conducted in the name and by the authority of the same.

ARTICLE 7.

OF THE MILITIA.

1. The Militia of this State shall be composed of all able bodied white male persons between the ages of eighteen and forty-five years, except such persons as are, or may hereafter, be exempted by the laws of the United States or of this State.

2. No person or persons conscientiously scrupulous of bearing arms shall be compelled to do militia duty in time of peace: *Provided*, That such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

3. The Legislature shall provide by law for organizing, equipping, and disciplining the militia of this State, in such manner as they deem expedient, not incompatible with the constitution and laws of the United States in relation thereto.

4. All commissioned officers of the militia (staff officers excepted) shall be elected by the persons liable to perform military duty, and shall be commissioned by the Governor.

ARTICLE 8.

OF PUBLIC DEBTS AND LIABILITIES.

1. The Legislature shall not in any manner create any debt or debts, liability or liabilities which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, suppress insurrection, unless the same shall be authorized by some law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interests of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrevocable until the principal and the interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people and have received a majority of all the votes cast for and against it at such election, and all money raised by authority of such law shall be applied only to the specific object therein stated or to the payment of the debt thereby created, and such law shall be published in newspapers in the State for three months preceding the election at which it is submitted to the people.

ARTICLE 9.

INCORPORATIONS.

1. No act of incorporation shall continue in force for a longer period than twenty years, without the re-enactment of the Legislature, unless it be an incorporation for public improvement.

2. The personal and real property of the individual mem-

bers of all corporations hereafter created, shall, at all times, be liable for the debts due by any such corporation.

3. The Legislature shall create no bank or banking institution, or corporation with banking privileges in this State, unless the charter with all its provisions, shall be submitted to a vote of the people at a general election for State officers, and receive a majority of the votes of the qualified electors of this State, cast for and against it.

4. The Legislative Assembly shall have power to repeal all acts of incorporation by them granted.

5. The property of the inhabitants of this State shall never be used by any incorporated company, without the consent of the owner.

6. Corporations of a public nature, such as counties, towns, villages, and the like, shall not be subject to the foregoing provisions.

7. The State shall not, directly or indirectly, become a stockholder in any bank or other corporation.

ARTICLE 10.

EDUCATION AND SCHOOL LANDS.

1. The Legislature, by joint vote, shall appoint a Superintendent of Public Instruction, who shall hold his office for three years, and whose duties shall be prescribed by law, and who shall receive such compensation as the Legislature may direct.

2. The Legislature shall encourage, by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement. The proceeds of all lands that have been or hereafter may be granted by the United States to this State for the support of schools, which shall hereafter be sold or disposed of, and the five hundred thousand acres of land granted to the new States, under an act of Congress distributing the proceeds of the Public Lands among the several States of the Union, approved, A. D. 1841, and all estates of

deceased persons, who may have died without leaving a will, or heirs, and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund; the interest of which, together with all the rents of the unsold lands, shall be inviolably appropriated to the support of schools throughout the State.

3. The Legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each school district, at least three months in every year; and any school district neglecting to keep up and support such a school, may be deprived of its equal proportion of the interest of the public fund, during such neglect.

4. As soon as the circumstances of the State will permit, the Legislature shall provide for the establishment of libraries—one at least in each township; and the moneys which shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines assessed in the several counties for any breach of the penal laws, shall be exclusively applied to the support of said libraries.

5. The Legislature shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this State, for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source, for the purpose aforesaid, shall be and remain a permanent fund for the support of said University, with such branches as the public convenience may hereafter demand for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the Legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

ARTICLE 11.

COUNTY ORGANIZATION.

1. No new county shall be laid off of, nor old county reduced to less contents than four hundred square miles.

2. There shall be elected by the qualified electors of each organized county in this State, one sheriff, one coroner, one county recorder, who shall discharge the duties of clerk of the county court, or court doing county business; one county surveyor, and one county treasurer, who shall be ex-officio collector of the public revenues, and hold their offices for the term of two years, and until their successors are elected and qualified, and shall perform such duties and be allowed such compensation as may be provided by law. They shall reside in their respective counties during their continuance in office, and be respectively disqualified for the office a second time, on default for any moneys collected by virtue of their respective offices, but in no case shall the sheriff be elected for more than two terms in succession.

3. The legislature may provide for a township organization. There shall be elected in each township, by the qualified electors, not less than two justices of the peace, at such time and place as may be provided by law, who shall hold their respective offices for two years, and until their successors are elected and qualified. Their jurisdiction shall be co-extensive with their respective townships, and shall extend to all civil cases where the amount in controversy does not exceed one hundred dollars, and by the consent of parties, may be extended to any amount not exceeding five hundred dollars. They shall be conservators of the peace, and shall possess such criminal jurisdiction as the Legislature may prescribe.

4. The Legislature shall provide by law for the jurisdiction of probate, and of all matters relating to county taxes, disbursement of moneys for county purposes, and in every case that may be necessary to the internal improvement and local concerns of the respective counties.

5. The fees of all county officers shall be defined by law, and no extra compensation, either by the county or State, shall be paid or allowed to such officers.

ARTICLE 12.

ON AMENDMENTS TO THE CONSTITUTION.

1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays thereon, and referred to the General Assembly then next to be chosen, and shall be published for three months previous to the time of making such choice; and, if, in the General Assembly then 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 General Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the General Assembly shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of all the qualified electors of the State voting for and against said amendment or amendments voting in their favor, such amendment or amendments shall become part of this Constitution. When any amendment or amendments to this Constitution shall be proposed in pursuance of the foregoing provisions, the same shall, at each of the said sessions, be read three several days in each house. The General Assembly shall not propose the same amendments to this Constitution oftener than once in six years.

2. And if, at any time, two-thirds of the Senate and House of Representatives shall think it necessary to revise or change this Constitution, they shall recommend to the electors at the next election for members of the Legislature to vote for or against a Convention, and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention, to be holden within six months after the passage of such law, and such Conven-

tion shall consist of a number of members not less than of both branches of the Legislature.

ARTICLE 13.

SCHEDULE.

1. That no inconvenience may arise from a change of the Territorial government to a permanent State government, it is declared that all writs, actions, prosecutions, contracts, claims and rights, shall continue as if no change had taken place in this government; and all process which may, before the organization of the judicial department under this Constitution, be issued under the authority of the Territory of Iowa, shall be as valid as if issued in the name of the State.

2. All laws now in force in this Territory, which are not repugnant to this Constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the Legislature.

3. All fines, penalties, and forfeitures, accruing to the Territory of Iowa, shall accrue to the use of the State.

4. All recognizances heretofore taken, or which may hereafter be taken, before the organization of the judicial department under this constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the State. And all bonds executed to the Governor of this Territory, or to any other officer in his official capacity, shall pass over to the Governor or other proper State authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for, and recovered accordingly. All criminal prosecutions and penal actions, which have arisen, or which may arise before the organization of the judicial department under this constitution, and which shall then be pending, may be prosecuted to judgment and executed in the name of the State.

5. All officers, civil and military, now holding their offices and appointments in this Territory under the authority of the United States, or under the authority of this Territory, shall

continue to hold and exercise their respective offices and appointments until superceded under this constitution.

6. It is made the duty of the President of this Convention, to transmit to the Delegate to the Congress of the United States, from this Territory, a copy of this constitution, together with an authenticated copy of an act of the Legislative Assembly of this Territory, entitled "An act to provide for the expression of the opinion of the people of the Territory of Iowa, upon the subject of the formation of a state constitution for the State of Iowa," and also a certified abstract of the census of this Territory, taken in the month of May, 1844, and also a certified abstract of the vote of the people of this Territory upon the question of Convention or no Convention, to be by him submitted to Congress at as early a day as practicable at its next session, for the purpose of gaining admission into the Union as a State. This constitution, together with whatever conditions may be made to the same by Congress, shall be ratified or rejected by a vote of the qualified electors of this Territory at the township elections in April next, in the manner prescribed by the act of the Legislative Assembly providing for the holding of this Convention: *Provided, however,* that the General Assembly of this State may ratify or reject any conditions Congress may make to this Constitution after the first Monday in April next.

7. The Clerks of the several boards of County Commissioners shall give at least thirty days notice, in the manner and form directed in the laws of this Territory regulating general elections, of the first general election under this Constitution, to be held on the first Monday in August next after the adoption of this Constitution by the people of this Territory, for the election of a Governor, Lieutenant Governor, Representative in the Congress of the United States, members of the Legislature, and one Auditor, Treasurer and Secretary of State. And said election shall be conducted in accordance with the existing election laws of this Territory; and the said Governor, Lieutenant Governor, Representative in the Con-

gress of the United States, Auditor, Treasurer and Secretary of State, duly elected at said election, shall continue to discharge the duties of their respective offices for the time prescribed by this Constitution, and until their successors are elected and qualified.—The returns of said election shall be made in conformity to the existing laws of this Territory.

8. Until the first enumeration of the inhabitants of this Territory as directed by this Constitution, the following shall be the apportionment of the members of the State Legislature. The county of Lee shall be entitled to two Senators and five Representatives; the county of Van Buren, two Senators and four Representatives; the counties of Davis, Wapello, Kishkekosh and Appanoose, one Senator jointly, and one Representative to each of the counties of Davis and Wapello, and one Representative to the counties of Kishkekosh and Appanoose jointly; the county of Des Moines, two Senators and four Representatives; the county of Henry, one Senator and three Representatives; the county of Jefferson, one Senator and three Representatives; the counties of Lousia and Washington, one Senator jointly and two Representatives each; the counties of Keokuk and Mahaska, one Senator jointly, and one Representative each; the counties of Muscatine and Johnson, one Senator and one Representative jointly, and each one Representative; the counties of Scott and Clinton, one Senator jointly, and one Representative each; the counties of Cedar, Linn and Benton, one Senator jointly, the county of Cedar one Representative, and the county of Linn and Benton one Representative jointly; the counties of Jackson and Jones, one Senator and two Representatives; the counties of Dubuque, Delaware, Clayton, Fayette, Buchanan and Blackhawk, two Senators, and the county of Dubuque, one Representative, and the counties of Delaware, Clayton, Fayette, Buchanan and Blackhawk, one Representative. And any country attached to any county for judicial purposes, shall, unless otherwise provided for, be considered as forming part of such county for election purposes.

9. The first meeting of the Legislature under this Constitution shall be on the first Monday in November following its ratification by the people, at Iowa City, in Johnson county, which place shall be the Seat of Government of the State of Iowa, until the year eighteen hundred and sixty-five, and until removed by law.

DONE in Convention at Iowa City, this first day of November one thousand eight hundred and forty-four, and of the Independence of the United States of America the sixty-ninth.

IN TESTIMONY WHEREOF, We have hereunto subscribed our names:

SHEPHERD LEFFLER, PRESIDENT.

ROBERT LUCAS,	JOSEPH C. HAWKINS,
STEPHEN HEMPSTEAD,	GEORGE HOBSON,
JAMES GRANT,	HENRY M. SALMON,
WILLIAM L. TOOLE,	CHARLES STALEY,
ANDREW W. CAMPBELL,	DAVID GALLAND,
WRIGHT WILLIAMS,	JAMES MARSH,
HENRY FELKNER,	O. S. X. PECK,
S. A. BISSELL,	A. HOOTON,
WM. H. GALBRAITH,	E. SELLS,
WM. MORDEN,	DAVID FERGUSON,
JOHN D. WRIGHT,	LYMAN EVANS,
MICHAEL O'BRIEN,	ELISHA CUTLER, JR.
HENRY ROBINSON,	JAMES I. MURRAY,
JAMES CLARKE,	PAUL BRATTAIN,
V. B. DELASHMUTT,	ALEXANDER KERR,
EBENEZER COOK,	JOHN RIPLEY,
WILLIAM R. HARRISON,	JOHN HALE, JR.
THEOPHILUS CRAWFORD,	J. C. BLANKINSHIP,
LUMAN M. STRONG,	ENOCH ROSS,
SAMUEL W. McATEE,	JOHN H. RANDOLPH,
C. B. CAMPBELL,	STEPHEN B. SHELLY,
RALPH R. BENEDICT,	RICHARD QUINTON,
SULIFAND S. ROSS,	JONATHAN E. FLETCHER,

S. W. DURHAM,	SAMUEL WHITMORE,
THO. J. MCKEAN,	JOHN DAVIDSON,
ROBERT BROWN,	THOMAS CHARLTON,
SAMUEL H. MCCRORY,	W. W. CHAPMAN,
RICHARD B. WYCKOFF,	JOHN W. BROOKBANK,
ENOS LOWE,	CALVIN J. PRICE,
GEORGE HEPNER,	JONATHAN C. HALL,
JOHN TAYLOR,	EDWARD LANGWORTHY,
HARDIN BUTLER,	R. P. LOWE,
G. S. BAILEY,	JOSEPH D. HOAG,
S. B. OLMSTEAD,	JAMES H. GOWER,
FRANCIS GEHON,	JOHN THOMPSON,
J. S. KIRKPATRICK.	

ATTEST,

GEORGE S. HAMPTON,
Secretary of the Convention.

—*Reprinted from Journal of the Convention for the Formation of a Constitution for the State of Iowa, begun and held at Iowa City on the first Monday of October, 1844, p. 187.*

AN ORDINANCE.

BE IT ORDAINED, By the Convention assembled to form a Constitution for the State of Iowa, in behalf and by the authority of the people of said State, that the following propositions be made to the Congress of the United States, which, if assented to by that body, shall be obligatory on the State.

1. Section number sixteen in every surveyed township of public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of Schools.

2. The seventy-two sections of land set apart and reserved for the use and support of a University, by an act of Congress approved on the twentieth of July, one thousand eight hundred and forty, entitled an act granting two townships of land

for the use of a University in the Territory of Iowa, shall, together with such further quantities as may be agreed upon by Congress, be conveyed to the State, and shall be applied solely to the use and support of such University, in such manner as the General Assembly may prescribe.

3. That five entire sections of land, in addition to the one heretofore granted, to be selected and located under the direction of the Legislature, in legal divisions of not less than one quarter section, from any of the unappropriated lands belonging to the United States, within this State, shall be granted to the State for the purpose of completing the public buildings of the State at the seat of government, to be applied in such manner as the General Assembly may direct.

4. One township of any of the public lands within this State not otherwise disposed of, for the purpose of finishing the Penitentiary of the Territory of Iowa, to be selected as the General Assembly may direct.

5. That all salt springs within the State, with six sections adjoining or as contiguous as may be to each, shall be granted to the State for its use, to be selected by the Legislature.

6. That five per cent. of the nett proceeds of the sales of all public lands lying within the State, which shall be sold by Congress, after the admission of the State into the Union, shall be granted to the State.

7. That thirty-six sections of land be granted to the State for a lunatic assylum; thirty-six sections for an assylum for the deaf and dumb, and thirty-six sections for an assylum for the instruction of the blind, to be selected from any of the United States lands within the state of Iowa, that may be subject to private entry, to be selected in not less quantities than the legal sub divisions of quarter sections, in such manner as the Legislature may direct.

8. One quarter section of land in each township for the purpose of purchasing a library for the benefit of the township.

That in consideration of the grants specified in the eight foregoing propositions, it is declared that this State will never

interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil, to the bona-fide purchaser thereof, and that no tax shall be imposed on lands, the property of the United States, and that in no case shall non-resident proprietors be taxed higher than resident.

—*Reprinted from Journal of the Convention for the Formation of a Constitution for the State of Iowa, begun and held at Iowa City on the first Monday of October, 1844, p. 207.*

A MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

The Convention for the formation of a Constitution for the State of Iowa, having performed that duty, herewith present the Constitution which they have adopted, and ask to be admitted into the Union of the States.

A large majority of the votes in every county in this Territory were given at the township elections in April last, for a convention to form a Constitution for a State government, and in pursuance of that determination, delegates were elected on the first Monday in August last, who met at Iowa City on the first Monday of the present month, and will close their labors with this address.

The population of the Territory, as will appear from an abstract of the census, was, in the month of May last, upwards of eighty thousand, and having conformed to the principles of the Federal Constitution, we confidently rely upon the guarantee in the third article of the treaty between the United States and France, for admission in the Union of the United States at as early a day as possible. Liberal donations of land for education, internal improvements, seats of government, for ameliorating the condition of the deaf and dumb, the blind

and the insane, have invariably been made by Congress to the new States, and this well settled precedent, fraught as it is with incalculable benefits, and based upon considerations extending far beyond the mere limits of the particular State to which such grants may be made, it is confidently believed, will not be departed from now, to the detriment and injustice of Iowa.

The Delegate to the Congress of the United States from this Territory, is fully acquainted with the several objects for which donations should be made; and without further specification upon this subject, we submit it to the magnanimity and justice of Congress, trusting that in this, and all other respects, we shall be placed upon an equal footing with the States which have preceded us.

The revenue for the support of a State government must necessarily be derived, to a great extent, from a tax upon real estate; and for this State to be deprived of the right of taxing the lands of her citizens for five years from the time of sale, by the general government, would place a heavy and unjust burden where there is less ability to bear it. Against this restriction, contained in the compacts with many of the new States, this Convention would respectfully protest, as one that would be calculated, if applied to Iowa, to affect unjustly and unequally, portions of her citizens, and greatly retard the prosperity of the State.

