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Arkansas Constit. 1874

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THE
CONSTITUTION
OF THE
STATE OF ARKANSAS.

FRAMED AND ADOPTED BY THE CONVENTION WHICH
ASSEMBLED AT LITTLE ROCK, JULY 14, 1874,
AND RATIFIED

BY THE PEOPLE OF THE STATE

AT THE ELECTION HELD OCTOBER 13TH, 1874.

WITH AN APPENDIX, CONTAINING THE CONSTITUTION OF THE
UNITED STATES, AND THE CONSTITUTIONS OF ARKANSAS
OF 1836, 1861, 1864 AND 1868.

WITH NOTES
BY U. M. ROSE.

LITTLE ROCK, ARK.:
PRESS PRINTING COMPANY.
1891.

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874.12

Entered according to act of Congress

By U. M. ROSE

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PREFACE.

A reader of the constitution of the state, however careful or wise, having no knowledge of the various decisions made by the courts in construing its several provisions, would acquire but an imperfect and inadequate conception of the full import of that important instrument. Those decisions, scattered through many volumes of reports, often blended with other matters, are not always easy of access; nor, when the volumes are at hand, can they be readily collated on short notice. Even familiar rulings cannot always be found without tiresome research.

At the beginning of the last summer vacation it occurred to me that I might perform some service to the profession, and to the public at large, by making notes of the cases decided by the state and federal courts that throw light on the meaning and practical effect of our present constitution. Having had some degree of familiarity with these adjudications, I fancied that the labor would be light. I have no disposition to exaggerate the task thus undertaken. With a fair amount of leisure it would not have been serious; but with the time at my disposal it proved to be unexpectedly heavy. Viewed in the light of a recreation, it was certainly found to be lacking in exhilarating qualities. Perhaps no field ever looks so large to any one as it does to the farmer who is engaged in plowing it.

I cannot hope that the notes will be found to be absolutely perfect. Few things are so. Omissions may have occurred. To use the simple and artless language of Dr. Johnson, whose toilsome labors escaped not criticism: "Sudden fits of inadvertence will surprise vigilance, slight avocations will seduce attention, and casual eclipses of the mind will darken learning; and the writer shall often in vain trace his memory at the moment of need for that which yesterday he knew with intuitive readiness, and which will come uncalled into his thoughts to-morrow."

I can only trust that the compilation may in some moderate way prove to be generally useful. The thought has also occurred to me that it might serve as an aid for more thorough and extensive research, for a larger and more exhaustive presentation of the subject by some one else; some one joining greater abilities with that more abounding leisure which the poet piously declared to be the gift of the gods.

In this state we have had five constitutions, known respectively as the constitutions of 1836, 1861, 1864, 1868 and 1874, a succession due to the civil war; each one reflecting in a measure peculiar views that were entertained at the time of its adoption. Nevertheless in their main features they are much alike. Indeed the same thing may be said of all our American state constitutions, based as they are chiefly on English institutions that have long stood the test of time.

As there is no limitation on the power of framing state constitutions save that contained in the federal constitution implying that the states shall maintain govern-

ments republican in form, it is clear that constitutions as impracticable as that of Locke, or as visionary as that of Sieyes, are within the range of possibility. Heretofore however there has been hardly a conspicuous departure from the common type. The seriousness and durable quality of organic law serve perhaps to overawe that love of novelty by which ordinary legislation is sometimes inspired. From this uniformity it may be inferred that during the last hundred years, a period the most productive in inventions and discoveries of which we possess any record, the science of government has made no considerable progress. Whether it is susceptible of further improvement is a matter about which opinions differ.

Notwithstanding some diversity, most of the decisions made in the construction of the former constitutions of this state have a bearing more or less important on questions that have arisen or may arise under that which is now in force. Hence very few have been omitted in the following notes as being entirely irrelevant.

The appendix includes the constitution of the United States. It also includes the text of the previous constitutions of this state; which, though abrogated, must always possess not only an historical interest, but a legal value as well. To these short indexes are annexed to facilitate reference to their contents.

The notes include the decisions in Hempstead's Reports, those contained in the reports of the supreme court of the United States down to, and including, the 136th volume, the decisions made by federal circuit and district courts found in various reports, coming down to, and including, the 41st volume of the Federal Reporter, and the decisions of the supreme court of the state down to and including the 52d volume of the Arkansas Reports, as far as they seemed to have any distinct bearing on the interpretation of our present constitution. Of course the citations from the federal reports only include decisions made in reference to the constitutions of this state. Some later decisions of our supreme court, not included in the 52d volume of the Arkansas reports, are cited from the current volume of the Southwestern Reporter. These, which come down to the month of October last, when the following notes were put into the hands of the printer, have since appeared in the 53d volume of the Arkansas reports.

I have also added to the notes cases decided by our supreme court relative to the interpretation of the constitution of the United States. It must be confessed that these are somewhat irrelevant to the general plan; but as the cases are but few in number, it was thought as well to include them for convenience of reference, the want of symmetry not being very glaring.

In conclusion, I wish to return my thanks to the publishers, who have kindly spared me, as far as possible, the labor and annoyance necessarily attending publication.

Little Rock, April 14, 1891.

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CONSTITUTION OF ARKANSAS
OF 1874.

SYLLABUS.

CONSTITUTION OF ARKANSAS.

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CONSTITUTION

OF THE

STATE OF ARKANSAS*

***Construction.**—Such construction should be given to the constitution, if possible, as that no clause, sentence, or word, shall be void, superfluous or unmeaning; but if on the whole it appears that the intention is different from the literal import of some of the words, then the intention should prevail. *Hawkins v. Filkins*, 24 Ark., 288. The constitution should be construed according to the terms used, and the intention of its authors. *State v. Ashley*, 1 Ark., 513; *State v. Scott*, 9 Ark., 270. Constitutions are interpreted by the following rules: 1st. The first fundamental rule in the construction of all instruments is, to construe them according to the sense of the terms, and the intention of the parties. 2d. Where its words are plain, clear and determinate, they require no interpretation, and it should therefore be admitted, if at all, with great caution, and only from necessity, either to escape from absurd consequences, or to guard against some fatal error. 3d. It is to be construed as a frame of fundamental law of government, established by the people according to their own free pleasure and sovereign will. No interpretation should be allowed which would conflict with any other provision of the constitution. *State v. Scott*, 9 Ark., 270. Where the constitution prescribes the time when an act must be done the provision is mandatory; *State v. Johnson*, 26 Ark., 281; but a directory provision in the constitution has no greater effect than a like provision in a statute. *Whiting v. Beebe*, 12 Ark., 421. A constitutional grant of power carries with it the right to use the means to carry the power into effect. *Fletcher v. Oliver*, 25 Ark., 290. An act of the legislature will not be held to be unconstitutional unless it is clearly so. *Cairo R. Co. v. Parks*, 32 Ark., 131. And all doubts are solved in favor of the constitutionality of an act. *Eason v. State*, 11 Ark., 481; *Little Rock v. Parish*, 36 id., 171. Before a statute can be held unconstitutional it must appear to be in conflict with some constitutional provision, or to be opposed to natural right, or the fundamental principles of civil liberty; and all doubts on the subject must be resolved in favor of the statute. *Dabbs v. State*, 39 Ark., 353. The constitution should receive a fair and liberal interpretation. Every word should be expounded in its plain, obvious and common sense, unless the context furnishes some ground to control, qualify or enlarge it. *State v. Scott*, 9 Ark., 270. The

CONSTRUCTION.

intention is to be derived from the subject matter, and the language, in connection with known political truths and common law institutions. *Allis ex parte*, 12 Ark., 101. The usage of the government, continued from the adoption of the constitution, is entitled to regard in the determination of doubtful questions. *State v. Sorrells*, 15 Ark., 664; *Reynolds ex parte*, 52 *id.*, 339. The constitution of 1836 provided that the legislature might incorporate two banks: Held, that it could not incorporate more than two. *State v. Ashley*, 1 Ark., 513.

Constitutional convention cannot legislate.—A state constitutional convention cannot exercise general legislative functions; and an ordinance of the convention of 1861 providing for the issue of treasury warrants is void. *Bragg v. Tuffis*, 49 Ark., 554.

Unconstitutional statutes, effect of.—When a statute has been adjudged to be unconstitutional, it is as if it had never been; rights cannot be built up under it, contracts dependent on it for their consideration are void, and it protects no one who has acted under it. *Cochran v. Cobb*, 43 Ark., 180. Where a part of a statute is unconstitutional, and that part can be separated from the rest of the act, the whole act will not be declared to be void. *Huntington v. Worthen*, 120 U. S., 97. When part of an act is unconstitutional, that part will be considered as stricken out, and the residue will be maintained, if it can be separated from the unconstitutional part, and stand without it. *State v. Marsh*, 37 Ark., 356; *Morrison v. State*, 40 *id.*, 448. Executive officers are not bound to execute unconstitutional statutes. *Little Rock R. Co. v. Worthen*, 46 Ark., 312.

Effect of new constitution on existing officers.—If on the adoption of a new constitution no provision is made for the continuance of existing officers, they cease to be such. *Danley ex parte*, 24 Ark., 1; *State v. Clendenin*, *id.*, 80.

Adoption of constitution a political question.—The question as to whether a constitution has been adopted or not is a political and not a judicial question. *Danley ex parte*, 24 Ark., 1.

Effect of amendment to constitution.—An amendment to the constitution of 1836 providing a new way of electing circuit judges was held not to be self-executing, and not to oust judges previously elected. *State v. Scott*, 9 Ark., 270.

Decisions of the supreme court of Arkansas relating to the constitution of the United States.

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Attachment of boats.—The states cannot empower their courts to proceed *in rem* against a boat after the manner of the admiralty courts where a maritime lien is involved. *Davis v. Mason*, 44 Ark., 553.

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Naturalization laws.—Congress may authorize state courts to naturalize foreigners. *State v. Penney, 10 Ark., 621.*

Interstate commerce.—An agent of a foreign corporation selling merchandise previously shipped into the state cannot avoid payment of a license on the ground that he is engaged in interstate commerce. *Hynes v. Briggs, 41 Fed. R., 468.* The act of February 27, 1885, prohibiting railways from charging more than specified in bills of lading, is not in conflict with the federal constitution as to the regulation of commerce. *Little Rock R. Co. v. Hanniford, 49 Ark., 291.*

Bills of credit.—Treasury warrants issued under an ordinance of the convention of 1861 were bills of credit, and void, as forbidden by the constitution of the United States. *Bragg v. Tuffts, 49 Ark., 554.* The state was the only stockholder in the state bank; but it was held that bills issued by it were not bills of credit. *Murphey v. State Bank, 7 Ark., 57; McFarland v. State Bank, 4 id., 410.*

Discrimination against citizens of other states.—The legislature cannot, under guise of defining peddlers, discriminate in favor of the products of this state as against other states. *State v. McGinnis, 37 Ark., 362.* Under this rule the court held that *sections 4376 et seq. of Gantt's Digest* were void.

Constitution of 1861.—All acts of the state government under the constitution of 1861, not in violation of the constitution of the United States, were valid. *Hawkins v. Filkins, 24 Ark., 286; Howell v. Hogins, 37 id., 110; Bragg v. Tuffts, 49 id., 562.*

Pardon by the president of the United States.—The pardon of the president of the United States relieves the person pardoned from all penalties, and restores him to his former rights and privileges. *Rison v. Farr, 24 Ark., 161.*

Laws impairing the obligations of contracts.—As the provisions of the federal and state constitutions on this subject are alike, general reference to the decisions on this subject will be found in note to *Art. II, sec. 17.* That note includes decisions made by the supreme court of Arkansas and those made by the federal courts touching statutes of this state only.

PREAMBLE.

We, the people of the State of Arkansas, grateful to Almighty God for the privilege of choosing our own form of Government; for our civil and religious liberty; and desiring to perpetuate its blessings and secure the same to ourselves and posterity, do ordain and establish this Constitution.

ARTICLE I.

BOUNDARIES.

We do declare and establish, ratify and confirm the following as the permanent boundaries of the state of Arkansas, that is to say: Beginning at the middle of the main channel of the Mississippi river, on the parallel of thirty-six degrees of north latitude, running thence west with said parallel of latitude to the middle of the main channel of the St. Francis river; thence up the main channel of said last named river, to the parallel of thirty-six degrees, thirty minutes, of north latitude; thence west with the southern boundary line of the state of Missouri to the southwest corner of said last named state; thence to be bounded on the west to the north bank of Red river, as by act of congress and treaties existing January 1, 1837, defining the western limits of the territory of Arkansas; and to be bounded across and south of Red river by the boundary line of the state of Texas as far as to the northwest corner of the state of Louisiana; thence easterly with the northern boundary line of the said last named state to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said last named river, including an island in said river known as "Belle Point Island," and all other land originally surveyed and included as a part of

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the territory or state of Arkansas, to the thirty-sixth degree of north latitude, the place of beginning.

The eastern boundary of the state is the midway line between the principal banks of the Mississippi river. Where there are two channels, with an intervening island, the middle of the larger is the boundary. The word "channel," as descriptive of the boundary, has no reference to the track of navigation. *Cessill v. State*, 40 Ark., 501.

SEAT OF GOVERNMENT.

The seat of government of the state of Arkansas shall be and remain at Little Rock, where it is now established.

ARTICLE II.

DECLARATION OF RIGHTS.

Section 1. Source of political power—Object of government—Right of reform and abolition.—All political power is inherent in the people, and government is instituted for their protection, security and benefit; and they have the right to alter, reform or abolish the same, in such manner as they may think proper.

Sec. 2. Natural freedom and independence of men—inalienable rights—Origin of government.—All men are created equally free and independent, and have certain inherent and inalienable rights; amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property, and reputation; and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

Sec. 3. Equality of all persons before the law.—The equality of all persons before the law, is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity, nor exempted from any burden or duty, on account of race, color or previous condition.

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Section 5545 of Mansfield's Digest, prescribing penalties against railway employes for certain forbidden acts, is not unconstitutional. *Bannon v. State*, 49 Ark., 167.

Sec. 4. Right of public assembly; and of petition.

—The right of the people peaceably to assemble, to consult for the common good; and to petition, by address or remonstrance, the government, or any department thereof, shall never be abridged.

Sec. 5. Right to bear arms.—The citizens of this state shall have the right to keep and bear arms for their common defense.

This section does not prevent the legislature from prohibiting the wearing of such weapons as are not used in civilized warfare, and would not contribute to the common defense. *Fife v. State*, 31 Ark., 455. The legislature cannot prohibit the citizen from wearing or carrying such arms as are used in war, except on his own premises, or when on a journey, or when acting as an officer, or in aid of an officer; *Wilson v. State*, 33 Ark., 557; but it may prohibit the wearing of concealed weapons; *Buzzard v. State*, 4 id., 18; and may prohibit the carrying of army pistols except uncovered and in the hand. *Haile v. State*, 38 Ark., 564; *Holland v. State*, 33 id., 560.

Sec. 6. Liberty of the press and speech—Libel.—

The liberty of the press shall forever remain inviolate. The free communication of thoughts and opinions is one of the invaluable rights of man; and all persons may freely write and publish their sentiments on all subjects, being responsible for the abuse of such right. In all criminal prosecutions for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party charged shall be acquitted.

Sec. 7. Trial by jury.—The right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases, in the manner prescribed by law.

An act providing that a jury should consist of six men was held to be unconstitutional. *State v. Cox*, 8 Ark., 437; *State v. Morrill*, 16 Ark., 410. Statutes

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giving to certain bonds the force of judgments without trial are valid. *Reardon ex parte*, 9 Ark., 450; *Ruddell v. Magruder*, 11 id., 578; *Biscoe v. Sandefur*, 14 id., 584; *Phillips v. Wills*, id., 596; *Dougherty v. McDonald*, id., 598. This provision as to trial by jury has no application to trials in cases of *quo warranto*; *State v. Johnson* 26 Ark., 281; nor to suits for the possession of an office. *Wheat v. Smith*, 50 Ark., 266. The trial in a case of a contested election is by the court and not by a jury. *Wise v. Martin*, 36 Ark., 305; *Govan v. Jackson*, 32 id., 553. Exceptions to a guardian's account in the probate court should not be submitted to a jury. *Crow v. Reed*, 38 Ark., 482. The right to trial by jury is confined to cases which were thus triable at common law, and an issue as to the requisite signers to a petition under the "three-mile law" should be tried by the court. *Williams v. Citizens*, 40 Ark., 291. The legislature may prescribe the manner in which the qualification of jurors shall be determined. *Whitehead v. Wells*, 29 Ark., 99. But it cannot take away the right to object to them. *Palmore v. State*, id., 248. By agreement of the parties a defendant in a misdemeanor case may be tried by a jury of less than twelve jurors; but a mere waiver of the requisite number, by failing to object to less, will not authorize a trial by less than twelve. *Warwick v. State*, 47 Ark., 568. The right of trial by jury is confined to cases which were so triable at common law before the adoption of the constitution, and is not a matter of right in chancery. *State v. Churchill*, 48 Ark., 426.

Sec. 8. No person to be held to answer for crime but on presentment or indictment—Exceptions—No person to be put twice in jeopardy for same offense—Or compelled to be a witness against himself—Security for life, liberty and property—Due process of law—Right to bail.—No person shall be held to answer a criminal charge unless on the presentment or indictment of a grand jury, except in cases of impeachment or cases such as the general assembly shall make cognizable by justices of the peace, and courts of similar jurisdiction; or cases arising in the army or navy of the United States; or in the militia when in actual service in time of war or public danger; and no person, for the same offense, shall be twice put in jeopardy of life or liberty; but if, in any criminal prosecution, the jury be divided in opinion, the court before which the trial shall be had, may, in its discretion, discharge the jury, and commit or bail the accused for trial, at the same or the next term of said court; nor shall any person be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or

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property, without due process of law. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

No person to be held to answer for crime but on presentment or indictment.—The legislature may prescribe the time and manner of determining objections to grand jurors; but it cannot take away the right of objecting. *Palmore v. State*, 29 Ark., 248. The words "presentment" and "indictment" necessarily include the action of a grand jury. *Eason v. State*, 11 Ark., 482; *Straughan v. State*, 16 id., 43; *State v. Cox*, 8 id., 436. Where the punishment provided is removal from office and disqualification from holding office, this clause has no application; *Steck v. State*, 28 Ark., 113; except where the act charged involves a criminal offense. *Haskins v. State*, 47 Ark., 243. The legislature may dispense with mere matter of form; but under this clause the substance of a good common law indictment must be preserved. *Mott v. State*, 29 Ark., 147. Township and county officers may be removed from office for incompetency upon information. *Texas R. Co. v. State*, 41 Ark., 488. The head note to this case is too broad. See *Haskins v. State*, 47 Ark., 246.

No person to be put twice in jeopardy for same offense.—A prosecution in a court having no jurisdiction of the offense charged will not bar a second prosecution. *Rector v. State*, 6 Ark., 187. Wherever a judgment of conviction in a capital case is reversed for error in the proceedings, of which, without the statute allowing writs of error, he could not have availed himself by motion in arrest, and which he can only place upon the record by bill of exceptions, and of which he could not have availed himself by motion for new trial at the common law, it is no violation of his constitutional right to remand the cause to be tried again on the same indictment. *Stewart v. State*, 13 Ark., 721. Where a defendant indicted for a misdemeanor punishable by fine only, has been tried and acquitted, and on appeal or writ of error to this court, the judgment reversed, and the cause remanded, he may be tried again without any violation of this provision. *Jones v. State*, 15 Ark., 261; *State v. Czarnikow*, 20 id., 160. One who has not been put on his trial on the merits in a court of competent jurisdiction has not been put in jeopardy. *State v. Check*, 25 Ark., 206. Where a jury has been discharged for misconduct a new jury may be summoned. *McKenzie v. State*, 26 Ark., 334. Where a new trial has been granted a defendant on his own motion he may be tried again for the same offense. *Johnson v. State*, 29 Ark., 31. Where an indictment is quashed on demurrer the defendant is not in jeopardy under it and he may be prosecuted by a second indictment for the same offense. *State v. Gill*, 33 Ark., 129. Nor will a dismissal for variances between the indictment and proof bar another prosecution for the same offense. If upon the first indictment the defendant could not be convicted of the offense described in the second, then a dismissal of, or acquittal upon the first, is no bar to the second. *Williams v. State*, 42 Ark., 35. A mis-trial in a felony case, from the disagreement of the jury on a verdict, is not a jeopardy, and the defendant cannot plead it as a former jeopardy, to a new indictment for the

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same offense. *Potter v. State*, 42 Ark., 29. Where an indictment is quashed on a plea in abatement based on the incompetency of the grand jury, it is no bar to a subsequent indictment. *Brown v. State*, 10 Ark., 607. On an indictment charging murder the jury returned a verdict of "guilty as charged in the indictment." The court, instead of directing the jury to retire and return a verdict in proper form, discharged them, and afterwards granted a new trial on the application of the defendant. *Held*, that the verdict was no bar to a second trial and conviction for murder in the first degree. *Ford v. State*, 34 Ark., 649. A conviction for selling liquor without a license will not bar a prosecution for selling liquor to a minor without the written consent of his parent or guardian, although both prosecutions are for the same transaction. *Ruble v. State*, 51 Ark., 170. On the trial of an indictment for grand larceny, the offense having been committed more than a year before the indictment was found, the jury offered to return a verdict convicting the defendant of petit larceny, and the court, conceiving that they did not understand that their verdict was equivalent to an acquittal, refused to receive it, and after charging the jury over again, directed them to reconsider, and, on their failure to agree on any verdict, discharged them; the defendant then moved for his discharge, on the ground that he had been acquitted of the felony, and that therefore the prosecution for the misdemeanor was barred; but his motion was denied; and he was tried before another jury, and convicted of grand larceny. *Held*, that it was not error to deny the defendant's motion, and that the judgment of conviction was valid. *McRae v. State*, 49 Ark., 195. When, after a jury has been sworn, unauthorized separation and misconduct are satisfactorily shown, the court may discharge them and order a new venire, and the defendant will not be entitled to a discharge from sentence under verdict found against him by a second jury. Jeopardy cannot attach until the jury are duly empanelled, and all the machinery of the court is fully organized. *McKenzie v. State*, 26 Ark., 334. The filing of an affidavit before a justice of the peace, and issue of a warrant of arrest for assault and battery is no bar to an indictment in the circuit court for the same offense, where it appears that the defendant was not found, and there were no farther proceedings under the warrant issued by the justice; and a conviction before a justice on the confession or information of the offender is no bar to an indictment for the same offense. *Bradley v. State*, 32 Ark., 722. If upon a former indictment the defendant could not have been convicted of an offense charged in a later one, then an acquittal on the first will not bar a prosecution on the second. *State v. McMin*, 34 Ark., 160. An acquittal of robbery is an acquittal of a simple assault and also of false imprisonment, they being included in the charge of robbery. *Fox v. State*, 50 Ark., 528. Where a defendant has been regularly tried for a felony, and acquitted, the supreme court cannot, by reversing the judgment, subject him to a second trial. *State v. Han*, 6 Ark., 169; *State v. Ashley*, 37 *id.*, 403. Where a defendant is indicted for murder and a verdict is rendered against him for a lower offense, the verdict is an acquittal of any higher offense, and on a new trial he cannot be tried for any such higher offense; *State v. Ross*, 34 Ark., 376; and where a juror absents himself by reason of which it becomes necessary to discharge the jury, the defendant

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will not be deprived of his defense of former jeopardy in a second prosecution for the same offense by reason of the fact that he had consented that the jury might separate during the recess of the court. *State v. Ward*, 48 Ark., 36. A conviction or acquittal by a judgment or verdict will bar any other prosecution for the same offense notwithstanding a defect in form or substance in the indictment; but by any proceeding short of conviction or acquittal the defendant is not in jeopardy if the indictment is so defective that a conviction under it would be reversed for error. *Ross v. State*, 34 Ark., 376. A former conviction is a bar as to any offense of which the defendant might have been convicted under the indictment in the first case. *State v. Nunnally*, 43 Ark., 68. If upon the first indictment charging larceny of money of various descriptions, the defendant could be convicted of stealing the money, or any part or piece of it, described in the second indictment, a dismissal of the first after the jury was empaneled and sworn, would be a bar to the second. When a jury in a criminal case has been empaneled and sworn the defendant is in jeopardy, and a dismissal of the prosecution without his consent will bar a second indictment for the same offense. *Williams v. State*, 42 Ark., 35. If a defendant, being indicted for murder in the first degree, is found guilty of murder in the second degree, and a new trial is granted him on his own motion, he cannot afterwards be convicted of murder in the first degree, of which he was acquitted by implication on the first trial. *Johnson v. State*, 29 Ark., 31. The defendant was indicted for the larceny of several articles, tried and convicted as to a part of the articles, and a new trial granted him. A new indictment was afterwards found against him for the same larceny, but embracing some additional articles, and the original indictment was quashed. *Held*, First, the indictment being good, the defendant could not be put in jeopardy again on that or a subsequent indictment as to the articles he was acquitted of stealing, or other articles embraced in the larceny but not included in the first indictment; second, as to the articles he was found guilty of stealing under the first indictment, he was in the same attitude as if there had been no trial, and could be tried again upon the second indictment. *State v. Clark*, 32 Ark., 231. Where the jury has been sworn, and the court dismisses the indictment without the consent of the defendant, he cannot be subjected to trial on a second indictment for the same offense. *Lee v. State*, 26 Ark., 260. One convicted of petit larceny in a justice's court cannot be prosecuted in the circuit court for grand larceny for the same offense. *Southworth v. State*, 42 Ark., 270. A trial of a defendant on a change of venue on a transcript of the record and proceedings had in the court in which the indictment was found, which is without a seal, is no defense against a trial on the same record after it has been perfected by the seal. *Ball v. State*, 48 Ark., 94. To sustain a plea of former conviction under another indictment it must be made to appear that both indictments were for the same offense. *State v. Blahut*, 48 Ark., 34. A conviction under a statute for carrying concealed weapons is not a bar to a prosecution for the same act under a city ordinance. *Van Buren v. Wells*, 14 S. W. R., 38. A plea of former jeopardy must show the manner in which such former jeopardy occurred, and if it allege jeopardy on another indictment, it must set out the record of the former indictment,

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propose to verify it by the record, and allege the identity of the defendant in both indictments. *Atkins v. State*, 16 Ark., 568. A record which shows that jeopardy has once attached is sufficient to bar a farther prosecution, though no final judgment be entered, except in cases where defendants may be twice tried for the same offense and in such cases it must be shown that the former case is ended. A plea of former acquittal in a case punishable by fine only, is not sustained by a record entry, made at a previous term, showing that by consent a verdict of not guilty was entered in the case, but that judgment was to abide the decision of the supreme court in a like case, without further showing that the supreme court had decided the case referred to favorably to the pleader. *State v. Bradley*, 45 Ark., 31. A prisoner is in jeopardy from the time the jury is empaneled and sworn in a court of competent jurisdiction, upon an indictment sufficient in form and substance to sustain a conviction; and the entry of a *nolle prosequi*, or discharge of a juror, after that, without his consent, operates as an acquittal, except in cases of overruling necessity, as the death or illness of a judge or juror, or inability of a jury to agree upon a verdict. *Whitmore v. State*, 43 Ark., 271. To maintain the defense of former conviction for selling liquor to the same person, the defendant must plead and prove that the offense charged in the last indictment was the same of which he was convicted under the first; and the record of the former conviction is not of itself evidence of the identity of the offense. Nor does the fact that the evidence on the last indictment would support a conviction on the first necessarily sustain the plea. *Emerson v. State*, 43 Ark., 372.

Defendant not to be compelled to testify against himself.—*But see Art. III, Sec. 9.*—Where two persons have been concerned in the commission of the same crime, one of them may be compelled to testify against the other; but his testimony cannot afterwards be used against him, nor can he be called on to divulge his connection with any distinct offense not charged in the indictment. *State v. Quarles*, 13 Ark., 307; *Casey v. State*, 37 id., 83.

Due process of law.—*See Art. II, Sec. 21.*—No rights of any one can be impaired or destroyed by judicial sentence unless he has been made a party to the proceeding, or has had an opportunity to defend himself; he must have had notice either actual or constructive. *McKnight v. Smith*, 5 Ark., 409; *Pile ex parte*, 9 id., 337; *McLain v. Taylor*, id., 362; *Danley v. Rector*, 10 id., 225; *Rison v. Farr*, 24 id., 161; *Epps v. Sasby*, 43 id., 545. The statute of forcible entry and detainer held to be constitutional. *Fleeman v. Horen*, 8 Ark., 353. The rights and privileges of the citizen cannot be taken away by legislative enactment, directly or indirectly, or otherwise than by due process of law, that is, by the judgment of a court of competent jurisdiction. *Rison v. Farr*, 24 Ark., 162. An officer cannot be deprived of his office for an alleged offense without judicial ascertainment thereof. *State v. Carneall*, 10 Ark., 156. An act imposing 10 per cent. damages on the affirmance of judgments appealed from in cases of misdemeanor, was held not to be unconstitutional in *Wellington v. State*, 52 Ark., 447. A tax on each criminal conviction in courts of record is not unconstitutional. *Id.* After tender and acceptance of a pardon the legislature cannot revoke it. *State v. Nichols*, 26 Ark., 74.

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A repeal of a statute cannot divest rights that had previously vested under it. *St. Louis R. Co. v. Alexander*, 49 Ark., 190. The legislature cannot divest any right previously vested. *Brown v. Morrison*, 5 Ark., 217; *Grissom v. Hill*, 17 Ark., 489. An act authorizing administrators to convey lands in pursuance of agreements made by their intestates is not unconstitutional. *Moore v. Maxwell*, 18 Ark., 469. Retrospective acts, not in violation of any constitutional provision, and not interfering with any vested rights, are not unconstitutional. *Smith v. Van Giider*, 26 Ark., 527. Curative acts are not unconstitutional. *Johnson v. Richardson*, 44 Ark., 365; *Green v. Abraham*, 43 id., 421. Where a curative act has been passed pending an appeal, it must be applied in the supreme court. *Id.* An act curing defective acknowledgments of deeds cannot interfere with the rights of third persons vested at the time of its passage. *McGehee v. McKenzie*, 43 Ark., 156. The voters of a town having elected officers before the town was incorporated, under a mistaken notion that it had been incorporated, the legislature had power to appoint the persons so voted for, and to validate their acts. *State v. Kline*, 23 Ark., 587. The revenue act having fixed the time and place for the meeting of the state board for the valuation of railway tracks, the failure to require that notice of the meeting of the board shall be given to the railway companies, does not render the act obnoxious to the charge of taking property without due process of law. Nor is the statute unconstitutional because it fails to provide for an appeal from the valuation of railroad property fixed by the state board. *St. Louis R. Co. v. Worthen*, 52 Ark., 529. The legislature cannot so limit the time within which appeals may be taken as to render it impracticable for parties to perfect their appeals within the time prescribed. *O'Bannon v. Ragan*, 30 Ark., 181. It may authorize a municipal corporation to prohibit the erection of wooden buildings in certain districts; and if such buildings be erected in violation of an ordinance inhibiting it, the council may promptly remove them without any prosecution or judicial proceeding of any kind against the owner. *McKibbin v. Ft. Smith*, 35 Ark., 352. A statute providing for the sale by cities and towns of domestic animals found running at large, held not to be unconstitutional. *Ft. Smith v. Dodson*, 46 Ark., 296. The legislature may require the owner of a franchise to keep a toll bridge to give a bond to keep the bridge in repair. *Chandler v. Montgomery Co.*, 31 Ark., 25. Pending a suit a law may be passed requiring the plaintiff to give a bond for any costs afterwards to accrue. *Williams v. Pindall*, 35 Ark., 434. During the life of one owning property laws of inheritance may be changed at will, no one having a vested right to be the future heir of one living. *Gregley v. Jackson*, 38 Ark., 487. The seizure of private property by unauthorized military power and placing it with the property of the United States, without any act of condemnation or appropriation for military purposes, does not divest the owner of his title. *Taylor v. Jenkins*, 24 Ark., 337. The legislature cannot divest rights by prescribing to the courts what shall be *conclusive evidence*; *Little Rock R. Co. v. Payne*, 33 Ark., 816; as by making the recitals in tax deeds conclusive evidence of their truth. *Cairo R. Co. v. Parks*, 32 Ark., 132. An act making railway companies liable for double damages on failure to post notice of stock killed by their trains, is not unconstitutional. *Memphis*

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R. Co. v. Horsfall, 36 Ark., 651. An act providing for the taking of lands for taxes without notice or sale, and with no provision for saving for the owner the excess of the value of the lands over the taxes, penalty and costs, held unconstitutional. *Bagley v. Castile*, 42 Ark., 77; *Shaw v. Hill*, 46 id., 333. An act providing a penalty against defaulting tax-payers without any judicial ascertainment of delinquency is valid. *Scott v. Watkins*, 22 Ark., 556. The legislature may provide for the assessment of lands by a court of equity which had not been assessed, and may charge the lands with the assessment. *St. Louis R. Co. v. State*, 47 Ark., 323. The overdue tax law providing for the collection of taxes on lands by proceedings in chancery held to be constitutional. *State v. Certain Lands*, 40 Ark., 35. The act for taxation of lands for local improvements is constitutional. *Little Rock v. Board of Improvements*, 42 Ark., 152. The legislature cannot enact a statute which will transfer one man's land to another under the guise of a tax sale when there has been no assessment or levy of taxes; nor can it prescribe any period within which the owner must make his objections for such fundamental defects, he remaining in possession, and being in no default for not paying his taxes. But it may cure any illegality or irregularity in a tax sale which consists in a mere failure to observe some requirements imposed, not by the constitution, but by the legislature itself, and the non-observance of which does not deprive the former owner of any substantial rights; and it may limit the time within which objections for such failure must be made or barred. *Radcliffe v. Scruggs*, 46 Ark., 96. A betterment act allowing ejected occupants of lands to recover the value of improvements made by them while in possession, and before the passage of the act, is valid. *Fee v. Cowdry*, 45 Ark., 410. Neither the state constitution nor a statute can divest, as against a husband in favor of his wife, any property rights previously vested in him. *Allen v. Hanks*, 136 U. S., 300; *Shryock v. Cannon*, 39 Ark., 434; *Erwin v. Puryear*, 50 id., 536. Where a statute provides that a purchaser at a tax sale, if it is adjudged to be invalid, shall have the right to recover from the owner moneys paid at the tax sale, and for subsequent taxes paid by him, the repeal of the statute will not affect the rights of a purchaser that were vested before the repeal. *St. Louis R. Co. v. Alexander*, 49 Ark., 190. The provisions of the constitution of 1861, and all the acts of the different branches of the state government, not hostile to the federal government, were valid, and could not be invalidated by the action of a subsequent constitutional convention. *Berry v. Bellows*, 30 Ark., 198.

Sec. 9. Excessive bail—Cruel and unusual punishments—Witnesses not to be unreasonably detained.—Excessive bail shall not be required, nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted; nor witnesses be unreasonably detained.

An indictment for a capital offense will not prevent the court on application for bail from going behind the indictment, and investigating the case on its merits; but before the defendant in such case can have a writ of habeas corpus for the purpose

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of being admitted to bail, he must state such facts in his petition under oath as will rebut the presumption of guilt raised by the indictment; and a general allegation of innocence will not entitle him to the writ. *White ex parte*, 9 Ark., 222.

Sec. 10. Rights of accused in criminal prosecutions—Speedy trial—Impartial jury—Venue—To be informed of nature of offense—To be confronted with witnesses—To have process for witnesses—To be heard by himself or counsel.—In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the county in which the crime shall have been committed; provided that the venue may be changed to any other county of the judicial district in which the indictment is found, upon the application of the accused, in such manner as now is, or may be prescribed by law; and to be informed of the nature and cause of the accusation against him, and to have a copy thereof; and to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to be heard by himself and his counsel.

Speedy trial.—A statute that discontinues for one half of a county the only court that can try felonies, is unconstitutional. *Jones ex parte*, 49 Ark., 110.

By impartial jury.—A juror shown to be partial must be rejected. *Milan v. State*, 24 Ark., 346. The party in a proceeding for contempt is not entitled to a trial by jury. *Neel v. State*, 9 Ark., 259.

Defendant to be furnished with copy of charge against him.—The legislature may regulate the rights mentioned in this section, and may provide that in a prosecution for an offense not capital, the defendant shall not have a copy of the indictment without tendering the fee for it. *Howard v. State*, 37 Ark., 265. A defendant who is at large on bail is not entitled to service of a copy of the indictment. *Dawson v. State*, 29 Ark., 116. The failure of the clerk to furnish one indicted for murder with a copy of the indictment is only ground for a motion for new trial, and is waived by pleading and going to trial without claiming a copy. *McCoy v. State*, 46 Ark., 141. Unless otherwise shown it will be presumed that a copy of the indictment was furnished to the defendant. *Wright v. State*, 42 Ark., 94. Where a defendant pleads, declares himself ready for a trial, and the trial has commenced, it is too late for him to object that he has not been furnished with a copy of the indictment. *Johnson v. State*, 43 Ark., 391.

Venue in criminal cases.—Where an offense is committed on the line between two counties, the offender may be prosecuted in either county. *State v. Rhoda*, 23 Ark., 156. The general assembly cannot authorize a circuit judge on his own motion to remove a criminal cause to another county for trial. *Osborne v. State*, 24 Ark.,

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629. The legislature cannot invest a court with jurisdiction of crimes committed beyond the limits of the county. *Dougan v. State*, 30 Ark., 41. The trial of a person charged with bigamy must be in the county in which the bigamous marriage occurred. *Walls v. State*, 32 Ark., 565. An act dividing a county into two judicial districts, providing for a circuit court to be held in each, and limiting the selection of grand and petit jurors of each district to the territory embraced in it, held not to be unconstitutional. *Walker v. State*, 35 Ark., 386. Where after the commission of a crime the territory in which it was committed is cut off to form a new county, the indictment should be in the new county. *McElroy v. State*, 13 Ark., 708. A county having been divided into two judicial districts while an indictment was pending, the selection of a jury for the trial drawn from one of the districts alone was not in violation of the constitution. *Potter v. State*, 42 Ark., 30. The venue in a criminal cause cannot be changed to a county outside of the judicial circuit in which the indictment is found. *State v. Flynn*, 31 Ark., 35. A statute authorizing the prosecution of a thief in any county in this state where he may be found with property stolen in another state, is not in conflict with this section. *State v. Johnson*, 38 Ark., 568.

Defendant's right to be confronted with witnesses.—A statute requiring a defendant in a criminal proceeding who has applied for a continuance to go to trial, provided the prosecution will admit that the witnesses named in the application would, if present, testify to the statement contained in the application, is unconstitutional. *Graham v. State*, 50 Ark., 161. The testimony of a witness in the presence of a defendant on the hearing of his application for bail, may be read on his trial, if the witness is out of the jurisdiction of the court, or cannot be found. *Sneed v. State*, 47 Ark., 180. An order summoning extra jurors to serve as talesmen on the trial of a felony case, if any should be needed on the day of trial, may be made in the absence of the defendant. *Mabry v. State*, 50 Ark., 492. The evidence of a witness on a former trial, since deceased, may be proved on a subsequent trial for the same offense. *Green v. State*, 38 Ark., 304. It is within the discretion of the circuit court to refuse a trial of a misdemeanor in the absence of the defendant, when he consents thereto. *Bridges v. State*, 38 Ark., 510. But the defendant has the right to be present. The statute providing for his trial in his absence applies only where he waives the right. *Owen v. State*, 38 Ark., 512. Where in a felony case it does not appear from the record that defendant was present when the verdict was rendered, a new trial will be granted; but if it only appears that he was absent when sentence was pronounced, the cause will be remanded for a new sentence. *Cole v. State*, 10 Ark., 318. If during the progress of a criminal trial a view of the locality where the alleged crime is said to have been committed is ordered by the court, the defendant must be allowed to accompany the jury. *Benton v. State*, 30 Ark., 328. The testimony of a witness before a committing court taken in his presence, may be read against the defendant on his trial, where the witness is not a resident of the State. *Dolan v. State*, 40 Ark., 454. A defendant in a felony case should be present in court when an order for a change of venue is made; but the making of such order in his absence, on his own petition, is not error

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for which a conviction will be reversed. *Polk v. State*, 45 Ark., 165. Where there is a probability of a prejudice growing out of the absence of the defendant the judgment will be reversed; but not where it is plain that the defendant has lost no advantage by his absence. *Mabry v. State*, 50 Ark., 492. In felony cases the defendant must be present whenever any substantive step is taken in his case, unless it appear that no prejudice could by any possibility result from his absence. The names of the panel may be placed by the clerk in a box preparatory to drawing the trial jury in his absence; but the witnesses cannot be sworn and put under the rule in his absence. *Bearden v. State*, 44 Ark., 331. Section 2213 Mansfield's Digest, providing that if a defendant on trial for a felony escapes, or absents himself, the trial may progress to a verdict, is constitutional. He has no right to abscond and then complain of his own absence. *Gore v. State*, 52 Ark., 285. Where the punishment may be imprisonment the court should not permit the defendant to be tried in his absence, even with his consent; but if it does so, and the verdict is for imprisonment as part of his punishment, he cannot afterwards complain. *Martin v. State*, 40 Ark., 364. On a trial for murder the defendant having testified that the deceased made such an attempt to shoot him with a pistol as would have justified the killing, the jury after retiring obtained the pistol and cartridges used by the deceased, and experimented with them, apparently for the purpose of testing the truth of the defendant's statement: *Held*, that this was taking evidence out of court in the defendant's absence, and was such misconduct on the part of the jury as entitled him to a new trial. *Forehand v. State*, 51 Ark., 553.

Sec. 11. Habeas corpus.—The privilege of the writ of habeas corpus shall not be suspended; except by the general assembly in case of rebellion, insurrection, or invasion, when the public safety may require it.

Beard ex parte, 4 Ark., 9.

Sec. 12. Suspension of the laws.—No power of suspending or setting aside the law or laws of the State, shall ever be exercised, except by the general assembly.

Sec. 13. Remedy for wrongs—Free administration of justice.—Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase; completely and without denial; promptly and without delay; conformably to the laws.

A statute requiring all persons urging claims against estates of deceased debtors to make oath in person to their demands in the probate courts in which administrations might be pending, was held to be unconstitutional. *Riggs v. Martin*, 5 Ark., 506; *Bennett v. Dawson*, 18 Ark., 337. An act passed in 1862 declaring that civil

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and criminal causes should be continued until peace, was held to be unconstitutional in *Burt v. Williams*, 24 Ark., 91. An act providing for boards of appraisement of stock killed by railways, and that if either party should refuse to abide by the award of such boards, he or it should be taxed with an attorney's fee in any subsequent suit that might be brought if the judgment of the court should be less favorable to him or it than the award, was held to be unconstitutional. *St. Louis R. Co. v. Williams*, 49 Ark., 492. An act requiring any one suing to invalidate a tax title to file an affidavit to the effect that he had tendered taxes, penalties, etc., held not to be unconstitutional. *Craig v. Flanagan*, 21 Ark., 319; *Coats v. Hill*, 41 id., 149. The legislature may require plaintiffs in election suits to give bonds for costs. *Williams v. Pindall*, 35 Ark., 434.

Sec. 14. Treason.—Treason against the state shall only consist in levying and making war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Sec. 15. Security against unreasonable searches and seizures.—The right of the people of this state to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Sec. 16. Imprisonment for debt prohibited.—No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

Sutton v. Hays, 17 Ark., 462.

Sec. 17. Attainder laws—Ex post facto laws—Laws impairing contracts—Corruption of blood and forfeiture.—No bill of attainder, *ex post facto* law, or law impairing the obligation of contracts shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate.

The constitution of the United States forbids that any state shall "pass any *ex post facto* law," or "any law impairing the obligation of contracts." Art. I, Sec. 10.

Ex post facto laws.—An *ex post facto* law declares an offense punishable in a manner in which it was not punishable when it was committed, and relates only to criminal proceedings. *Taylor v. Governor*, 1 Ark., 21. An act relating to procedure, and not to punishment, is not *ex post facto*. *Potter v. State*, 42 Ark., 30.

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A statute making it a misdemeanor to "commit any act injurious to public health, or public morals, or the perversion or obstruction of public justice, or the due administration of the law, is too vague to be upheld, and is *ex post facto* in allowing judges and juries to define the supposed offense after its commission. *Jackson ex parte*, 45 Ark., 158. The legislature may provide for alternative punishment in felony cases, such as is inflicted in misdemeanors, at the discretion of the court; and this discretion to mitigate the punishment does not change the nature of the crime. *State v. Waller*, 43 Ark., 381.

Laws impairing the obligation of contracts—What are contracts within the meaning of this provision.—The charter of the State Bank provided that its notes and bills should be receivable for debts due to the state: *Held* that a statute repealing this provision, as far as it related to notes and bills previously issued, was void. *Woodruff v. Trapnall*, 10 How., 204; S. C., 12 Ark., 811, (overruling *Woodruff v. Attorney General*, 8 Ark., 236); see, also, *Woodruff v. Trapnall*, *id.*, 640. A provision in a charter of a corporation exempting its property from taxation, on being accepted by it, becomes a contract, and cannot be repealed either by the legislature or a constitutional convention, without the consent of the corporation; *Oliver v. Memphis R. Co.*, 30 Ark., 128; *St. Louis R. Co. v. Loftin*, 30 *id.*, 693; *Memphis R. Co. v. Berry*, 41 *id.*, 436; but the exemption is personal to the corporation to which it is granted, cannot be assigned, and is lost if the company consolidates with another. *Id.*; *Arkansas R. Co. v. Berry*, 44 *id.*, 17; *St. Louis R. Co. v. Berry*, 41 *id.*, 509. A contrary dictum in *Zimmer v. State*, 30 *id.*, 677, is overruled. A mortgage of a charter of a railway company, made under a provision of the charter granting that right, does not convey an exemption from taxation contained in the charter. *Memphis R. Co. v. Berry*, 41 Ark., 436. An exemption from taxation conferred on a corporation after its creation, is not a contract, and may be repealed. *Memphis R. Co. v. Berry*, 41 Ark., 509. A consolidation of two railway companies by an agreement which provides that all the property of the companies shall be taken and deemed to be transferred to the consolidated company creates a new corporation, with an existence dating from the time when the consolidation took effect, and is subject to the constitutional provisions respecting taxation in force in the state at that time. *St. Louis R. Co. v. Berry*, 113 U. S., 465. Where the property of a railway company is sold and a new company is organized to operate the railway, the new company cannot claim any right by reason of the charter of the old company. A provision in the charter of a railway company that the company shall not charge exceeding five cents a mile for carrying passengers, is not a contract on the part of the state that the fare shall never be reduced below that limit. *Dow v. Beideman*, 44 Ark., 325. A charter of a railway company having provided a method for the assessment of damages for rights of way, this provision could not be repealed by the adoption of a subsequent state constitution which made a different requirement; *Cairo R. v. Turner*, 31 Ark., 494; but the right cannot be assigned. *Little Rock R. Co. v. McGehee*, 41 Ark., 202. A statute which prescribes a mode of serving process upon railroad companies different from that provided in a charter

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previously granted to a particular company, does not impair the obligation of the contract between such company and the state. *Railroad Co. v. Hecht*, 95 U. S., 168 (affirming *Cairo R. Co. v. Hecht*, 29 Ark., 661). In these two latter decisions it was held that the matter related to the remedy merely. The supreme court of this state (29 Ark., 663,) said: "—it is now a well established doctrine that the legislature may change the remedy of one of the parties to a contract without in the least impairing its obligation;" and this ruling was affirmed by the supreme court of the United States on error. In the case of the *Cairo R. Co. v. Turner*, *supra*, the clause of the charter under consideration also related solely to the remedy. It is difficult to reconcile these decisions; and the Turner case is on this point probably overruled by these two later ones as to laws changing the remedy. See also what is said in *Auditor v. Woodruff*, 2 Ark., 82. Where a statute authorizes a county to issue its negotiable bonds, and makes it the duty of the county court to levy a special tax of sufficient amount to pay the interest and principal of the bonds as the same become due, the power of taxation thus given enters into and becomes a part of the obligation of the contract between the county and every holder of such bonds; and, under the constitution of the United States, this obligation of the contract cannot be impaired or lessened in any degree by the constitution or laws of the state afterwards enacted. *United States v. Jefferson Co.*, 5 Dillon, 310; *S. C. v. McCrary*, 356; *Brodie v. McCabe*, 33 Ark., 690. It was held that a statute providing that when a county seat had been established for four years, it should not be removed without paying for lots and improvements, did not amount to a contract, and might be repealed. *Moses v. Kearney*, 31 Ark., 261. An act of a state legislature which provides that counties are no longer corporations—that they cannot be sued—is void as to obligations legally issued by such counties when the law of the state provided they could be sued, when set up against a party seeking a remedy upon the obligations of a county in a federal court, because the state legislature cannot take away the right of a holder of such county obligations to sue in a federal court when such right is given him by the constitution and the laws of the United States, and because such a law impairs the obligations of such contracts. *Nat. Bank v. Sebastian Co.*, 5 Dillon, 415. The election or appointment of an officer does not create any contract between him and the state. *Humphrey v. Sadler*, 40 Ark., 100. The legislature having provided that swamp lands sold by the state should be exempt from taxation for ten years from date of purchase, it could not afterwards subject them to taxation during that period. *State v. County Court*, 19 Ark., 360. The state having issued swamp land scrip under a statute providing that lands entered with it should be exempt from taxation for ten years, a statute repealing the exemption was held to be void as to all scrip previously issued. *McGee v. Mathis*, 4 Wall., 143 (overruling *McGehee v. Mathis*, 21 Ark., 40). The legislature cannot deprive one of the benefit of a contract lawfully made by commissioners for letting of public contracts. *Berry v. Mitchell*, 42 Ark., 243.

What laws impair the obligation of a contract.—Any law which enlarges or changes the intention of the parties to a contract as shown by it impairs it. *Woodruff v. State*, 3 Ark., 285. The legislature cannot so impair a remedy as

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to defeat a right. *Riggs v. Martin*, 5 Ark., 506; *Bennett v. Dawson*, 18 id., 337. The legislature may change remedies; but a law providing that deeds shall not be made for lands sold under execution until one year after the sale, can have no application to contracts previously made. *Oliver v. McClure*, 28 Ark., 555. The State bank, being insolvent, several acts of the legislature were passed which had the effect to vest much of its assets in the state, which was its only stockholder, and to deprive the other creditors of the usual remedies for the collection of their debts; and the acts were held to be invalid, as impairing the obligation of the contracts of the bank. *Curran v. State of Arkansas*, 15 How., 304 (overruling *State v. Curran*, 12 Ark., 321) See, also, *State v. Curran*, 15 Ark., 20. An act providing that debts due to the Real Estate Bank might be paid in coupons of bonds, issued by the state in aid of the bank, is valid as to contracts subsequently made. *Thruston v. Peay*, 21 Ark., 85. But *quere* if the bonds were not due. *Sessions v. Peay*, id., 100. The legislature could not compel the receiver of the Real Estate Bank to receive in payment of debts due it bonds of the state issued to the State Bank. *Peay v. Ramsey*, 21 Ark., 91. Suits having been begun against the state on bonds, the legislature passed an act requiring the filing of the bonds before any judgment should be rendered on them. *Held*, that the act was constitutional. *Platenius v. State*, 17 Ark., 518. The legislature may pass an act of limitations as to existing contracts, providing a reasonable time is allowed for bringing suit on them. *Sadler v. Sadler*, 16 Ark., 628. A clause in a statute of limitations making exceptions in favor of non-residents was repealed, without allowing such non-residents any time within which to sue. *Held*, that as the act took away all remedy it impaired the obligation of the contract sued on, and was void. *Johnson v. Tilden, Hempf.*, 533. The repeal of the usury laws does not impair the obligation of a contract which was void while these laws were in force. *Birnie v. Main*, 29 Ark., 591; *Woodruff v. Scruggs*, 27 Ark., 26; *Nicholls v. Gee*, 30 Ark., 135. But a usury law can have no effect on pre-existing contracts. *Newton v. Wilson*, 31 Ark., 484. A statute providing that it might be shown by parol evidence that written contracts for the payment of certain sums in dollars, were intended to be payable in Confederate money, and that in such case no recovery beyond the value of the Confederate money should be had, was held to be unconstitutional. *Leach v. Smith*, 25 Ark., 247; *Woodruff v. Tilly*, id., 309; *Green v. Koane*, 26 id., 15. An act scaling Confederate money held unconstitutional. *Hastings v. White*, 26 Ark., 308. The constitution of 1868 contained a provision to the effect that no suit should ever be maintained on any contract for the purchase of slaves; but this provision was held to be void as in violation of the clause of the constitution of the United States forbidding any state from passing any law impairing the obligation of contracts. *Sevier v. Haskell*, 26 Ark., 133; *Jacoway v. Denton*, 25 id., 625; *Osborne v. Nicholson*, 13 Wall., 654; *Pillow v. Brown*, 26 Ark., 245. An act declaring that any class of persons shall be barred from the collection of their debts is void. *Vernon v. Henson*, 24 Ark., 242. Laws abolishing imprisonment for debt do not impair the obligation of contracts previously existing. *Newton v. Tibbatts*, 7 Ark., 150. A redemption statute cannot apply to a mortgage executed before its passage.

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Hudgins v. Morrow, 47 Ark., 515. A statute requiring mortgaged property to be appraised, and requiring it to bring two-thirds of its appraised value, and providing for its subsequent redemption, cannot be made to apply to mortgages previously executed. *Robards v. Brown*, 40 Ark., 425; *Moore v. Fowler*, *Hempst.*, 536. A statute repealing a statute permitting the state to be sued was held to be valid. *Beers v. State*, 20 How., 527; *Bank of Washington v. State*, *id.*, 530. The legislature may authorize the auditor to sue on a bond executed to the governor. *Auditor v. Woodruff*, 2 Ark., 83. A statute requiring holders of school warrants to present them to the county judge and county clerk for examination, with power in the judge and clerk to cancel them if found invalid, and to issue other warrants in lieu thereof if they were found valid, was held to be void as to warrants previously issued. *McCracken v. Moody*, 33 Ark., 81. But an act authorizing county courts to call in county warrants for cancellation and re-issue was held valid as to all warrants afterwards issued. *Allen v. Bankston*, *id.*, 740.

Sec. 18. Equality of privileges and immunities.—

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. 19. Perpetuities, monopolies and hereditary distinctions prohibited.—Perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed; nor shall any hereditary emoluments, privileges or honors ever be granted or conferred in this state.

While the county courts may refuse to grant any license to sell liquor to any one, they cannot arbitrarily grant license to a few persons, and refuse license to others of good moral character, who offer to comply with the statute. *Levy ex parte*, 43 Ark., 42.

Sec. 20. Resident aliens.—No distinction shall ever be made by law, between resident aliens and citizens, in regard to the possession, enjoyment, or descent of property.

Sec. 21. Security of life, liberty and property—Banishment prohibited.—No person shall be taken or imprisoned, or dispossessed of his estate, freehold, liberties or privileges, or outlawed, or in any manner destroyed, or deprived of his life, liberty, or property, except by the judgment of his peers, or the law of the land; nor shall any person, under any circumstances, be exiled from the state.

Due process of law.—See note to *Art. II, Sec. 8.*

Sec. 22. Private property taken for public use.—

The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated, or damaged for public use, without just compensation therefor.

See *Martin ex parte*, 13 Ark., 199. The legislature cannot take private property for private use. *Roberts v. Williams*, 15 Ark., 43. Farther as to *Eminent Domain*, see Art. XII, Sec. 9, and notes.