—*Reprinted from Journal of the Convention for the Formation of a Constitution for the State of Iowa, begun and held at Iowa City on the first Monday of October, 1844, p. 208.*

THE VOTE IN APRIL, 1845, ON THE CONSTITUTION OF 1844.

The Act of the Legislature of the 12th of February 1844, "to provide for the expression of the opinion of the people of the Territory of Iowa upon the subject of a State Constitu-

tion for the State of Iowa" resulted, as you know, in the vote of a majority in favor of a Constitution, and Delegates for a Constitution¹ having been elected in conformity to the provisions of the act, they assembled at the Capitol in November² last, and performed the duty assigned them. The Constitution, as it came from the hands of the Convention was presented to Congress at the last session, and an act was passed by that body for the admission of Iowa into the Union as a State, upon certain conditions, among which was our acceptance of a boundary so greatly curtailing on the North and West the limits of the proposed State, as included in the boundary adopted by the Convention, as to cause very general dissatisfaction among the people of the Territory—indeed such is the general repugnance to the boundary offered us by Congress, that I believe it will with great reluctance be acceded to at any time.

The vote taken at the election in last month for and against the Constitution, in conformity to the provisions of the act of the 12th of February 1844, to which I have before referred, though not yet officially ascertained, has certainly resulted in the rejection of that instrument, and there is reason to believe that the boundary offered us by Congress had much influence in producing that result. The rejection of the Constitution by the vote of the people, will impose upon you the necessity of further legislation preparatory to presenting anew to Congress, our claims to admission into the Union.

The opinion prevails with many of our fellow citizens that at present, and under existing circumstances a majority would prefer to remain under the territorial government, to incurring the responsibilities and expenses of a State government; and a proper respect for the respectable minority who voted against a Convention last year, and the well known fact that many who voted for it have since changed their opinion, would seem to justify, if not require, that the question be again submitted

¹ Should read, Convention.

² Should read, October.

to the people, whether or not they will at this time have a Convention, especially as no time will be lost in again presenting our claims for admission into the Union, if the majority should at the next August election vote for a Convention—and in that case the course pursued under the act of 12th of February, 1844, would bring us to the same result, in time to present the Constitution to the new Congress at its first session.

—*Reprinted from Journal of the House of Representatives of the Seventh Legislative Assembly of the Territory of Iowa, p. 14.—being an extract from the Governor's Message of May 5th, 1845.*

ABSTRACT OF THE VOTES POLLED FOR AND AGAINST
THE ADOPTION OF THE CONSTITUTION.

COUNTIES.	FOR CONSTITUTION.	AGAINST.
Des Moines,	483	941
Lee,	953	549
Henry,	360	633
Van Buren,	765	649
Dubuque,	191	542
Wapello and Kishkekosh,	220	363
Jefferson,	478	357
Muscatine,	297	282
Delaware,	16	83
Mahaska,	165	310
Cedar,	191	125
Clayton,	21	126
Scott,	169	291
Clinton,	124	144
Jackson,	267	280
Washington,	227	259
Keokuk,	223	117
Linn,	223	201

COUNTIES.	FOR CONSTITUTION	AGAINST.
Jones,	68	146
Louisa,	169	415
Johnson,	347	206
Reported maj. of Davis and Appanoose,	66	
Total,	6023	7019
		6023
Majority against,		996

—*Reprinted from Iowa Capital Reporter, Vol. IV., No. 14, May 10th, 1845.*

AN ACT TO SUBMIT TO THE PEOPLE THE DRAFT OF A
CONSTITUTION FORMED BY THE LATE CONVENTION.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the Constitution as it came from the hands of the late Convention, be and the same is, hereby, submitted to the people for their ratification or rejection; and for said election a poll shall be opened in each election precinct in this Territory, at the places of holding the general election, upon the first Monday of August next:—*Provided,* That where counties are not organized into townships, polls shall be opened at the places of voting for members of the Legislature.

SEC. 2. That it shall be the duty of the judges of the election, to interrogate the qualified electors when they approach the polls to vote, whether, they are in favor of, or against the Constitution; to which interrogatory the elector shall answer simply, "constitution," or "no constitution;" and the clerk of said election shall thereupon write down his name in a column headed, "constitution," or "no constitution," in accordance with the vote of said elector.

SEC. 3. The returns of said election shall be made in all

respects as the returns made under the act of the 12th February, A. D. 1844, for and against a Convention; and, thereupon the Governor shall issue his proclamation declaring the number of votes given for and against the Constitution.

SEC. 4. That, if the Constitution shall receive a majority of the votes cast at said election, the Secretary of the Territory shall forward a certified copy of the Constitution to the delegate in Congress, from this Territory, together with a certified abstract of the votes cast at said election.

SEC. 5. That the election provided for in this act, shall, in all respects, be conducted in accordance with the provisions of an act regulating general elections, so far as applicable, except, as is herein specially provided for.

SEC. 6. That it shall be the duty of the Secretary of the Territory to cause this act to be published in all the newspapers of the Territory, as soon as the same shall become a law; and it shall be the duty of the clerk of the board of county commissioners, in the several counties of this Territory, to give notice, that a poll will be opened for the purpose specified in the first section of this act, to the Sheriff of his proper county, who is hereby required to post up notices according to law, at least twenty days before the next August election.

SEC. 7. That every white male citizen of the United States who shall have attained the age of twenty-one years, and who may have been a resident of this Territory on the first day of July, A. D. 1845, shall be entitled to vote for or against the Constitution at said election: *Provided,* That said citizen shall continue to reside in the Territory from the said first day of July, up to time of holding said election.

SEC. 8. *And be it further enacted,* That no election of State officers shall be held under said Constitution, if ratified at said election, until after the admission of the State of Iowa is complete: *Provided,* That the ratification of the Constitution, as aforesaid, shall not be construed as an acceptance of the boundaries fixed by Congress in the late act of admission, and the admission shall not be deemed complete until

whatever condition may be imposed by Congress, shall be ratified by the people.

SEC. 9. This act shall take effect and be in force from and after its passage.

SECRETARY'S OFFICE, IOWA CITY, }
June 10, 1845. }

This bill having been returned to the Legislative Council (in which House it originated) by the Governor, with his objections to its passage, was duly passed by a majority of two thirds; and subsequently passed, by a similar majority, in the House of Representatives. By the Organic Law, said act thereby became a law, and I hereby so declare it.

S. J. BURR,

Secretary of Iowa Territory.

—*Reprinted from Laws of the Territory of Iowa, 1845, Ch. 13, p. 31.*

THE VOTE IN AUGUST, 1845, ON THE CONSTITUTION
OF 1844.

Since your adjournment in June last, a most important question has been decided by the people, the effect of which is to throw us back where we originally commenced in our efforts to effect a change in the form of government under which we at present live.—I allude to the rejection of the Constitution at the August election. This result, however brought about, in my judgement, is one greatly to be deplored. That misrepresentation and mystification had much to do in effecting it, there can be no doubt; still it stands as the recorded judgment of the people; and to that judgment, until the people themselves reverse the decree, it is our duty to submit.

Having, from absence and indisposition, been denied all op-

portunity of ascertaining public feeling at present in relation to this subject, I do not feel prepared to urge upon the Legislature any particular course of conduct to be pursued. The members themselves, come fresh from the people, and are presumed to be advised of the wishes of their constituents as to what action, if any, should be had in reference to the question. Being thus advised, they will doubtless adopt such measures as are called for by the public sentiment, and adhering, as I do, to the opinion long entertained and frequently expressed, that the prosperity of Iowa would be greatly advanced by her speedy incorporation into the Union as a State, it affords me great pleasure to assure you that whatever steps may be taken by you, looking to that desirable result, and in my judgment calculated to effect it, will receive my hearty co-operation.

—*Reprinted from Journal of the House of Representatives of the Eighth Legislative Assembly of the Territory of Iowa, p. 11.—being an extract from the Governor's Message of December 3rd, 1845.*

Abstract of vote given * * * for and against the Constitution, at the August Election, 1845; except in the Counties of Marion and Iowa, for which no returns have been received.

COUNTIES.	FOR CONSTITUTION.	AG'T.
Louisa	175	382
Du Buque	278	502
Scott	204	265
Johnson	345	291
Jefferson	490	369
Washington	207	300
Kishkekosh	80	52
Wapello	318	407
Muscatine	395	319
Clayton	29	110
Jones	74	115

COUNTIES.	FOR CONSTITUTION.	AG'ST.
Linn	221	211
Davis	231	153
Lee	1150	705
Clinton	113	99
Jackson	301	318
Mahaska	200	375
Henry	335	654
Des Moines	744	788
Del. and Buchan,	74	58
Keokuk	193	185
Van Buren	917	839
	<u>7235</u>	<u>7656</u>
		<u>7235</u>
Majority against Constitution,		421,

—Reprinted from *Bloomington Herald, New Series, Vol. I., No. 26, September 20th, 1845.*

NUMBER VII.

INTRODUCTION.

WHEN the Legislative Assembly met in December, 1845, the Constitution of 1844 had been twice rejected by the people of the Territory.¹ In his message to the Assembly, the Governor deplored this result and promised his "hearty coöperation" in such action as might be directed toward admission into the Union.² The Assembly was not slow to act. On the 17th of January, 1846, an act was approved, which provided for the election of delegates to a convention to form a new Constitution.³ The delegates elected in accordance with this act met at the Capitol in Iowa City on Monday, the 4th of May.⁴ The Constitution which they drafted (properly termed the *Constitution of 1846*)⁵ was ratified by the people on the 3d day of August by a majority of 456 votes. On the 4th of August, the act of Congress defining the boundaries of the Commonwealth was approved by the President.⁶ And finally on the 28th day of December, 1846, the Common-

¹ See No. VI. of this series, pp. 177, 182.

² See No. VI. of this series, p. 182.

³ See p. 187 of this number.

⁴ Journal of Convention, p. 23.

⁵ See p. 190 of this number for text of this Constitution.

⁶ See No. V. of this series, p. 128.

wealth of Iowa was "declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatsoever."¹

B. F. S.

¹ See No. V. of this series, p. 131.

NOTE

ON THE ORIGINAL MANUSCRIPT COPIES OF THE SEVERAL CONSTITUTIONS
OF THE COMMONWEALTH OF IOWA.

The original manuscript copy of the Constitution of 1844, with the signatures of the members of the convention, has been preserved in the office of the Secretary of the Commonwealth of Iowa.

No complete manuscript copy of the Constitution of 1846 seems to have been preserved. However, there is, in the office of the Secretary of the Commonwealth of Iowa, an incomplete manuscript copy of this Constitution. I have carefully examined this incomplete manuscript and find that it contains all of the Constitution from the "Preamble and Boundaries" to the article on "Amendments of the Constitution." The articles entitled "Amendments of the Constitution," "Miscellaneous," "Schedule," and the signatures of the members of the convention which drafted the Constitution are wanting. But the copy of the articles that have been preserved appears to be the authentic original manuscript copy as adopted in the convention.

The original manuscript copy of the Constitution of 1857, with the signatures of the members of the convention, has been preserved in the office of the Secretary of the Commonwealth of Iowa.

B. F. S.

THE CONVENTION OF 1846.

AN ACT TO PROVIDE FOR THE ELECTION OF DELEGATES
TO A CONVENTION TO FORM A CONSTITUTION AND
STATE GOVERNMENT.

SECTION. I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That there shall be a poll opened at the township election in April next, for the election of Delegates to a Convention, to form a Constitution for the future State of Iowa; and the notice for said election for Delegates, shall be given at least twenty days before the holding thereof, and the manner of giving said notice, and all other proceedings connected with said election, shall be in accordance with the provisions of the law providing for the election of members of the Council and House of Representatives in this Territory, so far as the same may be applicable.

SEC. 2. That the Convention shall consist of thirty-two members; to be elected within the several organized counties in this Territory as follows, to-wit:

Des Moines,	3.
Lee,	3.
Van Buren,	3.
Jefferson,	2.
Henry,	2.
Davis,	1.
Appanoose and Kishkekosh,	1.
Wapello,	1.
Iowa, Marion, Polk and Jasper,	1.
Mahaska,	1.
Keokuk,	1.
Washington,	1.
Louisa,	1.
Muscatine,	1.
Johnson,	1.

Linn and Benton,.....	I.
Cedar,.....	I.
Scott,.....	I.
Clinton,.....	I.
Jackson,.....	I.
Jones,.....	I.
Clayton,.....	I.
Dubuque, Delaware, Buchanan, Fayette and Blackhawk,.....	2.

The said Delegates shall be citizens of the United States and shall have resided six months within this Territory, before the election aforesaid.

SEC. 3. That the judges of election, in the several townships and precincts shall certify the votes for Delegates, in the same manner, as is provided by law for the election of members of Council and House of Representatives, and shall send returns of said election, so certified to the clerk of the board of county commissioners, who shall open said returns, and certify the election of Delegates, in the same manner as is provided by law, for the election of members of the Legislative Assembly; and in case of a tie vote between any of the candidates for Delegates, it shall be the duty of the clerk of the board of county commissioners, to order a new election for the purpose of effecting an election in said tied vote, which election shall be held within twenty days after said first election.

SEC. 4. That the said Delegates elect, shall meet at Iowa City, on the first Monday of May, A. D. 1846, and proceed to form a Constitution, and State Government for the future State of Iowa.

SEC. 5. That when a Constitution, and form of State Government shall have been adopted by said Convention, they shall cause the same to be published, and at the next general election succeeding the formation of a Constitution and State Government by said Convention, the qualified electors who may have resided thirty days in this Territory next pre-

ceding said election, and who are entitled in all other respects to vote for members of the Legislative Assembly of said Territory, shall be, and they are hereby authorized, to vote for or against a Convention.¹ The vote for and against a Constitution shall be counted, and returned to the clerk of the board of county commissioners, who shall, in the same manner, transmit the returns of said votes for and against the Constitution, to the Secretary of the Territory; who shall open and count the same, as soon as they are all received from the several counties in this Territory, in the presence of the Governor; who shall issue his proclamation declaring the result.

SEC. 6. That all electors, qualified as aforesaid, may vote for or against said Constitution in any county in said Territory, whether a resident of such county or not. But in the election of Delegates to the Convention the said electors shall not vote out of the counties wherein they have their residence.

SEC. 7. That the several elections, provided for in this act, shall in all respects, be conducted in accordance with the provisions of an act regulating general elections in this Territory, so far as the same is applicable, and except as is herein specially provided for.

SEC. 8. That said Constitution and form of State Government, shall, if ratified at the election specified in the fifth section of this act, be presented to the Congress of the United States, at the next ensuing session thereof, for admittance into the Union upon an equal footing with the original States; and with such other provisions and conditions as may be provided for by the Convention, framing said Constitution, and form of State Government; but shall not be presented for admittance until the same shall be accepted and ratified, by the qualified electors of this Territory.

SEC. 9. That it shall be the duty of the Secretary of the Territory, to provide a suitable room for the meeting of the Convention; also to provide the same with furniture, stationary, and all other things necessary for the comfort and convenience of the Convention.

¹ Should read, Constitution.

SEC. 10. That the members of said Convention shall be entitled to three dollars for every twenty miles travel to and from the place of holding said Convention, and three dollars per diem for their services, to be paid in the way and manner as may hereafter be provided for by the Legislative Assembly of the Territory or State of Iowa.

SEC. 11. This act shall take effect, and be in force from and after its passage.

Approved, January 17th, 1846.

—*Reprinted from Laws of the Territory of Iowa, 1846, Ch. 37, p. 37.*

THE CONSTITUTION OF 1846.

CONSTITUTION.

ARTICLE I.

PREAMBLE AND BOUNDARIES.

We, the People of the Territory of Iowa, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of the State of Iowa, the boundaries whereof shall be as follows:

Beginning in the middle of the main channel of the Mississippi river, at a point due east of the middle of the mouth of the main channel of the Des Moines river, thence up the middle of the main channel of the said Des Moines river, to a point on said river where the northern boundary line of the State of Missouri, as established by the constitution of that State, adopted June 12th, 1820, crosses the said middle of the main

channel of the said Des Moines river; thence westwardly, along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line, intersect the middle of the main channel of the Missouri river; thence up the middle of the main channel of the said Missouri river, to a point opposite the middle of the main channel of the Big Sioux river, according to Nicollett's map; thence up the main channel of the said Big Sioux river, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east, along said parallel of forty-three degrees and thirty minutes, until said parallel intersect the middle of the main channel of the Mississippi river; thence down the middle of the main channel of said Mississippi river, to the place of beginning.

ARTICLE 2.

BILL OF RIGHTS.

1. All men are by nature free and independent, and have certain unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right at all times, to alter or reform the same, whenever the public good may require it.

3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or for the maintenance of any minister or ministry.

4. No religious test shall be required as a qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges or capacities, or disqualified from

the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion.

5. Any citizen of this State who may hereafter be engaged, either directly or indirectly, in a duel, either as principal or accessory before the fact, shall forever be disqualified from holding any office under the constitution and laws of this State.

6. All laws of a general nature shall have a uniform operation.

7. Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appear to the jury that the matter charged as libellous was true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

8. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches, shall not be violated, and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the papers and things to be seized.

9. The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by a jury of a less number than twelve men in inferior courts.

10. In all criminal prosecutions, the accused shall have a right to a speedy trial by an impartial jury, to be informed of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for his own witnesses, and to have the assistance of counsel.

11. No person shall be held to answer for a criminal offense, unless on presentment, or indictment by a grand jury, except in cases cognizable by justices of the peace, or arising in the army or navy, or in the militia when in actual service in time of war or public danger.

12. No person shall after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great.

13. The writ of Habeas Corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety require it.

14. The military shall be subordinate to the civil power. No standing army shall be kept up by the State in time of peace, and in time of war no appropriation for a standing army shall be for a longer time than two years.

15. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, except in the manner prescribed by law.

16. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

17. Excessive bail shall not be required. Excessive fines shall not be imposed; and cruel and unusual punishments shall not be inflicted.

18. Private property shall not be taken for public use without just compensation.

19. No person shall be imprisoned for debt in any civil action on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

20. The people have the right freely to assemble together to counsel for the common good, to make known their opinions to their representatives, and to petition for a redress of grievances.

21. No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed.

22. Foreigners who are, or who may hereafter become residents of this State, shall enjoy the same rights, in respect to the possession, enjoyment, and descent of property, as native born citizens.

23. Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.

24. This enumeration of rights shall not be construed to impair or deny others, retained by the people.

ARTICLE 3.

RIGHT OF SUFFRAGE.

1. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county in which he claims his vote twenty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law.

2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to, and returning therefrom.

3. No elector shall be obliged to perform militia duty on the day of election, except in time of war, or public danger.

4. No person in the military, naval or marine service of the United States, shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place or station within this state.

5. No idiot, or insane person, or persons convicted of any infamous crime, shall be entitled to the privileges of an elector.¹

6. All elections by the people, shall be by ballot.

ARTICLE 4.

OF THE DISTRIBUTION OF POWERS.

1. The powers of the government of Iowa shall be divided into three separate departments; the legislative, the executive, and the judicial; and no person charged with the exercise

¹ In the manuscript copy of this section (see note to Introduction of this number) the following clause is added: unless restored to the right of suffrage by an act of the General Assembly.

of powers properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT.

1. The Legislative authority of this State shall be vested in a Senate and House of Representatives, which shall be designated the General Assembly of the State of Iowa, and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The sessions of the General Assembly shall be biennial, and shall commence on the first Monday of December next ensuing the election of its members; unless the Governor of the State shall, in the interim, convene the General Assembly by proclamation.

3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the first Monday in August, whose term of office shall continue two years from the day of the general election.

4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years; be a free white male citizen of the United States, and have been an inhabitant of this State or Territory one year next preceding his election; and at the time of his election, have an actual residence of thirty days in the county or district he may be chosen to represent.

5. Senators shall be chosen for the term of four years, at the same time and place as representatives, they shall be twenty-five years of age, and possess the qualifications of representatives as to residence and citizenship.

6. The number of Senators shall not be less than one-third nor more than one-half the representative body, and at the first session of the General Assembly after this Constitution takes effect, the Senators shall be divided by lot, as equally as may be, into two classes; the seats of the Senators of the first

class shall be vacated at the expiration of the second year, so that one-half shall be chosen every year.

7. When the number of Senators is increased they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. Each house shall choose its own officers and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

10. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and with the consent of two-thirds, expel a member, but not a second time for the same offense, and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

11. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals.

12. Senators and representatives, in all cases except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

13. When vacancies occur in either house, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies.

14. The doors of each house shall be open, except on such occasion as, in the opinion of the house, may require secrecy.

15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either house, except bills for revenue, which shall always originate in the House of Representatives, and may be amended, altered, or rejected by the other, and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses.

17. Every bill which shall have passed the General Assembly shall, before it become a law, be presented to the Governor. If he approve, he shall sign it, but if not, he shall return it with his objections, to the house in which it originated, which shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two-thirds of the members of each house present, it shall become a law notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the General Assembly by adjournment prevent such return.

18. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the General Assembly.

19. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

20. The Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust or profit under this State; but the party convicted or acquit-

ted shall nevertheless be liable to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the General Assembly may provide.

21. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

22. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to the General Assembly: Provided, That offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmasters whose compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

23. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for and paid into the treasury, all sums for which he may be liable.

24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

25. Each member of the General Assembly shall receive a compensation to be fixed by law, for his services, to be paid out of the treasury of the State. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session: when convened in extra session by the Governor, they shall receive such sum as shall be fixed for the first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they shall travel, in going to and returning from their place of meeting, on the most usual route: Provided, however, That the members of the first General As-

sembly under this constitution shall receive two dollars per day for their services during the entire session.

26. Every law shall embrace but one object, which shall be expressed in the title.

27. No law of the General Assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this State, by authority. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state.

28. No divorce shall be granted by the General Assembly.

29. No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed.

30. Members of the General Assembly shall, before they enter upon 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 Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability. And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

31. Within one year after the ratification of this constitution, and within every subsequent term of two years, for the term of eight years, an enumeration of all the white inhabitants of this state shall be made, in such manner as shall be directed by law. The number of Senators and Representatives shall, at the first regular session of the General Assembly after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each, and [the General Assembly] shall also, at every subsequent regular session, apportion the House of Representatives, and every other regular session the Senate for eight years; and the House of Representatives shall never be less than twenty-six, nor greater than thirty-nine, until the

number of white inhabitants shall be one hundred and seventy-five thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-nine nor exceeding seventy-two.

32. When a Congressional, Senatorial, or Representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district.

33. In all elections by the General Assembly, the members thereof shall vote viva voce, and the votes shall be entered on the journal.

34. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed one thousand dollars; Secretary of State, five hundred dollars; Treasurer, four hundred dollars; Auditor, six hundred dollars; Judges of the Supreme and District Courts, each one thousand dollars.

ARTICLE 5.

EXECUTIVE DEPARTMENT.

1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the Governor of the State of Iowa.

2. The Governor shall be elected by the qualified electors, at the time and place of voting for members of the General Assembly, and shall hold his office four years from the time of his installation, and until his successor shall be qualified.

3. No person shall be eligible to the office of Governor, who has not been a citizen of the United States, and a resident of the State two years next preceding the election, and attained the age of thirty years at the time of said election.

4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall, during the first week of the session, open and publish them in

presence of both houses of the General Assembly. The person having the highest number of votes shall be Governor; but in case any two or more have an equal and the highest number of votes, the General Assembly shall, by joint vote, choose one of said persons so having an equal and the highest number of votes, for Governor.

5. The Governor shall be commander-in-chief of the militia, the army, and navy of this state.

6. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

7. He shall see that the laws are faithfully executed.

8. When any office shall from any cause become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

9. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

10. He shall communicate by message to the General Assembly, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

11. In case of disagreement between the two houses, with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he may think proper, provided it be not beyond the time fixed for the meeting of the next General Assembly.

12. No person shall, while holding any other office under the United States, or this State, execute the office of Governor, except as hereinafter expressly provided.

13. The Governor shall have power to grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment.

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

15. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the Great Seal of the State of Iowa.

16. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the great seal of this state, signed by the Governor, and countersigned by the Secretary of State.

17. A Secretary of State, Auditor of Public Accounts, and Treasurer, shall be elected by the qualified electors, who shall continue in office two years. The Secretary of State shall keep a fair register of all the official acts of the Governor, and shall, when required, lay the same, together with all the papers, minutes, and vouchers relative thereto, before either branch of the General Assembly, and shall perform such other duties as shall be assigned him by law.

18. In case of the impeachment of the Governor, his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the Secretary of State, until such disability shall cease, or the vacancy be filled.

19. If, during the vacancy of the office of Governor, the Secretary of State shall be impeached, displaced, resign, die, or be absent from the state, the powers and duties of the office of Governor shall devolve upon the President of the Senate; and should a vacancy occur by impeachment, death, resignation, or absence from the State, of the President of the Senate, the Speaker of the House of Representatives shall act as Governor till the vacancy be filled.

ARTICLE 6.

JUDICIAL DEPARTMENT.

1. The Judicial power shall be vested in a Supreme Court,

District Courts, and such inferior courts, as the General Assembly may from time to time establish.

2. The Supreme Court shall consist of a Chief Justice and two Associates, two of whom shall be a quorum to hold court.

3. The Judges of the Supreme Court shall be elected by joint vote of both branches of the General Assembly, and shall hold their courts at such time and place as the General Assembly may direct, and hold their offices for six years, and until their successors are elected and qualified, and shall be ineligible to any other office during the term for which they may be elected. The Supreme Court shall have appellate jurisdiction only in all cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the General Assembly may by law prescribe. The Supreme Court shall have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals, and the Judges of the Supreme Court shall be conservators of the peace throughout the State.

4. The District Court shall consist of a Judge who shall be elected by the qualified voters of the district in which he resides, at the township election, and hold his office for the term of five years, and until his successor is duly elected and qualified, and shall be ineligible to any other office during the term for which he may be elected. The District Court shall be a court of law and equity, and have jurisdiction in all civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law. The Judges of the District Courts shall be conservators of the peace in their respective districts. The first session of the General Assembly shall divide the State into four districts, which may be increased as the exigencies require.

5. The qualified voters of each county, shall at the general election, elect one Prosecuting Attorney and one Clerk of the District Court, who shall be residents therein, and who

shall hold their several offices for the term of two years and until their successors are elected and qualified.

6. The style of all process shall be "the State of Iowa" and all prosecutions shall be conducted in the name and by the authority of the same.

ARTICLE 7.

MILITIA.

1. The Militia of this State shall be composed of all able bodied white male citizens between the ages of eighteen and forty-five years, except such as are or may hereafter be exempt by the laws of the United States or of this State, and shall be armed, equipped, and trained, as the General Assembly may provide by law.

2. No person or persons conscientiously scrupulous of bearing arms, shall be compelled to do militia duty in time of peace; provided, that such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

3. All commissioned officers of the militia, (staff officers excepted,) shall be elected by the persons liable to perform military duty, and shall be commissioned by the Governor.

ARTICLE 8.

STATE DEBTS.

1. The General Assembly shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single object, or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability

within twenty years from the the time of the contracting thereof, and shall be irrepalable until the principal and the interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election, and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each judical district, if one is published therein, throughout the State, for three months preceding the election at which it is submitted to the people.

ARTICLE 9.

INCORPORATIONS.

1. No corporate body shall hereafter be created, renewed, or extended, with the privilege of making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The General Assembly of this State shall prohibit, by law, any person or persons, association, company or corporation, from exercising the privileges of banking, or creating paper to circulate as money.

2. Corporations shall not be created in this State by special laws, except for political or municipal purposes, but the General Assembly shall provide, by general laws, for the organization of all other corporations, except corporations with banking privileges, the creation of which is prohibited. The stockholders shall be subject to such liabilities and restrictions as shall be provided by law. The State shall not directly or indirectly, become a stockholder in any corporation.

ARTICLE 10.

EDUCATION AND SCHOOL LANDS.

1. The General Assembly shall provide for the election, by the people, of a Superintendent of Public Instruction, who

shall hold his office for three years, and whose duties shall be prescribed by law, and who shall receive such compensation as the General Assembly may direct.

2. The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, for the support of schools, which shall hereafter be sold or disposed of, and the five hundred thousand acres of land granted to the new states, under an act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved, A. D. 1841, and all estates of deceased persons, who may have died without leaving a will, or heir; and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the General Assembly may provide, shall be inviolably appropriated to the support of common schools throughout the State.

3. The General Assembly shall provide for a system of common schools, by which a school shall be kept up and supported in each school district, at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

4. The money which shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, shall be exclusively applied, in the several counties in which such money is paid or fine collected, among the several school districts of said counties, in the proportion to the number of inhabitants in such districts, to the support of common schools, or the establishment of libraries, as the General Assembly shall, from time to time, provide by law.

5. The General Assembly shall take measures for the

protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this State, for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source, for the purpose aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said University, with such branches as the public convenience may hereafter demand, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the General Assembly, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

ARTICLE 11.

AMENDMENTS OF THE CONSTITUTION.

1. If at any time, the General Assembly shall think it necessary to revise or amend this constitution, they shall provide by law for a vote of the people for or against a convention, at the next ensuing election for members of the General Assembly, in case a majority of the people vote in favor of a convention, said General Assembly shall provide for an election of Delegates to a convention, to be held within six months after the vote of the people in favor thereof.

ARTICLE 12.

MISCELLANEOUS.

1. The jurisdiction of Justices of the Peace shall extend to all civil cases, (except cases in chancery and cases where the question of title to any real estate may arise,) where the amount in controversy does not exceed one hundred dollars, and by the consent of parties may be extended to any amount not exceeding five hundred dollars.

2. No new county shall be laid off hereafter, nor old county reduced, to less contents than four hundred and thirty-two square miles.

3. The General Assembly shall not locate any of the public lands, which have been or may be granted by Congress to this State, and the location of which may be given to the General Assembly, upon lands actually settled, without the consent of the occupant. The extent of the claim of such occupant so exempted shall not exceed three hundred and twenty acres.

ARTICLE 13.

SCHEDULE.

1. That no inconvenience may arise from the change of a Territorial government to a permanent State government, it is declared that all writs, actions, prosecutions, contracts, claims and rights, shall continue as if no change had taken place in this government; and all process which may, before the organization of the judicial department under this constitution, be issued under the authority of the Territory of Iowa, shall be as valid as if issued in the name of the State.

2. All the laws now in force in this Territory, which are not repugnant to this constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the General Assembly of this State.

3. All fines, penalties, and forfeitures, accruing to the Territory of Iowa, shall accrue to the use of the State.

4. All recognizances heretofore taken, or which may hereafter be taken, before the organization of the judicial department under this constitution, shall remain valid, and shall pass to, and may be prosecuted in the name of the State. And all bonds executed to the Governor of this Territory, or to any other officer in his official capacity, shall pass over to the Governor of the State, or other proper State authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for, and recovered accordingly. All criminal prosecutions and penal actions, which have arisen, or may arise, before the organization of the judicial department under this constitution, and which shall then be

pending, may be prosecuted to judgment and execution in the name of the State.

5. All officers, civil and military, now holding their offices and appointments in this Territory under the authority of the United States, or under the authority of this Territory, shall continue to hold and execute their respective offices and appointments until superseded under this constitution.

6. The first general election under this constitution, shall be held at such time as the Governor of the Territory, by proclamation, may appoint, within three months after its adoption, for the election of a Governor, two Representatives in the Congress of the United States, (unless Congress shall provide for the election of one Representative,) members of the General Assembly, and one Auditor, Treasurer, and Secretary of State. Said election shall be conducted in accordance with the existing election laws of this Territory, and said Governor, Representatives in the Congress of the United States, Auditor, Treasurer, and Secretary of State, duly elected at said election, shall continue to discharge the duties of their respective offices for the time prescribed by this constitution, and until their successors are elected and qualified. The returns of said election shall be made in conformity to the existing laws of this Territory.

7. Until the first enumeration of the inhabitants of this State as directed by this Constitution, the following shall be the apportionment of the General Assembly:

The county of Lee shall be entitled to two Senators and five Representatives;

The county of Van Buren, two Senators and four Representatives;

The counties of Davis and Appanoose, one Senator and one Representative, jointly;

The counties of Wapello and Monroe, one Senator jointly, and one Representative each;

The counties of Marion, Polk, Dallas and Jasper, one Senator and two Representatives, jointly;

The county of Des Moines, two Senators and four Representatives;

The county of Henry, one Senator and three Representatives;

The county of Jefferson, one Senator and three Representatives;

The counties of Louisa and Washington, one Senator jointly, and one Representative, each;

The counties of Keokuk and Mahaska, one Senator jointly, and one Representative each;

The counties of Muscatine, Johnson and Iowa, one Senator and one Representative jointly, and Muscatine one Representative, and Johnson and Iowa one Representative jointly;

The counties of Scott and Clinton, one Senator jointly, and one Representative each;

The counties of Cedar, Linn and Benton, one Senator jointly, the county of Cedar one Representative, and the counties of Linn and Benton, one Representative jointly;

The counties of Jackson and Jones, one Senator and two Representatives;

The counties of Dubuque, Delaware, Clayton, Fayette, Buchanan and Blackhawk, two Senators, and two Representatives jointly;

And any country attached to any county for judicial purposes, shall, unless otherwise provided for, be considered as forming part of such county for election purposes.

8. The first meeting of the General Assembly under this Constitution shall be at such time as the Governor of the Territory may, by proclamation, appoint, within four months after its ratification by the people, at Iowa City, in Johnson county, which place shall be the Seat of Government of the State of Iowa, until removed by law.

Done in Convention, at Iowa City, this 18th day of May, in the year of our Lord, one thousand eight hundred and forty six, and of the Independence of the United States of America, the seventieth.

In Testimony Whereof, We have hereunto subscribed our names:

ENOS LOWE, President.