Sec. 23. State's right of eminent domain and taxation—Delegation of taxing power.—

The state's ancient right of eminent domain and of taxation, is herein fully and expressly conceded; and the general assembly may delegate the taxing power, with the necessary restriction, to the state's subordinate political and municipal corporations, to the extent of providing for their existence, maintenance and well being, but no further.

Stedman v. Planters' Bank, 7 Ark., 424. The right to impose taxes for the support of the state government may be restricted by the state constitution, but needs no clause to confer it. *Ouachita Co. v. Rumph*, 43 Ark., 525. The legislature has authority to delegate to cities the power to tax occupations. *Little Rock v. Prather*, 46 Ark., 471.

Sec. 24. Religious liberty.—

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can, of right, be compelled to attend, erect, or support any place of worship; or to maintain any ministry against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience; and no preference shall ever be given, by law, to any religious establishment, denomination or mode of worship, above any other.

Laws for the punishment of Sabbath breaking are not unconstitutional; *Shover v. State*, 10 Ark., 259; even though they contain no exception in favor of Jews and others keeping other days of the week than Sunday. *Scales v. State*, 47 Ark., 476.

Sec. 25. Protection of religious liberty.—Religion, morality and knowledge being essential to good government, the general assembly shall enact suitable laws to protect every

religious denomination in the peaceable enjoyment of its own mode of public worship.

Sec. 26. Religious tests prohibited—Oaths and affirmations not dispensed with.—No religious test shall ever be required of any person as a qualification to vote or hold office; nor shall any person be rendered incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths or affirmations.

Sec. 27. Slavery forbidden—Standing army—Military subordinate to civil power—Quartering of troops.—There shall be no slavery in this state, nor involuntary servitude, except as a punishment for crime. No standing army shall be kept in time of peace; the military shall, at all times, be in strict subordination to the civil power; and no soldier shall be quartered in any house, or on any premises, without the consent of the owner, in time of peace; nor in time of war, except in a manner prescribed by law.

Sec. 28. Tenure of lands.—All lands in this state are declared to be allodial; and feudal tenures of every description, with all their incidents, are prohibited.

Sec. 29. This enumeration not to disparage other rights—Paramount authority of this declaration of rights.—This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government; and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

The declaration of rights is not amendable. *Eason v. State*, 11 Ark., 481; *Pope v. Ashley*, 13 *id.*, 267.

ARTICLE III.

FRANCHISE AND ELECTIONS.

Sec. 1. Qualifications of electors.—Every male citizen of the United States, or male person who has declared his intention of becoming a citizen of the same, of the age of twenty-one years, who has resided in the state twelve months, and in the county six months, and in the voting precinct or ward one month, next preceding any election, where he may propose to vote, shall be entitled to vote at all elections by the people.

The legislature cannot require any qualifications for an elector in addition to those here named. *Rison v. Farr*, 24 Ark., 161.

Sec. 2. Freedom of elections—No previous registration—Right of elector not to be impaired except on conviction of felony.—Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted, whereby the right to vote at any election shall be made to depend upon any previous registration of the elector's name; or whereby such right shall be impaired or forfeited, except for the commission of a felony at common law, upon lawful conviction thereof.

Sec. 3. Elections to be by ballot—Ballots to be numbered—Secrecy of ballot.—All elections by the people shall be by ballot. Every ballot shall be numbered in the order in which it shall be received, and the number recorded by the election officers, on the list of voters opposite the name of the elector who presents the ballot. The election officers shall be sworn or affirmed not to disclose how any elector shall have voted, unless required to do so as witnesses in a judicial proceeding, or a proceeding to contest an election.

A widespread, systematic plan, whereby all negro voters in the county, under threats of personal violence, of social ostracism, and of expulsion from the community, were compelled to vote open tickets for the purpose of disclosing to their fellows any negro who might try to vote for certain candidates, will avoid the election, though there is no proof that a majority voted against their wishes by rea-

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son of the plan, and though it was also partly designed as a means of testing the returns of the election officers. *Jones v. Glidewell*, 13 S. W. R., 723.

Sec. 4. Privilege of electors.—Electors shall, in all cases (except treason, felony and breach of the peace), be privileged from arrest during their attendance at elections, and going to and from the same.

Sec. 5. Idiots and insane persons.—No idiot or insane person shall be entitled to the privileges of an elector.

Sec. 6. Violation of election laws.—Any person who shall be convicted of fraud, bribery, or other wilful and corrupt violation of any election law of this state, shall be adjudged guilty of a felony, and disqualified from holding any office of trust, or profit in this state.

Sec. 7. Soldiers and marines.—No soldier, sailor, or marine, in the military or naval service of the United States, shall acquire a residence by reason of being stationed on duty in this state.

Sec. 8. Time of holding elections.—The general elections shall be held biennially, on the first Monday of September; but the general assembly may by law fix a different time.

Sec. 9. Testimony in cases of contested elections.—In trials of contested elections and in proceedings for the investigation of elections, no person shall be permitted to withhold his testimony on the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not be used against him in any judicial proceeding, except for perjury in giving such testimony.

Sec. 10. Causes of disqualification of election officers.—No person shall be qualified to serve as an election officer, who shall hold, at the time of the election, any office, appointment, or employment in or under the government of the United States, or of this state, or in any city or county or any municipal board, commission or trust in any city, save only the justices of the peace, and aldermen, notaries public, and persons in the militia service of the state. Nor shall any election officer be eligible to any civil office to be filled at an

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election at which he shall serve—save only to such subordinate municipal or local offices, below the grade of city or county officers, as shall be designated by general law.

That an officer of an election was himself a candidate voted for will only invalidate his own election. *Sweepston v. Barton*, 39 *Ark.*, 550.

Sec. 11. Votes unlawfully refused to be counted.—If the officers of any election shall unlawfully refuse or fail to receive, count or return the vote or ballot of any qualified elector, such vote or ballot shall nevertheless be counted upon the trial of any contest arising out of said election.

Sec. 12. Elections by persons acting as representatives.—All elections by persons acting in a representative capacity shall be *viva voce*.

ARTICLE IV.

DEPARTMENTS.

Sec. 1. Departments of government.—The powers of the government of the state of Arkansas shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial to another.

Granting continuances of causes pending in the courts is beyond the power of the legislature; *Burt v. Williams*, 24 *Ark.*, 91; nor can the legislature authorize the courts to set aside judgments previously rendered. *Byrd v. Brown*, 5 *Ark.*, 710; *McLain v. Irwin*, 6 *id.*, 71; *Biscoe v. Sandefur*, 14 *id.*, 568.

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

No person can at the same time be treasurer and justice of the peace; *State v. Hutt*, 2 *Ark.*, 282; nor sheriff or deputy sheriff and justice of the peace. *State Bank v. Curran*, 10 *id.*, 142. The auditor of the state cannot exercise any judicial power. *Auditor v. Davies*, 2 *Ark.*, 494; *Danley v. Whitely*, 14 *Ark.*, 698. The legislature cannot abridge the power of the courts to punish for contempts. *State v. Morrill*, 16 *id.*, 384. The legislature cannot—at least until after the establishment of separate courts of chancery—authorize masters in chancery to issue writs

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of injunction. *Kennedy ex parte*, 11 *Ark.*, 598; *In re Cornelius*, 14 *id.*, 678; *Scoggin v. Taylor*, 13 *id.*, 384. An act conferring on swamp land agents the power to pass on conflicting entries was held to be constitutional. *Hempstead v. Underhill*, 20 *Ark.*, 337. Held under the constitution of 1868 that an act creating a state board of equalization of taxes to be composed of the senate and auditor was constitutional. *Van DeGriff v. Haynie*, 28 *Ark.*, 270. The offices of county supervisor and deputy circuit clerk held not to be incompatible. *State v. Feibleman*, 28 *Ark.*, 424. In *Files v. Robinson*, 30 *Ark.*, 487, the question was discussed as to whether the legislature could give power to a clerk of a circuit court to enter a judgment by default; but the point was not decided. The circuit courts may be authorized to approve official bonds. *Oliver v. Martin*, 36 *Ark.*, 134. The legislature cannot prescribe for the courts rules for interpretation, or fix for future legislatures any limits as to the effects of their action: so held as to a statute declaring the effect of all repealing statutes. *Files v. Fuller*, 44 *Ark.*, 273. The legislature cannot require the judges of the supreme court to give their decisions in writing. *Vaughn v. Harp*, 49 *Ark.*, 160. The governor is not amenable to the judiciary, and a writ of mandamus will not be issued against him. *Hawkins v. Governor*, 1 *Ark.*, 570. Where the legislature has detached part of the territory of one county and has added it to another, it may afterwards apportion a county debt between the two counties. *Perry Co. v. Conway Co.*, 52 *Ark.*, 430.

ARTICLE V.

LEGISLATIVE.

Sec. 1. General Assembly.—The legislative power of this state shall be vested in a general assembly, which shall consist of the senate and house of representatives.

General Powers.—The legislature may pass any law not prohibited by the constitution of the state or that of the United States. *Henry v. State*, 26 *Ark.*, 523; *Straub v. Gordon*, 27 *id.*, 629; *State v. Ashley*, 1 *id.*, 513; *State v. Fairchild*, 15 *id.*, 619.

Police Power.—Every citizen holds his property subject to a proper exercise of police power, either by the legislature directly, or through public corporations to which the legislature may delegate it. *Little Rock v. Barton*, 33 *Ark.*, 436. An act prohibiting the sale or giving away of liquors within three miles of a church or school house held constitutional. *Blackwell v. State*, 36 *Ark.*, 178. An act authorizing the county courts to make an order prohibiting the sale or giving away of liquor within three miles of any church or school house upon the petition of a majority of the adult inhabitants held not to be unconstitutional. *Trammell v. Bradley*, 37 *Ark.*, 374. Retailing spirits may be regulated by the legislature. *Edgar v. State*, 45 *Ark.*, 356; *Woods v. State*, 36 *Ark.*, 36. The legislature has absolute control of the liquor traffic; but counties and towns cannot impose a tax on the privilege without legislative authority. *Drew Co. v. Bennett*, 43 *Ark.*, 364. The legislature

may authorize municipal corporations to establish fire limits, and if wooden buildings are erected therein in violation of an ordinance, they may be removed. *McKibben v. Fl. Smith*, 35 Ark., 352. The act of April 4, 1887, requiring dentists to be registered with a board of examiners, is not unconstitutional. *Gosnell v. State* 52 Ark., 228. An act providing that no railway company shall charge more freight than is specified in its bill of lading, and for a penalty for non-delivery of goods on payment or tender of charges, is valid as a proper exercise of the police power. *Little Rock R. Co. v. Hanniford*, 49 Ark., 291. The act of March 21, 1885, conferring powers on cities of the first class to require owners of lots to make and maintain suitable pavements or sidewalks along their premises, when necessary for the safety or convenience of travel, and to enforce obedience by fines, is a delegation of the police power of the state, and is not unconstitutional. *James v. Pine Bluff*, 49 Ark., 199. This principle however does not apply to an ordinance requiring lot owners to pave the street in front of their lots. *Monticello v. Banks*, 48 id., 251. A statute making it a criminal offense to sell any pistol, not an army or navy pistol, held not to be unconstitutional. *Dabbs v. State*, 39 Ark., 353. Under the police power the legislature may require the owner of a franchise to keep a toll bridge to give a bond to keep the bridge in repair. *Chandler v. Montgomery Co.*, 31 Ark., 25. Billiard tables may be specifically taxed under the police power; *Washington v. State*, 13 Ark., 752; *McGehee v. Mathis*, 21 id., 51; and the legislature may authorize towns and cities to impose a license on ten pin alleys. *Goetler v. State*, 45 Ark., 454.

Sec. 2. House of representatives.—The house of representatives shall consist of members to be chosen every second year by the qualified electors of the several counties.

Sec. 3. Senate.—The senate shall consist of members to be chosen every four years, by the qualified electors of the several districts. At the first session of the senate, the senators shall divide themselves into two classes, by lot, and the first class shall hold their places for two years only, after which all shall be elected for four years.

Sec. 4. Qualifications of senators and representatives.—No person shall be a senator or representative, who, at the time of his election, is not a citizen of the United States, nor any one who has not been for two years next preceding his election, a resident of this state, and for one year next preceding his election, a resident of the county or district whence he may be chosen. Senators shall be at least twenty-five years of age, and representatives at least twenty-one years of age.

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Sec. 5. Time of meeting.—The general assembly shall meet at the seat of government every two years, on the first Tuesday after the second Monday in November, until said time be altered by law.

By act of November 30, 1875, the time was changed to the second Monday in January. *Mansf. Dig., sec. 3423.*

Sec. 6. Vacancies.—The governor shall issue writs of election, to fill such vacancies as shall occur in either house of the general assembly.

Sec. 7. Officers ineligible to general assembly.—No judge of the supreme, circuit or inferior courts of law or equity, secretary of state, attorney general for the state, auditor or treasurer, recorder, clerk of any court of record, sheriff, coroner, member of congress, nor any other person holding any lucrative office under the United States or this state, (militia officers, justices of the peace, postmasters, officers of public schools and notaries excepted), shall be eligible to a seat in either house of the general assembly.

Sec. 8. Defaulters.—No person who now is, or shall be hereafter, a collector or holder of public money, nor any assistant or deputy of such holder or collector of public money, shall be eligible to a seat in either house of the general assembly, nor to any office of trust or profit, until he shall have accounted for and paid over, all sums for which he may have been liable.

This section is not in violation of the constitution of the United States. *Taylor v. Governor, 1 Ark., 21.* If a party elected to office be a defaulting collector or holder of public money the governor may withhold his commission; or if commissioned, he may be ousted on quo warranto. *Sweepston v. Barton, 39 Ark., 549.*

Sec. 9. Persons convicted of crimes ineligible to office.—No person hereafter convicted of embezzlement of public money, bribery, forgery, or other infamous crime, shall be eligible to the general assembly, or capable of holding any office of trust or profit in this state.

Sec. 10. Senators and representatives disqualified for office.—No senator or representative shall, during the

term for which he shall have been elected, be appointed or elected to any civil office under this state.

A like clause being contained in the constitutions of 1836 and 1861, it was held that one elected as a senator under the former constitution might be elected to an office under the latter during the period for which he was elected senator, his office of senator having in the meantime been abolished by the adoption of the constitution of 1861. *State v. Clendenin*, 24 Ark., 78.

Sec. 11. Each house to appoint its own officers and determine qualification of its members—Quorum.—Each house shall appoint its own officers, and shall be sole judge of the qualifications, returns and elections of its own members. A majority of all the members elected to each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house shall provide.

Sec. 12. Rules—Contempts—Enforcement of process—Protection of members—Expulsion—Journal—Yeas and nays.—Each house shall have the power to determine the rules of its proceedings; and punish its members or other persons, for contempt or disorderly behavior in its presence; enforce obedience to its process; to protect its members against violence or offers of bribes, or private solicitations; and, with the concurrence of two-thirds, expel a member; but not a second time for the same cause. A member expelled for corruption shall not thereafter be eligible to either house; and punishment for contempt, or disorderly behavior, shall not bar an indictment for the same offense. Each house shall keep a journal of its proceedings; and, from time to time, publish the same, except such parts as require secrecy; and the yeas and nays, on any question, shall, at the desire of any five members, be entered on the journals.

Sec. 13. Proceedings to be public.—The sessions of each house, and of committees of the whole, shall be open, unless when the business is such as ought to be kept secret.

Sec. 14.—Vote *viva voce*.—Whenever an officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house of the general assembly, the vote shall be taken *viva voce* and entered on the journals.

Sec. 15. Privileges of senators and representatives.—The members of the general assembly shall, in all cases except treason, felony, and breach, or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective houses; and in going to and returning from the same; and, for any speech or debate in either house, they shall not be questioned in any other place.

Sec. 16. Pay and mileage—Beginning of term.—The members of the general assembly shall receive such *per diem* pay and mileage for their services, as shall be fixed by law. No member of either house shall, during the term for which he has been elected, receive any increase of pay for his services, under any law passed during such term. The term of all members of the general assembly shall begin on the day of their election.

Sec. 17. Duration of sessions.—The regular biennial sessions shall not exceed sixty days in duration; unless by a vote of two-thirds of the members elected to each house of said general assembly: Provided, that this section shall not apply to the first session of the general assembly under this constitution, or when impeachments are pending.

Sec. 18. Presiding officers—President of senate to succeed as governor in case of vacancy.—Each house, at the beginning of every regular session of the general assembly, and whenever a vacancy may occur, shall elect from its members a presiding officer, to be styled, respectively, the president of the senate, and the speaker of the house of representatives; and whenever, at the close of any session, it may appear that the term of the member elected president of the senate will expire before the next regular session, the senate shall elect another president from those members whose terms of office

continue over, who shall qualify and remain president of the senate until his successor may be elected and qualified; and who, in the case of a vacancy in the office of governor, shall perform the duties and exercise the powers of governor, as elsewhere herein provided.

Sec. 19. Style of laws.—The style of the laws of the state of Arkansas shall be: "Be it enacted by the general assembly of the state of Arkansas."

The style here prescribed is essential to the validity of every act. *Vinsant v. Knox*, 27 Ark., 276. It may be attached to the bill on a separate piece of paper. *Id.*

Sec. 20. State not to be sued.—The state of Arkansas shall never be made defendant in any of her courts.

Sec. 21. Laws to be by bills—Amendments.—No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house, as to change its original purpose.

An amendment to a bill extending its scope, but embracing no matter not germane to its original purpose, is not within this prohibition. *Loftin v. Watson*, 32 Ark., 414.

Sec. 22. Passage of bills.—Every bill shall be read at length, on three different days, in each house; unless the rules be suspended by two-thirds of the house, when the same may be read a second or third time on the same day; and no bill shall become a law unless, on its final passage, the vote be taken by yeas and nays; the names of the persons voting for and against the same be entered on the journal; and a majority of each house be recorded thereon as voting in its favor.

The courts may examine the legislative journals to see whether an act was passed. *Burr v. Ross*, 19 Ark., 250; *Worthen v. Budgett*, 32 Ark., 496. Not only the enrolled bill, but the legislative journals, and records and files of the office of the secretary of state, may be looked to to ascertain whether the act was duly passed. *Chicot County v. Davies*, 40 Ark., 200. Where the house journal shows that an original bill was read a first and second time, and referred; that a substitute was reported and adopted in lieu of the original bill, and was read a third time and passed, but does not show the first and second reading of the substitute, it not affirmatively appearing to the contrary, the court will presume that the substitute was

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read three times, as the constitution requires. *Id.* Every reasonable presumption is to be made in favor of the legislative body. It will not be presumed in any case from the mere silence of the journals, that either house has exceeded its authority, or disregarded a constitutional requirement in the passage of legislative acts, unless the constitution has expressly required the journals to show the action taken. *Smithee v. Garth*, 33 Ark., 17. When the constitution requires certain formal rules to be complied with by the legislature before a bill becomes a law, and the appropriate office of the journal is to record the successive steps of legislative action, such journal will be sufficient evidence to overturn an enrolled bill which is in conflict with it; but where the constitution does not require a certain matter (e. g., an amendment) to be entered upon the journal, but the journal shows that the original bill was amended, and is silent as to the rescision of the amendment, and the enrolled bill contains no amendment, this court will presume that the amendment was rescinded. *Chicot County v. Davies*, 40 Ark., 200. As where an original bill in the house of representatives, to authorize county subscriptions for stock in railroads, provided that the county court should submit the question of subscription to a popular vote, upon the joint application of the president and directors of the company "and" one hundred of the voters of the county. The manuscript journal of the house shows that the bill was amended by substituting the word "or" for "and," so as to authorize a popular vote upon the application of either the company, or of one hundred voters. The entry in the printed journal as to this amendment is insensible, and neither journal said anything more on the amendment. The bill was passed and transmitted to the senate, and there passed, and was sent to the governor. The enrolled bill, as signed by the governor, has the word "and" in place of "or." In a contention that the bill signed by the governor and enrolled is not the same bill passed by the house and senate: *Held*, that, as the constitution did not require amendments of bills to be entered upon the journals, this court, to uphold the act, will presume that the house receded from its amendment, and hold that the enrolled act was the one passed. *Id.* Where there is a variance between the manuscript and printed minutes of legislative proceedings, the manuscript must prevail. *Id.* The courts may look beyond the enrollment of an act to the journals to see whether it was constitutionally passed. But if, admitting all that the journals affirmatively show, it *may* have been properly passed, the courts should so presume, and sustain the act. Under the constitution of 1868 a bill might be read by title only; and a change of title in the house before the last reading into another indicating the same bill, did not impair the constitutional passage of the bill. *Webster v. Little Rock*, 44 Ark., 536. This section does not require that the reading of the bill shall be shown by an entry in the journal; and if the journal does not show how it was read the courts must presume that it was read as required by the constitution. *Glidewell v. Martin*, 51 Ark., 559.

The constitution of 1868 (Art. XV, Sec. 2) provided for a commission "to revise and re-arrange the statute laws of this state." This commission amplified its jurisdiction by undertaking to prepare a new code of civil and criminal law, having

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little or no connection with statutes previously passed. The result was that about sixty-five chapters of the proposed civil and criminal codes were prepared, and submitted to the legislature for approval; and they were acted on by that body in various methods. These were printed in a book published in 1869 under the title, "*Chapters of the Digest, approved by the general assembly of the state of Arkansas at the session begun and held in Little Rock on the 17th day of November, 1868.*" In *Vinsant v. Knox*, 27 Ark., 278, the court held that the revisers had no power "to prepare new laws and [or] amend the old statutes any farther than was necessary to render them consistent with themselves, and in harmony with the constitution; that the *Chapters of the Digest* was not such a revision; and that if valid, they must derive their validity from having been legally enacted by the general assembly as other original statutes." As the result of the investigation the court found that none of the chapters had been enacted according to the forms of the constitution except the following: Sections from one to ten inclusive of the chapter entitled "*Circuit Courts,*" and chapters entitled "*Corporations, and Organization of Municipal Corporations,*" "*Regulating the Assessment and Collection of Revenue,*" "*Robbery,*" "*Forgery and Counterfeiting,*" "*Enticing Females to Houses of Ill-Fame,*" "*Trespass on Personal Property,*" "*Violating the Grave,*" and "*Profane Cursing and Swearing.*" In the meantime various proceedings were had on the authority of the so-called "*Chapters of the Digest,*" which, proving to be defective, led to the passage of curative acts. See *Mansfield's Digest*, Secs. 218, 223, 1490. The chapters held to be void were so decided on several constitutional grounds in *Vinsant v. Knox*. See notes to Sec. 19 of the present article, *ante*; also Art. VI, Sec. 15.

The provision as to the yeas and noes is mandatory; and unless they are shown by the journal the act is void. *Vinsant v. Knox*, 27 Ark., 279. Upon the passage of a bill in the house, the journal showed the number of votes in the affirmative and the number in the negative, and the names of those voting in the affirmative, but there was no entry of the names of the members who voted in the negative: *Held*, that the failure to enter the names of those voting in the negative, was a disregard of the constitutional requirement, and that the bill did not become a law. *Smithee v. Garth*, 33 Ark., 17. Unless the journal shows to the contrary, it will be presumed that the provision as to the reading of a bill on different days was complied with. *Vinsant v. Knox*, 27 Ark., 278. Where the evidence fails to show that the proceedings of the legislature did not conform to the requirements of the constitution, the act will be held to be valid. *English v. Oliver*, 28 Ark., 317. A bill was regularly passed by the house of representatives, and transmitted to the senate. It was read twice and referred to a committee. During its pendency in the senate, a motion was made in the house to reconsider it, and it was recalled from the senate, and then the motion to reconsider was adopted. It was then again passed in the house and transmitted to the senate, and there read again the third time and passed *Held*, that the bill was constitutionally passed. *State v. Crawford*, 35 Ark., 237. A bill was passed by the house of representatives and was sent to the senate, where it was amended and returned to the house. The house rejected the amendment, and

returned the bill to the senate. The senate rec'ded from the amendment, and returned the bill again to the house. It was then enrolled and signed by the officers of both houses, and approved by the governor, with the amendment still remaining: *Held*, that the bill, as enrolled and approved by the governor, was not passed, and the act was void. *Smithee v Campbell*, 41 Ark., 471. An allegation that an act was not passed as required by this section must be made absolutely, and not on information and belief. *State v. Tufts*, 28 Ark., 502. One cannot be estopped to deny that an act was properly passed. *State v. Little Rock R. Co.*, 31 Ark., 702. In this case a similar clause in the constitution of 1868 as to the reading of bills was discussed; but no ruling was made, the case going off on other grounds. The objection that a statute was not passed as required by this section may be raised by demurrer, and the court will seek information to determine the question. *Scott v. Clark Co.*, 34 Ark., 283.

Sec. 23. Revival, amendment and extension of laws.

—No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended or conferred, shall be re-enacted and published at length.

A statute which undertakes to extend the positive provisions of a law relating to the calling in of county warrants to warrants issued by cities and towns, by a general reference, is bad. But when a new right is created, or a new cause of action is given, it is not necessary to re-enact the whole law governing the remedy. *Watkins v. Eureka Springs*, 49 Ark., 131. A void act cannot be made valid by subsequent amendments. *State v. Little Rock R. Co.*, 31 Ark., 702. Section 3072 of Mansfield's Digest, providing that the statutes relating to the redemption of lands sold under execution shall apply to sales of land made under decrees in chancery is unconstitutional. *Beard v. Wilson*, 52 Ark., 290. The act of March 26, 1883, re-enacted the prohibitory part of a prior liquor license act which was thereby enlarged so as to prohibit the sale of alcohol without license, which was not forbidden by the previous act, and then declared that the latter act should have operation in every part of the state, irrespective of other prohibitory acts: *Held*, that the latter act was not unconstitutional. *Baird v. State*, 52 Ark., 326.

Sec. 24. Special legislation.—The general assembly shall not pass any local or special law changing the venue in criminal cases; changing the names of persons, or adopting or legitimating children; granting divorces; vacating roads, streets or alleys.

Sec. 25. Special legislation—Suspension of laws.—In all cases where a general law can be made applicable, no special law shall be enacted; nor shall the operation of any gen-

eral law be suspended by the legislature for the benefit of any particular individual, corporation, or association; nor where the courts have jurisdiction to grant the powers, or the privileges, or the relief asked for.

Local option laws held to be constitutional. *Boyd v. Bryant*, 35 Ark., 69. The legislature cannot suspend the general law relating to cities by fixing the boundary of a particular city. *Little Rock v. Parish*, 36 Ark., 177. Where part of a statute is void under this section, the rest of the act may stand, where the void part does not materially affect the general enactment. *Davis v. Gaines*, 48 Ark., 370. A clause in an act providing for the levy of local assessments exempting a part of the lands benefited from assessment is void. *Id.* The legislature has a discretion as to when a special statute is necessary, and except in the enumerated cases its discretion cannot be controlled. *Boyd v. Bryant*, 35 Ark., 73; *Davis v. Gaines*, 48 *id.*, 371. An act providing that in case of recovery against a railway company in certain cases, the plaintiff shall recover a certain penalty, and a reasonable attorney's fee, is not unconstitutional. *Dow v. Beidelman*, 49 Ark., 455. An act that is general and uniform in its operation upon all persons coming within the class to which it applies, is not within the prohibition of this section; as where it applies to all railways. *Little Rock Ry. Co. v. Hanniford*, 49 Ark., 291; *Dow v. Beidelman*, 49 Ark., 325. An act of the legislature providing that no railway company shall charge more freight than is specified in its bills of lading, and providing a penalty for the non-delivery of goods on payment or tender of charges, is not invalid as being special legislation. *Little Rock R. Co. v. Hanniford*, 49 Ark., 291.

Sec. 26. Publication of special and local bills.—

No local or special bill shall be passed, unless notice of the intention to apply therefor, shall have been published, in the locality where the matter or the thing to be affected may be situated; which notice shall be at least thirty days prior to the introduction into the general assembly of such bill, and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the general assembly before such act shall be passed.

The legislature is the sole judge as to whether a general law can be made applicable in any given case. *Little Rock v. Parish*, 36 Ark., 172. No issue on the subject of notice can be raised in the courts. *Davis v. Gaines*, 48 Ark., 370.

Sec. 27. Extra compensation—Appropriations not provided for by law.—

No extra compensation shall be made to any officer, agent, employe or contractor, after the service shall have been rendered, or the contract made; nor shall any

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money be appropriated or paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws; unless such compensation or claim, be allowed by bill passed by two-thirds of the members elected to each branch of the general assembly.

An act providing for the payment of a debt lawfully due to an individual does not come within this section. As where provision for payment had been made by pre-existing laws, and no payment was ever made. *State v. Crawford*, 35 Ark., 242.

Sec. 28. Adjournment.—Neither house shall, without the consent of the other, adjourn for more than three days; nor to any other place than that in which the two houses shall be sitting.

Sec. 29. Appropriations.—No money shall be drawn from the treasury except in pursuance of specific appropriation made by law, the purpose of which shall be distinctly stated in the bill; and the maximum amount which may be drawn shall be specified in dollars and cents; and no appropriations shall be for a longer period than two years.

See *Art. XVI, Sec. 12.*

Sec. 30. General appropriation bills.—The general appropriation bill shall embrace nothing but appropriations for the ordinary expense of the executive, legislative and judicial departments of the state; all other appropriations shall be made by separate bills, each embracing but one subject.

Sec. 31. Special appropriation bills, how passed.—No state tax shall be allowed, or appropriation of money made, except to raise means for the payment of the just debts of the state, for defraying the necessary expenses of government, to sustain common schools, to repel invasion and suppress insurrection, except by a majority of two-thirds of both houses of the general assembly.

Sec. 32. Amount of damages in certain cases not to be limited—Actions for such injuries to survive.—No act of the general assembly shall limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property; and, in case of death from such injuries, the right

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of action shall survive, and the general assembly shall prescribe for whose benefit such action shall be prosecuted.

The court may however in a suit for damages set aside a verdict that is excessive. *Little Rock R. Co. v. Barker*, 39 Ark., 492.

Sec. 33. Claims of state not to be impaired.—No obligation or liability of any railroad, or other corporation held or owned by this state, shall ever be exchanged, transferred, remitted, postponed, or in any way diminished by the general assembly; nor shall such liability or obligation be released, except by payment thereof into the state treasury.

Sec. 34. New bills not to be introduced at close of session.—No new bill shall be introduced into either house during the last three days of the session.

Sec. 35. Bribery.—Any person who shall, directly or indirectly, offer, give or promise any money, or thing of value, testimonial, privilege or personal advantage to any executive or judicial officer, or member of the general assembly; and any such executive or judicial officer, or member of the general assembly, who shall receive or consent to receive any such consideration, either directly or indirectly, to influence his action in the performance or non-performance of his public or official duty, shall be guilty of a felony, and be punished accordingly.

Sec. 36. Expulsion of member no bar to indictment.—Proceedings to expel a member for a criminal offense, whether successful or not, shall not bar an indictment and punishment, under the criminal laws, for the same offense.

ARTICLE VI.

EXECUTIVE DEPARTMENT.

Sec. 1. Executive officers—Offices to be at seat of government—Terms of office—Commissioner of state lands.—The executive department of this state shall consist of a governor, secretary of state, treasurer of state, auditor of state, and attorney general; all of whom shall keep their offices in person at the seat of government, and hold their offices for

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the term of two years, and until their successors are elected and qualified; and the general assembly may provide by law for the establishment of the office of commissioner of state lands.

Sec. 2. Governor.—The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled “the governor of the state of Arkansas.”

The governor has no power to employ counsel to represent the interests of the state in litigation so as to give him a lien on the judgment recovered. *Compton v. State*, 38 Ark., 601.

Sec. 3. Election of executive officers.—The governor, secretary of state, treasurer of state, auditor of state, and attorney general shall be elected by the qualified electors of the state at large, at the time and places of voting for members of the general assembly; the returns of each election therefor shall be sealed up separately and transmitted to the seat of government by the returning officers, and directed to the speaker of the house of representatives; who shall, during the first week of the session, open and publish the votes cast and given for each of the respective officers hereinbefore mentioned, in the presence of both houses of the general assembly. The person having the highest number of votes, for each of the respective offices, shall be declared duly elected thereto; but if two or more shall be equal, and highest in votes for the same office, one of them shall be chosen by the joint vote of both houses of the general assembly, and a majority of all the members elected shall be necessary to a choice.

Sec. 4. Contested elections for executive officers.—Contested elections for governor, secretary of state, treasurer of state, auditor of state, and attorney general shall be determined by the members of both houses of the general assembly, in joint session; who shall have exclusive jurisdiction in trying and determining the same, except as hereinafter provided in the case of special elections; and all such contests shall be tried and determined at the first session of the general assembly after the election in which the same shall have arisen.

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The general assembly alone has jurisdiction in case of a contest for the office of governor. *State v. Baxter*, 28 Ark., 129; *Baxter v. Brooks*, 29 *id.*, 174.

Sec. 5. Qualifications of governor.—No person shall be eligible to the office of governor except a citizen of the United States, who shall have attained the age of thirty years, and shall have been seven years a resident of this state.

Sec. 6. Governor to be commander-in-chief.—The governor shall be commander-in chief of the military and naval forces of this state, except when they shall be called into the actual service of the United States.

Sec. 7. May require information from officers of executive department—Execution of laws.—He may require information, in writing, from the officers of the executive department, on any subject relating to the duties of their respective offices; and shall see that the laws are faithfully executed.

Sec. 8. Messages to general assembly.—He shall give to the general assembly, from time to time, and at the close of his official term, to the next general assembly, information, by message, concerning the condition and government of the state; and recommend for their consideration such measures as he may deem expedient.

Sec. 9. Great seal of the state.—A seal of the state shall be kept by the governor, used by him officially, and called the "great seal of the state of Arkansas."

Sec. 10. Grants and commissions.—All grants and commissions shall be issued in the name, and by the authority of the state of Arkansas; sealed with the great seal of the state; signed by the governor, and attested by the secretary of state.

Sec. 11. Persons ineligible to office of governor.—No member of congress, or other person holding office under the authority of this state, or of the United States, shall exercise the office of governor, except as herein provided.

Sec. 12. Death or disability of governor.—In case of the death, conviction on impeachment, failure to qualify, resig-

nation, absence from the state, or other disability of the governor, the powers, duties and emoluments of the office for the remainder of the term, or until the disability be removed, or a governor elected and qualified, shall devolve upon, and accrue, to the president of the senate.

Sec. 13. Impeachment or disability of president of senate acting as governor.—If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state; the speaker of the house of representatives shall, in like manner, administer the government.

Sec. 14. Election to fill vacancy in office of governor.—Whenever the office of governor shall become vacant by death, resignation, removal from office or otherwise, provided such vacancy shall not happen within twelve months next before the expiration of the term of office for which the late governor shall have been elected, the president of the senate or speaker of the house of representatives, as the case may be, exercising the powers of governor for the time being, shall, immediately cause an election to be held to fill such vacancy, giving by proclamation sixty day's previous notice thereof; which election shall be governed by the same rules prescribed for general elections of governor as far as applicable; the returns shall be made to the secretary of state, and the acting governor, secretary of state and attorney general shall constitute a board of canvassers, a majority of whom shall compare said returns, and declare who is elected; and if there be a contested election, it shall be decided as may be provided by law.

Sec. 15. Bills to be approved by governor - Proceedings in case of veto—Bills not returned in five days—Bills passed during last five days of session.—Every bill which shall have passed both houses of the general assembly, shall be presented to the governor; if he approve it, he shall sign it; but if he shall not approve it, he shall return it, with his objections, to the house in which it originated; which house shall enter the objections at large upon their journal, and pro-

ceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house, shall agree to pass the bill, it shall be sent, with the objections, to the other house; by which, likewise, it shall be reconsidered; and, if approved by a majority of the whole number elected to that house, it shall be a law; but in such cases, the votes of both houses, shall be determined by "yeas and nays;" and the names of the members voting for or against the bill, shall be entered on the journals. If any bill shall not be returned by the governor within five days, Sunday 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 general assembly, by their adjournment, prevent its return; in which case it shall become a law, unless he shall file the same, with his objections, in the office of the secretary of state, and give notice thereof, by public proclamation, within twenty days after such adjournment.

Where two bills are attached together and the governor indorses his approval, that approval only applies to the bill on which it is actually indorsed. *Vinsant v. Knox*, 27 Ark., 287. A defective enrollment of a bill was approved by the governor. After the legislature had adjourned the president of the senate and speaker of the house sent to him a correct enrollment, which he approved: *Held*, that the bill became a law. *Dow v. Beidelman*, 49 Ark., 325.

Sec. 16. Concurrent orders and resolutions to be presented to governor—Proceedings if disapproved by him.—Every order or resolution in which the concurrence of both houses of the general assembly may be necessary, except on questions of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the case of a bill.

A resolution of the legislature extending its session does not require the approval of the governor. *Trammell v. Bradley*, 37 Ark., 374.

Sec. 17. Veto of items of appropriation bills—Proceedings in such case.—The governor shall have power to disapprove any item or items, of any bill making appropriation of money, embracing distinct items; and the part or parts of

the bill approved shall be the law; and the item or items of appropriations disapproved, shall be void unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

Sec. 18. Pardoning power.—In all criminal and penal cases, except in those of treason and impeachment, the governor shall have power to grant reprieves, commutations of sentence, and pardons, after conviction; and to remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason, he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence until the adjournment of the next regular session of the general assembly. He shall communicate to the general assembly at every regular session each case of reprieve, commutation or pardon, with his reasons therefor; stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon or reprieve.

The governor may grant pardons on any conditions that he may choose to impose. *Hunt ex parte*, 10 Ark., 284. See *Mansf. Dig.*, Sec. 2427. A pardon does not relieve the offender from payment of costs of prosecution. *Edwards v. State*, 12 Ark., 122. The governor may remit a fine though by statute it may inure to the school fund; and though the legislature has failed to regulate the exercise of the power. *Baldwin v. Scoggin*, 15 Ark., 427. Notwithstanding the power granted to the governor by this section the legislature may pass a general amnesty act. *State v. Nichols*, 26 Ark., 74. Where a witness is disqualified by conviction of a crime his competency is restored by a pardon, though his conviction may still be urged against his credibility. *Werner v. State*, 44 Ark., 122. A pardon will not restore to office an officer convicted of a felony. *State v. Carson*, 27 Ark., 469. As to a pardon by the president of the United States, see *ante*, p. 17.

Sec. 19. Extra sessions of general assembly.—The governor may, by proclamation on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or contagious disease; and he shall specify in his proclamation the purpose for which they are convened; and no other business than that set forth therein shall be transacted until the same shall have been dis-

posed of; after which they may, by a vote of two-thirds of all the members elected to both houses, entered upon their journals, remain in session not exceeding fifteen days.

Sec. 20. Case of disagreement in general assembly as to time of adjournment.—In cases of disagreement between the two houses of the general assembly, at a regular or special session, with respect to the time of adjournment, the governor may, if the facts be certified to him by the presiding officers of the two houses, adjourn them to a time not beyond the day of their next meeting; and on account of danger from an enemy or disease, to such other place of safety as he may think proper.

Sec. 21. Secretary of state—Superintendent of public instruction.—The secretary of state shall keep a full and accurate record of all the official acts and proceedings of the governor; and, when required, lay the same with all papers, minutes and vouchers relating thereto, before either branch of the general assembly. He shall also discharge the duties of superintendent of public instruction, until otherwise provided by law.

Sec. 22. Treasurer—Secretary of state—Auditor—Attorney general—Not to hold any other office—Vacancies.—The treasurer of state, secretary of state, auditor of state and attorney general shall perform such duties as may be prescribed by law; they shall not hold any other office or commission, civil or military, in this state, or under any state, or the United States, or any other power, at one and the same time; and in case of vacancy occurring in any of said offices, by death, resignation or otherwise, the governor shall fill said office by appointment for the unexpired term.

Sec. 23. Other vacancies.—When any office, from any cause, may become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the governor shall have the power to fill the same by granting a commission, which shall expire when the person elected to fill said office, at the next general election, shall be duly qualified.

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ARTICLE VII.

JUDICIAL DEPARTMENT.

Sec. 1. Judicial power vested in certain courts—Additional courts—Separate chancery courts—Corporation courts—Common pleas courts.—The judicial power of the state shall be vested in one supreme court; in circuit courts; in county and probate courts; and in justices of the peace. The general assembly may also vest such jurisdiction as may be deemed necessary in municipal corporation courts, courts of common pleas, where established; and, when deemed expedient, may establish separate courts of chancery.

All the courts of this state are of limited and prescribed jurisdiction. *Fisher v. Hall*, 1 Ark., 275; *Fenter v. Andrews*, 5 id., 37. The legislature by omitting to act cannot impair or enlarge the jurisdiction of the courts. *Wood's ex parte*, 3 Ark., 532. The legislature cannot authorize courts to set aside judgments previously rendered. *Byrd v. Brown*, 5 Ark., 710; *McLain v. Irwin*, 6 id., 71; *Biscoe v. Sandefur*, 14 id., 568.

Sec. 2. Supreme court—Chief justice—Quorum.—The supreme court shall be composed of three judges, one of whom shall be styled chief justice, and elected as such; any two of whom shall constitute a quorum, and the concurrence of two judges shall, in every case, be necessary to a decision.

Sec. 3. Increase of judges of supreme court.—When the population of the state shall amount to one million, the general assembly may, if deemed necessary, increase the number of judges of the supreme court to five; and, on such increase, a majority of judges shall be necessary to make a quorum or a decision.

The number of judges was increased to five by act of February 20, 1889. *Acts 1889*, p. 18.

Sec. 4. Jurisdiction of supreme court, and of the judges thereof.—The supreme court, except in cases otherwise provided by this constitution, shall have appellate jurisdiction only; which shall be co-extensive with the state, under such restrictions as may from time to time be prescribed by law. It shall have a general superintending control over all

inferior courts of law and equity; and, in aid of its appellate and supervisory jurisdiction, it shall have power to issue writs of error, and supersedeas, certiorari, habeas corpus, prohibition, mandamus, and quo warranto, and other remedial writs; and to hear and determine the same. Its judges shall be conservators of the peace throughout the state, and shall severally have power to issue any of the aforesaid writs.

General Jurisdiction.—The legislature may regulate its proceedings, but cannot take away any of the jurisdiction of the supreme court. *Miller v. Heard*, 6 Ark., 75; *Byrd v. Brown*, 5 id., 710; *State v. Jones*, 22 id., 331; *State v. Morrill*, 16 id., 384. Nor can the legislature add anything to its jurisdiction; *Allis ex parte*, 12 Ark., 101; *State v. Jones*, 22 id., 331; or require the judges to deliver their opinions in writing. *Vaughan v. Harp*, 49 Ark., 160.

Original jurisdiction.—The supreme court has no original jurisdiction in cases of information in the nature of a *quo warranto*, or in any other criminal procedure. *State v. Anthony*, 1 Ark., 280; *Anthony ex parte*, 5 id., 358; *State v. Brown*, 1 id., 336. But see note to *sec. 5, post*. The legislature cannot authorize the supreme court to issue injunctions in the exercise of original jurisdiction. *Jones ex parte*, 2 Ark., 93. The supreme court cannot issue a writ of injunction on an original bill of complaint filed therein; nor in any way save in aid of its appellate or supervisory jurisdiction. *Jones v. Little Rock*, 25 Ark., 284. It has only such original jurisdiction as may be necessary for the control of inferior courts; *Allis ex parte*, 12 Ark., 102; *Crise ex parte*, 16 id., 193; *Good ex parte*, 19 id., 411; except as provided in *sec. 5, post*.

Appellate and supervisory jurisdiction.—The appellate jurisdiction only applies to the reversal of proceedings that are judicial in their nature. *Dunn v. State*, 2 Ark., 230. The supreme court may prohibit circuit courts from transcending their jurisdiction. *Woods ex parte*, 3 Ark., 532; *Anthony ex parte*, 5 id., 358. In aid of its supervisory jurisdiction the supreme court may issue writs of *certiorari*; *Hudson v. Jefferson County Court*, 28 Ark., 359; as (*e. g.*) to quash a void judgment of a circuit court. *Baxter v. Brooks*, 29 Ark., 173. It may issue writs of mandamus in aid of its appellate and supervisory jurisdiction, and can direct the sheriff as to the funds to be received in satisfaction of its writ of execution; *Hinkle v. Ball*, 34 Ark., 177; may issue a writ of mandamus to a circuit judge to compel him to grant an appeal; *McCreary v. Rogers*, 35 Ark., 298; and may review the proceedings of inferior courts or judges on application for *habeas corpus*. *State v. Neel*, 48 Ark., 283; *Jackson ex parte*, 45 id., 158; *Harbour ex parte*, 39 id., 129. The constitution secures the right of appeal from all final judgments of inferior courts. *Simpson v. Simpson*, 25 Ark., 487. But where the circuit court has no jurisdiction the supreme court can render no judgment on appeal for costs incurred in that court; but it may render judgment for costs incurred in the supreme court against the party bringing suit. *Hightower v. Handlin*, 27 Ark., 20. An

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appeal will only lie from a final judgment; *Carey v. Ducker*, 52 *id.*, 103; *Batesville R. Co. ex parte*, 39 *id.*, 82; and not from an order made at chambers dissolving an injunction. *Sanders v. Plunkett*, 40 *Ark.*, 507. An appeal or writ of error will not lie from a judgment of the circuit court punishing for contempt. *Cossart v. State*, 14 *Ark.*, 538; *Bunch v. State, id.*, 544. The legislature cannot authorize an appeal from the county court directly to the supreme court; *Hays v. Pope Co.*, 5 *Ark.*, 308; *Allis ex parte*, 12 *id.*, 101; nor deprive any party of a right of appeal. *Anthony ex parte*, 5 *Ark.*, 358; *Pope v. Ashley*, 13 *Ark.*, 268. An appeal will not lie from the judgment of a justice of the peace to the supreme court. *Marr ex parte*, 12 *Ark.*, 84. An act authorizing a judge of the supreme court to review the action of a chancellor in refusing an injunction was held to be void in *Batesville R. Co. ex parte*, 39 *Ark.*, 82. The supreme court has no jurisdiction to issue a mandamus to the clerk of the circuit court to compel him to perform a duty imposed by law, though the circuit judge be disqualified from acting by reason of having an interest in the cause. *Snoddy ex parte*, 44 *Ark.*, 221. The legislature cannot so limit the time within which appeals may be taken as to render it impracticable for parties to perfect their appeals within the time prescribed. *O'Bannon v. Ragan*, 30 *Ark.*, 181. The supreme court has jurisdiction to issue writs of error, and the clerk may issue them at any time. *Harrison v. Tradee*, 27 *Ark.*, 59. An act extending writs of error to decrees in chancery was held to be void in *Colby v. Lawson*, 5 *Ark.*, 303. An appeal will lie from an order of the circuit court rejecting a collector's bond. *Lowman ex parte*, 42 *Ark.*, 370. The supreme court has jurisdiction to render judgment against the sureties on a supersedeas bond given upon appeal to that court. *White v. Prigmore*, 29 *Ark.*, 208. "Other remedial writs" includes all such writs as are appropriate for appellate powers, or powers of superintending control. *State v. Ashley*, 1 *Ark.*, 280.

Sec. 5. Jurisdiction in cases of quo warranto.—In the exercise of original jurisdiction, the supreme court shall have power to issue writs of quo warranto to the circuit judges and chancellors, when created, and to officers of political corporations when the question involved is the legal existence of such corporations.

The clause as to municipal corporations includes information in the nature of quo warranto. *State v. Leatherman*, 38 *Ark.*, 81.

Sec. 6. Qualification of judges of supreme court—Election—Terms of office.—A judge of the supreme court shall be at least thirty years of age, of good moral character, and learned in the law; a citizen of the United States, and two years a resident of the state; and who has been a practicing lawyer eight years, or whose service upon the bench of any

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court of record, when added to the time he may have practiced law, shall be equal to eight years. The judges of the supreme court shall be elected by the qualified electors of the state, and shall hold their offices during the term of eight years from the date of their commissions; but at the first meeting of the court, after the first election under this constitution, the judges shall, by lot, divide themselves into three classes; one of which shall hold his office for four, one for six, and the other for eight years; after which, each judge shall be elected for a full term of eight years. A record shall be made in the court of this classification.

Sec. 7. Clerk—Reporter.—The supreme court shall appoint its clerk and reporter, who shall hold their offices for six years, subject to removal for good cause.

Sec. 8. Terms of supreme court.—The terms of the supreme court shall be held at the seat of government, at the times that now are, or may be, provided by law.

Sec. 9. Special judges of supreme court.—In case all, or any of the judges of the supreme court shall be disqualified from presiding in any cause or causes, the court, or the disqualified judge, shall certify the same, to the governor, who shall immediately commission the requisite number of men learned in the law, to sit in the trial and determination of such causes.

Sec. 10. Pay of supreme judges.—The supreme judges shall, at stated times, receive a compensation for their services to be ascertained by law, which shall not be, after the adjournment of the next general assembly, diminished during the time for which they shall have been elected. They shall not be allowed any fees or perquisites of office, nor hold any other office, nor hold any office of trust or profit under the state or the United States.

Sec. 11. Jurisdiction of circuit courts.—The circuit court shall have jurisdiction in all civil and criminal cases, the exclusive jurisdiction of which may not be vested in some other court provided for by this constitution.

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Generally.—Circuit courts may appoint administrators *pendente lite*. *Mangum v. Cooper*, 28 Ark., 253; *Wade v. Bridges*, 24 *id.*, 569; *Grace v. Neel*, 41 Ark., 168. The legislature cannot limit the jurisdiction of the circuit courts to cases brought in the county in which the defendant resides, or in which the plaintiff resides and the defendant may be found; *Dillard v. Noel*, 2 Ark., 456; but it may provide for the removal of a cause once begun to the county of the defendant's residence. *Block ex parte*, 11 Ark., 281. The correct method of ascertaining the civil and criminal jurisdiction of the circuit courts is to see what cases are confided by the constitution exclusively to other tribunals: the residuum belongs exclusively or concurrently to the circuit courts. *State v. Devers*, 34 Ark., 188.

Civil suits—Amount in controversy.—The legislature cannot enlarge or diminish their jurisdiction. *Dillard v. Noel*, 2 Ark., 449; *Lafferty v. Day*, 7 *id.*, 262; *Martin v. Foreman*, 18 *id.*, 251. Several causes of action within the jurisdiction of a justice cannot be added together so as to give jurisdiction to the circuit court; *Berry v. Linton*, 1 Ark., 252; *Fenter v. Andrews*, 5 *id.*, 34; *Collins v. Woodruff*, 9 *id.*, 466; *Auditor v. Davies*, 2 *id.*, 501; *Wilson v. Mason*, 3 *id.*, 495; *Martin v. Foreman*, 18 *id.*, 251; *Mannington v. Young*, 35 *id.*, 287; but the aggregate of the items of an open account is the criterion of jurisdiction. *Gregory v. Williams*, 24 *id.*, 177. In suit on a bond the amount of the penalty is the criterion of jurisdiction. *Edwards v. State*, 22 Ark., 303. The jurisdiction of the circuit court in garnishment cases does not depend on the amount due from the garnishee; *Moore v. Kelly*, 47 Ark., 219; and the circuit court has jurisdiction of a *scire facias* on a judgment without regard to the amount in controversy; but not a *scire facias* on a recognizance, unless the amount of the recognizance exceeds the jurisdiction of a justice of the peace. *Blackwell v. State*, 3 Ark., 320. This case, as to writs of *scire facias*, is probably modified by *Flynn v. State*, *post*. The circuit court has jurisdiction to enforce a mechanic's lien for less than \$100; *White v. Millbourne*, 31 Ark., 486; to make a settlement of the accounts of the circuit court clerk; *Lee Co. v. Abrams*, 31 Ark., 571; and to render judgment on a forfeited bail bond for \$100 taken by a committing court. *Flynn v. State*, 42 Ark., 315.

Venue in civil cases.—The legislature may authorize the bringing of suits by a corporation in the circuit court of a county in which it transacts its business, though the defendant does not reside in the county, and is not found therein. *Tucker v. Real Estate Bank*, 4 Ark., 431. The circuit court of the county in which lands are wrongfully levied on under a distress warrant illegally issued by the auditor, has jurisdiction of a suit to enjoin the sale. *Crawford v. Carson*, 35 Ark., 565.

In actions ex delicto.—An action for exacting excessive fees is *ex delicto*, and within the original jurisdiction of the circuit court, without regard to the amount exacted. *Bagley v. Shoppach*, 43 Ark., 375. In actions sounding in damages the verdict is not the criterion of jurisdiction; and if the defendant does not plead to the jurisdiction the circuit court may render judgment for an amount within the jurisdiction of a justice of the peace; but if a plea to the jurisdiction is pleaded, and it appear that the sum exceeding the jurisdiction of a justice is fictitious and simulated, the suit must abate for the want of jurisdiction. This rule however only

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applies to suits where the law prescribes the amount of recovery; but where the damages are wholly unliquidated and uncertain, depending on the discretion of the court or jury, the amount claimed in the complaint constitutes the sum in controversy, and determines the jurisdiction. *Heilman v. Martin*, 2 Ark., 158. Where a contract is alleged in the complaint which if proved would justify the bringing of the suit in the circuit court, the jurisdiction of that court can only be questioned by a plea in abatement. *Hanna v. Harter*, 2 Ark., 392.

In crimes and misdemeanors.—The circuit courts have exclusive jurisdiction in all cases of felonies; *Dunn v. State*, 2 Ark., 230; and cannot be deprived of original jurisdiction of misdemeanors, exclusive jurisdiction of them not having been conferred by the constitution on any other court. *State v. Devers*, 34 Ark., 189. The carrying of a pistol as a weapon is a misdemeanor of which justices of the peace and circuit courts have concurrent jurisdiction. *Walker v. State*, 35 Ark., 386. Circuit courts have concurrent jurisdiction with justices of the peace in prosecutions against justices of the peace for malfeasance in office. *McClure v. State*, 37 Ark., 426. Their jurisdiction in criminal cases cannot be impaired by the legislature. *Id.*

Bail Bonds.—The circuit court has no jurisdiction to render judgment on a summary proceeding upon a forfeited bail bond for failure of the principal to appear in a mayor's court to answer for a violation of a town ordinance, as required by the terms of the bond. *Cauthron v. State*, 43 Ark., 128.

Official bonds.—The circuit courts may be authorized to approve official bonds. *Oliver v. Martin*, 36 Ark., 134.

Habeas corpus.—Circuit judges may issue writs of *habeas corpus* in term or in vacation. *Beard ex parte*, 4 Ark., 9.

Sec. 12. Terms of circuit courts.—The circuit courts shall hold their terms in each county, at such times and places as are, or may be, prescribed by law.

Unless the court is held at the time fixed by law its acts are void. *Dunn v. State*, 2 Ark., 229; *Brumley v. State*, 20 *id.*, 77; *Pulaski Co. v. Lincoln*, 9 *id.*, 326. But the courts may adjourn to a distant day. *Dunn v. State*, 2 Ark., 230. The legislature may establish more than one place for holding the circuit court in any county. *Jones ex parte*, 27 Ark., 349; *Walker v. State*, 35 *id.*, 386; *Potter v. State*, 42 *id.*, 30. This section does not prohibit the legislature from reducing the terms of any circuit court to one term a year. *Parker v. Sanders*, 46 Ark., 229.

Sec. 13. Judicial circuits—Judge to be conservator of the peace.—The state shall be divided into convenient circuits, each circuit to be made up of contiguous counties, for each of which circuits a judge shall be elected; who, during his continuance in office, shall reside in and be a conservator

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of the peace within the circuit for which he shall have been elected.