Thomas Dibble,	Josiah Kent,
Erastus Hoskins,	George Berry,
David Galland,	Socrates H. Tryon,
Sullifand S. Ross,	William Hubbell,
Shepherd Leffler,	Stewart Goodrell,
Curtis Bates,	Alvin Saunders,
William G. Coop,	Sylvester G. Matson,
John Ronalds,	S. A. Bissell,
S. B. Shelleday,	John Conrey,
David Olmsted,	William Steele,
Joseph H. Hedrick,	John J. Selman,
Sanford Harned,	James Grant,
G. W. Bowie,	Thomas McCraney,
George Hobson,	Francis K. O'Ferrall,
Wareham G. Clark,	J. Scott Richmam,
Henry P. Haun.	

Attest—WILLIAM THOMPSON, Secretary.

—*Reprinted from Journal of the Convention for the Formation of a Constitution for the State of Iowa, begun and held at Iowa City, on the first Monday of May, 1846, p. iii.*

ORDINANCE.

Be it ordained by the Convention assembled to form a Constitution for the State of Iowa, in behalf of the people of said State, that the following propositions shall be made to the Congress of the United States, which, if assented to by that body, shall be obligatory on this State.

1. Section number sixteen in every surveyed township of public lands, and where such section has been disposed of, other lands equivalent thereto, and as contiguous as may be,

shall be granted to the State for the use of common schools.

2. The seventy-two sections of land set apart and reserved for the use and support of a University by an act of Congress, approved on the twentieth of July one thousand eight hundred and forty, entitled "An act granting two townships of land for the use of a University in the Territory of Iowa," shall be applied solely to the use and support of such University in such manner as the General Assembly may direct.

3. That one quarter section of land in each township be granted to the State for the purpose of purchasing a common school library for the use of such township.

4. That five per cent of the net proceeds of the sales of all public lands lying within this State, which shall be sold by Congress after the admission of the State into the Union, shall be granted to the State for the use of common schools.

That in consideration of the grants specified in the four foregoing propositions, it is declared that this State will never interfere with the primary disposal of the soil within the same, by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bonafide purchasers thereof, and that no tax shall be imposed on lands, the property of the United States, and that in no case shall nonresident proprietors be taxed higher than resident.

—*Reprinted from Journal of the Convention for the Formation of a Constitution for the State of Iowa, begun and held at Iowa City on the first Monday of May, 1846, p. xx.*

THE VOTE IN AUGUST, 1846, ON THE CONSTITUTION OF 1846.

Abstract of votes given for and against the Constitution in the different Counties in the Territory of Iowa on the first Monday to-wit on the 3rd day of August. A. D. 1846.

COUNTIES	FOR	AGAINST
Cedar	244	214
Jefferson	639	566
Jasper	33	29
Clayton	152	199
Jones	109	154
Munroe	112	70
Marion	188	89
Jackson	588	166
Benton	40	17
Mahaska	268	292
Linn	391	183
Scott	296	245
Wapello	550	437
Davis	339	225
Van Buren	841	872
Appanoose	88	6
Keokuk	333	191
Iowa	36	12
Washington	231	389
Henry	428	825
Polk	87	168
Du Buque	395	597
Clinton	167	155
Muscatine	309	424
Des Moines	801	954
Lee	1287	785
Louisa	182	458
Johnson	358	314
	<hr/>	<hr/>
	9492	9036

I certify that this abstract of votes from the different above named counties, has this day been carefully compared with the several returns from said counties made to the Secretary of the Territory and found to be a correct exhibit of the same.
Executive Office,

Burlington, Iowa Territory, September 8th, A. D. 1846.

JAMES CLARKE.

—*Printed from the original manuscript as preserved in the office of the Secretary of the Commonwealth of Iowa.*

THE GOVERNOR'S PROCLAMATION.

PROCLAMATION.

Returns having been received at the office of the Secretary of the Territory of the votes taken for and against the Constitution, at the general election held on the third day of August last, in all the organized counties thereof except Delaware and Buchanan, in conformity to the provisions of "An act to provide for the election of Delegates to a Convention to form a Constitution and State Government," approved January 17, 1846; and the said votes so returned having been counted in the presence of the undersigned, Governor of the said Territory, and examined and compared as contemplated by law; It is hereby declared and made known, (in compliance with the spirit and intention of the provisions of said act,) that there were given, in the counties from which returns have been received, nine thousand, four hundred and ninety-two votes for the Constitution, and nine thousand and thirty-six votes against it, making a majority of *four hundred and fifty-six* votes in favor of the Constitution:

And Whereas, said majority exceeds by three hundred and seventy-nine votes the aggregate vote cast at the election held in August, 1845, for Delegate to Congress, in the counties not returned, thus making it manifest, in the absence of com-

plete returns, that a majority of the votes have been cast in favor of the adoption of the Constitution. It is therefore, conformably to the provisions of the statute, hereby proclaimed, that the Constitution for the State of Iowa, adopted in Convention on the eighteenth day of May, 1846, has been formally ratified and adopted by the people.

And Whereas, under the Constitution thus adopted, it is made the duty of the Governor of the Territory to designate, by proclamation, a day for the holding of the first general election for the selection of State officers, and members of the first State Legislature. Be it therefore known, that MONDAY, THE 26TH DAY OF OCTOBER NEXT, is the day fixed upon for the holding of said State election, at which time the qualified electors of Iowa will elect one Governor, two Representatives in Congress of the United States, one Secretary of State, one State Auditor, one State Treasurer, and such number of members of the Senate and House of Representatives of the State as are designated and provided for in article thirteen of said Constitution. Said elections, under said Constitution, are to be conducted in all respects according to the existing laws of the Territory, except only in such cases as the same may be found to conflict with the Constitution under which the election will be held.

In Testimony whereof, I have hereunto subscribed
L. S. my name, and caused the Seal of the Territory to be affixed.

Done at Burlington, this ninth day of September, in the year of our Lord one thousand eight hundred and forty-six, and of the Independence of the United States the seventy-first.

JAMES CLARKE.

By the Governor,

JESSE WILLIAMS,

Secretary of the Territory.

—*Reprinted from the Bloomington Herald, New Series, Vol. I. No. 22, September 11th, 1846.*

NUMBER VIII.

INTRODUCTION.

THE Constitution¹ which became the supreme law of the Commonwealth on the 28th day of December, 1846,² contained the following provision: "No corporate body shall hereafter be created, renewed, or extended, with the privilege of making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The General Assembly of this State shall prohibit, by law, any person or persons, association, company or corporation, from exercising the privileges of banking, or creating paper to circulate as money."³ This prohibition aimed to insure the people of the Commonwealth against the evils and abuses which at that time pervaded American banking operations. But the effect of the prohibition was to deny the people the benefits of banks without preventing the evils and abuses. For the Commonwealth was constantly flooded with bank notes, scrip, and shinplasters from the neighboring Commonwealths.⁴

¹ See No. VII. of this series, p. 190.

² See No. V. of this series, p. 130.

³ See No. VII. of this series, p. 205.

⁴ Cf. "Some Iowa Bank History," by H. W. Lathrop in *Iowa Historical Record*, Vol. XIII., p. 54. Also "Wildcat Banks," by A. G. Warner in *Transactions of the Nebraska Historical Society*, Vol. II., p. 22.

It was chiefly this anti-bank provision which necessitated an early revision or amendment of the Constitution of 1846. The ostensible object of the constitutional convention, voted by the people in August, 1856, was to remove the unsatisfactory prohibition.¹

In accordance with the act of the General Assembly, of January 24th, 1855,² the "convention to revise or amend" the Constitution of 1846 met in the Capitol at Iowa City on the 19th day of January, 1857,³ and adjourned on the 5th day of March of the same year. The Constitution submitted by this convention (properly termed the *Constitution of 1857*) was ratified by the people in August, 1857. But the proposition to amend the article on the "Right of Suffrage," by striking out the word "white," submitted at the same time, was defeated. The Constitution went into effect September 3d, 1857, on which day the Governor declared it to be the "supreme law of the State of Iowa."

Since its adoption the Constitution has been amended at four different times—1868, 1880, 1882, 1884.⁴ At no time, however, since 1857 have the people of the Commonwealth favored the calling of a constitutional convention.

The 13th, 14th, and 15th amendments to the Constitution of the United States were ratified by the General Assembly in 1866, 1868 and 1870 respectively.⁵

B. F. S.

¹ Cf. Debates of the Constitutional Convention of 1857, Vol. I., pp. 350, 351, 355, 367, 377.

² See p. 219 of this number.

³ Debates of the Convention, Vol. I., p. 5.

⁴ For the purport of the amendments, see contents of this number.

⁵ See joint Resolutions reprinted in this number.

THE CONVENTION OF 1857.

AN ACT PROVIDING FOR THE REVISION OR AMENDMENT OF THE CONSTITUTION OF THIS STATE.

SECTION I. *Be it enacted by the General Assembly of the State of Iowa,* That at the next general election in this State, to be holden on the first Monday of August, A. D. 1856, there shall be a poll opened in each township and election precinct, for the purpose of taking a vote of the people, for or against a convention to revise or amend the present constitution of this State.

§ 2. Voters desiring such a convention, shall have written or printed on their ballots, the words "*For a Convention,*" and those opposed, shall have written or printed on their ballots the words "*Against a Convention.*"

§ 3. The election shall be conducted in the same manner as the general elections of the State, and the poll books shall be returned and canvassed, as provided in the 25th chapter of the Code, and abstracts shall be forwarded to the Secretary of State, which abstracts shall be canvassed in the manner provided for the canvass of state officers.

§ 4. On or before the first day of October, A. D. 1856 the Governor shall issue his proclamation, declaring the result of said election and if a majority of the votes cast at said election shall be in favor of a convention as aforesaid, then an election of delegates to said convention shall be held on the Tuesday after the first Monday in November, in said year, and the election shall be conducted, and the returns made, according to the provisions of the Code, regulating general elections.

§ 5. The number of delegates shall correspond to the number of Senators in the General Assembly, according to the apportionment at the time of the election of said delegates, and each senatorial district shall constitute a district for the election of delegate.

§ 6. Said delegates shall possess the qualifications of Sen-

ators in the General Assembly, and shall meet in Convention at the then Capital of the State, on the third Monday in January, A. D. 1857, for the purpose of revising or amending the constitution of the State.

§ 7. Should a vacancy or vacancies at any time occur by death, resignation or otherwise, the Governor shall issue writs of election to fill the same, in the manner prescribed for filling vacancies of members of the General Assembly.

§ 8. Each delegate shall receive three dollars per day, from the State Treasury for each day's attendance in said convention, and three dollars for every twenty miles travel, in going to, and returning from said convention; the mileage to be computed by the usually traveled route.

§ 9. The Convention shall have power to appoint its own officers, and to fix their compensation; and shall also have power to provide the necessary printing for said convention; it shall also keep a journal of its proceedings, containing all amendments, revisions, or alterations, agreed upon, which journal shall be filed in the office of the Secretary of State, to be kept as other official papers of this State.

§ 10. Said revised or amended constitution, when agreed upon by the convention, shall be submitted to a vote of the people, for their adoption or rejection, and if a majority of the legally qualified electors shall approve the same, it shall then become the constitution and the supreme law of the land.

§ 11. The convention shall fix the time, and prescribe the manner of submitting the question to the people; it shall also provide for the publication of the proposed amendments a journal of its proceedings, and for the manner of canvassing the votes given for and against said amended constitution; it shall also have full power to make all necessary regulations, for the taking effect of the said amended, or revised constitution: *Provided*, That all elections contemplated in this Act, shall be conducted, as nearly as practicable, in the same manner as provided by law for the regulation of general elections in this State.

§ 12. The Secretary of State is hereby required to furnish a suitable room for the meeting of said delegates, and also to furnish stationery for the use of the convention which shall be paid for out of the State Treasury.

Approved January 24th, 1855.

I certify that the foregoing Act was published by direction of the Governor in the Iowa Capital Reporter on the 14th of February, and Iowa Republican on the 21st day of February, 1855.

GEO. W. McCLEARY,
Secretary of State.

—*Reprinted from Acts of the Fifth General Assembly of the State of Iowa, Ch. 78, p. 114.*

PROCLAMATION

WHEREAS, "At the general election in State of Iowa, held on the first Monday of August last, there was a poll opened in each township and election precinct, for the purpose of taking a vote of the people, for or against a Convention, to revise or amend the present Constitution of the State," of which election due returns have been made and the votes canvassed.

Now, Therefore, I, JAMES W. GRIMES, Governor of said State, do declare and make known, that there were polled for a Convention, thirty-two thousand, seven hundred and ninety votes, and against a Convention, fourteen thousand, one hundred and sixty-two votes, being a majority in favor of a Convention of eighteen thousand, six hundred and twenty-eight votes. And I do furthermore declare that an election of delegates to said Convention will be held on the Tuesday after the first Monday in November next, the election to be conducted and the returns made according to the provisions of the Code regulating general elections, and an act entitled,

"An act providing for the revision and amendment of the Constitution of this State," approved January 24th, 1855.

IN TESTIMONY WHEREOF, I have hereunto set my L. S. hand and caused the great seal of the State to be hereunto affixed.

Done at Iowa City, this tenth day of September, A. D. 1856.

JAMES W. GRIMES.

By the Governor:

GEO. W. McCLEARY,
Secretary of State.

—*Reprinted from the Washington Press (Iowa), Vol. I., No. 23, October 1st, 1856.*¹

THE CONSTITUTION OF 1857.

CONSTITUTION
OF THE
STATE OF IOWA.

WE, THE PEOPLE OF THE STATE OF IOWA, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of THE STATE OF IOWA, the boundaries whereof shall be as follows:

Beginning in the middle of the main channel of the Mississippi River, at a point due East of the middle of the mouth of the main channel of the Des Moines River, thence up the middle of the main channel of the said Des Moines River, to a point on said river where the Northern boundary line of

¹ The proclamation which is here reprinted from the *Washington Press* does not seem to have been preserved in the archives of the Commonwealth.

the State of Missouri—as established by the constitution of that State—adopted June 12th, 1820—crosses the said middle of the main channel of the said Des Moines River; thence Westwardly along the said Northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of main channel of the Missouri River; thence up the middle of the main channel of the said Missouri River to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollett's Map; thence up of the main channel of the said Big Sioux River, according to the said map, until it is intersected by the parallel of forty-three degrees and thirty minutes North latitude; thence East along said parallel of forty three degrees and thirty minutes until said parallel intersects the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said Mississippi River to the place of beginning.

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. All men are, by nature, free and equal, and have certain inalienable rights—among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it.

SEC. 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.

SEC. 4. No religious test shall be required as a qualification for any office, or public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion; and any party to any judicial proceeding shall have the right to use as a witness, or take the testimony of, any other person not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits may be witnesses, as provided by law.

SEC. 5. Any citizen of this State who may hereafter be engaged, either directly, or indirectly, in a duel, either as principal, or accessory before the fact, shall forever be disqualified from holding any office under the Constitution and laws of this State.

SEC. 6. All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

SEC. 7. Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech, or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appear to the jury that the matter charged as libelous was true, and was published with good motives and for justifiable ends, the party shall be acquitted.

SEC. 8. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

SEC. 9. The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by a jury of a

less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law.

SEC. 10. In all criminal prosecutions, and in cases involving the life, or liberty of an individual, the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation against him, to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compulsory process for his witnesses; and, to have the assistance of counsel.

SEC. 11. All offenses less than felony and in which the punishment does not exceed a fine of one hundred dollars, or imprisonment for thirty days, shall be tried summarily before a Justice of the Peace, or other officer authorized by law, on information under oath, without indictment, or the intervention of a grand jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher criminal offense, unless on presentment or indictment by a grand jury, except in cases arising in the army, or navy, or in the militia, when in actual service, in time of war or public danger.

SEC. 12. No person shall after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable, by sufficient sureties, except for capital offenses where the proof is evident, or the presumption great.

SEC. 13. The writ of habeas corpus shall not be suspended, or refused when application is made as required by law, unless in case of rebellion, or invasion the public safety may require it.

SEC. 14. The military shall be subordinate to the civil power. No standing army shall be kept up by the State in time of peace; and in time of war, no appropriation for a standing army shall be for a longer time than two years.

SEC. 15. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

SEC. 16. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them

aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open Court.

SEC. 17. Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted.

SEC. 18. Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

SEC. 19. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in case of fraud; and no person shall be imprisoned for a militia fine in time of peace.

SEC. 20. The people have the right freely to assemble together to counsel for the common good; to make known their opinions to their representatives and to petition for a redress of grievances.

SEC. 21. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

SEC. 22. Foreigners who are, or may hereafter become residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and descent of property, as native born citizens.

SEC. 23. There shall be no slavery in this State; nor shall there be involuntary servitude, unless for the punishment of crime.

SEC. 24. No lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid for a longer period than twenty years.

SEC. 25. This enumeration of rights shall not be construed to impair or deny others, retained by the people.

[SEC. 26.]¹

¹ At a special election held on June 27, 1882, the following amendment was added to the Bill of Rights as Sec. 26: "No person shall manufacture

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION I. Every white¹ male citizen of the United States, of the age of twenty one years, who shall have been a resident of this State six months next preceding the election, and of the County in which he claims his vote sixty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law.

SEC. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

SEC. 3. No elector shall be obliged to perform military duty on the day of election, except in time of war, or public danger.

SEC. 4. No person in the military, naval, or marine service of the United States shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place, or station within this State.

SEC. 5. No idiot, or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector.

SEC. 6. All elections by the people shall be by ballot.²

for sale, or sell, or keep for sale, as a beverage, any intoxicating liquors whatever, including ale, wine and beer. The General Assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provisions hereof."

But the Supreme Court, April 21, 1883, in the case of Koehler & Lange vs. Hill, reported in 60th Iowa, page 543, held, that owing to certain irregularities, the same was not legally submitted to the electors, and did not become a part of the constitution.

¹ Amended by striking out the word "white" at the general election in 1868.

² Amended at the general election in 1884, by adding: "The general election for state, district, county and township officers shall be held on the Tuesday next after the first Monday in November."

ARTICLE III.

OF THE DISTRIBUTION OF POWERS.

SECTION 1. The powers of the government of Iowa shall be divided into three separate departments—the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT.

SECTION 1. The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives; and the style of every law shall be, "Be it enacted by the General Assembly of the State of Iowa."

SEC. 2. The sessions of the General Assembly shall be biennial, and shall commence on the second Monday in January next ensuing the election of its members; unless the Governor of the State shall, in the meantime, convene the General Assembly by proclamation.

SEC. 3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the second Tuesday in October, except the years of the Presidential election, when the election shall be on the Tuesday next after the first Monday in November; and their term of office shall commence on the first day of January next after their election, and continue two years, and until their successors are elected and qualified.¹

SEC. 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, be a free white² male citizen of the United States,

¹ By an amendment adopted at the general election in 1884, elections now occur uniformly in November.

² Amended by striking out the words "free white," at the general election in 1880.

and shall have been an inhabitant of this State one year next preceding his election, and at the time of his election shall have had an actual residence of sixty days in the County, or District he may have been chosen to represent.

SEC. 5. Senators shall be chosen for the term of four years, at the same time and place as Representatives; they shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship.

SEC. 6. The number of Senators shall not be less than one third, nor more than one half the representative body; and shall be so classified by lot, that one class, being as nearly one half as possible, shall be elected every two years. When the number of Senators is increased, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal in numbers as practicable.

SEC. 7. Each house shall choose its own officers, and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

SEC. 8. A majority of each house shall constitute a quorum to transact business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

SEC. 9. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and, with the consent of two thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

SEC. 10. Every member of the General Assembly shall have the liberty to dissent from, or protest against any act or resolution which he may think injurious to the public, or an individual, and have the reasons for dissent entered on the journals; and the yeas and nays of the members of either house, on any

question, shall, at the desire of any two members present, be entered on the journals.

SEC. 11. Senators and Representatives, in all cases, except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

SEC. 12. When vacancies occur in either house, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies.

SEC. 13. The doors of each house shall be open, except on such occasions, as, in the opinion of the house, may require secrecy.

SEC. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 15. Bills may originate in either house, and may be amended, altered, or rejected by the other; and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses.

SEC. 16. Every bill which shall have passed the General Assembly, shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it originated, which shall enter the same upon their journal, and proceed to re-consider it; if, after such re-consideration, it again pass both houses, by yeas and nays, by a majority of two thirds of the members of each house, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by adjournment, prevent such return. Any bill submitted to the Governor for his approval during the last three days of a session of the General Assembly, shall be deposited by him in the office of the Secretary of State, within thirty days after the adjournment, with his approval, if approved by him, and with his objections, if he disapproves thereof.

SEC. 17. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly, 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. 18. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the General Assembly.

SEC. 19. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the members present.

SEC. 20. The Governor, Judges of the Supreme and District Courts, and other State officers, shall be liable to impeachment for any misdemeanor or malfeasance in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanors and malfeasance in office, in such manner as the General Assembly may provide.

SEC. 21. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

SEC. 22. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to hold a seat in the General Assembly: but offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmaster whose compensation does not exceed one hundred dollars per annum, or notary public, shall not be deemed lucrative.

SEC. 23. No person who may hereafter be a collector or holder of public monies, shall have a seat in either House of the General Assembly, or be eligible to hold any office of trust or profit in this State, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

SEC. 24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

SEC. 25. Each member of the first General Assembly under this Constitution, shall receive three dollars per diem while in session; and the further sum of three dollars for every twenty miles traveled, in going to and returning from the place where such session is held, by the nearest traveled route; after which they shall receive such compensation as shall be fixed by law; but no General Assembly shall have power to increase the compensation of its own members. And when convened in extra session they shall receive the same mileage and per diem compensation, as fixed by law for the regular session, and none other.

SEC. 26. No law of the General Assembly, passed at a regular session, of a public nature, shall take effect until the fourth day of July next after the passage thereof. Laws passed at a special session, shall take effect ninety days after the adjournment of the General Assembly by which they were passed. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the State.

SEC. 27. No divorce shall be granted by the General Assembly.

SEC. 28. No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed.

SEC. 29. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

SEC. 30. The General Assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for State, County, or road purposes;

For laying out, opening, and working roads or highways;

For changing the names of persons;

For the incorporation of cities and towns;

For vacating roads, town plats, streets, alleys, or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

SEC. 31. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly.

SEC. 32. Members of the General Assembly shall, before they enter upon 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 Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability." And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

SEC. 33. The General Assembly shall, in the years One thousand eight hundred and fifty nine, One thousand eight hundred and sixty three, One thousand eight hundred and sixty five, One thousand eight hundred and sixty seven, One thousand eight hundred and sixty nine, and One thousand eight hundred and seventy five, and every ten years thereafter, cause an enumeration to be made of all the white¹ inhabitants of the State.

SEC. 34. The number of senators shall, at the next session following each period of making such enumeration, and the next session following each United States census, be fixed by law, and apportioned among the several counties, according to the number of white² inhabitants in each.

SEC. 35. The Senate shall not consist of more than fifty members, nor the House of Representatives of more than one hundred; and they shall be apportioned among the several counties and representative districts of the State, according to the number of white³ inhabitants in each, upon ratios to be fixed by law; but no representative district shall contain more than four organized counties, and each district shall be entitled to at least one representative. Every county and district which shall have a number of inhabitants equal to one-half of the ratio fixed by law, shall be entitled to one representative; and any one county containing in addition to the ratio fixed by law, one half of that number, or more, shall be entitled to one additional representative. No floating district shall hereafter be formed.

SEC. 36. At its first session under this Constitution, and at every subsequent regular session, the General Assembly shall fix the ratio of representation, and also form into representative districts those counties which will not be entitled singly to a representative.

¹ Amended by striking out the word "white" at the general election in 1868.

² Amended by striking out the word "white" at the general election in 1868.

³ Amended by striking out the word "white" at the general election in 1868.

SEC. 37. When a congressional, senatorial, or representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district.

SEC. 38. In all elections by the General Assembly, the members thereof shall vote viva voce and the votes shall be entered on the journal.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

SECTION 1. The Supreme Executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of Iowa.

SEC. 2. The Governor shall be elected by the qualified electors at the time and place of voting for members of the General Assembly, and shall hold his office two years from the time of his installation, and until his successor is elected and qualified.

SEC. 3. There shall be a Lieutenant Governor, who shall hold his office two years, and be elected at the same time as the Governor. In voting for Governor and Lieutenant Governor, the electors shall designate for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor, and Lieutenant Governor, shall be sealed up and transmitted to the seat of government of the State, directed to the speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

SEC. 4. The persons respectively having the highest number of votes for Governor and Lieutenant Governor, shall be declared duly elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of said persons Governor, or Lieutenant Governor, as the case may be.

SEC. 5. Contested elections for Governor, or Lieutenant Governor, shall be determined by the General Assembly in such manner as may be prescribed by law.

SEC. 6. No person shall be eligible to the office of Governor, or Lieutenant Governor, who shall not have been a citizen of the United States, and a resident of the State, two years next preceding the election, and attained the age of thirty years at the time of said election.

SEC. 7. The Governor shall be commander in chief of the militia, the army, and navy of this State.

SEC. 8. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.

SEC. 9. He shall take care that the laws are faithfully executed.

SEC. 10. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

SEC. 11. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both Houses, when assembled, the purpose for which they shall have been convened.

SEC. 12. He shall communicate, by message, to the General Assembly, at every regular session, the condition of the State, and recommend such matters as he shall deem expedient.

SEC. 13. In case of disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he may think proper; but no such adjournment shall be beyond the time fixed for the regular meeting of the next General Assembly.

SEC. 14. No person shall, while holding any office under the authority of the United States, or this State, execute the office of Governor, or Lieutenant Governor, except as herein after expressly provided.

SEC. 15. The official term of the Governor, and Lieutenant Governor, shall commence on the second Monday of January next after their election, and continue for two years, and until their successors are elected and qualified. The Lieutenant Governor, while acting as Governor, shall receive the same pay as provided for Governor; and while presiding in the Senate, shall receive as compensation therefor, the same mileage and double the per diem pay provided for a Senator, and none other.

SEC. 16. The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting, when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and the reason therefor; and also all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

SEC. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the Governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the Lieutenant Governor.

SEC. 18. The Lieutenant Governor shall be President of the Senate, but shall only vote when the Senate is equally

divided; and in case of his absence, or impeachment, or when he shall exercise the office of Governor, the Senate shall chose a President pro tempore.

SEC. 19. If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

SEC. 20. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the Great Seal of the State of Iowa.

SEC. 21. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 22. A Secretary of State, Auditor of State and Treasurer of State, shall be elected by the qualified electors, who shall continue in office two years, and until their successors are elected and qualified; and perform such duties as may be required by law.

ARTICLE V.

JUDICIAL DEPARTMENT.

SECTION 1. The Judicial power shall be vested in a Supreme Court, District Courts, and such other Courts, inferior to the Supreme Court, as the General Assembly may, from time to time, establish.

SEC. 2. The Supreme Court shall consist of three Judges, two of whom shall constitute a quorum to hold Court.

SEC. 3. The Judges of the Supreme Court shall be elected by the qualified electors of the State, and shall hold their

Court at such time and place as the General Assembly may prescribe. The Judges of the Supreme Court so elected, shall be classified so that one Judge shall go out of office every two years; and the Judge holding the shortest term of office under such classification, shall be Chief Justice of the Court, during his term, and so on in rotation. After the expiration of their terms of office, under such classification, the term of each Judge of the Supreme Court shall be six years, and until his successor shall have been elected and qualified. The Judges of the Supreme Court shall be ineligible to any other office in the State, during the term for which they shall have been elected.

SEC. 4. The Supreme Court shall have appellate jurisdiction only in cases in chancery, and shall constitute a Court for the correction of errors at law, under such restrictions as the General Assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior Judicial tribunals throughout the State.

SEC. 5. The District Court shall consist of a single Judge, who shall be elected by the qualified electors of the District in which he resides. The Judge of the District Court shall hold his office for the term of four years, and until his successor shall have been elected and qualified; and shall be ineligible to any other office, except that of Judge of the Supreme Court, during the term for which he was elected.

SEC. 6. The District Court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law.

SEC. 7. The Judges of the Supreme and District Courts shall be conservators of the peace throughout the State.

SEC. 8. The style of all process shall be, "The State of Iowa," and all prosecutions shall be conducted in the name and by the authority of the same.

SEC. 9. The salary of each Judge of the Supreme Court shall be two thousand dollars per annum; and that of each District Judge, one thousand six hundred dollars per annum, until the y year Eighteen hundred and Sixty; after which time they shall severally receive such compensation as the General Assembly may, by law, prescribe; which compensation shall not be increased or diminished during the term for which they shall have been elected.

SEC. 10. The State shall be divided into eleven Judicial Districts; and after the year Eighteen hundred and sixty, the General Assembly may re-organize the Judicial Districts and increase or diminish the number of Districts, or the number of Judges of the said Court, and may increase the number of Judges of the Supreme Court; but such increase or diminution shall not be more than one District, or one Judge of either Court, at any one session; and no re-organization of the districts, or diminution of the number of Judges, shall have the effect of removing a Judge from office. Such re-organization of the districts, or any change in the boundaries thereof, or increase or diminution of the number of Judges, shall take place every four years thereafter, if necessary, and at no other time.¹

SEC. 11. The Judges of the Supreme and District Courts shall be chosen at the general election; and the term of office of each Judge shall commence on the first day of January next, after his election.

SEC. 12. The General Assembly shall provide, by law, for the election of an Attorney General by the people, whose term of office shall be two years, and until his successor shall have been elected and qualified.

¹ At the general election in 1884 the following amendment was added: "At any regular session of the General Assembly, the State may be divided into the necessary Judicial Districts for District Court purposes, or the said districts may be re-organized and the number of the districts and the Judges of said courts increased or diminished; but no re-organization of the districts or diminution of the Judges shall have the effect of removing a Judge from office."

SEC. 13. The qualified electors of each judicial district shall, at the time of the election of District Judge, elect a District Attorney, who shall be a resident of the district for which he is elected, and who shall hold his office for the term of four years, and until his successor shall have been elected and qualified.¹

SEC. 14. It shall be the duty of the General Assembly to provide for the carrying into effect of this article, and to provide for a general system of practice in all the Courts of this State.²

ARTICLE VI.

MILITIA.

SECTION 1. The militia of this State shall be composed of all able-bodied white³ male citizens, between the ages of eighteen and forty-five years, except such as are or may hereafter be exempt by the laws of the United States, or of this State, and shall be armed, equipped, and trained, as the General Assembly may provide by law.

SEC. 2. No person or persons conscientiously scrupulous of bearing arms shall be compelled to do military duty in time of peace; provided, that such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

SEC. 3. All commissioned officers of the militia, (staff

¹ At the general election in 1884 the following was substituted for section 13: "The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter, elect a county attorney, who shall be a resident of the county for which he is elected, and shall hold his office for two years, and until his successor shall have been elected and qualified."

² At the general election in 1884 the following was added to this section: "The grand jury may consist of any number of members, not less than five, nor more than fifteen, as the General Assembly may by law provide, or the General Assembly may provide for holding persons to answer for any criminal offence without the interference of a grand jury."

³ Amended by striking out the word "white," at the general election in 1868.

officers excepted), shall be elected by the persons liable to perform military duty, and shall be commissioned by the Governor.

ARTICLE VII.

STATE DEBTS.

SECTION 1. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the State shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the State.

SEC. 2. The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed the sum of two hundred and fifty thousand dollars; and the money arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

SEC. 3. All losses to the permanent, School, or University fund of this State, which shall have been occasioned by the defalcation, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the State, in favor of the respective fund, sustaining the loss, upon which not less than six per cent, annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized by the second section of this article.

SEC. 4. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money aris-

ing from the debts so contracted shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

SEC. 5. Except the debts hereinbefore specified in this article, no debt shall be hereafter contracted by, or on behalf of this State, unless such debt shall be authorized by some law for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax, sufficient to pay the interest on such debt, as it falls due, and also to pay and discharge the principal of such debt, within twenty years from the time of the contracting thereof; but no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt created thereby; and such law shall be published in at least one newspaper in each County, if one is published therein, throughout the State, for three months preceding the election at which it is submitted to the people.

SEC. 6. The Legislature may, at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may, at any time, forbid the contracting of any further debt, or liability, under such law; but the tax imposed by such law, in proportion to the debt or liability, which may have been contracted in pursuance thereof, shall remain in force and be irrevocable, and be annually collected, until the principal and interest are fully paid.

SEC. 7. Every law which imposes, continues, or revives a tax, shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

ARTICLE VIII.

CORPORATIONS.

SECTION 1. No corporation shall be created by special laws; but the General Assembly shall provide, by general laws, for the organization of all corporations hereafter to be created, except as herein after provided.

SEC. 2. The property of all corporations for pecuniary profit, shall be subject to taxation, the same as that of individuals.

SEC. 3. The State shall not become a stockholder in any corporation, nor shall it assume or pay the debt or liability of any corporation, unless incurred in time of war for the benefit of the state.

SEC. 4. No political or municipal corporation shall become a stockholder in any banking corporation, directly or indirectly.

SEC. 5. No act of the General Assembly, authorizing or creating corporations or associations with banking powers, nor amendments thereto shall take effect, or in any manner be in force, until the same shall have been submitted, separately, to the people, at a general or special election, as provided by law, to be held not less than three months after the passage of the act, and shall have been approved by a majority of all the electors voting for and against it at such election.

SEC. 6. Subject to the provisions of the foregoing section, the General Assembly may also provide for the establishment of a State Bank with branches.

SEC. 7. If a State Bank be established, it shall be founded on an actual specie basis, and the branches shall be mutually responsible for each other's liabilities upon all notes, bills, and other issues intended for circulation as money.

SEC. 8. If a general Banking law shall be enacted, it shall provide for the registry and countersigning, by an officer of State, of all bills, or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the State Treasurer, in United States stocks,

or in interest paying stocks of states in good credit and standing, to be rated at ten per cent. below their average value in the City of New York, for the thirty days next preceding their deposit; and in case of a depreciation of any portion of said stocks, to the amount of ten per cent. on the dollar, the bank or banks owning such stock shall be required to make up said deficiency by depositing additional stocks; and said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer, and to whom.

SEC. 9. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held for all of its liabilities, accruing while he or she remains such stockholder.

SEC. 10. In case of the insolvency of any banking institution, the bill-holders shall have a preference over its other creditors.