The change of the number of a circuit will not abolish the office of the judge of that circuit. *State v. Floyd*, 9 Ark., 302.

Sec. 14. Superintending and appellate jurisdiction of circuit courts.—The circuit courts shall exercise a superintending control and appellate jurisdiction over county, probate, court of common pleas, and corporation courts and justices of the peace; and shall have power to issue, hear and determine all the necessary writs to carry into effect their general and specific powers, any of which writs may be issued upon order of the judge of the appropriate court in vacation.

The superintending control here mentioned is the exercise of original and not appellate jurisdiction. *Anthony ex parte*, 5 Ark., 358; *Levy v. Lychirski*, 8 id., 115. But the writs used in its exercise may affect parties as well as the inferior tribunals. *Carnall v. Crawford County*, 11 Ark., 604. On appeal from a justice of the peace to the circuit court the circuit court has jurisdiction to render judgment against the sureties on the appeal bond. *Callahan v. Saleski*, 29 Ark., 216. On appeal from a justice of the peace the circuit court cannot add to the controversy a cause of action or an issue that the justice of the peace could not entertain, and can render no judgment that the justice could not render. *Whitesides v. Kershaw*, 44 Ark., 377. Where a justice of the peace has no jurisdiction the circuit court can acquire none on appeal. *Dunnington v. Bailey*, 27 Ark., 508. Where not otherwise provided by statute the superintending control must be exercised by *certiorari* and not by appeal. *Couch ex parte*, 14 Ark., 337; *Lindsay v. Lindley*, 20 id., 581. Circuit courts have jurisdiction in appeals from corporation courts both in civil and criminal cases. *Ullevy v. Ft. Smith*, 35 Ark., 214. The circuit court has no power to order the county court to make an appropriation and build a court house. *Turner ex parte*, 40 Ark., 548. The legislature may regulate the exercise of the jurisdiction of the circuit courts; *Miller v. Heard*, 6 Ark., 73; *Carnall v. Crawford Co.*, 11 id., 604.

Sec. 15. Equity jurisdiction of circuit courts.—Until the general assembly shall deem it expedient to establish courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the supreme court, in such manner as may be prescribed by law.

This means such jurisdiction as a court of chancery could properly exercise at the time the constitution was adopted; and the legislature cannot limit or abridge the jurisdiction thus conferred. *Hempstead v. Watkins*, 6 Ark., 318. The legisla-

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ture cannot—at least until after the establishment of separate courts of chancery—authorize a master in chancery to issue writs of injunction. *Kennedy ex parte*, 11 Ark., 598; *in re Cornelius*, 14 *id.*, 678; *Scoggin v. Taylor*, 13 *id.*, 384. The legislature cannot authorize the bringing of chancery causes to the supreme court by writs of error. *Colby v. Lawson*, 5 Ark., 303.

Sec. 16. Qualification of circuit judges.—A judge of the circuit court shall be a citizen of the United States, at least twenty-eight years of age, of good moral character, learned in the law, two years a resident of the state, and shall have practiced law six years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall be equal to six years.

Sec. 17. Election of judges of circuit courts—Terms of office.—The judges of the circuit courts shall be elected by the qualified electors of the several circuits, and shall hold their offices for the term of four years.

On the happening of a vacancy the election of a circuit judge is only for the unexpired term. *State v. Sorrels*, 15 Ark., 664; *State v. Askew*, 48 Ark., 82. The legislature cannot enlarge or abridge a term of office. *Id.* See *sec. 50 post*.

Sec. 18. Compensation of judges of circuit courts—They shall hold no other office.—The judges of the circuit courts shall at stated times receive a compensation for their services to be ascertained by law; which shall not, after the adjournment of the first session of the general assembly, be diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this state or the United States.

An act providing that if any judge of the circuit court should fail to hold any regular term he should forfeit to the state a sum of money, was held to be unconstitutional. *Tully ex parte*, 4 Ark., 220. But see *Art. XLX, sec. 8*.

Sec. 19. Clerks and recorders.—The clerks of the circuit court shall be elected by the qualified electors of the several counties, for the term of two years, and shall be ex-officio clerks, of the county and probate courts, and recorder; provided, that in any county having a population exceeding fifteen thousand inhabitants, as shown by the last federal census, there shall

be elected a county clerk, in like manner as clerk of the circuit court, who shall be ex-officio clerk of the probate court of said county.

The legislature may define the duties of county clerks. *State v. McDiarmid*, 27 Ark., 176.

Sec. 20. Judges when not to preside.—No judge or justice shall preside in the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by consanguinity or affinity, within such degree as may be prescribed by law; or in which he may have been of counsel; or have presided in any inferior court.

The statute disqualifies any judge who is interested or related to either party within the fourth degree of consanguinity or affinity, or who shall have been of counsel, or have presided in any inferior court. *Mansf. Dig.*, sec. 1471. The husband of the aunt is related to the husband of her niece within the fourth degree of affinity. *Kelley v. Neely*, 12 Ark., 657. The supreme court will not hold a judge of a lower court to have been incompetent to preside where the question was not raised of record in that court. *Shropshire v. State*, 12 Ark., 190. A judge related to a party who is a mere trustee is not disqualified. *Fowler v. Byers*, 16 Ark., 196. The interest that disqualifies a judge is not the interest which one feels in public proceedings, or public measures, but a pecuniary or property interest; one affecting his individual rights; and the liability of pecuniary gain or relief to the judge must occur upon the event of the suit, and not result remotely in the future from the general operation of laws and government upon the status fixed by the decision. *Foreman v. Marianna*, 43 Ark., 325. See sec. 36 post.

Sec. 21. Special judges of circuit courts.—Whenever the office of judge of the circuit court of any county is vacant at the commencement of a term of such court, or the judge of said court shall fail to attend, the regular practicing attorneys in attendance on said court, may meet at 10 o'clock a. m. on the second day of the term, and elect a judge to preside at such court, or until the regular judge shall appear: and if the judge of said court shall become sick, or die, or unable to continue to hold such court after its term shall have commenced, or shall from any cause be disqualified from presiding at the trial of any cause then pending therein, then the regular practicing attorneys in attendance on said court may in like manner, on notice from the judge, or clerk of said court, elect a judge to

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preside at such court, or to try said causes; and the attorney so elected shall have the same power and authority in said court as the regular judge would have had if present and presiding; but this authority shall cease at the close of the term at which the election shall be made. The proceedings shall be entered at large upon the record. The special judge shall be learned in the law, and a resident of the state.

A special judge cannot hold a special term. *Brown v. Fleming*, 3 Ark., 284. A *quo warranto* to inquire into the authority of a special judge can only issue on the motion of the attorney general. *Caldwell v. Bell*, 3 Ark., 419; *S. C.*, 6 *id.*, 227. If the special judge were ousted on *quo warranto* his previous judgments would not be affected thereby. *Id.* If his authority should be questioned in the court below the objections and the grounds thereof should be spread on the record. *Id.* *Sweepzer v. Gaines*, 19 Ark., 96. His authority only continues as long as the incompetency of the regular judge continues. *Caldwell v. Bell*, 6 *id.*, 227. He has no authority to preside in a cause originating before him; nor can he, when appointed to try a single case, proceed until the court is opened by the regular judge. *Cruson v. Whitley*, 19 *id.*, 99. A special judge must be an elector. *White v. Reagan*, 25 Ark., 622. If the regular judge is not present to take the bench at the commencement of an adjourned term of the court, if necessary, it would be his duty or the clerk's to certify to the bar his inability to hold the court. They should then proceed to elect a special judge for general business, who would perhaps supersede a special judge elected at the regular term for special business. Where this is not done, the presumption arises from the record that the regular judge was present. A decree rendered at an adjourned term by a special judge elected at the regular term, is a judicial act from which an appeal lies. *Fishback v. Weaver*, 34 Ark., 569. A judgment or order rendered by a person selected by agreement of the parties is void. *Dansby v. Beard*, 39 Ark., 254; *Gaither v. Wasson*, 42 *id.*, 126; *Trotter v. Neal*, 50 *id.*, 340. When a special judge elected in the absence of the regular judge is disqualified in a particular case, another special judge may be elected for that case. *Little Rock R. Co. v. Barker*, 39 Ark., 491. An appeal will be dismissed by the supreme court where the record fails to show that the special judge who presided at the trial of the cause was elected for that purpose. *Wall v. Looney*, 52 Ark., 113. Where there is a vacancy in the office, or where the regular judge fails to appear, the judicial power of the special judge elected by the bar terminates when the regular judge appears and takes the bench; and after that he has no power to try a cause even by consent, and though the regular judge be disqualified. But where the latter is disqualified in a cause, or during the term falls ill, or dies, or becomes unable from any cause to hold the court, the authority of the special judge elected in his place continues for the remainder of the term at which he was elected. *Hyllis v. State*, 45 Ark., 478. When a special judge is not elected on the second day of the term, the regular judge may assume his duties on the bench the next day.

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Neal v. Shinn, 49 Ark., 227. When the judge gets sick after evidence received and instructions given in a cause, the trial should proceed before a special judge, beginning just where the regular judge left off. *Bullock v. Neal*, 42 Ark., 278. If at the time appointed for holding an adjourned term the regular judge is holding court in another county, the adjourned term fails, as there is no authority for electing a special judge in such case. *State v. Williams*, 48 Ark., 227. The disqualification of a judge cannot be set up after judgment. *Pettigrew v. Washington Co.*, 43 Ark., 33. See note to *sec. 36 post*.

Sec. 22. Exchange of circuits.—The judges of the circuit courts may temporarily exchange circuits, or hold courts for each other under such regulations as may be prescribed by law.

The legislature may require circuit judges to exchange circuits temporarily, but not permanently. *Knox v. Beirne*, 4 Ark., 460. But though the act were unconstitutional, the acts of the *de facto* judge would not be void, if the parties voluntarily submitted to his jurisdiction. *Rives v. Pettit*, 4 Ark., 582. A circuit judge cannot be directed or commissioned to try a single cause in another circuit. *Adams v. State*, 11 Ark., 466.

Sec. 23. Charge to juries.—Judges shall not charge juries with regard to matters of fact, but shall declare the law; and in jury trials shall reduce their charge or instructions to writing, on the request of either party.

The court should not instruct the jury as to the weight or force of evidence. *Shinn v. Tucker*, 37 Ark., 581; *Fitzpatrick v. State*, *id.*, 239; *Keith v. State*, 49 *id.*, 439. It is not the duty of the trial court to point out what inferences may be drawn from particular facts in proof; *Haley v. State*, 49 Ark., 148; and it is error for the court to instruct the jury as to the differing weight of affirmative and negative testimony. *Keith v. State*, 49 Ark., 439. A circuit court cannot determine the sufficiency of evidence, and direct the jury what verdict to find, when there is any evidence to sustain the issue. *Little Rock R. Co. v. Barker*, 39 Ark., 491; *Little Rock R. Co. v. Henson*, *id.*, 413; *Little Rock R. Co. v. Perry*, 37 *id.*, 165; *Overton v. Matthews*, 35 *id.*, 147. It is error for a judge to advise a prosecuting attorney in the presence of the jury to dismiss a prosecution for want of evidence. *State v. Wardlow*, 43 Ark., 73. An instruction that "if the jury believe that a witness has any bias or leaning to one side or the other they should find that leaning or bias against the party in whose favor the witness leans," is erroneous. *Bing v. State*, 52 Ark., 263. An instruction which intimates the opinion of the court as to the weight of the evidence should not be given. *Randolph v. McCain*, 34 Ark., 696. A declaration by the judge in instructing the jury in a case of assault with intent to kill "that the prisoner is guilty of an assault with intent to kill, or he is guilty of rothing," is error. *Flynn v.*

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State, 43 *Ark.*, 290. The circuit judge should not tell the jury what importance to attach to particular evidence, or the absence of it. *Polk v. State*, 45 *Ark.*, 166; *Stephens v. Oppenheimer*, *id.*, 492. A clause in an instruction by which the jury are told that a witness for the state is an accomplice, will not be construed to assume that the defendant is guilty, where it appears from the whole charge that no assumption is warranted to the effect that the court intended to interfere with the jury's right to believe the testimony of the witness, but only to inform them that if they believed it, other evidence connecting the defendant with the commission of the offense charged would still be required to authorize his conviction. *Fort v. State*, 52 *Ark.*, 180. The clause as to written instructions is mandatory, and must be obeyed. *Mazzia v. State*, 51 *Ark.*, 184; *Anderson v. State*, 34 *id.*, 257. But the court need not reduce to writing an instruction given on its own motion before argument to the jury; *National Lumber Co. v. Snell*, 47 *Ark.*, 407; and the reading of a section of the digest to the jury as an instruction is a sufficient compliance with this clause. *Palmore v. State*, 29 *Ark.*, 250. Where written instructions are demanded, it is error for the court to add oral explanations. *Mazzia v. State*, 51 *Ark.*, 178. The judge need not reduce his findings to writing where judgment is rendered on demurrer. *Chrisman v. Rogers*, 30 *Ark.*, 351.

Sec. 24. Prosecuting attorneys.—The qualified electors of each circuit shall elect a prosecuting attorney, who shall hold his office for the term of two years; and he shall be a citizen of the United States, learned in the law, and a resident of the circuit for which he may be elected.

Sec. 25. Judges not to practice law.—The judges of the supreme, circuit or chancery courts shall not, during their continuance in office, practice law, or appear as counsel in any court—state or federal—within this state.

Sec. 26. Contempts.—The general assembly shall have power to regulate, by law, the punishment of contempts, not committed in the presence or hearing of the courts, or in disobedience of process.

Sec. 27. Removal of officers.—The circuit court shall have jurisdiction upon information, presentment or indictment, to remove any county or township officer from office for incompetency, corruption, gross immorality, criminal conduct, malfeasance, misfeasance, or nonfeasance in office.

McClure v. State, 37 *Ark.*, 426. An act providing for the suspension of the officer on the filing of the indictment or presentment until trial held constitutional. *Allen v. State*, 32 *Ark.*, 241. This section relates to township and county officers

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provided for in the constitution, and not to officers appointed under mere police regulations. *Patton v. Vaughan*, 39 Ark., 211. No leave to file the information is necessary; and, in the absence of a statute, the proceeding must be according to the course of the common law. *State v. Whitlock*, 41 Ark., 403. When an alleged cause of removal from office is a matter not cognizable by a grand jury, as for example, incompetency, drunkenness, immorality, etc., then the state's attorney may proceed on his own motion by information filed under oath; but if it is for an indictable offense, the proceeding must be by indictment. *Haskins v. State*, 47 Ark., 243. The judgment in a proceeding under this section can only be for removal and costs. *State v. Jackson*, 46 Ark., 137.

Sec. 28. County courts.—The county courts shall have exclusive original jurisdiction in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, the apprenticeship of minors, the disbursement of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties. The county court shall be held by one judge, except in cases otherwise herein provided.

The county court has jurisdiction to render judgment against a collector and his sureties for school taxes collected, and not paid over. *Pettigrew v. Washington Co.*, 43 Ark., 33. County courts have no power of taxation and disbursement without legislative action. *County of Pulaski v. Irvin*, 4 Ark., 473. They have exclusive jurisdiction as to removal of county seats. *Russell v. Jacoway*, 33 Ark., 192; *Blackburn ex parte*, 5 *id.*, 21; *Rogers v. Sebastian Co.*, 21 *id.*, 444. The county court may allow the sheriff compensation for fuel and stationery; but its discretion cannot be controlled by the circuit court. *Clark Co. v. Spence*, 21 Ark., 465; *Turner ex parte*, 40 *id.*, 548. The county court cannot entertain jurisdiction of an action on an estray bond where the amount in controversy is within the jurisdiction of a justice of the peace; nor render a judgment on an estray bond where the amount in controversy is within the jurisdiction of a justice of the peace; *Huddleston v. Spear*, 8 Ark., 406. The legislature may vest in the county court the jurisdiction for organizing and extending municipal corporations. *Foreman v. Marianna*, 43 Ark., 324. This section has no application to special local assessments for the improvement of lands that are taxed. *McGehee v. Mathis*, 21 Ark., 41. The legislature cannot create two county courts for one county unless each has a jurisdiction extending over an area of six hundred square miles. *Patterson v. Temple*, 27 Ark., 202 (See art. 13, sec. 1.) Where the circuit court neglects to require its clerk to settle his accounts during his term the county court may force him to settle. *Lee Co. v. Abrahams*, 31 Ark., 571. This section does not abrogate the jurisdiction of municipal courts to punish vagrancy. *Brizzolari v. State*, 37 Ark., 364. The county court has juris-

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diction to render judgment against a defaulting collector and his sureties for county revenue that he has failed to pay over. *Christian v. Ashley Co.*, 24 *Ark.*, 143. The county court has power to provide a poor house. *Pulaski Co. v. Lincoln*, 9 *Ark.*, 320. County courts have exclusive original jurisdiction to purge the polls of fraudulent and illegal votes cast at an election held on a contest for a county seat; and from its decision any person aggrieved may appeal to the circuit court. *Willeford v. State*, 43 *Ark.*, 63. County courts have exclusive original jurisdiction to audit, settle and order payment of all demands against the county. Where a new county was created out of the territory of another, a suit brought by the new county against the old one for a *pro rata* part of internal improvement fund should be brought in the county court of the old county. *Shaver v. Lawrence Co.*, 44 *Ark.*, 225. County courts have original exclusive jurisdiction to audit, settle and direct the payment of all demands against the county, including contingent expenses of the circuit court. *Chicot Co. v. Kruse*, 47 *Ark.*, 80.

Sec. 29. Judge of county court—Term of office—Qualifications.—The judge of the county court shall be elected by the qualified electors of the county, for the term of two years. He shall be at least twenty-five years of age, a citizen of the United States, a man of upright character, of good business education, and a resident of the state for two years before his election; and a resident of the county at the time of his election, and during his continuance in office.

Sec. 30. Quorum of county justices for levying taxes.—The justices of the peace of each county shall sit with and assist the county judge in levying the county taxes, and in making appropriations for the expenses of the county, in the manner to be prescribed by law; and the county judge, together with a majority of said justices, shall constitute a quorum for such purposes; and in the absence of the county judge a majority of the justices of the peace may constitute the court, who shall elect one of their number to preside. The general assembly shall regulate by law the manner of compelling the attendance of such quorum.

The constitution authorizes the justices of the peace to sit with the county judge, in levying taxes and making appropriations for the expenses of the county. In other matters the legislature cannot authorize the justices to sit with the county judge; and an act attempting to do so is unconstitutional and void. *Worthen v. Sadgett*, 32 *Ark.*, 497. An order of a county court composed of the county judge and justices, establishing a ferry, is void, and is not made valid by the taking of a

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bond of the ferryman and the approval of a commissioner's report by the county court as constituted by the county judge alone. *Howell ex parte*, 36 Ark., 466. The levying of county taxes and making appropriations for county expenses must be by the county court when held by the county judge and justices of the peace. The making of contracts and allowances for county expenses must be by the court when held by the county judge alone. *Lawrence Co. v. Coffman*, 36 Ark., 641.

Sec. 31. Terms of county courts.—The terms of the county courts shall be held at the times that are now prescribed for holding the supervisors' courts, or may hereafter be prescribed by law.

Sec. 32. Courts of common pleas.—The general assembly may authorize the judge of the county court of any one or more counties, to hold severally a quarterly court of common pleas, in their respective counties; which shall be a court of record, with such jurisdiction in matters of contract and other civil matters, not involving title to real estate, as may be vested in such court.

Sec. 33. Appeals from county courts and courts of common pleas.—Appeals from all judgments of county courts or courts of common pleas, when established, may be taken to the circuit court under such restrictions and regulations as may be prescribed by law.

An appeal will lie from a final judgment of the county court fixing the amount due from a collector on settlement. *Carnall v. Crawford Co.*, 11 Ark., 605. See *McCullough v. Blackwell*, 51 *id.*, 163. An appeal will lie from the judgment of a county court refusing a liquor license. *Levy ex parte*, 43 Ark., 42. Petitioners for a prohibitory order under the three-mile law may appeal from the judgment of the county court, and so may any one admitted to contest the petition. *McCullough v. Blackwell*, 51 Ark., 159.

Sec. 34. Probate courts.—The judge of the county court shall be the judge of the court of probate, and have such exclusive original jurisdiction in matters relative to the probate of wills, the estates of deceased persons, executors, administrators, guardians, and persons of unsound mind, and their estates, as is now vested in the circuit court, or may be hereafter prescribed by law. The regular terms of the court of

probate shall be held at the times that may hereafter be prescribed by law.

The probate court is a court of superior jurisdiction, and its judgments in the exercise of its jurisdiction rightfully acquired, cannot be collaterally attacked; *Apel v. Kelsey*, 52 Ark., 341; *Borden v. State*, 11 Ark., 519; and its jurisdiction is the same as it was before the transfer of probate jurisdiction to the circuit courts by the act of 1873. *West v. Waddill*, 33 Ark., 575; *Reinhardt v. Gartrell*, *id.*, 727; *Hall v. Brewer*, 40 Ark., 434. Probate courts have exclusive jurisdiction of matters of administration of estates of deceased persons. *Meredith v. Scallion*, 51 Ark., 366; *Flash v. Gresham*, 36 Ark., 529; *Hankins v. Layne*, 48 Ark., 544; jurisdiction also to assign dower; *Hilliard v. Hilliard*, 50 Ark., 34; chancery courts have a like jurisdiction in matters of dower. *Meniffee v. Meniffee*, 8 Ark., 9. After the death or marriage of a female ward the probate court has jurisdiction to compel her guardian to account for her estate. *Price v. Peterson*, 38 Ark., 494. Probate judges have power to approve bonds executed by assignees for the benefit of creditors. *Raleigh v. Griffith*, 37 Ark., 150; *Clayton v. Johnson*, 36 Ark., 406. The probate court may compel the discovery of assets belonging to the estate of a deceased person; *Moss v. Sandefur*, 15 Ark., 381; *Clark v. Shelton*, 16 *id.*, 482; and has power to charge an administrator with all money or property not accounted for by him; *Hankins v. Layne*, 48 Ark., 544; to determine who are creditors of an estate, and when there is a sufficiency of assets to pay their claims without resort to a particular fund claimed by distributees; *State v. Roth*, 47 Ark., 222; and to make distribution of the personal property of estates. *Oliver v. Vance*, 34 Ark., 564. The probate court has jurisdiction to charge an executor or administrator with money or property of an estate with which he has fraudulently failed to charge himself, and to compel him to file proper inventories and appraisements of its property coming to his hands as such, at any time before his final settlement and discharge. *Hankins v. Layne*, 48 Ark., 544. Probate courts have no jurisdiction to settle partnership accounts between a deceased and a surviving partner; but where their accounts have been settled and a balance struck against a partner who afterwards dies, it may render judgment for such balance against his estate. *Culley v. Edwards*, 44 Ark., 423. They have no jurisdiction to create a lien or render a money judgment in a proceeding for partition of land among heirs; *Dismukes v. Halpern*, 47 Ark., 317; or to order lands of a minor to be exchanged for other lands; *Meyer v. Rousseau*, 47 Ark., 460; nor to relieve against fraud of administrator in buying lands of the estate for his own use; *id.*; nor to establish a lost will; *Waggener v. Lyles*, 29 Ark., 47; nor to order the father of a minor child, he not being its probate guardian, to sell its lands; *Gwynn v. McCauley*, 32 Ark., 97; nor after the close of a guardianship to authorize a guardian to sell the lands of his former ward for the repayment of advances made by him; *Phelps v. Buck*, 40 Ark., 219; nor can they assign dower in lands lying in another county; *Crabtree v. Crabtree*, 5 Ark., 638; nor settle a partnership account between a deceased and a surviving partner; *Nelson v. Green*, 22 Ark., 547; *Tiner v. Christian*, 27 *id.*,

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306; nor enforce a vendor's lien; *id.*; nor settle disputes as to title of property between an administrator and others; *Moss v. Sandefur*, 15 Ark., 381; *Clark v. Shelton*, 16 *id.*, 482. They have no jurisdiction of a suit against a guardian to recover the value of goods furnished to his ward. *Creswell v. Matthews*, 52 Ark., 87. A court of chancery cannot administer an estate of a deceased person, though the plaintiff is a non-resident, and asserts that there is no administrator, and that the sheriff refuses to administer. *Flash v. Gresham*, 36 Ark., 529. A court of equity cannot review the action of the probate court in admitting a will to probate. *Mitchell v. Rogers*, 40 Ark., 91. An execution cannot issue on a judgment of the circuit court against an administrator in his fiduciary capacity *Meredith v. Scallion*, 51 Ark., 366. The statute authorizing the circuit courts to appoint administrators *ad litem* is not unconstitutional. *Wade v. Bridges*, 24 Ark., 569. *Que. c.* Can power be given to probate courts to remove the disabilities of minors? *Pinchback v. Graves*, 42 Ark., 229. *Hilliard v. Hilliard*, 52 *id.*, 283.

Sec. 35. Appeals from probate courts.—Appeals may be taken from judgments and orders of the probate court to the circuit court, under such regulations and restrictions as may be prescribed by law.

An appeal lies from the judgment of the probate court assigning dower; *Hill v. Mitchell*, 5 Ark., 609; and from an order removing a guardian. *Morrow v. Walker*, 10 Ark., 569. On appeal the trial in the circuit court is *de novo*. *Dempsey v. Fenno*, 16 Ark., 491.

Sec. 36. Special judges of county and probate courts.—Whenever a judge of the county or probate court may be disqualified from presiding, in any cause or causes pending in his court, he shall certify the facts to the governor of the state, who shall thereupon commission a special judge to preside in such cause or causes during the time said disqualification may continue, or until such cause or causes may be finally disposed of.

A judge of a county court is not disqualified to act upon an application to annex territory to a town or city by reason of being a resident of the corporation, and having voted for or against the annexation. The interest that disqualifies a judge is not that which he feels in public questions, but a pecuniary or property interest. *Foreman v. Marianna*, 43 Ark., 324.

Sec. 37. Compensation of county judges—Jurisdiction when circuit judge absent.—The county judge shall receive such compensation for his services as presiding judge

of the county court, as judge of the court of probate, and judge of the court of common pleas, when established, as may be provided by law. In the absence of the circuit judge from the county, the county judge shall have power to issue orders for injunction and other provisional writs in their counties, returnable to the court having jurisdiction; provided, that either party may have such order reviewed by any superior judge in vacation in such manner as shall be provided by law. The county judge shall have power, in the absence of the circuit judge from the county, to issue, hear and determine writs of habeas corpus, under such regulations and restrictions as shall be provided by law.

Sec. 38. Justices of the peace—Election—Term of office—Commission.—The qualified electors of each township shall elect the justices of the peace for the term of two years; who shall be commissioned by the governor, and their official oath shall be indorsed on the commission.

Sec. 39. Number of justices.—For every two hundred electors there shall be elected one justice of the peace; but every township, however small, shall have two justices of the peace.

Sec. 40. Jurisdiction of justices of the peace.—They shall have original jurisdiction in the following matters: First. Exclusive of the circuit court, in all matters of contract where the amount in controversy does not exceed the sum of one hundred dollars, excluding interest; and concurrent jurisdiction in matters of contract, where the amount in controversy does not exceed the sum of three hundred dollars, exclusive of interest. Second. Concurrent jurisdiction in suits for the recovery of personal property, where the value of the property does not exceed the sum of three hundred dollars; and in all matters of damage to personal property where the amount in controversy does not exceed the sum of one hundred dollars. Third. Such jurisdiction of misdemeanors as is now, or may be prescribed by law. Fourth. To sit as examining courts

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and commit, discharge or recognize offenders to the court having jurisdiction, for further trial, and to bind persons to keep the peace, or for good behavior. Fifth. For the foregoing purposes, they shall have power to issue all necessary process. Sixth. They shall be conservators of the peace within their respective counties; provided, a justice of the peace shall not have jurisdiction where a lien on land, or title or possession thereto is involved.

Jurisdiction cannot be increased or diminished.—Justices may exercise their jurisdiction though the legislature may not have prescribed any method for its exercise; *More v. Woodruff*, 5 Ark., 214; and the legislature cannot increase or diminish their constitutional jurisdiction. *Woodruff v. Griffith*, 5 Ark., 354; *Gibson v. Emerson*, 7 id., 173; *McDaniel v. Coleman*, 14 id., 545; *Dillard v. Noel*, 2 id., 449. An act authorizing justices of the peace to issue writs of attachment returnable to the circuit court was held to be unconstitutional. *Troy v. Bower*, 3 Ark., 352. An act providing that justices of the peace should have no jurisdiction of suits against a corporation was held to be unconstitutional. *More v. Woodruff*, 5 Ark., 214.

Suits for statutory penalties.—Justices have no jurisdiction to render judgment for statutory penalties, and an act attempting to confer it is void. *Gibson v. Emerson*, 7 Ark., 172; *Baltimore Tel. Co. v. Lovejoy*, 48 id., 301.

Bastardy cases.—It was held in *Jackson v. State*, 29 Ark., 62, that justices of the peace had jurisdiction in bastardy cases; but that jurisdiction is now vested in the county courts. See *ante*, sec. 28.

No equitable jurisdiction.—A justice of the peace may apply equitable doctrines to the solution of questions in cases within his jurisdiction, but he cannot administer the flexible remedies of equity. *Whitesides v. Kershaw*, 44 Ark., 377.

Jurisdiction must be shown.—The jurisdiction of justices of the peace cannot be intended; it must be shown. *McClure v. Hill*, 36 Ark., 268.

Jurisdiction in matters of contract.—In garnishment proceedings if the debt garnished exceed the jurisdiction of the justice the proceeding cannot be sustained. *More v. Woodruff*, 5 Ark., 214. Where the balance of an account is less than three hundred dollars, a suit may be brought on it before a justice of the peace without regard to the amounts of the items of debit and credit. *Hempstead v. Collins*, 6 Ark., 533; *Brinkley v. Barinds*, 7 id., 165; *Lafferty v. Day*, id., 262. If the amount sued for be within the jurisdiction of a justice the defendant cannot defeat the jurisdiction by showing that he owes the plaintiff more than he has sued for, being an amount in excess of his jurisdiction. *Lafferty v. Day*, 7 Ark., 258; *State v. Scoggin*, 10 id., 329. Where the amount claimed by the plaintiff is within the jurisdiction of a justice of the peace the jurisdiction is not ousted on the trial if it appears that the plaintiff might have claimed an amount beyond his jurisdiction. *Lafferty v. Day*, 7 Ark., 258. One suit may be brought before a justice of the

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peace on several notes where each note is within the limit of his jurisdiction, though the aggregate sum exceeds that amount. *Collins v. Woodruff*, 9 Ark., 463; *Lindsay v. Wayland*, 17 id., 386. A justice of the peace has jurisdiction of instalments of interest not exceeding three hundred dollars each, on a bond the principal of which exceeds that sum. *Walker v. Byrd*, 15 Ark., 33. The clause excluding interest applies alike to legal and conventional interest. *Chatten v. Heffley*, 21 Ark., 313. An action on an account for less than three hundred dollars is within the jurisdiction of a justice of the peace. *Hibbard v. Kirby*, 38 Ark., 102. An action against a common carrier for breach of a contract to carry and deliver goods may be *ex contractu* or *ex delicto*; but the measure of damages is the same in both; and in either case a justice of the peace has jurisdiction. *St. Louis R. Co. v. Heath*, 41 Ark., 477. Where a pledgor of a horse tenders the amount of the debt for which it was pledged, and the pledgee refuses it, and the former sues the latter for damages, the action is one on a contract. *Stanley v. Bracht*, 42 Ark., 210. A judgment of a justice on a claim above his jurisdiction is void, and cannot be cured or set off against another judgment. *Hanna v. Morrow*, 43 Ark., 107. Plaintiff having sued for rent before a justice of the peace the defendant pleaded by way of counter-claim fraud on the part of the plaintiff in procuring the making of the lease out of which the claim for rent proceeded, and on a trial defendant got judgment for an amount in excess of the plaintiff's demand. Held, that the judgment was valid, as being based on an implied contract to repay money improperly received. *Harris v. Simpson*, 50 Ark., 422.

Jurisdiction for recovery of personal property, and for damage done to it.—A justice of the peace has jurisdiction of an action for damage to personal property by negligence in keeping a ferry, when the amount claimed is one hundred dollars or less. *Wells v. State*, 31 Ark., 219. Justices have no jurisdiction for the attachment of mortgaged personal property. *Lemay v. Williams*, 32 Ark., 166. A justice of the peace has jurisdiction of an action for taking and carrying away corn of the value of one hundred dollars. *Moreland v. Condry*, 40 Ark., 78. "Matters of damage to personal property" means all injuries which one may sustain in respect to his ownership of personal estate. *St. Louis R. Co. v. Heath*, 41 Ark., 477. Where in an action for damages to personal property the plaintiff claims more than one hundred dollars, a justice has no jurisdiction. *Little Rock R. Co. v. Manees*, 44 Ark., 100. Justices have concurrent jurisdiction in all matters of damage resulting from the loss, conversion or destruction of personal property, as well as for injury to it, when the amount in controversy does not exceed one hundred dollars. *St. Louis R. Co. v. Briggs*, 47 Ark., 59; *Parks v. Webb*, 48 id., 293; *Sibley v. Leak*, 45 id., 346.

Jurisdiction in criminal cases.—The carrying of a pistol as a weapon is a misdemeanor of which justices of the peace and circuit courts have concurrent jurisdiction. *Walker v. State*, 35 Ark., 386. A justice of the peace has no right to decline to try a misdemeanor. *Thomson v. State*, 35 Ark., 327. A justice of the peace has no jurisdiction of any felony. *State v. Nichols*, 38 Ark., 550. It is a misdemeanor to take or hold real estate by force or violence, and a justice of the

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peace has jurisdiction of the offense. *Mann v. State*, 37 Ark., 405. A justice of the peace has no authority to decline to try a misdemeanor, and bind the accused over to the circuit court for trial. *Thomm v. State*, 35 Ark., 327.

No jurisdiction where title to land is involved.—The legislature cannot confer on justices of the peace jurisdiction in actions of forcible entry and detainer. *McLain v. Taylor*, 4 Ark., 147. Justices have no jurisdiction of suits involving titles to lands. *Fitzgerald v. Beebe*, 7 Ark., 305; *Thruston v. Hinds*, 8 id., 118; *Evans v. Perciful*, 5 id., 424. A justice has jurisdiction of a claim for the purchase money of an improvement on public land. *Jones v. Austin*, 17 Ark., 498. And also of an action for rent. *Dicus v. Bright*, 23 id., 110. In action before a justice of the peace on an alleged contract for rent the defendant cannot defeat the jurisdiction by controverting the plaintiff's title to the land. *Matthews v. Morris*, 31 Ark., 222. A mechanic's or material man's lien involves a lien on real estate, and a justice of the peace has no jurisdiction to enforce it. *Cotton v. Penzel*, 44 Ark., 484. A justice of the peace has no jurisdiction of an action for a trespass on lands. *School District v. Williams*, 38 Ark., 454; *Halpern v. Burgess*, 13 S. W. R., 763. A justice of the peace has no jurisdiction to try title to land, and he should refuse an interplea for land on which an attachment from his court has been levied, and should proceed to judgment without reference to the title. *Cunningham v. Holland*, 40 Ark., 556. Upon rescission of a parol contract for the sale of land the vendee may recover money paid upon the contract; and a justice of the peace has jurisdiction if the amount is within his jurisdiction. The title to the land is not involved in the action. *Benton v. Marshall*, 47 Ark., 241. An answer in a justice's court to an action for the price of land, setting up a want of title to it will not oust the jurisdiction of the court without evidence on the trial tending to bring the title in question. *Bramble v. Beilder*, 38 Ark., 200. A justice should not dismiss an action for rent merely on the defendant's answer denying the plaintiff's title to the land; but the facts should be investigated; and if the relation of landlord and tenant exists, the ownership of the land is not material. *Jordan v. Henderson*, 37 Ark., 120. The act of January 23, 1875, providing for the levy of attachments issued by justices of the peace on lands, is not unconstitutional. *Bush v. Visant*, 40 Ark., 124. The grounds for an attachment where land has been attached in a suit before a justice of the peace may be controverted before the justice, or on an appeal in the circuit court, for they involve no inquiry as to the title to the land. *Irwin v. Taylor*, 48 Ark., 224.

Sec. 41. Qualifications of justices of the peace.—

A justice of the peace shall be a qualified elector, and a resident of the township for which he is elected.

Sec. 42. Appeals from justices of the peace.—Appeals may be taken from the final judgments of the justices of the peace, to the circuit courts, under such regulations as are now, or may be provided by law.

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An appeal from a justice of the peace is a matter of right, and on filing the affidavit required by the statute it cannot be denied. *Townsend v. Timmons*, 44 *Ark.*, 482. When the justice of the peace has no jurisdiction the circuit court can acquire none by appeal. *Latham v. Jones*, 6 *Ark.*, 371; *Pendleton v. Fowler*, *id.*, 41; *Levy v. Shurman*, *id.*, 182; *Collins v. Woodruff*, 9 *id.*, 463. An appeal will lie from an order in reference to estrays. *Langley v. Barkman*, 23 *Ark.*, 293. An appeal lies from a judgment of a justice of the peace in a garnishment proceeding. *Smith v. Parker*, 25 *Ark.*, 518.

Sec. 43. Corporation courts.—Corporation courts, for towns and cities, may be invested with jurisdiction concurrent with justices of the peace in civil and criminal matters, and the general assembly may invest such of them as it may deem expedient with jurisdiction of any criminal offenses not punishable by death, or imprisonment in the penitentiary, with or without indictment, as may be provided by law; and, until the general assembly shall otherwise provide, they shall have the jurisdiction now provided by law.

See *Lewis v. State*, 21 *Ark.*, 209; *Price v. State*, 22 *Ark.*, 335; *Graham v. State*, 1 *Ark.*, 171; *Rector v. State*, 6 *id.*, 187. Where a suit is on a recognizance which is for an amount exceeding the jurisdiction of a justice of the peace, the corporation court has no jurisdiction, though its judgment may not exceed such jurisdiction. *Hall v. State*, 1 *Ark.*, 201. The legislature may vest in corporation courts jurisdiction of all offenses below the grade of felony at common law. *Slattery ex parte*, 3 *Ark.*, 484; *Rector v. State*, 6 *id.*, 187.

Sec. 44. Pulaski chancery court—Judge and clerk.—The Pulaski chancery court shall continue in existence until abolished by law, or the business pending at the adoption of this constitution shall be disposed of, or the pending business be transferred to other courts. The judge and clerk of said court shall hold office for the term of two years; and shall be elected by the qualified voters of the state. All suits and proceedings which relate to sixteenth section lands, or to money due for said lands shall be transferred to the respective counties where such lands are located, in such manner as shall be provided by the general assembly at the next session.

Sec. 45. Criminal courts abolished.—The separate criminal courts established in this state are hereby abolished, and all the jurisdiction exercised by said criminal courts is

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vested in the circuit courts of the respective counties; and all causes now pending therein are hereby transferred to said circuit courts respectively. It shall be the duty of the clerks of said criminal courts to transfer all the records, books and papers pertaining to said criminal courts to the circuit courts of their respective counties.

Sec. 46. Sheriffs—Collectors—Assessors—Coroners—Treasurers—County surveyors.—The qualified electors of each county shall elect one sheriff, who shall be ex-officio collector of taxes, unless otherwise provided by law; one assessor, one coroner, one treasurer, who shall be ex-officio treasurer of the common school fund of the county; and one county surveyor; for the term of two years, with such duties as are now or may be prescribed by law. Provided, that no per centum shall ever be paid to assessors upon the valuation or assessment of property by them.

The legislature has power to provide for the assessment of lands by a court of equity which had escaped assessment in any year, and to charge the lands with the cost of the assessment. *St. Louis R. Co. v. State*, 47 Ark., 323. The legislature may establish county boards of equalization, with power to increase or diminish individual assessments. *Board of Equalization Cases*, 49 Ark., 519.

Sec. 47. Constables.—The qualified electors of each township shall elect a constable, for the term of two years, who shall be furnished by the presiding judge of the county court with a certificate of election, on which his official oath shall be indorsed.

Sec. 48. Commissions to officers.—All officers provided for in this article, except constables, shall be commissioned by the governor.

A commission does not confer a title to an office; but is only evidence of title, which may be overturned. *State v. Johnson*, 17 Ark., 407.

Sec. 49. Style of process and indictments.—All writs and other judicial process, shall run in the name of the state of Arkansas, bear test and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude: "Against the peace and dignity of the state of Arkansas."

A writ not running in the name of the state is amendable, and should be amended by the court of its own motion, or considered as amended; *Kuhn v. Kuhn*, 44 Ark., 404; and when collaterally questioned will be considered as amended, *Whiting v. Bebe*, 12 Ark., 421; *Mitchell v. Conley*, 13 *id.*, 414; *Hall v. Lackmond*, 50 *id.*, 115. Each count in an indictment must conclude with this form. *State v. Cadle*, 19 Ark., 613; *State v. Hazle*, 20 Ark., 156; *Williams v. State*, 47 *id.*, 230. An indictment concluding "against the peace and dignity of the *people of the state of Arkansas*" was held good. *Anderson v. State*, 5 Ark., 444.

Sec. 50. Vacancies in office.—All vacancies occurring in any office provided for in this article, shall be filled by special election; save that in case of vacancies occurring in county and township offices six months, and in other offices nine months, before the next general election, such vacancies shall be filled by appointment by the governor.

The filling of vacancies in the office of collector is not within the purview of this section. *Falconer v. Shores*, 37 Ark., 386. When one is elected to the office of circuit judge of a circuit newly created, his term of office expires at the time of the election and qualification of the judge elected at the next general election. *State v. Askew*, 48 Ark., 82. See note to sec. 17, *ante*. Where not otherwise provided in the constitution the legislature may regulate the manner of filling vacancies. *State v. Crow*, 20 Ark., 209.

Sec. 51. Appeals from allowances against counties, cities and towns.—That in all cases of allowances made for or against counties, cities, or towns, an appeal shall lie to the circuit court of the county, at the instance of the party aggrieved, or on the intervention of any citizen or resident and tax-payer of such county, city, or town, on the same terms and conditions on which appeals may be granted to the circuit court in other cases; and the matter pertaining to any such allowance shall be tried in the circuit court *de novo*. In case an appeal be taken by any citizen, he shall give a bond, payable to the proper county, conditioned to prosecute the appeal, and save the county from costs on account of the same being taken.

An award of a contract to build a jail is not an allowance within the meaning of this section. *Armstrong v. Truitt*, 13 S. W. R., 934. Nor is an order prohibiting the sale of liquor under the three-mile law. *Holmes v. Morgan*, 52 Ark., 99.

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Sec. 52. Contested elections for county, township and municipal officers.—That in all cases of contest for any county, township or municipal office, an appeal shall lie at the instance of the party aggrieved, from any inferior board, council or tribunal to the circuit court, on the same terms and conditions on which appeals may be granted to the circuit court in other cases; and on such appeals the case shall be tried *de novo*.

The legislature may establish a special tribunal for the trial of contested elections. *Govan v. Jackson*, 32 Ark., 553.

ARTICLE VIII.

APPORTIONMENT.

Sec. 1. Number of representatives—Ratio of representation.—The house of representatives shall consist of not less than seventy-three, nor more than one hundred members. Each county now organized shall always be entitled to one representative; the remainder to be apportioned the several counties according to the number of adult male inhabitants, taking two thousand as the ratio, until the number of representatives amounts to one hundred, when they shall not be further increased; but the ratio of representation shall, from time to time, be increased as hereinafter provided; so that the representatives shall never exceed that number. And until the enumeration of the inhabitants is taken by the United States government, A. D. 1880, the representatives shall be apportioned among the several counties as follows:

The county of Arkansas shall elect one representative. The county of Ashley shall elect one representative. The county of Benton shall elect two representatives. The county of Boone shall elect one representative. The county of Bradley shall elect one representative. The county of Baxter shall elect one representative. The county of Calhoun shall elect one representative. The county of Carroll shall elect one representative. The county of Chicot shall elect one representative. The

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county of Columbia shall elect two representatives. The county of Clark shall elect two representatives. The county of Conway shall elect one representative. The county of Craighead shall elect one representative. The county of Crawford shall elect one representative. The county of Cross shall elect one representative. The county of Crittenden shall elect one representative. The county of Clayton shall elect one representative. The county of Dallas shall elect one representative. The county of Desha shall elect one representative. The county of Drew shall elect one representative. The county of Dorsey shall elect one representative. The county of Franklin shall elect one representative. The county of Fulton shall elect one representative. The county of Faulkner shall elect one representative. The county of Grant shall elect one representative. The county of Green shall elect one representative. The county of Garland shall elect one representative. The county of Hempstead shall elect two representatives. The county of Hot Spring shall elect one representative. The county of Howard shall elect one representative. The county of Independence shall elect two representatives. The county of Izaard shall elect one representative. The county of Jackson shall elect one representative. The county of Jefferson shall elect three representatives. The county of Johnson shall elect one representative. The county of Lafayette shall elect one representative. The county of Lawrence shall elect one representative. The county of Little River shall elect one representative. The county of Lonoke shall elect two representatives. The county of Lincoln shall elect one representative. The county of Lee shall elect two representatives. The county of Madison shall elect one representative. The county of Marion shall elect one representative. The county of Monroe shall elect one representative. The county of Montgomery shall elect one representative. The county of Mississippi shall elect one representative. The county of Nevada shall elect one representative. The county of Newton shall elect one representative. The county of Ouachita shall elect two rep-

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representatives. The county of Perry shall elect one representative. The county of Phillips shall elect three representatives. The county of Pike shall elect one representative. The county of Polk shall elect one representative. The county of Pope shall elect one representative. The county of Poinsett shall elect one representative. The county of Pulaski shall elect four representatives. The county of Prairie shall elect one representative. The county of Randolph shall elect one representative. The county of Saline shall elect one representative. The county of Sarber shall elect one representative. The county of Scott shall elect one representative. The county of Searcy shall elect one representative. The county of Sebastian shall elect two representatives. The county of Sevier shall elect one representative. The county of St. Francis shall elect one representative. The county of Stone shall elect one representative. The county of Union shall elect two representatives. The county of Van Buren shall elect one representative. The county of Washington shall elect three representatives. The county of White shall elect two representatives. The county of Woodruff shall elect one representative. The county of Yell shall elect one representative. The county of Sharp shall elect one representative.

The provisions as to apportionment do not prevent the changing of county lines. *Howard v. McDiarmid*, 26 Ark., 100.

Sec. 2. Senatorial districts—Ratio of representation in the senate.—The legislature shall, from time to time, divide the state into convenient senatorial districts in such manner that the senate shall be based upon the adult male inhabitants of the state; each senator representing an equal number as nearly as practicable, and until the enumeration of the inhabitants is taken by the United States government, A. D. 1880, the districts shall be arranged as follows:

The counties of Greene, Craighead and Clayton shall compose the first district, and elect one senator.

The counties of Randolph, Lawrence and Sharp shall compose the second district, and elect one senator.

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The counties of Carroll, Boone and Newton shall compose the third district, and elect one senator.

The counties of Johnson and Pope shall compose the fourth district, and elect one senator.

The county of Washington shall compose the fifth district, and elect one senator.

The counties of Independence and Stone shall compose the sixth district, and elect one senator.

The counties of Woodruff, St. Francis, Cross and Crittenden shall compose the seventh district, and elect one senator.

The counties of Yell and Sarber shall compose the eighth district, and elect one senator.

The counties of Saline, Garland, Hot Spring and Grant shall compose the ninth district, and elect one senator.

The counties of Pulaski and Perry shall compose the tenth district, and elect two senators.

The county of Jefferson shall compose the eleventh district and elect one senator.

The counties of Lonoke and Prairie shall compose the twelfth district, and elect one senator.

The counties of Arkansas and Monroe shall compose the thirteenth district, and elect one senator.

The counties of Phillips and Lee shall compose the fourteenth district, and elect one senator.

The counties of Desha and Chicot shall compose the fifteenth district, and elect one senator.

The counties of Lincoln, Dorsey and Dallas shall compose the sixteenth district, and elect one senator.

The counties of Drew and Ashley shall compose the seventeenth district, and elect one senator.

The counties of Bradley and Union shall compose the eighteenth district, and elect one senator.

The counties of Calhoun and Ouachita shall compose the nineteenth district, and elect one senator.

The counties of Hempstead and Nevada shall compose the twentieth district, and elect one senator.

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The counties of Columbia and Lafayette shall compose the twenty-first district, and elect one senator.

The counties of Little River, Sevier, Howard and Polk shall compose the twenty-second district, and elect one senator.

The counties of Fulton, Izard, Marion and Baxter shall compose the twenty-third district, and elect one senator.

The counties of Benton and Madison shall compose the twenty-fourth district, and elect one senator.

The counties of Crawford and Franklin shall compose the twenty-fifth district, and elect one senator.

The counties of Van Buren, Conway and Searcy shall compose the twenty-sixth district, and elect one senator.

The counties of White and Faulkner shall compose the twenty-seventh district, and elect one senator.

The counties of Sebastian and Scott shall compose the twenty-eighth district, and elect one senator.

The counties of Poinsett, Jackson and Mississippi, shall compose the twenty-ninth district, and elect one senator.

The counties of Clark, Pike and Montgomery, shall compose the thirtieth district, and elect one senator.

And the senate shall never consist of less than thirty, nor more than thirty-five members.

Sec. 3. Senatorial districts—How formed.—Senatorial districts shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senatorial district.

An act destroying Clark county, and dividing its territory among other counties, held to be unconstitutional. *Bittle v. Stuart*, 34 Ark., 224. The transferring of a part of a county in one senatorial district to another county in a different senatorial district, constitutes no change in the districts. *Pulaski Co. v. County Judge*, 37 Ark., 340.

Sec. 4. Apportionments, when to be made.—The division of the state into senatorial districts, and the apportionment of representatives to the several counties, shall be made by the general assembly at the first regular session after each enumeration of the inhabitants of the state, by the federal or state government, shall have been ascertained, and at no other time.

ART. IX.—EXEMPTIONS.

ARTICLE IX.

EXEMPTIONS.

The exemption sections in the constitution should be liberally construed. *St. Louis R. Co. v. Hart*, 38 Ark., 112. A waiver of the exemption laws at the time of the creation of a debt is against public policy, and is void. *Lindsay v. Norrill*, 36 Ark., 546.

Sec. 1. Exemption of personal property of persons other than heads of families from seizure for debt.—The personal property of any resident of this state, who is not married or the head of a family, in specific articles, to be selected by such resident, not exceeding in value the sum of two hundred dollars, in addition to his or her wearing apparel, shall be exempt from seizure on attachment, or sale on execution or other process from any court issued for the collection of any debt by contract; provided, that no property shall be exempt from execution for debts contracted for the purchase money therefor while in the hands of the vendee.

A defendant does not waive his right of exemption by executing a delivery bond. *Atkinson v. Gatcher*, 23 Ark., 101. Choses in action may be selected as exempt from a garnishment process. *Probst v. Scott*, 31 Ark., 652; *Winter v. Simpson*, 42 *id.*, 410. Exempted personal property may be sold by the debtor, and the creditor cannot follow it into the hands of the purchaser; but property taken in exchange must take its position subject to the exemption laws in force. *Bennett v. Hutson*, 33 Ark., 762. There is no exemption where the debt or decree is for fraud or tort, nor as against the costs recovered therein. *Massie v. Enyart*, 33 Ark., 688; *Cason v. Bone*, 43 *id.*, 17. The right of exemption appertains only to residents of the state. *Donnelly v. Wheeler*, 34 Ark., 111. So as to wages of laborers. *Porter v. Navin*, 52 Ark., 352; *Blythe v. Jett*, *id.*, 549. Personal property is not exempt as against an execution on a judgment in replevin. *Smith v. Ragsdale*, 36 Ark., 297. The exemption will prevail as against a judgment rendered in an action for use and occupation. *St. Louis R. Co. v. Hart*, 38 Ark., 112. A debtor's property is not exempt from execution for its purchase price. *Cason v. Bone*, 43 Ark., 17; *Swanger v. Goodwin*, 49 *id.*, 287. The provision as to "debts contracted for the purchase money" of property applies also to section 2 of this article. *Friedman v. Sullivan*, 48 Ark., 213. Where a debtor and creditor are domiciled in different states, and the creditor proceeds by attachment in the courts of the state of his domicile against the property of his debtor, the courts of the debtor's domicile will not interfere by injunction, on the ground that the property is exempt by the law of the debtor's domicile, though the creditor be temporarily

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found within their jurisdiction. *Griffith v. Langsdale*, 13 *S. W. R.*, 733. The exemption laws apply to a judgment rendered in favor of the state on a bail bond. *State v. Williford*, 36 *Ark.*, 155. The exemption laws that apply to a judgment are those in force at the time of the creation of the debt sued on. *Moore v. Boozier*, 42 *Ark.*, 385. The members of an insolvent firm are not entitled to exemptions out of the partnership property after it has been seized at the suit of firm creditors. *Richardson v. Adler*, 46 *Ark.*, 43; *in re Handlin*, 12 *Nat. Bank. Reg.*, 49. In case of judgment against husband and wife for a debt contracted by her before marriage the husband is entitled to such exemptions as were allowed by law at the time of his marriage, and she to such as were allowed at the time the debt was contracted. *Williams v. Rivercomb*, 31 *Ark.*, 292. One claiming an exemption assumes the burden of proof. *Blythe v. Jett*, 52 *Ark.*, 547. The clause as to laborers' and mechanics' liens in section 3 of this article has no relation to personal property. *Parham v. McMurray*, 32 *Ark.*, 262. One having his domicile in this state may claim his exemption of personal property though he is temporarily residing in another state. *Birdsong v. Tuttle*, 52 *Ark.*, 91. The act of November 27, 1875, providing for the exemption of wages of laborers and mechanics to a certain amount, is constitutional. *Id.*

Sec. 2. Exemption of personal property of heads of families.—The personal property of any resident of this state, who is married or the head of a family, in specific articles to be selected by such resident, not exceeding in value the sum of five hundred dollars, in addition to his or her wearing apparel, and that of his or her family, shall be exempt from seizure on attachment, or sale on execution or other process from any court, on debt by contract.

The provision of section 1 of this article as to "debts contracted for purchase money" applies also to section 2. *Friedman v. Sullivan*, 48 *Ark.*, 213. A creditor cannot set aside as fraudulent a transfer by his debtor of personal property that is exempt from execution. *Blythe v. Jett*, 52 *Ark.*, 549; *Sannoner v. King*, 49 *id.*, 299. A recovered a judgment against B, who bought up a judgment rendered against A in favor of C, and offered it as a set-off against A's judgment; upon which A claimed his judgment as exempt; and, upon a proper showing in his schedule, his claim was allowed, and the set-off was denied. *Atkinson v. Pittman*, 47 *Ark.*, 464. The rights of a landlord against his tenant do not attach as against the debtor of the tenant, against whom the former has recovered judgment in a proceeding by garnishment, so as to deprive him of the benefit of his right of exemption. *Swope v. Ross*, 29 *Ark.*, 370. A debtor who is married, whether husband or wife, is entitled to the chattel exemption of \$500. *Memphis R. Co. v. Adams*, 46 *Ark.*, 159. A married man is the head of a family though his wife has abandoned him. *Gates v. Steele*, 48 *Ark.*, 539.

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Sec. 3. Homestead exemption.—The homestead of any resident of this state, who is married or the head of a family, shall not be subject to the lien of any judgment or decree of any court, or to sale under execution, or other process thereon, except such as may be rendered for the purchase money, or for specific liens, laborers' or mechanics' liens for improving the same, or for taxes, or against executors, administrators, guardians, receivers, attorneys for moneys collected by them, and other trustees of an express trust, for moneys due from them in their fiduciary capacity.