SEC. 11. The suspension of specie payment by banking institutions shall never be permitted or sanctioned.

SEC. 12. Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.

ARTICLE IX.

EDUCATION AND SCHOOL LANDS.

1ST. EDUCATION.

SECTION 1. The educational interest of the State, including Common Schools and other educational institutions, shall be under the management of a Board of Education, which

shall consist of the Lieutenant Governor, who shall be the presiding officer of the Board, and have the casting vote in case of a tie, and one member to be elected from each judicial district in the State.

SEC. 2. No person shall be eligible as a member of said Board who shall not have attained the age of twenty five years, and shall have been one year a citizen of the State.

SEC. 3. One member of said Board shall be chosen by the qualified electors of each district, and shall hold the office for the term of four years, and until his successor is elected and qualified. After the first election under this Constitution, the Board shall be divided, as nearly as practicable, into two equal classes, and the seats of the first class shall be vacated after the expiration of two years; and one half of the Board shall be chosen every two years thereafter.

SEC. 4. The first session of the Board of Education shall be held at the Seat of Government, on the first Monday of December, after their election; after which the General Assembly may fix the time and place of meeting.

SEC. 5. The session of the Board shall be limited to twenty days, and but one session shall be held in any one year, except upon extraordinary occasions, when upon the recommendation of two thirds of the Board, the Governor may order a special session.

SEC. 6. The Board of Education shall appoint a Secretary, who shall be the executive officer of the Board, and perform such duties as may be imposed upon him by the Board, and the laws of the state. They shall keep a journal of their proceedings, which shall be published and distributed in the same manner as the journals of the General Assembly.

SEC. 7. All rules and regulations made by the Board shall be published and distributed to the several Counties, Townships, and School Districts, as may be provided for by the Board, and when so made, published and distributed, they shall have the force and effect of law.

SEC. 8. The Board of Education shall have full power and

authority to legislate and make all needful rules and regulations in relation to Common Schools, and other educational institutions, that are instituted, to receive aid from the School or University fund of this state; but all acts, rules, and regulations of said Board may be altered, amended or repealed by the General Assembly; and when so altered, amended, or repealed they shall not be re-enacted by the Board of Education.

SEC. 9. The Governor of the State shall be, *ex officio*, a member of said Board.

SEC. 10. The Board shall have no power to levy taxes, or make appropriations of money. Their contingent expenses shall be provided for by the General Assembly.

SEC. 11. The State University shall be established at one place without branches at any other place, and the University fund shall be applied to that Institution and no other.

SEC. 12. The Board of Education shall provide for the education of all the youths of the State, through a system of Common Schools, and such schools shall be organized and kept in each school district at least three months in each year. Any district failing, for two consecutive years, to organize and keep up a school as aforesaid may be deprived of their portion of the school fund.

SEC. 13. The members of the Board of Education shall each receive the same per diem during the time of their session, and mileage going to and returning therefrom, as members of the General Assembly.

SEC. 14. A majority of the Board shall constitute a quorum for the transaction of business; but no rule, regulation, or law, for the government of Common Schools or other educational institutions, shall pass without the concurrence of a majority of all the members of the Board, which shall be expressed by the yeas and nays on the final passage. The style of all acts of the Board shall be, "Be it enacted by the Board of Education of the State of Iowa."

SEC. 15. At any time after the year One thousand eight

hundred and sixty three, the General Assembly shall have power to abolish or re-organize said Board of Education, and provide for the educational interest of the State in any other manner that to them shall seem best and proper.

2ND. SCHOOL FUNDS AND SCHOOL LANDS.

SECTION 1. The educational and school funds and lands, shall be under the control and management of the General Assembly of this state.

SEC. 2. The University lands, and the proceeds thereof, and all monies belonging to said fund shall be a permanent fund for the sole use of the State University. The interest arising from the same shall be annually appropriated for the support and benefit of said University.

SEC. 3. The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this State, for the support of schools, which may have been, or shall hereafter be sold, or disposed of, and the five hundred thousand acres of land granted to the new States, under an act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved in the year of our Lord one thousand eight hundred and forty one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as has been or may hereafter be granted by Congress, on the sale of lands in this State, shall be, and remain a perpetual fund, the interest of which, together with all rents of the unsold lands, and such other means as the General Assembly may provide, shall be inviolably appropriated to the support of Common schools throughout the State.

SEC. 4. The money which may have been or shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines collected in the several Counties for any breach of the penal laws, shall be exclusively

applied, in the several Counties in which such money is paid, or fine collected, among the several school districts of said Counties, in proportion to the number of youths subject to enumeration in such districts, to the support of Common schools, or the establishment of libraries, as the Board of Education shall, from time to time provide.

SEC. 5. The General Assembly shall take measures for the protection, improvement, or other disposition of such lands as have been, or may hereafter be reserved, or granted by the United States, or any person or persons, to this State, for the use of the University, and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be, and remain, a permanent fund, the interest of which shall be applied to the support of said University, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the General Assembly as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

SEC. 6. The financial agents of the school funds shall be the same, that by law, receive and control the State and county revenue for other civil purposes, under such regulations as may be provided by law.

SEC. 7. The money subject to the support and maintenance of common schools shall be distributed to the districts in proportion to the number of youths, between the ages of five and twenty-one years, in such manner as may be provided by the General Assembly.

ARTICLE X.

AMENDMENTS TO THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in either House of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such pro-

posed amendment 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, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the General Assembly 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 General Assembly to submit such proposed amendment or amendments to the people, in such manner, and at such time as the General Assembly shall provide; 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 General Assembly, voting thereon, such amendment or amendments shall become a part of the Constitution of this State.

SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

SEC. 3. At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such times as the General Assembly 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 General Assembly; and in case a majority of the electors so qualified, voting at such election, for and against such proposition, shall decide in favor of a Convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such Convention.

ARTICLE XI.

MISCELLANEOUS.

SECTION 1. The jurisdiction of Justices of the Peace shall extend to all civil cases, (except cases in chancery, and cases

where the question of title to real estate may arise,) where the amount in controversy does not exceed one hundred dollars, and by the consent of parties may be extended to any amount not exceeding three hundred dollars.

SEC. 2. No new County shall be hereafter created containing less than four hundred and thirty two square miles; nor shall the territory of any organized county be reduced below that area; except the County of Worth, and the counties west of it, along the Northern boundary of this State, may be organized without additional territory.

SEC. 3. No county, or other political or municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding five per centum on the value of the taxable property within such county or corporation—to be ascertained by the last State and county tax lists, previous to the incurring of such indebtedness.

SEC. 4. The boundaries of the State may be enlarged, with the consent of Congress and the General Assembly.

SEC. 5. Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office.

SEC. 6. In all cases of elections to fill vacancies in office occurring before the expiration of a full term, the person so elected shall hold for the residue of the unexpired term; and all persons appointed to fill vacancies in office, shall hold until the next general election, and until their successors are elected and qualified.

SEC. 7. The General Assembly shall not locate any of the public lands, which have been, or may be granted by Congress to this State, and the location of which may be given to the General Assembly, upon lands actually settled, without the consent of the occupant. The extent of the claim of such occupant, so exempted, shall not exceed three hundred and twenty acres.

SEC. 8. The seat of Government is hereby permanently established, as now fixed by law, at the City of Des Moines, in the County of Polk; and the State University, at Iowa City, in the County of Johnson.

ARTICLE XII.

SCHEDULE.

SECTION I. This Constitution shall be the supreme law of the State, and any law inconsistent therewith, shall be void. The General Assembly shall pass all laws necessary to carry this Constitution into effect.

SEC. 2. All laws now in force and not inconsistent with this Constitution, shall remain in force until they shall expire or be repealed.

SEC. 3. All indictments, prosecutions, suits, pleas, complaints, process, and other proceedings pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as now provided by law; and all offences, misdemeanors, and crimes that may have been committed before the taking effect of this Constitution, shall be subject to indictment, trial and punishment, in the same manner as they would have been, had not this Constitution been made.

SEC. 4. All fines, penalties, or forfeitures due, or to become due, or accruing to the State, or to any County therein, or to the school fund, shall inure to the State, county, or school fund, in the manner prescribed by law.

SEC. 5. All bonds executed to the State, or to any officer in his official capacity, shall remain in force and inure to the use of those concerned.

SEC. 6. The first election under this Constitution shall be held on the second Tuesday in October, in the year One thousand eight hundred and fifty seven, at which time the electors of the State shall elect the Governor and Lieutenant

Governor. There shall also be elected at such election, the successors of such State Senators as were elected at the August election, in the year One thousand eight hundred and fifty-four, and members of the House of Representatives, who shall be elected in accordance with the act of apportionment, enacted at the session of the General Assembly which commenced on the first Monday of December One thousand eight hundred and fifty six.

SEC. 7. The first election for Secretary, Auditor, and Treasurer of State, Attorney General, District Judges, Members of the Board of Education, District Attorneys, members of Congress, and such State officers as shall be elected at the April election, in the year One thousand eight hundred and fifty seven, (except the Superintendent of Public Instruction,) and such county officers as were elected at the August election, in the year One thousand eight hundred and fifty six, except Prosecuting Attorneys, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-eight: *Provided*, That the time for which any District Judge or other State or County officer elected at the April election in the year One thousand eight hundred and fifty eight, shall not extend beyond the time fixed for filling like offices at the October election in the year one thousand eight hundred and fifty eight.

SEC. 8. The first election for Judges of the Supreme Court, and such County officers as shall be elected at the August election, in the year one thousand eight hundred and fifty-seven, shall be held on the second Tuesday of October, in the year One thousand eight hundred and fifty-nine.

SEC. 9. The first regular session of the General Assembly shall be held in the year One thousand eight hundred and fifty-eight, commencing on the second Monday of January of said year.

SEC. 10. Senators elected at the August election, in the year one thousand eight hundred and fifty-six, shall continue in office until the second Tuesday of October, in the year one

thousand eight hundred and fifty-nine, at which time their successors shall be elected as may be prescribed by law.

SEC. 11. Every person elected by popular vote, by a vote of the General Assembly, or who may hold office by executive appointment, which office is continued by this Constitution, and every person who shall be so elected or appointed, to any such office, before the taking effect of this constitution, (except as in this Constitution otherwise provided,) shall continue in office until the term for which such person has been or may be elected or appointed shall expire; but no such person shall continue in office after the taking effect of this Constitution, for a longer period than the term of such office, in this Constitution prescribed.

SEC. 12. The General Assembly, at the first session under this Constitution, shall district the State into eleven Judicial Districts, for District Court purposes; and shall also provide for the apportionment of the members of the General Assembly in accordance with the provisions of this Constitution.

SEC. 13. This Constitution shall be submitted to the electors of the State at the August election, in the year one thousand eight hundred and fifty-seven, in the several election districts in this State. The ballots at such election shall be written or printed as follows: Those in favor of the Constitution, "New Constitution—Yes." Those against the Constitution, "New Constitution—No." The election shall be conducted in the same manner as the general elections of the State, and the poll-books shall be returned and canvassed as provided in the twenty-fifth chapter of the code, and abstracts shall be forwarded to the Secretary of State, which abstracts shall be canvassed in the manner provided for the canvass of State officers. And if it shall appear that a majority of all the votes cast at such election for and against this Constitution are in favor of the same, the Governor shall immediately issue his proclamation stating that fact, and such Constitution shall be the Constitution of the State of Iowa, and shall take effect from and after the publication of said proclamation.

SEC. 14. At the same election that this Constitution is submitted to the people for its adoption or rejection, a proposition to amend the same by striking out the word "white" from the article on the Right of Suffrage, shall be separately submitted to the electors of this State for adoption or rejection in the manner following—Namely: A separate ballot may be given by every person having a right to vote at said election, to be deposited in a separate box; And those given for the adoption of such proposition shall have the words, "Shall the word 'White' be stricken out of the Article on the Right of Suffrage? Yes." And those given against the proposition shall have the words, "Shall the word 'White' be stricken out of the Article on the Right of Suffrage? No." And if at said election the number of ballots cast in favor of said proposition shall be equal to a majority of those cast for and against this Constitution, then said word "White" shall be stricken from said Article and be no part thereof.¹

SEC. 15. Until otherwise directed by law, the County of Mills shall be in and a part of the sixth Judicial District of this State.

Done in Convention at Iowa City, this fifth day of March in the year of our Lord One thousand eight hundred and fifty seven, and of the Independence of the United States of America, the eighty first.

In testimony whereof we have hereunto subscribed our names:

Timothy Day	M. W. Robinson
S. G. Winchester	Lewis Todhunter
David Bunker	John Edwards
D. P. Palmer	J. C. Traer
Geo. W. Ells	James F. Wilson.
J. C. Hall	Amos Harris
John H. Peters	Jno T. Clark
Wm. A. Warren	S. Ayres.
H. W. Gray	Harvey J. Skiff

¹ This proposition was voted down by a large majority.

Robt. Gower	J. A. Parvin
H. D. Gibson	W. Penn. Clarke
Thomas Seely	Jeremiah Hollingsworth
A. H. Marvin	Wm. Patterson
J. H. Emerson	D. W. Price
R. L. B. Clarke	Alpheus Scott
James A. Young	George Gillaspay
H. D. Solomon	Edward Johnston
	Aylett R. Cotton

FRANCIS SPRINGER, President.

Attest;—TH: J. SAUNDERS, Secretary.

E. N. BATES, Asst. Secretary.

—Printed from the original manuscript copy as preserved in the office of the Secretary of the Commonwealth of Iowa.

PROCLAMATION.

WHEREAS an instrument known as the "New Constitution of the State of Iowa" adopted by the constitutional convention of said State on the fifth day of March A. D. 1857 was submitted to the qualified electors of said State at the annual election held on Monday the third day of August 1857 for their approval or rejection.

And whereas an official canvass of the votes cast at said election shows that there were Forty thousand three hundred and eleven votes cast for the adoption of said Constitution and Thirty eight thousand six hundred and eighty one votes were cast against its adoption, leaving a majority of sixteen hundred and thirty votes in favor of its adoption.

Now therefore I, JAMES W. GRIMES, Governor of said State, by virtue of the authority conferred upon me, hereby declare

the said New Constitution to be adopted, and declare it to be the supreme law of the State of Iowa.

In testimony whereof I have hereunto set my hand and affixed the Great Seal of the State of Iowa.

L. S. Done at Iowa City this Third day of September A. D. 1857 of the Independence of the United States the eighty second and of the State of Iowa the eleventh.

JAMES W. GRIMES.

By the Governor,

ELIJAH SELLS,

Secretary of State.

—Printed from Executive Register, No. I., p. 394. Manuscript copy of Register in office of the Secretary of the Commonwealth of Iowa.

THE VOTE IN AUGUST, 1857, ON THE CONSTITUTION OF 1857.

The following is an abstract of the votes cast in the several counties of the Commonwealth for and against the Constitution of 1857:

COUNTIES	FOR	AGAINST
Adair	107	15
Adams	98	72
Allamakee	480	679
Appanoose	388	1004
Audubon	17	57
Benton	535	622
Black Hawk	609	618
Boone	248	456
Bremer	348	91
Butler	198	189

COUNTIES	FOR	AGAINST
Buchanan	649	583
Calhoun	34	3
Carroll	45	
Cass	119	80
Cedar	826	692
Cerro Gordo	118	48
Chickasaw	389	296
Clarke	458	381
Clayton	866	1395
Clinton	812	676
Crawford	37	20
Dallas	476	361
Davis	574	1202
Decatur	254	644
Delaware	592	842
Des Moines	1465	1130
Dickinson		
Dubuque	539	2023
Fayette	653	667
Floyd	312	198
Franklin	62	129
Fremont	124	389
Greene	112	73
Grundy	51	40
Guthrie	245	213
Hamilton	82	199
Harrison	193	196
Hardin	549	303
Henry	1205	624
Howard	273	118
Humbolt	26	1
Iowa	424	459
Jackson	581	1077
Jasper	836	393
Jefferson	1082	1038

COUNTIES	FOR	AGAINST
Johnson	847	1257
Jones	784	772
Keokuk	789	759
Kossuth	61	21
Lee	2721	661
Linn	1307	955
Louisa	698	473
Lucas		
Madison	625	656
Mahaska	926	872
Marion	819	1417
Marshall	231	641
Mills	253	346
Mitchell	290	224
Monona	28	119
Monroe	548	695
Montgomery	17	31
Muscatine	1108	778
Page	142	309
Polk	1892	106
Pottawattamie	264	418
Poweshiek	653	221
Ringgold	183	50
Scott	1414	1242
Shelby	100	14
Story	280	359
Sac	37	51
Tama	386	298
Taylor	221	157
Union	109	101
Van Buren	1062	1508
Wapello	938	1249
Warren	881	361
Washington	813	709
Wayne		

COUNTIES	FOR	AGAINST
Webster	142	264
Winneshiek	590	241
Woodbury		
Wright	61	50
Total	<u>40311</u>	<u>38681</u>

—Printed from the original manuscript records as preserved in the office of the Secretary of the Commonwealth of Iowa.

THE AMENDMENTS OF 1868.

A PROPOSAL TO AMEND THE CONSTITUTION OF THE STATE OF IOWA.

Be it resolved by the General Assembly of the State of Iowa, That the following amendments to the Constitution of the State of Iowa are hereby proposed:

- 1st. Strike the word "white" from Section 1 of Article 2 thereof.
- 2d. Strike the word "white" from Section 33 of Article 3 thereof.
- 3d. Strike the word "white" from Section 34 of Article 3 thereof.
- 4th. Strike the word "white" from Section 35 of Article 3 thereof.
- 5th. Strike the word "white" from Section 1 of Article 6 thereof.
- 6th. Add to Section 5 of Article 2, the following words: Nor shall any person who has committed or may hereafter commit the crime of treason against the United States, nor any person who has absconded for the purpose of avoiding any military conscription or draft, ordered by the authority of the United States or this State, be entitled to the privilege of an elector, or qualified to hold any office under the constitu-

tion and laws of this State. In order that the provisions of this section may be effectually enforced, the Legislature may by law prescribe a suitable Oath to be taken under such limitations as it may deem proper, by persons offering to qualify for office or to vote, to the effect that they are not subject to the disabilities of this section.

Approved April 2d, 1866.

NOTE—This resolution being considered of importance was numbered with the laws in order of its filing, and is accordingly chaptered and published as a law.

James Wright, Secretary of State.

—Reprinted from Acts of the Eleventh General Assembly of the State of Iowa, p. 106.

AN ACT TO PROVIDE FOR DUE REFERENCE AND PUBLICATION OF PROPOSALS TO AMEND THE CONSTITUTION OF THE STATE OF IOWA.

1. That the Resolutions proposing to amend the Constitution of the State of Iowa, which have been passed at the present session of the General Assembly of the said State, are hereby referred to the Legislature to be chosen at the next general election.

2. The Secretary of State shall cause the same to be published for three months previous to the time of the next general election of members of the Legislature, in one newspaper in each Congressional District.

Approved April 2d, 1866.

—Reprinted from Acts of the Eleventh General Assembly of the State of Iowa, p. 108.

JOINT RESOLUTION AGREEING TO, RATIFYING, AND CONFIRMING AMENDMENTS TO THE STATE CONSTITUTION.

WHEREAS, The Eleventh General Assembly of the State

of Iowa did, in due form, by a majority of the members elected to each of the two houses, agree to proposed amendments to the constitution as follows:

1st. Strike the word "White" from section 1 of article 2 thereof;

2d. Strike the word "White" from section 33 of article 3 thereof;

3d. Strike the word "White" from section 34 of article 3 thereof;

4th. Strike the word "White" from section 35 of article 3 thereof;

5th. Strike the word "White" from section 1 of article 6 thereof; and entered the same on the Journals thereof, and referred the same to the legislature to be chosen at the next general election, and the same having been published, as provided by law, for three months previous to the time of making the choice of this the Twelfth General Assembly: therefore,

Be it resolved by the General Assembly of the State of Iowa, That the said amendments aforesaid, and each of them, are hereby ratified, agreed to, and confirmed, and the same shall be submitted to the people for their approval, as this General Assembly shall provide.

Approved March 31, 1868.

—*Reprinted from Acts of the Twelfth General Assembly of the State of Iowa, p. 290.*

AN ACT PROVIDING FOR THE SUBMISSION OF CERTAIN PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE STATE OF IOWA, TO THE PEOPLE THEREOF, AT THE NEXT GENERAL ELECTION THEREIN.

WHEREAS, The Eleventh General Assembly of the State of Iowa did propose certain amendments to the constitution of said State, and did, by a majority of the members elected to each of the two houses thereof, agree to the same; and did

cause the same to be entered on their journals with the yeas and nays taken thereon, and did refer the same to the legislature chosen at the general election now last past, and did cause the same to be published, as provided by law, for three months previous to such election; and

WHEREAS, The legislature chosen at such election, to-wit, the 12th General Assembly of the State of Iowa, has, by a majority of all the members elected to each house thereof, agreed to the following of said proposed amendments to the constitution of the State of Iowa, to-wit:

1st. Strike the word "white" from section one of article two thereof.

2d. Strike the word "white" from section thirty-three of article three thereof.

3d. Strike the word "white" from section thirty-four of article three thereof.

4th. Strike the word "white" from section thirty-five of article three thereof.

5th. Strike the word "white" from section one of article six thereof. Therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That said amendments are hereby submitted to the people of the State of Iowa for their approval and ratification at the next general election; and it shall be the duty of the Governor to set forth said amendments and the submission thereof in his proclamation of such election.

SEC. 2. Those electors voting to approve and ratify the first of said amendments, shall have written or printed on their ballots the words, "For the first amendment." Those electors voting not to approve and ratify said first amendment, shall have written or printed on their ballots the words, "Against the first amendment."

SEC. 3. Those electors voting to approve and ratify the second of said amendments, shall have written or printed on their ballots the words, "For the second amendment." Those electors voting not to approve and ratify said second amend-

ment, shall have written or printed on their ballots the words, "Against the second amendment."

SEC. 4. Those electors voting to approve and ratify the third of said amendments, shall have written or printed on their ballots the words, "For the third amendment." Those electors voting not to approve and ratify said third amendment, shall have written or printed on their ballots the words, "Against the third amendment."

SEC. 5. Those electors voting to approve and ratify the fourth of said amendments, shall have written or printed on their ballots the words, "For the fourth amendment." Those electors voting not to approve and ratify said fourth amendment, shall have written or printed on their ballots the words, "Against the fourth amendment."

SEC. 6. Those electors voting to approve and ratify the fifth of said amendments, shall have written or printed on their ballots the words, "For the fifth amendment." Those electors voting not to approve and ratify said fifth amendment, shall have written or printed on their ballots the words, "Against the fifth amendment."

SEC. 7. The votes cast for and against the approval and ratification of each of said amendments, in the manner aforesaid, shall be canvassed and returned in all respects as the vote for the office of Secretary of State is canvassed and returned, except that the result shall be certified in duplicate by the board of State canvassers, one certificate being deposited in the office of the Governor, and the other in the office of the Secretary of State.

SEC. 8. In case either of said amendments shall be approved and ratified by a majority of the electors qualified to vote for members of the General Assembly voting thereon, the Governor shall forthwith issue his proclamation setting forth such approval and ratification, and declaring such amendment, so approved and ratified, to be a part of the Constitution of the State of Iowa, which proclamation shall be

transmitted and published the same as proclamations of election.

Approved April 2, 1868.

—Reprinted from Acts of the Twelfth General Assembly of the State of Iowa, p. 931.

PROCLAMATION.

To all to whom these Presents may come, greeting; Know Ye, That whereas the Eleventh General Assembly of the State of Iowa passed a resolution which was approved April 2d, 1866, and which is in the words following namely:

"Be it Resolved by the General Assembly of the State of Iowa, That the following amendments to the Constitution of the State of Iowa are hereby proposed:

"1st. Strike the word 'white' from Section 1, of Article 2 thereof.

"2d. Strike the word 'white' from Section 33, of Article 3 thereof.

"3d. Strike the word 'white' from Section 34, of Article 3 thereof.

"4th. Strike the word 'white' from Section 35, Article 3 thereof.

"5th. Strike the word 'white' from Section 1, of Article 6 thereof."

And whereas the Twelfth General Assembly of the State of Iowa passed a resolution which was approved March 31st, 1868; and which is in words the following namely: "Whereas, The General Assembly of the State of Iowa did in due form, by a majority of the members elected to each of the two houses, agree to proposed amendments to the Constitution as follows:

1st. Strike the word "white" from Section 1, of Article 2 thereof.

2d. Strike the word "white" from Section 33, of Article 3 thereof.

3d. Strike the word "white" from Section 34, of Article 3 thereof.

4th. Strike the word "white" from Section 35, Article 3 thereof.

5th. Strike the word "white" from Section 1, of Article 6 thereof; and entered the same on the journals thereof, and referred the same to the legislature to be chosen at the next general election, and the same having been published, as provided by law, for three months previous to the time of making the choice of this the Twelfth General Assembly; therefore,

Be it Resolved by the General Assembly of the State of Iowa, That the said amendments aforesaid, and each of them, are hereby ratified, agreed to, and confirmed, and the same shall be submitted to the people for their approval, as this General Assembly shall provide."

And Whereas, The said Twelfth General Assembly, passed an Act, which was approved April 2, 1868, "Providing for the submission of certain proposed amendments to the Constitution of the State of Iowa to the People thereof, at the next general election thereof," and the said amendments were submitted to the people of the State of Iowa, in the manner and at the time prescribed by the terms of said act;

And whereas, an official canvass of the votes cast at the said general election shows that there were one hundred and five thousand three hundred and eighty-four (105,384) votes cast for the adoption of the first of said amendments, and eighty-one one hundred and nineteen (81,119) votes cast against the adoption of said first amendment, and that there were one hundred and five thousand four hundred and ninety-eight (105,498) votes cast for the adoption of the second of the said amendments, and eighty-one thousand and fifty (81,050) votes against the adoption of said second amendment, and that there were one hundred and five thousand five hundred and twenty-four (105,524) votes cast for the adoption of the third of

the said amendments, and eighty-one thousand and thirty-eight (81,038) votes cast against the adoption of said third amendment, and that there were one hundred and five thousand five hundred and two (105,502) votes cast for the adoption of the fourth of said amendments, and eighty thousand nine hundred and twenty-nine (80,929) votes cast against the adoption of said fourth amendment; and that there were one hundred and five thousand five hundred and fifteen (105,515) votes cast for the adoption of the fifth of said amendments, and eighty-one thousand and fifty (81,050) votes cast against the adoption of said fifth amendment;

Now therefore, I, SAMUEL MERRILL, Governor of the State of Iowa, by virtue of the authority vested in me, do hereby proclaim that each and all of the amendments aforesaid have become valid to all intents and purposes as part of the Constitution of the State of Iowa,

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Iowa. Done at Des Moines, this eighth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, of the Independence of the United States the ninety-third, and of the State of Iowa the twenty second.

SAMUEL MERRILL.

By the Governor:

ED WRIGHT,

Secretary of State.

—Printed from *Executive Register, Vol. II., p. 540. Manuscript copy of Register as preserved in the office of the Secretary of the Commonwealth of Iowa.*

ACTS RELATING TO PROPOSITIONS TO AMEND
THE CONSTITUTION.

AN ACT PROVIDING FOR THE PUBLICATION OF PROPOSITIONS TO AMEND THE CONSTITUTION AND FOR OTHER PURPOSES CONNECTED THEREWITH.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That whenever any proposition to amend the constitution has passed the general assembly and [been] referred to the next succeeding legislature as provided in section 1, article ten of the constitution, the secretary of state shall cause the same to be published in two newspapers of general circulation in each congressional district in the state for the time provided in section one, article ten of the constitution; and the fact of such publication having been made shall be verified by the affidavits of the publishers of such newspapers and such affidavits together with the certificate of the secretary of state that he had designated the newspapers in which the publication was made shall be filed, preserved and recorded in a book kept for that purpose in the office of the secretary of state; and the secretary of state shall report his action in the premises to the next succeeding general assembly.

SEC. 2. Whenever a proposition to amend the constitution shall have passed the general assembly and been agreed to by the next succeeding general assembly as provided in section one, article ten of the constitution, the same shall be submitted to the qualified electors at the next ensuing general election; and the ballots relating to such amendment or amendments shall be separate from the ballots for officers cast at such election, and shall be deposited in boxes to be provided by the judges of election, separate from said ballots so cast for officers; and there shall be written or printed on such ballots the entire proposed amendment or amendments with the word "for" or "against"—as the elector may desire—preceding each amendment voted upon; and the election shall be conducted in the same manner as the election for state

officers, except as herein otherwise provided; and the canvass shall be in the same manner, and by the same officers and like returns made thereof as of the ballots cast for the secretary of state; and the board of state canvassers shall declare the results and enter the same of record in the book mentioned in section one of this act, immediately following and in connection with the proofs of publication.

SEC. 3. Whenever a proposition to amend the constitution is submitted to a vote of the electors, the governor shall include such proposed amendment in his proclamation provided for in section 577 of the Code.

SEC. 4. Expenses incurred under the provisions of this act, shall be audited and allowed by the executive council and paid out of any money in the state treasury not otherwise appropriated.

Approved March 15, 1876.

—*Reprinted from Acts of the Sixteenth General Assembly of the State of Iowa, p. 99.*

A BILL FOR AN ACT TO AMEND CHAPTER 114, OF THE ACTS OF THE SIXTEENTH GENERAL ASSEMBLY, RELATING TO THE SUBMISSION OF AMENDMENTS TO THE CONSTITUTION TO A VOTE OF THE PEOPLE.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That chapter 114 of the acts of the sixteenth general assembly be and the same is hereby amended as follows: Add after the word "constitution," in the fourth line of section 2, of said act, the following words: "When no other time is fixed by such general assembly for its submission to the people."

SEC. 2. That said chapter be and the same is hereby further amended by adding thereto, as section five thereof, the following:

SEC. 5. The general assembly to which a proposition to

amend the constitution has been referred by the last preceding general assembly, and which has agreed to such proposed amendment, may provide for its submission to the people at a special election for that purpose, at such time as the general assembly may prescribe, proclamation for which election shall be made by the governor, and the same shall in all respects be governed and conducted as prescribed in this act for submission of a constitutional amendment at a general election so far as applicable.

SEC. 3. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and Iowa State Leader, newspapers published at Des Moines, Iowa.

Approved, February 11, 1882.

□ I hereby certify that the foregoing act was published in the *Iowa State Leader* February 13, and *Iowa State Register* February 14, 1882.

J. A. T. HULL, *Secretary of State.*

—*Reprinted from Acts of the Nineteenth General Assembly of the State of Iowa, p. 8.*

THE AMENDMENT OF 1880.

PROPOSING TO AMEND SECTION FOUR (4) OF ARTICLE THREE (3) OF THE CONSTITUTION OF THE STATE OF IOWA, AND TO PROVIDE FOR ITS REFERENCE AND PUBLICATION.

Be it resolved by the General Assembly of the State of Iowa:

That the following amendment to the constitution of the state, be, and the same is hereby proposed, viz:

Strike out the words, "free white," from the third line of section four (4) of article three (3) of said constitution, relating to the legislative department.

Resolved, further, That the foregoing proposed amendment to the constitution of the state of Iowa, be, and the same

hereby is referred to the legislature, to be chosen at the next general election for members of the general assembly, and that the secretary of State cause the same to be published for three months previous to the day of such election, in two weekly newspapers in each congressional district in the state.

Approved, March 15, 1878.

—*Reprinted from Acts of the Seventeenth General Assembly of the State of Iowa, p. 178.*

JOINT RESOLUTION AGREEING TO, RATIFYING, AND CONFIRMING AN AMENDMENT TO SECTION FOUR (4) OF ARTICLE THREE (3) OF THE CONSTITUTION OF THE STATE OF IOWA, RELATING TO THE LEGISLATIVE DEPARTMENT.

WHEREAS, The seventeenth general assembly of the state of Iowa did, in due form, by a majority of the members elected to each of the two houses, agree to a proposed amendment to the constitution of this state, to strike the words "free white" from the third line of section four (4) of article three (3) of said constitution, and the same was entered on the journals thereof, and was referred to the legislature to be chosen at the next general election, and the same having been published as provided by law; therefore,

Be it resolved by the General Assembly of the State of Iowa:

That the following amendment to the constitution of the state be and the same is hereby agreed to, ratified, and confirmed: Strike out the words "free white" from the third line of section four (4) of article three (3) of said constitution, relating to the legislative department.

Resolved further, That the foregoing proposed amendment to the constitution be and the same is hereby submitted to the qualified electors of this state for their approval at the next ensuing general election, in the manner provided by law.

Approved, March 12, 1880.

—*Reprinted from Acts of the Eighteenth General Assembly of the State of Iowa, p. 214.*

CERTIFICATE OF THE BOARD OF STATE CANVASSERS.

State of Iowa:—ss.

We, the undersigned, Board of State Canvassers of the State of Iowa, do hereby certify that at the General Election held on the second day of November A. D. 1880, there were one hundred forty-two thousand one hundred and eighty (142,180) ballots cast on the proposition to amend the constitution of the State as follows: Strike out the words "free white" from the third line of section four (4) of Article three (3) of said constitution relating to the Legislative department. Of which ninety thousand two hundred and thirty-seven (90,237) were "For" and fifty-one thousand nine hundred and forty-three (51,943) votes were "Against."

We therefore declare the aforesaid proposition to amend the constitution as follows: Strike out the words free white from the third line of section four (4) of Article three (3) of said constitution, relating to the Legislative department, was adopted.

In testimony whereof, we have hereunto set unto
L. S. our hands and affixed the Great Seal of the State
of Iowa, at Des Moines, this third day of December
A.D. 1880.

JNO H. GEAR	} Board of State Canvassers.
J. A. T. HULL	
B. R. SHERMAN	
GEO W. BEMIS	

—Printed from Election Record, No. II., p. 325. Manuscript copy as preserved in the office of the Secretary of the Commonwealth of Iowa.

THE PROHIBITORY AMENDMENT (1882).

JOINT RESOLUTION PROPOSING TO AMEND THE CONSTITUTION SO AS TO PROHIBIT THE MANUFACTURE AND SALE OF INTOXICATING LIQUOR AS A BEVERAGE WITHIN THIS STATE.