To constitute a family there must be an obligation on the head of the house to support the others, or some of them, and on their part a state of dependence. *Harbison v. Vaughan*, 42 Ark., 539. See note to sec. 2, ante. A homestead is the place of a house or home; that part of a man's landed property which is about and contiguous to his dwelling house. *Tumlinson v. Swinney*, 22 Ark., 400. It is not necessary that the claimant shall be a husband or parent. *Harbison v. Vaughan*, 42 Ark., 539. Under the homestead act of 1852 a levy of an execution on a homestead created a lien which might be enforced after the homestead right ceased. *Brandon v. Moore*, 50 Ark., 247. The plea of homestead is a good defence to a possessory action based on a title acquired under an execution sale. *Hughes v. Watt*, 26 Ark., 228. See Act 1887, sec. 2, post. An alien resident in this state is entitled to a homestead. *McKensie v. Murphy*, 24 Ark., 155. To be effectual the right to an exemption by a debtor claiming as the head of a family must exist at the time that the lien of the creditor attaches. *Richardson v. Adler*, 46 Ark., 43. Where a creditor by fraud procures the sale under execution of the homestead of his debtor, the sale will be set aside in chancery. *Jennings v. Carter*, 13 S. W. R., 800. A creditor cannot complain that the conveyance of a homestead is fraudulent as to a debt for the payment of which it is not subject to execution; but where the debtor exchanges his homestead for other real estate, the latter will not be exempt except as a homestead, and to the extent allowed by the constitution. *Campbell v. Jones*, 52 Ark., 493; *Bogan v. Cleveland*, id., 101; *Blythe v. Jett*, id., 549. A defendant asserting that certain lands constitute his homestead assumes the burden of proof. *Webb v. Davis*, 37 Ark., 551; *Blythe v. Jett*, 52 id., 547. A homestead is not subject to attachment any more than it is to an execution. *Grubbs v. Ellyson*, 23 Ark., 287. A homestead is subject to a vendor's lien; but this fact does not render it liable to sale under execution issued on a judgment rendered for the purchase money. *Tunstall v. Jones*, 25 Ark., 272. A tenant in common may apply for partition, and after partition, by fixing his dwelling on land assigned him in severalty, he will become entitled to the benefit of the homestead exemption. *Greenwood v. Maddox*, 27 Ark., 648. A tenant in common is entitled to a homestead, exempt from execution in the common estate,

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and on his death the right descends to his widow and heirs. *Ward v. Mayfield*, 41 Ark., 94; *Sims v. Thompson*, 39 id., 301; *Sentell v. Armor*, 35 id., 49. There can be no partition of a homestead. *Trotter v. Trotter*, 31 Ark., 145. The mere intention to build a dwelling on a tract of land and occupy it as a homestead, does not impress it with that character: the house must be actually built. *Williams v. Dorris*, 31 Ark., 466. Lands are not a homestead unless occupied as such at the time they are levied on. *Patrick v. Baxter*, 42 Ark., 175. Where land is not occupied as a residence at the time an attachment is levied on it, the defendant's occupation of it afterwards will not enable him to hold it as a homestead exempt from sale under a judgment sustaining the attachment. *Reynolds v. Tenant*, 51 Ark., 85. One having residences on separate tracts of land, both levied on, may make his election, even on the day of sale, which of the two he will claim as his homestead, unless he has previously made his election. *Tumlinson v. Swinney*, 22 Ark., 400. See *post*, act of 1887, sec. 2, on this subject. The clause as to "laborers' or mechanics' liens" has no relation to personal property. *Parham v. McMurray*, 32 Ark., 262. A conveyance of land set aside for fraud at the suit of creditors does not estop the grantor from claiming a homestead in the premises conveyed; but he must assert his homestead in that suit, or he will be barred. *Turner v. Vaughan*, 33 Ark., 454; *Bennett v. Hutson*, id., 762; *Carmack v. Lovett*, 44 id., 180. The homestead is not exempt for debts contracted in a fiduciary capacity. *Gilbert v. Neely*, 35 Ark., 24. Where a guardian's homestead is not exempt from liability for obligations contracted by him as such to his wards, if his sureties pay off his debt to the latter they will become subrogated to their rights, and his homestead will not be exempt from their demand. *Id.* And so the sureties on the bond of a deceased guardian are entitled to subrogation to the right of the wards to subject the homestead of the guardian to sale for the payment of claims owing by him in his fiduciary capacity. And in such a case, where the deceased guardian was the father of the wards, and they were his sole heirs, such right of subrogation may be made available to defeat an action by the wards against the sureties on a claim due from the father as guardian. *Luck v. Atkins*, 13 S. W. R., 1097. A homestead held by an equitable title is exempt. *Rockafellow v. Peay*, 40 Ark., 70. A homestead is not exempt from a mechanic's lien for the value of lumber furnished to improve it. *Anderson v. Seamans*, 49 Ark., 475; *Gullede v. Preddy*, 32 id., 433. By an act approved March 18, 1887, entitled "An act to render more effectual the constitutional exemption of homestead," it is enacted as follows: Section 1. That no conveyance, mortgage or other conveyance affecting the homestead of any married man shall be of any validity except for taxes, laborers' and mechanics' liens, and the purchase money, unless his wife joins in the execution of such instrument, and acknowledges the same. Sec. 2. That a debtor's right of homestead shall not be lost or forfeited by his omission to select and claim it as exempt before the sale thereof on execution, nor by his failure to file a description or schedule of the same in the recorder's or clerk's office; but he may select and claim his homestead after or before its sale on execution, and may set up his right of homestead when suit is brought against him for possession, and if the husband neglects or refuses

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to make such claim, his wife may intervene and set it up; provided, that if the debtor does not reside on his homestead, and is the owner of more land than he is entitled to hold as a homestead, he or his wife, as the case may be, shall select the same before sale. Sec. 3. That all acts and parts of acts in conflict with this act are hereby repealed, and this act shall be in force from and after its passage. *Acts 1887, p. 90.* Notwithstanding the second section of this act the defendant, if he desires to avoid litigation, may obtain a supersedeas as provided in *Mansf. Dig., secs. 3006-3013*; in which case the provisions of the statute must be pursued. *Chambers v. Perry, 47 Ark., 400; Brown v. Peters, 13 S. W. R., 729.*

Abandonment.—A homestead is not lost by a temporary residence elsewhere, for the purpose of business. *Tumlinson v. Swinney, 22 Ark., 400.* The owner of an actual homestead may transact any business on it he may deem necessary for the support of his family—may erect conveniences proper for business, and occasionally rent out such portions of the premises as may be temporarily spared, or he may contract its area by cutting off a portion, and appropriating it to other than family uses. *Klenk v. Knoble, 37 Ark., 298.* The rights of creditors are restored upon abandonment by the owner, or his death without wife or child. *Chambers v. Sallie, 29 Ark., 407.* Minors are incapable of waiving or abandoning their homestead rights. *Booth v. Goodwin, 29 Ark., 633.* If the owner of a homestead mortgage it, he does not thereby abandon it to his other creditors, to be taken for their debts either directly or by subrogation. *Flask v. Tindall, 39 Ark., 571.* A husband with his wife, occupying one room of his hotel as their residence, does not lose his homestead right in the premises by renting out the rest of the building for a hotel. *Gainus v. Cannon, 42 Ark., 504.* The owner of a homestead does not lose it by the death of his wife, and the arrival of his children at the age of maturity, or their removal from the premises; *Stanley v. Snyder, 43 Ark., 429;* and a married man is the head of a family though his wife has abandoned him. *Gates v. Steele, 48 Ark., 539.* The owner of a homestead does not lose it by reason of the fact that he has made a conveyance of it for the purpose of defrauding his creditors. *Carmack v. Lovett, 44 Ark., 180.* Continuous occupation is not necessary to preserve the homestead. A removal for a temporary purpose with an intention of returning does not forfeit the exemption. *Euper v. Alkire, 37 Ark., 283; Brown v. Watson, 41 id., 309; Garibaldi v. Jones, 48 id., 230.* But if a widow sells her homestead this is an abandonment. *Garibaldi v. Jones, 48 Ark., 230.* Ordinarily a lease of the homestead for life is an abandonment; but where it reserves a right in the lessor to return to the homestead, and he intends to return, there is no abandonment. *Gates v. Steele, 48 Ark., 539.* Temporary removal from the homestead will not amount to an abandonment where there is no intention to abandon. *Brown v. Watson, 41 Ark., 309.* *husband cannot waive claim w/ wife, C. 9*

Sec. 4. Extent of exemption of homestead outside of city, town or village.—The homestead outside any city, town or village, owned and occupied as a residence, shall consist of not exceeding one hundred and sixty acres of land, with

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the improvements thereon, to be selected by the owner; provided, the same shall not exceed in value the sum of twenty-five hundred dollars; and in no event shall the homestead be reduced to less than eighty acres, without regard to value.

Where a tract of land not within the limits of an incorporated town is used only for agricultural purposes, in connection with a contiguous farm, and has never been surveyed into lots and blocks, or dedicated to the uses of the town, it may be claimed as a rural homestead, although the land on which the claimant's residence is situated juts into the town. *Orr v. Doughty*, 51 Ark., 527.

Sec. 5. Extent of exemption of homestead situated in city, town or village.—The homestead in any city, town or village, owned and occupied as a residence, shall consist of not exceeding one acre of land, with the improvements thereon, to be selected by the owner; provided, the same shall not exceed in value the sum of two thousand five hundred dollars; and in no event shall such homestead be reduced to less than one quarter of an acre of land, without regard to value.

Sec. 6. Homestead exemption for benefit of widow—Proviso—Rights of children during minority.—If the owner of a homestead die, leaving a widow, but no children, and said widow has no separate homestead in her own right, the same shall be exempt, and the rents and profits thereof shall vest in her during her natural life; provided, that if the owner leaves children, one or more, said child or children shall share with said widow, and be entitled to half the rents and profits till each of them arrives at twenty-one years of age—each child's rights to cease at twenty-one years of age—and the shares to go to the younger children; and then all to go to the widow; provided, that said widow or children may reside on the homestead or not. And in case of the death of the widow, all of said homestead shall be vested in the minor children of the testator or intestate.

A tenant in common is entitled to a homestead from the common estate, and on his death his right descends to his widow and heirs. *Ward v. Mayfield*, 41 Ark., 94. A widow has no estate in her husband's homestead until her dower is assigned but a mere right of occupancy. Her possession is not hostile to the title of the heir, and she has nothing to convey to a stranger to the title; and if she abandons

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the possession the heir may enter and occupy the premises subject to her right to have her dower assigned her. *Padgett v. Norman*, 44 Ark., 490. A widow is entitled to a homestead as well against heirs as against creditors of her deceased husband; but she cannot create a homestead on her husband's lands after his death. *Hoback v. Hoback*, 33 Ark., 399. After the death or re-marriage of the widow the minor children can maintain ejectment for the homestead against any one not holding under a better title than that of their father. One buying the homestead at an administrator's sale will be held to notice of the rights of minor children. *McCloy v. Arnett*, 47 Ark., 445. Under the constitution of 1868 the reversionary interest in the homestead of a decedent, after the termination of the rights of the widow and children could not be sold for the payment of his debts subject to their right of homestead. *Id.* The same is true under the present constitution. See *post*, sec. 10, note. The children are not required to assert their rights of homestead, during the continuance of the wife's right; and delay after the expiration of her right will not bar or prejudice the rights of minors, who are not required to assert their rights, or take possession of the homestead on account of their incapacity. The domicile of the wife and minor children follows that of the husband, and their actual personal residence at the homestead place is not necessary to perfect the right in him, or to entitle them to the benefit of it after his death. Where the head of the family has, in good faith, selected a place of residence, owns the land, and has entered and resides upon it, the absence of the wife and children might require stronger proof of intention, but nothing more. The homestead estate is created equally for the benefit of the wife and children, and none of them can do an act that will impair or prejudice the rights of the others. The widow and children of one who held a homestead during his life, are entitled to occupy and enjoy it, with the like exemptions, during the time specified, and the question of homestead may be determined by the acts, declarations, circumstances and general conduct of the party, which tend to show what his *bona fide* intention was. *Johnson v. Turner*, 29 Ark., 280. Where a widow is a party to a suit for partition among the heirs, and fails to claim her homestead right, it is barred by the decree. *Hoback v. Hoback*, 33 Ark., 399. The widow is entitled to the possession of the entire homestead of her deceased husband, and is the proper party to sue for a trespass on it; and the heirs may sue separately for a permanent injury to the freehold resulting from the trespass. *Little Rock R. Co. v. Dyer*, 35 Ark., 360. A widow who has no other place of residence, is entitled to the homestead of her deceased husband for life, whether she occupies it or not, and is not accountable to any one for rents received for it. A widow who pays off her husband's note given for the homestead, may enforce the vendor's lien against the homestead, or collect the note out of the general estate, before any distribution to his heirs or distributees. *Gainus v. Cannon*, 42 Ark., 503. The legislature cannot provide that the whole interest in lands held as a homestead under a certain value shall vest in the widow to the exclusion of the children. *Sansom v. Harrell*, 51 Ark., 429. Nor can the widow defeat an action brought by the minor children to recover their share of the rents and profits of the homestead lands by showing that no dower has been assigned her in them, and claiming the right to occupy them

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until assignment of her dower. *Winters v. Davis*, 51 Ark., 335. The constitution extends the homestead to the widow only where she has no separate homestead of her own. *Davenport v. Devenoux*, 45 Ark., 341. Where the homestead of minors is sold at a void sale for the payment of the debts of their ancestor, and the purchaser enters into possession, the statute of limitations does not begin to run against them until the youngest of their number reaches lawful age. *Kessinger v. Wilson*, 14 S. W. R., 96. As each child arrives at age his interest in the homestead, as such, expires, and he has no right to the possession, and can bring no action for it until the youngest child arrives at age; and so until then the statute of limitations does not begin to run against the latter or his vendee in favor of an adverse occupant of the land. *Kirksey v. Cole*, 47 Ark., 504. By act of April 25, 1873, it is provided that whenever any resident of this state shall die leaving a widow or children who may desire to claim a homestead, she or they "shall file with the clerk of the probate court of the county in which the homestead is situate an accurate description of the land so claimed, or, if the same be a lot in any city, town, or village, a description of said lot, and shall apply to have the same reserved from sale. It shall be the duty of such clerk, immediately after the filing of said description and application, to enter upon the records of said court that said homestead has been duly reserved from sale upon the application of such claimant or claimants." *Mansf. Dig.*, secs. 3592, 3593.

Sec. 7. Separate property of married women.—The real and personal property of any *femme covert* in this state, acquired either before or after marriage, whether by gift, grant, inheritance, devise or otherwise, shall, so long as she may choose, be and remain her separate estate and property, and may be devised, bequeathed or conveyed by her the same as if she were a *femme sole*; and the same shall not be subject to the debts of her husband.

This section does not destroy estates by entirety. *Robinson v. Eagle*, 29 Ark., 202. Where a married woman joins her husband in a deed of her land, and also relinquishes dower, the deed will convey the fee, though she acknowledges only the relinquishment. *Bryan v. Winburn*, 43 Ark., 29. A married woman may sue and interplead alone for her separate property; *Berlin v. Cantrell*, 33 Ark., 611; or sue on a note which is her separate property. *Beavers v. Baucum*, *id.*, 723. Whatever interest the husband acquires in his wife's lands by marriage since the constitution of 1874, is swept away by her subsequent conveyance of them; and where a husband and wife during her infancy joined in a deed of her land, and after her maturity she avoided the conveyance by conveying to another party, the last conveyance swept from the first purchaser as well the interest of the husband as that of the wife. *Bagley v. Fletcher*, 44 Ark., 153. The marital rights of the husband in the lands of his wife are excluded during her life. She may dispose of them at

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will; but if she does not do so, and if there be issue of the marriage, born alive, his title by curtesy consummate attaches at her death, as at common law. *Neely v. Lancaster*, 47 Ark., 175. The constitution could not take from the husband any rights vested in him prior to its adoption; but it was competent for it to provide that all property thereafter acquired by a married woman should constitute her separate estate, not subject to the control, nor liable for the debts, of her husband. *Allen v. Hanks*, 136 U. S., 300; *Shryock v. Cannon*, 39 Ark., 434; *Erwin v. Puryear*, 50 id., 356. A married woman may mortgage her lands to secure a debt of her husband. *Scott v. Ward*, 35 Ark., 480; *Collins v. Wassell*, 34 id., 17. The effect of the constitution of 1874 is to make all property thereafter acquired by a woman who is, or may afterwards become *covert*, her separate property as effectually as if conveyed to her by deed to her separate use. *Ward v. Ward*, 36 Ark., 586. A married woman may convey her estate and acknowledge the execution of a deed for registration as a *femme sole*; and if her acknowledgment be not sufficient to admit it to registration, it will still be good between her and her grantee. *Roberts v. Wilcoxson*, 36 Ark., 356; *Donahue v. Mills*, 41 id., 421. A wife may convey her separate estate as a *femme sole* without acknowledgment of the deed; which is necessary only for registration and notice to subsequent purchasers and incumbrancers. *Criscoe v. Hambrick*, 47 Ark., 235. Married women cannot make executory contracts to convey their estates. *Chrisman v. Partee*, 38 Ark., 31; *Stidham v. Matthews*, 29 id., 650. Nor can they convey by power of attorney. *Holland v. Moon*, 39 Ark., 120; *Batte v. McCaa*, 44 id., 398. A married woman can convey her separate property as a *femme sole*; and in the acknowledgment of her deed no pivity examination, or disclaimer of compulsion or undue influence is necessary. Her deed is good without acknowledgment as to all parties with notice of it. *Stone v. Stone*, 43 Ark., 160. A married woman may bind her separate estate by contract; and if she carries on a trade or business on her own account, she may make contracts, and execute bills and notes in relation to it, on which she will be personally responsible. *Walker v. Jessup*, 43 Ark., 164. A married woman may form a partnership as a sole trader with one not her husband, and will as to her separate property be bound effectually by all the contracts of the firm. *Abbott v. Jackson*, 43 Ark., 212. And may engage in farming or other business on her separate account. *Hickey v. Thompson*, 52 Ark., 234.

Sec. 8. Scheduling of separate personal property of married women.—The general assembly shall provide for the time and mode of scheduling the separate personal property of married women.

Money need not be scheduled. *Humphries v. Harrison*, 30 Ark., 80. A schedule filed by a woman before her marriage is of no effect. *Berlin v. Cantrell*, 33 Ark., 611. Since the act of December 15, 1875, the neglect of a married woman to schedule her property does not prejudice her right to it. She may still show that it is hers. *German Bank v. Himstedt*, 42 Ark., 62. Property bought with the

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money of the husband cannot be screened from his debts by scheduling it in the name of his wife. *Dyer v. Arnold*, 37 Ark., 17. By act of December 15, 1875, the general assembly has made special provisions for the scheduling of property of married women. *Mansf. Dig., secs. 4634-4640.*

Sec. 9. Effect of exemptions of constitution of 1868.—The exemptions contained in the constitution of 1868, shall apply to all debts contracted since the adoption thereof, and prior to the adoption of this constitution.

Moore v. Boozier, 42 Ark., 385. Where after a debt was contracted under the constitution of 1868, the debtor was discharged in bankruptcy, but made a new promise to pay after the adoption of the present constitution, it was held that the exemptions declared by the constitution of 1868 should apply. *Nowland v. Lanagan*, 45 Ark., 108. Under the constitution of 1868 (*Art. XII, sec. 2*) a homestead could not be incumbered. Under the constitution of 1868 a wife could acquire and hold personal property; but it was not protected from her husband's debts until scheduled. *Dyer v. Arnold*, 37 Ark., 17. Under the constitution of 1868 a tenant in common purchasing his co-tenant's interest, could not for the purchase price, mortgage the whole tract on which was his homestead, but only the interest purchased. *Sims v. Thompson*, 39 Ark., 301. A declaration in a mortgage during the constitution of 1868, that the mortgaged property was not the homestead of the mortgagor, will not estop him from asserting the contrary. *Webb v. Davis*, 37 Ark., 551. A mortgage of the homestead while the constitution of 1868 was in force for future advances is void as to advances made after the present constitution was adopted. *Brown v. Watson*, 41 Ark., 309. A judgment on a note dated since the present constitution was adopted, for a debt contracted prior thereto, is governed by the constitution of 1868. *Cohn v. Hoffman*, 45 Ark., 376.

Sec. 10. Homestead exemption for benefit of minor orphan children.—The homestead provided for in this article shall inure to the benefit of the minor children, under the exemption herein provided, after the decease of the parents.

A minor cannot waive his right to the homestead. *Alzheimer v. Davis*, 37 Ark., 316. The sale of a homestead for the payment of the debts of a deceased person during the minority of his children is void. *Nichols v. Shearon*, 49 Ark., 76; *Stayton v. Halpern*, 50 *id.*, 329; *Burgett v. Apperson*, 52 *id.*, 213. So under the constitution of 1868. *McCloy v. Arnett*, 47 Ark., 445.

ARTICLE X.

AGRICULTURE, MINING AND MANUFACTURE.

Sec. 1. Agricultural, mining, and manufacturing interests of state—Mining, manufacturing, and agricultural bureau.—The general assembly shall pass such laws as will foster and aid the agricultural, mining and manufacturing interests of the state, and may create a bureau to be known as the mining, manufacturing and agricultural bureau.

Sec. 2. State geologist.—The general assembly, when deemed expedient, may create the office of state geologist, to be appointed by the governor, by and with the advice and consent of the senate, who shall hold his office for such time, and perform such duties, and receive such compensation as may be prescribed by law; provided, that he shall be at all times subject to removal by the governor, for incompetency or gross neglect of duty.

Sec. 3. Exemption from taxation, of mines and manufactures.—The general assembly may, by general law, exempt from taxation for the term of seven years from the ratification of this constitution, the capital invested in any or all kinds of mining and manufacturing business in this state, under such regulations and restrictions as may be prescribed by law.

ARTICLE XI.

MILITIA.

Sec. 1. Persons liable to military duty—Organization of militia.—The militia shall consist of all able-bodied male persons, residents of the state, between the ages of eighteen and forty-five years; except such as may be exempted by the laws of the United States, or this state; and shall be organized, officered, armed and equipped and trained in such manner as may be provided by law.

Sec. 2. Volunteer companies.—Volunteer companies of infantry, cavalry or artillery, may be formed in such manner and with such restrictions as may be provided by law.

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Sec. 3. Privilege of militia from arrest, at muster, etc.—The volunteer and militia forces shall in all cases (except treason, felony and breach of the peace) be privileged from arrest during their attendance at muster and the election of officers, and in going to and returning from the same.

Sec. 4. Authority to call out volunteers and militia.—The governor shall, when the general assembly is not in session, have power to call out the volunteers or militia, or both, to execute the laws, repel invasion, repress insurrection and preserve the public peace; in such manner as may be authorized by law.

ARTICLE XII.

MUNICIPAL AND PRIVATE CORPORATIONS.

Sec. 1. Revocation of existing charters and grants, for non user.—All existing charters or grants of special or exclusive privileges under which a *bona fide* organization shall not have taken place and business been commenced in good faith, at the time of the adoption of this constitution, shall thereafter have no validity.

Where a railway company was created by special act, and had in good faith begun to build its road before the adoption of the constitution of 1874, its charter was not revoked by this section. *Little Rock R. Co. v. Little Rock R. Co.*, 36 Ark., 663.

Sec. 2. Limitation of power of incorporation by special act.—The general assembly shall pass no special act conferring corporate powers, except for charitable, educational, penal or reformatory purposes, where the corporations created are to be and remain under the patronage and control of the state.

This does not apply to legislation concerning counties. *Pulaski County v. Reeve*, 42 Ark., 54. The legislature cannot pass a special act fixing the boundaries of a city. *Little Rock v. Parish*, 36 Ark., 175.

Sec. 3. Incorporation of cities and towns.—The general assembly shall provide, by general laws, for the organization of cities (which may be classified) and incorporated

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towns; and restrict their power of taxation, assessment, borrowing money, and contracting debts, so as to prevent the abuse of such power.

Sec. 4. Limitation of legislative power of municipal corporations, and of their power of taxation—Payment of existing indebtedness.—No municipal corporation shall be authorized to pass any laws contrary to the general laws, of the state; nor levy any tax on real or personal property to a greater extent, in one year, than five mills on the dollar of the assessed value of the same; provided, that to pay indebtedness existing at the time of the adoption of this constitution, an additional tax of not more than five mills on the dollar, may be levied.

The legislature has power to provide in what manner and to what extent taxes shall be levied to support municipal corporations, and how their debts shall be paid, subject to constitutional limitations. *Vance v. Little Rock*, 30 Ark., 435. Where the law existing when debts were created by counties and towns authorized the levy of a tax exceeding five mills, it is not changed as to such debts by this section, as such law formed a part of the contract which could not be impaired. *Brodie v. McCabe*, 33 Ark., 690. But when five mills have been levied to pay such debts no farther levy can be made to pay debts existing at the time of the adoption of this constitution. *Id.*

Sec. 5. Municipal corporations not to become stockholders, or financially assist corporations, etc.—No county, city, town, or other municipal corporation, shall become a stockholder in any company, association, or corporation; or obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual.

Sec. 6. General incorporation laws—Power of alteration and revocation.—Corporations may be formed under general laws; which laws may, from time to time, be altered or repealed. The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing, and revocable at the adoption of this constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of this state; in such manner, however, that no injustice shall be done to the corporators.

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Sec. 7. State not to be interested in stock of corporations, etc.—Except as herein provided, the state shall never become a stockholder in, or subscribe to, or be interested in the stock of any corporation or association.

Sec. 8. Issue and increase of stock, etc., of private corporation.—No private corporation shall issue stocks or bonds, except for money or property actually received, or labor done; and all fictitious increase of stock or indebtedness shall be void; nor shall the stock or bonded indebtedness of any private corporation be increased, except in pursuance of general laws, nor until the consent of the persons holding the larger amount, in value, of stock, shall be obtained at a meeting held after notice given for a period not less than sixty days, in pursuance of law.

This section does not render illegal an agreement between mortgage bondholders of an embarrassed railroad company by which it is agreed that trustees should buy in the mortgaged property on foreclosure, and convey it to a new company to be organized by the bondholders, which should issue new mortgage bonds to pay the expenses of the sale, and other new mortgage bonds to be taken by the bondholders in lieu of their old bonds, and full paid-up stock, subject to the mortgage debt, to be delivered to and held by the bondholders without any payment of money. *Memphis R. Co. v. Dow*, 120 U. S., 287.

Sec. 9. Compensation for property, and right of way taken for use of corporations.—No property, nor right of way, shall be appropriated to the use of any corporation, until full compensation therefor shall be first made to the owner, in money; or first secured to him by a deposit of money; which compensation, irrespective of any benefit from any improvement proposed by such corporation, shall be ascertained by a jury of twelve men, in a court of competent jurisdiction, as shall be prescribed by law.

Martin ex parte, 13 Ark., 199. Private property cannot be taken for private use; *Roberts v. Williams*, 15 Ark., 43; but if property is taken for a road, public or private, it is for a public use. *Id.* The requirement as to a jury in a section of the constitution of 1868 similar to this section, had no effect as against the charter of a railway company granted before that constitution was adopted, providing for the assessment of damages by five commissioners, in the absence of a statute requiring the landowner to proceed according to the new constitutional provision. *Cairo R. Co.*

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v. Trout, 32 Ark., 18; *Cairo R. Co. v. Turner*, 31 *id.*, 494. The owner of a lot abutting on a street, having no interest in the fee of the street, may recover from a railway company damages resulting to his premises by the construction of its railway or other structures on its right of way along the street, in such manner as to obstruct access to his premises, though no part of his premises be taken, and the road or other structure be skillfully and properly built. *Hot Springs R. Co. v. Williamson*, 45 Ark., 429; *S. C.*, 136 *U. S.*, 121. The cost of additional fencing required by the building of a railway, and the increased danger of fire, are proper elements of damage for a right of way. *Texas R. Co. v. Cella*, 42 Ark., 528. The measure of damages for a right of way taken by a railway company across a town lot is the difference between its value without the road at the time it was built and the value of the part remaining after it is built; and in estimating this value the jury should consider all present and prospective actual damages resulting to the owner from the prudent construction and operation of the road; the effect it will have in decreasing the value of the land for gardening purposes; for building stables and outhouses; the danger of fire, the care of family and stock, as well as inconveniences caused by embankments, excavations, ditches and obstruction to the free egress and ingress of the premises, and from the sounding of whistles, ringing of bells and rattling of trains. *Little Rock R. Co. v. Allen*, 41 Ark., 431. The assessment of damages is not necessarily restricted to the injury done to the tract of land described in the petition; but if it is a part of a larger connected body of land the owner may recover for the injury done to that body as a whole. *Railway v. Hunt*, 51 Ark., 330. The price which the owner paid for the land may be put in evidence; and the owner may show in explanation the circumstances under which he bought, the condition of the property at the time, and the improvements made on it after his purchase. *St. Louis R. Co. v. Smith*, 42 Ark., 265. The owner's damages cannot be diminished by the estimated benefit accruing to his remaining property by the building of the road. *St. Louis R. Co. v. Anderson*, 39 Ark., 167; *Whitehead v. Arkansas R. Co.*, 28 *id.*, 460. The damages include not only the value of the land taken for the way, but also the injury to his remaining land arising from the increased difficulty of communication between the several parts, the inconvenient shape in which the remaining land is left, the cost of new fences required by the construction of the road, and various other causes not of a remote or speculative character; the true measure of damages being the difference between the market value of the whole tract before the taking and that of the remainder after the taking, excluding any enhancement of value by the building of the road; and the opinions of witnesses conversant with the land and its value before and after the taking, are admissible in evidence. *Id.* Full compensation means the market value, which is the price that the owner could obtain after taking reasonable time to effect a sale. On the trial it may be shown that the land is more valuable on account of the fact that it is peculiarly suitable for a bridge site, ferry landing, or other use. *Little Rock R. Co. v. Woodruff*, 49 Ark., 381. The destruction of a landowner's crop by reason of his fences being thrown down by the builders of a railroad, and the cost and annoyance of keeping the stock out of his crop, are not proper elements of damage in a pro-

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ceeding for condemnation of the right of way. They are an independent tort. *Springfield R. Co. v. Henry*, 44 Ark., 360. Where a railway company so constructs its road as to obstruct a mill race, and destroy a mill on an unperfected homestead entry of land, the measure of damages is the difference between the value of the mill site and machinery before the obstruction and after it. *Hot Springs R. Co. v. Tyler*, 36 Ark., 205. A charter of a railway company providing that it might enter on land for a right of way without compensation to the owner, and that if the latter did not sue for compensation within a certain period his claim should be barred, was held to be unconstitutional in *Organ v. Memphis R. Co.*, 51 Ark., 236. When the assessment of damages for right of way precedes the building of a road, the presumption is, that it will be built with skill and proper precautions. But if the road has been completed through the land at the date of the trial, the jury may consider the state of the facts then existing, and from the light of the actual construction, determine what the damage has been, embracing all past, present, and future damage which the location of the road may reasonably produce. *Springfield R. Co. v. Rhea*, 44 Ark., 258. The manner in which the railroad passing through land cuts it up, the amount and location of the land taken, the inconvenience to the owner in passing from one part of his field through which it runs to another, the absence of proper crossings, and the overflowing of the land caused by the road, are all proper elements of damages for taking the right of way. Evidence of damages for taking land for right of way should be directed first to the actual value of the land taken by the railroad, then to the damages resulting to the remainder. *Id.* Under the constitution of 1836, which contained no limitation on the exercise of the right of eminent domain, it was held that property could not be taken for public use until a just indemnity had been afforded to the owner. *Martin ex parte*, 13 Ark., 198. The provision as to trial by jury refers only to the final assessment of compensation, and does not prohibit the legislature from prescribing a different method for ascertaining the amount to be deposited as security for compensation pending proceedings to condemn a right of way, as provided in sections 5464, 5466, Mansfield's Digest. *Reynolds ex parte*, 52 Ark., 330. The legislature cannot substitute the action of commissioners in lieu of a trial by jury. *Whitehead v. Arkansas R. Co.*, 28 Ark., 460. An injunction to arrest public works of importance should not be issued without due caution. *Martin ex parte*, 13 Ark., 198. The tax assessment of land is not admissible to show the value of the land taken. *Texas R. Co. v. Eddy*, 42 Ark., 527; *Springfield R. Co. v. Rhea*, 44 *id.*, 263. The compensation need not precede entry upon the land providing there is an adequate remedy afforded before the entry is made for obtaining compensation. *Cairo R. Co. v. Turner*, 31 Ark., 503. But the legislature cannot dispense with the necessity of providing for full compensation before the appropriation of the property. *Organ v. Memphis R. Co.*, 51 Ark., 235. Where a railway company occupies land without paying for it, and does not proceed to condemn it, the proper remedy of the landowner is indicated in *Reynolds ex parte*, 52 Ark., 330, and cases cited. [It does not however require an act of the legislature to authorize a remedy for a wrong, as an act of parliament was once required in England. Indeed the legislature cannot by affirmative action cut off an

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adequate remedy for a legal wrong. *Ante*, art. II, sec. 13. See also *ante*, p. 25, cases cited under title *Due process of law*. No reason is perceived why, when property has been taken by a corporation under the claim of eminent domain, the owner may not tender a deed for it, and ask that he be paid its value. Whether the suit should be brought at law or in chancery is, it would seem, of no importance. *Mansf. Dig.*, sec. 4925.] By section 13 of the act of March 31, 1885, the right of eminent domain is extended also to telegraph and telephone companies. *Acts of 1885*, p. 179.

Sec. 10. Legislation authorizing issue of circulating paper prohibited.—No act of the general assembly shall be passed authorizing the issue of bills, notes, or other paper which may circulate as money.

Sec. 11. Foreign corporations.—Foreign corporations may be authorized to do business in this state, under such limitations and restrictions as may be prescribed by law; provided, that no such corporation shall do any business in this state, except while it maintains therein one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served; and, as to contracts made or business done in this state, they shall be subject to the same regulations, limitations and liabilities as like corporations of this state; and shall exercise no other or greater powers, privileges or franchises than may be exercised by like corporations of this state; nor shall they have power to condemn or appropriate private property.

“An act to prescribe the conditions upon which foreign corporations may do business in this state: Section 1. Before any foreign corporation shall begin to carry on business in this state it shall, by its certificate under the hand of the president and seal of such company, filed in the office of the secretary of state, designate an agent, who shall be a citizen of this state, upon whom service, summons and other process may be made. Such certificate shall also state the principal place of business of such corporations in this state. Service upon such agent shall be sufficient to give jurisdiction over such corporation to any of the courts of this state. Sec. 2. If any such foreign corporation shall fail to comply with the provisions of the foregoing section, all its contracts with citizens of this state shall be void as to the corporation, and no court of this state shall enforce the same in favor of the corporation. Sec. 3. Any foreign corporation that has heretofore engaged in business, or made contracts in this state, may, within ninety days from the passage of this act, file such certificate with the secretary of state, and thereon all their contracts made before this act goes into effect, are hereby declared as valid as if said certificate

ART. XIII.—COUNTIES, COUNTY SEATS AND COUNTY LINES.

had been filed before they began business in this state. Sec. 4. This act shall take effect and be in force from and after its passage. Approved April 4, 1887." *Acts* 1887, p. 234.

Sec. 12. State not to assume liabilities of counties or corporations—Exceptions—Indebtedness of corporations to state.—Except as herein otherwise provided, the state shall never assume, or pay the debt or liability of any county, town, city or other corporation whatever; or any part thereof; unless such debt or liability shall have been created to repel invasion, suppress insurrection, or to provide for the public welfare and defense. Nor shall the indebtedness of any corporation to the state, ever be released, or in any manner discharged, save by payment into the public treasury.

ARTICLE XIII.

COUNTIES, COUNTY SEATS, AND COUNTY LINES.

Sec. 1. Minimum limits of counties prescribed—Exceptions.—No county now established shall be reduced to an area of less than six hundred square miles, nor to less than five thousand inhabitants; nor shall any new county be established with less than six hundred square miles and five thousand inhabitants; provided, that this section shall not apply to the counties of Lafayette, Pope and Johnson, nor be so construed as to prevent the general assembly from changing the line between the counties of Pope and Johnson.

An act reducing the area of a county below 600 square miles is unconstitutional. *Bittle v. Stuart*, 34 Ark., 224. The constitutional provisions as to apportionment do not prevent the changing of county lines. *Howard v. McDiarmid*, 26 Ark., 100. To determine the area of a county the courts can only look to the act creating it, or some official record of like character, or official surveys or maps of which they take judicial notice. *State v. Dorsey Co.*, 28 Ark., 378. The power of the legislature over counties, except so far as limited by the constitution, is supreme. When a county is divided the legislature may apportion pre-existing debts, and provide for their payment. *Eagle v. Beard*, 33 Ark., 497. An act destroying Clark county held to be unconstitutional. *Bittle v. Stuart*, 34 Ark., 224. A county is not properly a corporation, but a political sub-division of the state, which, for the more convenient administration of justice, and for some purposes of local government, is

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invested with a few functions characteristic of corporate existence. *Pulaski Co. v. Reeve*, 42 Ark., 54.

Sec. 2. Consent of voters of territory affected, requisite to change of county lines.—No part of a county shall be taken off to form a new county, or a part thereof, without the consent of a majority of the voters in such part proposed to be taken off.

The consent of a majority of the voters in the part taken off, is only required in the case of new counties to be formed out of portions of old ones. *Reynolds v. Holland*, 35 Ark., 56. Subject to this provision the legislature may enlarge or diminish the power of counties, and may extend or limit their boundaries, without the consent of the inhabitants; and it may require of a county to which a part of the territory of another county has been attached to pay a part of the debts of the latter, and may direct how the liability shall be ascertained. *Pulaski Co. v. County Judge*, 37 Ark., 339.

Sec. 3. Changes of county seats—County seats of new counties.—No county seat shall be established or changed without the consent of a majority of the qualified voters of the county to be affected by such change, nor until the place at which it is proposed to establish or change such county seat shall be fully designated; provided, that, in formation of new counties, the county seat may be located temporarily by provisions of law.

The county court has exclusive jurisdiction over the question of a removal of a county seat. *Russell v. Jacoway*, 33 Ark., 192. A law fixing the number assessed for poll tax on the last assessment as the criterion of the number of voters in the county, is not unconstitutional. *Vance v. Austell*, 45 Ark., 400; *Saunders v. Erwin*, 49 *id.*, 376.

Sec. 4. Lines of new counties.—In the formation of new counties, no line thereof shall run within ten miles of the county seat of the county proposed to be divided, except the county seat of Lafayette county.

Sec. 5. Division of Sebastian county into two districts.—Sebastian county may have two districts, and two county seats, at which county, probate and circuit courts shall be held as may be provided by law, each district paying its own expenses.

ARTICLE XIV.

EDUCATION.

Sec. 1. Free school system.—Intelligence and virtue being the safeguards of liberty, and the bulwark of a free and good government, the state shall ever maintain a general, suitable and efficient system of free schools, whereby all persons in the state, between the ages of six and twenty-one years, may receive gratuitous instruction.

Sec. 2. School funds to be used exclusively for purposes for which set apart.—No money or property belonging to the public school fund, or to this state, for the benefit of schools or universities, shall ever be used for any other than for the respective purposes to which it belongs.

Sec. 3. State school tax—Poll tax school fund—School district tax.—The general assembly shall provide, by general laws, for the support of common schools by taxes, which shall never exceed in any one year two mills on the dollar on the taxable property of the state; and by an annual *per capita* tax of one dollar, to be assessed on every male inhabitant of this state over the age of twenty-one years; provided, the general assembly may, by general law, authorize school districts to levy, by a vote of the qualified electors of such district, a tax not to exceed five mills on the dollar in any one year for school purposes; provided further, that no such tax shall be appropriated to any other purpose, nor to any other district than that for which it was levied.

Sec. 4. Supervision of public schools, etc.—The supervision of public schools, and the execution of the laws regulating the same, shall be vested in and confided to, such officers as may be provided for by the general assembly.

This section deprived the county courts of jurisdiction to levy district school taxes in cities and towns organized into single school districts, upon the estimate of the board of school directors, and without a vote of the directors of the district *Cole v. Blackwell*, 38 Ark., 271.

ARTICLE XV.

IMPEACHMENT AND ADDRESS.

Sec. 1. Impeachments—Judgment.—The governor and all state officers, judges of the supreme and circuit courts, chancellors and prosecuting attorneys, shall be liable to impeachment for high crimes and misdemeanors, and gross misconduct in office; but the judgment shall go no further than removal from office and disqualification to hold any office of honor, trust or profit under this state. An impeachment, whether successful or not, shall be no bar to an indictment.

Sec. 2. Power of impeachment—Trial.—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 thereof. The chief justice shall preside, unless he is impeached or otherwise disqualified, when the senate shall select a presiding officer.

Sec. 3. Removal upon address.—The governor, upon the joint address of two-thirds of the members elected to each house of the general assembly, for good cause, may remove the auditor, treasurer, secretary of state, attorney general, judges of the supreme and circuit courts, chancellors, and prosecuting attorneys.

ARTICLE XVI.

FINANCE AND TAXATION.

Sec. 1. Loan of public credit prohibited—Issue of interest-bearing evidences of public indebtedness, except to pay present debt prohibited.—Neither the state, nor any city, county, town or other municipality in this state shall ever loan its credit for any purpose whatever. Nor shall any county, city, town, or municipality ever issue any interest-bearing evidences of indebtedness; except such bonds as may be authorized by law to provide for, and secure the payment

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of, the present existing indebtedness. And the state shall never issue any interest-bearing treasury warrants or scrip.

Except as limited by the constitution the power of the legislature over taxation is supreme. *English v. Oliver*, 28 Ark., 317. County scrip cannot be made to bear interest by any indorsement made on it by the treasurer. *Jacks v. Turner*, 36 Ark., 89. But a judgment rendered on such scrip bears interest. *Nevada Co. v. Hicks*, 50 Ark., 416.

Sec. 2. Payment of state debt.—The general assembly shall, from time to time, provide for the payment of all just and legal debts of the state.

Sec. 3. Misappropriation of public moneys.—The making of profit out of public moneys, or using the same for any purpose not authorized by law, by any officer of the state, or member or officer of the general assembly, shall be punishable as may be provided by law; but part of such punishment shall be disqualification to hold office in this state for a period of five years.

Sec. 4. Salaries and fees—Clerks, etc., of departments of state.—The general assembly shall fix the salaries and fees of all officers in the state; and no greater salary or fee than that fixed by law, shall be paid to any officer, employe, or other person, or at any rate other than par value; and the number and salaries of the clerks and employes of the different departments of the state shall be fixed by law.

Sec. 5. Uniform rule of taxation—Taxation of privileges, etc.—Property exempt from taxation.—All property subject to taxation shall be taxed according to its value; that value to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the state. No one species of property, from which a tax may be collected, shall be taxed higher than another species of property of equal value; provided, the general assembly shall have power, from time to time, to tax hawkers, pedlers, ferries, exhibitions and privileges, in such manner as may be deemed proper; provided, further, that the following property shall be exempt from taxation: Public property used ex-

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clusively for public purposes; churches used as such; cemeteries used exclusively as such; school buildings and apparatus; libraries and grounds used exclusively for school purposes; and buildings and grounds and materials used exclusively for public charity.

All taxes must be uniform; *Stevens v. State*, 2 Ark., 291; *Pike v. State*, 5 id., 204; *State v. Crittenden Co.*, 19 id., 368; but the rule as to uniformity was held to apply to state taxes alone. *McGehee v. Mathis*, 21 Ark., 40; *Straub v. Gordon*, 27 id., 625. The rule of uniformity in taxation requires uniformity in the rate of taxation, and in the mode of assessment. There must be an equality of burden, and the uniformity must be co-extensive with the territory upon which it is imposed. *Fletcher v. Oliver*, 25 Ark., 289. Assessment of over-due taxes for higher values than the property was worth, or for a different rate from that prevailing for the years included in the assessment, would be a violation of the constitutional rule of uniformity. *Williamson v. Mimms*, 49 Ark., 337. Taxation for local improvements cannot be made by the front foot of the lands adjoining the proposed improvements; such taxation not being uniform; *Peay v. Little Rock*, 32 Ark., 31; and must apply to all lots similarly situated. *Monticello v. Banks*, 48 Ark., 251. See note to art. XIX, sec. 27. A statute providing for a method of assessing the lands of non-residents which is different from that applied in the case of resident land owners is not unconstitutional on that account. *Redd v. St. Francis Co.*, 17 Ark., 416. No tax can be imposed on occupations for the purpose of raising a state revenue. *Hynes v. Briggs*, 41 Fed. R., 468. The legislature may authorize cities and towns to levy an occupation tax, but cannot levy a tax on callings and pursuits for the purpose of raising state revenue. *Baker v. State*, 44 Ark., 134. The ascertainment of values and the details of levying and collecting taxes are left to the discretion of the legislature. *State v. Certain Lands*, 40 Ark., 37. A sum required for a license to sell liquors is not a tax. *Henry v. State*, 26 Ark., 523. A tax imposed by statute on each criminal conviction held not to be unconstitutional. *Murphy v. State*, 38 Ark., 514. Tavern keepers may be required to pay a license. *Bostick v. State*, 47 Ark., 126. A law that excludes a part of the property of railway companies from assessment is void. *Little Rock R. Co. v. Worthen*, 46 Ark., 312. The exemption as to school buildings applies to private schools as well as public schools. *Phillips Co. v. Estelle*, 42 Ark., 536. Foreign corporations may be required to pay a license for doing business in this state. *New Home Sewing Machine Co. v. Fletcher*, 44 Ark., 139. Billiard tables may be specially taxed. *Washington v. State*, 13 Ark., 752; *McGehee v. Mathis*, 21 Ark., 51. The keeping of a stallion is not a privilege. *Gibson v. Pulaski Co.*, 2 Ark., 309. The legislature has power to classify property for purposes of taxation, and to provide for the valuation of different classes by different methods. *St. Louis R. Co. v. Worthen*, 52 Ark., 529. The revenue act of 1883, providing that the tracks and rolling stock of railways shall be assessed by

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a board of commissioners, is not unconstitutional, though the act provides for the valuation of all other property by county assessors. The legislature may also require the annual assessment of railway tracks, though other real estate is required to be assessed only once in two years. *Id.* An act imposing 10 per cent. damages on the affirmance of judgments appealed from in cases of misdemeanor, is not unconstitutional; nor is a tax on each criminal conviction in courts of record. *Wellington v. State*, 52 Ark., 447. Tax on writs and on certificates attached to recorded instruments held to be constitutional. *Lee Co. v. Abrahams*, 34 Ark., 166.

Sec. 6. Exemption by statutory enactment void.—All laws exempting property from taxation, other than as provided in this constitution, shall be void.

The legislature cannot exempt any property from taxation. *Fletcher v. Oliver*, 25 Ark., 289. A statute that exempts any property from taxation is void. *Huntington v. Worthen*, 120 U. S., 97; *Little Rock R. Co. v. Worthen*, 46 Ark., 312.

Sec. 7. Taxation of corporate property.—The power to tax corporations and corporate property, shall not be surrendered or suspended, by any contract or grant to which the state may be a party.

Sec. 8. Maximum rate of state taxes.—The general assembly shall not have power to levy state taxes for any one year to exceed, in the aggregate, one per cent. of the assessed valuation of the property of the state for that year.

Sec. 9. Maximum rate of county taxes.—No county shall levy a tax to exceed one-half of one per cent. for all purposes; but may levy an additional one-half of one per cent. to pay indebtedness existing at the time of the ratification of this constitution.

Where the maximum rate is levied for county purposes an additional levy for fees and salaries of the county court is illegal. A levy of taxes for the payment of county indebtedness, when there is no such indebtedness, is illegal. *Greedup v. Franklin Co.*, 30 Ark., 101. This section creates a limitation on the taxing power of counties unless there be an exceptional case arising under prior contracts. *Graham v. Parham*, 32 Ark., 676. When the county court levies a tax of five mills to pay indebtedness existing at the time of the adoption of the constitution, it exhausts its power, and cannot make an additional levy for a particular debt. *Cope v. Collins*, 37 Ark., 649. This provision has no application to special local assessments for the improvement of lands that are taxed. *McGehee v. Mathis*, 21 Ark., 41. County warrants issued since the adoption of the constitution for liabilities incurred after that date, are not receivable

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to pay county indebtedness existing when the constitution was adopted. *Loftin v. Watson*, 32 Ark., 414. The county court levied a tax of five mills for the purpose of paying indebtedness existing at the time of the adoption of the constitution, but on a subsequent day of the term modified its order, and appropriated the whole of the levy to the payment of a judgment rendered against it in the federal court. Conceding the latter order to have been an error, it was not void for want of jurisdiction of the subject matter, and could only be corrected on appeal: *Held*, further, that the levy, as originally made, would have been payable in county warrants, issued prior to the adoption of the constitution, but under the modified order, so long as it remained unreversed, the tax was payable in currency. *Graham v. Parham*, 32 Ark., 676. Neither state nor federal courts can force a county to make a levy in excess of the limitation contained in this section. *Id.*

Sec. 10. County and municipal taxes, in what payable.—The taxes of counties, towns and cities shall only be payable in lawful currency of the United States, or the orders or warrants of said counties, towns and cities respectively.

See *ante*, sec. 9, note.

Sec. 11. Levy and specific appropriation of taxes.—No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same; and no moneys arising from a tax levied for one purpose shall be used for any other purpose.

Sec. 12. Disbursements.—No money shall be paid out of the treasury until the same shall have been appropriated by law; and then only in accordance with said appropriation.

The auditor cannot draw his warrant unless there is an appropriation to meet it; *Clayton v. Berry*, 27 Ark., 129. (*Mansf. Dig.*, sec. 3173.) Even for the salary of a judge. *Tully ex parte*, 4 *id.*, 220. [It may be seriously doubted whether this decision is correct, at least as applied to the present constitution. Under constitutions containing almost identical provisions an opposite ruling has been made after grave consideration. By our constitution the salaries of officers cannot be diminished during their respective terms. *Art. XIX, sec. 11*; *art. VII, secs. 10, 18*. As to judges, it is provided in the last two sections cited that they "shall at stated times receive a compensation for their services," a provision that, it would seem, was intended as a standing appropriation, securing the independence of the judicial department. Of course if the legislature may deprive the judges of salaries by failing to make regular appropriations for their payment, the judicial department is continually at the mercy of the legislature. See on this point, *Thomas v. Owens*, 4 *Md.*, 189; *Green v. Purnell*, 12 *id.*, 333; *State v. Weston*, 4 *Neb.*, 216, and

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State v. Hickman, 23 *Pac. Rep.*, 740, where it is held that there is a standing appropriation for the payment of all official salaries mentioned in the constitution, and that within the meaning of provisions similar to that contained in the text such salaries are perpetually "appropriated by law."] The auditor cannot draw his warrant against an appropriation that has been exhausted; nor can he draw a warrant in excess of an appropriation. *Rumbough v. Berry*, 28 *Ark.*, 348. The auditor cannot issue warrants on claims against the state when there is no appropriation to pay them; but if the claim is one recognized by law he should audit and settle it, and issue to the claimant a certificate of the amount under his official seal, if demanded. *Files v. State*, 42 *Ark.*, 233.

Sec. 13. Right of citizen to sue in behalf of inhabitants of county or municipality.—Any citizen of any county, city or town may institute suit, in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever.

See *art. V, sec. 29*; *Little Rock v. Barton*, 33 *Ark.*, 441. Chancery has no jurisdiction to enjoin a city from prosecuting any one for a violation of its ordinances. *Taylor v. Pine Bluff*, 34 *Ark.*, 603. Illegal taxes may be enjoined. *Little Rock v. Prather*, 46 *Ark.*, 471.

ARTICLE XVII.

RAILROADS, CANALS AND TURNPIKES.

Sec. 1. Railroads, etc., public highways—Transportation companies; common carriers—Right to construct railroads—Intersection and connection of railroads.—All railroads, canals and turnpikes shall be public highways, and all railroads and canal companies shall be common carriers. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with, or cross any other road, and shall receive and transport, each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

Sec. 2. Transportation companies to maintain office in state—Transfers of stock—Books.—Every railroad,

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canal or turnpike corporation operated or partly operated in this state, shall maintain one office therein, where transfers of its stock shall be made, and where its books shall be kept for inspection by any stockholder or creditor of such corporation; in which shall be recorded the amount of capital stock subscribed or paid in, and the amounts owned by them respectively, the transfers of said stock, and the names and places of residence of the officers.

Sec. 3. Equal rights to transportation—Regulation of charges.—All individuals, associations and corporations shall have equal right to have persons and property transported over railroads, canals and turnpikes; and no undue or unreasonable discrimination shall be made in charges for, or in facilities for transportation, of freight or passengers within the state, or coming from, or going to, any other state. Persons and property transported over any railroad shall be delivered at any station, at charges not exceeding the charges for transportation of persons and property of the same class, in the same direction to any more distant station. But excursion and commutation tickets may be issued at special rates.

Sec. 4. Parallel or competing lines of transportation not to be consolidated or controlled by same parties.—No railroad, canal or other corporation, or the lessees, purchasers or managers of any railroad, canal or corporation, shall consolidate the stock, property or franchises of such corporation with, or lease, or purchase the works or franchises of, or in any way control, any other railroad or canal corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad or canal corporation act as an officer of any other railroad or canal corporation, owning or having control of a parallel or competing line; and the question whether railroads or canals are parallel or competing lines, shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

Sec. 5. Prohibitions upon officers, etc., of transportation companies.—No president, director, officer, agent or

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employe of any railroad or canal company, shall be interested, directly or indirectly, in the furnishing of materials or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company. Nor in any arrangement which shall afford more advantageous terms, or greater facilities than are offered or accorded to the public. And all contracts and arrangements in violation of this section shall be void.

Sec. 6. Discrimination of charges between transportation companies and individuals prohibited—Preferences in furnishing cars or motive power prohibited.—No discrimination in charges, or facilities for transportation, shall be made between transportation companies and individuals, or in favor of either by abatement, drawback or otherwise; and no railroad or canal company, or any lessee, manager or employe thereof, shall make any preferences in furnishing cars or motive power.

Sec. 7. General assembly to prevent grant of free passes to officers of the state.—The general assembly shall prevent by law the granting of free passes by any railroad or transportation company to any officer of this state, legislative, executive or judicial.

Accordingly an act forbidding the granting of free passes was passed February 26, 1887. *Ac's 1887, p. 27.*

Sec. 8. Conditions of remission of forfeiture of charter, or legislation favorable to corporations.—The general assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any general or special law for the benefit of such corporation, except on condition that such corporation shall thereafter hold its charter, subject to the provisions of this constitution.

Sec. 9. Eminent domain over property of corporations.—The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the general

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assembly from taking the property and franchises of incorporated companies, and subjecting them to public use—the same as the property of individuals.

Sec. 10. Legislation to prevent abuses by transportation companies.—The general assembly shall pass laws to correct abuses, and prevent unjust discrimination and excessive charges by railroad, canal and turnpike companies for transporting freight and passengers, and shall provide for enforcing such laws by adequate penalties and forfeitures.

Sec. 11. Moveable property of corporations personal property—Not to be exempted from taxation.—The rolling stock and all other moveable property belonging to any railroad company or corporation in this state shall be considered personal property, and shall be liable to execution and sale, in the same manner as the personal property of individuals; and the general assembly shall pass no law exempting any such property from execution and sale.

Sec. 12. Damages by railroads to persons and property.—All railroads, which are now or may be hereafter built and operated, either in whole or in part, in this state, shall be responsible for all damages to persons and property, under such regulations as may be prescribed by the general assembly.

Sec. 13. Annual report of railroad companies to auditor.—The directors of every railroad corporation shall annually make a report under oath to the auditor of public accounts, of all of their acts and doings; which report shall include such matters relating to railroads as may be prescribed by law; and the general assembly shall pass laws enforcing by suitable penalties, the provisions of this section.

ARTICLE XVIII.

JUDICIAL CIRCUITS.

Judicial circuits.—Until otherwise provided by the general assembly, the judicial circuits shall be composed of the following counties :

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First—Phillips, Lee, St. Francis, Prairie, Woodruff, White and Monroe.

Second—Mississippi, Crittenden, Cross, Poinsett, Craighead, Green, Clayton and Randolph.

Third—Jackson, Independence, Lawrence, Sharp, Fulton, Izard, Stone and Baxter.

Fourth—Marion, Boone, Searcy, Newton, Madison, Carroll, Benton and Washington.

Fifth—Pope, Johnson, Franklin, Crawford, Sebastian, Sarber and Yell.

Sixth—Lonoke, Pulaski, Van Buren and Faulkner.

Seventh—Grant, Hot Spring, Garland, Perry, Saline and Conway.

Eighth—Scott, Montgomery, Polk, Howard, Sevier, Little River, Pike and Clark.

Ninth—Hempstead, Lafayette, Nevada, Columbia, Union, Ouachita and Calhoun.

Tenth—Chicot, Drew, Ashley, Bradley, Dorsey and Dallas.

Eleventh—Desha, Arkansas, Lincoln and Jefferson.

Terms of circuit courts.—Until otherwise provided by the general assembly, the circuit courts shall be begun and held in the several counties as follows :

First circuit—White, first Monday in February and August. Woodruff, third Monday in February and August. Prairie, second Monday after the third Monday in February and August. Monroe, sixth Monday after third Monday in February and August. St. Francis, eighth Monday after the third Monday in February and August. Lee, tenth Monday after the third Monday in February and August. Phillips, twelfth Monday after the third Monday in February and August.

Second circuit—Mississippi, first Monday in March and September. Crittenden, second Monday in March and September. Cross, second Monday after the second Monday in March and September. Poinsett, third Monday after the second Monday in March and September. Craighead, fourth Monday after the second Monday in March and September. Greene, sixth

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Monday after the second Monday in March and September. Clayton, seventh Monday after the second Monday in March and September. Randolph, ninth Monday after the second Monday in March and September.

Third circuit—Jackson, first Monday in March and September. Lawrence, fourth Monday in March and September. Sharp, second Monday after the fourth Monday in March and September. Fulton, fourth Monday after the fourth Monday in March and September. Baxter, sixth Monday after the fourth Monday in March and September. Izard, seventh Monday after the fourth Monday in March and September. Stone, ninth Monday after the fourth Monday in March and September. Independence, tenth Monday after the fourth Monday in March and September.

Fourth circuit—Marion, second Monday in February and August. Boone, third Monday in February and August. Searcy, second Monday after the third Monday in February and August. Newton, third Monday after the third Monday in February and August. Carroll, fourth Monday after the third Monday in February and August. Madison, fifth Monday after the third Monday in February and August. Benton, sixth Monday after the third Monday in February and August. Washington, eighth Monday after the third Monday in February and August.

Fifth circuit—Greenwood district, Sebastian county, third Monday in February and August. Fort Smith district, Sebastian county, first Monday after the fourth Monday in February and August. Crawford county, fourth Monday after the fourth Monday in February and August. Franklin county, sixth Monday after the fourth Monday in February and August. Sarber county, eighth Monday after the fourth Monday in February and August. Yell county, tenth Monday after the fourth Monday in February and August. Pope county, twelfth Monday after the fourth Monday in February and August. Johnson county, fourteenth Monday after the fourth Monday in February and August.

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Sixth circuit—In the county of Pulaski on the first Monday in February, and continue twelve weeks if the business of said court require it. In the county of Lonoke, on the first Monday succeeding the Pulaski court, and continue two weeks if the business of said court require it. In the county of Faulkner on the first Monday after the Lonoke court, and continue two weeks if the business of said court require it. In the county of Van Buren on the first Monday after the Faulkner court, and continue two weeks if the business of said court require it.

Fall term, sixth district—In the county of Pulaski on the first Monday in October, and continue seven weeks if the business of said court require it. In the county of Lonoke on the first Monday next after the Pulaski court, and continue two weeks if the business of said court require it. In the county of Faulkner on the first Monday after the Lonoke court, and continue one week if the business of said court require it. In the county of Van Buren on the first Monday after the Faulkner court, and continue one week if the business of said court require it.

Seventh circuit—Hot Spring, second Monday in March and September. Grant, third Monday in March and September. Saline, fourth Monday in March and September. Conway, second Monday after fourth Monday in March and September. Perry, fourth Monday after the fourth Monday in March and September. Garland, fifth Monday after the fourth Monday in March and September.

Eighth circuit—Montgomery, first Monday in February and August. Scott, first Monday after the first Monday in February and August. Polk, second Monday after the first Monday in February and August. Sevier, third Monday after the first Monday in February and August. Little River, fifth Monday after the first Monday in February and August. Howard, seventh Monday after the first Monday in February and August. Pike, eighth Monday after the first Monday in February and August. Clark, ninth Monday after the first Monday in February and August.

ART. XIX.—MISCELLANEOUS PROVISIONS.

Ninth circuit—Calhoun, first Monday in March and September. Union, second Monday after the first Monday in March and September. Columbia, fourth Monday after the first Monday in March and September. Lafayette, sixth Monday after the first Monday in March and September. Hempstead, eighth Monday after the first Monday in March and September. Nevada, eleventh Monday after the first Monday in March and September. Ouachita, thirteenth Monday after the first Monday in March and September.

Tenth circuit—Dorsey, third Monday in February and August. Dallas, first Monday in March and September. Bradley, second Monday in March and September. Ashley, third Monday in March and September. Drew, second Monday after the third Monday in March and September. Chicot, fourth Monday after the third Monday in March and September.

Eleventh circuit—In the county of Desha on the first Monday in March and September. In the county of Arkansas on the fourth Monday in March and September. In the county of Lincoln on the third Monday after the fourth Monday in March and September. In the county of Jefferson on the sixth Monday after the fourth Monday in March and September.

ARTICLE XIX.

MISCELLANEOUS PROVISIONS.

Sec. 1. Disqualifications of atheists.—No person who denies the being of a God shall hold any office in the civil departments of this state, nor be competent to testify as a witness in any court.

Sec. 2. Duelling.—No person who may hereafter fight a duel, assist in the same as second, or send, accept, or knowingly carry a challenge therefor, shall hold any office in the state, for a period of ten years; and may be otherwise punished as the law may prescribe.

Sec. 3. Electors only qualified for office.—No person shall be elected to, or appointed to fill a vacancy in any office, who does not possess the qualifications of an elector.

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A special judge must be an elector. *White v. Reagan, 25 Ark., 622.*

Sec. 4. Residence, etc., of officers.—All civil officers for the state at large shall reside within the state, and all district, county and township officers within their respective districts, counties and townships, and shall keep their offices at such places therein as are now, or may hereafter be, required by law.

Where the residence of a sheriff of a county was included in the territory of a new county just formed, it was held that his office was not thereby vacated; but that it would be if he persisted in residing out of his county. *State v. Hixon, 27 Ark., 398.*

Sec. 5. Officers to continue in office till qualification of successors.—All officers shall continue in office after the expiration of their official terms until their successors are elected and qualified.

The term of a collector continues until his successor is elected and qualified. *Haley v. Petty, 42 Ark., 394.*

Sec. 6. Plurality of offices.—No person shall hold, or perform the duties of more than one office in the same department of the government at the same time, except as expressly directed or permitted by this constitution.

Sec. 7. Forfeiture of residence.—Absence on business of the state, or of the United States, or on a visit, or on necessary private business, shall not cause a forfeiture of residence once obtained.

Sec. 8. Deductions from salaries of officers.—It shall be the duty of the general assembly to regulate by law in what cases, and what deductions from the salaries of public officers, shall be made for neglect of duty in their official capacity.

Sec. 9. Creation of additional permanent state offices prohibited.—The general assembly shall have no power to create any permanent state office, not expressly provided for by this constitution.

Sec. 10. Returns of election, to whom made.—Returns for all elections, for officers who are to be commissioned by the governor, and for members of the general assembly,

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except as otherwise provided by this constitution, shall be made to the secretary of state.

Sec. 11. Salaries of state officers—Fees pertaining to state offices—Maximum salaries of state officers—Increase of salaries of members of general assembly.—The governor, secretary of state, auditor, treasurer, attorney general, judges of the supreme court, judges of the circuit court, commissioner of state lands, and prosecuting attorneys, shall each receive a salary to be established by law, which shall not be increased or diminished during their respective terms; nor shall any of them, except the prosecuting attorneys, after the adoption of this constitution, receive to his own use any fees, costs, perquisites of office, or other compensation; and all fees that may hereafter be payable by law for any service performed by any officer mentioned in this section, except prosecuting attorneys, shall be paid in advance into the state treasury; provided, that the salaries of the respective officers herein mentioned shall never exceed per annum:

For governor, the sum of \$4000; for secretary of state, the sum of \$2500; for treasurer, the sum of \$3000; for auditor, the sum of \$3000; for attorney general, the sum of \$2500; for commissioner of state lands, the sum of \$2500; for judges of the supreme court, each the sum of \$4000; for judges of the circuit courts and chancellors, each the sum of \$3000; for prosecuting attorneys, the sum of \$400.

And provided, further, that the general assembly shall provide for no increase of salaries of its members which shall take effect before the meeting of the next general assembly.

As to officers not named in this section their salaries may be increased or diminished so as to affect the incumbent. *Humphrey v. Sadler*, 40 Ark., 101. An office may be abolished, and then the salary ceases. *Supervisors v. Mattox*, 30 Ark., 566.

Sec. 12. Publication of receipts and expenditures of public money.—An accurate and detailed statement of the receipts and expenditures of the public money, the several amounts paid, to whom and on what account, shall, from time to time, be published as may be prescribed by law.

Sec. 13. Usury—Rate of interest.—All contracts for a greater rate of interest than ten per centum per annum shall be void, as to principal and interest, and the general assembly shall prohibit the same by law; but when no rate of interest is agreed upon the rate shall be six per centum per annum.

What constitutes usury.—Plaintiff holdings several notes against defendant, by agreement with him, calculated the interest due on each note, and adding it to the principal, took a new note for the whole sum, bearing 10 per cent interest: *Held*, not to be a usurious contract. *Turner v. Miller*, 6 Ark., 463; *Magruder v. State Bank*, 18 Ark., 9. To constitute usury there must be an intention knowingly to contract for, or to take usurious interest. *Gregory v. Bewly*, 9 id., 22. Where one loans another depreciated bank paper, and takes his bond therefor payable in dollars, with a provision that it may be discharged at maturity in such bank paper, the transaction is not usurious, unless that form is given to it as a device to cover usury. The fact that the lender was in the habit at the time of paying and receiving such paper at par in business transactions, disproves a usurious intention on his part. *Id.* After usurious securities have been destroyed by mutual consent, a promise by the borrower to repay the principal and legal interest, is founded on a sufficient consideration, and is binding. *Ambler v. Ruddell*, 17 id., 142. The charge of a commission merchant for accepting a draft is but a legal compensation for the benefit of his name and credit, and in consideration of his risk, and is not regarded as interest. But a charge for paying such draft at maturity is regarded as interest on the money advanced; and if the commission and interest together exceed the legal rate of interest, it will be deemed usurious. *Jones v. McLean*, 18 id., 456. Usurious contracts can be avoided only by the borrower or his privies; never by the usurer. *Ford v. Hancock*, 36 Ark., 248. A note for a debt past due, including interest to date, payable at a future day with interest from date, is not usurious. *Magruder v. State Bank*, 18 Ark., 9. A applied to B for a loan of money with which to buy a town lot; B said that his money was worth to him more than 10 per cent. per annum, and by agreement paid for the lot and took the title to it in his own name, and charged A for rent an amount exceeding 10 per cent. on the purchase price of the lot: *Held*, that this was a shift for usury. *Tillar v. Cleveland*, 47 Ark., 287. In a suit by a surety to foreclose a mortgage given him by the principal to indemnify him, the principal cannot plead usury in the note signed by the surety for him where the latter was not privy to the usury. *Turman v. Looper*, 42 Ark., 500. A promissory note given for the aggregate amount of an account and 10 per cent. interest, and bearing 10 per cent. interest from its date, is not usurious. *Wallis v. Lehman*, 36 Ark., 569. Where a contract is for the payment of so many dollars, with 10 per cent. interest, the fact that it was agreed that it should be paid in depreciated confederate money will not of itself show that the contract is usurious. *Moody v. Hawkins*, 25 Ark., 191. To constitute usury there must be a loan, and an intent to reserve illegal interest;

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if neither party intends usury the law will not infer a corrupt agreement; and if a contract in its inception is unaffected by usury, it will not be rendered usurious by anything that may occur afterwards. A note for \$700 bearing 10 per cent. interest given for property worth that sum in confederate money, worth only fifty cents on the dollar, is not usurious. *Jordan v. Mitchell*, 25 Ark., 258. When usurious interest is carried into a general account, and made part of a sum found due on final settlement, for which a note is executed, it taints the entire contract with usury; and it matters not that the usurious interest was charged with the tacit consent of the debtor in stating monthly accounts, or by a note substituted for one previously executed. *Pickett v. Merchants National Bank*, 32 Ark., 346. It is not usury for one to sell property on a credit for a higher price than he would have sold it for cash and the legal rate of interest; but if the sale be really made on a cash estimate, and time be given to pay, and an amount is agreed to be paid greater than the cash price with legal interest, would amount to, this is an usurious agreement for forbearance; and if the intention be not apparent, it is for the jury to determine whether it was a *bona fide* credit sale or a device to cover usury. *Ford v. Hancock*, 36 Ark., 248; *Grider v. Driver*, 46 Ark., 50. A note or mortgage including a usurious debt is void in toto; but if it also includes a debt not usurious, that will stand on its original merits. *Marks v. McGehee*, 35 Ark., 217. Where a note for money lent is made payable in three months without interest until due, it is not usury to reserve in advance interest at 10 per cent. per annum from the date of the note until its maturity. *Vahlberg v. Keaton*, 51 Ark., 535; *Baird v. Millwood*; *id.*, 548. A sum paid by the borrower of money to his own agent for procuring a loan will not make the loan usurious; but where the lender's agent receives from the borrower a bonus in excess of 10 per cent. per annum, either with the knowledge of the lender, or under circumstances from which the law will presume his knowledge, the transaction is usurious. *Vahlberg v. Keaton*, 51 Ark., 535; *Baird v. Millwood*, *id.*, 548. So where the lender places money with his agent to be lent at 10 per cent. per annum, with the understanding that the agent shall look to the borrower for his commissions, a loan by the latter is usurious if the interest and the bonus together exceed 10 per centum per annum on the amount of the loan. *Thompson v. Ingram*, *id.*, 546; *Baird v. Millwood*, *id.*, 548. Defendant executed a deed, absolute in form, to secure a loan. Afterwards he obtained a usurious loan from plaintiff, who at his request paid the original debt, and took a deed from the creditor as security. This deed being void because of the usury, the court below decreed that plaintiff should be subrogated to the rights of the original creditor, and ordered a foreclosure of the original mortgage: *Held*, error, since equity will not aid one who is compelled to prove an illegal contract in order to establish his claim. Under such circumstances, plaintiff is entitled to recover the taxes he paid on the land, with interest. *Nichols v. Tribble*, 13 S. W. R., 796. In order to constitute usury it need not be made to appear that the parties intended to violate the law; it need only be shown that one of the parties intended to reserve and the other to pay more than the legal rate of interest. A note usurious in the hands of the original parties to it is void, though held by one who acquired

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it for value before maturity, without notice of its illegality, notwithstanding the legislature may have declared otherwise. *German Bank v. Deshom*, 41 Ark., 331. A contract to pay at a future day a sum larger than the actual debt and lawful interest, but dischargeable by the payment of the true debt and interest before the day, is not usurious, unless a mere shift to evade the usury laws; but equity will relieve against the excess as against a penalty. *Chaffe v. Landers*, 46 Ark., 365. A firm executed a note payable at a future day. On the same day a member of the firm executed a larger note to the same payee, payable at a more distant date, with a mortgage on land securing the same, reciting that it was given as collateral security for the firm note, and providing that if the firm note was not paid at maturity the land should be sold for the payment of the individual note: *Held*, that the two notes were but one transaction; that, in the absence of proof of usurious intent, the excess of the last note over the actual debt and interest must be held a penalty, and that the mortgage should be foreclosed for the true debt and interest. *Id.* It is not usury to add the interest on several notes to the principal, and then add to this sum the interest on it at 10 per cent. per annum for one year, and then take a new note for this last sum payable one year after date, with interest at 10 per cent. per annum after maturity, in payment of the old notes. *Grider v. Driver*, 46 Ark., 50. A note executed at the maturity of a bill of goods, for the aggregate amount of the bill and interest on it at 10 per cent. per annum from the date of purchase, instead of from its maturity, is void for usury. *White v. Friedlander*, 35 Ark., 52. The purchaser of a tract of land took possession under a bond for deed, leaving the legal title in his vendor as security for the purchase money, to pay which he subsequently obtained a loan at a usurious rate of interest, giving his note therefor, and causing a deed to be executed by his vendor to the payee as security. He afterwards rented the land of the payee, and later, in consideration of an agreement to surrender his note and forgive the rent, promised to release his equitable interest, but never did so: *Held*, in an action brought to declare a trust in the land, discharged of the lien, that he was still the owner thereof, and that the agreement to release his equity was void for want of consideration. *Brakefield v. Halpern*, 13 S. W. R., 1102. Reserving interest in advance at the highest lawful rate on money lent does not constitute usury. Nor will such loan be made usurious by the fact that a broker who procures it for the borrower retains for his commissions a sum in addition to the interest reserved by the lender. *Baird v. Millwood*, 51 Ark., 548. By act approved March 3, 1887, entitled "*An act to give effect to the constitutional provisions against usury*," it is provided as follows: Section 1. That every lien created or arising by mortgage, deed of trust, or otherwise, on real or personal property, to secure the payment of a contract for a greater rate of interest than 10 per centum per annum, either directly or indirectly, and every conveyance made in furtherance of any such lien is void; and every such lien or conveyance may be canceled and annulled at the suit of the maker of such usurious contract, or his vendees, assigns or creditors. The maker of a usurious contract may by suit in equity against all parties asserting rights under the same, have such contract, and any mortgage, pledge or other lien, or conveyance executed to secure the performance of the same, annulled and can-

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celed, and any property real or personal, embraced within the terms of said lien or conveyance, delivered up, if in possession of any of the defendants in the action, and if the same be in the possession of the plaintiff, provision shall be made in the decree in the case removing the cloud of such usurious lien, and conveyance made in furtherance thereof, from the title to such property. And any person who may have acquired the title to, or interest in, or lien upon such property by purchase from the makers of such usurious contract, or by assignment, or by sale under judicial process, mortgage or otherwise, either before or after the making of the usurious contract, may bring his suit in equity against the parties to such usurious contract, and any one claiming title to such property by virtue of such usurious contract, or may intervene in any suit brought to enforce such lien, or to obtain possession of such property, under any title growing out of such usurious contract, and shall by proper decree have such mortgage, pledge or other lien, or conveyance, made in furtherance thereof, canceled and annulled in so far as the same is in conflict with the rights of the plaintiff in action. Sec. 2. That any creditor whose debtor has given a lien by mortgage, pledge or otherwise, on real or personal property, subject to execution, to secure the payment of a usurious contract, may bring his suit in equity against the parties to such usurious contract, and recover judgment for his debt against the debtor, and a decree cancelling and annulling such usurious lien, and directing the sale of the property to satisfy the plaintiff's judgment and costs, and any surplus that may remain after satisfying the plaintiff's judgment, shall be paid to the debtor. Sec. 3. That neither the maker of a usurious contract nor his vendees, assigns or creditors, or any other person who may have or claim an interest in any property embraced within the terms of said usurious contract, shall be required to tender or pay any part of the usurious debt or interest as a condition of having such contract, and any conveyance, mortgage, pledge or other lien given to secure its payment, or executed in furtherance thereof, enjoined, canceled and annulled; and any rule of law, equity or practice to the contrary is hereby abrogated. Sec. 4. That this act shall apply to all usurious contracts and securities, whether executed before or after its passage, and shall be in force from and after its passage. *Acts 1887, p. 50.*

Conflict of laws.—The validity of a note as to usury must be determined by the usury statutes of the state where it is made, unless it designates some other place for payment. *Bowles v. Eddy, 33 Ark., 645.* A note made in Arkansas, and payable in Tennessee, will be governed by the laws of Tennessee; and in the absence of proof of the law of Tennessee, such note, though usurious, if governed by the laws of Arkansas, will be enforced in her courts. *White v. Friedlander, 35 Ark., 52.* A promissory note given in one state in settlement of an account made in another state, is a new contract, and governed by the law of the state where given, and is not usurious if the interest reserved does not exceed the lawful interest of that state. *Wallis v. Lehman, 36 Ark., 569.*

Pleading.—The facts constituting usury must be averred with certainty. *Jordan v. Mitchell, 25 Ark., 258; Pilsbury v. McNally, 22 id., 409.* A plea of usury should aver an intent to reserve more than the legal rate of interest. *Moody*

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v. Hawkins, 25 Ark., 191. Where a note is not made payable at any particular place a plea of usury should state where the parties intended that the money should be paid. *Laird v. Hodges*, 26 Ark., 356. A plea of usury should allege a corrupt agreement. *Id.*; *McFarland v. State Bank*, 4 *id.*, 410.

Evidence.—Where a contract does not import usury, it must be proved that there was some corrupt agreement, device or shift to cover usury. *Moody v. Hawkins*, 25 Ark., 191; *Levy v. Brown*, 11 *id.*, 16. Parol evidence is admissible to show that a written contract for the purchase of land was a cloak for usury. *Tillar v. Cleveland*, 47 Ark., 287. The plea of usury is personal, and when a third party assumes the payment of a usurious debt, and gives the creditor an assurance of payment, he can neither dispute with the creditor the validity or the amount of the debt, the consideration passing from the debtor to the party undertaking; but where the amount of the liability is left for future ascertainment, and there are rights and interest, reserved that can only be protected by the party who has contracted to pay the debt, or by the debtor himself, the rule is different, and the defense may be interposed by the third party. *Pickett v. Merchants National Bank*, 32 Ark., 346.

Usury act constitutional.—An act providing that it shall be lawful for all persons lending money in this state to reserve or discount interest upon any commercial paper, mortgage or other securities at any agreed rate of interest, not exceeding 10 per cent., held to be valid as to commercial transactions in short time paper. *Vahlberg v. Keaton*, 51 Ark., 535.

Sale under usurious contract void.—The sale of property under a power contained in a deed of trust given to secure a usurious debt will pass no title. *Smith v. Finley*, 52 Ark., 373.

Sec. 14. Lotteries prohibited.—No lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.

Sec. 15. Contracts for stationery, fuel, printing, furniture, etc., for state government.—All stationery, printing, paper, fuel, for the use of the general assembly and other departments of government, shall be furnished, and the printing, binding and distributing of the laws, journals, department reports, and all other printing and binding, and the repairing and furnishing the halls and rooms used for the meetings of the general assembly and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as shall be prescribed by law. No member or officer of any department of the government shall in any way be interested

in such contracts, and all such contracts shall be subject to the approval of the governor, auditor and treasurer.

Woodruff v. Berry, 40 Ark., 255.

Sec. 16. Contracts for public buildings, bridges, etc.—For care of paupers.—All contracts for erecting or repairing public buildings or bridges in any county, or for materials therefor; or for providing for the care and keeping of paupers, where there are no alms houses, shall be given to the lowest responsible bidder, under such regulations as may be provided by law.

Sec. 17. Revision, publication, etc., of laws.—The laws of this state, civil and criminal, shall be revised, digested, arranged, published and promulgated at such times, and in such manner as the general assembly may direct.

Sec. 18. Security of miners and travelers.—The general assembly, by suitable enactments, shall require such appliances and means to be provided and used, as may be necessary to secure, as far as possible, the lives, health and safety of persons employed in mining, and of persons traveling upon railroads, and by other public conveyances, and shall provide for enforcing such enactments by adequate pains and penalties.

Sec. 19. Education of deaf and dumb, blind and insane.—It shall be the duty of the general assembly to provide, by law, for the support of institutions for the education of the deaf and dumb, and of the blind; and also for the treatment of the insane.

Sec. 20. Oath of office.—Senators and representatives and all judicial and executive, state and county officers, and all other officers, both civil and military, before entering on the duties of their respective offices, shall take and subscribe to the following oath or affirmation: "I, ———, do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of Arkansas, and that I will faithfully discharge the duties of the office of ——— upon which I am now about to enter."

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An assessor who fails to take an oath of office is an officer *de facto*, and his acts are valid when questioned collaterally. *Murphy v. Shepard*, 52 Ark., 356; *Moore v. Turner*, 43 *id.*, 243; *Twombly v. Kimbrough*, 24 *id.*, 474; *Equalization Board v. Land Owners*, 51 *id.*, 516.

Sec. 21. Sureties upon official bonds.—The sureties upon the official bonds of all state officers shall be residents of, and have sufficient property within, the state, not exempt from sale under execution, attachment or other process of any court, to make good their bonds, and the sureties upon the official bonds of all county officers shall reside within the counties where such officers reside, and shall have sufficient property therein, not exempt from such sale, to make good their bonds.

A non-resident of the state cannot be accepted as a surety on the bond of a county officer. *Hyner v. Dickinson*, 32 Ark., 776.

Sec. 22. Amendments to constitution; how originated—To be published and submitted to the people—Not more than three to be proposed or submitted at same time—Separate ratification of each.—Either branch of the general assembly, at a regular session thereof, may propose amendments to this constitution; and if the same be agreed to by a majority of all the members elected to each house, such proposed amendments shall be entered on the journals with the yeas and nays, and published in at least one newspaper in each county, where a newspaper is published, for six months immediately preceding the next general election for senators and representatives, at which time the same shall be submitted to the electors of the state, for approval or rejection; and if a majority of the electors voting at such election adopt such amendments, the same shall become a part of this constitution. But no more than three amendments shall be proposed or submitted at the same time. They shall be so submitted as to enable the electors to vote on each amendment separately.

An amendment to the constitution of 1836 providing a new method of electing circuit judges was held to operate only *in futuro*, and not to abridge the terms of

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judges previously elected. *State v. Scott*, 9 Ark., 270. As for the method prescribed by the legislature for the submission of amendments to a vote of the people, ascertaining the vote, and declaring the result, see *Mansf. Dig.*, secs. 610–626.

Sec. 23. Maximum of officers' salary and fees—Disposition of excess received.—No officer of this state, nor of any county, city or town, shall receive directly or indirectly for salary, fees and perquisites, more than five thousand dollars, net profits per annum in par funds, and any and all sums in excess of this amount shall be paid into the state, county, city or town treasury, as shall hereafter be directed by appropriate legislation.

Sec. 24. Contested elections not herein specifically provided for.—The general assembly shall provide by law the mode of contesting elections in cases not specifically provided for in this constitution.

The act of January 23, 1875, conferring on the county courts jurisdiction of cases of contests for county and township officers, is constitutional. *Glidwell v. Martin*, 51 Ark., 560.

Sec. 25. Seal of the state.—The present seal of the state shall be and remain the seal of the state of Arkansas until otherwise provided by law, and shall be kept and used as provided in this constitution.

Sec. 26. Officers eligible to executive and judicial office.—Militia officers, officers of the public schools, and notaries, may be elected to fill any executive or judicial office.

Sec. 27. Assessments on real property for local improvements in towns and cities.—Nothing in this constitution shall be so construed as to prohibit the general assembly from authorizing assessments on real property for local improvements in towns and cities, under such regulations as may be prescribed by law; to be based upon the consent of a majority in value of the property holders owning property adjoining the locality to be affected. But such assessments shall be *ad valorem* and uniform.

The provision as to uniformity contained in article XVI, section 5, applies also to local assessments; and an assessment for an improvement in a city based on the frontage of lots cannot be sustained. *Peay v. Little Rock*, 32 Ark., 31; *Monticello*

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v. Banks, 48 *id.*, 251; *James v. Pine Bluff*, 49 *id.*, 202. This section applies to any property adjoining or near the improvement which is physically affected, or the value of which is commercially affected, directly by the improvement, to a degree in excess of the effect upon the property in the city generally. *Little Rock v. Katzenstein*, 52 *Ark.*, 107. An act levying a tax for a local improvement upon only a part of the land to be benefited, to the exclusion of others of the same class, violates the constitutional rule of uniformity (*art. XVI, sec. 5.*) and is so far void; *Davis v. Gaines*, 48 *Ark.*, 370; and a provision in such an act that citizens who had previously contributed money for the same purpose should be reimbursed by giving them a credit on their future taxes for sums so contributed, is void. *Id.* The legislature may authorize a board of levee inspectors of a levee district to determine the rate of taxation, as well as what lands are subject to taxation for the reclamation or protection of the lands of the district from overflow. *Id.* The act of March 22, 1881, providing for taxation for local improvements in cities is constitutional. *Little Rock v. Board of Improvement*, 42 *Ark.*, 152. An assessment for local improvement cannot be imposed on the property in one improvement district to pay the cost of improvements in another, or for the general improvement of the city. An administrator cannot be authorized by law to sign an application for a local assessment, he not being the *owner* of the lands of his intestate. *Rector v. Board of Improvement*, 50 *Ark.*, 116.

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Sec. 1. Retention of existing laws—Effect of exemption laws in force at adoption of constitution of 1868—Distinction between sealed and unsealed instruments.—All laws now in force, which are not in conflict or inconsistent with this constitution, shall continue in force until amended or repealed by the general assembly, and all laws exempting property from sale on execution or by decree of a court, which were in force at the time of the adoption of the constitution of 1868, shall remain in force with regard to contracts made before that time. Until otherwise provided by law, no distinction shall exist between sealed and unsealed instruments, concerning contracts between individuals, executed since the adoption of the constitution of 1868; provided, that the statutes of limitation with regard to sealed and unsealed instruments in force at that time, continue to apply to all instruments afterwards executed, until altered or repealed.

Statutes continued in force.—Under a like clause of the constitution of 1864, a statute that had been passed, but which did not take effect until after the

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adoption of that constitution, was held to be in force within the meaning of the saving clause. *Milor v. Farrelly*, 25 Ark., 353. All laws thus continued in force are as valid as if re-enacted. *Henry v. State*, 26 Ark., 523.

Exemption laws.—As to contracts made before the adoption of the constitution of 1868, the homestead act of 1852 is revived by this section. *Lindsay v. Norrill*, 36 Ark., 545. This provision applies to sealed instruments executed since the adoption of the constitution. *Vaughn v. Norwood*, 44 Ark., 101; *Dyer v. Gill*, 32 Ark., 410. The statute of ten years, and not five, is applicable to an instrument under seal, executed before the adoption of the constitution of 1868; *Moore v. Nichols*, 39 Ark., 145; also while that constitution was in force. *Stephens v. Shannon*, 43 *id.*, 464. The statute of limitations of five years is not applicable to an action on a note under seal executed before the adoption of the constitution of 1868; *Smith v. Carder*, 33 Ark., 709; but the statute of five years will apply to the liability of an indorser on it. *Andrews v. Simms*, 33 Ark., 771.

Sec. 2. Competency of witnesses.—In civil actions, no witness shall be excluded because he is a party to the suit, or interested in the issue to be tried; provided, that in actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transactions with or statements of the testator, intestate or ward, unless called to testify thereto by the opposite party; provided, further, that this section may be amended or repealed by the general assembly.

Witnesses who are interested.—This clause does not render husband and wife competent as witnesses for each other. *Collins v. Mack*, 31 Ark., 684.

In suits in which executors, administrators or guardians are parties.—This provision does not exclude absolutely the testimony of parties, but only in respect to transactions that were strictly personal, and where in the nature of the case the privilege of testifying could not be mutual. *Giles v. Wright*, 26 Ark., 476. A party in a suit in which an administrator *de bonis non* is the adverse party is not prohibited from testifying as to statements and conversations of the former administrator who is dead. *Wassell v. Armstrong*, 35 Ark., 248. This clause only applies to parties to the record, and not to those not parties, though they may have an interest in the result. *McRae v. Holcomb*, 46 Ark., 306. In actions by the widow and heirs of an intestate for property descended from him, the defendant may testify as to transactions with the intestate and statements made by him in relation to the matters in controversy. *Bird v. Jones*, 37 Ark., 195; *Lawrence v. LaCade*, 46 *id.*, 378. The parties excluded from testifying as to transactions or statements of testators, intestates or wards, are the executors, administrators and guardians on the one hand, and their adversaries in the suit on the other, and do not include their co-

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defendants, or other parties not pursued by the fiduciaries. *Nolen v. Harden*, 43 Ark., 307. A plaintiff cannot prove an account against an administrator based on his transactions with the intestate by his own evidence. *Miller v. Jones*, 32 Ark., 337. Under a plea of *non est factum* by an administrator to a suit on a note alleged to have been made by his testator, the plaintiff should not be allowed to testify that the deceased executed the note just as it appeared on the trial. *Gist v. Gans*, 30 Ark., 285. A party in a suit against a surviving executor may testify of his transactions with a deceased executor in relation to matters in controversy. *McDearman v. Maxfield*, 38 Ark., 631. In a contest for title between the devisees of a testator and others claiming the land under a title bond executed by him, which is begun after the administration is closed, any of the parties to the suit are competent to prove such transactions with the deceased, or statements made by him, as are relevant. *Bozeman v. Browning*, 31 Ark., 364. In an action brought by an administratrix to recover a sum of money which she paid to defendant before administration in discharge of his claim against the estate of her intestate, he offered to prove by his own testimony that he lent the deceased the money in controversy to pay for certain land; that he took no note for the amount; but that deceased at the time of receiving it made an entry in his own memorandum book; and that no part of the debt had been paid except that paid by the plaintiff: Held, that the testimony was properly excluded. *Rainwater v. Harris*, 51 Ark., 401. In an action against husband and wife, in which she is the real party in interest, she is a competent witness for herself, and in a suit with an administrator she may testify of transactions between herself and her husband to which the deceased was not a party. *Rudd v. Peters*, 41 Ark., 177. In a proceeding against an administrator to obtain an allowance of a claim against the estate of his intestate for money alleged to have been converted by the latter, testimony of the plaintiff to the effect that he delivered a box containing the money to be deposited in his safe, is not admissible; nor can the plaintiff prove that the box was in his safe if his knowledge of that fact was derived solely from the transaction between himself and the intestate. *Nunnally v. Becker*, 52 Ark., 550. A deposition of a party to an action as to transactions or statements of the other party, taken in the lifetime of the latter, are not admissible after his death against his administrator. *Park v. Lock*, 48 Ark., 133; *St. L. R. Co. v. Harper*, 50 *id.*, 160.

Sec. 3. First general election for officers, and election for submission of constitution to the people.—An election shall be held at the several election precincts of every county of the state, on Tuesday, the 13th day of October, 1874, for governor, secretary of state, auditor, treasurer, attorney general, commissioner of state lands for two years, unless the office is sooner abolished by the general assembly, chancellor, and clerk of the separate chancery court of Pulaski county, chief justice and two associate justices of the supreme court, a

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circuit judge and prosecuting attorney for each judicial circuit provided for in this constitution, senators and representatives to the general assembly, all county and township officers provided for in this constitution; and also for the submission of this constitution to the qualified electors of the state, for its adoption or rejection.

Sec. 4. Qualifications of voters thereat.—The qualification of voters at the election to be held as provided in this schedule shall be the same as is now prescribed by law.

Sec. 5. Notice thereof.—The state board of supervisors hereinafter mentioned shall give notice of said election immediately after the adoption of this constitution by this convention, by proclamation in at least two newspapers published at Little Rock, and such other newspapers as they may select. And each county board of supervisors shall give public notice, in their respective counties, of said election, immediately after their appointment.

Sec. 6. Governor's proclamation enjoining good order at such election.—The governor shall also issue a proclamation enjoining upon all peace officers the duty of preserving good order on the day of said election, and preventing any disturbance of the same.

Sec. 7. State board of supervisors of election—Vacancies therein.—Augustus H. Garland, Gordon N. Peay and Dudley E. Jones are hereby constituted a state board of supervisors of said election, who shall take an oath faithfully and impartially to discharge the duties of their office, a majority of whom shall be a quorum, and who shall perform the duties herein assigned them. Should a vacancy occur in said board by refusal to serve, death, removal, resignation or otherwise, or if any member should become incapacitated from performing said duties, the remaining members of the board shall fill the vacancy by appointment. But if all the places on said board become vacant at the same time, the said vacancies shall be filled by the president of this convention.

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Sec. 8. County boards of supervisors of election—Vacancies therein.—Said state board shall at once proceed to appoint a board of election supervisors for each county of this state, consisting of three men of known intelligence and uprightness of character, who shall take the same oath as above provided for the state board. A majority of each board shall constitute a quorum, and shall perform the duties herein assigned to them; and vacancies occurring in the county boards shall be filled by the state board.

Sec. 9. Poll books and ballot boxes for the election.—The state board shall provide the form of poll books, and each county board shall furnish the judges of each election precinct with three copies of the poll books in the form prescribed; and with ballot boxes, at the expense of the county.

Sec. 10. Distribution to officers of the election of copies of the constitution.—The state board of supervisors shall cause to be furnished in pamphlet form a sufficient number of copies of this constitution to supply each county supervisor and judge of election with a copy, and shall forward the same to the county election boards for distribution.

Sec. 11. Judges of the election, and election clerks—Case of absence of judges of the election from the polls.—The boards of county election supervisors shall at once proceed to appoint three judges of election for each election precinct in their respective counties, and the judges shall appoint three election clerks for their respective precincts, all of whom shall be good, competent men, and take an oath as prescribed above. Should the judges of any election precinct fail to attend at the time and place provided by law, or decline to act, the assembled electors shall choose competent persons, in the manner provided by law, to act in their place, who shall be sworn as above.

Sec. 12. Conduct of the election—Qualifications of voters, how decided—Registration.—Said election shall be conducted in accordance with existing laws except as herein provided. As the electors present themselves at the polls to

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vote, the judges of the election shall pass upon their qualifications, and the clerks of the election shall register their names on the poll books, if qualified; and such registration by said clerks shall be a sufficient registration in conformity with the constitution of this state, and then their votes shall be taken.

Sec. 13. Style of ballot.—Each elector shall have written or printed on his ticket “for constitution,” or “against constitution,” and also the offices and the names of the candidates for the offices, for whom he desires to vote.

Sec. 14. Deposit of tickets—Elector to vote only in township or ward of residence—Numbering of tickets.—The judges shall deposit the tickets in the ballot box; but no elector shall vote outside of the township or ward in which he resides. The names of the electors shall be numbered, and the corresponding numbers shall be placed on the ballots by the judges when deposited.

Sec. 15. Drinking houses to be closed on day of the election—Sale or gift of intoxicating liquor prohibited.—All dram shops and drinking houses in this state, shall be closed during the day of said election, and the succeeding night; and any person selling or giving away intoxicating liquors during said day or night, shall be punished by fine not less than two hundred dollars, for each and every offence, or imprisoned not less than six months, or both.

Sec. 16. Hours of voting—Counting of ballots—Disposition of returns—Copies of abstract of returns, ballots and poll books, where filed.—The polls shall be opened at eight o'clock in the forenoon, and shall be kept open until sunset. After the polls are closed the ballots shall be counted by the judges at the place of voting, as soon as the polls are closed, unless prevented by violence or accident; and the results by them certified on the poll books, and the ballots sealed up. They shall be returned to the county board of election supervisors, who shall proceed to cast up the votes and ascertain and state the number of votes cast for the constitution, and the number cast against the constitution, and also

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the number of votes cast for each candidate voted for, for any office, and shall forthwith forward to the state board of supervisors duly certified by them, one copy of the statement or abstracts of the votes so made out by them, retain one copy in their possession, and file one copy in the office of the county clerk, where they shall also deposit for safe-keeping the ballots sealed up, and one copy of the poll books, retaining possession of the other copies.

Sec. 17. Ascertainment and publication of result of election on adoption of constitution—Constitution, if adopted, in force from date of such publication—**Abstract of returns of the election to be filed with secretary of state—List of members of general assembly elect to be certified to general assembly—Abstract of returns of election for state officers to be certified to speaker of house of representatives—And the result by him announced—State officers elected, when to enter upon their duties.**—The state board of supervisors shall at once proceed, on receiving such returns from the county board, to ascertain therefrom and state the whole number of votes given for the constitution, and the whole number given against it; and if a majority of all votes cast be in favor of the constitution, they shall at once make public that fact by publication in two or more of the leading newspapers published in the city of Little Rock, and this constitution from that date shall be in force; and they shall also make out and file in the office of secretary of state an abstract of all the votes cast for the constitution, and all the votes cast against it; and also an abstract of all votes cast for every candidate voted for at the election, and file the same in the office of the secretary of state, showing the candidates elected. They shall also make out and certify, and lay before each house of the general assembly a list of the members elected to that house; and shall also make out, certify and deliver to the speaker of the house of representatives, an abstract of all votes cast at the election for any and all persons for the office of governor, secretary of

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state, treasurer of state, auditor of state, attorney general and commissioner of state lands, and the said speaker shall cast up the votes, and announce the names of the persons elected to these offices. The governor, secretary of state, treasurer of state, auditor of state, attorney general and commissioner of state lands, chosen at said election, shall qualify and enter upon the discharge of the duties of their respective offices within fifteen days after the announcement of their election as aforesaid.

Sec. 18. All officers chosen at this election to be commissioned by governor.—All officers shown to be elected by the abstract of said election filed by the state board of supervisors in the office of the secretary of state, required by this constitution to be commissioned, shall be commissioned by the governor.

Sec. 19. First election of representatives and senators—Their certificates of election.—At said election the qualified voters of each county and senatorial district as defined in article eight of this constitution, shall elect respectively representatives and senators according to the numbers and apportionment contained in said article. The board of election supervisors of each county shall furnish certificates of election to the person or persons elected to the house of representatives as soon as practicable after the result of the election has been ascertained, and such board of election supervisors in each county shall make a correct return of the election for senator or senators to the board of election supervisors of the county first named in the senatorial apportionment, and said board shall furnish certificates of election to the person or persons elected as senator or senators in said senatorial district as soon as practicable.

Sec. 20. Officers elected, other than state officers, when to enter upon their duties.—All officers elected under this constitution, except the governor, secretary of state, auditor of state, treasurer, attorney general and commissioner of state lands, shall enter upon the duties of their several offices when

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they shall have been declared duly elected by said state board of supervisors, and shall have duly qualified. All such officers shall qualify and enter upon the duties of their offices within fifteen days after they have been duly notified of their election.

Sec. 21. Prior incumbents to vacate their offices.—Upon the qualification of the officers elected at said election, the present incumbents of the offices for which the election is held shall vacate the same, and turn over to the officers thus elected and qualified, all books, papers, records, moneys and documents belonging or pertaining to said offices by them respectively held.

Sec. 22. Time of convention of first session of general assembly.—The first session of the general assembly under this constitution shall commence on the first Tuesday after the second Monday in November, 1874.

Sec. 23. Transfer of jurisdiction from boards of supervisors to county courts—From criminal courts to circuit courts—And of probate business to probate courts.—The county courts provided for in this constitution shall be regarded in law, as a continuation of the boards of supervisors now existing by law, and the circuit courts shall be regarded in law as continuations of the criminal courts wherever the same may have existed in their respective counties; and the probate courts shall be regarded as continuations of the circuit courts for the business within the jurisdiction of such probate courts, and the papers and records pertaining to said courts and jurisdictions shall be transferred accordingly; and no suit or prosecution of any kind shall abate because of any change made in this constitution.

Dodson v. Ft. Smith, 33 Ark., 508.

Sec. 24. Present incumbents to continue in office till qualification of successors—Commissioner of state lands.—All officers now in office whose offices are not abolished by this convention, shall continue in office and discharge the duties imposed on them by law, until their successors are

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electd and qualified under this constitution. The office of commissioner of state lands shall be continued, provided that the general assembly at its next session may abolish or continue the same in such manner as may be prescribed by law.

Sec. 25. Penalty of fraud by officers of the election—Or other persons.—Any election officer appointed under the provisions of this schedule, who shall fraudulently and corruptly permit any person to vote illegally, or refuse the vote of any qualified elector, cast up or make a false return of said election, shall be deemed guilty of a felony, and on conviction thereof, shall be imprisoned in the penitentiary not less than five years, nor more than ten years. And any person who shall vote when not a qualified elector, or vote more than once, or bribe any one to vote contrary to his wishes, or intimidate or prevent any elector by threats, menace or promises from voting, shall be guilty of a felony, and upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years.

Sec. 26. Tenure of office of officers chosen at the election—Time of next general election—Election of congressmen.—All officers elected at the election provided for in this schedule shall hold their offices for the respective periods provided for in the foregoing constitution, and until their successors are elected and qualified. The first general elections after the ratification of this constitution shall be held on the first Monday of September A. D. 1876. Nothing in this constitution and the schedule thereto, shall be so construed as to prevent the election of congressmen at the time as now prescribed by law.

Sec. 27. Appropriation to defray expenses of the election.—The sum of five thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated to defray the expenses of the election provided for in this schedule; and the auditor of state shall draw his warrant on the treasurer for such expenses, not exceeding said amount, on the certificate of the state board of supervisors of election.

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Sec. 28. Present salaries of state officers—Per diem and mileage of members of general assembly.—For the period of two years from the adoption of this constitution, and until otherwise provided by law, the respective officers herein enumerated shall receive for their services the following salaries per annum.

For governor the sum of \$3500; for secretary of state the sum of \$2000; for treasurer the sum of \$2500; for auditor the sum of \$2500; for attorney general the sum of \$2000; for commissioner of state lands the sum of \$2000; for judges of the supreme court, each the sum of \$3500; for judges of the circuit and chancery courts, each the sum of \$2500; for prosecuting attorneys, each the sum of \$400; for members of the general assembly the sum of \$6 per day, and twenty cents per mile for each mile traveled in going to and returning from the seat of government, over the most direct and practicable route.

Done in convention, at Little Rock, the seventh day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of the independence of the United States the ninety-ninth.

In witness whereof, we have hereunto subscribed our names.

GRANDISON D. ROYSTON,

President of the Convention, and

Delegate from the County of Hempstead.

THOMAS W. NEWTON,

Secretary.

A. M. Rodgers, delegate from Benton county.

Horace H. Patterson, delegate from Benton county.

W. W. Baily, delegate from Boone county.

John R. Hampton, delegate from Bradley county.

John W. Cypert, delegate from Baxter county.

Bradley Bunch, delegate from Carroll county.

Jesse A. Ross, delegate from Clark county.

H. F. Thomason, delegate from Crawford county.

W. D. Leiper, delegate from Dallas county.

Wm. J. Thompson, delegate from Woodruff county.

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James A. Gibson, delegate from Arkansas county.
Henry W. Carter, delegate from Pike county.
Daniel F. Reinhardt, delegate from Prairie county.
Elijah Moseley, delegate from Ouachita county.
Stephen C. Bates, delegate from Polk county.
G. P. Smoote, delegate from Columbia county.
D. L. Killgore, delegate from Columbia county.
William S. Hanna, delegate from Conway county.
John S. Anderson, delegate from Craighead county.
J. G. Frierson, delegate from Cross county.
E. Foster Brown, delegate from Clayton county.
Jas. P. Stanley, delegate from Drew county.
John Niven, delegate from Dorsey county.
William W. Mansfield, delegate from Franklin county.
John Dunaway, delegate from Faulkner county.
Davidson D. Cunningham, delegate from Grant county.
Ben. H. Crowly, delegate from Greene county.
H. M. Rector, delegate from Garland county.
John R. Eakin, delegate from Hempstead county.
W. C. Kelly, delegate from Hot Spring county.
J. W. Butler, delegate from Independence county.
James Rutherford, delegate from Independence county.
Ransom Gulley, delegate from Izard county.
Franklin Doswell, delegate from Jackson county.
Jno. A. Williams, delegate from Jefferson county.
Seth J. Howell, delegate from Johnson county.
Philip K. Lester, delegate from Lawrence county.
J. H. Williams, delegate from Little River county.
J. P. Eagle, delegate from Lonoke county.
Reason G. Puntney, delegate from Lincoln county.
Monroe Anderson, delegate from Lee county.
John Carroll, delegate from Madison county.
S. P. Hughes, delegate from Monroe county.
Nicholas W. Cable, delegate from Montgomery county.
Charles Bowen, delegate from Mississippi county.
R. K. Garland, delegate from Nevada county.

AMENDMENT I.

Henry G. Bunn, delegate from Ouachita county.
W. H. Blackwell, delegate from Perry county.
John J. Horner, delegate from Phillips county.
Jno. R. Homer Scott, delegate from Pope county.
John Miller, Jr., delegate from Randolph county.
Sidney M. Barnes, delegate from Pulaski county.
Jabez M. Smith, delegate from Saline county.
Ben. B. Chism, delegate from Sarber county.
J. W. Sorrels, delegate from Scott county.
W. S. Lindsey, delegate from Searcy county.
R. P. Pulliam, delegate from Sebastian county.
W. M. Fishback, delegate from Sebastian county.
B. H. Kinsworthy, delegate from Sevier county.
Lewis Williams, delegate from Sharp county.
John M. Parrott, delegate from St. Francis county.
Walter J. Cagle, delegate from Stone county.
Horatio G. P. Williams, delegate from Union county.
Robt. Goodwin, delegate from Union county.
A. R. Witt, delegate from Van Buren county.
R. P. Polk, delegate from Phillips county.
T. W. Thomason, delegate from Washington county,
Benjamin F. Walker, delegate from Washington county.
M. F. Lake, delegate from Washington county.
Jesse N. Cypert, delegate from White county.
J. W. House, delegate from White county.
Joseph T. Harrison, delegate from Yell county.
Marcus L. Hawkins, delegate from Ashley county.
Edwin R. Lucas, delegate from Fulton county.
Benjamin W. Johnson, delegate from Calhoun county.
Roderick Joyner, delegate from Poinsett county.

AMENDMENT I.

Article XX. The general assembly shall have no power to levy any tax, or make any appropriations, to pay either the principal or interest, or any part thereof, of any of the following bonds of the state, or the claims or pretended claims upon

AMENDMENT I.

which they may be based to-wit : Bonds issued under an act of the general assembly of the state of Arkansas, entitled "An act to provide for the funding of the public debt of the state," approved April 6, A. D. 1869, and numbered from four hundred and ninety-one to eighteen hundred and sixty, inclusive, being the "Funding Bonds" delivered to F. W. Caper, and sometimes called "Holford Bonds;" or bonds known as "Railroad Aid Bonds," issued under an act of the general assembly of the state of Arkansas, entitled "An act to aid in the construction of railroads," approved July 21, A. D. 1868; or bonds called "Levee Bonds," being bonds issued under an act of the general assembly of the state of Arkansas, entitled "An act providing for the building and repairing the public levees of the state, and for other purposes," approved March 16, A. D. 1869, and the supplemental act thereto, approved April 12, 1869, and the act entitled "An act to amend an act entitled an act providing for the building and repairing of the public levees of this state," approved March 23, A. D. 1871; and any law providing for any such tax or appropriation shall be null and void.

This amendment was submitted under a joint resolution of the general assembly, approved January 30, 1883. *Acts of 1883, p. 346.* In joint session of both houses held January 14, 1885, the popular vote on the amendment was counted, when it appeared that at the general election held on the first Monday in September, 1884, 119,806 votes were cast for the amendment, and 15,492 were cast against the amendment; upon which it was unanimously declared that the amendment had been adopted. *Senate Journal, 1885, p. 53.*

APPENDIX.

CONSTITUTION

OF THE

UNITED STATES OF AMERICA

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SEC. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SEC. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state for which he shall be chosen.

The vice-president of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore* in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable to indictment, trial, judgment and punishment, according to law.

SEC. 4. The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SEC. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall

agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SEC. 8. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and to fix the standard of weights and measures.

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

To establish postoffices and postroads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the supreme court.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SEC. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed

on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince or foreign state.

SEC. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows :

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds

of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.]

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal; death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president; and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation :

“I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States.”

SEC. 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United

States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

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

SEC. 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SEC. 4. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as

the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SEC. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service, or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SEC. 3. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SEC. 4. The United States shall guarantee to every state in this union a republican form of government; and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.

In witness whereof we have hereunto subscribed our names.

GEO. WASHINGTON,
President and Deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

Wm. Samuel Johnson,
Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

Wil. Livingston,
David Brearly,
Wm. Patterson,
Jona. Dayton.

DELAWARE.

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

MARYLAND.

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

VIRGINIA.

John Blair,
James Madison, Jr.

NORTH CAROLINA.

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

PENNSYLVANIA.

B. Franklin,
 Thomas Mifflin,
 Robt. Morris,
 Geo. Clymer,
 Theo. Fitzsimons,
 Jared Ingersoll,
 James Wilson,
 Gouv. Morris.

Attest :

SOUTH CAROLINA.

J. Rutledge,
 Charles Coatesworth Pinckney,
 Charles Pinckney,
 Pierce Butler.

GEORGIA.

William Few,
 Abr. Baldwin.

WILLIAM JACKSON,

Secretary.

[The conventions of a number of the states having, at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, congress, at the session begun and held at the city of New York, on Wednesday, the 4th of March, 1789, proposed to the legislatures of the several states twelve amendments, ten of which, only, were adopted. They are the ten first following :]

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

FIRST SESSION, FIRST CONGRESS, MAY 4, 1789.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III.

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

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be pre-

served, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.

THIRD CONGRESS, SECOND SESSION, DECEMBER 2, 1793.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

EIGHTH CONGRESS, FIRST SESSION, OCTOBER 17, 1803.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of voters for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the

votes shall then be counted ; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed ; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the vote shall be taken by states, the representation from each state having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March, next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president ; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the

United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. The representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof is denied to any one of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

SEC. 3. No person shall be a senator or representative in congress, or elector of president or 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 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 and 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.

ARTICLE XV.

SECTION I. 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.

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APPENDIX.

CONSTITUTION

OF THE

STATE OF ARKANSAS

OF 1836.

We, the people of the territory of Arkansas, by our representatives in convention assembled, at Little Rock, on Monday, the fourth day of January, A. D. 1836, and of the independence of the United States the sixtieth year, having the right of admission into the union as one of the United States of America, consistent with the federal constitution, and by virtue of the treaty of cession, by France to the United States, of the province of Louisiana, in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty, and property, and the free pursuit of happiness, do mutually agree with each other to form ourselves into a free and independent state, by the name and style of "The State of Arkansas," and do ordain and establish the following constitution for the government thereof.

ARTICLE I.

OF BOUNDARIES.