Be it resolved by the General Assembly of the State of Iowa:

That the following amendment to the Constitution of the state of Iowa be and the same is hereby proposed: To add, as section 26 to Article 1 of said constitution, the following:

SECTION 26. No person shall manufacture for sale, or sell or keep for sale as a beverage, any intoxicating liquors whatever, including ale, wine and beer.

The general assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provisions hereof.

Resolved, further, That the foregoing proposed amendment be and the same is hereby referred to the legislature to be chosen at the next general election for members of the next general assembly, and that the secretary of state cause the same to be published for three months previous to the day of said election, as provided by law.

Approved, March 17, 1880.

—Reprinted from Acts of the Eighteenth General Assembly of the State of Iowa, p. 215.

JOINT RESOLUTION AGREEING TO AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF IOWA, PROHIBITING THE MANUFACTURE AND SALE OF INTOXICATING LIQUORS AS A BEVERAGE WITHIN THIS STATE.

WHEREAS, The eighteenth general assembly of the state of Iowa did in due form, by a majority of the members elected

to each of the two houses, agree to a proposed amendment to the constitution of this state to add as section 26 to article I of said constitution the following:

“SECTION 26. No person shall manufacture for sale, or sell, or keep for sale, as a beverage any intoxicating liquors whatever, including ale, wine and beer. The general assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provisions hereof;”

And the said proposed amendment was entered on the journals of said houses and was referred to the legislature to be chosen at the next general election, and the same having been published as provided by law; therefore,

Be it resolved by the General Assembly of the State of Iowa:

That the following amendment to the constitution of the state of Iowa be and the same is hereby agreed to:

Add as section 26 to article I of said constitution the following: Section 26. No person shall manufacture for sale, or sell, or keep for sale, as a beverage any intoxicating liquors whatever, including ale, wine and beer. The general assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provisions hereof.

Approved, March 13, 1882.

—*Reprinted from Acts of the Nineteenth General Assembly of the State of Iowa, p. 178.*

AN ACT TO SUBMIT TO A VOTE OF THE PEOPLE THE PROPOSED AMENDMENT TO THE CONSTITUTION PROHIBITING THE MANUFACTURE AND SALE OF INTOXICATING LIQUORS AS A BEVERAGE WITHIN THIS STATE.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That a special election for the adoption or rejection by the qualified electors of the state of the proposed amendment to the constitution prohibiting the manufacture and sale of intoxicating liquors as a beverage within the state shall be held throughout the state on Tuesday, the 27th day of June, A. D. 1882, and the governor shall issue his proclamation therefor at least thirty days before said election and shall transmit a copy thereof to the sheriff of each county.

SEC. 2. The sheriff shall give at least ten days' notice thereof by causing a copy of such proclamation to be published in some newspaper printed in the county, or if there be no such paper by posting such copy in at least five of the most public place[s] in the county.

SEC. 3. The ballots shall have written or printed thereon, “For the adoption of the amendment,” or “Against the adoption of the amendment.”

SEC. 4. The county auditor shall prepare and furnish to the voting precincts in their respective counties poll-books for said election, and said election shall be held by the same officers and conducted in the same manner and returns thereof made as at a general election.

SEC. 5. The board of supervisors of the several counties shall meet on the first Monday after said election and proceed to canvass the votes in their respective counties. The votes shall be canvassed in the same manner and returns made to the secretary of state to be examined by the executive council as a board of state canvassers as in case of election for state and district officers, and immediately after the canvass of said returns by the executive council the governor shall issue his proclamation declaring the result of said election.

SEC. 6. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and Iowa State Leader, newspapers published at Des Moines, Iowa.

Approved, March 31, 1882.

I hereby certify that the foregoing was published in *The Iowa State Leader* April 3, and the *Iowa State Register* April 4, 1882.

J. A. T. HULL, *Secretary of State.*

—*Reprinted from Acts of the Nineteenth General Assembly of the State of Iowa, p. 164.*

CERTIFICATE OF THE BOARD OF STATE CANVASSERS.

State of Iowa:—ss.

We, the undersigned, Board of State Canvassers of the State of Iowa, do hereby certify that at the Special election held on the twenty-seventh day of June A. D. 1882, there were two hundred eighty one thousand one hundred and forty nine (281,149) votes cast on the proposition to amend the Constitution of the State as follows; Add as Section 26 to Article I of said Constitution the following: "Section 26. No person shall manufacture for sale, or sell, or keep for sale, as a beverage any intoxicating liquors whatever, including ale, wine and beer. The general assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provisions hereof," of which one hundred fifty five thousand four hundred and thirty six (155,436) votes were "For the Adoption of the Amendment," and one hundred twenty five thousand six hundred and seventy seven (125,677) votes were "Against the Adoption of the Amendment," and thirty-six (36) votes were "scattering."

We therefore declare the aforesaid proposition to amend the Constitution as follows: Add as Section 26 to Article I of said constitution the following: "Section 26. No person shall manufacture for sale, or sell, or keep for sale, as a beverage any intoxicating liquors whatever, including ale, wine and beer. The general assembly shall by law prescribe regulations for the enforcement of the prohibition herein con

tained, and shall thereby provide suitable penalties for the violation of the provisions hereof," was adopted.

In testimony whereof we have hereunto set our hands and affixed the Great Seal of the State of L. S. Iowa, at Des Moines, this twenty eighth day of July A D 1882.

BUREN R. SHERMAN.	}	Board of State Canvassers.
J. A. T. HULL		
W. V. LUCAS		
E. H. CONGER		

—*Printed from the original manuscript records as preserved in the office of the Secretary of the Commonwealth of Iowa. Document No. 786.*

THE AMENDMENTS OF 1884.

JOINT RESOLUTION PROPOSING AMENDMENTS TO THE CONSTITUTION AND PROVIDING FOR THEIR REFERENCE AND PUBLICATION.

Be it resolved by the General Assembly of the State of Iowa, That the following amendments to the constitution of the state be and the same are hereby proposed:

AMENDMENT 1. The general election for the state, district, county, and township officers shall be held on the Tuesday next after the first Monday in November.

AMENDMENT 2. At any regular session of the general assembly the state may be divided into the necessary judicial districts for district court purposes; or the said districts may be reorganized and the number of the districts and the judges of said courts increased or diminished; but no reorganization of the districts or diminution of the judges shall have the effect of removing a judge from office.

AMENDMENT 3. The grand jury may consist of any number of members not less than five nor more than fifteen, as the

general assembly may by law provide, or the general assembly may provide for holding persons to answer for any criminal offense without the intervention of a grand jury.

AMENDMENT 4. That Section 13, of article 5, of the constitution be stricken therefrom and the following adopted as such section:

SECTION 13. The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter, elect a county attorney, who shall be a resident of the county for which he is elected, and who shall hold his office for two years and until his successor shall have been elected and qualified.

The foregoing proposed amendments to the constitution of the state of Iowa be and the same are hereby referred to the legislature to be chosen at the next general election of the members of the general assembly, and that the secretary of state cause the same to be published for three months, next prior to the day of such election, in at least two weekly newspapers in each congressional district in the state.

Approved, March 17, 1882.

—*Reprinted from Acts of the Nineteenth General Assembly of the State of Iowa, p. 180.*

JOINT RESOLUTION AGREEING TO CERTAIN AMENDMENTS
TO THE CONSTITUTION OF THE STATE OF IOWA PRO-
POSED BY THE NINETEENTH GENERAL ASSEMBLY.

WHEREAS, The nineteenth general assembly of the state of Iowa did in due form by a majority of the members elected to each of the two houses, agree to the following proposed amendments to the constitution of the state of Iowa, viz:

AMENDMENT 1. The general election for state, district county and township officers, shall be held on the Tuesday next after the first Monday in November.

AMENDMENT 2. At any regular session of the general assembly the state may be divided into the necessary judicial districts for district court purposes, or the said districts may be reorganized and the number of the districts and the judges of said courts increased or diminished; but no reorganization of the districts or diminution of the judges shall have the effect of removing a judge from office.

AMENDMENT 3. The grand jury may consist of any number of members, not less than five, nor more than fifteen, as the general assembly may by law provide, or the general assembly may provide for holding persons to answer for any criminal offense without the intervention of a grand jury.

AMENDMENT 4. That section 13 of article 5 of the constitution be stricken therefrom, and the following adopted as such section.

SECTION 13. The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter, elect a county attorney, who shall be a resident of the county for which he is elected, and who shall hold his office for two years, and until his successor shall have been elected and qualified.

AND WHEREAS, The said proposed amendments were entered on the journals of the said houses with the ayes and nays thereon, and were referred to the legislature to be chosen at the next general election, and the same having been published as provided by law, therefore.

Be it resolved by the General Assembly of the State of Iowa:

That the said proposed amendments to the constitution of the state of Iowa, be and the same are hereby agreed to, viz:—

AMENDMENT 1. The general election for state, district county and township officers shall be held on the Tuesday next after the first Monday in November.

AMENDMENT 2. At any regular session of the general assembly, the state may be divided into the necessary judicial districts for district court purposes, or the said districts may be reorganized and the number of the districts and the judges

of said courts increased or diminished; but no reorganization of the districts or diminution of the judges shall have the effect of removing a judge from office.

AMENDMENT 3. The grand jury may consist of any number of members not less than five, nor more than fifteen, as the general assembly may by law provide, or the general assembly may provide for holding persons to answer for any criminal offense without the intervention of a grand jury.

AMENDMENT 4. That section 13 of Article 5 of the constitution be stricken therefrom, and the following adopted as such section.

SECTION 13. The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter elect a county attorney, who shall be a resident of the county for which he is elected, and shall hold his office for two years, and until his successor shall have been elected and qualified.

Approved, March 29, 1884.

—*Reprinted from Acts of the Twentieth General Assembly of the State of Iowa, p. 234.*

CERTIFICATE OF THE BOARD OF STATE CANVASSERS.

State of Iowa:—ss.

We the undersigned Board of State Canvassers of the State of Iowa, do hereby certify that, at the general election held on the 4th day of November A. D. 1884,

For and against amendment 1, there were one hundred and four thousand two hundred and eighty-two (104,182)¹ ballots cast, of which eighty-nine thousand three hundred and forty-two (89,342) votes were "for" and fourteen thousand nine hundred and forty (14,940) votes were "against."

We therefore declare that amendment 1 is duly adopted.

¹ Should read: 104,282. The error appears in the original manuscript.

For and against amendment 2 there were ninety-eight thousand eight hundred and twenty-eight (98,828) ballots cast of which sixty-four thousand nine hundred and sixty (64,960) votes were "for" and thirty-three thousand eight hundred and sixty-eight (33,868) votes were "against."

We therefore declare that amendment 2 is duly adopted.

For and against amendment 3 there were one hundred two thousand nine hundred and thirty-four (102,934) ballots cast, of which seventy-two thousand five hundred and ninety-one (72,591) votes were "for" and thirty thousand three hundred and forty-three (30,343) votes were "against."

We therefore declare that amendment 3 is duly adopted.

For and against amendment 4 there were one hundred thousand five hundred and twenty-three (100,523) ballots cast, of which sixty-seven thousand six hundred and twenty-one (67,621) votes were "for" and thirty-two thousand nine hundred and two (32,902) votes were "against."

We therefore declare that amendment 4 is duly adopted.

In testimony whereof, we have hereunto set our L. S. hands and caused to be affixed the Great Seal of the State, at Des Moines, this 10th day of December A. D. 1884.

B. R. SHERMAN	} Board of State Canvassers
J. A. T. HULL	
J. L. BROWN	
E. H. CONGER	

—*Printed from the original manuscript records as preserved in the office of the Secretary of the Commonwealth of Iowa. Document No. 788.*

VOTES ON THE PROPOSITION: "SHALL THERE
BE A CONVENTION TO REVISE THE CON-
STITUTION, AND AMEND THE SAME?"

THE VOTE IN 1870.

On the proposition "Shall there be a Convention to revise the Constitution and amend the same" there were cast One Hundred and six Thousand Eight hundred and eighty-five (106,885) ballots, of which twenty four thousand eight hundred and forty six (24,846) votes were for the proposition and Eighty two thousand and thirty nine (82,039) were against the proposition. We therefore declare that the proposition "Shall there be a convention to revise the Constitution and amend the same" was not adopted by the people.

In testimony whereof we have hereunto set our hands and caused to be affixed the Great Seal of
L. S. the State of Iowa at the Capitol in the City of Des Moines Iowa this 11th day of November A D 1870.

(Signed.) SAML. MERRILL } Board of
JNO. A. ELLIOTT } Canvassers.

—*Printed from Election Record, No. I¹/_{II}, pp. 450, 451.*
Manuscript copy as preserved in the office of the Secretary of the Commonwealth of Iowa.

THE VOTE IN 1880.

We, the undersigned Board of State Canvassers of the State of Iowa, do hereby certify that at the General Election held on the second day of November A. D. 1880, there were one hundred and fifty-three thousand five hundred and forty six (153,546) ballots cast on the question "Shall there be a convention to revise the constitution and amend the same," of

which sixty-nine thousand seven hundred and sixty-two votes were "Yes" and eighty-three thousand seven hundred and eighty-four votes were "No."

We therefore declare that the question "Shall there be a convention to revise the constitution and amend the same" was lost.

In testimony whereof, we have hereunto set our hands and caused to be affixed the Great Seal of
L. S. the State of Iowa, at Des Moines, this third day of December A. D. 1880.

JNO. H. GEAR }
J. A. T. HULL } Board of
B. R. SHERMAN } State
GEO. W. BEMIS } Canvassers.

—*Printed from Election Record, No. II., pp. 323, 324.*
Manuscript copy as preserved in the office of the Secretary of the Commonwealth of Iowa.

THE VOTE IN 1890.

There were One hundred and eighty seven thousand and two hundred [187,200] ballots cast on the question "Shall there be a convention to revise the constitution and amend the same" of which "Yes" received Twenty seven thousand, eight hundred and six [27,806] votes and

"No" received One hundred and fifty nine thousand, three hundred and ninety four [159,394] votes.

We therefore declare that the aforesaid proposition "Shall there be a convention to revise the Constitution and amend the same" was rejected.

In testimony whereof,—We have hereunto set our hands and caused to be affixed the Great Seal of
L. S. the State.

Done at Des Moines, this 10th day of December
A. D., 1890.

HORACE BOIES, Governor	}	Board of State Canvassers.
FRANK D. JACKSON, Sec. of State		
J. A. LYONS, Auditor of State		
V. P. TWOMBLY, Treasurer of State		

—*Printed from Election Record, No. III., p. 180. Manuscript copy as preserved in the office of the Secretary of the Commonwealth of Iowa.*

THE RATIFICATION OF AMENDMENTS TO THE
CONSTITUTION OF THE UNITED STATES.

JOINT RESOLUTION RATIFYING THE AMENDMENT TO THE
CONSTITUTION OF THE UNITED STATES ABOLISHING
SLAVERY.

WHEREAS, The Congress of the United States has proposed to the several States the following amendment to the Federal Constitution, viz:

“ARTICLE XIII.

“SECTION I. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

“SEC. II. Congress shall have power to enforce this Article by appropriate legislation.”

Therefore,

Be it Resolved by the General Assembly of the State of Iowa,
That the State of Iowa, by its Legislature, hereby ratifies
and assents to said Amendment.

Approved January 24th, 1866.

—*Reprinted from Acts of the Eleventh General Assembly of the State of Iowa, p. 163.*

JOINT RESOLUTION, RATIFYING THE AMENDMENT TO THE
CONSTITUTION OF THE UNITED STATES IN REGARD
TO REPRESENTATION, RECONSTRUCTION AND THE NA-
TIONAL DEBT.

WHEREAS, The Congress of the United States has proposed to the several States the following amendment to the Federal Constitution, viz:

ARTICLE 14.

SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, the executive and judicial officers of a State or the members of the legislature thereof, is denied to any of the male inhabitants of such State,

being twenty-one years of age, and citizens of the United States, or in any way abridge [d], except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a senator or representative in Congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the constitution of the United States shall have engaged in insurrection or rebellion against the same or given aid or comfort to the enemies thereof; but Congress may, by a vote of two-thirds of each House, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned; but neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article: therefore,

Be it resolved by the General Assembly of the State of Iowa,
That the State of Iowa by its legislature hereby ratifies, adopts, and assents to said amendment.

Approved April 3, 1868.

—Reprinted from Acts of the Twelfth General Assembly of the State of Iowa, p. 293.

JOINT RESOLUTION RATIFYING THE PROPOSED FIFTEENTH ARTICLE OF AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, RELATIVE TO THE RIGHT OF CITIZENS TO VOTE.

WHEREAS, The Fortieth Congress of the United States has proposed to the Legislatures of the several States the following article of amendment to the Federal Constitution, namely:

ARTICLE 15.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation; therefore,

Be it resolved by the General Assembly of the State of Iowa,
That the State of Iowa, by its legislature, hereby ratifies, adopts, and assents to the said amendment.

Approved, February 3, 1870.

—Reprinted from Acts of the Thirteenth General Assembly of the State of Iowa, p. 242.