We do declare and establish, ratify and confirm the following as the permanent boundaries of said state of Arkansas, that

is to say: Beginning in the middle of the main channel of the Mississippi river, on the parallel of thirty-six degrees north latitude; running from thence west with the said parallel of latitude to the St. Francis river; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the state of Missouri; and from thence to be bounded on the west, to the north bank of Red river, as by acts of congress and treaties heretofore defining the western limits of the territory of Arkansas; and to be bounded on the south side of Red river by the Mexican boundary line to the northwest corner of the state of Louisiana; thence east with the Louisiana state line to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of said river to the thirty-sixth degree of north latitude, the point of beginning.

ARTICLE II.

DECLARATION OF RIGHTS.

That the great and essential principles of liberty and free government may be recognized and unalterably established, we declare:

SECTION I. That all free men, when they form a social compact, are equal, and have certain inherent and indefeasible rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation; and of pursuing their own happiness.

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

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according the dictates of their own consciences; and no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. That no human authority can, in any

case whatever, interfere with the rights of conscience; and that no preference shall ever be given to any religious establishment or mode of worship.

SEC. 4. That the civil rights, privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

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

SEC. 6. That the right of trial by jury shall remain in-
violate.

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

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

SEC. 9. That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby any officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offenses are not particularly described and supported by evidence, are dangerous to liberty, and shall not be granted.

SEC. 10. That no free man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.

SEC. 11. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have

a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial by an impartial jury of the county or district in which the crime shall have been committed; and shall not be compelled to give evidence against himself.

SEC. 12. That no person shall, for the same offence, be twice put in jeopardy of life or limb

SEC. 13. That all penalties shall be reasonable, and proportioned to the nature of the offence.

SEC. 14. That no man shall be put to answer any criminal charge, but by presentment, indictment or impeachment.

SEC. 15. That no conviction shall work corruption of blood or forfeiture of estate.

SEC. 16. That all prisoners shall be bailable by sufficient securities, unless in capital offences, where the proof is evident or the presumption great. And the privilege of the writ of habeas corpus shall not be suspended, unless where, in case of rebellion or invasion, the public safety may require it.

SEC. 17. That excessive bail shall in no case be required, nor excessive fines imposed.

SEC. 18. That no ex post facto law, or law impairing the obligation of contracts, shall ever be made.

SEC. 19. That perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed; nor shall any hereditary emolument, privileges or honors ever be granted or conferred in this state.

SEC. 20. That the citizens have a right in a peaceable manner to assemble together for their common good, to instruct their representatives, and to apply to those invested with the power of the government for redress of grievances, or other proper purposes, by address or remonstrance.

SEC. 21. That the free white men of this state shall have a right to keep and to bear arms for their common defence.

SEC. 22. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner prescribed by law.

SEC. 23. The military shall be kept in strict subordination to the civil power.

SEC. 24. This enumeration of rights shall not be construed to deny or disparage others retained by the people; and, to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government, and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

ARTICLE III.

OF DEPARTMENTS.

SECTION 1. The powers of the government of the state of Arkansas shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

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

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of this state shall be vested in a general assembly, which shall consist of a senate, and a house of representatives.

SEC. 2. Every free white male citizen of the United States, who shall have attained the age of twenty-one years, and who shall have been a citizen of this state six months, shall be deemed a qualified elector, and be entitled to vote in the county or district where he actually resides, for each and every office made elective under this state, or under the United States: Provided, That no soldier, seaman, or marine, in the army or navy of the United States, shall be entitled to vote at any election within this state.

SEC. 3. The house of representatives shall consist of members to be chosen every second year, by the qualified electors of the several counties.

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

SEC. 5. The senate shall consist of members to be chosen every four years, by the qualified electors of the several districts.

SEC. 6. No person shall be a senator, who shall not have attained the age of thirty years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state one year; and who shall not, at the time of his election, have an actual residence in the district he may be chosen to represent.

SEC. 7. The general assembly shall meet every two years, on the first Monday of November, at the seat of government, until altered by law.

SEC. 8. All general elections shall be viva voce until otherwise directed by law, and shall commence and be holden every two years, on the first Monday in October, until altered by law; and the electors in all cases except in cases of treason, felony and breach of the peace, shall be privileged from arrest during their attendance on elections, and in going to and returning therefrom.

SEC. 9. The governor shall issue writs of election to fill such vacancies as shall occur in either house of the general assembly.

SEC. 10. No judge of the supreme, circuit or inferior courts of law or equity, secretary of state, attorney for the state, state auditor or treasurer, register or recorder, clerk of any court of record, sheriff, coroner, member of congress, nor any other person holding any lucrative office under the United States or this state (militia officers, justices of the peace, post

masters and judges of the county court excepted), shall be eligible to a seat in either house of the general assembly.

SEC. 11. No person who now is, or shall be hereafter, a collector or holder of public money, nor any assistant or deputy of such holder or collector of public money, shall be eligible to a seat in either house of the general assembly, nor to any office of profit or trust, until he shall have accounted for and paid over all sums for which he may have been liable.

SEC. 12. The general assembly shall exclude from every office of trust or profit, and from the right of suffrage, within this state, all persons convicted of bribery, perjury, or other infamous crime.

SEC. 13. Every person who shall have been convicted of directly or indirectly giving or offering any bribe, to procure his election or appointment, shall be disqualified from holding any office of trust or profit under this state; and any person who shall give or offer any bribe to procure the election or appointment of any person, shall, on conviction thereof, be disqualified from being an elector, or from holding office of trust or profit under this state.

SEC. 14. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased, during his continuance of office, except to such office as shall be filled by the election of the people.

SEC. 15. Each house shall appoint its own officers, and shall judge of the qualifications, returns and elections of its own members. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as each house shall provide.

SEC. 16. Each house may determine the rule of its proceedings, punish its own members for disorderly behavior, and, with the concurrence of two-thirds of the members elected, expel a member; but no member shall be expelled a second time for the same offence. They shall each from time to time,

publish a journal of their proceedings, except such parts as may in their opinion require secrecy; and the yeas and nays upon any question shall be entered on the journal, at the desire of any five members.

SEC. 17. The door of each house, when in session or in committee of the whole, shall be kept open, except in cases which may require secrecy; and each house may punish by fine and imprisonment, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in their presence, during their session; but such imprisonment shall not extend beyond the final adjournment of that session.

SEC. 18. Bills may originate in either house, and be amended or rejected in the other; and every bill shall be read on three different days in each house, unless two-thirds of the house where the same is pending shall dispense with the rules. And every bill having passed both houses, shall be signed by the president of the senate and the speaker of the house of representatives.

SEC. 19. Whenever an officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house of the general assembly, the vote shall be taken *viva voce*, and entered on the journal.

SEC. 20. The senators and representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest, during the session of the general assembly, and for fifteen days before the commencement and after the termination of each session; and for any speech or debate in either house, they shall not be questioned in any other place.

SEC. 21. The members of the general assembly shall severally receive, from the public treasury, compensation for their services, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made.

SEC. 22. The general assembly shall direct by law, in what courts, and in what manner suits may be commenced against the state.

SEC. 23. They shall have power to pass all laws that are necessary to prohibit the introduction into this state of any slave or slaves, who may have committed any high crime, in any other state or territory.

SEC. 24. The general assembly shall not have power to pass any bill of divorce; but may prescribe by law the manner in which such cases shall be investigated in the courts of justice and divorces granted.

SEC. 25. The general assembly shall have power to prohibit the introduction of any slave or slaves, for the purpose of speculation, or as an article of trade or merchandise. To oblige the owner of any slave or slaves to treat them with humanity. And, in the prosecution of slaves for any crime, they shall not be deprived of an impartial jury; and any slave who shall be convicted of a capital offence, shall suffer the same degree of punishment as would be inflicted on a free white person, and no other; and courts of justice, before whom slaves shall be tried, shall assign them counsel for their defence.

SEC. 26. The governor, secretary of state, auditor, treasurer, and all the judges of the supreme, circuit and inferior courts of law and equity, and the prosecuting attorneys for the state, shall be liable to impeachment, for any malpractice or misdemeanor in office; but judgment in such cases shall not extend farther than removal from office, and disqualification to hold any office of honor, trust or profit under this state. The party impeached, whether convicted or acquitted, shall nevertheless be liable to be indicted, tried and punished, according to law.

SEC. 27. The house of representatives shall have the sole power of impeachment, and all impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be on oath or affirmation to do justice according to law and evidence. When the governor shall be tried, the chief justice of the supreme court shall preside; and no person shall be convicted without the concurrence of two-thirds of all the senators elected. And for reasonable cause, which shall not be sufficient ground of impeachment, the governor shall, on

the joint address of two-thirds of each branch of the legislature, remove from office the judges of supreme and inferior courts. Provided, The cause or causes of removal be spread on the journals, and the party charged be notified of the same, and heard by himself and counsel, before the vote is finally taken and decided.

SEC. 28. The appointment of all officers, not otherwise directed by this constitution, shall be made in such manner as may be prescribed by law. And all officers, both civil and military, acting under the authority of this state, shall, before entry on the duties of their respective offices, take an oath or affirmation to support the constitution of the United States and of this state, and to demean themselves faithfully in office.

SEC. 29. No county now established by law shall ever be reduced by the establishment of any new county or counties, to less than nine hundred square miles, nor to a less population than its ratio of representation in the house of representatives; nor shall any county be hereafter established which shall contain less than nine hundred square miles (except Washington county, which may be reduced to six hundred square miles), or a less population than would entitle each county to a member in the house of representatives.

SEC. 30. The style of the laws of this state shall be, "Be it enacted by the general assembly of the state of Arkansas."

SEC. 31. The state shall, from time to time, be divided into convenient districts, in such manner that the senate shall be based upon the free white male inhabitants of the state, each senator representing an equal number, as nearly as practicable; and until the first enumeration of the inhabitants shall be taken, the districts shall be arranged as follows:

The county of Washington shall compose one district and elect two senators.

The counties of Carroll, Searcy and Izard shall compose one district and elect one senator.

The counties of Independence and Jackson shall compose one district and elect one senator.

The counties of Lawrence and Randolph shall compose one district and elect one senator.

The counties of Johnson and Pope shall compose one district and elect one senator.

The counties of Crawford and Scott shall compose one district and elect one senator.

The counties of Conway and Van Buren shall compose one district and elect one senator.

The counties of Pulaski, White and Saline shall compose one district and elect one senator.

The counties of Hot Spring, Clark and Pike shall compose one district and elect one senator.

The counties of Hempstead and Lafayette shall compose one district and elect one senator.

The counties of Sevier and Miller shall compose one district and elect one senator.

The counties of Chicot and Union shall compose one district and elect one senator.

The counties of Arkansas and Jefferson shall compose one district and elect one senator.

The counties of Phillips and Monroe shall compose one district and elect one senator.

The counties of St. Francis and Greene shall compose one district and elect one senator.

The counties of Crittenden and Mississippi shall compose one district and elect one senator.

And the senate shall never consist of less than seventeen nor more than thirty-three members; and as soon as the senate shall meet after the first election to be held under this constitution, they shall cause the senators to be divided by lot into two classes—nine of the first class and eight of the second; and the seats of the first class shall be vacated at the end of two years from the time of their election, and the seats of the second class at the end of four years from the time of their election; in order that one class of the senators may be elected every two years.

SEC. 32. An enumeration of the inhabitants of the State shall be taken under the direction of the general assembly, on the first day of January, one thousand eight hundred and thirty-eight, and at the end of every four years thereafter; and the general assembly shall, at the first session after the return of every enumeration, so alter and arrange the senatorial districts that each district shall contain as nearly as practicable an equal number of free white male inhabitants. Provided, That Washington county, as long as its population shall justify the same, may, according to its numbers, elect more than one senator: and such districts shall then remain unaltered, until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senatorial district.

SEC. 33. The ratio of representation in the senate shall be fifteen hundred free white male inhabitants to each senator, until the senators amount to twenty-five in number; and then they shall be equally apportioned, upon the same basis, throughout the state, in such ratio as the increased numbers of free white male inhabitants may require, without increasing the senators to a greater number than twenty-five, until the population of the state amounts to five hundred thousand souls; and when an increase of senators takes place, they shall from time to time be divided by lot and classed as prescribed above.

SEC. 34. The house of representatives shall consist of not less than fifty-four, nor more than one hundred representatives, to be apportioned among the several counties in this state, according to the number of free white male inhabitants therein, taking five hundred as the ratio, until the number of representatives amounts to seventy-five; and when they amount to seventy-five they shall not be further increased until the population of the state amounts to five hundred thousand souls. Provided, That each county now organized shall, although its population may not give the existing ratio, always be entitled to one representative. And until the first enumeration shall be taken, the representatives shall be apportioned among the several counties, as follows:

The county of Washington shall elect six representatives.

The county of Scott shall elect one representative.

The county of Johnson shall elect two representatives.

The county of Pope shall elect two representatives.

The county of Conway shall elect one representative.

The county of Van Buren shall elect one representative.

The county of Carroll shall elect two representatives.

The county of Searcy shall elect one representative.

The county of Izard shall elect one representative.

The county of Independence shall elect two representatives.

The county of Crawford shall elect three representatives.

The county of Jackson shall elect one representative.

The county of Lawrence shall elect two representatives.

The county of Randolph shall elect two representatives.

The county of White shall elect one representative.

The county of Pulaski shall elect two representatives.

The county of Saline shall elect one representative.

The county of Hot Spring shall elect one representative.

The county of Clark shall elect one representative.

The county of St. Francis shall elect two representatives.

The county of Pike shall elect one representative.

The county of Hempstead shall elect two representatives.

The county of Miller shall elect one representative.

The county of Sevier shall elect one representative.

The county of Lafayette shall elect one representative.

The county of Union shall elect one representative.

The county of Arkansas shall elect two representatives.

The county of Jefferson shall elect one representative.

The county of Monroe shall elect one representative.

The county of Phillips shall elect two representatives.

The county of Greene shall elect one representative.

The county of Crittenden shall elect two representatives.

The county of Mississippi shall elect one representative.

The county of Chicot shall elect two representatives.

And at the first session of the general assembly after the return of every enumeration, the representation shall be equally divided and reapportioned among the several counties, accord-

ing to the number of free white males in each county, as above prescribed.

The general assembly may at any time propose such amendments to this constitution as two-thirds of each house shall deem expedient, which shall be published in all the newspapers published in this state, three several times, at least twelve months before the next general election; and if, at the first session of the general assembly after such general election, two-thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes, as parts of this constitution. Provided, That such proposed amendments shall be read on three several days, in each house, as well when the same are proposed, as when they are finally ratified.

ARTICLE V.

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 Arkansas."

SEC. 2. The governor shall be elected by the qualified electors, at the time and places where they shall respectively vote for representatives.

SEC. 3. The returns of every election for governor shall be sealed up and transmitted to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in the presence of both houses of the general assembly. The person having the highest number of votes shall be the governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

SEC. 4. The governor shall hold his office for the term of four years from the time of his installation, and until his successor shall be duly qualified; but he shall not be eligible for more than eight years in any term of twelve years. He shall

be at least thirty years of age, a native born citizen of Arkansas, or a native born citizen of the United States, or a resident of Arkansas ten years previous to the adoption of this constitution, if not a native of the United States; and shall have been a resident of the same at least four years next before his election.

SEC. 5. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive, within that period, any other emolument from the United States, or any one of them, or from any foreign power.

SEC. 6. He shall be commander-in-chief of the army of this state, and of the militia thereof, except when they shall be called into the service of the United States.

SEC. 7. He may require any information, in writing, from the officers of the executive department, on any subject relating to the duties of their respective offices.

SEC. 8. He may, by proclamation, on extraordinary occasions, convene the general assembly, at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or from contagious diseases. In case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next meeting of the general assembly.

SEC. 9. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant pardons, after conviction, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason, he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and

he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly.

SEC. 12. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and the present seal of the territory shall be the seal of the state, until otherwise directed by the general assembly.

SEC. 13. All commissions shall be in the name and by the authority of the state of Arkansas, be sealed with the seal of this state, signed by the governor, and attested by the secretary of state.

SEC. 14. There shall be a secretary of state, elected by a joint vote of both houses of the general assembly, who shall continue in office during the term of four years, and until his successor in office be duly qualified. He 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 the general assembly; and shall perform such other duties as may be required by law.

SEC. 15. Vacancies that may happen in offices, the election to which is vested in the general assembly, shall be filled by the governor during the recess of the general assembly, by granting commissions, which shall expire at the end of the next session.

SEC. 16. Every bill which shall have passed both houses, shall be presented to the governor. If he approve, he shall sign it; but if he shall not approve it, he shall return it, with his objections, to the house in which it shall have originated, who shall enter his objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which, likewise, it shall be reconsidered; and if approved by a majority of the whole number elected to that house, it shall be a law; but, in such cases, the votes of both houses shall be determined by yeas and nays: and the names of the persons voting for or against the bill, shall be entered on the journals of each house respectively. If any bill shall not be

returned by the governor within 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 general assembly, by their adjournment, prevent its return; in such case it shall not be a law.

SEC. 17. Every order or resolution, to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the governor, and before it shall take effect, be approved by him, or being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the case of a bill.

SEC. 18. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the president of the senate shall exercise all the authority appertaining to the office of governor, until another governor shall have been elected and qualified, or until the governor, absent or impeached, shall return or be acquitted.

SEC. 19. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the house of representatives shall, in like manner, administer the government.

SEC. 20. The president of the senate, and speaker of the house of representatives, during the time they respectively administer the government, shall receive the same compensation which the governor would have received, had he been employed in the duties of his office.

SEC. 21. Whenever the office of governor shall have become vacant, by death, resignation, removal from office, or otherwise, provided such vacancy shall not happen within eighteen months of the term for which the late governor shall have been elected, the president of the senate, or speaker of the house of representatives, as the case may be, exercising the powers of governor for the time being, shall immediately cause an election to be held to fill such vacancy, giving, by proclamation, sixty days' previous notice thereof, which elec-

tion shall be governed by the same rules prescribed for general elections of governor, as far as applicable; the returns shall be made to the secretary of state, who, in presence of the acting governor, and judges of the supreme court, or one of them at least, shall compare them, and together with said acting governor and judges, declare who is elected; and if there be a contested election, it shall be decided by the judges of the supreme court, in manner to be prescribed by law.

SEC. 22. The governor shall always reside at the seat of government.

SEC. 23. No person shall hold the office of governor and any other office or commission, civil or military, either in this state, or under any state, or the United States, or any other power, at one and the same time.

SEC. 24. There shall be elected, by the joint vote of both houses of the general assembly, an auditor and treasurer for this state, who shall hold their offices for the term of two years, and until their respective successors are elected and qualified, unless sooner removed; and shall keep their respective offices at the seat of government, and perform such duties as shall be prescribed by law. And in case of vacancy, by death, resignation, or otherwise, such vacancy shall be filled by the governor, as in other cases.

MILITIA.

SECTION 1. The militia of this state shall be divided into convenient divisions, brigades, regiments and companies, and officers of corresponding titles and rank elected to command them, conforming, as nearly as practicable, to the general regulations of the army of the United States.

SEC. 2. Major generals shall be elected by the brigadier generals and field officers of their respective divisions; brigadier generals shall be elected by the field officers and commissioned company officers of their respective brigades; field officers shall be elected by the officers and privates of their respective regiments; and captains and subaltern officers shall be elected by those subject to military duty in their respective companies.

SEC. 3. The governor shall appoint the adjutant general and other members of his staff; and major generals, brigadier generals, and commanders of regiments, shall respectively appoint their own staff. And all commissioned officers may continue in office during good behavior; and staff officers during the same time, subject to be removed by the superior officer from whom they respectively derive their commissions.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of this state shall be vested in one supreme court, in circuit courts, in county courts, and in justices of the peace. The general assembly may also vest such jurisdiction as may be deemed necessary in corporation courts, and when they deem it expedient, may establish courts of chancery.

SEC. 2. The supreme court shall be composed of three judges, one of whom shall be styled chief justice, any two of whom shall constitute a quorum, and the concurrence of any two of said judges shall, in every case, be necessary to a decision. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations as may, from time to time, be prescribed by law. It shall have a general superintending control over all inferior and other courts of law and equity. It shall have power to issue writs of error and supersedeas, certiorari and habeas corpus, mandamus and quo warranto, and other remedial writs, and to hear and determine the same. Said judges shall be conservators of the peace throughout the state, and shall severally have power to issue any of the aforesaid writs.

SEC. 3. The circuit court shall have original jurisdiction over all criminal cases which shall not be otherwise provided for by law; and exclusive original jurisdiction of all crimes amounting to felony at the common law; and original jurisdiction of all civil cases which shall not be cognizable before

justices of the peace, until otherwise directed by the general assembly; and original jurisdiction in all matters of contract, where the sum in controversy is over one hundred dollars. It shall hold its terms at such place in each county as may be by law directed.

SEC. 4. The state shall be divided into convenient circuits, each to consist of not less than five, nor more than seven counties contiguous to each other, for each of which a judge shall be elected, who, during his continuance in office, shall reside and be a conservator of the peace within the circuit for which he shall have been elected.

SEC. 5. The circuit courts shall exercise a superintending control over the county courts, and over justices of the peace, in each county in their respective circuits; and shall have power to issue all the necessary writs to carry into effect their general and specific powers.

SEC. 6. Until the general assembly shall deem it expedient to establish courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the supreme court, in such manner as may be prescribed by law.

SEC. 7. The general assembly shall, by joint vote of both houses, elect the judges of the supreme and circuit courts, a majority of the whole number in joint vote being necessary to a choice. The judges of the supreme court shall be at least thirty years of age; they shall hold their offices during the term of eight years from the date of their commissions. Immediately after such election, by the first general assembly, the president of the senate and speaker of the house of representatives shall proceed by lot to divide the judges into three classes. The commission of the first class shall expire at the end of four years; of the second class at the end of six years; and of the third class at the end of eight years, so that one-third of the whole number shall be chosen every four, six and eight years. The judges of the circuit court shall be at least twenty-five years of age, and shall be elected for the term of four years from the date of their commissions. The supreme court shall appoint its own clerk or clerks, for the term of four years. The

qualified voters of each county shall elect a clerk of the circuit court for their respective counties, who shall hold his office for the term of two years; and courts of chancery, if any be established, shall appoint their own clerks.

SEC. 8. The judges of the supreme and circuit courts shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this state or the United States. The state's attorneys, and clerks of the supreme and circuit courts, and courts of chancery, if any such be established, shall receive for their services such salaries, fees and perquisites of office as shall be from time to time fixed by law.

SEC. 9. There shall be established in each county in the state a court to be holden by the justices of the peace and called the county court, which shall have jurisdiction in all matters relating to county taxes, disbursements of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties.

SEC. 10. There shall be elected, by the justices of the peace of the respective counties, a presiding judge of the county court, to be commissioned by the governor, and hold his office for the term of two years, and until his successor is elected and qualified. He shall, in addition to the duties that may be required of him by law, as a presiding judge of the county court, be a judge of the court of probate, and have such jurisdiction in matters relative to the estates of deceased persons, executors, administrators and guardians, as may be prescribed by law, until otherwise directed by the general assembly.

SEC. 11. The presiding judge of the county court and justices of the peace shall receive for their services such compensation and fees as the general assembly may from time to time by law direct.

SEC. 12. No judge shall preside on the trial of any cause, in the event of which he may be interested, or where either of

the parties shall be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or in which he may have been of counsel, or have presided in any inferior court, except by consent of all the parties. In case all or any of the judges of the supreme court shall be thus disqualified from presiding on any cause or causes, the court or judges thereof shall certify the same to the governor of the state, and he shall immediately commission specially the requisite number of men, of law knowledge, for the trial and determination thereof. The same course shall be pursued in the circuit and other inferior courts, as prescribed in this section for cases in the supreme court. Judges of the circuit courts may temporarily exchange circuits, or hold courts for each other, under such regulations as may be pointed out by law. Judges shall not charge juries with regard to matter of fact; but may state the testimony and declare the law.

SEC. 13. The general assembly shall, by a joint vote of both houses, elect an attorney for the state for each circuit established by law, who shall continue in office two years, and reside within the circuit for which he was elected at the time of and during his continuance in office. In all cases where an attorney for the state of any circuit fails to attend and prosecute according to law, the court shall have power to appoint an attorney pro tempore. The attorney for the circuit in which the supreme court may hold its terms, shall attend the supreme court and prosecute for the state.

SEC. 14. All writs and other process shall run in the name of the "State of Arkansas," and bear teste and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude "against the peace and dignity of the state of Arkansas."

SEC. 15. The qualified voters residing in each township shall elect the justices of the peace for their respective townships. For every fifty voters there may be elected one justice of the peace. Provided, That each township, however small, shall have two justices of the peace. Justices of the peace shall be elected for the term of two years, and shall be commissioned

by the governor, and reside in the townships for which they were elected, during their continuance in the office. They shall have, individually, or two or more of them jointly, exclusive original jurisdiction in all matters of contract, except in actions of covenant, where the sum in controversy is of one hundred dollars and under. Justices of the peace shall in no case have jurisdiction to try and determine any criminal case or penal offence against the state; but may sit as examining courts, and commit, discharge, or recognize to the court having jurisdiction, for further trial, offenders against the peace. For the foregoing purposes they shall have power to issue all necessary process. They shall also have power to bind to keep the peace, or for good behavior.

SEC. 16. The qualified voters of each township shall elect one constable, for the term of two years, who shall, during his continuance in office, reside in the township for which he was elected. Incorporated towns may have a separate constable and a separate magistracy.

SEC. 17. The qualified voters of each county shall elect one sheriff, one coroner, one treasurer, and one county surveyor, for the term of two years. They shall be commissioned by the governor, reside in their respective counties during their continuance in office, and be disqualified for the office a second term, if it should appear that they or either of them are in default for any moneys collected by virtue of their respective offices.

ARTICLE VII.

GENERAL PROVISIONS—EDUCATION.

Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government—and diffusing the opportunities and advantages of education through the various parts of the state being highly conducive to this end—it shall be the duty of the general assembly to provide by law for the improvement of such lands as are or hereafter may be granted by the United States to this state for the use of schools, and to apply any funds which may be raised

from such lands, or from any other source, to the accomplishment of the object for which they are or may be intended. The general assembly shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientific and agricultural improvement, by allowing rewards and immunities for the promotion and improvement of arts, science, commerce, manufactures, and natural history; and countenance and encourage the principles of humanity, industry and morality.

EMANCIPATION OF SLAVES.

SECTION 1. The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of the owners. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States. They shall have power to pass laws to permit owners of slaves to emancipate them, saving the right of creditors, and preventing them from becoming a public charge. They shall have power to prevent slaves from being brought to this state as merchandise, and also to oblige the owners of slaves to treat them with humanity.

SEC. 2. 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 testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 3. No person who denies the being of a God shall hold any office in the civil department of this state, nor be allowed his oath in any court.

SEC. 4. No money shall be drawn from the treasury but in consequence of an appropriation by law, nor shall any appropriation of money for the support of an army be made for a longer term than two years; and a regular statement and account of the receipts and expenditures of all public money shall be published with the promulgation of the laws.

SEC. 5. Absence on business of this state or of the United States, or on a visit or necessary private business, shall not cause a forfeiture of a residence once obtained.

SEC. 6. No lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.

SEC. 7. Internal improvements shall be encouraged by the government of this state; and it shall be the duty of the general assembly, as soon as may be, to make provision by law for ascertaining the proper objects of improvement in relation to roads, canals and navigable waters; and it shall also be their duty to provide by law for an equal, systematic and economical application of the funds which may be appropriated to these objects.

SEC. 8. Returns for all elections for officers who are to be commissioned by the governor, and for members of the general assembly, shall be made to the secretary of state.

SEC. 9. Within five years after the adoption of this constitution, the laws, civil and criminal, shall be revised, digested and arranged, and promulgated in such manner as the general assembly may direct; and a like revision, digest and promulgation shall be made within every subsequent period of ten years.

SEC. 10. In the event of the annexation of any territory to this state, by a cession from the United States, laws may be passed extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession, anything in this constitution to the contrary notwithstanding.

SEC. 11. The person of a debtor, except where there is strong presumption of fraud, shall neither be imprisoned nor continued in prison, after delivering up his estate for the benefit of his creditors, in such manner as may be prescribed by law.

REVENUE.

SECTION 1. All revenue shall be raised by taxation, to be fixed by law.

SEC. 2. All property subject to taxation, shall be taxed according to its value—that value to be ascertained in such manner as the general assembly shall direct; making the same equal and uniform throughout the state. No one species

of property, from which a tax may be collected, shall be taxed higher than another species of property, of equal value; *Provided*, The general assembly shall have power to tax merchants, hawkers, peddlers and privileges, in such a manner as may from time to time be prescribed by law: *And provided further*, That no other or greater amount of revenue shall at any time be levied than required for the necessary expenses of the government, unless by a concurrence of two-thirds of both houses of the general assembly.

SEC. 3. No poll tax shall be assessed for other than county purposes.

SEC. 4. No other or greater tax shall be levied on the productions or labor of the country, than may be required for expenses of inspection.

ESTABLISHMENT OF BANKS.

SECTION 1. The general assembly may incorporate one state bank, with such amount of capital as may be deemed necessary, and such number of branches as may be required for the public convenience, which shall become the repository of the funds belonging to or under the control of the state; and shall be required to loan them out throughout the state, and in each county, in proportion to representation. And they shall further have power to incorporate one other banking institution, calculated to aid and promote the great agricultural interests of the country; and the faith and credit of the state may be pledged to raise the funds necessary to carry into operation the two banks herein specified: *Provided*, Such security can be given by the individual stockholders as will guarantee the state against loss or injury.

SCHEDULE.

SECTION 1. That no inconvenience may arise from the change of government, we declare that all writs, actions, prosecutions, judgments, claims and contracts of individuals and bodies corporate, shall continue as if no change had taken place; and all process which may be issued under the authority of the territory of Arkansas, previous to the admission of

Arkansas into the union of the United States, shall be as valid as if issued in the name of the state.

SEC. 2. All laws now in force in the territory of Arkansas, 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.

SEC. 3. All fines, penalties and escheats accruing to the territory of Arkansas, shall accrue to the use of the state.

SEC. 4. All recognizances heretofore taken, or which may be taken before the change of territorial to a permanent state government, shall remain valid, and shall pass over to, and be prosecuted in the name of the state; and all bonds executed to the governor of the territory, or to any other officer or court, in his or their official capacity, shall pass over to the governor or other state authority, and 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 may have arisen, or which may arise, before the change from a territorial to a state government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the state. All actions at law, which now are or may be pending in any of the courts of record in the territory of Arkansas, may be commenced in or transferred to any court of record of the state which shall have jurisdiction of the subject matter thereof; and all suits in equity may, in like manner, be commenced in or transferred to the court having chancery jurisdiction.

SEC. 5. All officers, civil and military, now holding commissions under authority of the United States, or of the territory of Arkansas, shall continue to hold and exercise their respective offices until they shall be superseded under the authority of the state.

SEC. 6. The first session of the general assembly of the state of Arkansas shall be held at the city of Little Rock, which shall be and remain the seat of government until otherwise provided for by law.

SEC. 7. Elections shall be held at the several precincts, on the first Monday of August next, for a governor; also one representative to the congress of the United States; also, for senators and representatives to the next general assembly, clerks of the circuit and county courts, sheriffs, coroners, county surveyors and treasurers, justices of the peace and constables.

SEC. 8. The next general assembly shall be holden on the second Monday of September next.

SEC. 9. The election shall be conducted according to the existing laws of the territory of Arkansas; and the returns of all township elections held in pursuance thereof, shall be made to the clerks of the proper counties, within five days after the day of election. The clerks of the circuit courts of the several counties shall immediately thereafter certify the returns of the election of governor, and transmit the same to the speaker of the house of representatives, at the seat of government, in such time that they may be received on the second Monday of September next. As soon as the general assembly shall be organized, the speaker of the house of representatives and the president of the senate shall, in the presence of both houses, examine the returns, and declare who is duly elected to fill that office; and if any two or more persons shall have an equal number of votes, and a higher number than any other person, the general assembly shall determine the election by a joint vote of both houses; and the returns of the election for member to congress shall be made to the secretary of state, within thirty days after the day of election.

SEC. 10. The oaths of office may be administered by any judge or justice of the peace, until the general assembly shall otherwise direct.

Done in convention, at Little Rock, in the state of Arkansas, the thirtieth day of January, in the year of our Lord eighteen hundred and thirty-six, and in the sixtieth year of the independence of the United States of America.

JOHN WILSON,

President of the Convention, and Representative from the County of Clark.

JOHN ADAMS,
 WM. MCK. BALL,
 JAMES WOODSON BATES,
 MARK BEAN,
 HENRY LAWSON BISCOE,
 JAMES BOONE,
 R. C. S. BROWN,
 JOHN D. CALVERT,
 LORENZO N. CLARK,
 JOHN CLARK,
 J. S. CONWAY,
 WILLIAM CUMMINS,
 ANTHONY H. DAVIES,
 TOWNSEND DICKINSON,
 G. MARSHALL,
 G. L. MARTIN,
 ANDREW J. MAY,
 ROBERT McCAMY,
 JOSEPH W. MCKEAN,
 JOHN McLAIN,
 NIMROD MENIFEE,
 THOMAS MURRAY, JR.
 JOHN RINGGOLD,
 SAM C. ROANE,
 JOHN ROBINSON,

JOHN DRENNEN,
 THOMAS S. DREW,
 WRIGHT W. ELLIOTT,
 TERENCE FARRELLY,
 GEORGE W. FEREBEE,
 ABSALOM FOWLER,
 GEORGE HALBROOK,
 ELIJAH KELLY,
 JOHN F. KING,
 THOMAS J. LACY,
 JOHN L. LAFFERTY,
 BUSHROD W. LEE,
 DAVID W. LOWE,
 CALEB S. MANLEY,
 GRANDISON D. ROYSTON,
 CHARLES R. SAUNDERS,
 ANDREW SCOTT,
 HENRY SLAVENS,
 ROBERT SMITH,
 WILLIAM STRONG,
 JAMES H. WALKER,
 DAVID WALKER,
 JOSIAH N. WILSON,
 ABRAHAM WHINNERY,
 TRAVIS G. WRIGHT.

CHARLES P. BERTRAND, *Secretary to the Convention.*

AMENDMENTS TO THE CONSTITUTION OF ARKANSAS.

Proposed by the general assembly, begun and held at the city of Little Rock, in the state of Arkansas, on the first Monday of November, one thousand eight hundred and forty-four, and ratified by the general assembly, begun and held at the city of Little Rock, on the first Monday of November, one thousand eight hundred and forty-six :

1. No bank or banking institution shall be hereafter incorporated, or established in this state.

2. The general assembly shall have power to compel the judges of the circuit courts to interchange circuits, either temporarily or permanently, under such regulations as may be provided by law.

3. The general assembly shall have power to confer such jurisdiction, as it may from time to time deem proper, on justices of the peace in all matters of contract, covenants, and in actions for the recovery of fines and forfeitures, when the amount claimed does not exceed one hundred dollars, and in actions and prosecutions for assault and battery, and other penal offenses less than felony, which may be punishable by fine only.

4. Judges of the supreme and circuit courts, clerks of the supreme and circuit courts, attorneys for the state, sheriffs, coroners, county treasurers, justices of the peace, constables, and all other officers whose term is fixed by the constitution to a specific number of years, shall hold their respective offices for the term now specified, and until their successors are elected and qualified.

Ratified November 17, 1846.

Proposed by the general assembly, begun and held at the city of Little Rock, in the state of Arkansas, on the first Monday of November, one thousand eight hundred and forty-six, and ratified by the general assembly, begun and held at the city of Little Rock, on the first Monday of November, one thousand eight hundred and forty-eight :

1. That the qualified voters of each judicial circuit in the state of Arkansas shall elect their circuit judge.

2. That the qualified voters of each judicial circuit shall elect their prosecuting attorney for the state.

3. That the qualified voters of each county shall elect a county and probate judge.

4. That no member of the general assembly shall be elected to any office within the gift of the general assembly during the term for which he shall have been elected.

5. That the general assembly of the state of Arkansas shall not be restricted as to the number of counties that shall compose a judicial circuit in this state.

Ratified November 24, 1848.

Proposed by the general assembly begun and held at the city of Little Rock, in the state of Arkansas, on the first Monday of November, one thousand eight hundred and forty-eight, and ratified by the general assembly, begun and held at the city of Little Rock, on the first Monday of November, one thousand eight hundred and fifty, viz.:

That the words, "except Washington county, which may be reduced to six hundred square miles," included in parentheses in section 29 of article IV, be stricken out of said constitution.

Ratified December 2, 1850.

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APPENDIX.

CONSTITUTION

OF THE

STATE OF ARKANSAS

OF 1861.

PREAMBLE.

We, the people of the state of Arkansas, by our delegates in convention assembled, at Little Rock, on Monday, the 4th day of March, A. D. 1861, having the right to change, alter, or amend our constitution, or organic law, in order to secure to ourselves and our posterity, the enjoyment of all the rights of life, liberty and property, and the pursuit of happiness, do mutually agree with each other to continue ourselves as a free and independent state, by the name and style of "The State of Arkansas," and do ordain and establish the following constitution for the future government thereof:

ARTICLE I.

BOUNDARIES OF THE STATE.

We do declare and establish, ratify and confirm the following as the permanent boundaries of the state of Arkansas, that is to say: Beginning in the middle of the main channel of the Mississippi river, on the parallel of thirty-six degrees north latitude, running from thence west with the said parallel

of latitude to the St. Francis river; thence up the middle of the main channel of said river, to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the state of Missouri; and from thence to be bounded on the west to the north bank of Red river, as by acts of congress of the United States and the treaties heretofore defining the western limits of the territory of Arkansas; and to be bounded on the south side of Red river by the boundary line of the state of Texas, to the northwest corner of the state of Louisiana; thence east with the Louisiana state line to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of said river, to the thirty-sixth degree of north latitude, the point of beginning; these being the boundaries of the state of Arkansas, as defined by the constitution thereof, adopted by a convention of the representatives of the people of said state, on the 30th day of January, anno domini eighteen hundred and thirty-six, being the same boundaries which limited the area of the territory of Arkansas, as it existed prior to that time.

ARTICLE II.

DECLARATION OF RIGHTS.

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

SECTION 1. That all free white men, when they form a social compact, are equal, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty; of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness.

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

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

SEC. 4. That the civil rights, privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

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

SEC. 6. That the right of trial by jury shall remain inviolate to free white men and Indians.

SEC. 7. That printing presses shall be free to every person; and no law shall ever be made to restrain the rights thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject—being responsible for the abuse of that liberty.

SEC. 8. In prosecutions for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is matter for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury have the right to determine the law and the facts.

SEC. 9. That the people shall be secure in their persons, houses, papers, valuables and possessions from unreasonable searches and seizures; and that general warrants, whereby any officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty, and shall not be granted.

SEC. 10. That no free white man, or Indian, shall be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or

deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.

SEC. 11. That in all criminal prosecutions against free white men and Indians, the accused shall have the right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial by an impartial jury of the county or district in which the crime may be charged to have been committed, and shall not be compelled to give evidence against himself.

SEC. 12. That no person shall, for the same offence, be twice put in jeopardy of life or limb.

SEC. 13. That all penalties shall be reasonable and proportioned to the nature of the offence.

SEC. 14. That no free white man, or Indian, shall be put to answer to any criminal charge, punishable by death or imprisonment in a jail or penitentiary, but by presentment, indictment or impeachment.

SEC. 15. That no conviction shall work corruption of blood or forfeiture of the estate of the convict.

SEC. 16. That all free white prisoners, Indians included, shall be bailable by sufficient securities, unless in capital offences, where the proof is evident or the presumption is great. And the privilege of the writ of *habeas corpus* shall not be suspended, unless in case of rebellion or invasion, where the public safety may require it.

SEC. 17. That excessive bail shall in no case be required, nor excessive fines imposed.

SEC. 18. That no *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.

SEC. 19. That no perpetuities or monopolies shall ever be allowed or granted, nor shall any hereditary emolument, privileges or honors be conferred or granted in this state.

SEC. 20. That citizens have the right, in a peaceable manner, to assemble for their common good, to instruct their rep-

representatives, and to apply to those invested with the power of the government, for redress of grievances or other proper purposes, by address or remonstrance.

SEC. 21. That the free white men and Indians of this state have the right to keep and bear arms for their individual or common defence.

SEC. 22. That no soldier shall be quartered, in time of peace, in any house, without the consent of the owner; nor in time of war, but in a manner prescribed by law.

SEC. 23. The military shall be kept in strict subordination to the civil power.

SEC. 24. This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government, and shall forever remain inviolate, and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

ARTICLE III.

OF DEPARTMENTS.

SECTION 1. The powers of the government of the state of Arkansas shall be divided into three distinct departments, each of which to be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

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

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of this state shall be vested in a general assembly, which shall consist of a senate and a house of representatives.

SEC. 2. Every free white male citizen of the Confederate States of America, who shall have attained the age of twenty-one years, and shall have been a citizen of the state six months next preceding the election at which he may desire to vote, shall be deemed a qualified elector and be entitled to vote in the county or district where he actually resides, for each and every office made elective under this state or the constitution and laws of the Confederate States of America. *Provided,* That no soldier, seaman or marine in the army or navy of the Confederate States of America shall be entitled to vote at any election within this state.

SEC. 3. The house of representatives shall consist of members to be chosen every two years, by the qualified electors of the several counties, at such time as the general assembly has prescribed, or may hereafter prescribe.

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

SEC. 5. The senate shall consist of members, to be chosen every four years by the qualified electors of the several districts, as they are now, or may be hereafter arranged by the general assembly. The election for senators shall take place at the time now appointed, or which may hereafter be appointed by law.

SEC. 6. No person shall be a senator who shall not have attained the age of thirty years; who shall not be a free white male citizen of the Confederate States of America; who shall not have been an inhabitant of this state one year, next preceding his election, and who, at the time thereof, shall not have an actual residence in the district he may be chosen to represent.

SEC. 7. The general assembly shall meet every two years, on the first Monday in November, or at such time as may

hereafter be appointed for that purpose by that body, and at the capitol, in the city of Little Rock, until otherwise directed by law.

SEC. 8. All general elections shall be by ballot, until otherwise directed by law, and shall be held every two years, on the first Monday in October, until altered by law. The first general election to be hereafter held on the first Monday in October, eighteen hundred and sixty-two. The electors, in all cases, except in cases of treason, felony and breach of the peace, shall be privileged from arrest during their attendance on elections, and in going to and returning therefrom.

SEC. 9. The governor shall issue writs of election to fill such vacancies as may occur in either branch of the general assembly.

SEC. 10. Militia officers, justices of the peace, and postmasters, are declared to be eligible to either branch of the general assembly; but no person who now is, or who shall hereafter be a collector or holder of public money, nor any assistant or deputy of such holder or collector of public money, shall be eligible to either branch of the general assembly, nor to any office of profit or trust, until he shall have accounted for and paid over all sums for which he may be liable; and no person holding any office of trust or profit, under the Confederate States (except postmasters) shall be eligible to any office of trust or profit belonging to either of the three departments of this state.

SEC. 11. Persons convicted of bribery, perjury or other infamous crime, are excluded from every office of trust or profit, and from the right of suffrage in this state.

SEC. 12. Persons convicted of giving or offering any bribe to procure their own election or appointment, or that of any one else, to any office, are ineligible to any office of profit or trust, and are disqualified from voting at any election in this state.

SEC. 13. No member of the general assembly shall be elected or appointed to any civil office in this state, which shall have been created, or the emoluments of which shall have been

increased, whilst he was a member thereof, except he be elected to such office by a vote of the people; and that no member of the general assembly shall be elected to any office within the gift of the general assembly during the term for which he shall have been elected.

SEC. 14. Each house of the general assembly shall appoint its own officers, and shall judge of the qualifications, returns and elections of its own members. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may provide.

SEC. 15. Each house may determine the rule of its proceedings, punish its own members for disorderly behavior, and, with the concurrence of two-thirds of the members elected, expel a member; but no member shall be expelled a second time for the same offence. They shall each, from time to time, publish a journal of their proceedings, except such parts as may, in their opinion, require secrecy; and the yeas and nays upon any question shall be entered on the journal, by the request of any five members.

SEC. 16. The door of each house, when in session, or in committee of the whole, shall be kept open, except in cases which may require secrecy; and each house may punish by fine and imprisonment, any person not a member, who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in its presence when in session; but such imprisonment shall not extend beyond the final adjournment of that session.

SEC. 17. Bills may originate in either house, and be amended or rejected in the other; and every bill shall be read on three different days in each house, unless two-thirds of the house where the same is pending, shall dispense with the rules; and every bill having passed both houses, shall be signed by the president of the senate and speaker of the house of representatives.

SEC. 18. Whenever an officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house of the general assembly, the vote shall be taken *viva voce*, and entered on the journal.

SEC. 19. The senators and representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and for fifteen days before the commencement and after the termination of each session; and for any speech or debate in either house, they shall not be questioned in any other place.

SEC. 20. The members of the general assembly shall severally receive from the public treasury compensation for their services, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made.

SEC. 21. The general assembly may direct, by law, in what courts, and in what manner, suits may be commenced against the state.

SEC. 22. The general assembly may prohibit the introduction into this state, of any slave or slaves who may have committed any high crime in any other state or territory. The introduction of slaves into this state for sale, trade, speculation or merchandise, may be prohibited by the general assembly.

SEC. 23. The general assembly shall not have power to pass any bill of divorce; but may prescribe by law the manner in which such cases shall be investigated in the courts of justice, and divorces be granted.

SEC. 24. The general assembly may, by law, oblige owners of slaves to treat them with humanity, and may prescribe a code of laws defining their rights, regulating their intercourse with each other, and their relations with the free white people of this state; defining crimes which may be committed by slaves; prescribing appropriate punishment for such crimes, and providing courts for the trial of slaves, and the mode of proceeding in such courts.

SEC. 25. The governor, secretary of state, auditor, treasurer, the judges of the supreme court, the judges of the several

circuit courts, and other inferior courts of law and equity, and the several prosecuting attorneys for the state, shall be liable to impeachment, for any malpractice or misdemeanor in office; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust or profit under this state; the party impeached, whether convicted or acquitted, shall nevertheless be liable to be indicted, tried and punished according to law.

SEC. 26. The house of representatives shall have the sole power of impeachment, and all impeachments shall be tried by the senate, and, when sitting for that purpose, the senators shall be on oath or affirmation, to do justice according to law and evidence. When the governor shall be tried, the chief justice of the supreme court shall preside, and no person shall be convicted without the concurrence of two-thirds of all the senators elected; and for reasonable cause, which shall not be sufficient ground for impeachment, the governor shall, on the joint address of two-thirds of each branch of the general assembly, remove from office the judges of the supreme and other courts. *Provided*, The cause, or causes of removal be spread on the journals, and the party charged be notified of the same, and heard, by himself and counsel, before the vote is finally taken and decided.

SEC. 27. The appointment or election of all officers, not otherwise directed by this constitution, shall be made in such manner as may be prescribed by law; and all such officers, civil and military, under the authority of this state, shall, before they enter on their duties, take the following oath or affirmation, that is to say, "I, — — —, do solemnly swear or affirm, that I will support the constitution of the Confederate States of America, and of this state, and will abide and observe all the ordinances passed by the convention of the people of this state, and will demean myself faithfully in office." When the ordinances of this convention expire, every officer of this state shall take an oath to support the constitution of the Confederate States of America, and of the state of Arkansas, and faithfully demean himself in office.

SEC. 28. No county now established by law, shall ever be reduced by the establishment of any new county or counties to less than six hundred and twenty-five square miles, nor to a less population than its ratio of representation in the house of representatives, according to the ratio as it may exist by law at the time ; nor shall any county be hereafter established which shall contain less than six hundred and twenty-five square miles, nor a less population than would entitle such county to a member in the house of representatives, according to the ratio of representation then established by law.

SEC. 29. The style of the laws of this state shall be—
“Be it enacted by the general assembly of the state of Arkansas.”

SEC. 30. The state shall, from time to time, be divided into convenient senatorial districts, formed of contiguous territory, in such manner as the general assembly shall hereafter provide ; and in arranging such districts, the general assembly shall do so, taking into consideration the free white male inhabitants of the state, so that each senator may represent an equal number, as nearly as may be, of the free white male inhabitants thereof, according to the census enumeration ; and until the next enumeration of the census, or inhabitants of this state, the senatorial districts as now laid out by law shall continue.

SEC. 31. The senate shall never consist of less than twenty-five, nor of more than thirty-five members. The allotment of senators into two classes, as it now exists, shall continue until otherwise directed, and the successors of those in office shall be elected in the manner and at the time now required by law, and for the term of four years.

SEC. 32. The enumeration of the inhabitants of this state shall be taken under the direction of the general assembly of this state, at the end of every four years from the time the last enumeration was taken under the constitution and laws of this state, now in force therein.

SEC. 33. The house of representatives shall consist of not less than seventy-six members nor of more than one hundred.

representatives, to be apportioned among the several counties in this state, according to the number of free white male inhabitants therein, taking such ratio as is now provided for by law as the ratio of representation, until the number of representatives increases to one hundred; and when they shall number one hundred, they shall not be further increased until the population of the state numbers one million souls; *Provided*, That each county as now organized shall be entitled to the number of representatives to which it may be entitled under existing laws, until a future apportionment, under a future enumeration of the inhabitants of this state. And at the first session of the general assembly, after the return of every enumeration, the representation shall be equally divided and re-apportioned among the several counties, according to the number of free white males in each county, as above prescribed; *Provided further*, That the county of Craighead shall be entitled to one representative until the next enumeration and apportionment; *Provided further*, That the said county of Craighead be added to the senatorial district of Randolph and Greene counties until otherwise provided by law.

SEC. 34. The general assembly may, at any time, propose such amendments to this constitution as two-thirds of each house shall deem expedient, which shall be published in all the newspapers published in this state, three several times, at least twelve months before the next general election; and if, at the first session of the general assembly after such general election, two-thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes, as parts of this constitution; *Provided*, That such proposed amendments shall be read on three several days, in each house, as well when the same are proposed, as when they are finally ratified.

SEC. 35. The general assembly shall have power to regulate the militia system and military organization of the state, subject to the provisions of ordinances heretofore passed by the convention of the state of Arkansas.

ARTICLE V.

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 Arkansas."

SEC. 2. The governor shall be elected by the qualified electors, at the time and places, when and where they shall respectively vote for representatives at general elections.

SEC. 3. The returns of every election for governor shall be sealed up and transmitted to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in the presence of both houses of the general assembly. The person having the highest number of votes, shall be the governor; but if two or more shall be equal, and highest in votes, one of them shall be chosen governor by the joint vote of both houses. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

SEC. 4. The governor shall hold his office for the term of four years from the time of his installation, and until his successor shall be duly qualified; but he shall not be eligible for more than eight years, in any term of twelve years. He shall be at least thirty years of age, a native born citizen of Arkansas, or a native born citizen of the Confederate States of America, or a resident of the state of Arkansas ten years previous to the adoption of this constitution, if not a native of the Confederate States of America, and shall have been a resident of this state at least four years next before his election.

SEC. 5. The governor shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive, during that period, any other emolument from the Confederate States of America, or any one of them, or from any foreign power.

SEC. 6. The governor shall be commander-in-chief of the army of this state, and the militia thereof, except when they

shall be called into the service of the Confederate States of America. *Provided*, nevertheless, that this provision shall not be taken to conflict with any ordinance or ordinances which have been or may be passed by the convention of the people of the state of Arkansas.

SEC. 7. The governor may require any information, in writing, from the officers of the executive department, on any subject relating to the duties of their respective offices.

SEC. 8. The governor may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that should have become since their last adjournment, dangerous from an enemy or from contagious diseases. In case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next meeting of the general assembly.

SEC. 9. The governor shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

SEC. 10. The governor shall take care that the laws are faithfully executed.

SEC. 11. In all criminal and penal cases, except in those of treason and impeachment, the governor shall have power to grant pardons after conviction, and remit fines and forfeitures, under such rules and regulations as may have been, or shall be prescribed by law. In case of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence until otherwise directed by the general assembly.

SEC. 12. There shall be a seal of state provided, which shall be kept by the governor, and used by him officially, and the present seal of state now in use, shall be the seal of state until otherwise directed by the general assembly.

SEC. 13. All commissions shall be in the name, and by the authority of the state of Arkansas, be sealed with the seal of

the state, signed by the governor (except when otherwise directed by ordinance of the convention), and attested by the secretary of state.

SEC. 14. There shall be a secretary of state, elected by a joint vote of both houses of the general assembly, who shall continue in office during the term of four years, and until his successor in office be duly qualified. He 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 the general assembly, and shall perform such other duties as may be required by law.

SEC. 15. Vacancies that may happen in offices, the election to which is vested in the general assembly, shall be filled by the governor during the recess of the general assembly, by granting commissions, which shall expire at the end of the next session.

SEC. 16. Every bill which shall have passed both houses of the general assembly, shall be presented to the governor. If he approve it, he shall sign it; but if he shall not approve, he shall return it, with his objections, to the house in which it originated, which shall enter his objections at large upon its journal, and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections of the governor, to the other house, by which it shall likewise be reconsidered, and if approved by a majority of the whole number elected to that house, it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the parties voting for or 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 general assembly by their adjournment, prevent its return, in which event it shall not be a law.

SEC. 17. Every order or resolution, to which the concurrence of both houses of the general assembly may be necessary, except on questions of adjournment, shall be presented to the governor, and before it shall take effect, be approved by him, or, being disapproved, shall be repassed by both houses, according to the rules and limitations in the case of a bill.

SEC. 18. In case of the impeachment of the governor, his removal from office, his death, his refusal to qualify, his resignation or his absence from the state, the president of the senate shall exercise all the authority appertaining to the office of governor, until another governor shall have been elected and qualified, or until the governor, absent or impeached, shall return or be acquitted.

SEC. 19. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the house of representatives shall, in like manner, administer the government.

SEC. 20. The president of the senate and the speaker of the house of representatives, during the time they respectively administer the government, shall receive the same compensation which the governor would have received had he been employed in the duties of his office.

SEC. 21. Whenever the office of governor shall have become vacant, by death, resignation, removal from office, or otherwise; provided such vacancy shall not happen within eighteen months of the time for which the late governor shall have been elected, the president of the senate, or speaker of the house of representatives, as the case may be, exercising the powers of the governor for the time being, shall immediately cause an election to be held to fill such vacancy, giving, by proclamation, sixty days previous notice thereof, which election shall be governed by the same rules prescribed for general elections of governor, as far as applicable. The returns shall be made to the secretary of state, who, in the presence of the acting governor and judges of the supreme court,

or one of them, at least, shall compare them, and together with the said acting governor and judges, declare who is elected; and if there be a contested election, it shall be decided by the judges of the supreme court in the manner prescribed by law.

SEC. 22. The governor shall always reside at the seat of government.

SEC. 23. No person shall hold the office of governor, and any other office or commission, civil or military, either in this state or under any state or the Confederate States of America, or any other power, at one and the same time.

SEC. 24. There shall be elected, by the joint vote of both houses of the general assembly, until otherwise provided by law, an auditor and treasurer for this state, who shall hold their offices for the term of two years, and until their respective successors are elected and qualified, unless sooner removed; they shall keep their respective offices at the seat of government, and perform such duties as shall be prescribed by law; and in case of vacancy by death, resignation or otherwise, such vacancy shall be filled by the governor, as in other cases, so long as said officers remain elective by the general assembly.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of this state shall be vested in one supreme court, in circuit courts, in county courts, in probate courts, in corporation courts, and in justices of the peace. The general assembly may, when they deem it expedient, establish separate courts of chancery.

SEC. 2. The supreme court shall be composed of three judges, the one of whom holding his seat under the oldest commission for the time being, shall be chief justice; any two of whom shall constitute a quorum, and the concurrence of any two of said judges shall, in every case, be necessary to a decision. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under such

restrictions and regulations as may, from time to time, be prescribed by law. It shall have a general superintending control over all inferior and other courts of law and equity; it shall have power to issue writs of error and supersedeas, certiorari and habeas corpus, mandamus and quo warranto and other remedial writs, in aid of its appellate jurisdiction, and to hear and determine the same. Said judges shall be conservators of the peace throughout the state, and shall severally have power to issue any of the aforesaid writs.

SEC. 3. The circuit court shall have original jurisdiction over all criminal cases; which shall not be otherwise provided for by law, and exclusive original jurisdiction of all crimes amounting to felony, until otherwise provided by the general assembly; and original jurisdiction of all civil cases which shall not be cognizable before other inferior courts, or justices of the peace, until otherwise directed by law; and original jurisdiction in all matters of contracts, where the sum in controversy is over one hundred dollars. It shall hold its terms at such place, in each county, as may be, by law, prescribed.

SEC. 4. The state shall be divided into convenient circuits, to consist of counties contiguous to each other, for each of which a judge shall be elected, who, during his continuance in office, shall reside, and be a conservator of the peace, within the circuit for which he shall have been elected. If, from any cause, at the time of holding a circuit court in any county in this state, there shall be no regular judge present, the attorneys present may select from among themselves, one of their number, to act as judge with all the power and authority of a regular judge, and in case the judge, regular or special, shall be interested in any case, or cases, or otherwise incompetent, the attorneys present may select a judge to try such cases, who shall take the oath prescribed by law previous to entering upon the discharge of his duties.

SEC. 5. The circuit courts shall exercise a superintending control over all inferior courts, and shall have power to issue all the necessary writs to carry into effect their general and specific powers.

SEC. 6. Until the general assembly shall deem it expedient to establish courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to revision or review, in such manner as the general assembly may have, or shall hereafter prescribe. The special chancery court, heretofore created or established, for the county of Pulaski, is hereby confirmed in the jurisdiction conferred upon said court until otherwise provided by law.

SEC. 7. The judges of the supreme court shall be appointed by the governor, by and with the advice and consent of the senate. The judges of the supreme court shall be at least thirty years of age; they shall hold their offices during the term of eight years from the date of their commissions, and until their successors are appointed and qualified; the first appointment to take place at the session of the general assembly next before the expiration of the term for which the judges of the supreme court now in office expire, respectively. And in case of vacancy on the supreme bench, the same shall be filled by executive appointment, to continue until the end of the next session of the general assembly.

SEC. 8. The qualified voters of each judicial circuit in the state of Arkansas, shall elect their circuit judges. The judges of the circuit courts shall be at least twenty-five years of age, and shall be elected for the term of four years, from and after the dates of their commissions, and until their successors are elected and qualified—and all elections of circuit judges shall be held as is, or may be provided by law.

SEC. 9. The supreme court shall appoint its own clerk, or clerks, for the term of four years; and the qualified voters of each county, shall elect a clerk of the circuit court for their respective counties, who shall hold his office for the term of two years, and until his successor is elected and qualified—the first election of circuit clerks, under this constitution, to be held at the general election next before the expiration of the commissions of the present incumbents. Courts of chancery, when established, shall appoint their own clerks.

SEC. 10. The judges of the supreme and circuit courts shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be diminished during the time for which they are, or shall be appointed or elected. They shall not be allowed any fee or perquisites of office, nor hold any other office of trust or profit, under this state, or the Confederate States of America. The state's attorneys, and clerks of the supreme and circuit courts, and courts of chancery, if any other be established, shall receive for their services such salaries, fees and perquisites of office, as shall be, from time to time, fixed by law.

SEC. 11. There shall be established, in each county in the state, a court, to be holden by the justices of the peace, and called the county court, which shall have jurisdiction in all matters relating to county taxes, disbursements of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties.

SEC. 12. There shall be elected, by the qualified voters of the respective counties, a presiding judge of the county court, to be commissioned by the governor, and hold his office for the term of two years, and until his successor is elected and qualified. The first election under this section shall take place at the general election next before the commissions of the present incumbents expire. The presiding judge of the county court, in addition to the duties that may be required of him by law, as such presiding judge, shall be a judge of the court of probate, and have such jurisdiction in matters relative to the estates of deceased persons, executors, administrators and guardians, lunatics and insane persons, as may be prescribed by law, until otherwise directed by the general assembly.

SEC. 13. No judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or in which he may have been of counsel, or have presided in

any inferior court, except by consent of all the parties. In case all or any of the judges of the supreme court shall be thus disqualified from presiding in any cause or causes, the court, or judges thereof, shall certify the same to the governor of the state, and he shall immediately commission specially, the requisite number of men of law knowledge, for the trial and determination thereof. Judges shall not charge juries with regard to matter of fact, but may state the testimony and declare the law.

SEC. 14. The qualified voters of each judicial circuit shall elect a prosecuting attorney for the state, who shall continue in office for two years, and until his successor is elected and qualified. The first election under this constitution shall take place as is now or may be provided by law. Such attorney shall reside in the circuit for which he is elected. If any attorney for the state shall fail to attend and prosecute according to law, the court shall have power to appoint one *pro tempore*. The attorney for the circuit in which the supreme court is held, shall attend the court and prosecute for the state.

SEC. 15. All writs and other process shall run in the name of "the state of Arkansas," and bear teste and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude "against the peace and dignity of the state of Arkansas."

SEC. 16. The qualified voters residing in each township, shall elect the justices of the peace for their respective township. For every one hundred voters there may be elected one justice of the peace; *Provided*, That each township, however small, shall have two justices of the peace. Justices of the peace shall be elected for the term of two years, and shall be commissioned by the governor, and reside in the township for which they were elected, during their continuance in office. The first election for justice of the peace under this constitution, shall take place at the next general election, and those in office at this time shall continue in office until their successors are elected and qualified; justices of the peace shall have, individually, or two or more of them jointly, original jurisdic-

tion in cases of bastardy, and in all matters of contract, and in actions for the recovery of fines and forfeitures, where the amount claimed does not exceed one hundred dollars, and such jurisdiction as may be provided by law in actions *ex delicto*, where the damages do not exceed one hundred dollars, and prosecutions for assault and battery, and other penal offences less than felony, which may be punishable by fine only. Every action cognizable before a justice of the peace, instituted by summons or warrant, shall be brought before some justice of the peace of the township wherein the defendant resides, or is found, or if there be one or more defendants in different townships, then in the township where one of them resides or is found. They may also sit as examining courts, and commit, discharge, or recognize any person charged with any crime, of any grade. For the foregoing purposes they shall have power to issue all necessary process. They shall also have power to bind to keep the peace, or for good behavior.

SEC. 17. The qualified voters of each township shall elect one constable for the term of two years, who shall, during his continuance in office, reside in the township for which he was elected. The constables now in office shall continue until their terms expire, and the first election under this constitution shall be held at the next general election. Incorporated towns and cities may have their own or separate constables.

SEC. 18. The qualified voters of each county shall elect one sheriff, one coroner, one treasurer and one county surveyor, for the term of two years, at the election next before the term of those now in office expire. They shall be commissioned by the governor, reside in their respective counties during their continuance in office, and be disqualified for the office a second time, if it should appear that they, or either of them, are in default for any moneys collected by virtue of their respective offices.

ARTICLE VII.

GENERAL PROVISIONS—EDUCATION.

SECTION 1. The general assembly shall apply any and all funds which may be raised for the purpose of education, to the accomplishment of the object for which they may be raised; and from time to time, pass such laws as shall be calculated to encourage intellectual, scientific and agricultural improvement, by allowing rewards and immunities for the promotion and improvement of arts, science, commerce, manufactures, and natural history; and countenance and encourage the principles of humanity, industry and morality.

SEC. 2. 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 testimony of two witnesses, to the same overt act, or their own confession in open court.

SEC. 3. The general assembly shall have no power to pass laws for the emancipation of slaves.

SEC. 4. No person who denies the being of a God shall hold any office in this state, nor be allowed his oath in any court.

SEC. 5. No money shall be drawn from the treasury, but in consequence of an appropriation by law, nor shall any appropriation of money, for the support of an army, be made for a longer term than two years; and a regular statement and account of the receipts and expenditures of all public money shall be published with the promulgation of the laws.

SEC. 6. Absence on business for this state, or for the Confederate States of America, or on a visit, or on necessary private business, shall not cause a forfeiture of a residence once obtained.

SEC. 7. No lottery shall ever be authorized by this state, nor shall the sale of lottery tickets be allowed.

SEC. 8. Returns of all elections for officers, who are to be commissioned by the governor, and for members of the general assembly, shall be made to the secretary of state.

SEC. 9. Within ten years from the session of the general assembly, begun and held on the first Monday in November, eighteen hundred and fifty-six, and every ten years thereafter, the laws, civil and criminal, of this state, shall be revised or codified, digested, and arranged, and promulgated in such manner as provided by law.

SEC. 10. In the event of the annexation of any territory to this state, by cession from the Confederate States of America, or from any other source, laws may be passed extending to the inhabitants of such territory, all the rights and privileges which may be required by the terms of such cession, anything in this constitution to the contrary notwithstanding.

SEC. 11. Imprisonment for debt shall not be allowed, in this state, except when an allegation of fraud on the part of the debtor shall be clearly proved.

SEC. 12. The general assembly of this state shall not distribute the public lands, late the property of the United States, nor the proceeds of the same among the counties, but the same shall be applied to general purposes.

REVENUE.

SECTION 1. All revenue shall be raised by taxation, to be fixed by law.

SEC. 2. All property, subject to taxation, shall be taxed according to its true value—that value to be ascertained in such manner as the general assembly shall direct; making the same equal and uniform throughout the state. No one species of property, from which a tax may be collected, shall be taxed higher than another species of property of equal value; *Provided*, the general assembly shall have power to tax merchants, hawkers, peddlers, and privileges, in such manner as may, from time to time, be prescribed by law; *and provided further*, that no other or greater amount of revenue shall at any time be levied, than required for the necessary expenses of the government, unless by a concurrence of two-thirds of both houses of the general assembly; *and provided further*,

that the legislature may authorize the county courts in this state to levy and collect a specific tax, for the purpose of building levees to protect their respective counties from overflow.

SEC. 3. No poll tax shall be assessed for other than corporation or county purposes.

SEC. 4. No other or greater tax shall be levied on the productions or labor of the country than may be required for expenses of inspection.

SCHEDULE

SECTION 1. That no inconvenience may arise from this change of government, we declare that all writs, actions, prosecutions, judgments, claims and contracts, of individuals and bodies corporate, shall continue as if no change had taken place in the constitution or government of this state; and all process which may have been issued under the authority of this state, previous to this time, shall be as valid as if issued after the adoption of this constitution.

SEC. 2. All laws now in force in this state, which are not repugnant to this constitution, or the ordinances of the convention, shall remain in force until they expire by their own limitations, or be altered or repealed by the general assembly.

SEC. 3. In case any ordinance which may have been passed by this convention conflicts in any respect with this constitution, and the ordinance so conflicting herewith provides that it shall only have effect or force for a limited time; such ordinance shall have effect rather than this constitution.

SEC. 4. All officers, civil and military, now holding commissions under the authority of this state, shall continue to hold and exercise their respective offices until they shall be suspended under the authority of this state, in pursuance of the provisions of this constitution, or the ordinances passed by this convention.

SEC. 5. The next general election for officers of this state, under this constitution, not otherwise herein provided for, shall

be held on the first Monday in October, A. D., 1862, in the manner now prescribed by law.

SEC. 6. The jurisdiction of corporation courts shall be confined to their respective corporate limits.

DAVID WALKER, <i>President of</i>	M. SHELBY KENNARD,
<i>the Convention of the State</i>	W. H. SPIVEY,
<i>of Arkansas.</i>	MILTON D. BABER,
ALEX. ADAMS,	J. W. BUSH,
THOMAS B. HANLY,	URBAN E. FORT,
L. D. HILL,	ALFRED H. CARRIGAN,
ALEXANDER M. CLINGMAN,	W. M. FISHBACK,
ISAIAH C. WALLACE,	JOSEPH STILLWELL,
GEORGE P. SMOOTE,	GEO. C. WATKINS,
J. H. PATTERSON, of Jackson,	JAMES H. STIRMAN,
I. H. HILLIARD,	JAMES HENRY PATTERSON,
WM. M. MAYO,	S. J. STALLINGS,
JAMES L. TOTTEN,	WILLIAM STOUT,
S. W. COCHRAN,	ARCHIBALD RAY,
THOS. F. AUSTIN,	ISAIAH DODSON,
JOHN CAMPBELL,	A. W. HOBSON,
JAMES W. CRENSHAW,	J. N. CYPERT,
JAMES S. DOLLARHIDE,	WM. V. TATUM,
FELIX I. BATSON,	WILEY P. CRYER,
FELIX R. LANIER,	BURR H. HOBBS,
MARCUS L. HAWKINS,	JESSE TURNER,
W. F. SLEMONS,	F. W. DESHA,
J. P. JOHNSON,	A. W. DINSMORE,
JABEZ M. SMITH,	BENJAMIN C. TOTTEN,
J. A. RHODES,	SAMUEL KELLY,
WM. W. FLOYD,	E. T. WALKER,
J. N. SHELTON,	SAMUEL ROBINSON,
W. P. GRACE,	JOHN P. A. PARKS,
J. GOULD,	JAMES YELL,
H. H. BOLINGER,	H. BUSSEY,
BENJ. F. HAWKINS,	JOSEPH JESTER.
H. FLANAGIN,	

The foregoing constitution was adopted, in and by the state convention of Arkansas, in open session, on the first day of June, A. D., 1861, and this sheet was signed on that day by the several delegates whose names appear above.

Attest :

ELIAS C. BOUDINOT,

Secretary of the Convention of the State of Arkansas.

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CONSTITUTION

OF THE

STATE OF ARKANSAS.

OF 1864.

We, the people of the state of Arkansas, having the right to establish for ourselves a constitution in conformity with the constitution of the United States of America, recognizing the legitimate consequences of the existing rebellion, do hereby declare the entire action of the late convention of the state of Arkansas, which assembled in the city of Little Rock, on the 4th day of March, 1861, was, and is, null and void, and is not now, and never has been binding and obligatory upon the people.

That all the action of the state of Arkansas under the authority of said convention, of its ordinances, or of its constitution, whether legislative, executive, judicial or military (except as hereinafter provided,) was, and is hereby declared null and void; *Provided*, That this ordinance shall not be so construed as to affect the rights of individuals, or change county boundaries, or county seats, or to make invalid the acts of justices of the peace, or other officers in their authority to administer oaths, or take and certify the acknowledgment of deeds of conveyance or other instruments of writing, or in the

solemnization of marriages; *And provided further*, That no debt or liability of the state of Arkansas incurred by the action of said convention, or of the legislature, or any department of the government under the authority of either, shall ever be recognized as obligatory.

And we, the people of the state of Arkansas, in order to establish therein a state government, loyal to the government of the United States—to secure to ourselves and our posterity, the protection and blessings of the federal constitution, and the enjoyment of all the rights of liberty and the free pursuit of happiness, do agree to continue ourselves as a free and independent state, by the name and style of “the State of Arkansas,” and do ordain and establish the following constitution for the government thereof:

ARTICLE I.

BOUNDARIES OF THE STATE.

We do declare and establish, ratify and confirm the following as the permanent boundaries of the state of Arkansas, that is to say: Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees north latitude, to the St. Francis river; thence up the middle of the main channel of said river, to the parallel of thirty-six degrees, thirty minutes north, from the west to the southwest corner of the state of Missouri; and from thence to be bounded on the west to the north bank of Red river, as by acts of congress of the United States, and the treaties heretofore defining the western limits of the territory of Arkansas; and to be bounded on the south side of Red river by the boundary line of the state of Texas, to the northwest corner of the state of Louisiana; thence east with the Louisiana state line, to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of said river, to the thirty-sixth degree of north latitude, the point of beginning—these being the boundaries of the state of Arkansas as defined by the constitution thereof, adopted by a convention of the representatives of the people of said state, on the 30th day of January, *anno domini*, eigh-

teen hundred and thirty-six, being the same boundaries which limited the area of the territory of Arkansas as it existed prior to that time.

ARTICLE II.

DECLARATION OF RIGHTS.

That the great and essential principles of liberty and free government may be unalterably established, we declare :

SECTION 1. That all men, when they form a social compact, are equal, and have certain inherent and indefeasible rights, amongst which are those of enjoying and defending life and liberty ; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

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

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

SEC. 4. That the civil rights, privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

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

SEC. 6. That the right of trial by jury shall remain inviolate.

SEC. 7. That printing presses shall be free to every person ; and no law shall ever be made to restrain the rights thereof. The free communication of thoughts and opinions is one of the invaluable rights of man ; and every citizen may

freely speak, write and print, on any subject—being responsible for the abuse of that liberty.

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

SEC. 9. That the people shall be secure in their persons, houses, papers and possessions; from unreasonable search and seizures; and that general warrants, whereby any officer may be commanded to search suspected places without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty, and shall not be granted.

SEC. 10. That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land.

SEC. 11. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial by an impartial jury of the county or district in which the crime may have been committed; and shall not be compelled to give evidence against himself.

SEC. 12. That no person shall for the same offence, be twice put in jeopardy of life or limb.

SEC. 13. That all penalties shall be reasonable, and proportioned to the nature of the offence.

SEC. 14. That no man shall be put to answer any criminal charge, but by presentment, indictment or impeachment, except as hereinafter provided.

SEC. 15. That no conviction shall work corruption of blood or forfeiture of estate, under any law of this state.

SEC. 16. That all prisoners shall be bailable by sufficient securities, unless in capital offences, where the proof is evident or the presumption great. And the privilege of the writ of *habeas corpus* shall not be suspended, unless where in case of rebellion or invasion the public safety may require it.

SEC. 17. That excessive bail shall in no case be required, nor excessive fines imposed.

SEC. 18. That no *ex-post facto* law, or law impairing the obligations of contracts shall ever be made.

SEC. 19. That perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed; nor shall any hereditary emoluments, privileges or honors, ever be granted or conferred in this state.

SEC. 20. That the citizens have a right, in a peaceable manner, to assemble together for their common good to instruct their representatives, and to apply to those invested with the power of the government for redress of grievances or other proper purposes, by address or remonstrance.

SEC. 21. That the free white men of this state shall have a right to keep and bear arms for their common defence.

SEC. 22. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner prescribed by law.

SEC. 23. The military shall be kept in strict subordination to the civil power.

SEC. 24. This enumeration of rights shall not be construed to deny or disparage others retained by the people, and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government, and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

ARTICLE III.

OF DEPARTMENTS.

SECTION 1. The power of the government of the state of Arkansas shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to-wit: Those which are legislative to one; those which are executive to another; and those which are judicial to another.

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

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of this state shall be invested in a general assembly, which shall consist of a senate and house of representatives.

SEC. 2. Every free white male citizen of the United States who shall have attained the age of twenty-one years, and who shall have been a citizen of the state six months next preceding the election, shall be deemed a qualified elector, and be entitled to vote in the county or district where he actually resides, or in case of volunteer soldiers, within their several military departments or districts, for each and every office made elective under the state or under the United States; *Provided*, That no soldier, seaman or marine in the regular army or navy of the United States shall be entitled to vote at any election within the state in time of peace; *And provided further*, That any one entitled to vote in this state in the county where he resides, may vote for the adoption or rejection of this constitution in any county in this state.

SEC. 3. The house of representatives shall consist of members to be chosen every second year by the qualified electors of the several counties.

SEC. 4. No person shall be a member of the house of representatives who shall not have attained the age of twenty-

five years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state one year; and who shall not, at the time of his election, have an actual residence in the county he may be chosen to represent.

SEC. 5. The senate shall consist of members to be chosen every four years, by the qualified electors of the several districts.

SEC. 6. No person shall be a senator who shall not have attained the age of twenty-five years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state one year; and who shall not, at the time of his election, have an actual residence in the district he may be chosen to represent.

SEC. 7. The general assembly shall meet every two years, on the first Monday in November, at the seat of government, until changed by law, except that the general assembly for the year 1864, shall meet on the second Monday in April of that year.

SEC. 8. All general elections shall be *viva voce* until otherwise directed by law, and commence and be holden every two years, on the first Monday in August, until altered by law (except that) the first election under this constitution shall be held on the second Monday in March, 1864, and the electors in all cases, except in cases of treason, felony and breach of the peace, shall be privileged from arrest during their attendance on elections and in going to and returning therefrom.

SEC. 9. The governor shall issue writs of election to fill such vacancies as shall occur in either house of the general assembly.

SEC. 10. No judge of the supreme, circuit or inferior courts of law, or equity, secretary of state, attorney general of the state, district attorneys, state auditor or treasurer, register or recorder, clerk of any court of record, sheriff, coroner or member of congress, nor any other person holding any lucrative office under the United States or this state (militia officers, justices of the peace, postmasters and judges of the county

courts excepted), shall be eligible to a seat in either house of the general assembly.

SEC. 11. No person who now is, or shall be hereafter, a collector or holder of public money, nor any assistant or deputy of such holder or collector of public money, shall be eligible to a seat in either house of the general assembly, nor to any office of trust or profit, until he shall have accounted for and paid over all sums for which he may have been liable.

SEC. 12. The general assembly shall exclude from every office of trust or profit, and from the right of suffrage within this state, all persons convicted of bribery, or perjury, or other infamous crime.

SEC. 13. Every person who shall have been convicted, either directly or indirectly, of giving or offering any bribe to procure his election or appointment, shall be disqualified from holding any office of trust or profit under this state; and any person who shall give or offer any bribe to procure the election or appointment of any person shall, on conviction thereof, be disqualified from being an elector, or from holding office of trust or profit under this state.

SEC. 14. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state which shall have been created, or the emoluments of which shall have been increased during his continuance in office, except to such office as shall be filled by the election of the people.

SEC. 15. Each house shall appoint its own officers, and shall judge of the qualifications, returns and elections of its own members. Two-thirds of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house shall provide.

SEC. 16. Each house may determine the rules of its proceedings, punish its own members for disorderly behavior, and, with the concurrence of two-thirds of the members elected, expel a member; but no member shall be expelled a second

time for the same offence. They shall each, from time to time, publish a journal of their proceedings, except such parts as may require secrecy; and the yeas and nays upon any question shall be entered on the journal at the desire of any five members.

SEC. 17. The door of each house, when in session or in committee of the whole, shall be kept open, except in cases which may require secrecy; and each house may punish, by fine and imprisonment, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in their presence during their session; but such imprisonment shall not extend beyond the final adjournment of that session.

SEC. 18. Bills may originate in either house, and be amended or rejected in the other, and every bill for an act shall be read three times before each house, twice at length, and in no case shall a bill be read more than twice on one day; and the vote upon the passage of any law shall, in all cases, be taken by yeas and nays, and by recording the same; and every bill having passed both houses, shall be signed by the president of the senate and speaker of the house of representatives.

SEC. 19. Whenever an officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house of the general assembly, the vote shall be taken *viva voce*, and entered on the journal.

SEC. 20. The senators and representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and for fifteen days before the commencement and after the termination of each session; and for any speech or debate in either house, they shall not be questioned in any other place.

SEC. 21. The members of the general assembly shall severally receive from the public treasury, compensation for their services, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made.

SEC. 22. The general assembly shall direct by law in what courts, and in what manner, suits may be commenced against the state.

SEC. 23. The general assembly shall not have power to pass any bill of divorce, but may prescribe by law the manner in which such cases may be investigated in the courts of justice, and divorces granted.

SEC. 24. The governor, lieutenant governor, secretary of state, auditor, treasurer, and all judges of the supreme, circuit and inferior courts of law and equity, and the prosecuting attorneys for the state, shall be liable to impeachment for any malpractice or misdemeanor in office, but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of trust or profit under this state. The party impeached, whether convicted or acquitted, shall nevertheless be liable to be indicted, tried and punished according to law.

SEC. 25. The house of representatives shall have the sole power of impeachment, and all impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be on oath or affirmation to do justice according to law and evidence. When the governor shall be tried, the chief justice of the supreme court shall preside, and no person shall be convicted without the concurrence of two-thirds of all the senators elected; and for reasonable cause, which shall not be sufficient ground for impeachment, the governor shall, on the joint address of two-thirds of each branch of the legislature, remove from office the judges of the supreme and inferior courts. *Provided*, The cause or causes of removal be spread on the journals, and the party charged be notified of the same, and heard by himself and counsel before the vote is finally taken and decided.

SEC. 26. The appointment of all officers, not otherwise directed by this constitution, shall be made in such manner as may be prescribed by law; and all officers, both civil and military, acting under the authority of this state, shall, before entering on the duties of their respective offices, take an oath

or affirmation to support the constitution of the United States and of this state, and to demean themselves faithfully in office.

SEC. 27. No county now established by law shall ever be reduced by the establishment of any new county or counties, to less than six hundred square miles, nor to a less population than its ratio of representation in the house of representatives; nor shall any county be hereafter established which shall contain less than six hundred square miles, or a less population than would entitle each county to a member in the house of representatives.

SEC. 28. The style of the laws of this state shall be—
“Be it enacted by the general assembly of the state of Arkansas.”

SEC. 29. The state shall, from time to time, be divided into convenient districts, in such manner that the senate shall be based upon the free white male inhabitants of the state, each senator representing an equal number as nearly as practicable; and the senate shall never consist of less than seventeen nor more than thirty-three members; and as soon as the senate shall meet after the first election to be held under this constitution, they shall cause the senators to be divided by lot into two classes, nine of the first class and eight of the second; and the seats of the first class shall be vacated at the end of two years from the time of their election; and the seats of the second class at the end of four years from the time of their election, in order that one class of the senators may be elected every two years.

SEC. 30. An enumeration of the inhabitants of the state shall be taken under the direction of the general assembly on the first day of January, one thousand eight hundred and sixty-five, and at the end of every ten years thereafter; and the general assembly shall, at the first session after the return of every enumeration, so alter and arrange the senatorial districts, that each district shall contain, as nearly as practicable, an equal number of free white male inhabitants.

SEC. 31. The ratio of representation in the senate shall be fifteen hundred free white male inhabitants to each senator, until the senators amount to twenty-five in number, and then they shall be equally apportioned upon the same basis throughout the state, in such ratio as the increased number of free white male inhabitants may require, without increasing the senators to a greater number than twenty-five, until the population of the state amounts to five hundred thousand souls ; and when an increase of senators takes place, they shall, from time to time, be divided by lot, and be classed as prescribed above.

SEC. 32. The house of representatives shall consist of not less than fifty-four, nor more than one hundred representatives, to be apportioned among the several counties in this state, according to the number of free white male inhabitants therein, taking five hundred as the ratio, until the number of representatives amounts to seventy-five ; and when they amount to seventy-five, they shall not be further increased until the population of the state amounts to five hundred thousand souls ; *Provided*, That each county now organized, shall, although its population may not give the existing ratio, always be entitled to one representative ; and at the first session of the general assembly, after the return of every enumeration, the representation shall be equally divided and reapportioned among the several counties, according to the number of free white males in each county, as above prescribed.

The general assembly may, at any time, propose such amendments to this constitution as two-thirds of each house shall deem expedient, which shall be published in all the newspapers published in this state, three several times, at least twelve months before the next general election ; and if, at the first session of the general assembly after such general election, two thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this constitution ; *Provided*, That such proposed amendments shall be read on three several days in

each house, as well when the same are proposed as when they are finally ratified.

ARTICLE V.

ABOLISHMENT OF SLAVERY.

SECTION 1. Neither slavery nor involuntary servitude shall hereafter exist in this state, otherwise than for the punishment of crime, whereof the party shall have been convicted by due process of law; nor shall any male person, arrived at the age of twenty-one years, nor female arrived at the age of eighteen years, be held to serve any person as a servant, under any indenture or contract hereafter made, unless such person shall enter into such indenture or contract while in a state of perfect freedom, and on condition of a *bona fide* consideration received, or to be received for their services.

Nor shall any indenture of any negro or mulatto hereafter made and executed out of this state, or if made in this state, where the term of service exceeds one year, be of the least validity, except those given in case of apprenticeship, which shall not be for a longer term than until the apprentice shall arrive at the age of twenty-one years, if a male, or the age of eighteen years, if a female.

ARTICLE VI.

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 Arkansas."

SEC. 2. The governor shall be elected by the qualified electors, at the time and places where they shall respectively vote for representatives.

SEC. 3. The returns of every election for governor, except those of the election of eighteen hundred and sixty-four, which shall be sealed and directed, as ordered in the schedule appended to this constitution, shall be sealed up and transmitted to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in the

presence of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses of the general assembly, in such manner as shall be prescribed by law.

SEC. 4. The governor shall hold his office for the term of four years from the time of his installation, and until his successor shall be duly qualified, but he shall not be eligible for more than eight years in any term of twelve years; he shall be at least thirty years of age, a native born citizen of Arkansas, or a native born citizen of the United States, or a resident of Arkansas ten years previous to the adoption of this constitution, if not a native of the United States, and shall have been a resident of the same at least four years next before his election.

SEC. 5. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive, within that period, any other emolument from the United States, or any one of them, or from any foreign power.

SEC. 6. He shall be commander in chief of the army of this state, and of the militia thereof, except when they shall be called into the service of the United States.

SEC. 7. He may require any information, in writing, from the officers of the executive department on any subject relating to the duties of their respective offices.

SEC. 8. He may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious diseases. In case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next meeting of the general assembly.

SEC. 9. He shall, from time to time, give to the general assembly information of the state of the government, and

recommend to their consideration such measures as he may deem expedient.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant pardons, after conviction, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law, In cases of treason, he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons, and he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly.

SEC. 12. There shall be a seal of this state, which shall be kept by the governor, and used by him officially.

SEC. 13. All commissions shall be in the name and by the authority of the state of Arkansas, be sealed with the seal of this state, signed by the governor, and attested by the secretary of state.

SEC. 14. There shall be elected a secretary of state by the qualified voters of the state, who shall continue in office during the term of four years, and until his successor in office be duly qualified; he shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before the general assembly, and shall perform such other duties as may be required by law.

SEC. 15. Vacancies that may happen in offices, the election of which is vested in the general assembly, shall be filled by the governor, during the recess of the general assembly, by granting commissions, which shall expire at the end of the next session.

SEC. 16. Vacancies that may occur in offices, the election to which is vested in the people, within less than one year before the expiration of their term, shall be filled by the governor granting commissions, which shall expire at the end of the next term; but if one year or a longer period remains unexpired at the time of the vacancy, then, and in that case,

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the governor shall order an election to be held to fill the vacancy.

SEC. 17. Every bill which shall have passed both houses shall be presented to the governor; if he approve it, he shall sign it, but if he shall not approve it, he shall return it, with his objections, to the house in which it shall have originated, who shall enter his objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which, likewise, it shall be reconsidered, and, if approved by a majority of the whole number elected to that house, it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill, shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within 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 general assembly, by their adjournment, prevent its return; in such case it shall not be a law.

SEC. 18. Every order or resolution, to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the governor before it shall take effect, be approved by him, or being disapproved, shall be re-passed by both houses, according to the rules and limitations prescribed in the case of a bill.

SEC. 19. A lieutenant governor shall be chosen at every election for governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish for whom they vote as governor, and for whom as lieutenant governor.

SEC. 20. He shall, by virtue of his office, be president of the senate, have a right, when in committee of the whole, to debate, and, whenever the senate are equally divided, shall give the casting vote.

SEC. 21. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president for that occasion; and if, during the vacancy of the office of the governor, the lieutenant governor shall be impeached, removed from office, refuse to qualify, or resign, or die, or be absent from the state, the president of the senate shall, in like manner, administer the government.

SEC. 22. The lieutenant governor, while he acts as president of the senate, shall receive for his services the same compensation, which shall for the same period be allowed to the speaker of the house of representatives, and no more, and during the time he administers the government as governor, he shall receive the same compensation which the governor would have received had he been employed in the duties of his office.

SEC. 23. In case of an impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant governor shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this constitution for the election of a governor shall arrive, unless the general assembly shall provide by law for the election of governor to fill such vacancy.

SEC. 24. The governor shall always reside at the seat of government.

SEC. 25. No person shall hold the office of governor or lieutenant governor, and any other office or commission, civil or military, either in this state or under any state, or the United States, or any other power at one and the same time.

SEC. 26. There shall be elected by the qualified voters of this state, an auditor and treasurer for this state, who shall hold their offices for the term of two years, and until their respective successors are elected and qualified, unless sooner removed, and shall keep their respective offices at the seat of government, and perform such duties as shall be prescribed by law; and in case of vacancy by death, resignation or

otherwise, such vacancy shall be filled by the governor as in other cases.

MILITIA.

SECTION 1. The militia of this state shall be divided into convenient divisions, brigades, regiments and companies, and officers of corresponding titles and rank elected to command them, conforming, as nearly as practicable, to the general regulations of the army of the United States; and all officers shall be elected by those subject to military duty in their several districts, except as hereinafter provided.

SEC. 2. The governor shall appoint the adjutant general and other members of his staff; and major generals, brigadier generals, and commanders of regiments, shall respectively appoint their own staff; and all commissioned officers may continue in office during good behavior, and staff officers during the same time, subject to be removed by the superior officer from whom they respectively derive their commissions.

ARTICLE VII.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of this state shall be vested in one supreme court, in circuit courts, in county courts and in justices of the peace. The general assembly may also vest such jurisdiction as may be deemed necessary in corporation courts, and when they deem it expedient, may establish courts of chancery.

SEC. 2. The supreme court shall be composed of three judges, one of whom shall be styled chief justice, any two of whom shall constitute a quorum, and the concurrence of any two of said judges shall, in every case, be necessary to a decision.

The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, under such restrictions and regulations as may, from time to time, be prescribed by law.

It shall have a general superintending control over all inferior and other courts of law and equity. It shall have power

to issue writs of error, supersedeas, certiorari and habeas corpus, mandamus and quo warranto, and other remedial writs, and to hear and determine the same. Said judges shall be conservators of the peace throughout the state, and shall have power to issue any of the aforesaid writs.

SEC. 3. The circuit court shall have original jurisdiction over all criminal cases which shall not be otherwise provided for by law ; and exclusive original jurisdiction of all crimes amounting to felony at the common law, and original jurisdiction of all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly ; and original jurisdiction in all matters of contract, where the sum in controversy is over two hundred dollars. It shall hold its terms at such place in each county as may be by law directed.

SEC. 4. The state shall be divided into convenient circuits, each to consist of not less than five nor more than seven counties contiguous to each other, for each of which a judge shall be elected, who, during his continuance in office, shall reside and be a conservator of the peace, within the circuit for which he shall have been elected.

SEC. 5. The circuit courts shall exercise a superintending control over the county courts, and over justices of the peace in each county, in their respective circuits, and shall have power to issue all the necessary writs to carry into effect their general and specific powers.

SEC. 6. Until the general assembly shall deem it expedient to establish courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the supreme court, in such manner as may be prescribed by law.

SEC. 7. The qualified voters of this state shall elect the judges of the supreme court. The judges of the supreme court shall be at least thirty years of age ; they shall hold their offices during the term of eight years from the date of their commissions, and until their successors are elected and qualified.

Immediately after such election by the people, the lieutenant governor and speaker of the house of representatives shall proceed, by lot, to divide the judges into three classes. The commission of the first class shall expire at the end of four years; of the second class at the end of six years; and of the third class at the end of eight years; so that one-third of the whole number shall be chosen every four, six and eight years.

SEC. 8. The qualified voters of each judicial district shall elect a circuit judge. The judges of the circuit court shall be at least twenty-five years of age, and shall be elected for the term of four years from the date of their commissions, and shall serve until their successors are elected and qualified.

SEC. 9. The supreme court shall appoint its own clerk or clerks, for the term of four years. The qualified voters of each county shall elect a clerk of the circuit court for the respective counties, who shall hold his office for the term of two years, and until his successor is elected and qualified; and courts of chancery, if any be established, shall appoint their own clerks.

SEC. 10. The judges of supreme courts and circuit courts shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this state or the United States. The attorney general, the state's attorneys, and clerks of the supreme and circuit courts, and courts of chancery, if any such be established, shall receive for their services such salaries, fees and perquisites of office, as shall, from time to time, be fixed by law.

SEC. 11. There shall be established in each county in the state, a court to be holden by the justices of the peace, a court called the county court, which shall have jurisdiction in all matters relating to taxes, disbursements of money for county purposes, and in every other case that may be necessary to the

internal improvement and local concerns of the respective counties.

SEC. 12. The qualified voters of each county shall elect a county and probate judge, who shall hold his office for two years, and until his successor is elected and qualified. He shall, in addition to the duties that may be required of him by law, as a presiding judge of the county court, be a judge of the court of probate, and have such jurisdiction in matters relating to the estates of deceased persons, executors, administrators and guardians, as may be prescribed by law, until otherwise directed by the general assembly.

SEC. 13. The presiding judge of the probate and county court, and justices of the peace, shall receive for their services such compensation and fees as the general assembly may from time to time by law direct.

SEC. 14. No judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or in which he may have been counsel, or have presided in any inferior court, except by consent of all the parties. In case all or any of the judges of the supreme court shall be thus disqualified from presiding on any cause or causes, the court or judges thereof, shall certify the same to the governor of the state, and he shall immediately commission, specially, the requisite number of men of law knowledge, for the trial and determination thereof. The same course shall be pursued in the circuit and inferior courts as prescribed in this section for cases of the supreme court. Judges of the circuit courts may temporarily exchange circuits, or hold courts for each other, under such regulations as may be pointed out by law. Judges shall not charge juries with regard to matter of fact, but may state the testimony and declare the law.

SEC. 15. The qualified voters thereof shall elect an attorney for the state, for each judicial circuit established by law, who shall continue in office two years, and until his successor is elected and qualified, and reside within the circuit for which

he was elected at the time of and during his continuance in office. In all cases where an attorney for the state, of any circuit, fails to attend and prosecute, according to law, the court shall have power to appoint an attorney *pro tempore*.

SEC. 16. The qualified voters of this state shall elect an attorney general, whose salary shall be the same as that of circuit judge, who shall be learned in the law; who shall be at least thirty years of age, and shall hold his office for the term of four years from the date of his commission, and until his successor is elected and qualified; and whose duty it shall be to prosecute the state's pleas before the supreme court, and give his opinion, in writing, on all questions of law or equity, when required by the governor or other officer of the state, and perform such other duties as may be prescribed by law.

SEC. 17. All writs and other process shall run in the name of the "State of Arkansas," and bear teste and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude "against the peace and dignity of the state of Arkansas."

SEC. 18. The qualified voters residing in each township shall elect the justices of the peace for each township. For every one hundred voters there may be elected one justice of the peace; *Provided*, That each township, however small, shall have two justices of the peace. Justices of the peace shall be elected for the term of two years, and shall hold their offices until their successors are elected and qualified; shall be commissioned by the governor, and shall reside in the township for which they are elected during their continuance in office. The first election for justices of the peace shall take place on the second Monday in March, 1864, and the second election on the first Monday in August, 1866, and at the regular elections thereafter. Justices of the peace, individually, or two or more of them jointly, shall have original jurisdiction in cases of bastardy, and in all matters of contract, and actions for the recovery of fines and forfeiture where the amount claimed does not exceed two hundred dollars, and concurrent jurisdiction with circuit courts where the amount claimed exceeds one

hundred dollars, and does not exceed two hundred dollars, and such jurisdiction as may be provided by law in actions *ex delicto*, where the damages claimed do not exceed one hundred dollars, and prosecutions for assault and battery and other penal offenses less than felony, punishable by fine only. Every action cognizable before a justice of the peace, instituted by summons or warrant, shall be brought before some justice of the peace of the township where the defendant resides. They may also sit as examining courts, and commit, discharge or recognize any person charged with any crime of any grade. For the foregoing purposes they shall have power to issue all necessary process. They shall also have power to bind to keep the peace, or for good behavior.

SEC. 19. The qualified voters of each township shall elect one constable for the term of two years, who shall hold his office till his successor is elected and qualified, who shall, during his continuance in office, reside in the township for which he was elected. Incorporated towns may have a separate constable and a separate magistracy.

SEC. 20. The qualified voters of each county shall elect one sheriff, one coroner and one county surveyor, for the term of two years, and until their successors are elected. They shall be commissioned by the governor, reside in their respective counties during their continuance in office, and be disqualified for the office a second term, if it should appear that they or either of them are in default for moneys collected by virtue of their respective offices.

ARTICLE VIII.

GENERAL PROVISIONS—EDUCATION.

SECTION 1. Knowledge and learning generally diffused throughout a community, being essential to the preservation of a free government, and diffusing the opportunities and advantages of education through the various parts of the state, being highly conducive to this end, it shall be the duty of the general assembly to provide by law for the improvement of such lands as are or hereafter may be granted by the United

States to this state for the use of schools, and to apply any funds which may be raised from such lands, or from any other source, to the accomplishment of the object for which they are or may be intended. The general assembly shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientific and agricultural improvement, by allowing rewards and immunities for the promotion and improvement of arts, science, commerce, manufactures and natural history, and countenance and encourage the principles of humanity, industry and morality.

SEC. 2. 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 testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 3. No person who denies the being of a God shall hold any office in the civil department of this state, nor be allowed his oath in any court.

SEC. 4. No money shall be drawn from the treasury but in consequence of an appropriation by law; nor shall any appropriation of money for the support of the army be made for a longer term than two years; and a regular statement and account of the receipts and expenditures of all public money shall be published with the promulgation of the laws.

SEC. 5. Absence on business of this state, or of the United States, or on a visit, or necessary private business, shall not cause a forfeiture of a residence once obtained.

SEC. 6. No lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.

SEC. 7. Internal improvement shall be encouraged by the government of this state; and it shall be the duty of the general assembly, as soon as may be, to make provision by law for ascertaining the proper objects of improvement in relation to roads, canals and navigable waters; and it shall also be their duty to provide by law for an equal, systematic and economical application of the funds which may be appropriated to these objects.

SEC. 8. Returns for all elections for officers who are to be commissioned by the governor, and for members of the general assembly, shall be made to the secretary of state, except in the election of 1864, they may be made as directed in the schedule appended to this constitution.

SEC. 9. Within five years after the adoption of this constitution, the laws, civil and criminal, shall be revised, digested and arranged, and promulgated in such manner as the general assembly may direct; and a like revision, digest and promulgation shall be made within every subsequent period of ten years.

SEC. 10. In the event of the annexation of any territory to this state by a cession from the United States, laws may be passed extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession, anything in this constitution to the contrary notwithstanding.

SEC. 11. Imprisonment for debt shall not be allowed in this state, except when an allegation of fraud on the part of the debtor shall be clearly proved.

SEC. 12. Any person who shall, after the adoption of this constitution, fight a duel, or send or accept a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of suffrage, and of the right of holding any office of honor or profit in this state, and shall be punished otherwise in such manner as is or may be prescribed by law.

ARTICLE IX.

REVENUE.

SECTION 1. All revenue shall be raised by taxation to be fixed by law.

SEC. 2. All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the state. No one species of property from which a tax may be collected shall be taxed

higher than another species of property of equal value: *Provided*, The general assembly shall have the power to tax merchants, hawkers, peddlers and privileges, in such manner as may from time to time be prescribed by law; *And provided further*, That no other or greater amount of revenue shall at any time be levied than required for the necessary expenses of the government, unless by a concurrence of two-thirds of both houses of the general assembly.

SEC. 3. No poll tax shall be assessed for other than county purposes.

SEC. 4. No other or greater tax shall be levied on the productions of labor of the country than may be required for expenses of inspection.

SCHEDULE.

SECTION 1. In order that civil government may be in full operation and effect, at the earliest day possible, it is further ordained and provided that a general vote on the ratification of the constitution and ordinances of this convention, and a general election shall be taken and held throughout the state, as far as practicable, on the second Monday of March next, as follows, to wit: Any number of persons, being white male citizens of the state, over the age of twenty-one years, at the county seat of any county, or (in case of volunteer soldiers in the federal army,) at the camp of their respective companies, having first taken the oath prescribed in the president's proclamation of December 8, 1863, before any justice of the peace, or other person authorized to administer an oath within the county in which they reside, or within which they are encamped, may appoint a commissioner of elections, with power to appoint such election judges as may be necessary, who shall also be an enrolling officer for said county or company, who shall proceed as follows, to wit: Said commissioners shall prepare an enrolling and poll book, to which shall be appended the constitution, ordinances and schedule of this convention; one column shall then be headed with the oath contained in said proclamation of the president; another column headed "Consti-

tution and ordinances ratified ;" another column, "Constitution and ordinances rejected ;" other columns shall be arranged so that a vote may be taken for all officers to be voted for within the county or company where the election is proposed to be held ; said commissioner shall then take the oath aforesaid, before any justice of the peace or other officer authorized to administer oaths, and enroll his own name at the head of the column, under the said oath, written out in full ; the said commissioner shall then, on the said second Monday of March next, within usual election hours, proceed to hold an election, as follows, *viva voce* ; And *provided also*, That said commissioner may keep the polls open for three days, to-wit : Every white male citizen over the age of 21 years, of the county, or (in case of a military company) of the state, presenting himself to vote, and not being included in the exceptions contained in the said proclamation, shall take the oath contained in said proclamation, administered by any justice of the peace, or other officer authorized to administer oaths ; and when his name has been thereafter duly enrolled or subscribed in the proper column, the commissioner shall cause his vote to be recorded, first upon the question of the constitution and ordinances, and then in the election of all officers to be voted for.

SEC. 2. That within five days after the holding of said election, said commissioner shall foot up the said vote, and certify the result, over his signature, as commissioner ; he shall then make a duplicate of said book (except that the constitution and ordinances of this convention need not be appended to the copy), and forward the said copy to Little Rock, addressed to the provisional government ; the original book shall be preserved by said commissioner, and deposited by him as soon as the counties are organized, with the clerk of the county wherein the election is held, or (in case of soldiers) in the county wherein the voters reside.

SEC. 3. Within ten days after the receipt of the said enrolling and election return books by the provisional governor, it shall be his duty, with the assistance of the secretary of state, to

examine the same and declare the result by proclamation as follows, to wit :

First. Whether the constitution and ordinances of this convention have been adopted or rejected within the meaning of the president's proclamation.

Second. He shall announce the whole vote polled for or against said constitution and ordinances.

Third. He shall declare what persons are elected to the various offices throughout the state, except that of governor and lieutenant governor of state, deciding the result by plurality.

SEC. 4. All persons thus declared to be elected state officers, shall enter upon the discharge of their respective offices as soon thereafter as they take and subscribe an oath before any justice of the peace, or other officer authorized to administer oaths, as follows : That they will faithfully perform the duties of their respective offices ; that they will support the constitution and laws of the state and of the United States ; and said oath, in case of state officers, shall be filed in the office of the secretary of state ; and in case of county officers, they shall enter upon the duties of their respective offices immediately after the election, upon filing said oath with the county commissioners.

SEC. 5. At the first session of the legislature, and during the first week of the session, the said provisional governor shall place the said return books before that body, who shall declare the result as to the election of governor and lieutenant governor and secretary of state, who, before entering upon the duties of their respective offices, shall take the oath herein prescribed for other officers.

SEC. 6. It is also further ordained and declared, that in counties wherein, for any cause, elections are not held on the said second Monday of March next, the same may be held for the several local officers provided for in the constitution, ordinances and schedule of this convention, in the same manner as hereinbefore described, at any time thereafter, till the whole state is fully organized and represented.

SEC. 9. The officers to be voted for in this election, are governor, lieutenant governor, secretary of state, auditor, treasurer, attorney general, three judges of the supreme court, nine circuit judges and nine district attorneys (according to act of January 15, 1861), county judges, clerks, sheriffs, coroners, constables, justices of the peace, and all other officers provided for in the constitution and ordinances of this convention, or which may exist by law, and members of the legislature, according to the ratio or apportionment of senatorial districts in force in the year 1860, and members to congress in districts Nos. 1 and 2, according to the act approved January 19, 1861, (no election being ordered in district No. 3, this convention recognizing the election of Col. James M. Johnson as the representative from that district). And it is further hereby declared that all laws in force in this state on the 4th day of March, 1861, are still in force, not inconsistent with the provision of this constitution, and which have not expired by limitation therein contained.

JOHN McCOY,

President of the Convention, and Delegate from Newton County.

LUTHER C. WHITE, Crawford county.
 C. A. HARPER, Crawford county.
 JOHN AUSTIN, Crawford county.
 JOSIAH HARRELL, Crawford county.
 HARMON L. HOLLEMAN, Sebastian county.
 JOHN R. SMOOT, Sebastian county.
 RANDOLPH D. SWINDELL, Sebastian county.
 G. W. SEAMANS, Madison county.
 JAMES T. SWAFFORD, Saline county.
 W. HOLLEMAN, Saline county.
 JOHN M. DEMINT, Saline county.
 ENOCH H. VANCE, Saline county.
 MILES L. LANGLEY, Clark county.
 J. M. STAPP, Clark county.
 C. T. JORDAN, Clark county.
 JOHN BURTON, Clark county.
 JOHN C. PRIDDY, Montgomery county.

REUBEN LAMB, Montgomery county.
E. D. AYRES, Pulaski county.
T. D. W. YONLEY, Pulaski county.
E. L. MAYNARD, Pulaski county.
WILLIAM STOUT, Pope county.
BURKE JOHNSON, Yell county.
ELIAS G. COOK, Yell county.
L. D. CANTRELL, Pike county.
WILLIS JONES, Pike County.
JAMES A. BUTLER, Phillips county.
T. M. JACKS, Phillips county.
HORACE B. ALLIS, Jefferson county.
JOHN BOX, Jackson county.
CALVIN C. BLISS, Independence county.
A. B. FRYREAR, St. Francis county.
LEMUEL HELMS, Sevier county.
R. L. TURNER, Ouachita county.
THOMAS J. YOUNG, Polk county.
JAMES HUEY, Polk county.
ANDREW G. EVANS, Dallas county.
R. H. STANFIELD, Dallas county.
WILLIAM COX, Drew county.
L. DUNSCOMB, Conway county.
Attest : ROBERT J. T. WHITE, *Secretary.*
 JAMES R. BERRY, *Assistant Secretary.*

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CONSTITUTION

OF THE

STATE OF ARKANSAS

OF 1868.

PREAMBLE.

We, the people of the state of Arkansas, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this constitution:

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. 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 to alter or reform the same whenever the public good may require it. But the paramount allegiance of every citizen is due to the federal government in the exercise of all its constitutional powers as the same may have been or may be defined by the supreme court of the United States, and no power exists in the people of this or any other state of the federal union to dissolve their connection therewith, or perform any act tending to impair, subvert or resist the supreme authority of the United States.

The constitution of the United States confers full powers on the federal government to maintain and perpetuate its existence; and whensoever any portion of the states, or the people thereof, attempt to secede from the federal union, or forcibly resist the execution of its laws, the federal government may, by warrant of the constitution, employ armed force in compelling obedience to its authority.

SEC. 2. The liberty of the press shall forever remain inviolate. The free communication of thoughts and opinions is one of the invaluable rights of man; and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

SEC. 3. The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity, nor exempted from any burden or duty on account of race, color or previous condition.

SEC. 4. The citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives, and to petition for the redress of grievances, and other proper purposes.

SEC. 5. The citizens of this state shall have a right to keep and bear arms for their common defence.

SEC. 6. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases, in the manner prescribed by law.

SEC. 7. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel or unusual punishments be inflicted, nor witnesses be unreasonably detained.

SEC. 8. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or judicial district wherein the crime shall

have been committed—which county or district shall have been previously ascertained by law—and to be informed of the nature and cause of the accusation against him ; to have compulsory process for obtaining witnesses in his favor ; and to have the assistance of counsel in his defence.

SEC. 9. No person shall be held to answer a criminal offence unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases of petit larceny, assault, assault and battery, affray, vagrancy, and such other minor cases as the general assembly shall make cognizable by justices of the peace ; or arising in the army or navy of the United States, or in the militia when in actual service in time of war or public danger ; and no person, after having been once acquitted by a jury, for the same offence shall be again put in jeopardy of life or liberty ; but if, in any criminal prosecution, the jury be divided in opinion, the court before which the trial shall be had may in its discretion discharge the jury, and commit or bail the accused for trial at the same or the next term of said court ; nor shall any person be compelled in any criminal case to be a witness against himself ; nor be deprived of life, liberty or property, without due process of law. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences—murder and treason—when the proof is evident or the presumption great ; and the privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require.

SEC. 10. Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character ; he ought to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformably to the laws.

SEC. 11. Treason against the state shall only consist in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two (2) witnesses to the same overt act, or on confession in open court.

SEC. 12. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

SEC. 13. No bill of attainder, *ex post facto* law, nor any law impairing the obligation of contracts, shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate.

SEC. 14. No person shall be imprisoned for debt in this state; but this shall not prevent the general assembly from providing for imprisonment or holding to bail persons charged with fraud in contracting said debt. A reasonable amount of property shall be exempt from seizure or sale for the payment of debts or liabilities.

SEC. 15. Private property shall not be taken for public use without just compensation therefor.

SEC. 16. The military shall be subordinate to the civil power. No standing army shall be kept up in this state in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

SEC. 17. Suits may be brought by or against the state in such manner and in such courts as may be by law provided.

SEC. 18. 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. 19. The right of suffrage shall be protected by laws regulating elections and prohibiting, under adequate penalties, all undue influence from bribery, tumult, or other improper conduct.

SEC. 20. Foreigners who are, or may become *bona fide* residents of this state, shall be secured the same rights in respect to the acquisition, possession, and enjoyment and descent of property as are secured to native-born citizens.

SEC. 21. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the state. No religious test or amount of property shall ever be required as a qualification of any voter at any election in this state; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion; and the mode of administering an oath or affirmation shall be such as shall be most consistent with and binding upon the conscience of the person to whom such oath or affirmation may be administered.

SEC. 22. Any person who shall, after the adoption of this constitution, fight a duel, or send or accept a challenge for that purpose, or be aider or abettor in fighting a duel, either within this state or elsewhere, shall thereby be deprived of the right of holding any office of honor or profit in this state, and shall be forever disqualified from voting at any election, and shall be punished otherwise in such manner as may be prescribed by law.

SEC. 23. Religion, morality and knowledge being essential to good government, the general assembly shall pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship; and to encourage schools and the means of instruction.

SEC. 24. All lands in this state are declared to be allodial, and feudal tenures of every description, with all their incidents, are prohibited. Leases and grants of land for a longer period than twenty-one (21) years, hereafter made, in which shall be reserved any rent or service of any kind, shall be held a conveyance in fee to the lessee.

SEC. 25. The action of the convention of the state of Arkansas which assembled in the city of Little Rock on the fourth (4th) day of March, A. D. one thousand eight hundred and sixty-one (1861), was, and is null and void. All the action of the state of Arkansas under the authority of said convention, of its ordinances or its constitution, whether legislative, executive, judicial or military, was, and is hereby declared null and void; and no debt or liability of the state of Arkansas incurred

by the action of said convention, or of the general assembly, or any department of the government under the authority of either, shall ever be recognized as obligatory. *Provided*, That this ordinance shall not be so construed as to affect the rights of private individuals arising under contracts between the parties, or to change county boundaries or county seats, or to make invalid the acts of justices of the peace, or other officers in their authority to administer oaths, or take and certify the acknowledgments of deeds of conveyance, or other instruments of writing, or in the solemnization of marriage.

ARTICLE II.

BOUNDARIES.

We do declare and establish, ratify and confirm, the following as the permanent boundaries of said state of Arkansas, that is to say: Beginning at the middle of the main channel of the Mississippi river, on the parallel of thirty-six (36) degrees north latitude; running from thence west, with the said parallel of latitude, to the St. Francis river; thence up the middle of the main channel of said river to the parallel of thirty-six (36) degrees, thirty (30) minutes north; from thence west with the boundary line of the state of Missouri to the southwest corner of that state; and thence to be bounded on the west to the north bank of Red river, as by acts of congress, and treaties heretofore defining the western limits of the territory of Arkansas; and to be bounded on the south side of Red river by the boundary line of the state of Texas to the northwest corner of the State of Louisiana; thence east with the Louisiana state line to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of said river, including an island in said river known as "Belle Point Island," to the thirty-sixth (36) degree of north latitude—the place of beginning.

ARTICLE III.

The seat of government shall be at Little Rock, where it is now established.

ARTICLE IV.

SECTION 1. The powers of government are divided into three (3) departments—the legislative, the executive, and the judicial.

SEC. 2. No person belonging to one department shall exercise the powers properly belonging to another, excepting in the cases expressly provided in this constitution.

ARTICLE V.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power in this state shall be vested in a general assembly, which shall consist of a senate and a house of representatives.

SEC. 2. The general assembly shall meet every two (2) years, on the first Monday of January, at the seat of government, until altered by law; but the first general assembly elected after the adoption of this constitution shall meet on the second (2d) day of April, A. D., one thousand eight hundred and sixty-eight (1868).

SEC. 3. The house of representatives shall consist of members chosen every second (2d) year by the qualified electors of the several districts.

SEC. 4. No person shall be a member of the house of representatives who shall not have attained the age of twenty-one (21) years, and have been one year a resident of this state, who shall not be a male citizen of the United States, who shall not, at the time of his election, have an actual residence in the district he may be chosen to represent, and who shall not be a qualified elector as provided in this constitution.

SEC. 5. The senate shall consist of members chosen every fourth year by the qualified electors of the several districts.

SEC. 6. No person shall be a member of the senate who shall not have attained the age of twenty-five (25) years, and have been one year a resident of this state, who shall not be a male citizen of the United States, who shall not, at the time of his election, have an actual residence in the district he may be

chosen to represent, and who shall not be a qualified elector as provided in this constitution.

SEC. 7. The number of members composing the senate shall be twenty-six (26), and of the house of representatives eighty-two (82).

SEC. 8. The general assembly shall provide, by law, for an enumeration of the inhabitants of this state in the year one thousand eight hundred and seventy-five (1875), and every tenth (10th) year thereafter; and the first (1st) general assembly elected after each enumeration so made, and also after each enumeration made by the authority of the United States, may re-arrange the senatorial and representative districts according to the number of inhabitants as ascertained by such enumeration. *Provided*, That there shall be no apportionment, other than that made in this constitution, until after the enumeration to be made in the year one thousand eight hundred and seventy-five (1875).

SEC. 9. Senators shall be chosen at the same time and in the same manner that members of the house of representatives are required to be. Senatorial districts shall be composed of convenient contiguous territory, and no representative district shall be divided in the formation of a senatorial one. The senatorial districts shall be numbered in regular series, and the term of senators chosen for the districts designated by odd numbers shall expire in two (2) years, and the term of senators chosen for the districts designated by even numbers shall expire in four (4) years; but thereafter senators shall be chosen for the term of four (4) years, excepting when an enumeration of the inhabitants of the state is made, in which case, if a re-arrangement of the senatorial districts is made, the regulation above stated shall govern the term of office.

SEC. 10. Removals of senators and representatives from their respective districts shall be deemed a vacation of their office.

SEC. 11. No person holding any office under the United States, or this state, or any county office, excepting postmasters, notaries public, officers of the militia, and township offi-

cers, shall be eligible to or have a seat in either branch of the general assembly, and all votes given for any such person shall be void.

SEC. 12. Senators and representatives shall, in all cases, (treason, felony, or breach of the peace excepted,) be privileged from arrest during the session of the general assembly. They shall not be subject to any civil process during the session of the general assembly, or for fifteen (15) days next before the commencement and next after the termination of each session. And they shall not be questioned in any other place for remarks made in either house.

SEC. 13. A majority of the members of each house shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner, and under such penalties, as each house may prescribe.

SEC. 14. Each house shall choose its own officers, determine the rules of its proceedings, judge of the qualifications, election and return of its members; and may, with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause, nor for any cause known to his constituents at the time of his election. The reasons for any such expulsion shall be entered upon the journal, with the names of the members voting thereon.

SEC. 15. The general assembly shall prescribe by law the manner in which the state printing shall be executed, and the accounts rendered therefor, and shall prohibit all charges for constructive labor. They shall not rescind or alter any contract for such printing, or release the person or persons taking the same, or his or their securities, from the performance of any of the provisions of such contract.

SEC. 16. Each house shall keep a journal of its proceedings, and publish the same, excepting such parts as may require secrecy. The yeas and nays of the members of either house, upon any question, shall be entered on the journal at the request of five (5) members. Any member of either house

may dissent, and protest against any act, proceeding or resolution which he may deem injurious to any person or the public, and have the reason of his dissent entered on the journal.

SEC. 17. In all elections by either house, or in joint convention, the votes shall be given *viva voce*. All votes on nominations to the senate shall be taken by yeas and nays, and published with the journal of its proceedings.

SEC. 18. The doors of each house shall be open, unless the public welfare requires secrecy. Neither house shall, without the consent of the other, adjourn for more than three (3) days, nor to any other place than where the general assembly may then be in session.

SEC. 19. Bills may originate in either house of the general assembly; but all bills for raising revenue shall originate in the house of representatives, though the senate may propose amendments as on other bills.

SEC. 20. No portion of the public funds or property shall ever be appropriated by virtue of any resolution. No appropriation shall be made except by a bill duly passed for that purpose.

SEC. 21. Every bill and joint resolution shall be read three (3) times, on different days, in each house, before the final passage thereof, unless two-thirds of the house where the same is pending shall dispense with the rules. No bill or joint resolution shall become a law without the concurrence of a majority of all the members voting. On the final passage of all bills the vote shall be taken by yeas and nays, and entered on the journal.

SEC. 22. No act shall embrace more than one subject, which shall be embraced in its title. No public act shall take effect or be in force until ninety (90) days from the expiration of the session at which the same is passed, unless it is otherwise provided in the act.

SEC. 23. No law shall be revised, altered, or amended, by reference to its title only, but the act revised, and the section

or sections of the act, as altered or amended, shall be enacted and published at length.

SEC. 24. No new bill shall be introduced into either house during the last three (3) days of the session without the unanimous consent of the house in which it originated.

SEC. 25. The general assembly, at its first session, shall provide suitable laws for the registration of the qualified electors, and for the prevention of frauds in elections.

SEC. 26. The general assembly shall provide for the speedy publication of all statute laws of a public nature, and of such judicial decisions as it may deem expedient. All laws and judicial decisions shall be free for publication by any person.

SEC. 27. The style of the laws of the state shall be, "Be it enacted by the general assembly of the state of Arkansas."

SEC. 28. The general assembly may enact laws providing for county, township or precinct governments.

SEC. 29. It shall be the duty of the general assembly, from time to time, as circumstances may require, to frame and adopt a penal code, founded on principles of reformation.

SEC. 30. The general assembly shall not change the venue in any criminal or penal prosecution, but shall provide for the same by general laws.

SEC. 31. The general assembly may pass laws authorizing appeals in criminal or penal cases, and regulating the right of challenge of jurors therein.

SEC. 32. The general assembly shall direct by law when and how juries shall be selected from judicial districts in criminal and civil cases.

SEC. 33. The general assembly shall regulate by law by whom and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

SEC. 34. The general assembly may declare the cases in which any office shall be deemed vacant, and also for the manner of filling the vacancy, where no provision is made for that purpose in this constitution.

SEC. 35. Every bill and concurrent resolution, except of adjournment, passed by the general assembly, shall be presented to the governor for approval before it becomes a law. If he approve, he shall sign it; if not, he shall return it, with his objections, to the house in which it originated, which shall enter the objections at large upon its journals, and reconsider it. On such reconsideration, if a majority of the members elected agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall be reconsidered. If approved by a majority of the members elected to that house, it shall become a law. In such cases the vote of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house respectively. If any bill be not returned by the governor within three (3) days (Sundays excepted) after it has been presented to him, the same shall become a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall not become a law. The governor may approve, sign and file in the office of the secretary of state, within three (3) days after the adjournment of the general assembly, any act passed during the last three (3) days of the session, and the same shall become a law.

SEC. 36. Each house may punish by imprisonment during its session, any person not a member, who shall be guilty of any disorderly or contemptuous behavior in their presence; but no such imprisonment shall at any time exceed twenty-four (24) hours.

SEC. 37. No citizen of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless the same is done by the law of the land, or the judgment of his peers, except as hereinafter provided. There shall be neither slavery nor involuntary servitude, either by indentures, apprenticeships or otherwise, in the state, except for the punishment of crime, whereof the party shall have been duly convicted.

SEC. 38. The general assembly shall have no power to make compensation for emancipated slaves.

SEC. 39. The general assembly shall have no power to grant divorces, to change the names of individuals, or to direct the sales of estates belonging to infants or other persons laboring under legal disabilities, by special legislation; but by general laws, shall confer such powers on the courts of justice.

SEC. 40. The general assembly shall not authorize, by private or special law, the sale or conveyance of any real estate belonging to any person, or vacate or alter any road laid out by legal authority, or any street in any city or village, or in any recorded town plat; but shall provide for the same by general laws.

SEC. 41. The general assembly shall not authorize any lottery, and shall prohibit the sale of lottery tickets.

SEC. 42. In case of a contested election, only the claimant decided entitled to the seat, in either house in which the contest may take place, shall receive from the state *per diem*, compensation and mileage.

SEC. 43. No collector, holder, or disburser of public moneys shall have a seat in the general assembly, or be eligible to any office of trust or profit under this state, until he shall have accounted for and paid over, as provided by law, all sums for which he is liable.

SEC. 44. The general assembly shall have power to alter and regulate the jurisdiction and proceedings in law and equity, subject to the provisions of this constitution.

SEC. 45. The general assembly shall direct by law in what manner and in what courts suits may be brought by and against the state.

SEC. 46. It shall be the duty of the general assembly to make adequate provision for the maintenance of paupers throughout the state.

SEC. 47. The general assembly shall not have power to authorize any municipal corporation to pass any laws contrary to the general laws of the state, or to levy any tax on real or

personal property to a greater extent than two (2) per centum of the assessed value of the same.

SEC. 48. The general assembly shall pass no special act conferring corporate powers. Corporations may be formed under general laws ; but all such laws may, from time to time, be altered or repealed. Dues from corporations shall be secured by such individual liability of the stockholders, and other means as may be prescribed by law ; but, in all cases, each stockholder shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum at least equal in amount to such stock. The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals. No right-of-way shall be appropriated to the use of any corporation until full compensation therefor shall be first made in money, or first secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation ; which compensation shall be ascertained by a jury of twelve (12) men, in a court of record, as shall be prescribed by law.

SEC. 49. The general assembly shall provide for the organization of cities and incorporated villages by general laws, and restrict their powers of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such powers.

SEC. 50. All corporations with banking and discounting privileges shall, preparatory to issuing bills as currency, deposit the bonds of this state, equal in amount to the capital stock of such corporation, with the auditor of the state, who shall not permit an issue of circulation exceeding eighty (80) per centum of the amount of bonds so deposited, such circulation being receivable for all taxes and dues to the state, and the individual liability of stockholders shall be as hereinbefore directed. *Provided*, That corporations chartered or existing under any act of the congress of the United States shall be exempted from these provisions.

SEC. 51. The general assembly, on the day of final adjournment, shall adjourn at twelve (12) o'clock at noon.

ARTICLE VI.

EXECUTIVE DEPARTMENT.

SECTION 1. The executive department of this state shall consist of a governor, lieutenant governor, secretary of state, auditor, treasurer, attorney general and superintendent of public instruction—all of whom shall hold their several offices for the term of four years, and until their successors are elected and qualified. They shall be chosen by the qualified electors of this state at the time and places of choosing the members of the general assembly.

SEC. 2. The supreme executive power of this state shall be vested in the governor.

SEC. 3. No person shall be eligible to the office of governor or lieutenant governor who shall not have attained the age of twenty-five (25) years; who shall not have been five (5) years a citizen of the United States, who shall not, at the time of his election, have had an actual residence in this state for one (1) year next preceding his election, and who shall not be a qualified elector as prescribed in this constitution.

SEC. 4. In elections for governor and lieutenant governor, the person having the highest number of votes shall be declared elected. But in case that two (2) or more persons shall have an equal and the highest number of votes for governor or lieutenant governor, the general assembly shall, by joint vote, choose one (1) of such persons. The governor shall be commander in chief of the military and naval forces of the state, and may call out such forces to execute the laws, suppress insurrection, repel invasions, or preserve the public peace. He shall transact all necessary business with other officers of the state government, and may require information in writing of the officers of the executive department upon any subject pertaining to the duties of their respective offices.

SEC. 5. It shall be the duty of the governor to see that the laws are faithfully executed.

SEC. 6. He may convene the legislature on extraordinary occasions.

SEC. 7. He shall give to the general assembly, and at the close of his official term to the next general assembly, information by message concerning the condition of the state, and recommend such means to their consideration as he may deem expedient.

SEC. 8. He may convene the general assembly at some other place when the seat of government becomes dangerous from the prevalence of disease or the presence of a common enemy.

SEC. 9. He may grant reprieves, pardons and commutations, after conviction, for all offences, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper; subject however to such regulations as may be prescribed by law relative to the manner of applying for pardons. Upon conviction for treason he may suspend execution of the sentence until the matter shall be reported to the general assembly at its next session, when the general assembly shall either pardon, commute the sentence, direct the execution of the same, or grant a further reprieve. The governor shall communicate to the general assembly at each session, information concerning each case of pardon, reprieve or commutation granted, and the reasons therefor.

SEC. 10. In case of the impeachment of the governor, his removal from office, death, resignation, inability or removal from the state, the powers and duties of the governor shall devolve upon the lieutenant governor during the residue of the term, or until the disabilities of the governor are removed.

SEC. 11. During a vacancy in the office of governor, if the lieutenant governor resign, be impeached, displaced, absent from the state, or incapable of acting, the president *pro tempore* of the senate shall act as governor until the vacancy be filled or the disability cease.

SEC. 12. The lieutenant governor shall by virtue of his office be president of the senate, and when there is an equal division he shall give the casting vote.

SEC. 13. No member of congress or any person holding any office under the United States or this state, shall execute the office of governor.

SEC. 14. The lieutenant governor, and the president of the senate *pro tempore*, while performing the office of governor, shall receive the same compensation as the governor.

SEC. 15. All official acts of the governor—his approval of the laws excepted—shall be authenticated by the great seal of the state, which seal shall be kept by the secretary of state.

SEC. 16. The governor shall, by and with the advice and consent of the senate, appoint a convenient number of notaries public, not to exceed six (6) for each county, who shall discharge such duties as are now or as may hereafter be prescribed by law.

SEC. 17. All commissions issued to persons holding office under the provisions of this constitution shall be in the name, and by the authority of the people of the state of Arkansas, sealed with the great seal of the state, signed by the governor and countersigned by the secretary of state.

SEC. 18. The governor, chief justice, secretary of state, treasurer, auditor, attorney general, and superintendent of public instruction, shall severally reside and keep all public records, books, papers and documents which may pertain to their respective offices, at the seat of government.

SEC. 19. The returns of every election for governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, and superintendent of public instruction, shall be sealed up and transmitted to the seat of government by the returning officers, and directed to the presiding officer of the senate, who, during the first week of the session shall, open and publish the same in the presence of the members then assembled. The person having the highest number of votes shall be declared elected; but if two (2) or more shall have the highest and equal number of votes for the same office, one of

them shall be chosen by joint vote of both houses. Contested elections shall likewise be determined by both houses of the general assembly in such manner as is or may hereafter be prescribed by law.

SEC. 20. The secretary of state shall keep a fair record of all official acts and proceedings of the governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before the general assembly, and shall perform such other duties as are now or may hereafter be prescribed by law.

SEC. 21. The auditor, treasurer, attorney general, and superintendent of public instruction, shall perform such duties as are now, or may hereafter be prescribed by law.

SEC. 22. In case of the death, impeachment, removal from the state, or other disability of the secretary of state, treasurer, auditor, attorney general, and superintendent of public instruction, the vacancies in their several offices thus occasioned shall be filled by appointment of the governor; which appointment shall be made for the unexpired terms of said officers, or until said disabilities are removed, or until elections are held to fill said vacancies.

SEC. 23. Until the general assembly shall otherwise provide, the governor shall appoint a suitable person, who shall be styled commissioner of public works and internal improvements, who shall hold his office during the term of four (4) years, and until his successor is duly commissioned and qualified. It shall be the duty of the commissioner of public works and internal improvements to superintend all public works which may be carried on by the state, and have a supervising control over all internal improvements in which the state is interested; and, until otherwise provided by the general assembly, he shall be *ex officio* commissioner of immigration and of state lands, and shall perform such other duties as may be prescribed by law. He shall receive for his services the same salary as provided by law for the auditor of state.

SEC. 24. The officers of the executive department, mentioned in this article, shall, at stated times, receive for their

services, a compensation to be established by law, which shall not be diminished during the period for which they have been elected or appointed.

SEC. 25. The officers of the executive department and judges of the supreme court shall not be eligible, during the period for which they may be elected or appointed to their respective offices, to any position in the gift of the qualified electors, or of the general assembly of this state.

SEC. 26. The returns of every election for state, county and judicial officers, not herein provided for, shall be sealed up and transmitted to the seat of government by the returning officers, and directed to the secretary of state, who shall open and publish the same; and the persons so elected shall be duly commissioned by the governor.

ARTICLE VII.

JUDICIARY.

SECTION 1. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, a supreme court, circuit courts, and such other courts inferior to the supreme court as the general assembly may from time to time establish.

SEC. 2. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate. When sitting for that purpose senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members thereof. The chief justice shall preside, and the secretary of state shall act as clerk of the court; *Provided*, That in case of the trial of either of them the person appointed temporarily to perform the duties of the office shall act.

The governor and all civil officers under this state, shall be liable to impeachment for any misconduct or maladministration of their respective offices; but judgment in such cases shall not extend farther than a removal from office and disqualification to hold any office of honor, trust, or profit under this state. The party, whether convicted or acquitted, shall neverthe-

less be liable to indictment, trial and judgment according to law.

SEC. 3. Two (2) terms of the supreme court shall be held at the seat of government annually; *Provided*, That the general assembly may provide by law for holding said court at three other places. The supreme court shall consist of one (1) chief justice, who shall be appointed by the governor, by and with the advice and consent of the senate, for the term of eight (8) years, and four associate justices, who shall be chosen by the qualified electors of the state at large for the term of eight (8) years; *Provided*, That two (2) of the associate justices first chosen under this constitution shall serve for four (4) years after the next general election, and two (2) of them for eight (8) years after said election, said times to be determined by lot; but thereafter the associate justices shall be chosen for the full term.

SEC. 4. The supreme court shall have general supervision and control over all inferior courts of law and equity. It shall have power to issue writs of error, supersedeas, certiorari, habeas corpus, mandamus, quo-warranto and other remedial writs, and to hear and determine the same. Final judgments in the inferior courts may be brought by writ of error, or by appeal, into the supreme court, in such manner as may be prescribed by law.

SEC. 5. The inferior courts of the state, as now constituted by law, except as hereinafter provided, shall remain with the same jurisdiction as they now possess; *Provided*, That the general assembly may provide for the establishment of such inferior courts, changes of jurisdiction, or abolition of existing inferior courts, as may be deemed requisite. The judges of the inferior courts herein provided for, or of such as may hereafter be established by law, shall be appointed by the governor, by and with the advice and consent of the senate, for the term of six (6) years, and until such time as the general assembly may otherwise direct; *Provided*, that the general assembly shall not interfere with the term of office of any judge.

SEC. 6. All writs and other processes shall run in the name of the state of Arkansas, and bear teste and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude, "against the peace and dignity of the state of Arkansas."

SEC. 7. No judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or in which he may have been counsel, or have presided in any inferior court.

SEC. 8. In case all or any of the judges of the supreme court shall be disqualified from presiding on any cause or causes, the court or judges thereof shall certify the same to the governor of the state, and he shall immediately commission specially the required number of men, learned in the law, for the trial and determination thereof.

SEC. 9. Whenever at ten (10) o'clock a. m. of the second (2d) day of any term of the inferior courts of this state, the judge thereof is not present, or if present and he can not for any cause properly preside at the trial of any case then pending therein, the attorneys of said court then present may elect a special judge, who shall preside during the trial of such case or cases, or shall hold said court until the appearance of the regular judge thereof. The proceedings in such cases shall be entered at large upon the record.

SEC. 10. The judges of the inferior courts may temporarily exchange circuits, or hold courts for each other under such regulations as may be prescribed by law.

SEC. 11. Judges shall not charge juries with regard to matters of fact, but shall declare the law. In all trials by jury the judges shall give their instructions and charges in writing; and if the trial is by the court he shall reduce to writing his findings upon the facts in the case, and shall declare the law in the same manner he is required to do when instructing juries.

SEC. 12. Any judge whose appointment or election is herein provided for, shall be at least twenty-five (25) years of

age, a qualified elector of this state, and shall have been for one year an actual resident of the state, and shall reside in the circuit or district to which he may be appointed or elected.

SEC. 13. The judges of the supreme and inferior courts shall, at stated times, receive a compensation for their services as is now or may hereafter be provided by law, and which shall not be diminished during the respective terms for which they may be elected or appointed.

SEC. 14. The inferior courts shall hold annually such terms as the general assembly may direct.

SEC. 15. All appeals from inferior courts shall be taken in such manner and to such courts as may be provided by law. Appeals may be taken from courts of justices of the peace to such courts and in such manner as may be prescribed by law.

SEC. 16. When a vacancy occurs in the office of judge of the supreme, or any of the inferior courts, it shall be filled by appointment by the governor; which appointee shall hold his office the residue of the unexpired term, and until his successor is elected and qualified.

SEC. 17. The supreme court, and such other courts as may be established by law, shall be courts of *record* and shall have a common seal.

SEC. 18. The supreme court shall appoint a clerk of such court, and also a reporter of its decisions. The decisions of the supreme court shall be in writing, and signed by the judges concurring therein. Any judge dissenting therefrom shall give the reasons of such dissent in writing, over his signature; all such decisions shall be filed in the office of the clerk of the supreme court, and be published in such manner as the general assembly may direct. The clerk and reporter shall hold their respective offices for the term of six years, subject to removal by the court for cause.

SEC. 19. A county clerk shall be elected by the qualified electors in each organized county in this state for the term of four (4) years, and shall perform such duties and receive such fees as are now or may hereafter be prescribed by law.

SEC. 20. In each township in this state there shall be elected by the qualified electors thereof, two (2) justices of the peace, who shall hold their offices for the term of four (4) years. *Provided*, That in such townships as may contain more than two hundred (200) qualified electors, an additional justice of the peace may be chosen. Justices of the peace shall have exclusive original jurisdiction in all actions of contract and replevin where the amount in controversy does not exceed two hundred (200) dollars, and concurrent jurisdiction with the circuit court where the amount in controversy does not exceed five hundred (500) dollars. In criminal causes the jurisdiction of justices of the peace shall extend to all matters less than felony for final determination and judgment.

SEC. 21. Any suitor in any court of this state shall have the right to prosecute or defend his suit either in his own proper person or by attorney.

SEC. 22. In the courts of this state there shall be no exclusion of any witness in civil actions because he is a party to, or is interested in the issue to be tried; and no person convicted of infamous crime shall be a competent witness in any cause without the consent of both parties to the controversy. *Provided*, That in actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transactions with, or statements to, the testator, intestate or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court. The judges of the supreme and all inferior courts shall be conservators of the peace throughout their respective jurisdictions.

ARTICLE VIII.

FRANCHISE.

SECTION 1. In all elections by the people the electors shall vote by ballot.

SEC. 2. Every male person born in the United States, and every male person who has been naturalized, or has legally declared his intention to become a citizen of the United States,

who is twenty-one (21) years old or upwards, and who shall have resided in the state six (6) months next preceding the election, and who, at the time, is an actual resident of the county in which he offers to vote, except as hereinafter provided, shall be deemed an elector. *Provided*, No soldier, or sailor, or marine, in the military or naval service of the United States, shall acquire a residence by reason of being stationed on duty in the state.

SEC. 3. The following classes shall not be permitted to register, or vote, or hold office, viz.:

First. Those who during rebellion took the oath of allegiance, or gave bonds for loyalty and good behavior to the United States government, and afterwards gave aid, comfort or countenance to those engaged in armed hostility to the government of the United States, either by becoming a soldier in the rebel army, or by entering the lines of said army, or adhering in any way to the cause of rebellion, or by accompanying any armed force belonging to the rebel army, or by furnishing supplies of any kind to the same.

Second. Those who are disqualified as electors, or from holding office in the state or states from which they came.

Third. Those persons who during the late rebellion violated the rules of civilized warfare.

Fourth. Those who may be disqualified by the proposed amendment to the constitution of the United States, known as article XIV, and those who have been disqualified from registering to vote for delegates to the convention to frame a constitution for the state of Arkansas, under the act of congress entitled "An act to provide for the more efficient government of the rebel states," passed March 2, 1867, and the acts supplementary thereto.

Fifth. Those who have been convicted of treason, embezzlement of public funds, malfeasance in office, crimes punishable by law with imprisonment in the penitentiary, or bribery.

Sixth. Those who are idiots or insane.

Provided, That all persons included in the first, second, third and fourth subdivisions of this section, who have openly

advocated, or who have voted for the reconstruction proposed by congress, and accept the equality of all men before the law, shall be deemed qualified electors under this constitution.

SEC. 4. The general assembly shall have power, by a two-thirds vote of each house, approved by the governor, to remove the disabilities included in the first, second, third and fourth subdivisions of section three (3) of this article, when it appears that such person applying for relief from such disabilities has, in good faith, returned to his allegiance to the government of the United States. *Provided*, The general assembly shall have no power to remove the disabilities of any person embraced in the aforesaid subdivisions who, after the adoption of this constitution by this convention, persists in opposing the acts of congress and reconstruction thereunder.

SEC. 5. All persons, before registering or voting, must take and subscribe the following oath: "I — —, do solemnly swear (or affirm) that I will support and maintain the constitution and laws of the United States, and the constitution and laws of the state of Arkansas; that I am not excluded from registering or voting by any of the clauses of the first, second, third or fourth subdivisions of article VIII of the constitution of the state of Arkansas; that I will never countenance or aid in the secession of this state from the United States; that I accept the civil and political equality of all men, and agree not to attempt to deprive any person or persons, on account of race, color or previous condition, of any political or civil right, privilege or immunity, enjoyed by any other class of men; and furthermore that I will not in any way injure, countenance in others any attempt to injure any person or persons on account of past or present support of the government of the United States, the laws of the United States, or the principle of the political and civil equality of all men, or for affiliation with any political party." *Provided*, That if any person shall knowingly and falsely take any oath in this constitution prescribed, such person so offending, and being thereof duly convicted, shall be subject to the pains, penalties and

disabilities which by law are provided for the punishment of the crime of wilful and corrupt perjury.

SEC. 6. Electors shall in all cases except treason, felony or breach of the peace, be privileged from arrest and civil process during their attendance at elections, and in going to and returning from the same.

SEC. 7. It shall be the duty of the general assembly to enact adequate laws giving protection against the evils arising from the use of intoxicating liquors at elections.

ARTICLE IX.

EDUCATION.

SECTION 1. A general diffusion of knowledge and intelligence among all classes being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain a system of free schools for the gratuitous instruction of all persons in this state between the ages of five (5) and twenty-one (21) years; and the funds appropriated for the support of common schools shall be distributed to the several counties in proportion to the number of children and youths therein between the ages of five (5) and twenty-one (21) years, in such manner as shall be prescribed by law; but no religious or other sect or sects shall ever have any exclusive right to or control of any part of the school funds of this state.

SEC. 2. The supervision of public schools shall be vested in a superintendent of public instruction, and such other officers as the general assembly shall provide. The superintendent of public instruction shall receive such salary and perform such duties as shall be prescribed by law.

SEC. 3. The general assembly shall establish and maintain a state university, with departments for instruction in teaching, in agriculture, and the natural sciences, as soon as the public school fund will permit.

SEC. 4. The proceeds of all lands that have been or hereafter may be granted by the United States to this state, and not otherwise appropriated by the United States or this state,

also all mines, stocks, bonds, lands and other property, now belonging to any fund for purposes of education, also the net proceeds of all sales of lands and other property and effects that may accrue to this state by escheat, or from sales of estrays, or from unclaimed dividends, or distributive shares of the estates of deceased persons, or from fines, penalties or forfeitures, also any proceeds of sales of public lands which may have been or may be hereafter paid over to this state (congress consenting), also all the grants, gifts or devises that have been or hereafter may be made to this state, and not otherwise appropriated by the terms of the grant, gift or devise, shall be securely invested and sacredly preserved as a public school fund, which shall be the common property of the state; the annual income of which fund, together with one (1) dollar *per capita* to be annually assessed on every male inhabitant of this state over the age of twenty-one (21) years, and so much of the ordinary annual revenue of the state as may be necessary, shall be faithfully appropriated for establishing and maintaining the free school and university in this article provided for, and for no other uses or purposes whatever.

SEC. 5. No part of the public school fund shall be invested in the stocks or bonds or other obligations of any state, or any county, city, town or corporation. The stocks belonging to any school fund or university fund, shall be sold in such manner and at such times as the general assembly shall prescribe, and the proceeds thereof, and the proceeds of the sales of any lands or other property which now belongs, or may hereafter belong, to said school fund, may be invested in the bonds of the United States.

SEC. 6. No township or school district shall receive any portion of the public school fund, unless a free school shall have been kept therein for not less than three (3) months during the year for which distribution thereof is made. The general assembly shall require by law, that every child of sufficient mental and physical ability shall attend the public schools during the period between the ages of five (5) and eighteen

(18) years for a term equivalent to three (3) years, unless educated by other means.

SEC. 7. In case the public school fund shall be insufficient to sustain a free school at least three (3) months in every year in each school district in this state, the general assembly shall provide by law for raising such deficiency by levying such tax upon all taxable property in each county, township or school district that may be deemed proper.

SEC. 8. The general assembly shall, as far as can be done without infringing upon vested rights, reduce all lands, moneys, or other property, used or held for school purposes in the various counties of this state, into the public school fund herein provided for.

SEC. 9. Provision shall also be made, by general laws, for raising such sum or sums of money, by taxation or otherwise, in each school district, as may be necessary for the building and furnishing of a sufficient number of suitable school houses for the accommodation of all the pupils within the limits of the several school districts.

ARTICLE X.

FINANCES, TAXATION, PUBLIC DEBT AND EXPENDITURES.

SECTION 1. The levying of taxes by the poll is grievous and oppressive; therefore the general assembly shall never levy a poll tax excepting for school purposes.

SEC. 2. Laws shall be passed taxing by a uniform rule all money, credit, investments in bonds, joint stock companies or otherwise; and also all real and personal property according to its true value in money; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, shall never be taxed. Real estate shall be appraised at least once every five (5) years, by an appraiser to be provided for by law, at its true value in money. Personal property shall be appraised in such manner as may be provided by law at its true value in money; but the general assembly

may exempt from taxation personal property to the value of five hundred (\$500) dollars to each tax payer.

SEC. 3. The general assembly shall provide by law for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects or dues of every description, without deduction, of all banks now existing, or hereafter created, and of all bankers, so that all property employed in banking shall always bear a burden of taxation equal to that imposed on other property of individuals.

SEC. 4. The general assembly shall provide for raising revenue sufficient to defray the expenses of the state for each year; and also a sufficient sum to pay the interest on the state debt.

SEC. 5. No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same.

SEC. 6. The credit of the state or counties shall never be loaned for any purpose without the consent of the people thereof expressed through the ballot box.

SEC. 7. The general assembly may require the exhibit of receipts and expenditures of state and county officers at such time and manner as may be prescribed by law.

SEC. 8. No money shall be paid out of the treasury until the same shall have been appropriated by law.

SEC. 9. The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; and the money arising from the creation of such debts shall be appropriated to the purposes for which it was obtained, or to pay the debt so contracted, and to no other.

SEC. 10. In addition to the above power the state may contract debts to repel invasion, suppress insurrection, preserve the public peace, defend the state in time of war, or to redeem the present outstanding indebtedness of the state; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised and no other; and all debts incurred to redeem the present outstanding

indebtedness of the state, shall be so contracted as to be payable by the sinking fund hereinafter provided for, as the same shall accumulate.

SEC. 11. The faith of the state being pledged for the payment of its debt, in order to provide therefor, there shall be created a sinking fund ; which shall be sufficient to pay the accruing interest on such debt, and annually to reduce the same. The said sinking fund shall consist of such net earnings and profits of public institutions, bonds, stocks or other property of the state, or of any other funds or resources that are or may be provided by law.

SEC. 12. The governor, secretary of state, and attorney general, are hereby created a board of commissioners to be styled " the commissioners of the sinking fund."

SEC. 13. The commissioners of the sinking fund shall, immediately preceding each regular session of the general assembly, make an estimate of the probable amount of the fund provided by the eleventh (11th) section of this article, from all sources, except from taxation, and report the same, together with all their proceedings relative to said fund and debt, and transmit the same to the general assembly, and the general assembly shall make all necessary provisions for raising and disbursing said sinking fund, in pursuance of the provisions of this article.

SEC. 14. It shall be the duty of said commissioners faithfully to apply in such manner as the general assembly may by law direct, said fund, together with all moneys that may be by the general assembly appropriated to that object, to the payment of the interest as it becomes due, and the redemption of the principal of the public debt of the state, excepting only school and trust funds held by the state.

SEC. 15. The principal arising from the sale of all lands donated to the state for school purposes, shall be paid into the treasury ; and the state shall pay interest thereon, for the support of schools, at the rate of six (6) per cent. per annum.

SEC. 16. The state shall never assume the debts of county, town, city or other corporations, unless such debts have been

created to repel invasion, suppress insurrection, or to provide for the public welfare and defence.

SEC. 17. The general assembly shall tax all privileges, pursuits and occupations, that are of no real use to society; all others shall be exempt; and the amount thus raised shall be paid into the treasury.

ARTICLE XI.

MILITIA.

SECTION 1. All able-bodied electors in this state shall be liable to military duty in the militia of this state; but all citizens of any denomination whatever, who, from scruples of conscience, may be adverse to bearing arms, shall be exempt therefrom upon such conditions as may be prescribed by law.

SEC. 2. The general assembly shall provide for organizing, equipping and disciplining the militia in such manner as it shall deem expedient, not incompatible with the laws of the United States.

SEC. 3. The governor shall be commander in chief, and shall have power to call out the militia to execute the laws, to suppress insurrection, to repel invasion, and to preserve the public peace.

ARTICLE XII.

EXEMPTED PROPERTY.

SECTION 1. The personal property of any resident of this state, to the value of two thousand (2000) dollars, to be selected by such resident, shall be exempted from sale on execution, or other final process of any court, issued for the collection of any debt contracted after the adoption of this constitution.

SEC. 2. Hereafter the homestead of any resident of this state who is a married man or head of a family, shall not be encumbered in any manner while owned by him, except for taxes, laborers' and mechanics' liens, and security for the purchase money thereof.

SEC. 3. Every homestead not exceeding one hundred and sixty (160) acres of land, and the dwelling and appurtenances

thereon, to be selected by the owner thereof, and not in any town, city or village; or in lieu thereof, at the option of the owner, any lot in a city, town or village, with the dwelling and appurtenances thereon, owned and occupied by any resident of this state, and not exceeding the value of five thousand dollars, shall be exempted from sale on execution or any other final process from any court; but no property shall be exempt from sale for taxes, for the payment of obligations contracted for the purchase of said premises, for the erection of improvements thereon, or for labor performed for the owner thereof. *Provided*, That the benefit of the homestead herein provided for, shall not be extended to persons who may be indebted for dues to the state, county, township, school or other trust funds.

SEC. 4. If the owner of a homestead die, leaving a widow but no children, the same shall be exempt; and the rents and profits thereof shall accrue to her benefit during the time of her widowhood, unless she be the owner of a homestead in her own right.

SEC. 5. The homestead of a family, after the death of the owner thereof, shall be exempt from the payment of his debts in all cases during the minority of his children, and also so long as his widow shall remain unmarried, unless she be the owner of a homestead in her own right.

SEC. 6. The real and personal property of any female in this state, acquired either before or after marriage, whether by gift, grant, inheritance, devise or otherwise, shall, so long as she may choose, be and remain the separate estate and property of such female, and may be devised or bequeathed by her the same as she were a *femme sole*. Laws shall be passed providing for the registration of the wife's separate property, and when so registered, and so long as it is not entrusted to the management or control of her husband, otherwise than as an agent, it shall not be liable for any of his debts, engagements or obligations.

ARTICLE XIII.

AMENDMENTS TO THE CONSTITUTION.

SECTION 1. Any 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 (2) houses, such proposed 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 (3) 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 times 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 said amendments separately.

ARTICLE XIV.

APPORTIONMENTS.

SECTION 1. The congressional districts shall remain as they now are: *Provided*, That the general assembly may, at the first session held after the adoption of this constitution, re-district the state for congressional purposes.

SEC. 2. Until after the apportionment, as herein provided for, the senatorial and representative districts shall be composed of the following counties, to-wit: The 1st, of Jackson, Craighead, Poinsett, Cross and Mississippi; 2d, of Lawrence, Randolph and Greene; 3d, of Madison, Marion, Carroll, Ful-

ton and Izard; 4th, of Independence and Van Buren; 5th, of Searcy, Pope and Conway; 6th of Newton, Johnson and Yell; 7th, of Washington and Benton; 8th of Crawford, Franklin and Sebastian; 9th, of Crittenden, St. Francis and Woodruff; 10th, of Pulaski and White; 11th, of Phillips and Monroe; 12th, of Prairie and Arkansas; 13th, of Scott, Polk, Montgomery and Hot Spring; 14th, of Hempstead; 15th, of Lafayette and Little River; 16th, of Union and Calhoun; 17th, of Clark, Pike and Sevier; 18th, of Columbia; 19th, of Ouachita; 20th, of Jefferson and Bradley; 21st, of Dallas, Saline and Perry; 22d, of Ashley, Chicot, Drew and Desha. The senators and representatives shall be apportioned among the several senatorial and representative districts as follows, to-wit:

1st district—1 senator and 4 representatives.						
2d	"	1	"	"	3	"
3d	"	1	"	"	4	"
4th	"	1	"	"	3	"
5th	"	1	"	"	3	"
6th	"	1	"	"	3	"
7th	"	1	"	"	4	"
8th	"	1	"	"	4	"
9th	"	1	"	"	4	"
10th	"	2	"	"	6	"
11th	"	2	"	"	6	"
12th	"	1	"	"	4	"
13th	"	1	"	"	3	"
14th	"	1	"	"	3	"
15th	"	1	"	"	3	"
16th	"	1	"	"	2	"
17th	"	1	"	"	4	"
18th	"	1	"	"	3	"
19th	"	1	"	"	2	"
20th	"	2	"	"	6	"
21st	"	1	"	"	2	"
22d	"	2	"	"	6	"

ARTICLE XV.

MISCELLANEOUS PROVISIONS.

SECTION 1. The president of the convention shall, immediately after the adjournment thereof, cause this constitution to be deposited in the office of the secretary of state, and shall transmit a copy of the same to the president of the United States, to be by him laid before the congress of the United States.

SEC. 2. In all cases not otherwise provided for in this constitution, the general assembly may determine the mode of filling all vacancies in all offices, and of choosing all necessary officers, and shall define their respective powers and duties, and provide suitable compensation for all officers.

SEC. 3. All general elections shall be held on the Tuesday succeeding the first (1st) Monday in November, and shall be biennial, commencing at the general election of A. D. 1868; but all officers elected under the provisions of this constitution and schedule, except members of congress, at the election commencing on the 13th day of March, 1868, shall hold and continue in office, in accordance with the provisions of this constitution, the same as though elected at the general election, to be held on the Tuesday succeeding the first Monday in November, 1868; and no election shall be held for said officers at the election of 1868.

SEC. 4. All chartered cities and villages under the laws of this state, shall hold their municipal elections for the year 1868 at such times and places as may be provided in this constitution and the schedule of the same.

SEC. 5. The term of office of all township and precinct officers shall expire thirty (30) days after this constitution goes into effect; and the governor shall thereafter appoint such officers, whose term of office shall continue until the general assembly shall provide by law for an election of said officers.

SEC. 6. Until the general assembly shall otherwise provide, a prosecuting attorney for each judicial circuit shall be appointed by the governor, by and with the advice and consent

of the senate, who shall hold his office for the term of four (4) years, and until his successor is chosen and qualified: *Provided*, That the general assembly shall not interfere with the term of any appointed prosecuting attorney.

SEC. 7. The compensation of senators and representatives shall be six (6) dollars *per diem* during the first session after the adoption of this constitution, but may afterwards be prescribed by law: *Provided*, No increase of compensation shall be prescribed which shall take effect until the period for which the members of the house of representatives then existing shall have expired.

SEC. 8. Senators and representatives shall receive twenty (20) cents for each mile necessarily traveled in going to and returning from the seat of government, in attending each session of the general assembly, until otherwise provided by law.

SEC. 9. All salaries, fees and *per diem*, or other compensation of all state, county, town, or other officers within the state, shall be payable in such funds as may by law be receivable for state taxes.

SEC. 10. Any public fund set apart by the general assembly for one purpose shall not be used for another, unless in each case otherwise specially authorized by law.

SEC. 11. This convention shall appoint not more than three (3) persons, learned in the law, whose duty it shall be to revise and rearrange the statute laws of this state, both civil and criminal, so as to have but one law on any one subject; and, also, three other persons learned in the law, whose duty it shall be to prepare a code of practice for the courts, both civil and criminal, in this state, by abridging and simplifying the rules of practice and laws in relation thereto; all of whom shall, at as early a day as practicable, report the result of their labors to the general assembly for their adoption or modification. The general assembly shall provide suitable compensation for said persons appointed as aforesaid.

SEC. 12. No county now established by law shall ever be reduced by the establishment of any new county or counties to less than six hundred (600) square miles; nor shall any county

be hereafter established which shall contain less than six hundred (600) square miles.

SEC. 13. No indenture of any person hereafter made and executed out of this state, or if made in this state, where the term of service exceeds one (1) year, shall be of the least validity, except those given in cases of apprenticeship, which shall not be for a longer term than until the apprentice shall arrive at the age of twenty-one (21) years, if a male, or eighteen (18) years, if a female.

SEC. 14. All contracts for the sale or purchase of slaves are null and void; and no court of this state shall take cognizance of any suit founded on such contracts; nor shall any amount ever be collected or recovered on any judgment or decree which shall have been, or which hereafter may be, rendered on account of any such contract or obligation, on any pretext, legal or otherwise.

SEC. 15. There shall be a great seal of the state, which shall be kept and used officially by the secretary of state; and the seal heretofore in use in this state shall continue to be the great seal of the state until another shall have been adopted by the general assembly.

SEC. 16. Private seals are hereby abolished; and hereafter no distinction shall exist between sealed and unsealed instruments concerning contracts between individuals. All laws of this state not in conflict with this constitution shall remain in full force until otherwise provided by the general assembly, or until they expire by their own limitation. Nothing herein shall be construed to impair vested rights under provisions of existing laws.

SEC. 17. All officers of this state—executive, legislative and judicial—before they enter upon the duties of their respective offices, shall take the following oath: “I, ——, do solemnly swear (or affirm) that I am not disfranchised by the constitution or laws of the United States, or the constitution of the state of Arkansas; that I will honestly and faithfully support and defend the constitution and laws of the United States, the union of States, and the constitution and laws of

the state of Arkansas; and that I will honestly and faithfully discharge the duties of the office on which I am about to enter, to the best of my ability. So help me God."

SEC. 18. The term of all officers elected or appointed under the provisions of this constitution, shall expire on the first day of January, 1873, unless herein otherwise provided.

SEC. 19. No one shall be precluded from being elected or appointed to any office by reason of having been a delegate to this convention, or an officer of the same.

SEC. 20. No person shall be allowed or qualified to sit on any jury who is not a qualified elector.

SEC. 21. The general assembly may by general law declare the legal rate of interest upon contracts in which no rate of interest is specified; but no law limiting the rate of interest for which individuals may contract in this state shall ever be passed.

SEC. 22. All judges and clerks of election appointed under the provisions of this constitution, shall take and subscribe to the oath of an elector, as provided in section 5 of article VIII, before they enter upon the duties of said offices; and said judges are hereby authorized to administer the oath to each other and to the clerks; also to administer the same to all electors offering to vote. Said judges and clerks shall also swear to discharge their respective duties to the best of their ability, according to law. Judges of election may appoint a suitable number of persons, who shall, with themselves, be conservators of the peace; and they are hereby empowered to arrest all offenders. Any one refusing to act as such when called on by the judges, shall be subject to a fine of at least one hundred (100) dollars, or imprisonment not less than six months, or both.

SCHEDULE.

SECTION I. On the 14th day of March, A. D. 1868, and such successive days as hereinafter provided, an election shall be held for members of the house of representatives of the United States, governor, lieutenant governor, secretary of

state, auditor, treasurer, attorney general, superintendent of public instruction, judges of the supreme court, members of the general assembly, and all county officers, and also for the submission of this constitution to the people for their adoption or rejection.

SEC. 2. Upon the days designated as aforesaid, every qualified elector under the provisions of this constitution, may vote for all officers to be elected under this constitution at such election; and also for or against the adoption of this constitution.

SEC. 3. In voting for or against the adoption of this constitution, the words, "For Constitution," or "Against Constitution," shall be written or printed on the ballot of each voter; but no voter shall vote for or against this constitution on a separate ballot from that cast by him for officers to be elected at said election under this constitution.

SEC. 4. A board of commissioners is hereby appointed, to consist of James L. Hodges, Joseph Brooks and the president of this convention, any two of whom shall constitute a quorum to transact business, who shall keep an office for the transaction of business in Little Rock, and who may employ such clerical force as may be necessary, said clerks not to receive more per day for each day actually employed, than the *per diem* paid the assistant secretaries of this convention; and who are authorized and empowered to appoint, or cause to be appointed, suitable persons for judges and clerks of election in each county in this state, to hold the election therein for all state and county officers, and for members of the general assembly, and of the house of representatives of the United States, and also for the ratification of this constitution. Said election shall be held at such times and places in each county, commencing on the 13th day of March, and continuing on such successive days as the commissioners may direct, to secure a full and fair vote at such election.

SEC. 5. The judges of election, appointed as aforesaid, shall make returns of the same to said commissioners in such manner and under such regulations as said commissioners may

prescribe; which returns shall show the number of votes cast at said election for and against this constitution, and the number cast for each candidate for the offices provided for in this constitution and schedule.

SEC. 6. Any person contesting the election under this constitution for any state officer or member of the general assembly, shall do so before said board of commissioners, who shall have power to decide and declare the right to any office contested, and give the candidate legally elected a certificate of the same: *Provided*, Said commissioners may, in the cases of members of the general assembly whose right to the seats may be contested, refer the same to the general assembly for their determination. Said board of commissioners shall appoint the judges and clerks of the municipal elections to be held under the provisions of this constitution. Said judges shall conduct and make returns of said elections in the manner prescribed by the charter of the city or village in which said municipal election shall be held.

SEC. 7. Said commissioners shall appoint suitable persons as boards in every county, to hear and decide all cases of county elections.

SEC. 8. The said commissioners shall have power to inquire into the fairness or validity of the voting upon the ratification of this constitution, and to count the votes given at said election, and shall reject all fraudulent or illegal votes cast at said election; and said commissioners shall also have power, whenever it is made to appear that fraud, fear, violence, improper influence or restraint were used, or persons were prevented or intimidated from voting at such elections, to take such steps, either by setting aside the election and ordering a new one, or rejecting votes, or correcting the results in any county or precinct, as may in such cases be just and equitable.

SEC. 9. The said commissioners shall declare the result of the election upon the ratification of this constitution; and if adopted, the president of this convention shall transmit a certified copy of the same, together with an abstract of the votes cast, to the president of the United States, to be by him

laid before the congress of the United States for their approval or rejection, and shall also declare the officers elected thereunder; and if declared ratified, the constitution shall from and after that date be in full force and effect.

SEC. 10. No person disqualified from voting or registering under this constitution shall vote for candidates for any office; nor shall be permitted to vote for the ratification or rejection of this constitution at the polls herein authorized. The governor, and all other officers elected under this constitution, shall enter upon the duties of their offices when they shall have been declared duly elected by said board of commissioners, and shall have duly qualified. All officers shall qualify and enter upon the discharge of the duties of their offices within fifteen (15) days after they have been duly notified of their election or appointment.

SEC. 11. Upon notice of the election or appointment and qualification of the officers elected or appointed under this constitution, the present incumbents of all state, county and city offices shall vacate the same, and turn over to the officers so elected or appointed and qualified hereunder, all books papers, records, moneys and documents belonging or pertaining to said offices, on application made by the officers elected or appointed and qualified under this constitution.

SEC. 12. Any person may vote at the polls herein authorized for the election of officers and ratification of this constitution whom the judges of said election shall be satisfied by oath of the person offering to vote, and such other satisfactory evidence as they may require, is a legally qualified elector under this constitution: *Provided*, the judges of election shall administer to every person offering to vote at said election the oath prescribed in this constitution.

SEC. 13. In the event that either of the three (3) commissioners appointed by section four hereof, should be a candidate for any office, the other two commissioners shall canvass the vote so far as it relates to that office, and issue the certificate to the person elected.

SEC. 14. In case of death or any disability of any member or members of said board of commissioners, the remaining commissioner or commissioners shall have power to fill the vacancy ; and said commissioner or commissioners so appointed shall have full power to act as though originally appointed.

SEC. 15. Any person selling or giving away intoxicating liquor during the time of the election herein provided for, shall be punished by a fine of not less than two hundred (200) dollars for each and every offence, or imprisoned not less than six months, or both.

SEC. 16. Said commissioners shall provide suitable poll books for each county, and such instructions as may be necessary to carry into effect the provisions of this schedule. Judges and clerks of election thus appointed shall receive the same *per diem* as the board of registers provided for in the act entitled "An act to provide for the more efficient government of the rebel states," passed March 2d, 1867, and acts supplementary thereto.

SEC. 17. The commissioners herein appointed shall receive for their services, for each day actually employed, such compensation per day, and allowances, and in such manner as are now provided for members of this convention. All expenses incurred under this schedule, not otherwise provided for, shall be paid out of the appropriation for defraying the expenses of this convention.

Done in Convention, at Little Rock, the eleventh day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-second. In witness whereof we have hereunto subscribed our names.

THOMAS M. BOWEN,

President of the Convention, and Delegate from the County of Crawford.

GEORGE S. SCOTT, Little River county.

FRED. R. POOLE, Mississippi and Craighead counties.

GEORGE W. DALE, Independence county.

PETER C. MISNER, Independence county.

- CLIFFORD STANLEY SIMS, delegate from Desha county.
 DANIEL COATES, delegate from St. Francis county.
 J. A. HOUGHTON, delegate from Cross and Poinsett counties.
 FRANKLIN MONROE ROUNSAVILLE, Yell county.
 SOLOMON EXON, delegate from Clark county.
 MILES LEDFORD LANGLEY, Clark county.
 GALE H. KYLE, delegate from Dallas county.
 MOSES BELL, delegate from Sebastian county.
 JOHN H. HUTCHINSON, M. D., delegate from Arkansas
 county.
 JOHN McCLURE, delegate from Arkansas county.
 AMOS H. EVANS, delegate from Monroe county.
 JOHN N. SARBER, delegate from Johnson county.
 JESSE MILLSAPS, delegate from Van Buren county.
 WILLIAM A. WYATT, delegate from Searcy and Fulton
 counties.
 ANTHONY HINKLE, delegate from Conway county.
 O. P. SNYDER, delegate from Jefferson county.
 SAMUEL W. MALLORY, delegate from Jefferson county.
 JAMES M. GRAY, delegate from Jefferson county.
 JOSEPH BROOKS, Phillips county.
 THOMAS SMITH, Phillips county.
 WILLIAM H. GREY, Phillips county.
 JAMES T. WHITE, Phillips county.
 PARLEY A. WILLIAMS, delegate from Marion and Newton.
 ROBERT HATFIELD, delegate from Franklin county.
 JOHN W. HARRISON, delegate from Hot Spring county.
 JAMES W. MASON, delegate from Chicot county.
 GEORGE W. McCOWN, delegate from Columbia county.
 WILLIAM G. HOLLIS, delegate from Calhoun county.
 JAMES L. HODGES, delegate from Pulaski county.
 JAMES HINDS, delegate from Pulaski county.
 HENRY RECTOR, delegate from Pulaski county.
 THOMAS P. JOHNSON, delegate from Pulaski county.
 JOHN C. PRIDDY, delegate from Montgomery county.
 ASA HODGES, delegate from Crittenden county.
 F. M. SAMS, delegate from Madison county.

CHARLES H. OLIVER, delegate from Scott county.
 NATHAN N. RAWLINGS, from Ouachita county.
 JOHN R. MONTGOMERY, delegate from Hempstead county.
 SOLOMON D. BELDIN, delegate from Hempstead county.
 RICHARD SAMUELS, delegate from Hempstead county.
 R. C. VAN HOOK, delegate from Union county.
 IRA L. WILSON, delegate from Union county.
 WALTER W. BRASHEAR, delegate from Pope county.
 ALFRED M. MERRICK, delegate from Lafayette county.
 WILLIAM A. BEASLEY, delegate from Columbia county.
 JAMES P. PORTIS, delegate from Ouachita county.
 MONROE HAWKINS, delegate from Lafayette county.
 WILLIAM MURPHY, delegate from Jefferson county.
Attest: JOHN G. PRICE,
Secretary.

AMENDMENT.

ARTICLE VIII.

FRANCHISE.

SECTION 1. The following classes of persons shall not be permitted to register, vote or hold office in this state :

First. Persons who may have been convicted before any court of this state, or of the United States, or any other state of any crime punishable by law with death or confinement in the penitentiary: *Provided*, That any person disfranchised under this section who may be pardoned or his sentence commuted. Such pardon or commutation of sentence shall remove all disabilities imposed by this section. Second. Paupers, idiots and insane persons.

SEC. 2. Every male person who has attained the age of twenty-one years, and who is a citizen of the United States, or who has legally declared his intention to become a citizen thereof, who shall have resided in this state six months, and in the county in which he offered to vote ten days next pre-

ceding the election, shall be deemed a qualified elector and entitled to vote, if registered, unless disqualified by some one of the clauses of section 1 of this article.

SEC. 3. In all elections by the people the electors shall vote by ballot. The secrecy of the ballot shall be preserved inviolate, and the general assembly shall provide laws for that purpose. On the day of an election held by the people no elector shall be subject to arrest or any civil process. The general assembly shall pass adequate laws to prevent the sale of intoxicating liquors on the day on which any election by the people may be held.

Submitted to the people for ratification March 3, 1873, and declared ratified by proclamation of the governor, April 19, 1873. The act of January 23, 1873, providing for the submission of the amendment, declared that if the amendment should be ratified, it should be substituted for and known as Article VIII.

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